

1975.

*(Registered on the Records on the 2nd September, 1975.)*

AT THE COURT AT BUCKINGHAM PALACE

The 23rd day of July 1975

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Income Tax  
(Guernsey)  
Law, 1975.

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 10th day of July 1975, 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 14th day of November 1973, the 27th day of March 1974 and the 25th day of September 1974, the States of Deliberation at a meeting held on the 27th day of November 1974, approved a Bill or “Projet de Loi” entitled “The Income Tax (Guernsey) Law, 1975” 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 Guernsey entitled “The Income Tax (Guernsey) Law, 1975” 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."

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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, as it is hereby ordered, that the same shall have the 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.

*N. E. Leigh.*

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Projet de Loi referred to in the foregoing Order in Council.

## PROJET DE LOI

ENTITLED

(No. IX  
—1975)

THE INCOME TAX (GUERNSEY) LAW, 1975.

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## PROJET DE LOI

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## ENTITLED

## THE INCOME TAX (GUERNSEY) LAW, 1975.

THE STATES, in pursuance of their Resolutions of the fourteenth day of November, nineteen hundred and seventy-three, the twenty-seventh day of March, nineteen hundred and seventy-four, and the twenty-fifth day of September, nineteen hundred and seventy-four, 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.

## PART I

## INCOME TAX AND INCOME

## CHAPTER I

## GENERAL PROVISIONS AS TO CHARGE OF TAX AND ASSESSABLE INCOME

1. A year the income for which is to be assessed and for which tax is to be charged shall be the calendar year; and any such year is in this Law referred to as a "year of charge".

Year of charge.

2. Income in respect of which tax is chargeable shall be income of one or other of the following classes namely—

General provisions as to income and the computation thereof.

(1) income from businesses;

(2) income from offices and employments;

(3) income from the ownership of lands and buildings; and

(4) income from other sources;

and the income for any year of charge in respect of which tax is chargeable (in this Law referred to as

1975. "assessable income") shall in the case of each particular class be computed in such manner and by reference to such year of computation or other period as is mentioned in this Law.

Definition of "resident" in the case of an individual.

3. (1) An individual shall be treated as being resident in Guernsey in a year of charge if he—

- (a) is in Guernsey in the year of charge for a period or periods amounting in all to one hundred and eighty-two days or more; or
- (b) is in Guernsey during the twelve months commencing on the first day of August in the year preceding the year of charge and ending on the thirty-first day of July in the year of charge for a period or periods amounting in all to one hundred and eighty-two days or more; or
- (c) maintains or has maintained for him in Guernsey a dwelling-place for a period or periods amounting in all to ninety-one days or more in the year of charge, and is in Guernsey at any time in the year of charge; or
- (d) is in Guernsey for any time in the year of charge with the intention of setting up a dwelling-place therein, and in that or the following year of charge sets up such a dwelling-place; or
- (e) having during the four years immediately preceding the year of charge been in Guernsey for a period of, or for periods amounting in all to, three hundred and sixty-five days or more, is in Guernsey at any time during the year of charge, otherwise than on an occasional or casual visit.

(2) An individual who in a year of charge is resident in Guernsey but is not resident solely therein:—

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- (a) shall be treated as being principally resident in Guernsey if, in the year of charge—
- (i) he maintains or has maintained for him a dwelling-place or a place of business in Guernsey, but neither a dwelling-place nor a place of business elsewhere; or
  - (ii) he neither maintains nor has maintained for him a dwelling-place or a place of business in any country, but is domiciled in Guernsey;
- (b) shall, in a case to which paragraph (a) of this subsection does not apply, be treated as being principally resident in Guernsey if he appears in view of all the circumstances of his case to be so resident, regard being had in particular to his domicile, nationality, and habits of life.

4. A company shall be treated as resident in Guernsey in a year of charge if it is controlled in Guernsey, or, in the case of a company incorporated in Guernsey, if it maintains in that year an established place of business in Guernsey and any substantial part of its activities is conducted in Guernsey, but a company shall not be treated as so resident by reason only of the fact that it has a registered office in Guernsey at which is transacted such administrative business only as is necessary to comply with the requirements of the law from time to time regulating companies in Guernsey.

Definition of "resident" in the case of a company.

5. (1) Save as is otherwise by or in virtue of this Law provided, income tax at a standard rate shall be charged and paid on income as follows:—

Charge of tax and liability to tax according to residence.

- (a) in the case of an individual solely or principally resident in Guernsey, on his total income, wherever such income may arise or accrue;

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- (b) in the case of an individual resident in Guernsey but not solely or principally resident therein, on his income arising or accruing in Guernsey, together with any amount of income not so arising or accruing brought into or received by him in Guernsey in the year of charge;
- (c) in the case of a company resident in Guernsey, as in the case of an individual solely or principally resident in Guernsey; and
- (d) in the case of an individual or company not resident in Guernsey, on his or its income arising or accruing from sources in Guernsey.

(2) For any year of charge the standard rate of income tax shall be such as may be prescribed by Resolution of the States in respect of that year.

(3) Where a person who was not resident in Guernsey in the year preceding the year of charge becomes resident in the year of charge and such person possessed a source of income in Guernsey and continues to possess that source in the year of charge the assessable income from that source for that year of charge and for the two succeeding years shall be computed as if he had acquired that source of income on the first day of January in the year of charge:

Provided that this subsection shall not apply where a person who was not resident in the year preceding the year of charge was carrying on a business in Guernsey in that year.

(4) Where a person who was resident in Guernsey in the year preceding the year of charge becomes non-resident in the year of charge and such person possessed a source of income in Guernsey which he continues to possess in the year of charge the assessable income from that source for the two years

of charge preceding the year of charge in which he becomes non-resident shall be computed as if he had ceased to possess that source of income on the thirty-first day of December preceding that year of charge:

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Provided that this subsection shall not apply where a person who becomes non-resident in the year of charge carries on a business in Guernsey in that year.

## CHAPTER II

### COMPUTATION OF INCOME

6. (1) Save as otherwise by or in virtue of this Law provided, the assessable income of any class shall be the amount of profits or income for the year of computation, and the year of computation shall be the calendar year preceding the year of charge:

Year of  
compu-  
tation.

Provided that in the case of a business the year of computation shall be the accounting period ending within the year preceding the year of charge or, with the consent of the Administrator, within the period commencing on the first day of January in the year of charge and terminating on the thirty-first day of January in that year.

(2) The accounting period of a business shall be determined as follows:—

- (a) where the accounts of a business are made up for successive periods of twelve months each of those periods shall be an accounting period;
- (b) in any other case the accounting period shall be such period not exceeding twelve months as the Administrator may determine.

(3) Where the accounting period of a business has once been determined as a period of twelve months subsequent accounting periods shall be successive periods of twelve months:

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Provided that any such period may be varied with the consent of the Administrator and upon such conditions as regards the computation of profits as the Administrator may consider necessary to impose in order to ensure that the whole of the assessable profits of the business are charged to tax:

Provided further that the Administrator shall not withhold his consent unless he is satisfied that the application for variation is not made in good faith and for the purpose of facilitating the management of the business.

(4) Where the year of computation does not coincide with the period up to which the accounts of a business have been made up, such division and apportionment to specific periods of the profits or losses for the period for which accounts have been made up and such aggregation of any such profits or losses, or any apportioned parts thereof, shall be made as is necessary to arrive at the profits for the year of computation.

(5) Any apportionment under the last foregoing subsection shall be made in proportion to the number of months or fractions of months in the respective periods:

Provided that if the profits or losses determined in accordance with the aforesaid apportionment do not, in the opinion of the Administrator, fairly represent the profits or losses of the respective periods, the apportionment shall be made in such other manner as the Administrator may direct.

(6) Where for any of the purposes of this Law it is necessary to compute the amount of profits for any period which is not an accounting period nor a year of computation, subsection (4) of this section shall apply as if for the references to the year of computation there were substituted a reference to the period the profits for which are to be computed.

(7) In the case of a non-resident person (other than a non-resident person carrying on a business in Guernsey) the year of computation shall be the year of charge.

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7. (1) Subject to the succeeding provisions of this section, the amount of the profits of any business for any year of computation shall be computed in accordance with the ordinary commercial principles applicable to the computation of profits of that business. Income from  
businesses.

(2) No deduction shall be permitted in respect of—

- (a) any capital expenditure;
- (b) any item of expenditure or charge except so far as it is laid out or expended wholly and exclusively for the purposes of the business;
- (c) any sum transferred to a reserve account where the transfer would, in accordance with ordinary commercial principles as aforesaid, be treated as an appropriation of profits;
- (d) the maintenance of the person carrying on the business or of his family, or any expenditure for any other domestic or private purpose;
- (e) any liability due under or by virtue of this Law;
- (f) any sum recoverable under an insurance or contract of indemnity.

(3) Deductions shall be permitted in respect of—

- (a) the replacement of implements, utensils and articles not being machinery, or plant, used for the purpose of the business:

Provided that if a person carrying on an hotel, boarding house, public house,

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restaurant or café business claims to be allowed an annual allowance in respect of all such implements, utensils and articles in lieu of a deduction in respect of the replacement thereof, all such implements, utensils and articles shall be deemed to be plant;

- (b) current repairs to machinery, plant, furniture and fittings used for the purpose of the business;
- (c) premiums in respect of insurance—

- (i) against damage or destruction of buildings, machinery, plant, furniture and fittings as aforesaid and of stocks or stores so used;

- (ii) against loss of profits:

Provided that any sum received by any person under an insurance against loss of profits shall be treated as income of the year in which it is received;

- (iii) in any case where the insurance was effected to cover an expense which would have been an allowable deduction had the insurance not been effected;

- (d) interest on capital borrowed for the purpose of the business;

- (e) bad and doubtful debts, on so much of the debt as is discovered in the accounting period to have become bad or irrecoverable but not exceeding the amount written off as such in the books of the business:

Provided that, if any amounts received or credited on account of any such debt exceed the amount of the debt as reduced by the deduction allowed, the excess received or credited in any accounting period shall be

treated as a receipt of the business in that period;

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- (f) rent paid for any premises, or any part of any premises, in which the business is carried on :

Provided that where the business is carried on in a portion of any rented premises, a deduction shall only be allowed in respect of such proportion of the total rent as that portion bears to the whole premises;

- (g) such payments or contributions to any scheme to provide retirement or other benefits for any person employed in the business as may be deducted in accordance with the provisions of Part XIII of this Law, but not otherwise, and for the purposes of this paragraph the expression "retirement or other benefits" shall have the meaning assigned to it by section one hundred and fifty-eight of this Law;

- (h) a sum equal to the annual value of any land or building, or part of any land or building, owned by the person who is carrying on the business and used and occupied by him wholly and exclusively for the purposes of the business and, for the purposes of this paragraph only—

- (i) where any dwelling, or part of any dwelling, is owned by the person carrying on the business and is occupied free of rent by a person employed by him in the business in such circumstances that an amount equal to the annual rental value forms part of the emoluments of the occupier's office or employment, then that dwelling or part thereof shall be deemed to be a building used and occupied by the owner wholly and

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exclusively for the purposes of the business;

- (ii) where any dwelling, or part of any dwelling, is owned by the person carrying on the business and is occupied in consideration of a rent less than the annual rental value thereof by a person employed by him in the business in such circumstances that an amount equal to the difference between the annual rental value and the rent payable by the occupier forms part of the emoluments of the occupier's office or employment, then that proportion of the dwelling or part thereof, as the case may be, having an annual rental value equal to the said difference, shall be deemed to be a building used and occupied by the owner wholly and exclusively for the purposes of the business;
- (j) the amount expended by the person carrying on the business in respect of the current repairs and maintenance of any land or building occupied by him and used by him wholly and exclusively for the purposes of the business:

Provided that—

- (i) there shall be left out of account any expenditure in respect of additions or improvements or any other expenditure of a capital nature, and
- (ii) in the case of a glasshouse, the provisions of subsection (4) of this section shall apply.

(4) For the purposes of paragraph (j) of the last foregoing subsection, in the case of a glasshouse—

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- (a) in relation to repairs effected before the first day of January, nineteen hundred and seventy-two, the expression "current repairs" shall mean painting, glazing and minor repairs, and the amount allowable in respect of minor repairs shall not exceed a sum calculated in accordance with such rate per one hundred feet of glass thirty feet wide as may from time to time be determined by the Authority and published in La Gazette Officielle;
- (b) in relation to repairs effected after the thirty-first day of December, nineteen hundred and seventy-one, the expression "current repairs" shall be deemed not to include any operation which consists of the replacement of the whole, or substantially the whole, of the front or fronts of the glasshouse, or of the replacement of the whole, or substantially the whole, of the roof, or a substantial part of the roof, of a glasshouse and expenditure on such an operation shall be deemed to be expenditure of a capital nature;
- (c) notwithstanding the provisions of paragraphs (a) and (b) of this subsection, where a glasshouse has sustained damage by act of God, and the Administrator is satisfied that the glasshouse has been so maintained as to be in a reasonable state of repair immediately prior to such damage, the Administrator may allow such amount on account of the repairs to the glasshouse as may be reasonable and just.
- (5) Notwithstanding anything in this section contained, the profits from the ownership of land and buildings shall be computed in accordance with the provisions of section nine of this Law.

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(6) The provisions of the First Schedule to this Law shall apply to persons who—

- (a) could have claimed to be allowed a deduction in respect of the replacement of a glasshouse for the year of charge nineteen hundred and fifty, or
- (b) were for the first time allowed a deduction for depreciation in respect of a glasshouse in any of the years of assessment nineteen hundred and forty-six, nineteen hundred and forty-seven, nineteen hundred and forty-eight or nineteen hundred and forty-nine.

Income from  
offices and  
employ-  
ments.

8. (1) In the case of income chargeable to tax as income of Class (2) under the provisions of section two of this Law, the assessable income shall be the full emoluments of the office or employment arising or accruing in the year of computation less the authorised deductions.

(2) For the purposes of this section the following shall be deemed to be emoluments of an office or employment, that is to say—

- (a) the cash value of the perquisite of free board or of free lodging or of both;
- (b) where board or lodging, or both, are provided by an employer in such circumstances that the cost to the employee is less than the cash value of the board or lodging so provided, the amount by which the said cash value exceeds the cost to the employee.

(3) The authorised deductions to be made from the full emoluments of an office or employment in respect of expenses defrayed by the holder of the office or the employee out of those emoluments shall be the following—

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- (a) any expense, wholly, exclusively and necessarily incurred in the performance of the duties of the office or employment;
- (b) the amount of any ordinary contribution to an approved scheme or of any statutory or voluntary contribution in accordance with the provisions of section one hundred and fifty-one of this Law;
- (c) the amount of such relief in respect of certain capital expenditure as is provided for in section one hundred and thirteen of this Law;
- (d) such sums on account of replacement of implements, utensils and articles, as would be allowable if the holder of the office or the employee had been carrying on a business if such sums are expenses wholly, exclusively and necessarily incurred in the performance of the duties of the office or employment;
- (e) such sums on account of annual fees or subscriptions as are provided for in section sixty-three of this Law.

(4) Every office or employment held or exercised shall constitute a separate source of income and any office or employment held or exercised in Guernsey shall be treated as separate from any office or employment not so held or exercised.

(5) An office or employment shall be treated as held or exercised in Guernsey where the whole or part of the duties thereof are performed in Guernsey, but if the duties thereof are performed mainly outside Guernsey it shall be so treated only to the extent to which the duties are performed in Guernsey.

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Income from the ownership of land and buildings.

9. (1) Subject to the provisions of subsection (5) of this section, the assessable income arising from the ownership of any land and building situate in Guernsey shall, except as otherwise provided in sections ten to sixteen of this Law, be the annual value thereof.

(2) The annual value of any land or building situate in Guernsey, other than any land or building to which subsections (3) or (4) of this section apply, shall be the annual rental value thereof subject to the authorised deductions specified in section eleven of this Law.

(3) The annual value of any land or building situate in Guernsey, other than a building to which subsection (4) of this section applies, which is occupied by the owner thereof and used by him wholly and exclusively for the purposes of a business carried on by him in the basis period for any year of charge shall be the annual rental value thereof subject to the authorised deductions specified in paragraph (a) of section eleven of this Law.

(4) The annual value of any glasshouse situate in Guernsey which is occupied by the owner thereof and used by him wholly and exclusively for the purposes of a business carried on by him in the basis period for any year of charge shall be the annual rental value of such glasshouse, as determined in accordance with the Cadastre Rules from time to time in force.

(5) For the purposes of arriving at the assessable income arising from any land or building situate in Guernsey to which subsections (3) and (4) of this section apply there shall be deducted from the annual value thereof such authorised deductions as are specified in paragraphs (b), (c) and (d) of section eleven of this Law.

10. (1) Except as otherwise in this section provided, the annual rental value of any land or building situate in Guernsey to which subsections (2) and (3) of section nine of this Law relate shall be the sum arrived at by taking the reasonable rent at which any land or building would be expected to be let from year to year on the terms that the landlord be liable for all repairs and pay all landlord's rates and taxes and insurances.

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Annual  
rental value.

(2) If the annual rent or other consideration receivable by the owner under any lease, licence or other agreement is in excess of the sum so arrived at in accordance with the provisions of the last preceding subsection, the amount of such annual rent or other consideration shall be deemed to be the annual rental value.

(3) If the nature of the lease, licence or other agreement is such that the annual rent or other consideration cannot readily be ascertained the annual rental value shall be such sum as the Administrator may determine.

(4) Where it is necessary to have regard to the annual rent or other consideration receivable in order to determine the annual rental value and the annual rent or other consideration includes the value of any goods provided or services rendered or provided by the landlord, otherwise than by way of repair or maintenance of the property, then—

- (a) the value of such goods or services shall be deducted from the annual rent or other consideration for the purposes of determining the annual rental of any land or building; and
- (b) an amount equal to the difference between the annual rent or other consideration receivable and the annual rental value shall be treated as income of class (4) under the provisions of section two of this Law arising

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to the owner of the land or building concerned.

Authorised deductions.

11. The authorised deductions to be made from the annual rental value or the annual value, as the case may be, under the provisions of section nine of this Law shall be the following:—

- (a) such amount on account of repairs as is mentioned in the next succeeding section;
- (b) where the property is subject to a rente, the annual amount or a proportion thereof, as the case may be, as is payable in and as respects the basis period;
- (c) where the property is subject to a Crown or manorial charge, the amount of such charge;
- (d) where there is payable in and as respects the basis period by the person chargeable with tax an amount, not being of a capital nature or an instalment of a capital sum, as consideration for the extinguishment or the acquisition, in whole or in part, of a usufruct, that amount.

Deductions on account of repairs.

12. (1) Subject to the provisions of the next succeeding subsection, the amount to be deducted from the annual rental value on account of repairs shall be ascertained in accordance with the following provisions:—

- (a) where the annual rental value is that of land (other than a quarry) on which there is no building the said deduction shall be five per centum of the annual rental value;
- (b) where the annual rental value is that of a dwelling house or a glasshouse the said deduction shall be twenty-five per centum of the annual rental value;

- (c) where the annual rental value is that of a building, other than a dwelling house or a glasshouse, the said deduction shall be fifteen per centum of the annual rental value.

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(2) If under the terms of any lease, licence or other agreement in respect of any land or building situate in Guernsey the owner thereof is not liable for all repairs or to pay all landlord's rates and taxes and insurances, the amount to be deducted on account of repairs shall be such proportion of the deduction ascertained in accordance with the provisions of the last preceding subsection as may be just and reasonable and as the Administrator may determine.

13. (1) If in respect of any year of charge, and subject to the provisions of the next succeeding subsection, the owner of any land or building situate in Guernsey proves that the cost to him of the maintenance, repairs, insurance and management of any such land or building, according to the average of the cost to him in the five years preceding that year of charge, has exceeded the amount to be deducted from the annual rental value on account of repairs as provided in section twelve of this Law he shall, in addition to the authorised deductions, be entitled to have the income which would otherwise be assessable in respect of the land or building on which the expenditure has been incurred reduced by the amount of the excess:

Additional deductions for repairs.

Provided that the amount of such reduction shall in no case exceed the difference between the annual rental value of the said land or building and the authorised deduction on account of the repairs thereof.

(2) For the purposes of the last foregoing subsection, the amount to be taken into account in respect of repairs to a glasshouse shall be such an

1975.

amount as would be a permissible deduction from the profits of a business if the glasshouse had been in the occupation of the owner for the purpose of a business carried on by him.

(3) For the purpose of determining the cost of the maintenance, repairs, insurance and management of any land or building there shall be left out of account—

- (a) any expenditure which has been or may be taken into account as a deduction in computing income or profits under any other provision of this Law;
- (b) any expenditure in respect of additions or improvements or any other expenditure of a capital nature.

(4) In determining the amount to be deducted in respect of current repairs and maintenance under the provisions of paragraph (7) of subsection (3) of section seven of this Law there shall be left out of account any expenditure which would be taken into account for the purpose of determining the cost of the maintenance, repairs, insurance and management of any land or building under the provisions of subsection (3) of this section.

Interest on  
borrowed  
money.

14. Where any land has been acquired or any building has been acquired, constructed, reconstructed or repaired with borrowed money, the income which would otherwise be assessable in respect of that land or building in accordance with the provisions of this Part of this Law in any year of charge shall be reduced by the amount of the interest paid on the borrowed money in the basis period for that year of charge:

Provided that no deduction shall be made under the provisions of this section if a deduction has been made in respect of the amount of such interest under any other of the provisions of this Law.

15. Where a building is vacant in the basis period for any year of charge, the income which would otherwise be assessable in respect of that building in accordance with the provisions of this Part of this Law shall be reduced by an amount which bears the same proportion to a sum equal to the difference between the annual rental value of the building and the authorised deductions for repairs as the period during which the building is wholly vacant bears to a period of a year, or, where the building is let in parts, by an amount, calculated in accordance with the provisions of this section, appropriate to the vacant part.

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Vacancies.

16. (1) Where the rent or part of the rent payable in respect of any land or building situated in Guernsey has in the basis period for any year of charge been wholly and irrecoverably lost by reason of—

Lost rent.

- (a) the insolvency or absconding of the tenant or occupier by whom such rent was payable; or
- (b) the fraudulent assignment or removal of his goods by the said tenant or occupier;

the owner may claim that the income which would otherwise be assessable in respect of the said land or building shall be reduced by an amount equal to the difference between the rent so lost and the authorised deduction on account of repairs.

(2) Any claim for relief under this section must be made in writing to the Administrator within one year of the end of the year of charge to which the claim relates.

17. (1) The assessable income from sources not covered by any of sections seven, eight or nine of this Law shall be the income arising or accruing from such sources after deduction of any expenditure, not being in the nature of capital expenditure

Income from other sources.

1975. or personal expenses, wholly and exclusively incurred for the purpose of earning such income.

(2) In computing income a deduction shall be permitted in respect of any sum which has been paid on account of annual taxes or rates for the year of computation in a place outside Guernsey where the income has arisen in respect of the income or the property from which the income is derived.

Onus of proof as to expenses.

18. The onus of proof that any expenditure is an allowable deduction from profits or income for the purposes of this Law shall be upon the person claiming so to deduct.

Casual receipts.

19. In computing the amount of assessable income under this Law no account shall be taken of:—

- (a) profits and losses arising from the realisation of investments except where the varying of investments and the turning of such investments to account is a business or part of a business;
- (b) receipts of a casual or non-recurring nature other than receipts arising from a business or from the exercise of an office or employment.

### CHAPTER III

#### INCOME FROM SOURCES OUTSIDE GUERNSEY

Year of computation in respect of income from sources outside Guernsey.

20. (1) Save as otherwise in this Law provided, as respects assessable income from sources outside Guernsey, other than income from the carrying on of a business (hereinafter referred to as "income to which this Chapter applies") the year of computation shall, notwithstanding the provisions of section six of this Law, be the year of charge and the provisions of sections thirty and thirty-one of this

Law (which relate to commencements and cessations) shall not apply in respect of any such income.

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(2) Notwithstanding the provisions of the last preceding subsection, a preliminary assessment for any year of charge may be made on any person at any time after the commencement of the year of charge in respect of any income to which this Chapter applies (hereinafter referred to as "a preliminary assessment") and, for the purposes of a preliminary assessment, that income shall be computed as if the year of computation was the year preceding the year of charge.

