

Subsidiary Legislation made under s.37A.

## INCOME TAX (ALLOWANCES, DEDUCTIONS AND EXEMPTIONS) RULES, 1992

### LN.1992/016

*Commencement of rule 3(13)*                      **1.7.1989**  
*All other rules*    **1.7.1991**

Amending enactments	Relevant current provisions	Commencement date
LN. 1993/133	r.3(9)	1.7.1991
1992/118	r.3(9A)	1.7.1992
1993/114	r.3(8)-(9)	1.1.1993
1994/088	r.3(34)	1.1.1993
1992/022	r.25(1)	1.7.1993
1993/110	r.22(2)(b)-(d)	1.7.1993
1994/088	rr.21(1)(b)-(c), 27A, 31(1)	1.7.1993
1994/033	r.3(41)-(42)	31.3.1994
1994/088	rr.7(1), 8(4)	1.7.1995
1995/119	r.22(4)-(6)	1.7.1995
1995/122	r.22(4)	1.7.1995
1996/081	rr.6(1), 7(1)-(2), 12, 16(1)(a)-(b), 18(a), 14A	1.7.1996
1996/087	r.22(1), (2)(d), (2A), (7)	5.9.1996
1997/066	rr.6(1), 7(1)-(2), 12, 16(1), 18, (a)	1.7.1997
Act.1997-24	r.27A	1.10.1997
LN. 1998/048	rr.6(1), 7(1)-(2), 8(1), (4), 9-10, 11(d), 12, 16(1)(a)-(b), 18(1), (a)	1.7.1998
1999/025	r.3(43)	25.3.1999
1999/085	rr.3(23), 5(1)(c)-(e), (2), 5A- 5B, 6(1), 7(1)-(2), 8(1), (4), 9-10, 11(d), 12, 14A(1), 16(1)(a)-(b), 17, 18(1), (a)	1.7.1999
1999/104	rr.3(44), 26(1)-(2), (5), 27	1.7.1999
*2000/003	rr.7A, 10-11, 14(1)(a), (2)	1.7.1999
2000/005	r.5C	1.7.1999
2000/068	rr. 3(45)-(46), 6-7, 7A(1), 8(1)(c), (4), 9, 12,	

\* See saving provisions at the end of these Regulations.

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2002/013	14(1)(b)(i), 14A, 15-16, 16A, 17-18, 20A, 25 r. 16A(2)(b), (5),	1.7.2000 1.7.2000
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31. Repeal and Revocation.

*In exercise of the powers conferred on him by section 37A of the Income Tax Act, and of all other enabling powers, the Governor has made the following rules-*

**Title and commencement.**

1. These rules may be cited as the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992, and except for Rule 3 (13) which shall be deemed to have come into effect on the 1st day of July 1989, shall be deemed to have come into effect on the 1st day of July 1991.

**Interpretation.**

2. In these rules, unless the context otherwise requires-

"child" includes a stepchild, an illegitimate child, and a child adopted in accordance with an order made by a Court of Competent Jurisdiction;

"permitted individual" means an individual to whom section 34(3) applies;

"qualifying company" means a company to which section 41 applies;

"exempt company" means a company so designated by the Companies (Taxation and Concessions) Act.

**Income exempted.**

3. The following classes of income shall be exempt from tax –

(1) the Official emoluments received by the Officer Administering the Government;

(2) the emoluments payable to members of the permanent Consular Services of foreign countries who are nationals of those countries in respect of their offices or in respect of services rendered by them in their official capacity and any income derived by them from sources outside Gibraltar, and the emoluments of any other persons which in accordance with the terms of any International Convention applicable to Gibraltar or of any enactment in force in Gibraltar are to be exempted from taxes upon income;

(3) the emoluments payable from funds of Her Majesty's Government in the United Kingdom to members of Her Majesty's Forces and to any other persons (except persons appointed or engaged in Gibraltar) whose emoluments in respect of their offices in Gibraltar under that Government are charged to income tax in the United Kingdom, and the

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emoluments payable otherwise than from the said funds to members of the Armed Forces of any other power or body stationed in Gibraltar;

(4) the income of any friendly society registered in Gibraltar or in the United Kingdom in so far as the income is not derived from a trade or business carried on by such society;

(5) the income of any ecclesiastical, charitable or educational institution or trust of a public character in Gibraltar, but not including any income derived by such institution or trust from a trade or business carried on by it unless the profits are applied solely to the purposes of such institution or trust and either-

- (i) the trade or business is exercised in the cause of the actual carrying out of a primary purpose of the institution or trust; or
- (ii) the work in connection with the trade or business is mainly carried on by the beneficiaries of the institution or trust;

(6) the income of a body of persons formed for the purpose of promoting social or sporting amenities, subject to the Commissioner being satisfied that the income of such body is applied solely to the furtherance of the objects for which such body was formed and is not income derived from a trade or business carried on by such body;

(7) any sum paid as compensation for unfair dismissal which has been awarded by an industrial tribunal under the provisions of the Employment Act;

(8) such amount paid in respect of compensation for unfair dismissal which has been agreed between the parties which the Commissioner considers would have been awarded by an industrial tribunal if it had adjudicated upon the dismissal;

(9) such sum paid upon redundancy which the Commissioner considers to be appropriate, having regard to, but not limited to, the employee's length of service with the employer who made him redundant and his rate of pay;

(9A) such sum as is received by way of terminal gratuity as defined and provided for by the decision of the Construction and Allied Trades Joint Industrial Council in respect of short term terminal gratuity;".

(10) capital sums received by way of retiring, other than sums received in pursuance of a retirement benefit scheme, injury or death gratuities, or as consolidated compensation for death or injury;

(11) any capital sum received as a gratuity upon termination of employment by an employee of the Crown, whether in its right of the Government of Gibraltar or of the United

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Kingdom, after his having completed 20 years service, where the terms of employment of the employee are such that any service in excess of 20 years would not enhance the amount of the gratuity;

(12) (i) capital sums not exceeding 25 per centum of the capital value of the pension received by an individual on retirement from any provident society or other fund approved by the Commissioner.

(ii) capital sums received by an individual on retirement from any provident society or other fund approved by the Commissioner and established by an exempt or qualifying company registered in Gibraltar for the benefit of the non-resident employees (other than permitted individuals) of such exempt or qualifying company.

