

GUERNSEY STATUTORY INSTRUMENT

2005 No. 30

**The Income Tax (Business Profits)
(Commencement and Transitional Provisions)
(Guernsey) Regulations, 2005**

<i>Made</i>	<i>6th September, 2005</i>
<i>Coming into operation</i>	<i>1st September, 2005</i>
<i>Laid before the States</i>	<i>26th October, 2005</i>

THE TREASURY AND RESOURCES DEPARTMENT, in exercise of the powers conferred on it by sections 19 and 22 of the Income Tax (Business Profits) (Guernsey) (Amendment) Law, 2004^a and all other powers enabling it in that behalf, hereby makes the following regulations:-

PART I

COMMENCEMENT OF LAW

Commencement of Business Profits Law.

1. The Income Tax (Business Profits) (Guernsey) (Amendment) Law, 2004 (the "**Law of 2004**") shall come into force on the 1st September, 2005.

^a Order in Council No. V of 2005.

PART II
TRANSITIONAL PROVISIONS

Purpose of Part II.

2. This Part of these regulations makes provision for effecting the transition, in relation to the taxation of income from the carrying on of a business, from the law in force immediately before the commencement of the Law of 2004 to the law as it will have effect at the expiry of the transitional arrangements provided for by this Part.

Transitional year.

3. For the purposes of the taxation of income from the carrying on of a business, the year of charge 2005 is the transitional year.

Usual basis for assessment in transitional year : averaging.

4. (1) The assessable income of a business for the year of charge 2005 is the average of the income arising and the profits accruing -

- (a) in the year of computation comprising the accounting period ending in the year of charge 2004, and
- (b) in the year of computation comprising the accounting period ending in the year of charge 2005.

(2) The provisions of this regulation are subject to the provisions of regulations 6 to 10.

Basis period for year of charge 2005 for relief of capital expenditure.

5. For the purposes of section 118 of the Income Tax Law -

- (a) where the income and profits of a business for the year of charge 2005 are computed under the provisions of regulation 4(1), the basis period of that business for the year of charge 2005 is the period of 24 months terminating at the close of the year of computation comprising the accounting period ending in the year of charge 2005, and
- (b) where the said income and profits are computed under the provisions of regulation 8, the basis period of that business for the year of charge 2005 is the period covered by the accounting periods ending in the years of charge 2004 and 2005.

Taxation of new businesses.

6. (1) Where in the year of charge 2003 or 2004 a business commences to be carried on in Guernsey, the assessable income of the business for the year of charge 2005 is, subject to paragraph (2), the income arising and the profits accruing in the year of computation comprising the accounting period ending in the year of charge 2005.

(2) The assessable income of the business for the year of charge 2005 -

- (a) shall include any income arising and profits accruing prior to the year of computation comprising the accounting period ending in the year of charge 2005 which have not been assessed to tax in any previous year of charge, and

(b) shall exclude any such income and profits which have been assessed to tax in any previous year of charge.

(3) For the purposes of paragraph (1), and without limitation, a business commences to be carried on in Guernsey in the year of charge 2003 or 2004 if it is being, or has been, carried on in any other place, and -

(a) it commences to be carried on in Guernsey in either of those years, or

(b) in either of those years its income or profits (or any part thereof) commence to be taxable in Guernsey in the hands of an individual or company resident in Guernsey.

Taxation of ceasing businesses.

7. (1) Where in the year of charge 2005 or 2006 a business carried on in Guernsey permanently ceases to be carried on, or to be so carried on, the assessable income of the business for the years of charge 2005 and 2006 shall be determined in accordance with the provisions of section 31 of the Income Tax Law as originally enacted.

(2) For the purposes of paragraph (1), and without limitation, a business permanently ceases to be carried on in Guernsey in the year of charge 2005 or 2006 if it ceases, or has ceased, to be carried on in any other place, and -

(a) it permanently ceases to be carried on in Guernsey in either of those years, or

(b) in either of those years its income or profits (or any

part thereof) cease to be taxable in Guernsey in the hands of an individual or company resident in Guernsey.

Change of accounting date.

8. Where pursuant to section 6(2)(b) of the Income Tax Law the accounting period of a business ending in the year of charge 2004 or 2005 is changed with the consent of the Administrator, the assessable income of the business for the year of charge 2005 is the total of the income arising and the profits accruing in the accounting periods ending in the years of charge 2004 and 2005 -

- (a) divided by 730 and multiplied by 365, or
- (b) where the number of days comprised in those accounting periods is less than 730, divided by that number and multiplied by 365.

Losses.