(3) A definitive assessment for any year of charge may be made on any person at any time in respect of any income to which this Chapter applies (hereinafter referred to as "a definitive assessment") and, for the purposes of a definitive assessment, that income shall be computed in accordance with the provisions of subsection (1) of this section.

21. Where a preliminary assessment has been made on any person for any year of charge, the tax charged in consequence thereof shall be payable in the manner prescribed by the provisions of section eighty-one of this Law.

Payment of tax charged in consequence of preliminary assessment.

22. Where a definitive assessment has been made on any person for any year of charge, the tax charged in consequence thereof shall be payable within twenty-one days from the date of the issue of the notice of assessment:

Payment of tax charged in consequence of a definitive assessment.

Provided that in determining the amount of tax to be charged in consequence of the definitive assessment a deduction shall be made equal to the amount of any tax which has been charged in consequence of any preliminary assessment which may have been made for the same year of charge.

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Treatment when tax paid in consequence of a preliminary assessment exceeds tax charged in consequence of a definitive assessment.

23. (1) Save as provided in subsection (2) of this section when the tax paid in consequence of a preliminary assessment for any year of charge is found to exceed the tax charged in consequence of a definitive assessment for the same year of charge, the excess shall be applied in payment or part payment of any tax which has been charged, either in respect of the year of charge in which the definitive assessment has been made, or in respect of any year of charge prior to that year of charge, and which has not been paid, and where there is no such tax charged and unpaid the excess shall be repaid.

(2) When the tax paid in consequence of a preliminary assessment is found to exceed the tax charged in consequence of a definitive assessment for the same year of charge and—

- (a) the definitive assessment is made before the first day of June in the year next following the year of charge to which it relates, and
- (b) there is no tax which has been charged in respect of any year of charge prior to the year in which the definitive assessment has been made and which has not been paid,

the excess shall be repaid:

Provided that a claim for the repayment of the excess is submitted to the Administrator, in writing, by the person entitled to the repayment before the first day of June in the year in which the definitive assessment is made.

Bank interest from sources in Guernsey.

24. When in any year of charge there is included in the assessable income of any person any income to which this Chapter applies and in the same year of charge that person is entitled to receive interest on any sum deposited with a bank in such circumstances that the source of the interest is in Guernsey, the year of computation in respect of the deposit interest shall be determined and the provisions of

this Chapter in relation to the assessment of tax and the payment of the tax charged in consequence of the assessment shall apply as if the interest arose from a source outside Guernsey.

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25. When an individual who was not resident in Guernsey in the year preceding the year of charge becomes solely or principally so resident in a year of charge he shall be assessed and charged in that year of charge in respect of income to which this Chapter applies on the following bases:—

Persons becoming solely or principally resident.

- (a) in respect of any such income which he commenced to possess after the date on which he first arrived in Guernsey in the year of charge, on the income arising or accruing from that source in the year of charge;
- (b) in respect of any such income which he possessed on the date on which he first arrived in Guernsey in the year of charge and continued to possess throughout that year of charge, on the same proportion of the income arising or accruing from that source during the year of charge as the period of his residence in Guernsey during the year of charge bears to a period of twelve months or to the period during which he possessed the source in the year of charge if that period is less than twelve months;
- (c) in respect of any such income which he possessed on the date on which he first arrived in Guernsey and ceased to possess during the year of charge in which he became solely or principally resident as aforesaid, on the income arising or accruing from those sources between the date on which he first arrived in Guernsey in the year of charge and the date on which he ceased to possess the source.

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Persons  
solely or  
principally  
resident who  
permanently  
depart from  
Guernsey.

26. When an individual who was solely or principally resident in Guernsey in the year preceding the year of charge permanently departs from Guernsey he shall be assessed and charged in the year in which he so departs in respect of income to which this Chapter applies on the following bases:—

- (a) in respect of any such income which he possessed in the year preceding the year of charge and continued to possess on the date on which he permanently departed from Guernsey, on such proportion of a year's amount of the income arising or accruing from that source in the year prior to the year of charge as the period during which he resided in Guernsey during the year of charge bears to a period of twelve months;
- (b) in respect of any such income which he possessed at the commencement of the year of charge but ceased to possess before the date on which he permanently departed from Guernsey, on the income arising or accruing from that source during the year of charge;
- (c) in respect of any such income which he commenced to possess after the commencement of the year of charge but before the date on which he permanently departed from Guernsey, on the income arising or accruing from that source before the date on which he so departed.

#### CHAPTER IV

#### SOCIAL INSURANCE BENEFITS AND CONTRIBUTIONS

Benefits from  
social  
insurance  
chargeable  
to tax.

27. Benefit of any description payable under or in pursuance of the provisions of the Social Insurance Law, other than benefit of any of the following descriptions, that is to say, unemployment benefit,

sickness benefit, limited medical benefit, industrial disablement benefit, industrial medical benefit and partial disablement benefit, and any sum on account of an allowance in pursuance of the provisions of the Family Allowances Law shall be chargeable to income tax as if they were income in respect of which tax is chargeable as income of class (2) in pursuance of the provisions of section two of this Law and for all the purposes of this Law any such benefit or such sum shall be deemed to be an emolument chargeable as an emolument of an office or employment.

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28. (1) Subject to the provisions of subsection (2) of this section, no deduction or allowance shall be made in computing the assessable income of any person or the profits of any business in respect of any contribution which any person is required to pay in pursuance of the provisions of the Social Insurance Law in respect of any other person.

No deductions or allowances in respect of contributions for other persons.

(2) Where an employer is required in pursuance of the provisions of the Social Insurance Law to pay a contribution in respect of any person employed by him and but for the provisions of the last preceding subsection that contribution would—

- (a) be allowable as a deduction in pursuance of the provisions of section seven of this Law in computing the profits of any business carried on by the employer; or
- (b) be included as part of the cost of the maintenance, repair or management of any land or building for the purpose of computing the amount of any additional deduction for repairs to which the employer may be entitled in pursuance of the provisions of section thirteen of this Law; or
- (c) be included in computing the permissible management expenses in respect of which

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a deduction may be claimed by the employer in pursuance of the provisions of section one hundred and sixty-two of this Law;

the amount of the contribution shall be so deducted or so included.

Interpre-  
tation of  
Chapter IV.

29. In this Chapter, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“contribution” means a contribution paid in pursuance of the Social Insurance Law other than a contribution as respects limited medical benefit;

“the Family Allowances Law” means the Family Allowances (Guernsey) Law, 1950(a);

“the Social Insurance Law” means the Social Insurance (Guernsey) Law, 1964(b).

## CHAPTER V

### COMMENCEMENTS, CESSATIONS AND SUCCESSIONS

Commence-  
ments.

30. The assessable income from a business carried on in Guernsey for the year of charge in which the business is commenced, or is commenced to be so carried on, and for the two following years, and the assessable income from any other source for the year of charge in which the income first arose to the person chargeable and for the two following years (which years are in this section respectively referred to as “the first year”, “the second year” and “the third year”) shall be computed in accordance with the following provisions:—

(a) Income from business—

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- (a) Ordres en Conseil Vol. XIV, p. 332.  
(b) Ordres en Conseil Vol. XIX, p. 286.

- (i) for the first year the assessable income shall be the amount of the profits from the business for that year;
- (ii) for the second year the assessable income shall, unless such notice as is hereinafter mentioned is given, be computed as if the period of twelve months beginning on the date of the commencement was the year of computation;
- (iii) for the third year the assessable income shall, unless such notice as is hereinafter mentioned is given, be the profits of twelve months up to the end of the accounting period ending in the year preceding the year of charge, but where the accounting period ending in the year preceding the year of charge constitutes a period of less than twelve months or where no accounting period ends in the first or second year the assessable income shall be the profits of the twelve months preceding the year of charge;
- (iv) the person charged or liable to be charged with tax in respect of the income of the business shall be entitled, on giving notice in writing to the Administrator within two years after the end of the second year, to require that the assessable income both for the second and the third year (but not for one or other only of those years) shall be computed as if the year in question was the year of computation:

Provided that he may, at any time within twelve months after the end of the third year, in the like manner

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revoke the notice so given, in which case the assessable income both for the second year and the third year shall be computed as if the first notice had never been given.

(b) Other kinds of income—

- (i) for the first year the assessable income shall be computed as if the first year was the year of computation;
- (ii) for the second year the assessable income shall be computed as if the second year was the year of computation;
- (iii) for the third year the assessable income shall be computed as if the second year was the year of computation:

Provided that the person charged or liable to be charged with tax in respect of the income shall, on a claim being made for the purpose within twelve months after the end of the third year, be entitled to require that the assessable income for the third year shall be computed as if the third year was the year of computation;

- (iv) where in any year of charge a new source, or an addition to an existing source, of income is acquired by any person, the income attributable to that source or to the addition (as the case may be) shall for the purposes of paragraph (b) of this section be treated as income which first arose to that person in that year:

Provided that the provisions of this sub-paragraph shall not apply to income arising or accruing to any person from

any office or employment held or exercised by him.

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31. (1) Where in any year of charge a business carried on in Guernsey permanently ceases to be carried on, or to be so carried on— Cessations.

(a) the assessable income for that year shall be the amount of the profits for the period beginning on the first day of the year of charge and ending on the date of the cessation;

(b) if the profits of the year ending on the thirty-first day of December in the year preceding the year of charge in which the cessation occurs exceed the income in respect of which the person has been charged for that preceding year an assessment or an additional assessment may be made so that the income in respect of which tax is charged for that preceding year shall be the amount of profits for the said year ended on the thirty-first day of December:

Provided that if a business has not permanently ceased to be carried on but a particular source of the profits thereof has ceased to be possessed, then, if the person carrying on the business has been assessed in respect of that particular source under the provisions of Article seventeen of the Law entitled "Loi ayant rapport à la Taxe sur le Revenu" registered on the Records of this Island on the tenth day of January, nineteen hundred and twenty(c), the provisions of subsection (2) of this section shall apply in respect of that source.

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(c) Ordres en Conseil Vol. VI, p. 188.

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(2) Where in any year of charge income of any other kind permanently ceases to be the income of the person chargeable—

- (a) for the year of charge in which the income so ceases, the assessable income shall be computed as if the year of computation were that year instead of the year preceding the year of charge;
- (b) if the income for the year ending on the thirty-first day of December preceding the year of charge in which the cessation occurs exceeds the assessable income in respect of which tax has been charged for that year, an assessment or an additional assessment may be made so that the amount of income in respect of which tax is charged for that year shall be the amount of the income for that year.

(3) Where in any year of charge any person ceases to possess any source, or part of any source, of income, the income from that source or attributable to that part shall for the purposes of subsection (2) of this section be treated as income which permanently ceased to be income of that person in that year:

Provided that the provisions of this subsection shall not apply to income arising or accruing to any person from any office or employment held or exercised by him.

Application  
of sections  
30 and 31.

32. The provisions of section thirty and section thirty-one of this Law shall apply to income arising from an office or employment which, ceasing to be held or exercised outside Guernsey, commences to be held or exercised in Guernsey, and to income arising from an office or employment which, ceasing to be held or exercised in Guernsey, commences to be held or exercised outside Guernsey, as if the income commenced or ceased to arise to the person

holding or exercising the office or employment, as the case may be, at the time when the office or employment commenced or ceased to be held or exercised in Guernsey.

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33. (1) The office of director, by whatever name called, of a company incorporated according to the law of Guernsey, shall be treated as held in Guernsey: Directors.

Provided that the office shall not be treated as so held 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 is not required to and does not attend meetings of the board or other governing body held in Guernsey.

(2) The proviso to subsection (1) of this section shall not apply for the purpose of determining whether any repayment falls to be made under the provisions of section nine of the Corporation Tax (Guernsey) Law, 1950(*d*), and, if so, the amount of any such repayment.

34. (1) Where a person, on entering upon any new office or employment in Guernsey (in this section referred to as a “new employment”) ceases to hold any other office or employment in Guernsey (in this section referred to as an “old employment”) and— Change of employment.

- (a) the nature of the duties of the old and the new employment respectively was and is such as to require the holder thereof to devote substantially the whole of his time to the performance of those duties; and

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(*d*) Ordres en Conseil Vol. XIV, p. 371.

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- (b) his average monthly net emoluments arising from the new employment for the first twelve months of his tenure thereof, or for such shorter period as his tenure thereof endures, do not exceed by more than one quarter his average monthly net emoluments arising from the old employment for the last twelve months of his tenure thereof, or for such shorter period as his tenure thereof endured;

the income assessable in respect of both the old employment and the new employment shall be computed as if the provisions of section thirty and section thirty-one of this Law did not apply unless that person, by giving notice to the Administrator in writing, within eighteen months next after the end of the year of charge in which he entered upon the new employment, elects that the said section shall apply.

(2) For the purposes of this section the expression "net emoluments" in relation to an office or employment for any period means the emoluments of the office or employment for that period after making the authorised deductions.

Succession  
to a  
business.

35. If at any time a person succeeds to any business which until that time was carried on by another person, then for all years of charge the income shall be assessed and tax charged as if the business had permanently ceased at the date of the succession and another business had then commenced.

## PART II.

### ALLOWANCES TO INDIVIDUALS AND GENERAL RELIEFS

Personal and  
other  
allowances.

36. (1) For any year of charge the States may by Resolution prescribe the amount of personal and

other allowances to which an individual resident in Guernsey is entitled by way of relief from income tax at the standard rate, and the conditions applicable to such allowances.

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(2) A claim for relief under this section shall not be allowed unless made simultaneously with the return as to income delivered in accordance with section sixty-eight of this Law:

Provided that where the conditions by reason of which the allowance can be granted have arisen subsequently to the making of such return the relief shall be given if the claim therefor is made on or before the thirty-first day of December of the year following the year of charge to which the allowance relates:

Provided further that notwithstanding anything in this subsection contained the Administrator may, if he is satisfied that reasonable cause existed for not making a claim in the manner herein-before prescribed, admit such claim at any time within six years of the end of the year of charge for which the assessment in pursuance of the return was made.

37. (1) Where the amount of tax paid by any person was excessive by reason of some error or mistake in a return or claim made by him or on his behalf, he shall, on a claim being made for the purpose, be entitled to be given by way of repayment such relief as is reasonable and just.

Relief in respect of errors and mistakes in returns.

(2) A claim under this section must be made not later than six years after the end of the year of charge for which the assessment in pursuance of the return was made.

(3) No relief shall be granted under this section in respect of an error or mistake as to the basis on which the liability of the claimant ought to have

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been computed, if the return was in fact made on the basis of or in accordance with the practice prevailing at the time when the return was made.

Relief for interest on money borrowed.

38. (1) Where any person is required to pay, in respect of money borrowed, any annual interest which cannot be deducted under any provision of this Law in computing the income or profits arising or accruing or deemed to arise or accrue to him, the said interest may, subject to the provisions of this section, be deducted from the income or profits which, but for this section, would be assessable to tax.

(2) If the said interest is specifically payable out of, or attributable to, the income or profits derived from a particular source, it shall be deducted from the said income or profits.

(3) If the said interest is not so payable or attributable, it shall, as far as possible, be deducted from that person's unearned income and then, to the extent that it cannot be so deducted, from his earned income.

National insurance contributions.

39. The amount of any contribution paid by any person in pursuance of any of the provisions of the National Insurance Act, 1946, or in pursuance of the National Insurance Act (Northern Ireland), 1946, in order to secure a retirement pension, widow's benefit or dependant's pension for that person, his widow or dependants, as the case may be, shall be treated as if it were a premium paid to an assurance company in respect of a deferred annuity on the life of that person and accordingly as entitling him to any allowance which may be claimable under the provisions of section thirty-six of this Law.

## PART III

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## EXEMPTIONS

40. Tax shall not be chargeable in respect of:— Exemptions.

- (a) the official emoluments of any servant of Her Majesty or Her Majesty's Government or of any employee of the Corporation of the Trinity House of Deptford Strond in the County of Kent in respect of any office or employment held or carried on by him in Guernsey, provided and for so long as he is liable to pay United Kingdom income tax in respect of such emoluments;
- (b) the income derived from investments or deposits forming part of a pension scheme approved under the provisions of Part XIII of this Law;
- (c) a wound or disability pension granted in respect of any person's service in Her Majesty's Forces, or an allowance to the widow of any such person in respect of a child of that person;
- (d) the official emoluments of a consular officer in the service of a foreign state;
- (e) the emoluments of a scholarship, exhibition, bursary or other similar educational endowment held by an individual receiving full-time instruction in a university, college, school, or other educational establishment;
- (f) the profits arising from a show or exhibition held by an agricultural or horticultural society for the purposes of the society if those profits are applied solely to the purposes of the society;
- (g) the income of a registered trade union which is precluded, by law or by its rules, from

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- assuring to any person a sum exceeding five hundred pounds by way of gross sum, or one hundred and four pounds a year by way of annuity, so far as that income is applicable and applied solely for the purpose of provident benefits to its members;
- (h) (i) the income of an unregistered friendly society whose income for the year of charge does not exceed one hundred and sixty pounds;
- (ii) the income of a registered friendly society which is precluded, by law or by its rules, from assuring to any person a sum exceeding five hundred pounds by way of gross sum, or one hundred and four pounds a year by way of annuity;
- (i) the income derived by a savings bank certified as "a trustee savings bank" within the meaning of that expression for the purposes of section three of the Trustee Savings Banks Act 1969 from its investments with the National Debt Commissioners;
- (j) the income of any savings bank (other than income from lands and buildings not occupied for the purpose of the business) so far as such income is applied in the payment or credit of interest to any depositor if the bank makes an annual return to the Administrator of the name and address of every depositor to whom interest exceeding fifteen pounds has been paid in any year out of income other than income derived from investments with the National Debt Commissioners;
- (k) the income of a charity, if and so far as the income is applied to charitable pur-

poses only. For the purposes of this paragraph, "charity"—

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- (i) means any body of persons or trust established for charitable purposes only; and
  - (ii) where any property or fund the income whereof is applicable to charitable purposes only is entrusted to any person or body of persons, means, in relation to that property or fund and the income thereof, that person or body;
- (l) the income of any fund or trading department administered by or on behalf of the States, or of any parish or parochial institution;
- (m) the income derived from such securities and in such circumstances as the States may by resolution from time to time prescribe;
- (n) the official emoluments of an ordinary judge of the Court of Appeal, so long as he is not solely or principally resident in Guernsey;
- (o) the income derived from investments or deposits of any superannuation fund which is established in Guernsey and which—
- (i) is bona fide established under irrevocable trusts in connection with the carrying on of business or the exercise of functions wholly or mainly outside Guernsey;
  - (ii) has for its sole purpose the provision of superannuation benefits for person employed in the business or in connection with the exercise of functions wholly outside Guernsey and, for the widows, children or dependants of persons who

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are or have been so employed, on the death of those persons; and

- (iii) is recognised by the employer and by the persons employed in the business or in connection with the exercise of functions,

and for the purposes of this paragraph duties performed in Guernsey, the performance of which is incidental to the performance of other duties outside Guernsey, shall be treated as performed outside Guernsey;

- (p) any superannuation benefit which is paid out of a superannuation fund to which paragraph (o) of this section applies and which is paid to a person who is not resident in Guernsey;
- (q) the income derived from investments or deposits of a superannuation fund established in the United Kingdom or in the Island of Jersey where the trustee or other person having the management of the fund proves to the satisfaction of the Administrator that the fund has been approved by the Commissioners of Inland Revenue or the Comptroller of Income Tax of the Island of Jersey, as the case may be, under the relevant provisions of the laws relating to income tax in those territories;
- (r) the income derived from investments or deposits of any body of persons or trust established in the United Kingdom or in the Island of Jersey for charitable purposes only where the person entitled to the income proves to the satisfaction of the Administrator that the Commissioners of Inland Revenue or the Comptroller of Income Tax of the Island of Jersey, as the case

may be, have allowed a claim for exemption from tax on that income under the relevant provisions of the laws relating to income tax in those territories;

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- (s) the income derived by an assurance company from investments or deposits to the extent that the investments or deposits are referable to the company's pension annuity business carried on in the United Kingdom and where the company proves to the satisfaction of the Administrator that the said income is exempt from tax under the provisions of section three hundred and fourteen of the Income and Corporation Taxes Act 1970;
- (t) any payment of a supplementary benefit in pursuance of the provisions of the Supplementary Benefit (Guernsey) Law, 1971(e);
- (u) any payment of a pension in pursuance of the provisions of the Old Age and Blindness Pensions (Guernsey) Laws, 1950 and 1951(f);
- (v) any payment of outdoor assistance in pursuance of the provisions of the Public Assistance Law, 1937(g);
- (w) the income derived from investments and deposits of so much of an insurance company's life assurance fund and separate annuity fund, if any, as is referable to pension business as defined in section one hundred and eighty-eight of this Law;
- (x) any chargeable profit within the meaning of the Dwellings Profits Tax (Guernsey) Law, 1975(h), accruing to a person from a transaction to which that Law applies.

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(e) Ordres en Conseil Vol. XXIII, p. 26.

(f) Ordres en Conseil Vol. XIV, p. 214; Vol. XV, p. 20.

(g) Ordres en Conseil Vol. XI, p. 91.

(h) Ordre en Conseil No. VIII of 1975.

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## PART IV

PROVISIONS APPLICABLE TO SPECIAL  
CLASSES OF PERSONS AND MATTERS

## CHAPTER I

## APPLICATION

Application  
of Part IV.

41. The provisions of this Part of this Law shall apply to persons and matters of the classes and descriptions mentioned therein, but, except so far as modified by the provisions of this Part of this Law, the other provisions of the Law shall have effect and shall apply as respects such persons and matters.

## CHAPTER II

## PARTNERSHIPS

Method of  
charging  
partner-  
ships.

42. (1) In respect of income arising from any business carried on by two or more persons in partnership, and in respect of income arising from any other source and belonging to the partnership, each partner shall be assessed and charged in respect of his share of the profits of the partnership.

(2) If there is a change in the persons engaged in carrying on a business either—

(a) by reason that the person who has been carrying on the business on his own account commences to carry on the business in partnership with other persons; or

(b) in the case of a business carried on by a partnership by reason that—

(i) one or more of the partners retires or dies; or

(ii) one or more new partners are admitted; or

(iii) the partnership is dissolved, but one or more of the partners continue to carry

on the business as a partner or partners in a partnership, or one of them continues to carry it on as an individual,

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then, for the purpose of section thirty of this Law, only the incoming partner or partners shall be deemed to have commenced to carry on a business, and for the purpose of section thirty-one of this Law only the outgoing partner or partners shall be deemed to have permanently ceased to carry on a business:

Provided that where all the persons who were carrying on the business immediately before and all the persons who were carrying it on immediately after the change concur in requiring that the business shall be treated as having ceased at the date of the change and a new business as having commenced, then upon such notice as is hereinafter mentioned being given, the income of each person shall be assessed and tax charged as if a cessation and commencement had actually taken place:

Provided further that such notice as aforesaid must be a notice signed by all such persons as aforesaid, or if any of them has died, by his personal representative, and sent to the Administrator within twelve months after the change took place.

### CHAPTER III

#### HUSBAND AND WIFE

43. (1) Any income of a married woman living with her husband shall for the purposes of assessment, charge, collection, computation of total income, and reliefs be treated as if it were the income of the husband:

Liability of husband in respect of income of wife.

Provided that if, as respects any income of the married woman, the residence of the person entitled to the income is material for determining the question of whether or not that income is income in respect

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of which tax is chargeable, or the nationality and residence of the person entitled to the income is material for determining the amount of the assessable income, the question shall be determined by reference to the residence, or the nationality and residence, of the married woman, and not of the husband.

(2) The last preceding subsection shall not apply—

(i) if an application under section forty-six of this Law is in force, in which case the provisions of section forty-seven of this Law shall apply; or

(ii) if one of the spouses is resident in Guernsey in the year of charge, and the other is not so resident, in which case each spouse shall be charged, and entitled to relief as if he or she were unmarried:

Provided that, where the resident wholly maintains the non-resident, he or she shall be entitled to any personal allowance for married persons prescribed by the States under section thirty-six of this Law but in such a case the non-resident shall not be entitled to a personal allowance in computing the amount of the proportional allowance permissible by virtue of section fifty-one of this Law.

(3) If for the purposes of this section any question arises as to whether a spouse is or is not wholly maintained by the other spouse the question shall be determined by reference to the financial circumstances of the spouse who is maintained.