(13) wound and disability pensions granted to members of Her Majesty's forces or of any recognised national defence organisation in respect of service in such forces or organisation;

(14) pensions granted to widows of members of Her Majesty's Forces or of any recognised national defence organisation in respect of the death of such members in the service of such forces or organisation;

(15) gratuities granted to members of Her Majesty's Forces or of any recognised national defence organisation in respect of services rendered during the war, or on retirement;

(16) the income of any registered Trade Union and of the Gibraltar Chamber of Commerce, in so far as such income is not derived from any trade or business carried on by such Trade Union or by the Gibraltar Chamber of Commerce;

(17) the investment income of any pension fund, provided fund or other fund established in Gibraltar, and approved by the Commissioner;

(18) the income of the Government Savings Bank;

(19) the income arising from a scholarship, exhibition, bursary, or any other similar educational endowment held by a person receiving full time instruction at a university, college, school or educational establishment;

(20) the gains or profits derived by a non-resident owner or charterer or operator of ships or aircraft through the amounts received or receivable by him for the carriage of passengers or cargo to or from Gibraltar in any ship or aircraft owned or chartered or operated by him;

(21) the income of the Navy, Army and Air Force Institutes and of the Services Sound and Vision Corporation;

(22) the first £600 paid or credited to any person and the first £600 paid or credited to the spouse of any person in respect of interest on deposits in the Government Savings Bank in any basis period for any year of assessment;

(23) any interest not exceeding in the aggregate the sum of £600 paid or credited to any person and any interest not exceeding in the aggregate the sum of £600 paid or credited to the spouse of any person, being in the case of each person interest on deposits in any one or more banks or building societies incorporated, registered or recognised in Gibraltar in any basis period for any year of assessment;

(24) any interest received in respect of deposits in Gibraltar in any bank or building society by any non-resident person, except a permitted individual or any company which is an exempt company.

(25) any interest received by any non-resident person except a permitted individual in respect of any loan stock, where-

- (i) the loan stock is issued by a public company incorporated in Gibraltar which is an investment company; and
- (ii) the public company is one whose securities are dealt in under the auspices of a Stock Exchange approved for the purpose of this paragraph by the Commissioner; and
- (iii) the proceeds of the loan stock issue are applied only for development purposes in Gibraltar, approved for the purpose of this paragraph by the Minister for Trade and Industry; and
- (iv) the person receiving the interest is the person who is beneficially entitled to receive it.

(26) the profits of a company which is an exempt company, and the dividends or interest payable by such a company to its own members, to the extent that such profits, dividends or interest are exempted under the Companies (Taxation and Concessions) Act;

(27) the income received by any trust or beneficiary under the trust where-

- (i) the trust is created by or on behalf of a non-resident persons; and
- (ii) the income either accrues or is derived outside Gibraltar, or in the case of income received by a trust would, if it had been received directly by the beneficiary, be not liable to tax under this Act; and

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(iii) except in the case of a trust created before the 1st day of July 1983, the terms of the trust expressly exclude residents of Gibraltar (as defined in section 2(1) of the Companies (Taxation and Concessions) Act) as persons who either are, or may be, under any discretionary power of the trustee under the terms of the trust, a beneficiary or any class or classes of beneficiary;

(28) a grant under the Overseas Service Aid Scheme paid by Her Majesty's Government of the United Kingdom direct to an officer designated under that scheme on his appointment to service in Gibraltar;

(29) an inducement allowance or education allowance paid to an officer designated under the Overseas Service Aid Scheme;

(30) a gratuity payable by the Government under a Contract of Employment with an officer recruited from outside Gibraltar;

(31) a gratuity payable by the Government under the terms of a Contract of Employment with any officer, not being a gratuity payable under the Pensions Act or under any subsidiary legislation made under that Act;

(32) any interest received by any non-resident person, except a permitted individual, in respect of any interest received as a result of a loan made by such non-resident person to a qualifying company;

(33) any interest received by a qualifying company in respect of any loans made by that company to another qualifying company;

(34) such sum paid to an employee in lieu of the notice required to be given by an employer to terminate the Contract of Service of the employee under the provisions of section SS of the Employment Act which the Commissioner is satisfied is the only form of compensation paid to the employee by the employer upon the redundancy of the employee;

(35) any interest received by any person (whether resident or non-resident) in respect of any loan made by him to any person for the purpose of financing investment in development projects designed to promote the economic and social development of Gibraltar, where the terms and conditions of such loan have been approved for this purpose, in writing, by the Minister for Trade and Industry;

(36) the gains or profits derived by a non-resident person from his appearance as a public entertainer in Gibraltar, in any appearance of not more than 3 hours duration and not exceeding 5 such appearances in any year of assessment;



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(37) the emoluments, bounty and other grants payable from the Consolidated Fund to members of the Volunteer Reserve of the Gibraltar Regiment, under the Gibraltar Regiment Act;

(38) the emoluments paid in the United Kingdom to an individual recruited from outside Gibraltar by consultants or contractors engaged on development projects or studies financed either directly or indirectly by the Overseas Development Administration of Her Majesty's Government of the United Kingdom:

Provided that the provisions of this sub-rule shall not apply to a permitted individual;

(39) any inducement allowance or gratuity paid to an individual recruited from outside Gibraltar and employed by or seconded to a company wholly owned by the Government of Gibraltar and paid either wholly or partly out of grants and loans originating from the Overseas Development Administration of Her Majesty's Government of the United Kingdom and received either directly or indirectly by such company:

Provided that the provisions of this sub-rule shall not apply to a permitted individual;

(40) any income arising out of Gibraltar and received therein by a non-resident individual who is in Gibraltar for some temporary purpose:

Provided that such individual does not reside in Gibraltar at one or more times for a period equal in the aggregate to 6 months in the year of assessment;

(41) income to which rule 4 of the Parent and Subsidiary Company Rules 1991 applies.

Provided that nothing in this rule shall be construed to exempt in the hands of the recipients any dividends, interest, annuities, bonuses, salaries, wages, pensions or other profits paid wholly or in part out of the income so exempted, unless express provision to that effect has been made in the Act;

(42) a gratuity payable under the provisions of regulations 5(2) (d) of the Pensions Regulations.

(43) The cost to the Crown of housing any officer employed by the Crown, not being an officer entitled to a gratuity under the provisions of the Pensions Act.

(44) the income accruing to a life fund maintained by a life assurance company in so far as the retention of the income within the fund is necessary to maintain the fund at the level required by the Insurance Companies (Solvency Margins and Guarantee Funds) Regulations 1996.

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(45) any interest received in respect of deposits held in Gibraltar in any bank or building society where the following conditions apply-

- (a) the deposits are held by a property management company established under the terms of the title deeds relating to a property in Gibraltar comprised in an urban development commonly known as a housing estate, and
- (b) the money in deposit is raised from maintenance or service charges paid by the owner-occupiers of such properties, or interest thereon, pursuant to an obligation in the lease or underlease of the property to make such payment for the maintenance of such housing estate.

(46) the benefit to an employee by reason of the payment by his employer of premiums or contributions payable to an approved company for the purpose of providing health insurance for that employee, whether or not including his wife and dependent children, not exceeding in the aggregate the sum of £300 less any sum claimed by the employee under rule 20A, in any year of assessment.

#### **Loans charged on Consolidated Fund.**

4.(1) The Governor may by notice in the Gazette provide that the interest payable on any loan charged on the Consolidated Fund shall be exempt from tax, either generally or in respect of interest payable to non-resident persons and exempt companies, and such interest shall as from the date and to the extent specified by such notice be exempt accordingly.

