



# Qualifying company or loss attributing qualifying company elections

● For help completing this form please read the notes on the back.

This form is to elect to be either:

(tick one)

☐

a qualifying company

☐

a loss attributing qualifying company

☐

both

Is this a re-election due to a change in  
shareholding?

☐

Yes – State the date of change

Day

Month

Year

☐

No

## Section 1 – Directors' election

To be completed by all directors (see note 4) of the company. If there are more than seven directors, complete another election form and attach it to this.

I/we elect that

Name of company

IRD number

(8 digit numbers start in the second box.   1 2 3 4 5 6 7 8 )

Contact person's name

Contact number

ext

Daytime

shall become a qualifying company/loss attributing qualifying company (delete one if applicable)

from

Day

Month

Year

onwards (see note 2).

Director's name

Signature

Date

Director's name

Signature

Date

Director's name

Signature

Date

Director's name

Signature

Date

Director's name

Signature

Date

Director's name

Signature

Date





## Section 3 – Qualifying company majority shareholder election

### Section HA 5 of the Income Tax Act 2007

To be completed by a majority shareholder(s) electing on behalf of a minority shareholder(s).

I/we elect that

Name of company

IRD number

shall become a qualifying company from

Day

Month

Year

onwards (see note 2).

I/we elect that I/we will become personally liable (and/or jointly and severally liable, as the case may be) for each income year during which the election is in effect for such percentage of the company's income tax as set out in section HA 8 of the Income Tax Act 2007 (see notes 6 and 7).

Name of majority shareholder making election

IRD number

Effective interest

%

Signature

/ /  
Date

Name of minority shareholder

IRD number

Effective interest

%

Name of majority shareholder making election

IRD number

Effective interest

%

Signature

/ /  
Date

Name of minority shareholder

IRD number

Effective interest

%

Name of majority shareholder making election

IRD number

Effective interest

%

Signature

/ /  
Date

Name of minority shareholder

IRD number

Effective interest

%

Name of majority shareholder making election

IRD number

Effective interest

%

Signature

/ /  
Date

Name of minority shareholder

IRD number

Effective interest

%

Name of majority shareholder making election

IRD number

Effective interest

%

Signature

/ /  
Date

Name of minority shareholder

IRD number

Effective interest

%

## Notes

### Note 1: Criteria for qualifying company and loss attributing qualifying company (LAQC) status

To be a qualifying company, the company must meet the following criteria.

- It must not be a foreign company.
- It must not be a unit trust.
- It must have five or fewer shareholders, or be a “pure” flat-owning company.
- Each shareholder must be either a natural person, a qualifying company, or a trustee or trust of a specific kind.
- It must not receive more than \$10,000 foreign non-dividend income per year (after adjustments).
- All sui juris shareholders and directors must have elected that the company become an LAQC, and these elections must not have been revoked.
- It must not have ceased to be a qualifying company by ceasing to be an LAQC.
- The shareholders must have elected to be personally liable for their share of any income tax not paid by the company (see note 5).

To be an LAQC, the company must meet the following criteria.

- It must be a qualifying company at all times.
- All shares in the company must carry the same rights to
  - exercise voting power concerning company distributions, the company's constitution, variation of capital, and appointment of directors
  - receive distributions of profits, net assets, paid-up capital, and qualifying share premiums (section FC1 and FC2 debentures are deemed to be shares).
- All sui juris shareholders and directors must have elected that the company become an LAQC, and these elections must not have been revoked.
- None of the company's shares can have been the subject of an arrangement to defeat the intent and application of the LAQC rules.

### Note 2: Application date of elections

Elections apply from the beginning of the income year following the income year in which we receive them, unless a future income year is specified.

An existing company with a standard (31 March) or a late (30 April to 30 September) balance date wanting to become a qualifying company or LAQC must make an election before the start of their 2010–11 income year.