(4) Where a married woman is not living with her husband, each spouse shall for all the purposes of this Law be treated as if he or she were unmarried.

(5) For the purposes of this section a married woman shall be treated as living with her husband unless—

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- (i) they are separated under an order of a court of competent jurisdiction or by deed of separation; or
- (ii) they are in fact separated in such circumstances that the separation is likely to be permanent.

(6) Where under the order of any court of competent jurisdiction a husband or former husband is required to pay alimony or maintenance out of his income, to or for the benefit of his wife or former wife, any sum so paid shall be treated as the income of the wife or former wife and shall be allowed as a deduction in computing the income of the husband or former husband.

44. (1) Where—

- (a) an assessment to tax (hereafter in this section referred to as "the original assessment") is made on a man or on a man's trustee or guardian, or on a man's personal representative; and
- (b) the Administrator is of opinion that, if an application for separate assessment under section forty-six of this Law (which provides for application for separate charges on husband and wife) had been in force with respect to that year of charge, an assessment in respect of, or of part of, the same income would have fallen to be made on, or on the trustee or guardian of, or on the personal representative of, a woman who is the said man's wife or was his wife in that year of charge; and
- (c) the whole or part of the amount payable under the original assessment has remained

Collection  
from wife of  
tax assessed  
on husband  
attributable  
to her  
income.

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unpaid at the expiration of twenty-one days from the time when it became due;

the Administrator may serve on her, or, if she is dead, on her personal representative, or, if such an assessment as is referred to in paragraph (b) of this subsection could, in the event therein referred to, have been made on her trustee or guardian, on her or on her trustee or guardian, a notice—

- (i) giving particulars of the original assessment and of the amount remaining unpaid thereunder; and
- (ii) giving particulars, to the best of his judgment, of the assessment which would have fallen to be made as aforesaid;

and requiring the person on whom the notice is served to pay the amount which would have been payable under the last-mentioned assessment if it conformed with those particulars, or the amount remaining unpaid under the original assessment, whichever is the less.

- (2) The same consequence as respects—
  - (a) the imposition of a liability to pay, and the recovery of, the tax; and
  - (b) appeals to the Authority and the stating of cases for the opinion of the Royal Court; and
  - (c) the ultimate incidence of the liability imposed;

shall follow on the service of a notice under subsection (1) of this section on a woman, or on her trustee or guardian, or on her personal representative, as would have followed on the making on her, or on her trustee or guardian, or on her personal representative, as the case may be, of such an assessment as is referred to in paragraph (b) of subsection (1) of this section, being an assessment which—

- (i) was made on the day of the service of the notice; and
- (ii) charged the same amount of tax as is required to be paid by the notice; and
- (iii) fell to be made and was made by the Administrator; and
- (iv) was made by the Administrator to the best of his judgment;

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and the provisions of this Law relating to the matters specified in paragraphs (a) to (c) of this subsection shall, with the necessary adaptations, have effect accordingly.

(3) Where a notice is given under subsection (1) of this section, tax up to the amount required to be paid by the notice shall cease to be recoverable under the original assessment.

(4) Where the amount payable under a notice given under subsection (1) of this section is reduced as the result of an appeal or of the stating of a case for the opinion of the Royal Court—

- (a) the Administrator shall, if, in the light of that result, he is satisfied that the original assessment was excessive, cause such relief to be given by way of repayment or otherwise as appears to him to be just; but
- (b) subject to any relief so given, a sum equal to the reduction in the amount payable under the notice shall again become recoverable under the original assessment.

(5) The Administrator shall have the like powers of obtaining information with a view to the giving of, and otherwise in connection with, a notice under subsection (1) of this section as he would have had with a view to the making of, and otherwise in connection with, such an assessment as is referred to in paragraph (b) of subsection (1) of this section

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(6) The provisions of this section shall, with any necessary adaptations, apply in relation to any tax which was assessed and unpaid on the commencement of this Law.

Right of husband to disclaim liability for tax on deceased wife's income.

45. (1) Where a woman dies who, at any time before her death, was a married woman living with her husband, he or, if he is dead, his personal representative may, not later than two months from the date of the grant of probate or letters of administration in respect of her estate or, with the consent of her personal representative, at any date not later than the last day of the second year of charge next following the year of charge in which she died, serve on her personal representative and on the Administrator a notice in writing declaring that, to the extent permitted by this section, he disclaims responsibility for unpaid tax in respect of all income of hers for any year of charge or part of a year of charge during which he was her husband and she was living with him:

Provided that a notice under this section shall not be deemed to be validly served on the Administrator unless it specifies the name and address of the woman's personal representative.

(2) Where such a notice has been duly served on a woman's personal representative and on the Administrator—

(a) it shall be the duty of the Administrator to exercise such powers as he may then or thereafter be entitled to exercise under the last preceding section in connection with any assessment made on or before the date when the service of the said notice is completed, being an assessment in respect of any of the income to which the said notice relates; and

(b) the assessments (if any) which may be made after that date shall, in all respects and in particular as respects the person assessable and the tax payable, be the assessments which would have fallen to be made if—

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- (i) an application for separate assessment under section forty-six of this Law (which provides for application for separate charges on husband and wife) had been in force in respect of the year of charge in question; and
- (ii) all assessments previously made had been made accordingly.

46. (1) An application for separate charges on a husband and a wife—

Application for separate charges on husband and wife.

- (a) must be made by the husband or by the wife;
  - (b) must be made in writing in the manner and form prescribed by the Administrator;
  - (c) must be made on or before the thirty-first day of March in the first year of charge as regards which it is to have effect, or if the marriage takes place in the course of that year, at some time between the date of the marriage and the thirty-first day of March in the next subsequent year of charge;
  - (d) shall have effect not only as respects such first year but also as respects all subsequent years of charge up to the year as regards which a notice of withdrawal is given in a manner hereinafter provided.
- (2) A notice of withdrawal of application—
- (a) must be given by the party by whom the application was made;
  - (b) must be given in writing in the manner and form prescribed by the Administrator;

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- (c) must be given on or before the thirty-first day of March in the year of charge as regards which it is to take effect.

Effect of application for separate charges.

47. Whilst any such application is in force the income of the husband and of the wife shall be assessed and tax shall be charged in respect thereof, and reliefs given, as if they were not married, subject however to the following provisions:—

- (a) the income of the husband and of the wife shall be aggregated for the purpose of determining the amount of the allowances to individuals prescribed by the States under section thirty-six of this Law, and that amount shall not exceed the amount which would have been granted had no such application been made;
- (b) the benefit of any such allowances shall be apportioned between the spouses in such manner as the States may by resolution prescribe.

## CHAPTER IV

### NON-RESIDENTS

Power to charge agent on behalf of non-resident.

48. (1) Subject to the provisions of section fifty of this Law, where a non-resident person is liable to tax in respect of any income and has an agent in Guernsey the agent shall be chargeable on his behalf with tax in respect of any such income which arises whether directly or indirectly from or through his agency:

Provided that nothing in this section shall affect the liability of the non-resident to be charged in his own name.

(2) This section applies to any agent whether for the purpose of carrying on a business or for any

other purpose, and the expression "agent" includes a manager and any person receiving or paying income on behalf of or to a non-resident:

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Provided that nothing in this section shall render a resident person chargeable in respect of income arising from sales or transactions carried out through him, unless the resident is an authorised person carrying on the regular agency of the non-resident:

Provided further that where sales or transactions are carried out on behalf of a non-resident through a broker in the ordinary course of his business as such, and the broker—

- (a) is a person carrying on *bona fide* the business of a broker in Guernsey; and
- (b) receives, in respect of the business of the non-resident which is transacted through him, remuneration at a rate not less than that customary in the class of business in question;

then, notwithstanding that the broker is a person who acts regularly as broker for the non-resident, neither the non-resident nor the broker shall be chargeable in respect of income arising to the non-resident from those sales or transactions.

(3) Tax chargeable on an agent under the provisions of subsection (1) of this section may be deducted by such agent from any sum or sums payable by or through such agent to the non-resident. An agent who has deducted tax under the provisions of this subsection shall remit the tax to the Administrator within one month of the date of the deduction and shall furnish such particulars of the income in respect of which the deduction has been made as the Administrator may require.

(4) Any person who fails to comply with the provisions of the last preceding subsection shall be liable to the penalty for late payment prescribed in

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section one hundred and ninety-nine of this Law, and for the purposes of computing the penalty the tax shall be deemed to be an amount becoming due on the date on which it was deducted.

(5) A person who is chargeable in respect of any income of a non-resident person shall be answerable for the making of returns in the manner provided by this Law and for all other matters required to be done under this Law for the purposes of the assessment of income and the charge and payment of tax.

(6) In this section, the expression "broker" includes a general commission agent.

Special  
basis of  
compu-  
tation in  
certain  
cases.

49. (1) Where it appears to the Administrator that the amount of the income arising or accruing in Guernsey to a non-resident person cannot be readily ascertained, the Administrator may compute that income on such percentage of the turnover of the business done in Guernsey as he may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of this Law) as the amount of business done in Guernsey bears to the aggregate of the amount of the business done in Guernsey and out of Guernsey or in such other manner as the Administrator may agree with the non-resident person.

(2) Where a non-resident person or his agent carries on in Guernsey any business being an agricultural, manufacturing or other productive undertaking and sells the produce of that undertaking outside Guernsey, such proportion of the profits or income arising or accruing to that person shall be deemed to have arisen or accrued in Guernsey as may be just and reasonable having regard to all the circumstances of the case and in particular to the extent of the operations carried on in Guernsey.

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(3) Where a non-resident person or his agent is chargeable in respect of any income arising from the sale of goods or produce manufactured or produced out of Guernsey by the non-resident, he may apply to the Administrator to have the income computed on the basis of the profits which might reasonably be expected to have been earned:—

- (a) by a merchant; or
- (b) where the goods are retailed by or on behalf of the manufacture or producer, by a retailer of the goods sold who had bought from the manufacturer or retailer direct,

and the assessment shall be made or amended accordingly.

50. (1) Where a company resident in Guernsey is required to pay, in respect of money borrowed, any interest to a person not resident in Guernsey and—

Interest payable by certain trading companies to non-residents.

- (a) the company carries on a trade outside Guernsey, and
- (b) under the terms of the contract under which the interest is payable, the interest is to be paid, or may be required to be paid, outside Guernsey, and
- (c) the interest is in fact paid outside Guernsey, and
- (d) either—
  - (i) the liability to pay the interest was incurred wholly or mainly for the purposes of activities of the company's trade carried on outside Guernsey, or
  - (ii) the interest is payable in the currency of a territory outside the scheduled territories and, subject to the provisions of subsection (2) of this section, the liability to pay the interest was incurred wholly or mainly for the purposes of

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activities of that trade, wherever carried on,

then, notwithstanding the provisions of section forty-eight of this Law, the said interest may be paid without deduction of tax.

(2) The provisions of sub-paragraph (ii) of paragraph (d) of the preceding subsection shall not apply where—

- (a) the trade is carried on by a body of persons over whom the person entitled to the interest has control, or
- (b) the person entitled to the interest is a body of persons over whom the person carrying on the trade has control, or
- (c) the person carrying on the trade and the person entitled to the interest are both bodies of persons, and some other person has control over both of them.

(3) In this section, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

“trade” includes every manufacture, adventure or concern in the nature of trade;

“the scheduled territories” means the territories specified in Schedule 1 to the Exchange Control Act 1947 as for the time being in force.

Proportional  
and other  
allowances  
to non-  
resident  
individuals.

51. (1) No allowance under section thirty-six of this Law shall be granted to an individual who is not resident in Guernsey.

(2) An allowance (referred to in this Law as a proportional allowance) may be claimed by an individual who is a non-resident and who—

- (a) is a British subject; or

- (b) is resident in the United Kingdom or in any of the Channel Islands in which this Law is not in force;

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in respect of income arising or accruing in Guernsey, and the amount of such allowance shall be the amount by which the tax charged or chargeable but for such relief exceeds the portion attributable to Guernsey income of the tax which would be chargeable on his total income from all sources if such total income arose in Guernsey and if, notwithstanding the provisions of the last preceding subsection, he was entitled to such relief in respect of personal and other allowances as may be prescribed from time to time by Resolution of the States under section thirty-six of this Law.

(3) Claims by non-residents for a proportional allowance shall not be allowed unless a return as to total income from all sources has been made, and no claim shall be admitted if made later than six years after the end of the year of charge to which such claim relates.

(4) Notwithstanding the provisions of subsection (1) of this section, any non-resident person who satisfies, or whose employer satisfies, the Administrator that he was employed in Guernsey for a period of at least ninety-one consecutive days in any year of charge shall, in respect of that year of charge, be entitled to the personal and other allowances prescribed in pursuance of the provisions of subsection (1) of section thirty-six of this Law by way of relief from income tax at the standard rate and subject to the same conditions, as if that person were resident in Guernsey during that year of charge:

Provided that the foregoing provisions of this section shall not apply to a person who is a director, by whatever name called, of a company—

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- (a) incorporated according to the law of Guernsey; or
- (b) which, in the year of charge—
- (i) is resident in Guernsey, or
  - (ii) carries on any part of its activities in Guernsey.

## CHAPTER V

PERSONS UNDER GUARDIANSHIP,  
TRUSTEES AND PERSONAL  
REPRESENTATIVES

Persons  
under  
guardian-  
ship.

52. (1) The person having the direction, control or management of any income of any person under guardianship may be charged with income tax at the standard rate in respect of that income.

(2) Nothing in this section shall affect the liability of a person under guardianship to be himself charged in his own name.

(3) A person who may be charged with tax in respect of any income of a person under guardianship shall be responsible for making returns and for all other matters required to be done under this Law for the purposes of the assessment of income and the charge and payment of tax, and if such person submits to the Administrator a return of the total income from all sources of the person under guardianship he may on behalf of that person claim any allowance or relief which that person could have claimed if he had been charged in his own name.

(4) If a person under guardianship is charged with tax in his own name, his guardian shall in default of payment of the tax by the person under guardianship be liable therefor to the extent of the property of the person under guardianship of which he has the direction, control or management, and

may be proceeded against accordingly as if he had been the person charged with tax.

1975.

(5) Any person who has been duly charged with tax in respect of any income of, or who has lawfully paid tax on behalf of, a person under guardianship may raise and retain out of the property from time to time coming into his hands on behalf of the person under guardianship such sum as is sufficient to pay the tax charged, and shall be acquitted and discharged of so much as is equal to any tax so paid, and if and so far as such property is insufficient shall be entitled to be indemnified for any amount so paid.

53. (1) A trustee may be charged with income tax at the standard rate in respect of any income which he is entitled to receive on behalf of any person or which is derived from property vested in him, but nothing herein contained shall affect the liability of the person beneficially entitled to such income to be charged in his own name.

Liability to tax in respect of trust property.

(2) If a trustee chargeable under this section submits to the Administrator a return of the total income of the beneficiary from all sources, he may on behalf of the beneficiary claim any allowance or relief which the beneficiary could have claimed if he had been charged in his own name.

(3) Where any person is beneficially entitled to income which is payable to trustees or which is derived from property vested in trustees, and the residence of the person entitled to the income is material for determining the question whether or not that income is income in respect of which tax is chargeable, or the domicile or nationality and residence of the person entitled to the income is material for determining the amount of the assessable income, that question shall be determined with reference to the residence or domicile or nationality

1975. and residence, as the case may be, of the person so beneficially entitled.

(4) It shall be the duty of a trustee charged under this section to make all such returns and to do all such matters and things which the person beneficially entitled to the income would have been required to make or do if he had himself been charged in his own name.

Liability of personal representative to tax in respect of estate of deceased.

54. (1) On the death of an individual, all rights, duties and liabilities under this Law arising before his death which would have attached to him had he not died, and any liability to be charged with or to pay tax or a penalty to which he would have been subject under this Law if he had not died, shall pass to his personal representative, and the amount of tax or penalty payable by the personal representative shall be a debt due from and payable out of the estate of the deceased:

Provided that—

- (a) an assessment or an additional assessment of any income arising before his death shall not be made and penalty proceedings shall not be instituted later than the end of the third year of charge following that in which the individual died; and
- (b) where by reason of death the provisions of this Law regarding a cessation or succession are applicable, the personal representative of the deceased shall be liable for the tax for which the deceased would have been liable if he had not died and the cessation or succession had taken place at the date of his death.

(2) On the death of an individual, then as respects income arising in the period commencing at his death which is payable to or derived from pro-

perty vested in his personal representative, the provisions of the last preceding section shall apply as if the expression "trustee" included a personal representative.

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## CHAPTER VI

GOVERNMENTS OF PARTS OF HER  
MAJESTY'S DOMINIONS

55. Where a business of any kind is carried on in Guernsey by or on behalf of the Government of any part of Her Majesty's dominions, exclusive of Guernsey, that Government shall in respect of the business and of all income arising in connection therewith be liable to be charged under this Law in the same manner and to the same extent as in the like case a company would be liable:

Government trading.

Provided that the States may by Resolution exempt the whole or any part of such income from charge.

## CHAPTER VII

## MUTUAL PROFITS

56. In the case of an incorporated company (whether incorporated in Guernsey or elsewhere), in computing profits for the purpose of section seven of this Law, the profits shall be deemed to include any profit or surplus arising from transactions of the company with its members which would be included in computing profits for the purpose of that section if those transactions were transactions with non-members, and the profit or surplus aforesaid shall be determined for the purpose of that section on the same principles as those on which profits arising from transactions with non-members would be so determined:

Charge of tax on mutual profits.

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Provided that any discount, rebate, dividend or bonus granted by the company to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the company (being transactions which are taken into account in the said computation) shall be deducted as expenses if calculated by reference to the said amounts and not by reference to the amount of any share or interest in the capital of the company.

## CHAPTER VIII

### MATTERS RELATING TO DIVIDENDS

Deduction of  
tax from  
Guernsey  
dividends.

57. (1) The profits or gains to be charged on any company shall be computed in accordance with the provisions of this Law on the full amount of the same before any dividend thereof is made in respect of any share, right or title thereto, and where the company paying the dividend is a company resident in Guernsey it shall be entitled to deduct tax at the standard rate for the year in which the amount payable is declared.

(2) Subsection (1) of this section shall, in relation to a dividend paid by any company resident in Guernsey, be construed as authorising the deduction of tax from the full amount paid out of profits and gains of the said company which have been charged to tax or which, under the provisions of this Law, would fall to be included in computing the liability of the said company to assessment to tax for any year if the said provisions required the computation to be made by reference to the profits and gains of that year and not by reference to those of any other year or period.

(3) Where any tax has been deducted under the foregoing provisions of this section—

(a) the company by which the said tax has been so deducted shall, notwithstanding

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the provisions of subsection (1) of section eighty-one of this Law (which relate to the date of payment of tax), remit the tax to the Administrator within one month of the date of the deduction and shall furnish such particulars of the dividend in respect of which the deduction has been made as the Administrator may require; and

- (b) if the company fails or neglects to remit the said tax within the said period it shall be liable to a penalty calculated in the manner prescribed in section one hundred and ninety-nine of this Law (which relates to penalty for late payment) as if the said tax was an amount which became due and payable on the date on which the deduction was made; and
- (c) proceedings for the imposition of a penalty under this subsection may be instituted by the Administrator in accordance with the provisions of section two hundred of this Law (which relates to proceedings in respect of penalties).

(4) The amount of any tax deducted from any dividend and remitted, under the foregoing provisions of this section, by a company to the Administrator shall be a payment made by the company on account of tax charged or chargeable on the profits and gains of the company assessable to tax for the year of charge in which the deduction is made and for every year of assessment or charge prior to that year; and where the amount of tax charged or chargeable as aforesaid is less than the amount of tax so remitted the appropriate repayment shall be made to the company by the Administrator.

(5) For the purposes of this Law dividends shall be deemed to arise and accrue to the person entitled

1975. to receive them at the date on which they are declared.

Compu-  
tation of  
gross income  
represented  
by  
Guernsey  
dividends.

58. Subject as hereinafter provided, a dividend paid by a company resident in Guernsey shall, to the extent to which it is paid out of such profits and gains as are mentioned in subsection (2) of the last preceding section, be deemed, for all the purposes of this Law, to represent income of such an amount as would, after deduction of tax as is authorised by subsection (1) of the said section be equal to the net amount received.

Guernsey  
dividends  
paid without  
full deduc-  
tion of tax.

59. (1) Where any dividend from which deduction of tax is authorised by subsection (1) of section fifty-seven of this Law is paid without deduction of tax, the amount received in respect thereof shall, for the purposes of this Law, be deemed to be a net amount received in respect of a dividend from the gross amount of which such deduction as is authorised by the said subsection (1) has been made, and the provisions of—

- (a) the last preceding section; and
- (b) section sixty of this Law (which relates to the form of dividend warrants and other documents);

shall apply accordingly.

(2) The provisions of this section shall apply where, though a deduction is made from a dividend, that deduction is less than the full amount authorised, as it applies where no deduction is made.

Explanation  
of income  
tax deduc-  
tions to be  
annexed to  
dividend  
warrants,  
etc.

60. (1) Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, in payment of any dividend distributed by any company resident in Guernsey shall have annexed thereto or be accompanied by a statement in writing showing—

- (a) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount actually paid; and 1975.
- (b) the rate and the amount of income tax appropriate to such gross amount; and
- (c) the net amount actually paid; and
- (d) where subsection (1) of section one hundred and seventy-four of this Law (which relates to the effect on dividends of double taxation relief) applies, the net Guernsey rate as provided by that subsection.

(2) If a company fails to comply with the provisions of this section, the company shall, in respect of each offence, incur a penalty not exceeding ten pounds:

Provided that the aggregate amount of any penalties imposed under this section on any company in respect of offences connected with any one distribution of dividends or interest shall not exceed one hundred pounds.

(3) The provisions of section two hundred of this Law (which relate to proceedings in respect of penalties) and applying in relation to a pecuniary penalty under Part XVIII, other than section one hundred and ninety-eight thereof, of this Law shall apply in relation to a penalty under this section.

61. Notwithstanding the provisions of section eighty-one of this Law (which relates to the due date of payment of tax and penalty) and subject to the provisions of section one hundred and seventy-four thereof (which relates to the effect on dividends of double taxation relief), a person who is beneficially entitled to a dividend from which tax is authorised to be deducted under the provisions of section fifty-seven of this Law shall, on receiving the said dividend and on satisfying the Administrator that the

Credit in respect of dividends from which deduction of tax is authorised.

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dividend is one from which tax has been deducted as aforesaid and of the amount of tax so deducted, be entitled to a credit equal to the amount of the tax authorised to be deducted from the said dividend and the credit shall be applied towards the payment of any tax and any penalty which may be payable by that person and where the amount of the credit is greater than the tax payable by that person and any penalty payable by him, the appropriate repayment shall be made by the Administrator:

Provided that no such repayment shall be made until the tax payable by the person so entitled to the dividend for the year of charge in which the dividend is declared and for every year of assessment or charge prior to that year shall have been determined.

Dividends paid by a company incorporated in, but not resident in, Guernsey.

62. A dividend paid by a company which is incorporated in Guernsey but which, at the time at which the dividend is declared, is not resident in Guernsey within the meaning of section four of this Law shall, for the purposes of this Law, be deemed not to arise from a source in Guernsey.

## CHAPTER IX

### FEEs AND SUBSCRIPTIONS TO PROFESSIONAL BODIES, LEARNED SOCIETIES, ETC.

Deduction of certain fees and subscriptions.

63. (1) Subject to the succeeding provisions of this section and to the provisions of subsection (3) of section eight of this Law, any annual fee or subscription paid to a body of persons approved for the purposes of this section by the Administrator shall be deemed to be an expense wholly, exclusively and necessarily incurred in the performance of the duties of the office or employment out of the emoluments of which it is defrayed.

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(2) The Administrator may on the application of the body approve for the purposes of this section any body of persons not of a mainly local character whose activities are carried on otherwise than for profit and are solely or mainly directed to all or any of the following objects, that is to say—

- (a) the advancement or spreading of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions);
- (b) the maintenance or improvement of standards of conduct and competence among the members of any profession;
- (c) the indemnification or protection of members of any profession against claims in respect of liabilities incurred by them in the exercise of their profession.