(2) Any interest which has been exempt from tax under the provisions of sub-rule (1) and which has been paid to a company which distributes such interest by way of dividend to shareholders in such company or by way of fees to the directors of such company shall, subject to the provisions of sub-rules (3) and (4) be exempt from tax when paid to such shareholders or directors.

(3) If a company which has received interest exempt from tax under the provisions of sub-rule (1) has also received income from any other source and distributes only part of its total income, whether by way of dividends or as fees to directors, then only such part of the sum received exempt from tax shall be exempt from tax on distribution as the proportion such sum bears to the company's total income.

(4) No interest received by a company exempt from tax under the provisions of sub-rule (1) shall, on distribution, be exempt from tax unless-

- (a) the distribution of such interest is made within the accounting period in which the interest is received; and

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- (b) the total sum available for distribution after the deduction of the expenses of the company is distributed.

**Deductions allowed.**

5.(1) For the purpose of ascertaining the assessable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred by that person in the production of the income, including-

- (a) rent and other outgoings paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income:

Provided that where land or buildings are only partly occupied for that purpose the deduction shall be limited to such sum as the Commissioner may consider to be fair and reasonable;

- (b) bad debts incurred in any trade, business, profession or vocation which have become bad during the period for which the income is being ascertained, and doubtful debts to the extent that they are respectively estimated, to the satisfaction of the Commissioner, to have become bad during the said period, notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period:

Provided that-

- (i) all sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall, for the purposes of these Rules, be treated as receipts of the trade, business, profession or vocation for that period; and
  - (ii) the debts in respect of which a deduction is claimed were included as a trading receipt in the income of the year within which they were incurred.
- (c) such sum as the Commissioner may consider just and reasonable as representing the amount by which the value 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 similar premises, has been diminished by reason of wear and tear arising out of their use or employment by the owner thereof in a trade, business or profession:

Provided that-

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- (i) *Deleted*
- (ii) 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);
- (iii) 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 manner as the Commissioner deems just and equitable; and
- (iv) no deduction shall be allowed for any period if the deduction will exceed the written down value;

(d) *Deleted*

- (e) any sum expended for repair of premises, plant, machinery or fixtures employed in acquiring the income, or for the repair, renewal or alteration of any implement, utensil or article so employed;

Provided that no deduction shall be made for the cost of renewal of any asset which has been the subject of a deduction under these rules or under section 18 of the principal Act;

- (f) any sums payable by way of interest upon any money borrowed, where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income:

Provided that-

- (i) except in the case of a loan approved in writing by the Minister for Trade and Industry for this purpose prior to the 1st day of March 1992, no deduction shall be allowed in respect of any interest paid in relation to a loan approved by that Minister for the purposes of rule 3(35) of these Rules;
- (ii) where the interest is paid by a non-resident person to another non-resident person, no deduction shall be allowed unless tax is deducted and accounted for to the Commissioner as if the payment was a payment to which section 40 of the Act applies;

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- (g) expenses wholly, exclusively and necessarily incurred in the performance of the duties of an office or employment;
- (h) contributions by an employer to a provident or other fund for the benefit of his employees, such fund having been approved by the Commissioner:

Provided that-

- (i) a contribution which is not an ordinary annual contribution shall be allowed as a deduction in the year in which it is paid or spread over such period of years as the Commissioner thinks proper;
  - (ii) payments made or becoming due to an employer out of funds which are or have been held by any provident or other fund of the employer shall be treated as receipts of the employer's trade, business, profession or vocation for the period in which they are paid or become due;
- (i) in the case of a company-
    - (i) registered in Gibraltar, and
    - (ii) having a parent company which is neither registered in nor resident in Gibraltar; and
    - (iii) whose main income in interest received from that parent company,  
such amount of expenses, calculated as a percentage of that income, as the Financial and Development Secretary may direct.

(2) Subject to the provisions of the Act and these rules, for the purpose of ascertaining the assessable income of any person no deduction shall be allowed under these rules in respect of-

- (a) domestic or private expenses;
- (b) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) any capital withdrawn or any sum employed or intended to be employed as capital;
- (d) any capital employed in improvements;
- (e) any sum recoverable under an insurance or contract of indemnity;

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- (f) rent of or cost of repairs to or other outgoings in connection with any premises or part of premises not paid or incurred for the purpose of producing the income;
- (g) any tax charged under this Act or any tax in respect of which relief might fall to be given under rules 26 and 27;
- (h) depreciation of any assets, save such deductions as may be admissible under this rule; or
- (i) any salaries, wages, commissions or other remuneration in respect of which the person claiming the deduction does not furnish to the Commissioner a certified statement of the names, addresses and the amounts paid in respect of such salaries, wages, commissions or other remuneration to each of the persons in respect of whom the deduction is claimed.

(3) Nothing in this rule shall be taken as permitting a deduction for any outgoings or expenses wholly or partially incurred in the production of income which is exempt from taxation under the provisions of the Parent and Subsidiary Company Rules 1991 and-

- (a) to the extent that outgoings and expenses can be identified as being incurred wholly in the production of income so exempt they shall be wholly disallowed as deductions, and
- (b) to the extent that outgoings and expenses can be identified as being incurred partly in the production of income so exempt such proportion of those outgoings and expenses as in the opinion of the Commissioner is just and reasonable shall be disallowed.

**Full deductions allowed: plant and machinery**

5A.(1) In this rule and in rule 5B, “plant and machinery”, whether used conjunctively or disjunctively -

- (a) includes a fixture and a fitting;
- (b) 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;

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

(2) Subject to sub-rule (5), where -

(a) a person carrying on any trade, business, profession or vocation incurs in any year of assessment capital expenditure not exceeding £30,000 wholly and exclusively for the provision of plant or machinery for the purposes of producing income from that trade, business, profession or vocation; and

(b) in consequence of his incurring that expenditure, the plant or machinery belongs to him at some time during the year of assessment -

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

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

(4) Where any plant or machinery used for the purposes of any trade, business, profession or vocation, in respect of which a deduction is allowed under this rule, 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.

(5) 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.

(6) Nothing in this rule shall serve to operate in respect of expenditure incurred prior to the 1st July 1999, in which case the provisions of rule 5(1)(c) shall apply in the same manner as prior to the 1st July 1999.

#### **Partial deductions allowed: plant and machinery**

5B.(1) Subject to sub-rule (4), where -

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- (a) 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
- (b) in consequence of his incurring that expenditure, the plant or machinery belongs to him at some time during the year of assessment -

then for the purposes of ascertaining the assessable income of that person from that trade, business, profession or vocation, there shall be deducted from his income for that year 25% of the whole amount of the said capital expenditure exceeding £30,000, and an additional 25% in respect of the subsequent three years of assessment:

Provided that in respect of the first £30,000 of the said expenditure, the provisions of regulation 5A shall apply.

(2) Were 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.

(3) No deduction shall be allowed under this rule if the deduction will exceed the written down value.

(4) 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 section 18 of the Act or rule 5A 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-rule 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.

