

ORDER IN COUNCIL

XXIII
1989

ratifying a Projet de Loi

ENTITLED

The Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989

(Registered on the Records of the Island of Guernsey
on the 5th December, 1989.)



ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of December, 1989 before Sir Charles Frossard, Kt., Bailiff; present:— Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 1st November, 1989, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled "The Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989", THE COURT after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 1st day of November 1989

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 26th day of October 1989 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

1. That, in pursuance of their Resolutions of the 15th day of December, 1988 the 29th day of March, 1989, and the 27th day of July, 1989, the States of Deliberation at a meeting held on the said 27th day of July, 1989, approved a Bill or “Projet de Loi” entitled “The Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guern-

sey entitled "The Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989", and to order that the same shall have force of law in the Islands of Guernsey and Herm.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have force of Law within the Islands of Guernsey and Herm.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989

THE STATES, in pursuance of their Resolutions of the 15th day of December 1988, the 29th day of March 1989 and the 27th day of July 1989, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey and Herm.

1. The Income Tax (Guernsey) Law, 1975(a), as amended(b), is further amended as follows—

Amend-
ments to
Income Tax
Law—exempt
bodies.

(a) for section 4 there is substituted:

“4. A company shall be treated as resident in Guernsey in a year of charge if it—

(a) is controlled in Guernsey; or

(b) is incorporated in Guernsey and has not been granted an exemption from tax for that year of charge under any Ordinance made under section 40A of this Law.”;

(b) the following subsection is inserted immediately after subsection (1) of section 5:

“(1A) For the purposes of paragraphs

(a) Ordres en Conseil Vol. XXV, p. 124.

(b) Ordres en Conseil Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333, and 565; Nos. VIII and XV of 1983; Nos. II and IX of 1984; No. XIII of 1986; No. XIV of 1989.

(b) and (d) of subsection (1) of this section, dividends, interest, royalties and any other income of a similar nature shall not be regarded as arising or accruing from a source in Guernsey if:

(a) the individual or company to which it is paid does not carry on business in Guernsey through a permanent establishment situate in Guernsey; and

(b) it is paid to that individual or company by a body to which an exemption from tax has been granted under any Ordinance made under section 40A of this Law.”;

(c) immediately after paragraph (f) of section 7(2) there is inserted:

“(g) any sum paid by a body to which an exemption from tax has been granted under any Ordinance made under section 40A of this Law which, by virtue of section 5(1A) of this Law, is not regarded in the hands of the recipient as arising or accruing from a source in Guernsey.”;

(d) at the end of the words in paragraph (d) of section 7(3) there is inserted “except for interest paid to a person not resident in Guernsey by a body to which an exemption from tax has been granted under any Ordinance made under section 40A of this Law and which, by virtue of section 5(1A) of this Law, is not regarded in the hands of the recipient as arising or accruing from a source in Guernsey”;

(e) for section 14(4) there is substituted:

“(4) No deduction shall be made under the provisions of this section—

- (a) in respect of any such interest paid to a person not resident in Guernsey by a body to which an exemption from tax has been granted under any Ordinance made under section 40A of this Law and which, by virtue of section 5(1A) of this Law, is not regarded in the hands of the recipient as arising or accruing from a source in Guernsey; or
- (b) if a deduction has been made in respect of the amount of such interest under any other provision of this Law.”;

(f) in section 17(1), for “not being in the nature of capital expenditure or personal expenses” there is substituted:

“not being:

- (a) a sum paid to a person not resident in Guernsey by a body to which an exemption from tax has been granted under any Ordinance made under section 40A of this Law and which, by virtue of section 5(1A) of this Law, is not regarded in the hands of the recipient as arising or accruing from a source in Guernsey; or
- (b) in the nature of capital expenditure or personal expenses”;

(g) in section 20(1), immediately after the words “other than income from the carrying on

of a business”, there is inserted “or dividends, interest, royalties and any other income of a similar nature arising or accruing from a body to which an exemption from tax has been granted under any Ordinance made under section 40A of this Law”;

(h) for section 33 there is substituted:

“Directors.

33. (1) Subject to subsection (2) of this section, the office of director, by whatever name called, of a company incorporated in Guernsey shall be treated as held in Guernsey.