(3) If the activities of a body approved for the purposes of this section are to a significant extent directed to objects other than those mentioned in subsection (2) of this section the Administrator may determine that such specified part only of any annual subscription paid to the body may be deducted under this section as corresponds to the extent to which its activities are directed to objects mentioned in that subsection; and in doing so the Administrator shall have regard to all relevant circumstances and, in particular, to the proportions of the body's expenditure attributable to the furtherance of objects so mentioned and other objects respectively.

(4) A fee or subscription shall not be treated as defrayed out of the emoluments of any office or employment unless—

- (a) the fee is payable in respect of a registration (or retention of a name in a roll or record) which is a condition or one of alternative conditions of the performance of the duties of the office or employment;

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(b) the subscription is paid to a body the activities of which, so far as they are directed to the objects mentioned in subsection (2) of this section, are relevant to the office or employment, that is to say, the performance of the duties of the office or employment is directly affected by the knowledge concerned or involves the exercise of the profession concerned.

(5) Any approval given and any determination made under this section may be withdrawn, and any such determination varied, so as to take account of any change of circumstances; and where a body is approved for the purposes of this section in pursuance of an application made before the end of any year of charge a deduction may be made under this section in respect of a fee or subscription paid to the body in that year, whether the approval is given before or after the end of that year.

(6) Any body aggrieved by the failure of the Administrator to approve that body for the purposes of this section, or by his withdrawal of the approval or by any determination made by him under this section or the variation of or the refusal to withdraw or to vary any such determination shall be entitled to appeal to the Authority.

(7) The provisions of section seventy-six of this Law shall apply in the case of an appeal under the provisions of the last foregoing subsection as they apply in the case of an appeal from an assessment, penalty, direction or order made or imposed by the Administrator.

## CHAPTER X

1975.

## STATUTORY TRADING CORPORATIONS

64. (1) It shall be the duty of the Guernsey Tomato Marketing Board, a body corporate incorporated under the Tomato Marketing (Guernsey) Law, 1952<sup>(i)</sup> (hereafter in this section referred to as "the Board"), to furnish to the Administrator within such period, not being less than twenty-one days, as the Administrator may by notice in writing prescribe, in the form and manner prescribed by the Administrator, information as to—

Statutory  
trading  
corpora-  
tions.

- (a) the names and addresses of all persons who have delivered to the Board tomatoes to be exported and marketed by the Board in the year preceding any year of charge;
- (b) the names and addresses of the persons who have engaged in the trade or business of store-packing tomatoes and who have delivered to the Board on behalf of some other person tomatoes to be exported and marketed by the Board in the year preceding any year of charge; and
- (c) the monies arising or accruing to persons referred to in paragraphs (a) and (b) of this subsection in respect of tomatoes so exported and marketed and of any sums deducted or deductible from the said monies or otherwise charged or chargeable by the Board to the persons concerned.

(2) It shall be the duty of all persons who have engaged in the business of store-packer and who have delivered to the Board on behalf of some other person or persons tomatoes to be exported and marketed by the Board in the year preceding any year of charge to furnish to the Administrator within such

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(i) Ordres en Conseil Vol. XV, p. 341.

1975.

period, not being less than twenty-one days, as the Administrator may by notice prescribe, in the form and manner prescribed by the Administrator, information as to—

- (a) the names and addresses of the said other person or persons; and
- (b) the monies arising or accruing to the said other person or persons in respect of tomatoes so delivered and of all sums deducted or deductible from the said monies or otherwise charged or chargeable by the Board or by the person delivering the tomatoes to the Board:

Provided that any person delivering tomatoes to the Board on behalf of some other person shall not be required to furnish information in respect of any transaction not related to the collection, packing, delivering, exporting or marketing of the said tomatoes.

(3) The Board or any person referred to in paragraph (b) of subsection (1) of this section shall, if so required by a supplementary notice given by the Administrator, deliver a separate return containing particulars corresponding to those referred to in the last two preceding subsections in respect of tomatoes exported since the commencement of the year of charge in which the notice is given.

(4) The preceding provisions of this section shall, with such adaptations as may be necessary, apply to and in relation to any corporation incorporated by Law in connection with any industry and having in relation to that industry functions substantially similar to those exercised by the Board in respect of the tomato industry.

## CHAPTER XI

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REVOCABLE SETTLEMENTS AND  
SETTLEMENTS ON CHILDREN

65. (1) All income arising to any person by virtue or in consequence of a revocable settlement shall be deemed to be the income of the settlor unless—
- Income  
under  
certain  
revocable  
settlements  
to be  
treated as  
income of  
the settlor.
- (a) the settlement is not revocable for a period exceeding six years or during the lifetime of the person on whom the settlement has been made; and
- (b) the settlor has divested himself, while the settlement remains irrevocable, of all control over or right to receive any beneficial interest thereunder.

(2) The expression “settlement” includes any disposition, trust, covenant, agreement or arrangement made or entered into directly or indirectly by any person, and the expression “settlor” shall be construed accordingly.

(3) For the purposes of this section, a settlement shall be deemed to be revocable if any income or property which may at any time arise under or be comprised in the settlement is, or will or may become, payable to or applicable for the benefit of the settlor or the wife or husband of the settlor in any circumstances whatsoever:

Provided that a settlement shall not be deemed to be revocable—

- (a) if and so long as any income arising under or property comprised in the settlement cannot become payable or applicable as aforesaid except in the event of—
- (i) the insolvency of some person who is or may become beneficially entitled to that income or property; or

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- (ii) any assignment of or charge on that income or property being made or given by some such person; or
  - (iii) in the case of a marriage settlement, the death of both the parties to the marriage and of all or any of the children of the marriage; or
  - (iv) the death under the age of twenty-five or some lower age of some person who would be beneficially entitled to that income or property on attaining that age; or
- (b) if and so long as some person is alive and under the age of twenty-five during whose life that income or property cannot become payable or applicable as aforesaid except in the event of that person becoming insolvent or assigning or charging his interest in that income or property.

Income under settlements on children.

66. (1) Where by virtue or in consequence of any settlement any income is payable during the lifetime of the settlor to or for the benefit of a child of the settlor in any year of charge, the income shall, if at the commencement of that year the child was an infant and unmarried, be treated as the income of the settlor for that year.

(2) In this section "child" includes stepchild, adopted child and illegitimate child.

## PART V

### LEGAL AVOIDANCE

General provision against legal avoidance.

67. Where the Administrator is of opinion that the main purpose, or one of the main purposes, of a transaction is the avoidance or reduction of the liability of any person to tax under this Law, he

may, in his discretion, direct that such adjustments be made as respects the liability of that person to tax as may in his opinion be appropriate to counteract the avoidance or reduction of liability which would otherwise be effected by such transaction.

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## PART VI

### RETURNS AND ASSESSMENTS

68. (1) It shall be the duty of every person to whom a notice for that purpose has been given, and whether or not he is liable to pay any tax, to deliver to the Administrator, within twenty-one days of the date of the issue of such notice, a return as to his income in the form and manner required by the Administrator, and every such person shall furnish to the Administrator, within such period as the Administrator may specify, such accounts or other information as he may require, certified, if he so requires, by an accountant competent to appear on an appeal in accordance with the provisions of subsection (2) of section seventy-eight of this Law.

Returns as to income.

(2) Where any person chargeable with tax has not received before the thirtieth day of June in any year of charge a notice from the Administrator requiring him to make a return as to his income it shall be his duty to give notice to the Administrator that he is so chargeable.

69. A company resident in Guernsey or registered under any law applicable from time to time to companies in Guernsey, when required to do so by notice for that purpose given by the Administrator, shall deliver to the Administrator within such time and in such manner as he shall direct, lists shewing respectively the dividends and interest paid or payable during the calendar year preceding the year of charge to persons resident in Guernsey and to persons not so resident, together with the names and

Returns as to dividends and interest.

1975. addresses of the persons entitled to such dividends and interest.

Returns as  
to employees.

70. (1) Every employer when required to do so by notice for that purpose given by the Administrator and whether such notice be given by individual notice in writing or by a general notice published in La Gazette Officielle, shall, within the time limited by the notice, deliver a return containing:—

- (a) the names and addresses of the persons employed by him during the year preceding the year of charge;
- (b) the full emoluments of those persons in respect of that employment for that preceding year showing separately the cash value of any emoluments not paid in cash;
- (c) the deductions made from such emoluments for items in respect of which the employee is entitled to a deduction or allowance under the provisions of this Law;
- (d) in the case of persons who entered or left the employment in the course of that preceding year, the dates on which they entered or left the employment.

(2) The employer shall, if so required by the notice or by a supplementary notice given by the Administrator, include in his return, or deliver a separate return containing, corresponding particulars in respect of persons employed by him since the commencement of the year of charge in which the notice is given.

(3) Where the employer is a company, any director of the company or person engaged in the management of the company shall for the purposes of this section be deemed to be a person employed by the company.

71. Every person who provides or offers to provide accommodation for hire or reward otherwise than under a tenancy agreement shall, when required to do so by notice for that purpose given by the Administrator, and whether such notice be given by individual notice in writing or by a general notice published in La Gazette Officielle, deliver to the Administrator a return within the time limited by the notice, of all individuals who have been accommodated by him for hire or reward during such year as the Administrator may in such notice as aforesaid specify, and who during such year have been so accommodated for a period or periods amounting to one hundred and eighty-two days or more.

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Returns as to lodgers, etc.

72. Where the person required to deliver a return under this Part of this Law is a company, the secretary or other officer performing the duties of secretary (by whatever name called) shall be responsible for delivering the return.

Returns on behalf of companies, etc.

73. Assessments shall be made by the Administrator and a notice giving particulars of the assessment and stating the amount of tax chargeable in consequence of the assessment shall be sent by post, addressed to the person concerned at his usual or last known place of residence or, in the case of a company, at its principal place of business. Every such notice shall contain a statement that a right of appeal is conferred by this Law and shall further state the time within which notice of appeal must be given.

Making of assessments.

74. If the Administrator has reason to believe that a business carried on or an office or employment exercised in Guernsey is so temporarily established or exercised in this Island that the ordinary process of assessment under this Law is inappropriate, he may at any time serve on the person responsible for

Provision for speedy assessments in certain cases.

1975.

the conduct of that business or on the person exercising such office or employment a notice requiring him within such time as may be specified therein to deliver to the Administrator a return of the estimated income of the business, office or employment arising in Guernsey up to the probable date of the cessation of such business, office or employment in Guernsey, and the provisions of this Law shall, so far as may be, apply as if the notice were a notice issued under subsection (1) of section sixty-eight of this Law:

Provided that, notwithstanding anything in section eighty-one of this Law, the tax shall be payable in one instalment on such day or within such period as the Administrator may determine.

Additional  
assessments.

75. If as respects any year of charge the Administrator discovers that any income that ought to have been assessed has not been assessed, or that the assessment in respect of any income is or has become insufficient, he may, subject to the provisions of subsection (1) of section fifty-four of this Law, at any time not later than six years after the end of such year of charge, make an assessment or an additional assessment, as the case may be, on the person chargeable on such income and all the provisions of this Law shall thereupon apply to such assessment or additional assessment:

Provided that where any form of fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to tax for the year nineteen hundred and fifty or any subsequent year of charge, assessment or additional assessment on that person to tax for that year, may, for the purpose of making good to the States any loss of tax attributable to the fraud or wilful default, be made at any time, notwithstanding that, apart from this section, the time limited by Law for the

making of the assessment or additional assessment has expired. 1975.

## PART VII

### APPEALS

76. Any person aggrieved by an assessment made upon him by the Administrator, or by any penalty, direction or order imposed or made by the Administrator under this Law, shall be entitled to appeal to the Authority on giving to the Administrator notice in writing (stating the grounds of appeal) within twenty-one days of the date of the issue of the notice of assessment or of the order imposing the penalty, or other order or direction: Right of appeal.

Provided that the Authority may admit an appeal if it is satisfied that owing to absence, sickness or other reasonable cause a person has been prevented from giving the aforesaid notice within the time limited.

77. The Authority shall meet from time to time for the hearing of appeals, and shall cause reasonable notice to be given to each appellant of the date, time and place for hearing his appeal. Appeal meetings.

78. (1) The Administrator shall be entitled to be present during all the time of the hearing of an appeal, to give reasons in support of the assessment or other order made by him and to be present when the determination of the Authority is announced. Hearing of appeals.

(2) The appellant and the Administrator shall be entitled at the hearing of any appeal to appear by an advocate or by an accountant who is a member of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland or the Association of Certi-

1975.      fied Accountants, or who holds an equivalent qualification approved by the Authority:

Provided that the condition as to membership of one of these institutes or the Association, or the holding of an equivalent qualification, as the case may be, shall not apply to an accountant who has appeared before the Authority in a professional capacity in respect of an appeal in relation to income tax before the first day of January, nineteen hundred and seventy-four.

(3) If the Authority is satisfied that the appellant has been prevented by absence, sickness or other reasonable cause from attending on the day fixed for hearing the appeal, it may postpone the hearing for such time as it may think necessary.

(4) Where, on the hearing of an appeal, the appellant desires to put forward any ground of appeal which was not specified in the notice of appeal, the Authority, if in its opinion the omission of that ground from the notice was not wilful or unreasonable, may allow the appellant to put forward that ground and may take it into consideration.

(5) The Authority may, by notice sent by post, summon any person, (other than the appellant) whom it thinks able to give relevant evidence, to appear before it to be examined.

(6) Any witness before the Authority may be examined on oath, but where the witness is the appellant or any agent or servant of the appellant or any other person confidentially employed in his affairs, the witness shall not be compelled to give evidence on oath or to answer any question to which he objects.

(7) Any member of the Authority shall have power to administer the oath referred to in the last preceding subsection.

(8) The Authority may adjourn any appeal from 1975.  
time to time.

79. (1) In disposing of an appeal the Authority may— Determina-  
tion of  
appeals.

(a) in the case of an assessment—

(i) confirm, reduce, increase or annul the assessment; or

(ii) set aside the assessment and direct the Administrator to make a fresh assessment after making such further enquiry as the Administrator thinks fit or the Authority may direct; or

(b) in the case of an order imposing a penalty—  
confirm or cancel such order or vary it so as either to increase or reduce the penalty;  
or

(c) in the case of any other direction or order—  
make such order thereon as it thinks fit.

(2) Save as provided in section eighty of this Law orders made by the Authority shall be final and conclusive.

80. (1) Upon the determination of an appeal the appellant or the Administrator, if dissatisfied with the determination as being erroneous in point of law, may require the Authority to state and sign a case for submission to the Royal Court. Case for  
opinion of  
Royal  
Court.

(2) Such requirement shall be made by delivering, at any time within twenty-one days after the determination of the appeal, a notice in writing to the President of the Authority.

(3) The case shall set forth the facts and the determination of the Authority.

(4) The case when stated and signed shall be delivered by the President to the party who required it.

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(5) The party to whom the case has been delivered shall, within twenty-one days after he has received it, transmit the case to Her Majesty's Greffier and send to the other party a copy of the case, together with notice in writing that he has so transmitted it.

(6) The Royal Court sitting as an Ordinary Court shall hear and determine any question of law arising on the case, and may reverse, affirm, or amend the determination of the Authority, remit the matter to the Authority, with the opinion of the Court thereon, or make such other order as the Court may think fit.

(7) The Court may cause the case to be sent back for amplification or clarification and thereupon the case shall be amplified or clarified accordingly and returned to the Court and the last preceding subsection shall thereupon apply.

(8) Where the amount of the assessment is to be altered in consequence of the judgment of the Court, the Administrator shall alter the assessment and charge accordingly.

(9) An appeal shall lie from the Ordinary Court to the Court of Appeal.

## PART VIII

### COLLECTION AND RECOVERY

Due date of  
payment of  
tax and  
penalty.

81. (1) Tax for any year of charge shall be payable in two equal instalments as follows:—

(a) the first instalment on or before the thirtieth day of June in that year:

Provided that where the assessment in consequence of which the tax is chargeable has

not been made before the tenth day of June in that year the first instalment shall be payable within twenty-one days from the date of the issue of the notice of assessment;

1975.

- (b) the second instalment on or before the thirty-first day of December in that year:

Provided that where the assessment in consequence of which the tax is chargeable is made after the tenth day of December in that year the second instalment shall be payable within twenty-one days from the date of the issue of the notice of assessment.

- (2) A penalty shall be payable within thirty days from the date of the order communicating the penalty:

Provided that the Administrator may, at his discretion, allow a further time for payment.

82. (1) Where notice of an appeal to the Authority against an assessment or a penalty has been given, the Administrator may, at his discretion, allow such part of the tax charged in consequence of the assessment as appears to him to be in dispute, and the whole or part of the penalty imposed, to remain unpaid pending the result of such appeal.

Collection of tax and penalty pending appeal.

- (2) On the determination of the appeal any balance of tax or penalty shall become payable, and any tax or penalty overpaid shall be repaid.

83. In default of payment of tax or penalty by the due date, the Administrator may proceed to enforce payment as if the amount due were a civil debt.

Enforcement of payment.

1975.

## PART IX

RELIEFS FOR CERTAIN CAPITAL  
EXPENDITURE

## CHAPTER I

## ANNUAL ALLOWANCES—GENERAL

Annual  
allowances.

84. Subject to the provisions of this Part of this Law, where a person carries on a business in any year of charge, an allowance (hereafter in this Part of this Law referred to as an "annual allowance") shall be made to him for that year of charge on account of the depreciation of any machinery, plant, building or glasshouse which belongs to him and is in use for the purposes of the business at the end of the basis period for that year of charge.

Rates of  
annual  
allowances.

85. The annual allowance shall be at such rates and computed in such manner as may, from time to time, be determined by the Authority and published in La Gazette Officielle, and different annual allowances may be prescribed as aforesaid for different classes or descriptions of machinery, plant, building or glasshouse.

Annual  
allowances  
for part of a  
year of  
charge.

86. If an annual allowance falls to be made to any person in respect of any machinery, plant, building or glasshouse in charging the profits of any business which is carried on by him for part only of the year of charge the said allowance shall be proportionately reduced.

Effect on  
annual  
allowances of  
previous user  
which has  
not attracted  
an annual  
allowance.

87. (1) In determining whether any, and if so what, annual allowance falls to be made to a person for any year of charge in respect of any machinery, plant, building or glasshouse which has been owned by him during any previous year of assessment or charge, there shall be deemed to have been made to him for every previous year of assessment or

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charge (including years during which the machinery, plant, building or glasshouse was not used for the purposes of the business, and years during which the business was not carried on by him) such annual allowance as would have fallen to be made to him if all the conditions specified in subsection (2) of this section had been fulfilled in relation to every such previous year.

(2) The said conditions are as follows, that is to say—

- (a) that the business had been carried on by the person in question ever since the date on which he acquired the machinery, plant, building or glasshouse and had been so carried on by him in such circumstances that the profits thereof were liable to assessment to tax; and
- (b) that the machinery, plant, building or glasshouse had been used by him for the purposes of the business ever since that date; and
- (c) that a proper claim had been duly made by him for an annual allowance in respect of the machinery, plant, building or glasshouse for every relevant year of assessment or charge; and
- (d) that no question arose in connection with any year of assessment or charge as to the machinery, plant, building or glasshouse having been wholly or partly used by him otherwise than for the purposes of the business.

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## CHAPTER II

ANNUAL ALLOWANCES—MACHINERY AND  
PLANT

Effect on  
annual  
allowances of  
part-time use  
otherwise  
than for  
business  
purposes.

88. An annual allowance may be made in respect of any machinery or plant in charging the profits of any business for any year of charge notwithstanding that the machinery or plant is also used in that year for purposes other than those of the business, but where, in the basis period for any year of charge, machinery or plant is used for purposes other than those of the business, the annual allowance to be made in respect thereof shall be so much only of the allowance that otherwise would be made as may be just and reasonable having regard to all the relevant circumstances of the case and, in particular, to the extent and nature of the use for the said other purposes during the basis period and to the capital expenditure which would necessarily have been incurred if only such machinery and plant had been acquired as was necessary for the purpose of the business.

Adjustments  
of annual  
allowances in  
special  
circum-  
stances.

89. If the Administrator is satisfied in respect of any year of charge that the manner in which or the extent to which any machinery or plant is used in any basis period is such that the depreciation thereof is greater or less than that which might be expected to be caused by the use thereof in the normal manner and to the normal extent, he may direct that the annual allowance in respect of that machinery or plant for the said year of charge shall be at such rate, being a greater or lesser rate than the rate determined by the Authority under section eighty-five of this Law, as may from time to time be prescribed under this section by the Authority.

Allowances  
to lessors of  
machinery  
and plant.

90. (1) Where machinery or plant is let upon such terms that the burden of the depreciation thereof falls directly upon the lessor, there shall be made to

him, for each year of charge, an allowance on account of the depreciation of so much of the machinery or plant as is in use at the end of the basis period for the year of charge:

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Provided that if the letting continues for part only of the year, the allowance shall be proportionately reduced.

(2) The preceding provisions of this Part of this Law shall apply in relation to any such lessor of machinery or plant as is mentioned in subsection (1) of this section as if the machinery or plant were, during the period of the letting, in use for the purposes of a business carried on by him, and as if any reference to annual allowances included a reference to any allowance made under this section.

91. No allowance shall be made under this Chapter or under Chapter I of this Part of this Law in respect of, or of the expenditure on, any machinery or plant if, for the same or any previous or subsequent year of charge, an allowance is or can be made in respect of that expenditure under the provisions of Chapter IV of this Part of this Law.

Exclusion of double allowances.

### CHAPTER III

#### ANNUAL ALLOWANCES—BUILDINGS

92. An annual allowance may be made in respect of any building in charging the profits of any business for any year of charge notwithstanding that the building is also used in that year for purposes other than those of the business, but where, in the basis period for any year of charge, the building is used for purposes other than those of the business, the annual allowance to be made in respect thereof shall be so much only of the allowance that otherwise would be made as may be just and reasonable having regard to all the relevant circumstances of the case

Effect on annual allowances of part-time use otherwise than for business purposes.

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and, in particular, to the extent and nature of the use for the said other purposes during the said basis period.

Change of ownership of building in use.

93. Where any building which is used in any year of charge by the person to whom it belongs for the purposes of a business carried on by him ceases in that year of charge, for any reason whatsoever, to belong to that person and commences to belong to some other person, then, for the purposes of this Part of this Law, the building shall be deemed to have been sold by the first-mentioned person to the said other person for a sum equal to the amount of the expenditure on the provision of the building still unallowed immediately before the building ceased to belong to the first-mentioned person.

Change of ownership of building not in use.

94. Where any building which has been used by the person to whom it belongs for the purposes of a business carried on by him, but which is not so used by that person in any year of charge, ceases in that year, for any reason whatsoever, to belong to that person and commences to belong to some other person and the second-mentioned person commences, within five years of the date on which the building was last used for the purposes of a business by any person to whom it formerly belonged when it was so used, to use the building for the purposes of a business carried on by him, then, for the purposes of this Part of this Law, the building shall be deemed to have been used by the first-mentioned person for the purposes of a business carried on by him in the year of charge in which it ceased to belong to him.

#### CHAPTER IV

#### ANNUAL ALLOWANCES—GLASSHOUSES

Change of ownership of glasshouse.

95. Where any glasshouse which is used by the person to whom it belongs for the purposes of a business carried on by him in any year of charge

ceases, for any reason whatsoever, to belong to that person and commences to belong to some other person, then for the purposes of this Part of this Law, the glasshouse shall be deemed to have been sold by the first-mentioned person to the said other person for a sum equal to the amount of the expenditure on the provision of the glasshouse still unallowed immediately before the glasshouse ceased to belong to the first-mentioned person.

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96. Where any glasshouse to which the last preceding section of this Law applies ceases, for any reason whatsoever, to belong to one person and commences to belong to another person then the second-mentioned person shall be entitled to such additional deductions, if any, under and by virtue of subsection (6) of section seven of this Law (which relates to income from businesses) as those to which the first-mentioned person would have been entitled if he had continued to own the glasshouse.

Additional deductions under section 7.

97. (1) Where a glasshouse is let upon such terms that the burden of the depreciation thereof falls directly upon the lessor, there shall be made to him, for each year of charge, an allowance on account of the depreciation of so much of the glasshouse as is in use at the end of the basis period for the year of charge:

Allowances to lessors of glasshouses.