(5) Nothing in this rule shall serve to operate in respect of expenditure incurred prior to the 1st July 1999, in which case the provisions of rule 5(1)(c) shall apply in the same manner as prior to the 1st July 1999.

**Deductions for vehicles to which rule 5A and 5B do not apply.**



5C.(1) Subject to sub-rule (4), where -

- (a) a person carrying on any trade, business, profession or vocation incurs in any year of assessment capital expenditure for the provision of vehicles for the purposes of producing income from that trade, business, profession or vocation; and
- (b) 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% of the whole amount of the said capital expenditure, and an additional 25% in respect of the subsequent three years of assessment.

(2) Were 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.

(3) No deduction shall be allowed under this rule if the deduction will exceed the written down value.

(4) 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, 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;

Provided that where the sum realised or likely to be realised under the provisions of this sub-rule 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.

(5) Nothing in this rule shall serve to operate in respect of expenditure incurred prior to the 1st July 1999, in which case the provisions of rule 5(1)(c) shall apply in the same manner as prior to the 1st July 1999.

(6) In this rule, “vehicles”, means motor vehicles to which rule 5A or 5B do not apply.

**Personal Allowance.**

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6.(1) Save as otherwise hereinafter provided there shall be deducted from the assessable income of an individual the sum of £2,175:

Provided that the said sum of £2,175 shall be reduced by one twelfth for each complete calendar month that the individual is not resident in Gibraltar during the year of assessment.

(2) The balance of assessable income of an individual after the deduction of any further amounts which may be due to be made in accordance with these rules shall be the taxable income of such individual.

(3) Where no such deductions are due to be made under this rule or elsewhere in these rules, the assessable income of any person shall be the taxable income of such person.

**Deduction for a wife.**

7.(1) Save as otherwise hereinafter provided, an individual who proves to the satisfaction of the Commissioner that in the year of assessment he-

- (a) had a wife living with him or wholly maintained by him; or
- (b) paid alimony or maintenance to a previous wife whose marriage with him had been dissolved or annulled by a court of competent jurisdiction; or
- (c) made payments in accordance with an order of court or a separation agreement to a wife from whom he is separated by such order or agreement,

shall be entitled to claim a deduction from the amount of his assessable income of either £2,060 in the case of paragraph (a) or the amount actually paid under paragraphs (b) or (c):

Provided that -

- (i) where a deduction is claimed under paragraphs (b) or (c) and the payments are made by virtue of an order or an agreement, the amount of the deduction shall not exceed £2,060; and
- (ii) the deduction allowed under this sub-rule shall be reduced by one twelfth for each complete calendar month that the individual is not married and resident in Gibraltar (or, in the case of an individual who has paid alimony or maintenance, who is not resident in Gibraltar) during the year of assessment.

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(2) Where the total income of any claimant includes any earned income of his wife, the deduction to be allowed under sub-rule (1) shall, subject to rule 20, be increased by the amount of that earned income, or by £2,175, whichever is the lesser amount.

(3) For the purposes of sub-rule (2), "earned income" means-

- (a) income arising in respect of gains or profits derived by the wife from any trade, business, profession or vocation carried on or exercised by her, either as an individual acting personally or, in the case of a partnership, as a partner acting personally in it; and
- (b) income derived by the wife from any employment to the extent that the Commissioner is satisfied that it represents reasonable payment by way of fees, salary, wages, pension or other remuneration for services actually performed,

but does not mean any other income.

#### **Deduction for disabled individuals.**

7A.(1) Save as hereinafter provided, an individual who proves to the satisfaction of the Commissioner that he is the parent of an unmarried individual who -

- (a) resides with that parent;
- (b) suffers from a specific bodily or mental disability; and
- (c) by reason of that disability the parent or individual is in receipt of financial assistance out of the Social Assistance Fund of the Government of Gibraltar,

shall be entitled to claim from the amount of his assessable income a deduction of £1,185 in respect of each individual to whom this rule refers.

(2) An individual shall not be entitled to claim a deduction under rules 8 or 9 and this rule in respect of the same individual:

Notwithstanding the foregoing, where, but for this rule, two or more persons are entitled to claim a deduction under this rule in respect of the same individual, the Commissioner may apportion the relief on such basis as appears to him to be fair and reasonable in all the circumstances of the case, and so that the aggregate of deductions allowed does not exceed the amount specified in this rule.

(3) Nothing in this rule shall prejudice the provisions of rule 3(2) of the Income Tax (Allowances, Deductions And Exemptions) Rules 1992 (Amendment) (No.3) Rules 1999.

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(4) The Commissioner may consult either the Director of Education or the Chief Executive of the Gibraltar Health Authority, as the case may require, on any matter arising out of a claim to a deduction under this rule.

**Deduction for children.**

8.(1) Save as otherwise hereinafter provided, an individual who proves to the satisfaction of the Commissioner that he has maintained during the year of assessment an unmarried child who was-

- (a) under the age of 16 years at the commencement of the year of assessment; or
- (b) during the year of assessment receiving full time instruction at any university, college, school or other educational establishment; or
- (c) during the year of assessment under articles or indentures with a view to qualifying in a trade or profession,

shall, subject to rule 20, be entitled to claim from the amount of his assessable income a deduction of £745 in respect of the first child to whom this rule applies.

(2) An individual shall be entitled to claim the deduction referred to in sub-rule (1) in respect of the maintenance of a child born during the year of assessment:

Provided that the amount of the deduction shall be reduced by one twelfth for each complete month of that year ending before the birth of the child.

(3) Sub-rule (2) shall apply in relation to a stepchild or an adopted child as if the date on which the child has become a stepchild or an adopted child was the date of birth of that child.

(4) An individual who proves to the satisfaction of the Commissioner that in the year of assessment he has paid under an order of court or separate agreement or separate maintenance to a child, is entitled to claim a deduction from the amount of his assessable income of the amount of the alimony or maintenance actually paid up to a maximum of £745.

**Deduction for children educated abroad.**

9. Save as otherwise hereinafter provided an individual who proves to the satisfaction of the Commissioner that-

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- (a) he has maintained during the year of assessment an unmarried child who has attained the age of 16 years by the commencement of the year of assessment; and
- (b) the child was during the year of assessment receiving or undergoing outside Gibraltar any training specified in rule 8(1)(b) and (c);
- (c) the individual is ordinarily resident in Gibraltar; and
- (d) the individual is not entitled to a similar allowance or deduction in any other country in respect of the child

shall be entitled to claim from the amount of his assessable income a deduction of £830 if the child is the first child for whom he may claim a deduction under this rule and a further deduction of £665 in respect of each other child to whom this rule refers.

10. *Revoked*

11. *Revoked*

#### **Deduction for maintenance of children.**

12. An individual who proves to the satisfaction of the Commissioner that, if a man, he is not entitled for the year of assessment to claim a deduction under rule 7, or, if a woman, that no man is entitled to make a claim in respect of her under that rule, and that he has the custody of and maintains during the year of assessment an unmarried child for whom a deduction is allowable, shall, subject to rule 20, be entitled to claim a deduction from the amount of his assessable income of £2,060:

Provided that where a woman has the custody of and maintains such a child, she may claim a deduction under this rule, notwithstanding the fact that a claim is made in respect of her under rule 7(1)(b) or (c).

