

**The Income Tax (Deemed Distributions)  
(Exemptions) Regulations, 2009**

<i>Made</i>	6 <sup>th</sup> October, 2009
<i>Coming into operation</i>	6 <sup>th</sup> October, 2009
<i>Laid before the States</i>	25 <sup>th</sup> November, 2009

THE TREASURY AND RESOURCES DEPARTMENT, in exercise of the powers conferred upon it by section 62A(4) of the Income Tax (Guernsey) Law, 1975, as amended<sup>1</sup> ("the Law"), and all other powers enabling it in that behalf, hereby makes the following regulations:-

**Exemption from application of deemed distribution charging provisions.**

1. (1) Subject to the provisions of these regulations, the provisions of section 62A(1) of the Law do not apply in relation to any undistributed income of a company where the conditions set out in regulation 2 are satisfied.

(2) Accordingly, subject to compliance with those conditions, for the purposes of the Law and in the cases and circumstances and at the times mentioned in section

<sup>1</sup> 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. II 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; No's. V, VI and XVII of 2005; No's. II and VII of 2006; No. XXI of 2007; the Income Tax (Zero 10) (Guernsey) Law, 2007; and the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII). Section 66A was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

62B of the Law, the undistributed income of the company, other than that described in subparagraphs (i), (ii) and (iii) of regulation 2(c) -

- (a) shall not be deemed to have been distributed, and
- (b) is not a deemed distribution.

**Conditions for exemption.**

2. The conditions are as follows -

- (a) the company makes an irrevocable election, in such form and manner as the Director of Income Tax may require, to distribute not less than 65% of its income arising or accruing from businesses, as computed in accordance with the provisions of the Law including (without limitation) the provisions of Part IX of the Law (its "**tax adjusted trading profits**"), in accordance with these regulations,
- (b) the company thereafter distributes, within a period of 12 months beginning immediately after the final day of-
  - (i) the accounting period in which the election is made, and

(ii) every subsequent accounting period,

not less than 65% of its tax adjusted trading profits earned respectively in those periods, and

(c) the company deducts and accounts for tax and makes a quarterly return to the Director of Income Tax in accordance with the provisions of section 81B and any regulations thereunder in respect of -

(i) deemed distributions of investment income,

(ii) actual distributions of its tax adjusted trading profits, and

(iii) loans to participators which are qualifying loans within the meaning of section 66A of the Law,

and, apart from subparagraph (c), and subject to the provisions of these regulations, a company which complies with the conditions set out in this regulation is not under any other obligation under section 81B of the Law to deduct or account for tax or to make quarterly returns in respect of its undistributed income.

**Effect of later deemed distribution event.**

3. (1) If within a period of five years beginning immediately after the end of the accounting period in which the election mentioned in regulation 2(a) was made, any of the cases or circumstances specified in section 62B(1) of the Law in which income is deemed to be distributed occurs, other than the case or circumstance specified in section 62B(1)(g) (undistributed investment income), then the provisions of the Law shall apply to the company's undistributed income in all respects as if these regulations had not been enacted.

(2) The provisions of this regulation are subject to the provisions of regulation 4.

### **Exceptions from regulation 3.**

4. (1) The provisions of regulation 3 do not apply -
  - (a) in relation to a company in existence immediately prior to the date of commencement of these regulations which makes the election mentioned in regulation 2(a) before the 31<sup>st</sup> December, 2009, or
  - (b) in relation to a company incorporated on or after the date of commencement of these regulations which makes the election mentioned in regulation 2(a) within a period of 12 months beginning on the date of incorporation.
- (2) However, this regulation is subject to regulation 8.

### **Retrospective effect of election by existing company.**

5. In relation to a company in existence immediately prior to the date of commencement of these regulations which makes the election mentioned in regulation 2(a) before the 31<sup>st</sup> December, 2009, the election may be stated by the company to be retrospective and thereby deemed to have been made in any of the company's preceding accounting periods ending in 2008 or thereafter but before the date of the election; and the provisions of these regulations shall apply to the company accordingly, provided that, in relation to such accounting periods, regulation 2(b) shall have effect as if -

- (a) the words "within a period of 12 months" were replaced by "within a period of 24 months", and
- (b) the words "or within a period of 3 months immediately following the date on which the election was made, whichever is the later," were inserted after subparagraph (ii).