Provided that if the letting continues for part only of the year the allowance shall be proportionately reduced:

Provided further that any allowance which falls to be made under this section shall be reduced by the amount of any allowance in respect of the same glasshouse which falls to be made for the same year of charge under any other provision of this Law.

(2) The preceding provisions of this Part of this Law shall apply in relation to any such lessor of a

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glasshouse as is mentioned in subsection (1) of this section as if the glasshouse were, during the period of the letting, in use for the purposes of a business carried on by him, and as if any reference to annual allowances included a reference to any allowance made under this section.

(3) Any allowance made under or by virtue of this section shall be available primarily against the income arising from the ownership of the glasshouse.

(4) Where any glasshouse or any machinery or plant associated therewith is leased by the States of Guernsey to any person and is used by that person for the purpose of any business carried on by him, then for the purpose of calculating any allowance or charge which falls to be made to or on any person under the provisions of this Part of this Law or under the provisions of Chapter I of Part X of this Law, such glasshouse, machinery or plant shall be deemed to belong to a person who is subject to tax in accordance with the provisions of this Law, and to be used by that person for the purposes of a business carried on by him.

Determina-  
tion in  
certain cases  
of expend-  
iture  
incurred on  
provision of  
glasshouse.

98. Where, as respects any glasshouse in relation to which the provisions of subsection (6) of section seven of this Law (which relates to income from businesses) have effect, and where for the purposes of that subsection the cost of the glasshouse falls to be determined in accordance with the provisions of sub-paragraph (b) of paragraph 3 of the First Schedule to this Law the amount of the cost so determined shall, for the purposes of this Part of this Law, be deemed to be the amount of the expenditure incurred on the provision of that glasshouse.

Replace-  
ment of  
demolished  
glasshouse.

99. Where any glasshouse which is used by the person to whom it belongs for the purposes of a business carried on by him in a year of charge is

demolished and replaced by another glasshouse of substantially similar or greater dimensions, a replacement allowance shall be made to that person equal to the amount of the expenditure on the provision of the demolished glasshouse still unallowed immediately before it was demolished after the deduction therefrom of any sale, insurance, salvage or compensation monies received in respect of the demolished glasshouse and an amount equal to the open-market price at the time of demolition of any salvaged part of the glasshouse retained by that person.

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## CHAPTER V

### BALANCING ALLOWANCES AND BALANCING CHARGES— MACHINERY AND PLANT

100. (1) Subject to the provisions of this section, where any of the following events occurs in the case of any machinery or plant in respect of which an annual allowance or an initial allowance has been made for any year of charge to a person carrying on a business, that is to say, either—

Balancing  
allowances  
and  
balancing  
charges.

- (a) any event occurring after the setting up and before the permanent discontinuance of the business whereby the machinery or plant ceases to belong to the person carrying on the business (whether on a sale of machinery or plant or in any other circumstances of any description); or
- (b) any event occurring as aforesaid whereby the machinery or plant (while continuing to belong to the person carrying on the business) permanently ceases to be used for the purposes of the business carried on by him; or

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- (c) the permanent discontinuance of the business, the machinery or plant not having previously ceased to belong to the person carrying on the business;

an allowance or charge (in this Law referred to as a "balancing allowance" or a "balancing charge") shall, in the circumstances mentioned in this section, be made to, or, as the case may be, on, that person for the year of charge in his basis period for which that event occurs.

(2) Where there are no sale, insurance, salvage or compensation monies, or where the amount of the capital expenditure of the person in question on the provision of the machinery or plant still unallowed as at the time of the event exceeds those monies, a balancing allowance shall be made and the amount thereof shall be the amount of the expenditure still unallowed as aforesaid, or, as the case may be, of the excess thereof over the said monies.

(3) If the sale, insurance, salvage or compensation monies exceed the amount, if any, of the said expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the said amount still unallowed is nil, to the said monies.

(4) Notwithstanding anything in subsection (3) of this section, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts, that is to say—

- (a) the amount of any annual allowance made to him in respect of the machinery or plant in question; and
- (b) the amount of any balancing allowance previously made to him in respect of the said expenditure; and

- (c) the amount of any obsolescence allowance made to him; and
- (d) the amount of the initial allowance, if any, made to him in respect of the said expenditure.

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101. Where any machinery or plant which has been used by a person for the purposes of a business carried on by him has also been used by him for other purposes, then, in determining whether a balancing allowance or balancing charge falls to be made to or on him in charging the profits of the business and in determining the amount of the allowance or, as the case may be, the amount on which the charge is to be made, regard shall be had to all the relevant circumstances of the case and, in particular, to the extent of the use for the said other purposes, and there shall be made to or on him an allowance of such an amount, or, as the case may be, a charge on such an amount, as may be just and reasonable.

Effect on balancing allowances and balancing charges of part-time use otherwise than for business purposes.

102. (1) Subject to the provisions of this section, the provisions of section eighty-seven of this Law (which relates to the effect on annual allowances of previous user which has not attracted an annual allowance) shall apply for the purposes of determining whether any, and if so what, balancing allowance or balancing charge falls to be made to or on a person as they apply for the purpose of determining whether any, and if so what, annual allowance falls to be made to a person.

Effect on balancing allowances and balancing charges of previous user which has not attracted an annual allowance.

(2) The only years for which an annual allowance is to be deemed for the purposes of this section to have been made shall be years during which the machinery or plant was not used by the person in question for the purposes of the business and years during which the business was not carried on by

1975.

him, or was not carried on by him in such circumstances that the profits thereof were liable to assessment to tax.

(3) Nothing in this section shall affect the provisions of subsection (4) of section one hundred of this Law (which relates to balancing allowances and balancing charges).

Discontinu-  
ance of  
business by  
sale, demoli-  
tion,  
destruction  
or loss of  
machinery  
or plant.

103. Where an event occurs which gives rise or might give rise to a balancing allowance or balancing charge in respect of machinery or plant, and the event is the permanent discontinuance of a business, and at or about the time of the discontinuance there occurs in relation to the machinery or plant any event such as is mention in paragraphs (a) to (c) of the definition of the expression "sale, insurance, salvage or compensation monies" in section one hundred and twenty-two of this Law (which relates to the interpretation of this Part of this Law), not being a sale at less than the open-market price other than a sale to which section one hundred and eight of this Law (which relates to sales etc., of machinery or plant between associated persons) applies, then for the purposes of determining—

- (a) whether the discontinuance gives rise to a balancing allowance or balancing charge, and, if so,
- (b) the amount of the allowance or, as the case may be, the amount on which the charge is to be made,

the amount of any net proceeds, compensation, receipts or insurance monies mentioned in the said paragraphs (a) to (c) which arise on the last-mentioned event shall be deemed to be an amount of sale, insurance, salvage or compensation monies arising on the permanent discontinuance of the business.

104. (1) Subject to the provisions of section one hundred and seven of this Law (which provides for an option in case of gift or sale of machinery or plant), subsection (2) of this section shall have effect where an event occurs which gives rise or might give rise to a balancing allowance or balancing charge in respect of machinery or plant, and either—

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Discontinu-  
ance of  
business by  
occurrence  
of certain  
events and  
transfer of  
machinery  
or plant.

- (a) the event is the permanent discontinuance of the business and immediately after the time of the discontinuance the machinery or plant continues to belong to the person by whom the business was carried on immediately before the said time and the case is one not falling within the last preceding section of this Law; or
- (b) the event is the permanent discontinuance of the business and at the time of the discontinuance the machinery or plant is either sold at less than the open-market price, the sale not being one to which section one hundred and eight of this Law (which relates to sales, etc., of machinery or plant between associated persons) applies, or the machinery or plant is given away; or
- (c) the event is the sale of the machinery or plant at less than the open-market price, not being a sale to which the said section one hundred and eight of this Law applies, or is the gift of the machinery or plant; or
- (d) the event is that, after the setting-up and before the permanent discontinuance of the business, the machinery or plant permanently ceases to be used for the purposes of a business carried on by the person by whom the first-mentioned business is being carried on, and so ceases either by reason of that person's transferring the

1975.

machinery or plant to other use or, on a transfer of the business which is not treated as involving the discontinuance thereof, by reason of the retention of the machinery or plant by the transferor.

(2) For the purpose of determining whether a balancing allowance or balancing charge falls to be made and, if so, the amount of the allowance or, as the case may be, the amount on which the charge is to be made the event shall be treated as if it had given rise to sale, insurance, salvage or compensation monies of an amount equal to the open-market price of the machinery or plant.

Effect, in certain cases, of succession to businesses.

105. Where a person succeeds to a business as a beneficiary under the will or on the intestacy of a deceased person who carried on that business, the following provisions shall, if the beneficiary by notice in writing to the Administrator so elects, have effect in relation to any machinery or plant which passes to him together with the business, being machinery or plant previously owned by the deceased person and used by him for the purposes thereof, that is to say:—

- (a) the reference in subsection (1) of section one hundred and nine of this Law (which relates to the effect, in certain cases, of succession to businesses, etc.) to the open-market price shall, in relation to the succession and any previous succession occurring on or after the death of the deceased, be deemed to be a reference to that price or the amount of the expenditure on the provision of the machinery or plant still unallowed immediately before the succession in question, whichever is the less; and
- (b) notwithstanding anything in the said subsection (1), such balancing charge, if any,

shall be made on the beneficiary on any event occurring after his succession as would have fallen to be made on the deceased if he had not died and had continued to own the machinery or plant and had done all such things and been allowed all such allowances in connection therewith as were done by or allowed to the beneficiary or the successor on any previous succession as is mentioned in the last foregoing paragraph.

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## CHAPTER VI

### MISCELLANEOUS AND GENERAL

106. Subject to the provisions of the next succeeding section of this Law, where subsection (2) of section one hundred and four of this Law (which relates to the discontinuance of business by occurrence of certain events and transfer of machinery or plant) has effect by reason of the gift or sale of machinery or plant to any person, and that person receives or purchases it with a view to using it for the purposes of a business carried on by him, then in determining whether any, and if so what, annual allowances, balancing allowances or balancing charges are to be made in connection with that business the like consequences shall ensue as if the recipient or purchaser had purchased the machinery or plant at the open-market price.

Gift or sale  
of machinery  
or plant.

107. (1) Where in a case falling within the last preceding section the recipient or purchaser and the donor or seller by notice in writing to the Administrator jointly so elect, the following provisions shall have effect.

Option in  
case of gift  
or sale of  
machinery or  
plant.

1975.

(2) Subsection (2) of section one hundred and four of this Law (which relates to the discontinuance of business by occurrence of certain events and transfer of machinery or plant) and the last preceding section of this Law shall have effect as if for the references to the open-market price there were substituted references to that price or the amount of the expenditure on the provision of the machinery or plant still unallowed immediately before the gift or sale, whichever is the less.

(3) Notwithstanding anything in this Part of this Law, such balancing charge, if any, shall be made on the recipient or purchaser on any event occurring after the date of the gift or sale as would have fallen to be made on the donor or seller if the donor or seller had continued to own the machinery or plant and had done all such things and been allowed all such allowances in connection therewith as were done by or allowed to the recipient or purchaser.

Sales, etc., of  
machinery or  
plant  
between  
associated  
persons.

108. (1) The provisions of this section shall have effect in relation to any sale of any machinery or plant after the fourth day of August, nineteen hundred and fifty-four, where either—

(a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; or

(b) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from the provisions of this section, might have been expected to accrue to the parties or any of them was the obtaining of an allowance or deduction under this Part of this Law.

1975.

(2) Where the machinery or plant is sold at a price other than the open-market price, then, subject to the following provisions of this section, the like consequences shall ensue for the purposes of this Part of this Law, in their application to the tax of all persons concerned, as would have ensued if the machinery or plant had been sold for the open-market price.

(3) Subject to the provisions of this subsection and to the provisions of subsection (4) of this section, if the open-market price is greater than the limit of recharge on the seller, subsection (2) of this section shall have effect as if for the reference to the open-market price there were substituted a reference to the said limit of recharge:

Provided that this subsection shall not apply in relation to a sale of machinery or plant which has never been used if the business or part of the business of the seller was the manufacture or supply of machinery or plant of that class and the sale was effected in the ordinary course of the seller's business.

(4) Where the sale is one to which paragraph (a) of subsection (1) of this section applies and paragraph (b) of that subsection does not apply, and the parties to the sale by notice in writing to the Administrator so elect, the following provisions shall have effect—

- (a) subsection (2) of this section shall have effect as if for the reference to the open-market price there were substituted a reference to that price or to the sum hereinafter mentioned whichever is the less; and
- (b) subsection (3) of this section shall not apply; and
- (c) notwithstanding anything contained in the preceding provisions of this section, such balancing charge, if any, shall be made on

1975.

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the buyer on any event occurring after the date of the sale as would have fallen to be made on the seller if the seller had continued to own the property and had done all such things and been allowed all such allowances or deductions in connection therewith as were done by or allowed to the buyer.

(5) The sum referred to in paragraph (a) of subsection (4) of this section is the amount of the expenditure on the provision of the machinery or plant still unallowed immediately before the sale, computed in accordance with the provisions of section one hundred and nineteen of this Law (which provides for the meaning of "expenditure unallowed").

(6) Reference in this section to a body of persons includes a body corporate, a body unincorporate and a partnership.

(7) In this section "the limit of recharge" means, in relation to a person who sells machinery or plant—

- (a) if he provided that machinery or plant for himself before the first day of January, nineteen hundred and fifty, the actual cost to him of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on machinery or plant by way of renewal, improvement or reinstatement;
- (b) if he provided the machinery or plant for himself on or after the first day of January, nineteen hundred and fifty, the expenditure incurred by him on the provision thereof.

109. (1) Where a person succeeds to any business which until that time was carried on by another person and, by virtue of any of the provisions of section thirty-five (which relates to succession to a business) or section forty-two (which relates to the method of charging a partnership) of this Law, the business is to be treated as having ceased and a new business commenced, any machinery or plant which, immediately before the succession takes place, was in use for the purposes of the discontinued business and, without being sold, is, immediately after the succession takes place, in use for the purposes of the new business, shall, for the purposes of this Part of this Law, be treated as if it had been sold to the successor when the succession takes place, and as if the net proceeds of the sale had been the open-market price.

1975.  
Effect, in certain cases, of succession to businesses, etc.

(2) Where, after the setting up and on or before the permanent discontinuance of a business which at any time is carried on in partnership, any event occurs which gives rise or may give rise to a balancing allowance or balancing charge in respect of machinery or plant, any balancing allowance or balancing charge, which, if the business had at all times been carried on by one and the same person, would have fallen to be made to or on him in respect of that machinery or plant by reason of that event shall be made to or on the person or persons carrying on the business at the time of that event, and the amount of any such allowance or charge shall be computed as if that person or those persons had at all times been carrying on the business and as if everything done to or by his or their predecessors in the carrying on thereof had been done to or by him or them.

110. (1) Any reference in this Part of this Law to the sale of any property includes a reference to the sale of that property together with any other property and, where property is sold together with other

Apportionment of consideration, and exchanges.

1975.

property, so much of the net proceeds of the sale of the whole property as, on a just apportionment, is properly attributable to the first-mentioned property shall, for the purposes of this Part of this Law, be deemed to be the net proceeds of the sale of the first-mentioned property, and references to expenditure incurred on the provision or the purchase of the property shall be construed accordingly.

(2) For the purposes of subsection (1) of this section, all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are or purport to be agreed for certain items of that property or that there are or purport to be separate sales of separate items of that property.

(3) The provisions of subsection (1) of this section shall, with the necessary adaptations, apply in relation to other sale, insurance, salvage or compensation monies as they apply in relation to the net proceeds of sales.

(4) This Part of this Law shall have effect as if any reference therein (including any reference in the preceding provisions of this section) to the sale of any property included a reference to the exchange of any property and any provisions of this Part of this Law referring to sales shall have effect accordingly with the necessary adaptations and, in particular, with the adaptations that references to the net proceeds of sale and to the price shall be taken to include references to the consideration for the exchange and references to capital sums included in the price shall be taken to include references to so much of the consideration as would have been a capital sum if it had taken the form of a money payment.

Effect on  
partner-  
ships.

111. (1) Where a business is carried on in partnership, for the purpose of assessing and charging the

1975.

share of the profits of each partner of the partnership, the same allowances, deductions and charges shall be allowed or made in respect of any machinery, plant, building or glasshouse used for the purposes of that business and belonging to one or more of the partners but not being partnership property as would fall to be allowed or made if the machinery, plant, building or glasshouse had at all material times belonged to all the partners and been partnership property and everything done by or to any of the partners in relation thereto had been done by or to all the partners.

(2) Notwithstanding anything in section one hundred of this Law (which relates to balancing allowances and balancing charges), a sale or gift of machinery or plant used for the purposes of a business carried on in partnership, being a sale or gift by one or more of the partners to one or more of the partners, shall not be treated as an event giving rise to a balancing allowance or balancing charge if the machinery or plant continues to be used after the sale or gift for the purposes of that business.

(3) References in the foregoing provisions of this section to use for the purposes of a business do not include references to use in pursuance of a letting by the partner or partners in question to the partnership or to use in consideration of the making to the partner or partners in question of any payment which may be deducted in computing the profits of the business.

112. The provisions of this Part of this Law, other than the provisions of this section, shall apply in relation to a share in machinery or plant as they apply in relation to a part of machinery or plant, and for the purposes of the said provisions a share in machinery or plant shall be deemed to be used for

Application  
to shares in  
machinery or  
plant.

1975. the purposes of a business so long as, and only so long as, the machinery or plant is used for the purposes thereof.

Application to offices and employments.

113. The provisions of this Part of this Law shall, with any necessary adaptations and to the extent that the machinery or plant is exclusively and necessarily so used, apply in relation to machinery or plant used in the performance of the duties of an office or employment as they apply in relation to machinery or plant used in a business.

Manner of charging tax and granting allowances in case of businesses, etc.

114. (1) Any claim by a person for an allowance falling to be made to him under any of the provisions of this Part of this Law in charging the profits of his business shall be included in the annual return of income required to be delivered under this Law and the allowance shall be made as a deduction in charging those profits.

(2) Where full effect cannot be given to any such allowance as aforesaid in any year owing to there being no profits chargeable for that year, or owing to the profits chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of such allowances as aforesaid for that year, and be deemed to form part of those allowances, or, if there are no such allowances for that year, be deemed to be the allowances for that year, and so on for succeeding years.

(3) Any charge falling to be made under any of the provisions of this Part of this Law on a person for any year of charge in charging the profits of his business shall be made by means of an assessment on the profits of that business for that year of charge in addition to any other assessment falling to be made thereon for that year.

1975.

(4) Where a balancing charge falls to be made under this Part of this Law, the person on whom the balancing charge falls to be made may—

(a) where the business to which the balancing charge relates has been carried on for the whole of the two years of charge next preceding the year of charge in which the balancing charge would fall to be made, elect to have the balancing charge made by three equal assessments on the profits of the business to which the balancing charge relates, the said assessments to be made for the year of charge in which, but for the election, the balancing charge would fall to be made and for each of the next two preceding years of charge; or

(b) where the business to which the balancing charge relates has not been carried on for the whole of the two years of charge next preceding the year of charge in which the balancing charge would fall to be made, elect to have the balancing charge made by two equal assessments, the said assessments to be made for the year of charge in which, but for the election, the balancing charge would fall to be made and for the next preceding year of charge.

(5) An election under subsection (4) of this section shall be made by notice in writing given to the Administrator not later than the end of the year of charge next following that in which the balancing charge falls to be made.

(6) Nothing in this section applies to any deduction allowable under any provision of this Part of this Law in computing the profits of a business.

1975.

Option  
where  
allowance  
greater than  
income or  
profits.

115. Where, under any of the provisions of this Part of this Law, an allowance falls to be made to a person for any year of charge and the amount to be allowed is greater than the amount of his income or profits from the business or other source to which the allowance relates, the amount by which the allowance exceeds the said income or profits may if the person so elects, by notice in writing given to the Administrator within the year next following the year of charge to which the allowance relates, be deemed to be a loss sustained in that business or in respect of the source of income or profits to which the allowance relates:

Provided that any part of any allowance which cannot be set off in the year of charge against other income belonging to the claimant in accordance with the provisions of Part XI of this Law shall be carried forward in accordance with the provisions of subsection (2) of the last preceding section.

Manner of  
making  
allowances  
and charges.

116. (1) Subject to the provisions of this section and of subsection (3) of section ninety-seven of this Law (which relates to allowances to lessors of glass-houses), any allowance or charge made to or on any person under the provisions of this Part of this Law shall be made to or on that person in charging the profits of his business.

(2) Any allowance made under or by virtue of section ninety of this Law (which relates to allowances to lessors of machinery and plant) shall be available primarily against the income or profits from the letting of machinery or plant.

(3) Any charge made under or by virtue of the said section ninety shall be made as if the charge was on an income or profit from the letting of machinery or plant.

117. Any reference in this Law to an annual allowance shall, in relation to any year of assessment or charge before the year of charge nineteen hundred and fifty-five, include a reference to any deduction on account of depreciation under the Income Tax (Guernsey) Law, 1950<sup>(k)</sup>, or under any enactment repealed by that Law.

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Meaning of  
"annual  
allowance".

118. (1) In this Law "basis period" has the meaning assigned to it by the following provisions of this section.

Meaning of  
"basis  
period".

(2) In the case of a person to or on whom an allowance or charge falls to be made in charging the profits of his business, his basis period for any year of charge is the period on the profits of which tax for that year falls to be finally computed in respect of that business:

Provided that, in the case of any business—

- (a) where two basis periods overlap, the period common to both shall be deemed for the purposes of this subsection to fall in the first basis period only;
- (b) where there is an interval between the end of the basis period for one year of charge and the basis period for the next year of charge, then, unless the second-mentioned year of charge is the year of the permanent discontinuance of the business, the interval shall be deemed to form part of the second basis period; and
- (c) where there is an interval between the end of the basis period for the year of charge preceding that in which the business is permanently discontinued and the basis period for the year in which it is permanently discontinued, the interval shall be deemed to form part of the first basis period.

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(k) Ordres en Conseil Vol. XIV, p. 235.

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(3) Where an allowance falls to be made under this Part of this Law in relation to an office or employment or in relation to a glasshouse which is not used by the owner for the purpose of a business carried on by him, then subsection (2) of this section shall apply as if the references to a business included references to an office or employment or to the ownership of a glasshouse as the case may be.

Meaning of  
"expend-  
iture  
unallowed".

119. References in this Part of this Law to the amount still unallowed of any expenditure—

- (a) on any machinery or plant as at any time shall be construed as references to the amount of that expenditure less—
  - (i) any annual allowances made to the person who incurred it in respect of the machinery or plant on the provision of which the expenditure was incurred, being allowances made for a year of assessment or charge before the year of charge nineteen hundred and fifty-five or for a year of charge the basis period for which ended before the time in question; and
  - (ii) the amount of any obsolescence allowance made to him under the Income Tax (Guernsey) Law, 1950; and
  - (iii) any balancing allowance made to him in respect of that expenditure;
  - (iv) the amount of the initial allowance, if any, made to him in respect of that expenditure;
- (b) on any building as at any time shall be construed as references to the amount of that expenditure less any annual allowances made or deemed to have been made in respect of the building on the provision of

which the expenditure was incurred, being allowances made or deemed to have been made for a year of assessment or charge before the year of charge nineteen hundred and fifty-five or for a year of charge the basis period for which ended before the time in question;

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- (c) on any glasshouse as at any time shall be construed as references to the amount of that expenditure less any annual allowances made or deemed to have been made in respect of the glasshouse on the provision of which the expenditure was incurred, being allowances made or deemed to have been made for a year of assessment or charge before the year of charge nineteen hundred and fifty-five or for a year of charge the basis period for which ended before the time in question.

120. (1) References in this Part of this Law to capital expenditure and capital sums—

Interpre-  
tation of  
certain  
references to  
expenditure,  
etc.

- (a) in relation to the person incurring the expenditure or paying the sums, do not include any expenditure or sum which is allowed to be deducted in computing, for the purposes of tax, the income or profits of a business carried on by him or any other source belonging to him;
- (b) in relation to the person receiving the amounts expended or the sums in question, do not include references to any amounts or sums which fall to be taken into account as receipts in computing the income or profits of any business carried on by him or any other source of income belonging to him.