#### **Joint Custody.**

13. If it is proved to the satisfaction of the Commissioner that-

- (a) the parents of a child are legally separated; and
- (b) the father of the child is not entitled to claim a deduction under rule 7(1)(b) or (c); and
- (c) both parents have the custody of and maintain the child (irrespective of which parent has care and control),

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then, subject to rule 20, each parent shall be entitled to a deduction from his or her assessable income of one half of the amount specified in rule 12.

Provided that if one of the parents dies during a year of assessment then-

- (i) the amount of the deduction to which the deceased was entitled under this rule shall be reduced by one twelfth for each complete month of that year after the date of the death; and
- (ii) the amount by which the amount of that deduction is reduced shall be added to the amount of the deduction which the surviving parent is entitled to claim under this rule.

**Exceptions for certain children.**

14.(1) An individual shall not be entitled-

- (a) to claim any deduction under rules 8 and 9 in respect of any child who is not resident in Gibraltar unless the child is a child of the individual; or
- (b) to claim a deduction under more than one of those rules in respect of the same child, and notwithstanding those rules-
  - (i) no deduction shall be allowed under any such rules in respect of any child whose total income in his own right exceeds the amount of the deduction specified in that particular rule: notwithstanding the foregoing, this subparagraph shall not apply to the following income -
    - (aa) income to which a child is entitled as the holder of a scholarship, bursary or other educational allowance;
    - (bb) gains or profits from any employment by a child who is a full-time student at an educational establishment approved by the Commissioner for the purpose of this rule;
  - (ii) where, but for this paragraph, two or more persons are entitled to claim a deduction under any such rules in respect of the same child, the Commissioner may apportion the relief on such basis as appears to him to be fair and reasonable in all the circumstances of the case, and so that the aggregate of the deductions allowed does not exceed the amount specified in those rules.

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(2) The Commissioner may consult either the Director of Education or the Chief Executive of the Gibraltar Health Authority, as the case may require, on any matter arising out of a claim to a deduction under any of the rules specified in sub-rule (1)(a).

### Nursery school allowance

14A(1) An ordinarily resident individual who proves to the satisfaction of the Commissioner that in any year of assessment-

- (a) he has a child who reached the age of three years old-
  - (i) on the 31 August in that year of assessment, or
  - (ii) in the twelve months immediately preceding the 31 August in that year of assessment, and
- (b) subject to (2) below, the child in (a) above attends an independent nursery school in Gibraltar for the full school year ending in the year which immediately follows the year of assessment, shall be entitled to claim for that year of assessment an allowance in the amount of £535.

(2) Where a child described in (1)(a) above-

- (a) attends an independent nursery school for part but not all of the school year provided for in (1)(b), and
- (b) the Commissioner is satisfied that the failure to attend for the full school year is caused by,
  - (i) the long term illness or death of the child, or
  - (ii) genuine hardship on the behalf of the parents, the Commissioner may, at his discretion, allow a proportion of the allowance in (1) above which he considers appropriate given all the circumstances and in particular the length of attendance during the school year.

(3) For the purposes of this Rule-

“independent nursery school” shall mean a school, other than a government school which-

- (i) is used mainly for the purpose of providing education for children who have not started primary education, and

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- (ii) is registered under section 11 of the Education Act, and
- (iii) is accessible to the public at large, and
- (iv) provides an education service comparable to that provided in a government nursery school, and
- (v) charges a fee for the provision of education which the Commissioner is satisfied represents the market value of the service provided.

“school year” shall have the meaning ascribed to it in the Education Act.

**Apprentices.**

15.(1) An individual who proves to the satisfaction of the Commissioner that during the year of assessment he was an apprentice, shall be entitled to claim a deduction from the amount of his assessable income of £310.

Provided that the sum of £310 shall be reduced by one twelfth for each complete calendar month that the individual is not resident in Gibraltar during the year of assessment.

(2) For the purposes of this rule, an apprentice means a person who is bound by a written contract approved by the Industrial Training Board or the Gibraltar Official Employers Apprentices Board to serve an employer for a determined period with a view to acquiring knowledge, including theory and practice, of a trade in which the employer is reciprocally bound to instruct that person.

**Deduction for persons over 65 years.**

16.(1) Where an individual proves to the satisfaction of the Commissioner that at any time during the year of assessment, either he or, if he is married and his wife is living with him or wholly maintained by him, his wife is of the age of 65 years or more, he shall, in addition to the deductions provided for elsewhere in these rules, be entitled to a deduction from his assessable income of-

- (a) in the case where he is married and his wife is living with him or wholly maintained by him, £680; and
- (b) in any other case £475;

and in every case, to a further deduction of 15 per cent of the amount by which his assessable income is less than £4,500; but in the case of an individual to whom paragraph (a) of this subrule applies, his wife shall not herself be entitled to any deduction under this rule.



(2) Any deduction allowable under subrule (1) shall be reduced by one twelfth for each complete calendar month that the individual is not resident in Gibraltar.

(3) Subrule (2) shall not apply to the assessable income of an individual who is not resident in Gibraltar, where that assessable income includes income from a pension accruing in or derived from Gibraltar.

**Special deduction for senior citizens on low income.**

16A.(1) This rule applies to an individual who proves to the satisfaction of the Commissioner that during a year of assessment—

- (a) he is of the age of 65 years or more or in the case of a woman 60 years or more, and
- (b) that he has not made an election under rule 25.

(2) An individual to whom this rule applies who proves to the satisfaction of the Commissioner that his total assessable income from all sources during a year of assessment—

- (a) does not exceed £7,600 per annum, shall be entitled to claim a deduction from the amount of his assessable income equal to the difference between that income and the sum of all other deductions, allowances and reliefs to which he may be entitled under these rules,
- (b) exceeds £76,00 per annum, shall be entitled to claim a deduction from his assessable income in accordance with the following calculation—
  - (i) the deduction shall be equal to the amount by which £7,600 exceeds the sum of all other deductions, allowances and reliefs to which he may be entitled under these rules, and
  - (ii) from the resulting figure there is deducted the amount by which his assessable income exceeds £7,600.

(3) Any deduction allowable under this rule shall be reduced by one twelfth for each complete calendar month that the individual is not resident in Gibraltar.

(4) Sub-rule (3) shall not apply to the assessable income of an individual who is not resident in Gibraltar, where that assessable income includes income from a pension accruing in or derived from Gibraltar.

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(5) In the application of sub-rule (2) on or after 1 July 2001 for the figure “£7,600” there shall be substituted the figure “£7,760”.

**Deduction for blind persons.**

17. Save as otherwise hereinafter provided, an individual who proves to the satisfaction of the Commissioner by the production of a certificate signed by a qualified medical practitioner that he or his wife has effectively lost his or her sight shall, subject to rule 20, be entitled to claim a deduction from the amount of his assessable income of £375.