### **Cessation of election on transfer of control of company.**

6. (1) Where in the course of any accounting period there is a transfer of control in respect of a company which has made the election mentioned in regulation 2(a),

and if the company before the expiration of a period of 12 months beginning on the date of the transfer of control so requires by written notice delivered to the Director of Income Tax, the election shall (without prejudice to any liability, penalty or obligation incurred in respect of that or any previous accounting period) cease to have effect with effect from the date of the transfer of control.

(2) Accordingly, in respect of any accounting period or part of an accounting period arising after the date of the transfer of control, but subject to paragraph (3), the provisions of the Law shall apply to the company's undistributed income in all respects as if these regulations had not been enacted.

(3) The cessation of an election in the course of any accounting period by virtue of the operation of this regulation is without prejudice to the right of the company to make a new election in respect of any subsequent accounting period.

(4) In this regulation -

- (a) "**control**" shall be construed in accordance with section 122 of the Law,
- (b) "**transaction**" has the meaning given by section 67(2) of the Law,
- (c) "**transfer**" of control means any transaction in consequence of which control of the company passes from one person to another.

**Effect of late payment on surcharges.**

7. In relation to a company which fails to distribute any tax adjusted trading profits in accordance with regulation 2(b) -

- (a) the company is liable to surcharges and additional surcharges in all respects as if it had distributed 65% of its tax adjusted trading profits earned in the accounting period in question in

accordance with that regulation but had failed to account to the Director of Income Tax for any of the tax deductible therefrom, and

- (b) the election made by the company under regulation 2(a) shall be deemed void ab initio,

and the provisions of the Law and of these regulations shall apply accordingly.

**Anti-avoidance.**

8. (1) Where an election mentioned in regulation 2(a) is made by a company in contemplation of a deemed distribution event, the exceptions from regulation 3 set out in regulation 4 shall not apply unless the Director in his absolute discretion directs otherwise in any particular case where he is satisfied that the reason or principal reason for the making of the election was not to secure the non-application of the provisions of section 62A(1) of the Law in relation to any undistributed income of the company.

(2) In this regulation -

- (a) a "**deemed distribution event**" is the occurrence of any of the cases or circumstances specified in section 62B(1) of the Law in which income is deemed to be distributed, and
- (b) without limitation, an election is made by a company in contemplation of a deemed distribution event where any individual who participates in the decision to make the election knows or has reasonable cause to suspect that such an event will occur within a period of five years beginning immediately after the end of the accounting period in which the election is made.

**Interpretation.**

9. (1) In these Regulations -

"**accounting period**", in respect of any year of charge, means the year of computation, that is to say, the accounting period determined in accordance with section 6 of the Law ending within that year of charge,

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

"**tax adjusted trading profits**" : see regulation 2(a),

"**transfer of control**" : see regulation 6(4)(c).

(2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these regulations as it applies to the interpretation of an enactment.

**Citation.**

10. These Regulations may be cited as the Income Tax (Deemed Distributions) (Exemptions) Regulations, 2009.

**Commencement.**

11. These Regulations shall come into force on the 6<sup>th</sup> October, 2009.

Dated this 6<sup>th</sup> October, 2009



DEPUTY C.N.K. PARKINSON

Minister of the Treasury and Resources Department

For and on behalf of the Department

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EXPLANATORY NOTE

*(This note is not part of the regulations)*

These Regulations specify a further exemption from the charging regime for deemed distributions established by Chapter VIIIA of the Income Tax (Guernsey) Law, 1975, as

amended by the Income Tax (Zero 10) (Guernsey) Law, 2007 and the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007. The exemption applies in respect of companies which elect to distribute not less than 65% of their trading profits in accordance with these regulations.