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(2) Any reference in this Part of this Law to the date on which the expenditure is incurred shall be construed as a reference to the date when the sums in question become payable.

(3) Expenditure shall not be regarded for any of the purposes of this Part of this Law as having been incurred by any person in so far as it has been or is to be met directly or indirectly by the States of Guernsey or by any government or public or local authority, whether in the Island of Guernsey or elsewhere.

(4) In considering, for the purposes of subsection (3) of this section, how far any expenditure has been or is to be met directly or indirectly by the States of Guernsey or by any government or authority, there shall be left out of account any insurance moneys or other compensation moneys payable in respect of any asset which has been demolished, destroyed or put out of use.

Interpre-  
tation of  
references  
to  
allowances.

121. Any reference in this Part of this Law to an allowance made or deduction allowed includes a reference to an allowance or deduction which would be made or allowed but for an insufficiency of profits or other income against which to make it.

Other pro-  
visions as  
to  
interpre-  
tation of  
Part IX.

122. (1) In this Part of this Law, except where the context otherwise requires—

“building” does not include a glasshouse;

“control” means—

(a) in relation to a body corporate, the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other

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1975.

body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person;

- (b) in relation to a partnership, the right to a share of more than one half of the assets, or of more than one half of the income of the partnership;
- (c) in relation to a body corporate or a partnership, the power of a person, who is a loan creditor thereof and who is, in the opinion of the Administrator, able to exercise that power, to secure that the affairs thereof are conducted in accordance with the wishes of that person;

“open-market price”, in relation to any machinery or plant, means the price which the machinery or plant would have fetched if sold in the open market at the time of the event in question;

“sale, insurance, salvage or compensation monies” means, in relation to an event which gives rise or might give rise to a balancing allowance or a balancing charge to or on any person—

- (a) where the event is a sale of any property, the net proceeds to that person of the sale;
- (b) where the event is the demolition or destruction of any property, the net amount received by him for the remains of the property, together with any insurance monies received by him in respect of the demolition or destruction and any other compensation of any description received by him in respect thereof, in so far as that compensation consists of capital sums; and

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(c) as respects machinery or plant, where the event is the permanent loss thereof otherwise than in consequence of its demolition or destruction, any insurance monies received by him in respect of the loss and any other compensation of any description received by him in respect thereof, in so far as that compensation consists of capital sums.

(2) Any reference in this Part of this Law to any machinery, plant, building or glasshouse, shall be construed as including a reference to a part of any machinery, plant, building or glasshouse.

(3) Any reference in this Part of this Law to the time of any sale of any machinery or plant shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

(4) Any reference in this Part of this Law to the setting up or permanent discontinuance of a business includes, except where the contrary is expressly provided, a reference to the occurring of any event which, under any of the provisions of this Law, is to be treated as equivalent to the setting up or permanent discontinuance of a business.

(5) Any reference in this Part of this Law to the overlapping of two periods shall be construed as including a reference to the coincidence of two periods or to the inclusion of one period in another, and references to the period common to both of two periods shall be construed accordingly.

## PART X

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## INITIAL ALLOWANCES

## CHAPTER I

## INITIAL ALLOWANCE ON GLASSHOUSES

123. (1) Subject to the provisions of this Part of this Law, where, after the thirty-first day of December, nineteen hundred and sixty-four, a person carrying on a business incurs, for the purposes of that business, capital expenditure for any or all of the purposes referred to in subsection (3) of this section, he may claim that there shall be made to him for the year of charge in the basis period for which the expenditure is incurred an allowance (in this Chapter referred to as an "initial allowance") equal to one-quarter of that expenditure or to such other proportion of that expenditure as the States may from time to time by Resolution prescribe.

Initial allowance on glass-houses.

(2) Where a glasshouse is let upon such terms that the burden of the depreciation thereof falls directly upon the lessor and—

- (a) the lessor is entitled to an allowance on account of the depreciation of the glasshouse under the provisions of section ninety-seven of this Law; and
- (b) the lessor incurs capital expenditure for any or all of the purposes referred to in subsection (3) of this section,

he may claim that there shall be made to him such initial allowance as would fall to be made if he were carrying on a business and the capital expenditure had been incurred for the purpose of that business.

(3) An initial allowance shall be made in accordance with the provisions of the preceding subsections of this section in respect of capital expenditure:—

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- (a) on the provision of a glasshouse situate on an approved site and constructed so as to conform to such standards as the Authority may from time to time by regulation prescribe; or
  - (b) on the provision and installation of heating apparatus which conforms to such standards as the Authority may from time to time by regulation prescribe and which is installed in a glasshouse which is so situate and so constructed that it satisfies the requirements of paragraph (a) of this subsection or in a glasshouse which is deemed to warrant improvement; or
  - (c) on the provision and installation of apparatus for the automatic control of ventilation which conforms to such standards as the Authority may from time to time by regulation prescribe and which is installed in a glasshouse which is so situate and so constructed that it satisfies the requirements of paragraph (a) of this subsection or in a glasshouse which is deemed to warrant improvement; or
  - (d) on the improvement of heating apparatus which has previously been installed in a glasshouse which is deemed to warrant improvement if, after the expenditure has been incurred, the heating apparatus as so improved conforms to such standards as the Authority may from time to time by regulation prescribe; or
  - (e) on the provision on an approved site of roadways and turning points which conform to such standards as the Authority may from time to time by regulation prescribe.
- (4) For the purposes of subsection (3) of this section, a glasshouse shall be deemed to warrant

improvement if it was constructed on an approved site before the first day of January, nineteen hundred and sixty-four, and—

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- (a) it is well constructed and has been so maintained as to be in an efficient state of repair; and
- (b) the height of the fronts of the glasshouse is not less than five feet when measured from ground level inside the glasshouse; and
- (c) the width of the glass used in the construction of the glasshouse is not less than sixteen inches.

(5) Any capital expenditure incurred for the purposes of a business after the thirty-first day of December, nineteen hundred and sixty-four, by a person about to carry on the said business which if it had been incurred by that person after the date on which he commenced to carry on the business would have fallen to be treated as capital expenditure for the purposes of subsection (1) of this section shall for the purposes of that subsection be treated as if it had been incurred by that person on the first day on which he commenced to carry on that business.

124. The States may, from time to time, by Resolution suspend the operation of the provisions of the last preceding section or may vary the amount of the initial allowance prescribed in that section.

Power to vary amount of initial allowance.

125. (1) An initial allowance shall not be made unless a claim that an initial allowance be made is submitted to the Administrator in writing by the person entitled to the allowance not later than one year after the end of the year in which the expenditure in respect of which the relief is claimed was incurred.

Claims for initial allowance and right of election in respect thereof.

1975.

(2) Where an individual is entitled to claim an initial allowance and for the year of charge for which the initial allowance would, but for the provisions of this section, fall to be made the sum of the initial allowance and annual allowance which would otherwise fall to be made exceeds the amount of the profits which, but for the allowances, would be chargeable to tax, the individual may elect that one-half of the initial allowance be made for the year of charge in the basis period for which the expenditure was incurred and that one-half of the initial allowance shall be made for the next succeeding year of charge.

(3) Any election made in accordance with the provisions of subsection (2) of this section shall be made in writing by the individual entitled to the allowance not later than two years after the end of the year in which the expenditure in respect of which relief is claimed was incurred.

Transfer of property within six years of receiving initial allowance.

126. (1) If within six years of the end of a year of charge for which an initial allowance has been made any property in respect of which the initial allowance was so made ceases to belong to one person and commences to belong to another person then the assessment for each year of charge for which the tax which would otherwise have been chargeable has been reduced as a direct or indirect consequence of the making of an initial allowance, shall be amended and tax shall be charged as if an initial allowance had not been claimed.

(2) The provisions of sections seventy-three, seventy-four and seventy-six of this Law shall apply with such adaptations as may be necessary to assessments made under this section.

(3) Assessments may be made under the provisions of this section at any time not later than six years after the end of the year of charge in which

the change of ownership giving rise to the assessment takes place.

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(4) The tax chargeable as a consequence of an assessment made under this section shall be payable within twenty-one days from the date of the issue of the notice of assessment and the provisions of sections eighty-two and eighty-three of this Law shall apply to the tax so chargeable.

127. (1) The provisions of section ninety-seven of this Law shall apply as if any reference to an allowance on account of depreciation of a glasshouse included a reference to any initial allowance made under the provisions of this Part of this Law.

Application  
of Part IX to  
initial  
allowances.

(2) The provisions of subsection (2) of section one hundred and fourteen of this Law shall apply to any initial allowance made under the provisions of this Part of this Law as if the allowance were an allowance made under Part IX of this Law.

(3) The provisions of section one hundred and fifteen of this Law shall apply as if an initial allowance made under the provisions of this Part of this Law were an allowance made under the provisions of Part IX of this Law.

(4) The provisions of subsection (1) of section one hundred and sixteen of this Law shall apply to the making of allowances and charges under this Part of this Law as if such allowances and charges were made under the provisions of Part IX of this Law.

(5) The provisions of paragraph (c) of section one hundred and nineteen of this Law shall apply as if any reference to annual allowances in that paragraph included a reference to any initial allowance made under the provisions of this Part of this Law.

1975.

(6) The provisions of section one hundred and twenty of this Law shall apply, with such adaptations as may be necessary, to any reference to capital expenditure in this Part of this Law.

Expenditure  
on draining  
or levelling  
land.

128. Where expenditure is incurred on the levelling or draining of land in order to secure that such land may become an approved site and there is thereafter erected on such land a glasshouse in respect of which an initial allowance may be claimed, the expenditure so incurred shall be deemed to constitute part of the expenditure on the provision of the glasshouse.

Regulations  
for the  
purposes of  
Part X.

129. The Authority may, from time to time, make regulations for the purpose of carrying into effect the provisions of this Part of this Law.

Appeals.

130. (1) Any person aggrieved by a decision of the Administrator given under any regulation of the Authority made under the provisions of section one hundred and twenty-nine of this Law shall be entitled to appeal to the Authority on giving to the Administrator notice in writing, stating the grounds of appeal, within twenty-one days of the date of the issue of the notice of assessment or the notice of the Administrator's decision.

(2) If any regulation of the Authority made under the provisions of section one hundred and twenty-nine of this Law allows a discretion to the Administrator, any person aggrieved by the refusal of the Administrator to exercise any such discretion shall be entitled to appeal to the Authority on the ground that the Administrator has unreasonably declined to exercise the discretion allowed to him, on giving notice to the Administrator, in writing, within twenty-one days of the date of the issue of the notice of assessment or the notice of the Administrator's decision, as the case may be.

(3) The provisions of Part VII of this Law shall apply in the case of an appeal under the provisions of subsection (1) or subsection (2) of this section as they apply in the case of an appeal from an assessment, penalty, direction or order made or imposed by the Administrator, with such adaptations as may be necessary.

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131. In this Part of this Law, unless the context otherwise requires, the expression "approved site" means a site which complies with such requirements as the Authority may from time to time by regulation prescribe.

Meaning of  
"approved  
site".

## CHAPTER II

### INITIAL ALLOWANCE ON SHIPS AND AIRCRAFT

132. (1) Subject to the provisions of this Law, where, on or after the first day of January, nineteen hundred and fifty-seven, a person carrying on a trade incurs capital expenditure on the provision of a new ship or a new aircraft for the purposes of that trade there shall be made to him for the year of charge in the basis period for which the expenditure is incurred, an allowance (in this Chapter referred to as "an initial allowance") equal to three-tenths of the expenditure.

Initial  
allowance  
on ships and  
aircraft.

(2) Any expenditure incurred for the purposes of a trade on or after the date prescribed in subsection (1) of this section by a person about to carry on the said trade shall be treated for the purposes of that subsection as if it had been incurred by that person on the first day on which he commences to carry on the trade.

(3) The amount of any initial allowance made under subsection (1) of this section shall be taken into account for the purpose of determining whether

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any, and, if so, what, balancing allowance or balancing charge falls to be made to or on the person to whom the initial allowance has been made.

(4) The States may, from time to time, by Resolution vary the provisions of or may suspend the operation of the provisions of subsection (1) of this section.

(5) A Resolution under the provisions of the last preceding subsection may make different provisions for different classes of ships or aircraft and may make different provisions for different categories of ships or aircraft within those classes.

## PART XI

### RELIEF IN RESPECT OF LOSSES

Losses may be set off against profits.

133. Where a person carries on, either solely or in partnership, two or more distinct businesses the profits of which fall to be computed in accordance with the provisions of section seven of this Law (which relates to income from businesses), and the computation of the assessable income for any year of charge shows that a loss has been sustained in the year of computation in respect of one or more of those businesses, that person may require that the loss or his share of the loss shall be set off against the assessable income of any other such business for that year of charge:

Provided that if such other business is carried on by him in partnership the amount to be so set off against the assessable income thereof shall not exceed his share of the profits thereof.

Set off of losses in relation to sources of income of same class.

134. Where a person possesses two or more sources of income of the same class, other than businesses to which the last preceding section applies, and the computation of the assessable income for any year of charge shows that a loss has been sustained in

the year of computation in respect of one or more of those sources of income, that person may require that the loss shall be set off against the assessable income from any other source of income of the same class for that year of charge.

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135. (1) Where the computation of the assessable income of any business or of income from any source for any year of charge shows that a loss has been sustained in any year of computation which cannot be set off either wholly or in part against the income of any other business or against the income from any other source of income of the same class under the provisions of the last two preceding sections then, subject to the provisions of this section, the person who has sustained the loss may require that the loss or the unrelieved part thereof shall be set off against income of any other class which, but for this section, would be wholly assessable to tax in that year of charge.

Set off of  
losses in  
other cases.

(2) Any such loss or any part thereof which may be set off under the provisions of this section shall first be set off against income of the corresponding type belonging to the person who has sustained the loss and then, to the extent to which it cannot be so set off, against income of the corresponding type belonging to that person's spouse.

(3) Any such loss or any part thereof which cannot be set off against income of the corresponding type belonging to the person who has sustained the loss or belonging to that person's spouse shall first be set off against any other income belonging to that person and then, to the extent to which it cannot be so set off, against any other income belonging to that person's spouse.

(4) Where a person—

(a) carries on, either solely or in partnership, two or more distinct businesses and the loss

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or losses sustained in respect of one or more of those businesses cannot be wholly set off under the provisions of section one hundred and thirty-three of this Law (which provides that losses may be set off against profits), because the loss or the aggregate of the losses sustained in the year of computation exceeds the assessable profits or the aggregate of the assessable profits of that business or of those businesses in respect of which a loss has not been sustained in the year of computation or because there are no such profits; or

- (b) possesses two or more sources of income of the same class, other than businesses to which the said section one hundred and thirty-three applies, and the loss or losses sustained in respect of one or more of such sources of income cannot be wholly set off against income of the same class because the loss or the aggregate of the losses sustained in the year of computation exceeds the assessable income of that source or of those sources of that class of income in respect of which a loss has not been sustained in the year of computation or because there is no such income;

the loss or that part thereof which has not been relieved under the provisions of the said section one hundred and thirty-three or of the last preceding section shall be deemed to be a loss which may be set off under and in accordance with the preceding provisions of this section.

Relief for  
partnership  
losses in  
certain cases.

136. Where the profits or income of any partnership include any profits or income which do not fall to be included in the computation made in accordance with the provisions of section seven of this Law (which relates to income from businesses), and the

computation of the assessable income for any year of charge shows that a loss has been sustained in the year of computation then each partner shall be entitled to such relief in respect of his share of the loss as he would have been entitled to if the said share of the loss had been a loss sustained in respect of a source of income possessed by him.

1975.

137. (1) Where in any year of charge the aggregate of the losses sustained by any person in that year of charge exceeds the aggregate of—

Relief in certain cases where losses exceed income or profits.

- (a) the income or profits of any business or businesses carried on by that person in respect of which a loss has not been sustained; and
- (b) that person's share of the income or profits of any business or businesses carried on by him in partnership in respect of which a loss has not been sustained; and
- (c) the income or profits arising or accruing, or deemed to arise or accrue to that person, from any source or sources, other than those referred to in the last two preceding paragraphs of this subsection, in respect of which a loss has not been sustained;

then the income or profits which, but for this section, would be assessable to tax in the year of charge shall be reduced by the amount of the excess:

Provided that the said excess shall first be set off against income of the type in respect of which the greatest part of the aggregate of the losses has been sustained, then against income of the type in respect of which the next greatest part of the aggregate of the losses has been sustained, and so on until the amount of the said excess has as far as possible been relieved.

(2) Nothing in subsection (1) of this section shall prevent tax for the said year of charge being charged

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and payment being enforced but an appropriate repayment of tax shall be made by the Administrator where a claim for relief under this section is made within the year next following the year of charge in which the loss or losses has or have been sustained.

(3) Subject to the provisions of section one hundred and forty-one of this Law (which imposes a restriction on set off and carrying forward of losses), for the purposes of this section a loss sustained in any business in a year of computation ending within the year of charge shall be deemed to be a loss sustained in relation to that year of charge.

Relief in respect of losses where business is transferred to a company.

138. If, where a business carried on by any individual or by any individuals in partnership has been transferred to a company in consideration solely or mainly of the allotment of shares of the company to that individual or those individuals, the total income of any individual to whom or to whose nominee or nominees shares have been so allotted for any year of charge throughout which he is the beneficial owner of the shares, and throughout which the company carries on the business, includes any income derived by him from the company, whether by way of dividends on those shares or otherwise, the provisions of the next succeeding section shall apply as if the income so derived were income from a business on which that individual was assessable in respect of that business for that year.

Right to carry forward losses to future years.

139. Where in relation to any year of charge a person has, in any business carried on by him either solely or in partnership, sustained a loss, that person may claim that the loss or any part thereof in respect of which relief cannot be given under any provision of this Part of this Law shall be carried forward to the next following year of charge, and, as far as may be, set off against his income or profits

from the same business for that year of charge, and so on from year to year.

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140. Where a person owns a glasshouse and is entitled to a deduction on account of depreciation under the provisions of section ninety-seven of this Law (which relates to allowances to lessors of glasshouses) and in the computation of the assessable income for any year of charge the computation shows that a loss has been sustained in the year of computation in respect of that glasshouse, the loss shall, for the purpose of determining how that loss shall be relieved, be deemed to be a loss sustained by that person in carrying on a business the profits of which are assessable under the provisions of section seven of this Law (which relates to income from businesses):

Relief for losses in respect of glasshouses.

Provided that nothing in this section shall be so construed that a loss so sustained shall first be set off against any earned income arising to that person or to that person's spouse.

141. The amount of any loss set off or carried forward under any of the provisions of this Part of this Law shall not in any case exceed the amount of the loss sustained and where the year of computation or other period by reference to which any assessable income or profits for any year of charge fall to be computed is also in whole or in part a year of computation or other period by reference to which any assessable income or profits of any other year of charge fall to be computed, so much of the loss as may, under the said provisions, be set off or carried forward in the first-mentioned year of charge shall not be set off or carried forward as if it were a loss sustained in any subsequent year of charge.

Restriction on set off and carrying forward of losses.

1975.

Right to  
carry back  
loss  
sustained  
in last year  
of business.

142. (1) Where a business is permanently discontinued and a balancing allowance falls to be made to the person by whom the business was carried on immediately before the permanent discontinuance thereof and by reason of that balancing allowance that person sustains a loss which cannot be set off or carried forward under any provision, other than this section, of this Part of this Law, then, subject to the provisions of this section, he may claim that the amount of the loss or the unrelieved part thereof shall, as far as may be, be deducted from or set off against the amount of the income or profits on which he has been charged or may be chargeable to tax in respect of the business for the two years of charge last preceding that in which the discontinuance occurs, and there shall be made all such reductions of assessments or repayments of tax as may be necessary to give effect to the claim.

(2) Any relief under this section shall be given as far as possible from the assessment for a later rather than for an earlier year of charge.

(3) The provisions of this section shall, with any necessary adaptations, apply in relation to an office or employment as they apply in relation to a business.

Exclusion of  
double relief.

143. In so far as relief has been given under any provision of this Part of this Law to any person in respect of any loss that person shall not be entitled to claim relief in respect of that loss under any other provision of this Part of this Law.

Claims for  
relief.

144. Except as otherwise provided under or by virtue of this Part of this Law, no relief shall be given for any loss sustained by any person unless a claim for relief in respect of the loss is made within the six years next following the year of charge to which the claim relates.

145. Where a new business is commenced and in the year of charge in which the business is commenced or in the two years next following any loss is sustained which cannot be set off under any of the foregoing provisions of this Part of this Law during that year of charge, the business shall, for the purposes of this Part of this Law, continue to be treated as a separate business.

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New  
businesses.

146. Nothing in this Part of this Law shall be so construed as to permit the set off or the carrying forward of any loss which has been set off or carried forward under any enactment repealed by this Law.

Saving.

147. The amount of a loss sustained shall be computed in like manner as profits are computed.

Compu-  
tation of  
losses.

148. (1) In this Part of this Law, except where the context otherwise requires—

Interpre-  
tation of  
Part XI.

“earned income” means, in relation to any individual—

- (a) any income arising or accruing from any office or employment held or exercised by the individual, including any income from property which is attached to the office or employment or from which any part of the emoluments of the office or employment is derived;
- (b) any income immediately derived by the individual from the carrying on by him of any business either as an individual, or in the case of a partnership, as a partner personally acting therein;
- (c) any income arising or accruing from a pension, superannuation or other allowance given to the individual in respect of the past services of the individual or the past services of any deceased person;

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(d) any payment of benefit under the Social Insurance (Guernsey) Law, 1964, and payments on account of family allowances under the Family Allowances (Guernsey) Law, 1950;

“income of the corresponding type” means earned or unearned income according as income arising during the same period as the loss to the person sustaining it from income or profits of the same business or same source would have been that person’s earned or unearned income;

“spouse” means a married woman whose income is treated as if it were the income of her husband or the husband of such married woman.

(2) In any case where the income of a married woman is treated as if it were the income of the husband, any reference in the definition of “earned income” in the last preceding subsection to the individual includes the husband or the wife.

## PART XII

### EXPENDITURE INCURRED PARTLY FOR PRIVATE PURPOSES

Expenditure incurred partly for private purposes.

149. (1) In computing the profits of any business for any year of computation there may, as respects any machinery or plant being machinery or plant to which section eighty-eight of this Law (which relates to the effect on annual allowances of part-time use otherwise than for business purposes) applies, be deducted only such expenditure in connection with the repair, maintenance or operation thereof as is incurred wholly or exclusively for the purposes of the business.

(2) The provisions of this section shall, with any necessary adaptations, apply in relation to an office

or employment as they apply in relation to a business, provided that the expenditure is exclusively and necessarily incurred in the performance of the duties of the office or employment.

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## PART XIII

## PENSION SCHEMES

150. (1) In this Part of this Law the expression "approved scheme" means a pension scheme or part of a pension scheme approved by the Administrator in accordance with the succeeding provisions of this section.

Approval of pension schemes.

(2) The Administrator may approve a pension scheme if, but not unless, it is shown to the satisfaction of the Administrator that the following conditions are satisfied:—

- (a) the scheme is bona fide established as a trust;
- (b) the scheme is established in connection with the carrying on of business, or the exercise of functions, wholly or partly in Guernsey;
- (c) the scheme has for its sole or main purpose the provision of retirement or other benefits—
  - (i) for persons employed in connection with such business or functions, on their retiring at an age, not exceeding seventy years, specified in the rules of the scheme or on their becoming incapacitated at some earlier age;
  - (ii) for the widows, children or dependants of persons who are or have been so employed, on the death of those persons;
- (d) the person carrying on the business or exercising the functions (hereinafter re-

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- ferred to as "the employer") is a contributor to the scheme;
- (e) the scheme is recognised by the employer and by the persons so employed;
  - (f) the nature of the benefits afforded by the scheme is the same in relation to all the persons to whom the scheme relates;
  - (g) each person to whom the scheme relates is entitled by virtue of the provisions of the scheme to benefits defined therein and has been made aware of the terms of the scheme;
  - (h) no service of a person in whatever capacity while he is a proprietary director or a proprietary employee may be taken into account for any of the purposes of the scheme;
  - (j) no sum paid by an employer for the purposes of providing benefits under the scheme may be applied to any other purpose or may be repaid to the employer unless—
    - (i) the amount of the sums paid by the employer for the purpose of providing the benefits under the scheme in respect of any person exceeds the amount required to provide those benefits, in which event such excess may be repaid;
    - (ii) upon the dissolution of the scheme the amount of the sums paid by the employer for the purpose of providing all the benefits under the scheme in respect of all the persons entitled to those benefits exceeds the amount required to provide such benefits, in which event such excess may be repaid;

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- (k) the retirement or other benefits provided by the scheme shall not exceed such limits as the Authority may from time to time by regulation prescribe;
- (l) where any person holding an office or exercising an employment contributes to the cost of providing benefits under the scheme no sum contributed by that person may be applied to any purpose other than the provision of those benefits and shall not be refunded to that person except on the cessation of that person's service in such circumstances that he does not become entitled to any other benefits under the rules of the scheme; and

- (m) the benefits provided under the scheme are not assignable in whole or in part and cannot be surrendered otherwise than for a pension for a widow or dependant:

Provided that if the business is not carried on, or the functions are not exercised, wholly in Guernsey, or the employer is not resident in Guernsey, the Administrator may, as he thinks fit, approve the scheme as a whole or as to a part only thereof.