**Deduction in respect of dependent relatives.**

18. Save as otherwise hereinafter provided, an individual who proves to the satisfaction of the Commissioner that during the year of assessment he maintained at his own expense any person, being a relative of his or of his wife who 'is incapacitated by old age or infirmity from maintaining himself, or his or his wife's widowed mother, whether incapacitated or not, and being a person whose total income from all sources does not exceed £2,175 a year, shall subject to rule 20 be entitled to claim a deduction of £105 in respect of each such person from the amount of his assessable income:

Provided that-

- (a) if the total income from all sources of the person maintained exceeds £2,020 a year, the deduction shall be reduced by the amount of the excess;
- (b) where two or more individuals jointly maintain any such person, the deduction to be made under this rule shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person;
- (c) a deduction shall not be allowed under this rule to any individual for any year of assessment in respect of more than two such persons; and
- (d) where the dependent is ordinarily resident in Gibraltar the deduction which may be claimed shall be £155.

**Deduction in respect of services of unmarried daughters.**

19. Save as otherwise hereinafter provided, an individual who proves to the satisfaction of the Commissioner that, being a widower and not entitled for the year of assessment to claim a deduction in respect of any wife he is compelled to depend upon the services of an unmarried daughter resident with and maintained by him shall, subject to rule 20 be entitled to claim a deduction from the amount of his assessable income of £200:

Provided that no allowance shall be allowed in respect of an unmarried daughter whose total income in her own right, exceeds £200.

**Effect of non residence.**

20. The deductions allowable under 7(2), 8(1), 12, 13, 17, 18 and 19 shall be reduced by one twelfth for each complete calendar month that the individual claiming the deduction is not resident in Gibraltar during the year of assessment.

**Deduction for health insurance premiums.**

20A.(1) An individual who, for the purpose of providing health insurance for himself, his spouse or his dependent children contributes to an approved insurance policy, scheme, society or fund shall be entitled to claim a deduction from his assessable income of the amount of the premium or contribution, or both, payable during the year of assessment up to a maximum of £300 in aggregate.

(2) Any deduction allowable under sub-rule (1) shall be reduced by one twelfth for each complete calendar month that the individual is not resident in Gibraltar during the year of assessment.

(3) In this rule, “approved” means approved by the Commissioner for the purposes of this rule.

**Deduction in respect of life assurance premiums etc.**

21.(1) Save as otherwise hereinafter provided, an individual who has made assurance on his life or the life of his wife with an Assurance Company or who, for the purposes of providing a pension for himself or his widow and children, contributes to a pension scheme or to a provident society or fund approved by the Commissioner, other than in the case of a statutory Pension Scheme, or who prior to 1st July 1993 made contributions under any legislation relating to social insurance which provides for the payment of pensions, shall be entitled to claim a deduction from the amount of his assessable income of the amount of the premium or contribution, or both, payable during the year of assessment for such assurance or contribution:

Provided that-

- (a) in the case of a policy securing a capital sum at death, whether in conjunction with any other benefit or not, the amount of the deduction shall not exceed seven per cent of the capital sum, exclusive of any additional benefit by way of bonus or otherwise; and

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- (b) the total deductions which may be allowed under this rule to any individual shall not exceed one sixth part of the assessable income of that individual for that year of assessment;
- (c) an individual who prior to the dissolution on 31 st December 1993 of the Social Insurance (Pensions) Fund was entitled, by virtue of contributions to that Fund, to claim a deduction under this section or who would have been entitled by virtue of contributions to that Fund if that fund had not been dissolved, shall be entitled to claim a deduction of the amount equivalent to that to which he would have been entitled by virtue of the provisions of this sub-section had that Fund not been dissolved.

(2) Any deduction allowable under subrule (1) shall be reduced by one twelfth for each complete calendar month that the individual is not resident in Gibraltar during the year of assessment.

(3) Where a premium is paid by a wife out of her separate income in respect of an assurance on her own life or on the life of her husband, the same deduction may be claimed as if the premium was a premium paid by her husband for an assurance made on his own life.

**Deduction in respect of loan interest.**

22.(1) Subject to sub-rules (2), (2A) and (3) any interest paid by a person, or his wife living with him, on a loan, or loans, to defray money applied in constructing, purchasing or on improving or developing a property which he or they occupy or will occupy in Gibraltar for residential purposes shall, at the election by the person by whom the interest was paid, be deducted from the assessable income of that person or of his wife or both, in the proportion of 50 per cent each:

Provided that-

- (a) the aggregate of the loans in respect of which relief on interest is claimed under this rule, shall not exceed either the purchase price, construction price, development cost or improvement cost of the property as the case may be; and
- (b) in the case of the construction of a property, the property is subsequently occupied by the person or persons claiming relief in respect of interest on a loan to finance the construction, on the issue of the certificate of fitness in respect of that property under section 55 of the Public Health Act; or
- (c) in the case of a bridging loan to finance instalments payable either before or during the construction period on account of the purchase price of a property to

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be acquired from a developer in accordance with a purchase agreement, the property is subsequently occupied by the person or persons claiming relief in respect of the interest on the bridging loan on the execution of the lease or underlease in respect of the property; and

- (d) where relief has been claimed on interest on a loan to finance the construction of a property or to finance instalments payable either before or during the construction period on account of the purchase price of a property to be acquired from a developer in accordance with a purchase agreement and the property or interest in the property under construction is sold or otherwise disposed of before the property has been occupied by the claimant or claimants, then, unless the proceeds from sale are utilised within a 12 month period of the date on which it is sold or otherwise disposed of for the purpose of constructing or purchasing (and improving or developing the property so purchased) a property in Gibraltar for occupation by the claimant or claimants for residential purposes, any tax which would have been payable by the claimant or claimants for any year of assessment, were it not for the relief on interest claimed, will become due and payable to the Commissioner within thirty days from the expiry of such period of 12 months;
- (e) where a loan made for the purpose of and at the time of the purchase exceeds the amount outstanding on the purchase at the time of the purchase but does not exceed the purchase price and is secured on the property, interest on that loan shall be deemed to be interest which may be deducted in accordance with the provisions of this sub-rule.

(2) Sub-rule (1) shall not apply-

- (a) where the seller and purchaser are the husband and his wife and either sells to the other;
- (b) where the purchasers are the trustees of a settlement and the seller is the settlor or the wife or husband of the settlor and it appears that the main purpose of the purchase is to obtain relief in respect of interest on the loan;
- (c) where in the opinion of the Commissioner the price substantially exceeds the value of what is acquired or the cost of improvement, development or construction; or

(2A) Sub-rule (1), save for paragraphs (c) and (d) thereof, shall not apply in circumstances where any person, within 12 months of first claiming relief on interest payments under sub-rule (1), sells, gifts, disposes of or otherwise fails or ceases to occupy, the property concerning which that loan has been obtained; provided that -

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- (a) the provisions of this sub-rule shall not apply where the person claiming the said relief ceases by way of death to occupy such a property and that property continues to be occupied by the deceased's spouse, and that
- (b) the Commissioner may, at any time, make an amended or additional assessment to bring the amounts of any relief granted contrary to the provisions of this sub-rule to charge pursuant to section 74 of the Act.