(2) The office of director, by whatever name called, of any company shall not be treated as held in Guernsey if:

(a) the meetings of the board of directors or other governing body are ordinarily held outside Guernsey; or

(b) the director, owing to the nature of his duties, is continuously resident outside Guernsey and either—

(i) he is not required to, and does not, attend meetings of the board or other governing body held in Guernsey; or

- (ii) the company has been granted an exemption from tax under any Ordinance made under section 40A of this Law.”;
- (i) in section 40A, for “company or trust”, wherever appearing, there is substituted “body”;
- (j) the following subsection is inserted immediately after subsection (5) of section 40A :
 - “ (5A) It is hereby declared for the avoidance of doubt that:
 - (a) nothing in subsections (3) to (5) of this section precludes the States from prescribing as a condition of eligibility for exemption from tax by an Ordinance made under subsection (1) of this section a condition which is required to be fulfilled throughout any prescribed period (and, accordingly, that non-compliance with that condition at any time during that period may result in the immediate loss of any exemption granted); and
 - (b) the functions of the Authority under subsections (2) to (5) of this section may be exercised by the Administrator; and
 - (c) an Ordinance under this section may be made so as to come into force on any date not earlier than the 1st January of ^{the} year in which it is made.”;

- (k) in section 40B, for "companies or trusts", wherever appearing, there is substituted "bodies";
- (l) for section 62 and its marginal note there is substituted:

"Dividends
paid by
exempt
bodies.

62. A body which has been granted an exemption from tax in accordance with any Ordinance made under section 40A of this Law shall—

- (a) on making payment of a dividend or distribution to a person who is resident in Guernsey, deduct from it a sum representing the amount of tax on it at the standard rate; and
- (b) within one month of the payment, remit to the Administrator the sum so deducted and furnish such particulars of the dividend or distribution as the Administrator may require;

and sections 57(3), 60, 61 and 200 of this Law apply in the case of any such dividend or distribution as those provisions apply in a case where tax is deducted pursuant to section 57 of this Law.";

(m) in section 209, for the definition of "permanent establishment" there is substituted:

"permanent establishment" includes—

- (a) a branch;
- (b) a factory, shop, workshop, quarry or building site;
- (c) a place of management,

but the fact that a body's directors regularly meet at a particular place does not in itself make that place a permanent establishment of that body;"

2. In Chapter III of Part IV of the Income Tax (Guernsey) Law, 1975:

Amend-
ments to
Income Tax
Law—
alimony and
maintenance.

(a) section 43(6) is repealed; and

(b) the following section is inserted immediately after section 43:

Alimony
and main-
tenance.

43A. Where under the order of any court of competent jurisdiction a person is required to pay alimony or maintenance, out of that person's income, to or for the benefit of that person's spouse or former spouse, any sum so paid shall be treated as the income of that person's spouse or former spouse and shall be allowed as a deduction in computing the income of that person."

3. (1) Each of the enactments specified in column 1 of the Schedule to this Ordinance is repealed to the extent specified in relation to it in column 2 of that Schedule.

Repeal of
Corporation
Tax Laws,
and saving.

(2) Subsection (1) of this section does not affect the continued operation of the enactments thereby repealed in relation to any liability to Corporation Tax in respect of any year prior to 1990.

Citation.

4. This Law may be cited as the Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989.

Collective title.

5. This Law, the Income Tax (Guernsey) Laws, 1975 to 1984 and the Income Tax (Amendment) (Guernsey) Law, 1989 may be cited together as the Income Tax (Guernsey) Laws, 1975 to 1989.

Commencement.

6. (1) Paragraphs (b) to (m) inclusive of section 1 of this Law, and this section, shall be deemed to have come into force on 1st January, 1989.

(2) The remaining provisions of this Law shall come into force as follows:

- (a) sections 2, 4 and 5 on the day following its registration on the records of the Island of Guernsey;
- (b) paragraph (a) of section 1, and section 3, on 1st January 1990.

SCHEDULE Section 3(1)

REPEALS

(1) Enactment	(2) Extent of Repeal
The Corporation Tax (Guernsey) Law, 1950(c)	The whole Law
The Companies (Stamp Duty and Corporation Tax) (Amendment) Law, 1969(d)	Sections 3 and 5
The Indirect Taxes, Duties and Impôts (Miscellaneous Amendments and Repeals) (Guernsey) Law, 1975(e)	The entry in the First Schedule relating to section 5 of the Companies (Stamp Duty and Corporation Tax) (Amendment) Law, 1969
The Corporation Tax (Amendment) (Guernsey) Law, 1986(f)	The whole Law
The Income Tax (Amendment) (Guernsey) Law, 1989(g)	Section 3

K. H. TOUGH,
Her Majesty's Greffier.

- (c) Ordres en Conseil Vol. XIV, p. 371.
 (d) Ordres en Conseil Vol. XXII, p. 292.
 (e) Ordres en Conseil Vol. XXIV, p. 236.
 (f) Order in Council No. XXIX of 1986.
 (g) Order in Council No. XIV of 1989.