(3) Where, prior to the first day of January, one thousand nine hundred and seventy-four, a retirement benefit scheme was approved by the Authority under the provisions of section twenty-two of the Income Tax (Amendment) (Guernsey) Law, 1964<sup>(l)</sup>, or a superannuation fund was approved by the Authority under the provisions of section thirty-one of the said Law, and—

- (a) there has been no alteration to the rules of the scheme or of the fund, or in the case of a fund, to the instrument under which the fund is established, since the date on

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(l) Ordres en Conseil Vol. XIX, p. 405.

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which the scheme or fund was last approved by the Authority, and

- (b) the Authority has not withdrawn its approval to the scheme or fund,

the scheme or fund shall be deemed for all the purposes of this Law to be an approved scheme:

Provided that if there is any alteration to the rules of such a scheme or fund, or in the case of a fund to the instrument under which the fund is established, then—

- (a) the rules of the scheme or fund, and

- (b) in the case of a fund, the instrument under which the fund is established,

shall be amended to conform to the provisions of the preceding subsections of this section.

Deduction claimable by employees.

151. (1) In computing the income of an individual from—

- (a) any office or employment held or exercised by him; or

- (b) a pension payable to him in consequence of an office or employment formerly held or exercised by him;

there shall be deducted the amount of any ordinary contributions to an approved scheme or of any statutory or voluntary contributions made by him out of the said income in the year of computation:

Provided that no such deduction shall be made in respect of contributions exceeding fifteen per centum of the said income.

(2) In this section, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“ordinary contribution” means a periodic contribution, fixed in amount, or calculated on some definite basis by reference to earnings;

“statutory contribution” means—

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- (i) a contribution required by law to be made towards the expense of providing a pension or gratuity to the contributor on his retirement, or on his death to his widow, children or dependants or to his legal personal representative; or
- (ii) any contribution made by a member of the scheme established in accordance with the provisions of the States of Guernsey Civil Service (Pensions and Other Benefits) Rules, 1972, or of any scheme amending, replacing or extending the said scheme, and any contribution which a person employed by, or holding an office with, the States of Guernsey makes and which is authorised by Resolution of the States of Guernsey towards the expense of providing a pension or other benefit to the said member or person, as the case may be, on his retirement or on his death to his widow, children or dependants or to his legal personal representative.

152. (1) If a contribution to an approved scheme is made by the employer, then, in computing his income arising from the business in connection with which the scheme is established—

Deduction claimable by employers and sums repaid to employers or applied to other purposes.

- (a) if the contribution is an ordinary contribution, the amount thereof shall be allowed as a deduction in the accounting period in which it is paid;
- (b) if the contribution is not an ordinary contribution, then, according as the Administrator may direct, the amount thereof shall either—

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- (i) be allowed as a deduction for the accounting period in which it is paid; or
- (ii) be apportioned to such accounting periods as the Administrator thinks proper, and the amount apportioned to any accounting period shall be allowed as a deduction for that period.

(2) In this section the expression "ordinary contribution" means a periodic contribution fixed in amount or calculated on some definite basis by reference to the earnings or contributions of the members of the scheme, or to the number of such members, or in the case of a body corporate, a periodic contribution consisting of a share of the profits arising to that body from the business in connection with which the scheme is established and computed according to a formula approved by the Authority.

(3) Where any sum paid by an employer for the purpose of providing benefits under an approved scheme is applied to any other purpose or is repaid to him it shall be deemed to be income arising to the employer in the year of charge in which it is so applied or repaid and shall be charged to tax at the standard rate in force in that year of charge.

Charge of tax on retirement or other benefits and treatment of transfer payments.

153. (1) Subject to the provisions of this section—

- (a) contributions (including voluntary contributions) repaid and any interest thereon paid to directors or employees and lump sums paid out of or under the provisions of an approved scheme in commutation of or in lieu of pensions, shall be treated as income of the year in which they are repaid or paid, and tax in respect thereof shall be chargeable on the trustee or other person having the management of the scheme at one half

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- of the standard rate in force in the year of charge in which the contributions are repaid or the interest or the lump sums are paid;
- (b) statutory and voluntary contributions repaid and any interest thereon shall be treated as income of the year in which they are repaid or paid and tax in respect thereof shall be chargeable on the person by or through whom the repayment or payment is made at one half of the standard rate of tax in force in the year of charge in which the contributions are repaid or the interest is paid;
- (c) the trustee or other person having the management of an approved scheme or the person by or through whom a statutory contribution is repaid or by or through whom interest thereon is paid shall deduct the amount of tax chargeable under the provisions of the preceding paragraphs from the contributions, interest or other sums paid and shall remit the tax so deducted to the Administrator within one month of the date on which it was deducted, and shall at the same time furnish to the Administrator, in the form and manner which the Administrator may require, an account of the payment and of the tax deducted out of the payment and the Administrator shall assess and charge the tax on that person;
- (d) any person who fails to comply with the provisions of the preceding paragraph shall be liable to the penalty prescribed for late payment in section one hundred and ninety-nine of this Law and for the purpose of computing the penalty the tax shall

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be deemed to be an amount becoming due on the date on which it was deducted;

- (e) where any person has failed to deliver to the Administrator such account of a payment as is required by paragraph (c) of this sub-section within the time set out in that paragraph or where the Administrator is not satisfied with the account so delivered, the Administrator may make an assessment on that person to the best of his judgment;
- (f) nothing in this sub-section shall affect the liability of a person to be charged to tax in his own name;
- (g) any contribution repaid or any interest thereon or any lump sum paid out of or under the provisions of an approved scheme and which is to be treated as income by virtue of the provisions of this subsection shall, for all the purposes of this Law, be treated as income arising or accruing from a source in Guernsey;
- (h) the provisions of the preceding paragraph shall not apply to contributions repaid or to interest paid to the extent that contributions were originally paid in respect of—
  - (i) services performed wholly outside Guernsey, unless the services in question were services to which the provisions of subsection (7) of this section relate, or
  - (ii) any period when the scheme was not approved,

and the interest relates to the contributions so paid.

(2) The Authority may in its absolute discretion exempt from tax a lump sum or part of a lump sum paid out of an approved scheme in commutation of or in lieu of a pension which would

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otherwise be chargeable to tax under the provisions of paragraph (a) of the preceding subsection if the Authority is satisfied that the sum exempt from tax does not exceed such limit as the Authority may from time to time by regulation prescribe.

(3) Any annuity or pension payable out of or under the provisions of an approved scheme shall, for all the purposes of this Law, be treated as income arising or accruing from a source in Guernsey:

Provided that this subsection shall not apply where the services in respect of which the annuity or pension is payable were performed wholly outside Guernsey, unless the services in question were services to which the provisions of subsection (7) of this section relate.

(4) Where an annuity or pension is paid out of or under the provisions of an approved scheme the person chargeable with tax shall be the person entitled to the annuity or pension:

Provided that if the person entitled to the annuity or pension is not resident in Guernsey the trustees or other persons having the management of the scheme shall be charged with tax on behalf of the non-resident person, and the provisions of section forty-eight of this Law shall apply accordingly, but the trustees or other persons having the management of the scheme shall not be so chargeable if the services in respect of which the pension is payable were performed wholly outside Guernsey, unless the services in question were services to which the provisions of subsection (7) of this section relate.

(5) Where interchange arrangements are made as between the States of Guernsey and an employing authority in the United Kingdom with the object of providing for a single superannuation award in cases where persons may be transferred from service in the United Kingdom to service in

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Guernsey or from service in Guernsey to service in the United Kingdom, then any transfer payments made by the States of Guernsey shall be treated as if they were statutory contributions repaid and shall be chargeable to tax at one half of the standard rate in force in the year of charge in which the transfer is made:

Provided that such transfer payments may be exempt from tax if the Authority determines that having regard to the nature of the interchange arrangements it is equitable that the payments should be so exempt.

(6) Where any person ceases to be a member of an approved scheme in Guernsey (hereinafter referred to as "the Guernsey scheme") and becomes a member of a pension scheme outside Guernsey (hereinafter referred to as "the other scheme") and a transfer payment is made out of the Guernsey scheme into the other scheme with the object of providing for retirement and other benefits out of the other scheme only, then any such transfer payment made out of the Guernsey scheme shall be treated as a refund of contributions and shall be chargeable to tax at one half of the standard rate in force for the year of charge in which the transfer is made:

Provided that any such transfer payment shall be exempt from tax if the Administrator is satisfied that the other scheme is—

- (i) a "statutory scheme" as defined in subsection (1) of section twenty-six of the Finance Act 1970; or
- (ii) approved by the Board of Inland Revenue for the purposes of section two hundred and eight of the Income and Corporation Taxes Act 1970; or

(iii) an "exempt approved scheme" as defined by subsection (1) of section twenty-one of the Finance Act 1970; or

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(iv) a pension scheme approved by the competent authority under the laws relating to income tax in Jersey, the Isle of Man or the Republic of Ireland, as the case may be, which provides retirement or other benefits of a nature similar to a pension scheme which may be approved under the provisions of section one hundred and fifty of this Law.

(7) Where any person ceases to be a member of a pension scheme outside Guernsey (hereinafter referred to as "the other scheme") and becomes a member of an approved scheme in Guernsey (hereinafter referred to as "the Guernsey scheme") and a transfer payment is made out of the other scheme into the Guernsey scheme with the object of providing for retirement and other benefits out of or under the provisions of the Guernsey scheme only, then notwithstanding the provisos to subsections (3) and (4) of this section all service to which such transfer payment relates shall be deemed to be service performed in Guernsey.

(8) The provisions of paragraph (a) of subsection (1) of this section shall not apply to lump sums paid in commutation of or in lieu of pensions which would have been exempt from tax under the provisions of paragraph (b) of the proviso to subsection (2) of section forty-three of the Income Tax (Guernsey) Law, 1950, if that section had not been repealed and—

(a) the fund was approved by the Authority in pursuance of the provisions of section thirty-nine of the said Law before the twenty-sixth day of June, nineteen hundred and sixty-three, and

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- (b) the person entitled to receive the lump sum was a contributor to the fund, in the capacity of a director or employee, before that date, and
- (c) between that date and the date on which the lump sum was paid there was no alteration to the rules of the fund which would permit the payment of lump sums which would not have been payable but for the alteration.

(9) In this section the expressions "approved scheme" and "pension scheme" shall be deemed to include a statutory scheme and any scheme authorised by Resolution of the States of Guernsey.

Application  
for approval  
of pension  
schemes.

154. (1) Any employer desirous of obtaining the approval of the Administrator to a pension scheme or part of a pension scheme in pursuance of the provisions of section one hundred and fifty of this Law shall make application in that behalf to the Administrator and such application shall be in such form and shall contain such information as he may, from time to time, require and shall be accompanied by a copy of the instrument under which the scheme is established, a copy of the rules and of the accounts of the scheme for the last year for which such accounts have been drawn up.

(2) Upon the receipt of an application under the provisions of the last preceding subsection, or at any time thereafter, the Administrator may require the applicant to supply him with such information as he may require.

Grant,  
refusal or  
withdrawal  
of approval.

155. (1) Upon the receipt of an application under the provisions of the last preceding section the Administrator may—

- (a) approve the pension scheme or part of the pension scheme in pursuance of the provisions of section one hundred and fifty of this Law; or

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- (b) refuse such approval; or
- (c) approve such a scheme or part of a scheme, as the case may be, subject to such conditions as he may think it necessary or expedient to impose.

(2) If the Administrator approves a pension scheme or part of a pension scheme he shall, as soon as may be thereafter, notify the applicant, in writing, of such approval together with such conditions, if any, as may be attached thereto and the date upon which such approval is to take effect.

(3) The Administrator may at any time revoke any approval given under the provisions of subsection (1) of this section and may at any time vary any conditions attached to any such approval and he may at any time revoke any approval of a superannuation fund or retirement benefit scheme previously approved by the Authority.

(4) Where—

- (a) under the provisions of subsection (1) of this section the Administrator refuses to approve a scheme or part of a scheme or approves a scheme or part of a scheme subject to conditions, or
- (b) under the provisions of subsection (3) of this section the Administrator revokes any approval previously given or varies any conditions attached to any approval previously given,

he shall, as soon as may be thereafter, notify the applicant, in writing, of such refusal, revocation or variation, the reasons therefor and in the case of any revocation or variation, the date (which may be a date prior to such notice) upon which such revocation or variation is to take effect.

(5) Any applicant who is aggrieved by any conditions attached to any approval given by the Ad-

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ministrator under the provisions of subsection (1) of this section or by such refusal, revocation or variation as is referred to in the preceding subsection shall be entitled to appeal to the Authority on giving to the Administrator notice in writing, stating the grounds of appeal, within twenty-one days of the date of the issue of the notice of the Administrator's decision.

(6) The provisions of Part VII of this Law shall apply in the case of an appeal under the provisions of the preceding subsection as they apply in the case of an appeal from an assessment, penalty, direction or order made or imposed by the Administrator, with such adaptations as may be necessary.

Information  
to be  
furnished.

156. The persons having the management of an approved scheme or an employer who contributes to an approved scheme shall, when so required by notice from the Administrator, furnish, within twenty-one days of the date of the issue of such notice, such particulars as the Administrator may require regarding contributions made to the scheme, the names of the persons in receipt of annuities or other payments out of the scheme and the amount of the annuities or payments, particulars of contributions repaid, the accounts of the scheme and such other information relating to the scheme as the Administrator may require.

Aggregation  
and sever-  
ance of  
schemes.

157. (1) References in this Part of this Law to a pension scheme:—

- (a) shall, in relation to an agreement, series of agreements, or other arrangements providing for retirement or other benefits for persons of two or more classes, be construed as references to so much thereof as relates to persons of a single class, and accordingly an agreement, series of agreements, or other arrangements so providing shall be treated

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for the purposes of this Part of this Law as constituting two or more pension schemes relating respectively to the different classes;

- (b) shall be construed as including references to an agreement, series of agreements, or other arrangements providing for retirement or other benefits for a person or persons consisting of or including a director or employee, or directors or employees or, in a case falling within paragraph (a) of this subsection, to so much thereof as relates to a person or persons of any one class.

(2) For the purpose of satisfying himself that the conditions set out in section one hundred and fifty of this Law are satisfied, the Administrator shall take into account any other pension scheme subsisting in connection with the employer and relating to persons of the class to which the scheme in question relates and if the said conditions are satisfied in the case of all the pension schemes taken together, those conditions shall be taken to be satisfied in the case of each of them, and, if not, those conditions shall be taken to be satisfied in the case of none of them.

(3) The Administrator may, if he thinks fit—

(a) approve a part of a pension scheme, or

(b) approve such a scheme notwithstanding that, having regard to another such scheme subsisting in connection with the employer, the scheme in question is to be treated by virtue of the last preceding subsection as not satisfying the conditions aforesaid,

and references in this Part of this Law to an approved scheme shall be deemed to include references to a part of a scheme approved under this subsection.

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 Interpretation of  
 Part XIII.

158. In this Part of this Law, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“dependant” means a person who is dependent upon the employee for the ordinary necessities of life;

“employee”—

(a) in relation to a company, includes any officer of the company, any director of the company and any other person taking part in the management of the affairs of the company, and

(b) in relation to any employer, includes a person who is to be or has been an employee,

and “employer” and other cognate expressions shall be construed accordingly;

“proprietary director” means a director of a company who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control more than fifteen per cent of the ordinary share capital of the company;

“proprietary employee” means, in relation to a company, an employee who is the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control more than fifteen per cent of the ordinary share capital of the company;

“retirement or other benefits” means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change

in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason;

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“service” means service as an employee of the employer in question and other expressions, including “retirement” shall be construed accordingly.

159. The Authority may, from time to time, make regulations for the purposes of carrying into effect the provisions of this Part of this Law as respects approved schemes.

Regulations for the purposes of Part XIII.

#### PART XIV

#### SPECIAL PROVISIONS AS TO INVESTMENT COMPANIES RESIDENT IN GUERNSEY AND TO UNIT TRUST SCHEMES

160. For the avoidance of doubt it is hereby declared that, subject as hereinafter provided in relation to the expenses of management of investment companies, the assessable income arising or accruing to an investment company from the ownership of any land and any building situate in Guernsey shall be determined in accordance with the provisions of sections nine to sixteen of this Law, and the assessable income arising or accruing from any other investment shall be determined in accordance with the provisions of section seventeen of this Law.

Computation of income.

161. The provisions of Chapter III of Part I of this Law (which relate to the assessment of tax in respect of income to which the said Chapter applies and to the payment of tax charged in consequence

Application of Chapter III of Part I.

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Expenses of management.

162. A deduction from the income arising or accruing to an investment company for any year of charge may be permitted by the Administrator in respect of sums disbursed as permissible management expenses in the year of computation if a claim for the deduction is made in writing simultaneously with a return as to income submitted in the form and manner required by the Administrator in accordance with the provisions of section sixty-eight of this Law.

Management expenses not relieved.

163. When in any year of charge an investment company is unable to obtain relief for the whole of its permissible management expenses in pursuance of the provisions of the last preceding section, because it has no income, or because its income is less than the said expenses, an amount equal to its permissible management expenses, or to such part of its permissible management expenses as has not been relieved, whichever is the less, shall be carried forward and treated as permissible management expenses for the next succeeding year of charge and so on from year to year:

Provided that no amount shall be so carried forward if it can be carried forward or set off under any of the provisions of this Law relating to relief from losses.

No deduction for interest paid to non-residents.

164. Subject to the provisions of section one hundred and sixty-eight of this Law, where an investment company is liable to pay to any person who is not resident in Guernsey any interest on money

borrowed it shall not be entitled to claim a deduction of, or relief for, the interest so payable under any of the provisions of this Law.

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165. Subject to the provisions of section one hundred and sixty-eight of this Law, where any interest on money borrowed is payable by an investment company to a person who is not resident in Guernsey and is payable wholly out of income or profits brought into charge to tax—

Interest payable to non-residents out of income or profits brought into charge.

- (a) no assessment shall be made on the person entitled to the interest; and
- (b) the whole of the income or profits shall be assessed and charged to tax on the person liable to the interest without distinguishing the interest; and
- (c) the person liable to make the payment shall be entitled, on making the payment, to deduct and retain out of it a sum representing the tax thereon at the standard rate for the year of charge in which the amount payable becomes due; and
- (d) the person to whom the payment is made shall allow the deduction on receipt of the residue of the payment, and the person making the deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had actually been paid:

Provided that, with effect from the commencement of the year of charge nineteen hundred and seventy-one, where the investment company is entitled to relief from double taxation in accordance with the provisions of section one hundred and seventy-two or one hundred and seventy-six of this Law—

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- (i) for the purpose of calculating such relief the amount of any income on which the investment company would otherwise be entitled to relief shall be reduced by an amount equal to the same proportion of the interest as the amount of that income bears to the total assessable income for the year of charge; and
- (ii) the amount of relief allowable in respect of double taxation for any year of charge shall not exceed the amount remaining after deducting from the amount of tax chargeable upon the investment company for that year of charge, before the deduction of any such relief, the amount of any tax which the company is entitled to deduct and retain for that year of charge under the provisions of paragraph (c) of this section.

Interest payable to non-residents not out of income or profits brought into charge.

166. (1) Subject to the provisions of section one hundred and sixty-eight of this Law, where any interest on money borrowed is payable by an investment company to a person who is not resident in Guernsey and is not payable or is not wholly payable out of income or profits brought into charge to tax, the person by or through whom any payment thereof is made shall, on making the payment, deduct out of it a sum representing the amount of the tax thereon at the standard rate in force at the time of the payment.

(2) Where any such payment as aforesaid is made by or through any person that person shall, within one month of the date of the payment, remit the amount of the tax deducted therefrom to the Administrator and shall deliver to the Administrator, in such form and in such manner as the Adminis-

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trator may require, an account of the payment, or of so much thereof as is not made out of profits or gains brought into charge, and of the tax deducted out of the payment or out of that part thereof and the Administrator shall assess and charge the payment on that person.

(3) Where any person has failed to deliver to the Administrator an account of a payment in pursuance of the provisions of subsection (2) of this section or where the Administrator is not satisfied with the account so delivered, the Administrator may make an assessment on that person to the best of his judgment.

(4) Any person who fails to comply with the provisions of subsection (2) of this section shall be liable to the penalty prescribed for late payment in section one hundred and ninety-nine of this Law, and for the purposes of computing the penalty the tax shall be deemed to be an amount becoming due on the date on which it was deducted.

167. (1) Subject to the provisions of section one hundred and sixty-eight of this Law and of this section, where a person has been assessed to tax for any year of charge under the last preceding section in respect of interest on money borrowed payable to a person who is not resident in Guernsey the amount on which tax has been paid under that assessment shall, for the purposes of section thirty-eight of this Law, be treated as if it were interest which cannot be deducted under any provision of this Law and relief in respect thereof shall be allowed accordingly:

Relief in respect of interest not payable out of income or profits brought into charge.

Provided that no relief shall be allowed under this section in respect of any such payment which is not ultimately borne by the person assessed or which is charged to capital.

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(2) This section shall not apply to any sum assessed under section one hundred and sixty-six of this Law by virtue of the provisions of subsection (3) of section one hundred and seventy-four of this Law (which requires assessments to be made in certain cases on interest on money borrowed payable by an investment company to a non-resident out of dividends affected by double taxation relief).

Interest payable to non-residents with permanent establishment in Guernsey.

168. (1) The provisions of the last four foregoing sections relating to interest on money borrowed payable by an investment company to a person who is not resident in Guernsey shall not apply in the case of interest on money borrowed and payable to a non-resident carrying on business in Guernsey through a permanent establishment situate in Guernsey in such circumstances that the income or profits arising from, or attributable to, the permanent establishment are chargeable to Guernsey income tax and that the said interest falls to be taken into account in computing the profits so chargeable.

(2) In this section the expression "permanent establishment" means a branch, management or other fixed place of business.

Interpretation of Part XIV.

169. In this Part of this Law the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"investment company" means a company which is resident in Guernsey within the meaning of section four of this Law and whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom;

"permissible management expenses" means, in the case of an investment company, such items of expenditure as are laid out or expended wholly and exclusively for the pur-

pose of managing the company as would be permissible deductions in accordance with such provisions of this Law as relate to the computation of the profits of a business if the profits of the company fell to be computed in accordance with those provisions, but does not include:—

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- (a) any item of expenditure which may be deducted or taken into account under any provision of this Law which does not relate specifically to expenses of management, or
- (b) any expense of management which may be taken into account for the purpose of determining the amount of any additional deduction which may be claimable under the provisions of section thirteen of this Law.

170. (1) The provisions of this Law shall have effect in respect of income arising or accruing to the trustees of a unit trust scheme which has been approved by the Authority for that purpose as respects any year of charge as if the trustees were an investment company resident in Guernsey and as if the rights of the unit holders were shares of the company, and so much of the income arising or accruing as aforesaid as is available for payment to unit holders or for investment were dividends on such shares paid to them in proportion to their rights, the date of payment, in the case of income not paid to unit holders, being taken to be—

Trustees of unit trust scheme to be treated as investment company.

- (a) the date or latest date provided by the terms of the scheme for any distribution in respect of the distribution period in question;
- (b) if no date is so provided, the last day of the distribution period.