(3) Any interest paid by a person or his wife living with him on a loan or loans to defray money applied in constructing or purchasing a residential property or for the purpose of providing bridging finance in connection with the acquisition of a residential property either to be constructed or under construction in Gibraltar for occupation by a child of theirs or his or hers shall, at the election of the person by whom interest was paid, be deducted from the assessable income of that person or his wife or both, in the proportion of 50 per cent each:

Provided that-

- (a) the aggregate of the loans in respect of which relief on interest is claimed, shall not exceed the construction cost or purchase price of the property as the case may be;
- (b) if the property or interest in the property to be constructed or under construction is sold or otherwise disposed of before occupation by such a child, then unless the proceeds from sale are utilised within a 12 months period of the date on which the property is sold or otherwise disposed of for the purpose of acquiring another property in Gibraltar for residential occupation by such a child, then any tax which would have been payable for any year of assessment by the person to whom relief on interest has been granted in accordance with the provisions of this sub-rule were it not for the relief on interest granted in respect of years of assessment, will become due and payable to the Commissioner within thirty days from the expiry of such period of 12 months;
- (c) no relief will be available for any year of assessment during which the property has been occupied for any period of time by any person other than such a child.

(4) Subject to sub-rule (5), any interest paid by a person, or his wife living with him, on a loan, or loans, to defray money applied in constructing or purchasing a garage or parking bay in Gibraltar shall, at the election of the person by whom the interest was paid, be deducted from the assessable income of that person, or his wife, or both in proportion of 50% each:

Provided that the aggregate of the loans in respect of which relief on interest is claimed under this rule shall not exceed either the purchase price or construction price of the garage or parking bay, as the case may be.

- (5) Sub-rule (4) shall not apply -
- (a) where the seller and purchaser are the husband and his wife and either sells to the other ;
  - (b) where the purchasers are trustees of a settlement and the seller is the settlor or the wife or husband of the settlor and it appears that the main purpose of the purchase is to obtain relief in respect of interest on the loan;
  - (c) where in the opinion of the Commissioner the price substantially exceeds the value of the interest in the garage or parking bay, as the case may be, or the cost of construction thereof; or
  - (d) where the purchaser obtains the legal estate of the garage or parking bay constructed or purchased by a loan in respect of which the purchaser claims relief on interest payments in accordance with sub-rule (4) and either -
    - (i) he sells or disposes (other than by way of mortgage) within three years of obtaining the legal estate of his interest therein; or
    - (ii) he fails or ceases to use such garage or parking bay as a garage or parking bay to store or park a motor vehicle within twelve months of obtaining the legal estate,

and if the provisions of sub-rule (4) have been applied contrary to the provisions of this sub-rule in any year of assessment, the Commissioner may make an amended or additional assessment to bring the amounts of such a deduction to charge in accordance with the provisions of section 74.

(6) For the purposes of sub-rule (5) a motor vehicle is a motor vehicle other than a motor cycle which is in the ownership of the person, or his wife living with him, by whom a deduction of interest is claimed and is for his or her or their personal use.

(7) In this rule "occupy" shall mean occupy as the only or main place of residence in Gibraltar, and "occupation" shall be construed accordingly.

#### **Deduction in respect of certain investments.**

23.(1) There shall be deducted from the assessable income of a person in any year of assessment any amount invested by him during that year by way of a purchase of shares or otherwise in any such Company of which the Government is a member, and subject to such

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conditions as the Governor may, in the exercise of his discretion, prescribe from time to time.

(2) For the avoidance of doubt it is hereby declared that where an amount is deducted from the assessable income in accordance with subrule (1) no deduction or allowance shall be made in respect of that amount under any other provision of these rules.

**Deductions for non resident individuals.**

24.(1) Any person who is-

- (a) the director of a company which is an exempt company who is non resident in Gibraltar; or
- (b) a non resident British subject; or
- (c) a non resident individual, whether or not a British subject, who is in receipt of a pension accruing in Gibraltar,

shall be entitled to the deductions, allowances and reliefs set out in rules 6 to 21 of these rules as if he was resident in Gibraltar throughout the basis period:

Provided that no such allowances, deductions, or reliefs shall be given so as to reduce the amount of tax payable by him below the amount which bears the same proportion to the amount which would be payable by him by way of tax if the tax is chargeable upon his total income from all sources (including income which is not subject to tax chargeable in Gibraltar) as the amount of income subject to tax so charged, bears to the amount of his income from all sources.

(2) For the purposes of the proviso to subrule (1) of this rule, double taxation relief shall be left out of account in computing-

- (a) the amount of tax payable by an individual; and
- (b) the amount which would be payable by him by way of tax if the tax is chargeable on his total income from all sources, including income which is not subject to tax charged in Gibraltar.

**Election by husband.**

25.(1) An individual other than an individual in respect of whom a certificate issued under rule 2 of the Rates of Tax (Relocated Executive Possessing Specialist Skills) Rules 1992 is in effect, who proves to the satisfaction of the Commissioner that in the year of assessment the



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income from employment of his wife living with him is greater than his, may elect not to claim any deductions under the provisions of rules 7 to 13, 16 and 17 to 22 of these rules, and the Home Purchase (Deductions) Rules 1989.

(2) Where an individual has made an election pursuant to subrule (1) of this rule, his wife, living with him, shall be entitled to any deductions to which her husband would have been entitled under rules 7 to 13, 16 and 17 to 22 of these rules, and the Home Purchase (Deductions) Rules 1989.

**Relief in respect of EEA and Commonwealth income tax.**

26.(1) Any person resident in Gibraltar who has paid, by deduction or otherwise, or is liable to pay, tax under the Act in respect of any income derived from sources within Gibraltar or within a Relevant Territory being one of—

- (i) the United Kingdom;
- (ii) any other Member State of the European Economic Area; or
- (iii) any territory of the Commonwealth,

and who proves to the satisfaction of the Commissioner that he has paid by deduction or otherwise, or is liable to pay income tax in the Relevant Territory in respect of the same income, shall be entitled to relief from tax under the Act paid or payable by him in respect of that income of an amount equal to the lesser of the two following amounts—

- (a) the tax under the Act in respect of the said income; or
- (b) the income tax in the Relevant Territory in respect of that income:

Provided that where any relief from income tax, profits tax or excess profits levy in the Relevant Territory is allowable under the provisions of section 790 of the Income and Corporation Taxes Act 1988 or equivalent legislation in the Relevant Territory, or any statutory modification or re-enactment for the time being in force, in respect of tax paid under the Act in respect of the said income, the amount of the relief under this rule shall be reduced by the amount of that relief in the Relevant Territory.