Those with an early (31 October to 28 February) balance date must make an election before the start of their 2011–12 income year. Elections for later income years can't be made.

For a new company, elections apply from the beginning of the first income year, provided we receive them within the time required to file the first return of income and that income year is no later than the:

- 2010–11 income year if you have a standard or late balance date, or
- 2011–12 income year if you have an early balance date.

An extension of time may be granted to file returns up to the following 31 March. The extension of time will cease when the return is filed.

From the company's first income year that begins on, or after 1 April 2011 LAQC's will no longer be able to attribute losses to shareholders. As a result, the LAQC will default to being a qualifying company from the beginning of the:

- 2011–12 income year if you have a standard or late balance date, or
- 2012–13 if you have an early balance date.

### Note 3: Sui juris

Sui juris is a legal phrase to describe people who have the legal capacity to deal with their property, make binding contracts, to sue and be sued. People who do not have full legal capacity (that is, non sui juris) include minors (under 20) and people who have an intellectual disability.

### Note 4: Directors

A director is:

- any person on whose instructions the directors of the company are accustomed to act, and
- any person occupying the position of director, regardless of the name they are called.

### Note 5: Shareholders' qualifying company elections

Qualifying company elections must be made by all sui juris shareholders.

Where the shareholder is a company, enter below the signature the name and office (for example, company secretary) of the person signing on behalf of the company.

Where the shareholder is a trustee(s):

- all the trustees must elect
- at least one sui juris beneficiary must elect. If there are no sui juris beneficiaries, a natural person volunteer must elect (this may be a trustee)
- enter the shareholder's name as “Trustee in...”. Below the signature enter the name, IRD number and capacity in which the person is making the election (that is, trustee, beneficiary or volunteer)
- where a majority shareholder(s) is electing on behalf of a minority shareholder, they must complete Section 2 of this form for their own shareholding and Section 3 on behalf of the minority shareholder.

### Note 6: Shareholders' LAQC elections

Shareholders' LAQC elections must be made by all sui juris shareholders:

- where the shareholder is a company, enter below the signature the name and office (for example, company secretary) of the person signing on behalf of the company
- where the shareholder is a trustee enter the shareholder's name as “Trustee in...”. Below the signature enter the name and capacity of the person signing as “Trustee”.

### Note 7: Liability of sui juris shareholder, trustee, beneficiary, natural person volunteer, or majority shareholder for the qualifying company's income tax

Sui juris shareholders are liable for a percentage of:

- the company's income tax not paid, and
- any tax the company is liable for as a shareholder in another qualifying company, in proportion to their effective interest in the company.

Trustees, sui juris beneficiaries and natural person volunteers are liable for a percentage of:

- the company's income tax not paid, and
  - any tax the company is liable for as a shareholder in another qualifying company, in proportion to their effective interest in the company.
- The elector beneficiaries or natural person volunteers are jointly and severally liable with the trustee. The trustee is liable to the extent of the net assets of the trust.

Majority shareholders who have elected on behalf of minority shareholders are liable for a percentage of:

- the company's income tax not paid, and
- any tax the company is liable for as a shareholder in another qualifying company, in proportion to the minority shareholder's effective interest in the company.

### Note 8: Effective interest

This is measured by the percentage of voting rights in relation to:

- dividends
- constitution
- variation of capital
- appointment of directors.

There are special rules if these vary during the year, or if they do not reflect the economic interest in a company.

### More information

If you need more information please read our booklet *Qualifying companies* (IR 435). You can view a copy on our website or order one by phoning INFOexpress on 0800 257 773. Please have your IRD number handy when you call.

**[www.ird.govt.nz](http://www.ird.govt.nz)**

Visit our website for services and information. Go to:

- Get it done online to file returns, register for services and access account information
- Work it out to calculate tax, entitlements, repayments and due dates and to convert overseas income to New Zealand currency.

You can also check out our newsletters and bulletins, and have your say on items for public consultation.