9. (1) Where the computation of the assessable income of a business for the year of charge 2005 under the provisions of regulation 4 shows that a loss has been sustained, the amount of the loss shall, subject to paragraph (2), be available for set-off under Part XI of the Income Tax Law.

(2) Where a loss sustained in respect of a business in the year of computation comprising the accounting period ending in the year of charge 2004 has, under section 137 or 142A of the Income Tax Law, been set off -

- (a) against the assessable income of that business for any prior year of charge, or (as the case may be)

- (b) against the assessable income of another company for any year of charge,

the loss which may otherwise be set off under Part XI of the Income Tax Law against the assessable income of the business for the year of charge 2005 by virtue of paragraph (1) shall be reduced by the amount set off as mentioned in paragraph (a) or (b).

Anti-avoidance provisions.

10. (1) Where, in relation to the taxation of the income from the carrying on of a business, the effect of a transaction or series of transactions is the avoidance, reduction or deferral of the liability of any person ("**the person concerned**") to tax for the year of charge 2004 or 2005, the Administrator may, in his discretion, make such adjustments and apportionments as respects the liability of the person concerned to tax as may in his opinion be appropriate to counteract the avoidance, reduction or deferral of liability which would otherwise be effected by or as a result of that transaction or series of transactions.

(2) For the purposes of this regulation, a transaction includes any arrangement, agreement, operation, scheme or event, or any action, omission or decision, whether or not -

- (a) enforceable by legal proceedings,
- (b) involving or dependent on any action, omission or decision of the person concerned or of any other person,
- (c) brought to a conclusion, and

(d) involving or dependent on any other transaction.

(3) For the purposes of this regulation, and for the avoidance of doubt, it is immaterial -

(a) when or where the transaction or series of transactions (or any of the series of transactions) occurs,

(b) whether or not the transaction or series of transactions (or any of the series of transactions) -

(i) occurs in a year of charge in which an avoidance, reduction or deferral of liability is effected by or as a result of it,

(ii) was undertaken by or on behalf of, or in conjunction with, the person concerned, or

(iii) was undertaken by or on behalf of, or in conjunction with, more than one person, and

(c) whether or not the avoidance, reduction or deferral of liability -

(i) was an intended effect of the transaction or series of transactions, or any of the series of transactions, or

(ii) was the only or principal effect.

- (4) For the purposes of this regulation -
- (a) where the assessable income of a business for the year of charge 2005 is calculated in accordance with regulation 4(1), and
 - (b) the average figure calculated in accordance with that regulation is 10% (or more) less than the income arising and the profits accruing in the year of computation comprising the accounting period ending in the year of charge 2003,

there is a presumption for the purposes of paragraph (1) that there has occurred a transaction which has resulted in the avoidance, reduction or deferral of the liability of the person concerned to tax for the year of charge 2005, and the Administrator may exercise his powers under this regulation accordingly, unless that person can show to the satisfaction of the Administrator -

- (i) that no such transaction has occurred, or
 - (ii) that the amount of the income and profits of the business for the year of computation comprising the accounting periods ending in the years of charge 2004 and 2005 were computed in accordance with the ordinary commercial principles applicable to the computation of income and profits of that business.
- (5) The provisions of paragraph (4) are without limitation and are

without prejudice to the generality of the provisions of this regulation.

PART III
GENERAL PROVISIONS

Interpretation.

11. (1) In these regulations, unless the context requires otherwise -

"Law of 2004" means the Income Tax (Business Profits) (Guernsey) (Amendment) Law, 2004^b,

"Income Tax Law" means the Income Tax (Guernsey) Law, 1975, as amended^c,

and other expressions have the same meanings as in the Income Tax Law.

(2) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of these regulations.

Citation and commencement.

12. These Regulations may be cited as the Income Tax (Business Profits)

^b Order in Council No. V of 2005.

^c Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; and No's. V and VI of 2005.

^d Ordres en Conseil Vol. XIII, p. 355.

(Commencement and Transitional Provisions) (Guernsey) Regulations, 2005 and shall come into force on the 1st September, 2005.

Dated this 6th day of September, 2005

L. TROTT

Minister of the States Treasury and Resources Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations make provision, for the purpose of the Income Tax (Business Profits) (Guernsey) (Amendment) Law, 2004, for the transition to the new basis on which income from the carrying on of a business is assessed to income tax. Prior to the commencement of that Law, income tax was calculated on the basis of the income of the business arising in the accounting period ending within the year preceding the year of charge ("the preceding year basis"). From the 1st January, 2006 the relevant income will be that for the accounting period ending within the year of charge ("the current year basis"), thus bringing the taxation of the income of a business into line with the taxation of the income of individuals. The year of charge 2005 is the transitional year.