(2) For the purposes of this rule the amount of the income tax in the Relevant Territory in respect of any income shall be calculated without any reduction on account of any relief allowable under the provisions of section 790 of the Income and Incorporation Taxes Act 1988, or any statutory modification or re-enactment for the time being in force, in respect of tax paid under the Act, and a certificate issued in any particular case by or on behalf of the Commissioners of Inland Revenue in the United Kingdom or the equivalent body in the

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Relevant Territory 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 Relevant Territory under the said provisions.

(3) For the purposes of this rule the amount of the tax under the Act in respect of any income for any year of assessment shall be taken to be an amount which bears the same relation to the total amount of the tax paid or payable under the Act for that year (before the deduction of any relief granted under this rule or rule 27) as the amount of the said income charged to tax for that year bears to the total amount of the income in respect of which the tax paid or payable has been charged, except that where the income which is the subject of a claim to relief under this rule is computed by reference to the provisions of section 49 of the Act on an amount other than the ascertained amount of the actual profits the amount of the tax under the Act in respect of that income shall be determined by the Commissioner.

(4) Any claim to relief under this rule shall be made not later than 6 years after the end of the year of assessment to which it relates.

(5) Where the amount of any relief given under this rule is rendered excessive or insufficient by reason of any adjustment of the tax paid or payable under the Act, or of the amount of the income tax in the Relevant Territory, or of the amount of any relief from income tax or corporation tax in the Relevant Territory in respect of tax paid under the Act, nothing in the 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 Relevant Territory, as are material in determining whether any, and if so what relief falls to be given.

*27. Repealed*

*27A. Repealed*

**Double taxation relief for Public Investment Companies.**

28.(1) A company which is a Public Investment Company as defined in subrule (4) of this rule, and which proves to the satisfaction of the Commissioner that the investment income of the company has borne income tax or tax of a similar nature in the country where the income has accrued, shall be entitled to relief from tax under the provisions of the Act in respect of that income of an amount equal to the lesser of the two following amounts-

- (a) the tax under the Act in respect of the said income; or
- (b) the tax in the other country in respect of that income:

Provided that-

- (i) where in any year of assessment the total amount of tax deducted by the company from dividends or interest paid by it to shareholders, loan holders or debenture holders resident in Gibraltar during that year is greater than the amount of tax paid by the company to the Commissioner for that year by deduction or otherwise in respect of earnings of the company, the company shall forthwith account for and pay over to the Commissioner the difference between the total amount of tax paid and the total amount of tax deducted from the dividends or interest paid by the company to shareholders, loan holders or debenture holders resident in Gibraltar;
- (ii) for the purpose of arriving at the amount of tax paid by the company to the Commissioner by deduction or otherwise in respect of earnings of the company, no account shall be taken of any tax so paid by the company on income derived from or accruing in Gibraltar.

(2) For the purpose of this rule, a person shall be deemed to be interested in a share, loan or debenture if 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 if by reason of any arrangement or agreement with any other person he has the right to acquire an interest therein, as herein defined, all the power to enjoy a dividend or other benefit thereof:

Provided that a person shall not be deemed to be interested in a share, loan or debenture by reason of his holding it, or any interest therein, if he is acting in a representative or fiduciary capacity only, notwithstanding that he may be entitled to remuneration for so acting or may have a charge or lien thereon for such remuneration.

(3) Any company electing to, receive relief under subrule (1) shall deduct, in accordance with sections 39 or 40 of the Act (as the case requires), from the amount of any dividend or interest paid tax at the standard rate in force at the date the dividend is declared or interest became payable, double taxation relief being left out of account and in the case of dividends or interest paid to shareholders, loan holders or debenture holders not resident in Gibraltar the amount so deducted shall be retained by the company as double taxation relief.

(4) A Public Investment Company is a company resident in Gibraltar which carries on as its principal business the buying, selling and holding of securities quoted on a recognised Stock Exchange, and which in a manner satisfactory to the Financial and Development Secretary arranges for the shares of the company to be quoted and made available for purchase in Gibraltar by members of the public. A company which satisfies all the provisions of this subrule, save that its shares are not quoted and made available for purchase in Gibraltar by

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members of the public, shall be a Public Investment Company if it is a subsidiary of a Public Investment Company which satisfies all the provisions of this subrule.

(5) Sections 39, 42 and 43 of the Act, and rules 26 and 27 of these rules shall not apply to a Public Investment Company, to which this rule relates.

**Deductions subject to return of income being made and proof of claim.**

29. No deductions or allowances provided for by these rules shall be granted, nor shall tax be charged at less than the standard rate, unless a person makes a return of income on the proper form and claims the deductions and allowances to which he contends he is entitled, and the claim contains such particulars, and is supported by such proof as the Commissioner may require:

Provided that in the case of a non resident individual who is in receipt of a pension accruing in or derived from Gibraltar, or the non resident director of an exempt Company, it shall not be necessary for a return of income to be made before the allowance provided under rules 6 and 16 is granted, and tax charged at the rates applicable to an individual.

**Amendment to Act.**

30. Pursuant to the provisions of section 37A(3) of the Act, the following amendments are hereby made-

- (a) in section 6(1)(b) by omitting the expression "section 16 (g)" and substituting therefor the expression "rule 5(g) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992";
- (b) in section 6A(1) by omitting the expression "under sections 16(h) or 33" and substituting the expression "rules 5(h) or 21 of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992";
- (c) in section 10(4)-
  - (i) by omitting the expression "section 26(2)" and substituting therefor the express "rule 7(2) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992";
  - (ii) by omitting the expression "section 7(1) (c)" and substituting therefor the expression "rule 3(3) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992";

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- (d) in section 10(5) by omitting the expression "sections 26 to 31" and substituting therefor the expression "rules 7 to 14, 17 to 19 and 23 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992";
- (e) in section 34(3) by omitting the expression "the proviso to section 37 applies, and shall be entitled to the deductions, allowances and reliefs set out in sections 23 to 26, 27 to 30, 32, and 33", and substituting therefor the expression "section 37 and rules 6 to 21 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 apply,";
- (f) in section 39(5) by omitting the expression "sections 44 or 45" and substituting therefor the expression "rules 26 or 27 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992";
- (g) in section 40(1A) by omitting the expression "sub-section (1)(tf) of section 7" and substituting therefor the expression "rule 3(35) of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992";
- (h) in section 43 by omitting the expression "sections 44 or 45" and substituting therefor the expression "rules 26 or 27 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992";
- (i) in section 49(1) by omitting the expression "section 34" and substituting therefor the expression "rule 24 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992";
- (j) in section 54 by omitting subsection (2) and substituting therefor the following new sub-section-

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

### Repeal and Revocation.

31.(1) Pursuant to the provisions of section 37A(3) of the Act, sections 7, 16, 17, 19, 23, 24, 25, 26, 26B, 27, 28, 29, 30, 32, 33, 34(1) and (2), 34A, 35, 44, 45, 46 and 66(3) of the Act are hereby repealed.

(2) The Income Tax (Deduction for Maintenance of Children) Rules 1992 are revoked.