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(2) Without prejudice to the generality of the foregoing subsection—

- (a) sums periodically appropriated out of income arising or accruing as aforesaid shall be treated for the purposes of section one hundred and sixty-two of this Law as sums disbursed as permissible management expenses;
- (b) the proportion of income attributable to any unit holder, being income not paid to unit holders but available for investment, shall be treated as an amount paid to a unit holder after such deduction of tax as is authorised by section fifty-seven of the principal Law;
- (c) section sixty of this Law shall apply with any necessary modifications.

Meaning of "unit trust scheme" and supplementary provisions.

171. (1) In the last preceding section and in this section the expression "unit trust scheme" means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust established in Guernsey, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever, and the expression "unit holder" means a person entitled to a share of the investments subject to the trusts of a unit trust scheme.

(2) In ascertaining the amount available to unit holders in respect of any distribution period the trustees of a unit trust scheme may make such adjustments as may be reasonably required to allow for liabilities to, and relief from, tax where the amount of the liability or relief is not yet ascertained.

(3) The last preceding section shall have effect, in relation to any unit trust scheme, from the begin-

ning of the first distribution period of the scheme beginning after the thirty-first day of December, nineteen hundred and sixty-three.

1975.

(4) In the last preceding section and in this section the expression "distribution period" in relation to a unit trust scheme, means a period over which income from investments subject to the trust is aggregated for the purpose of ascertaining the amount available for distribution to unit holders.

## PART XV

### RELIEF FROM DOUBLE TAXATION

172. (1) If the States by Resolution declare that arrangements specified in the Resolution have been made with the government of any other territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything in any enactment.

Relief from  
double  
taxation.

(2) Any Resolution made under this section may be revoked by a subsequent Resolution.

(3) Where arrangements have effect by virtue of this section, the obligation as to secrecy imposed by section two hundred and six of this Law shall not prevent the disclosure of such information as is required to be disclosed under the arrangements to any authorised officer of the government with which the arrangements are made by any Member of the Authority, the Administrator, the Assistant Administrator or any person for the time being authorised in writing in that behalf by the Administrator; and the Administrator may at any time revoke any authorisation given by him under this subsection.

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Tax credits.

173. (1) The provisions of this section shall have effect where, under arrangements having effect under the preceding section of this Law, tax payable in respect of any income in the territory with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Guernsey; and in this section the expression "foreign tax" means any tax payable in that territory which under the arrangements is to be so allowed and the expression "income tax" means tax chargeable under this Law.

(2) The amount of the income tax chargeable in respect of the income shall be reduced by the amount of the credit:

Provided that credit shall not be allowed against income tax for any year of charge unless the person entitled to the income is resident in Guernsey in that year.

(3) The credit shall not exceed the amount which would be produced by computing the amount of the income in accordance with the provisions of this Law and then charging it to income tax at a rate ascertained by dividing the income tax chargeable (before the allowance of credit due under any arrangements having effect under the preceding section of this Law) on the total income of the person entitled to the income by the amount of his total income.

(4) Without prejudice to the provisions of the preceding subsection the total credit for foreign tax to be allowed to a person for any year of charge under all arrangements having effect under the preceding section of this Law shall not exceed the total income tax payable by him for the year of charge other than income tax payable by him as an agent for a person not resident in Guernsey.

(5) In computing the amount of the income:—

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- (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);
- (b) where the income tax chargeable depends on the amount received in Guernsey, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income;
- (c) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against income tax in respect of the dividend the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit;

but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

(6) Paragraphs (a) and (b) of the preceding subsection of this section (but not the remainder thereof) shall apply to the computation of total income for the purposes of determining the rate mentioned in subsection (3) of this section, and shall apply thereto in relation to all income in the case of which credit falls to be given for foreign tax under arrangements for the time being in force under the preceding section of this Law.

(7) Where—

- (a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by

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deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against income tax in respect of the dividends; and

- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide;

then if the dividend is paid to a company which controls, directly or indirectly, not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(8) Credit shall not be allowed under the arrangements referred to in the last preceding section against income tax chargeable in respect of the income of any person for any year of charge if he elects that credit shall not be allowed in the case of his income for that year.

(9) Any claim for an allowance by way of credit shall be made not later than six years after the end of the relevant year of charge in the form and manner required by the Administrator and in the event of any dispute as to the amount allowable the claim shall be subject to appeal in like manner as an assessment and the provisions of Part VII and Part VIII of this Law shall apply to any such appeal.

(10) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Guernsey or elsewhere, nothing in this Law 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 six years from the time when all such assessments, adjustments and other

determinations have been made, whether in Guernsey or elsewhere, as are material in determining whether any and if so what credit falls to be given.

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174. (1) Subject to the provisions of subsections (2) and (3) of this section, the amount of tax which is authorised by section fifty-seven of this Law (which relates to deduction of tax from Guernsey dividends) to be deducted from any dividend shall be determined without taking into account any reduction, by reason of double taxation relief, of the Guernsey income tax payable directly or by deduction by the company.

Effect on  
dividends of  
double  
taxation  
relief.

(2) Notwithstanding the provisions of section sixty-one of this Law, the credit in respect of tax deducted or authorised to be deducted from any dividend shall be restricted, where necessary, so as to secure that no relief in respect of tax so deducted shall be allowed and no tax in respect thereof shall be repaid at a rate exceeding the rate (hereinafter referred to as "the net Guernsey rate") of the Guernsey income tax payable directly or by deduction by the company after taking double taxation relief into account.

(3) Where the whole or any part of any interest on money borrowed is payable by an investment company to a non-resident in such circumstances that the investment company is not permitted to claim a deduction of, or relief for, the interest so payable by virtue of the provisions of section one hundred and sixty-four of this Law and the interest is payable in whole or in part out of a dividend, and the rate of relief or repayment allowable in respect of the tax deducted or authorised to be deducted from the dividend is affected by double taxation relief, the interest, or that part thereof, as the case may be, shall be deemed to be paid out of profits not brought into charge to tax and section one hundred and sixty-six of this Law shall apply

1975.

accordingly, but the tax chargeable under the said section one hundred and sixty-six on the person making the payment shall be reduced by an amount equal to tax on the payment or part of the payment at the net Guernsey rate applicable to the dividend.

(4) In this section, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“dividend” means a dividend from which deduction of tax is authorised by section fifty-seven of this Law;

“double taxation relief” means any credit for tax payable in any territory outside Guernsey which is allowable against Guernsey income tax by virtue of arrangements having effect under section one hundred and seventy-two of this Law or by way of relief from double taxation under section one hundred and seventy-six thereof and includes any credit or relief which has been taken into account for the purpose of determining the net Guernsey rate applicable to any dividends received by the company;

“the company” means the company paying the dividend.

Regulations  
for the  
purposes of  
double  
taxation  
relief.

175. The Authority may from time to time make regulations generally for carrying out the provisions of section one hundred and seventy-two of this Law or any arrangements having effect thereunder and for carrying out the provisions of the last preceding section, and may, in particular, by those regulations provide—

(a) for securing that relief from taxation imposed by the law of the territory to which any such arrangements relate does not enure to the benefit of persons not entitled thereto; and

- (b) for prescribing the principles upon which the net Guernsey rate is to be determined for the purposes of the last preceding section.

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 1975.

176. (1) If any person resident in Guernsey, who has paid, by deduction or otherwise, or is liable to pay, tax under this Law for any year of charge on any part of his income, proves to the satisfaction of the Administrator that he has paid, by deduction or otherwise, or is liable to pay income tax in respect of the same income under the law of any other territory and that the said income is not income arising in a territory in respect of which an arrangement made under the provisions of section one hundred and seventy-two of this Law is in force in respect of that year of charge, he shall be entitled to relief from tax paid or payable by him in Guernsey on the said part of his income at a rate thereon to be determined as follows:—

Unilateral provisions with regard to relief from double taxation.

- (i) if the effective rate of tax paid or payable in the territory in which the income arises does not exceed three-quarters of the effective rate of Guernsey tax the rate at which relief is to be given shall be the effective rate of tax paid or payable in the territory in which the income arises;
  - (ii) in any other case the rate at which relief is to be given shall be three-quarters of the effective rate of Guernsey tax.
- (2) For the purposes of this section—
- (a) the effective rate of Guernsey tax in respect of any person for any year of charge shall be taken to be the rate obtained by dividing the total amount of the income tax paid or payable by him under this Law for that year (before the deduction of any relief granted under this section or under

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section one hundred and seventy-two of this Law) by the amount of his total income assessable to Guernsey tax for that year;

- (b) the effective rate of tax paid or payable in relation to any other territory in respect of which it is necessary for the purposes of this section to determine the effective rate of tax in respect of any person for any year of charge shall be taken to be the rate determined as nearly as may be in accordance with the principles regulating the determination of the effective rate of Guernsey tax.

(3) In computing the amount of any income for the purposes of this section—

- (a) the provisions of subsection (2) of section seventeen of this Law (which relates to deduction of annual taxes and rates) in so far as they apply to taxation on income shall not apply to any income in respect of which relief is claimed under this section;
- (b) where the income tax chargeable depends on the amount received in Guernsey, the said amount shall be increased by the appropriate amount of the tax paid or payable in any territory in which the income has arisen in respect of that income;

but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the tax paid or payable by deduction or otherwise in any territory in respect of the income exceeds the relief allowable under subsection (1) of this section.

(4) A claim for relief under this section shall be made within the two years next following the year of charge to which it relates:

Provided that any such claim, though not made within the said two years, shall be admitted if made within the six years next following the said year of charge and within the six months next following the date on which the relevant amount of income tax in respect of which relief is being claimed under this section has been ascertained.

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177. Where relief from double taxation is claimed under the provisions of the last preceding section in respect of income arising in any territory to which that section applies, the obligation as to secrecy imposed by section two hundred and six of this Law shall not prevent the disclosure of such facts as may be necessary to enable the proper relief to be given in any case where relief is claimed from income tax in Guernsey to any authorised officer of such territory by any member of the Authority, the Administrator, the Assistant Administrator or any person for the time being authorised in writing in that behalf by the Administrator; and the Administrator may at any time revoke any authorisation given by him in that behalf.

Disclosure of information.

178. Notwithstanding the provisions of section one hundred and seventy-six of this Law, the provisions relating to relief from double taxation of any enactment repealed or amended by the Income Tax (Amendment) (Guernsey) Law, 1974(*m*) shall continue to apply in relation to tax for any year of charge prior to the year of charge nineteen hundred and seventy-three to the same extent as they would have applied thereto if that Law had not been passed.

Savings in respect of years of charge prior to year of charge 1973.

## PART XVI

## LIFE ANNUITIES

Purchased  
life  
annuities  
other than  
retirement  
annuities.

179. (1) A purchased life annuity (not being of a description excepted by subsection (5) of this section) shall, for the purposes of the provisions of this Law relating to tax on annuities, which but for this section would fall to be charged to tax as income of class (4) under the provisions of section two of this Law, be treated as containing a capital element and, to the extent of the capital element, as not being income of that class.

(2) In the case of any purchased life annuity to which this section applies—

- (a) the capital element shall be determined by reference to the amount or value of the payment made or other consideration given for the grant of the annuity; and
- (b) the proportion which the capital element in any annuity payment bears to the total amount of that payment shall be constant for all payments on account of the annuity; and
- (c) where neither the term of the annuity nor the amount of any annuity payment depends on any contingency other than the duration of a human life or lives, that proportion shall be the same proportion which the total amount of value of the consideration for the grant of the annuity bears to the actuarial value of the annuity payments; and
- (d) where the last foregoing paragraph does not apply the said proportion shall be such as may be just, having regard to that paragraph and to the contingencies affecting the annuity.

(3) For the purposes of the last foregoing subsection—

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- (a) any entire consideration given for the grant of an annuity and for some other matter shall be apportioned as appears just (but so that a right to a return of premiums or other consideration for an annuity shall not be treated for this purpose as a distinct matter from the annuity);
- (b) where it appears that the amount or value of the consideration purporting to be given for the grant of an annuity has affected, or has been affected by, the consideration given for some other matter, the aggregate amount or value of those considerations shall be treated as one entire consideration given for both and shall be apportioned under the foregoing paragraph accordingly; and
- (c) the actuarial value of any annuity payments shall be taken to be their value as at the date when the first of those payments begins to accrue, that value being determined by reference to such tables of mortality as the Authority may, from time to time, approve and without discounting any payment for the time to elapse between that date and the date it is to be made.

(4) For the purposes of this section “life annuity” means an annuity payable for a term ending with (or at a time ascertainable only by reference to) the end of a human life, whether or not there is provision for the annuity to end during the life on the expiration of a fixed term or on the happening of any event or otherwise, or to continue after the end of the life in particular circumstances, and “purchased life annuity” means a life annuity granted for consideration in money or money’s worth

1975.

in the ordinary course of a business of granting annuities on human life.

- (5) This section shall not apply—
- (a) to any annuity which would, apart from this section, be treated for the purposes of the provisions of this Law relating to tax on annuities as consisting to any extent in the payment or repayment of a capital sum; or
  - (b) to any annuity where the whole or part of the consideration for the grant of the annuity consisted of sums satisfying the conditions for relief of tax prescribed by any Resolution of the States made in pursuance of section thirty-six of this Law; or
  - (c) to any annuity purchased in pursuance of any direction in a will, or to provide for an annuity payable by virtue of a will or settlement out of income of property disposed of by the will or settlement (whether with or without resort to capital); or
  - (d) to any annuity purchased under or for the purposes of any pension scheme which has been approved under any of the provisions of this Law or in pursuance of any obligation imposed, or offer or acceptance made, under or in connection with any such scheme, or to any annuity purchased by any person in recognition of another's services (or past services) in any office or employment.
- (6) Any question whether an annuity is a purchased life annuity to which this section applies or as to what is the capital element in such annuity shall be determined by the Administrator.
- (7) Where a person is aggrieved by a determination of the Administrator in pursuance of the pro-

visions of the last preceding subsection he may appeal to the Authority. 1975.

(8) The provisions of Part VII of this Law shall apply in the case of an appeal under the provisions of the last foregoing subsection as they apply in the case of an appeal from an assessment, penalty, direction or order made or imposed by the Administrator.

180. The Authority may, from time to time, make regulations for the purposes of carrying into effect the foregoing provisions of this Part of this Law and for prescribing anything which is to be prescribed thereunder. **Regulations for the purposes of Part XVI.**

181. (1) If any person for the purpose of obtaining under this Part of this Law, either for himself or for any other person, any relief from or any repayment of tax or in order not to be charged with tax or to be charged with a less amount of tax than that which he or that other person ought to be charged, knowingly makes any false statement or false representation, he shall be liable to a penalty of five hundred pounds. **Penalties for offences against Part XVI.**

(2) In any case where the Administrator is of opinion that there are prima facie grounds for believing that a person is liable to a pecuniary penalty under the provisions of the last preceding subsection, the provisions of subsections (1), (2) and (4) of section two hundred of this Law shall apply as they apply in the case where the Administrator is of opinion that there are prima facie grounds for believing that a person is liable to pecuniary penalty under any of the provisions of Part XVIII of this Law other than section one hundred and ninety-eight thereof.

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## PART XVII

SPECIAL PROVISIONS RELATING TO  
INSURANCE COMPANIES, ETC.

Separation of  
different  
classes of  
business.

182. (1) Where an insurance company carries on life assurance business in conjunction with insurance business of any other class, the life assurance business shall, for the purposes of this Law, be treated as a separate business from any other business carried on by the company.

(2) Where an insurance company carries on both ordinary life assurance business and industrial life assurance business, the business of each class shall, for the purposes of this Law, be treated as though it were a separate business and the provisions of section one hundred and eighty-three of this Law shall apply separately to each such class of business.

Basis of  
computation  
of profits.

183. (1) Subject to the provisions of this section, the Administrator may, for any year of charge, elect that the profits of a life assurance business be charged upon one of the following bases, that is to say—

- (a) the amount of those profits as computed in accordance with the provisions of section seven of this Law, or
- (b) the amount of the relevant investment income of such business for that year of computation.

(2) Where the profits are computed in accordance with the provisions of paragraph (a) of subsection (1) of this section, the following provisions shall apply—

- (a) where the varying of investments is part of the business, any profits or losses derived from the realisation of such investments

shall be taken into account in the said computation,

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- (b) a deduction shall be made in respect of such part of those profits as belongs to, or is reserved for, or expended on behalf of, policyholders or annuitants but if any profits so deducted as being reserved for policyholders or annuitants cease at any time to be so reserved and are not allocated or expended on behalf of policyholders or annuitants, those profits shall be treated as profits of the business for the accounting period in which they cease to be so reserved.

(3) Where the profits are computed in accordance with the provisions of paragraph (b) of subsection (1) of this section, there shall be deducted any sums disbursed as relevant permissible management expenses for the year of computation:

Provided that—

- (a) relief in respect of the said relevant permissible management expenses shall not be given so far as it would reduce the profits to an amount less than the profits would have been if they had been computed in accordance with the provisions of paragraph (a) of subsection (1) of this section and where relief has been withheld for any year of computation by virtue of this proviso, the amount to be carried forward by virtue of the provisions of the next succeeding paragraph shall be increased accordingly;
- (b) where the relevant permissible management expenses cannot be deducted in whole or in part because the relevant investment income is less than the said expenses or because there is no such income, an amount equal to the relevant permissible management expenses or to such part thereof as

1975.

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has not been deducted, whichever is the lesser, shall be carried forward and treated as relevant permissible management expenses for the next succeeding year of charge and so on from year to year:

Provided that no amount shall be so carried forward if it can be carried forward or set off under any of the provisions of Part XI of this Law (which relates to relief from losses).

General  
annuity  
and pension  
business.

184. (1) Subject to the provisions of this section, profits arising to an insurance company from general annuity business or pension business shall be computed separately for each such class of business in accordance with the provisions of section seven of this Law:

Provided that this subsection shall not apply to an insurance company assessed in accordance with the provisions of paragraph (a) of subsection (1) of section one hundred and eighty-three of this Law in respect of the profits of its ordinary life assurance business.

(2) In the computation of such profits under the provisions of the preceding subsection, the following provisions shall apply—

- (a) the provisions of paragraph (b) of subsection (2) of section one hundred and eighty-three of this Law shall apply with the necessary modifications and in particular with the omission therefrom of all references to policyholders other than holders of policies referable to pension business; and
- (b) no deduction shall be made for any expenses of management which have been taken into account for the purposes of sec-

1975.

tion one hundred and eighty-three of this Law;

(c) in the case of a company carrying on general annuity business—

(i) where the varying of investments is a part of such business, any profits or losses arising from the realisation of such investments shall be taken into account in the said computation;

(ii) a deduction shall be allowed for any relevant investment income included in a computation made under the provisions of paragraph (b) of subsection (1) of section one hundred and eighty-three of this Law;

(d) in the case of a company carrying on pension business—

(i) the exemption from tax conferred by paragraph (w) of section forty of this Law shall not exclude any sums from being taken into account in computing profits or losses for any of the purposes of this Law;

(ii) where the varying of investments is part of the pension business of the company, any profits or losses arising from the realisation of such investments shall be excluded from the said computation.

(3) Any division to be made between general annuity business, pension business and other life assurance business shall be made on the principle of—

(a) referring to pension business any premiums attributable to such business falling within the definition of that term contained in section one hundred and eighty-eight of this Law, together with the incomings, out-

1975.

goings and liabilities referable to those premiums and the policies and contracts under which they are or have been paid;

- (b) allocating to general annuity business all other annuity business and references to "pension fund" and "general annuity fund" shall be construed accordingly whether or not any such funds are kept separate from the insurance company's life assurance fund.

Capital redemption business.

185. (1) Subject to the provisions of this section, where any person carries on capital redemption business in conjunction with business of any other class, the capital redemption business shall, for the purposes of this Law, be treated as a separate business from any other class of business carried on by that person.

(2) The profit from carrying on a capital redemption business shall be computed in accordance with the provisions of section seven of this Law.

(3) Any profits or losses derived from investments held in connection with the capital redemption business shall be taken into account in computing the profits of that business.

Non-resident insurance companies —charge on profits.

186. The provisions of the preceding sections of this Part of this Law shall apply to a non-resident insurance company carrying on a business in Guernsey through a branch or agency in Guernsey as they apply to a resident company carrying on such a business:

Provided that—

- (i) the amount of profits chargeable for the purposes of this Law shall be limited to the amount of the profits attributable to the business carried on in Guernsey, and

- (ii) where the amount of such profits cannot readily be determined, the company shall be liable upon the same proportion of its total profits computed in accordance with the provisions of this Law as its relevant premiums bear to the total premiums of the company or on such other proportion or part of such total profits as the Administrator may agree with the company.

1975.

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187. Where an insurance company to which the provisions of the preceding sections of this Part of this Law apply, has sustained a loss in any year of charge prior to the year of charge nineteen hundred and seventy-four for which relief has not been given under any of the provisions of this Law, such loss shall be set off against any profits chargeable under the foregoing provisions of this Law and, to the extent that it cannot be so set off, it shall be carried forward and so set off in the next following year of charge, and so on from year to year.

Unrelieved  
losses  
incurred  
prior to year  
of charge  
1974.

188. In this Part of this Law, unless the context otherwise requires, the following expressions shall have the meanings respectively assigned to them, that is to say—

Interpre-  
tation of  
Part XVII.

“annuity business” means the business of granting annuities on human life;

“annuity fund” means, where an annuity fund is not kept separately from the life assurance fund of an insurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts;

“capital redemption business” means the business (not being life assurance business or industrial assurance business) of effecting and carry-

1975.

ing out contracts of insurance, whether effected by the issue of policies, bonds, endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer, a sum or a series of sums is to become payable to the insured in the future;

“general annuity business” means any annuity business which is not pension business;

“insurance company” means a company to which the Insurance Companies Act, 1958 or the Insurance Companies Act (Northern Ireland) 1968 applies or a company which is registered—

(a) in the Island of Guernsey, in pursuance of the Law entitled “Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée”<sup>(n)</sup> registered on the records of the Island of Guernsey on the twenty-first day of March, nineteen hundred and eight; or

(b) in the Island of Alderney, in pursuance of the Law entitled “Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée”<sup>(o)</sup> registered on the records of the Island of Guernsey on the twenty-second day of May, eighteen hundred and ninety-four,

for the purpose of carrying on “ordinary long-term insurance business” within the meaning of that expression as defined in subsection (6) of section fifty-nine of the Companies Act 1967;

“investment income” includes income from money placed on deposit;

“life assurance business” includes the business of granting annuities on human life;

<sup>(n)</sup> Ordres en Conseil Vol. II, p. 451.

<sup>(o)</sup> Ordres en Conseil Vol. IV, p. 178.

“pension business” means any contract with the trustees or other persons having the management of an approved pension scheme entered into for the purposes only of that scheme and “approved pension scheme” means a pension scheme approved under the provisions of Part XIII of this Law;

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“premiums” includes any consideration for an annuity;

“relevant investment income” means the total gross investment income relating to a particular class of life assurance business;

“relevant permissible management expenses” means, in relation to a life assurance company, the sum of—

(i) permissible management expenses of the nature referred to in section one hundred and sixty-nine of this Law, and

(ii) any annual interest which the life assurance company is required to pay in respect of money borrowed and which cannot be deducted under any other provision of this Law,

less any income of that business from sources other than investments and from any fines, fees or profits arising from reversions;

“relevant premiums” means premiums received from policyholders resident in Guernsey and premiums received from policyholders not so resident whose proposals were made to the company at or through its branch or agency in Guernsey;

“varying of investments” includes the turning of such investments to account.

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## PART XVIII

## PENALTIES

Penalty for failure to give notice of liability.

189. A person who fails to give to the Administrator such notice of his liability to be charged with tax as he is required to give by subsection (2) of section sixty-eight of this Law shall be liable to a penalty not exceeding fifty pounds.

Penalty for failure to deliver return as to income.

190. A person who fails to make a return of his income within the period prescribed by the law for that purpose shall be liable to a penalty not exceeding fifty pounds and he shall in addition be liable to a further penalty not exceeding ten pounds for every day after the date of the imposition of the original penalty, during which the failure continues:

Provided that—

- (i) if at any time before the Administrator issues the notice referred to in section two hundred of this Law such person delivers a correct and complete return, he shall not be liable to any penalty;
- (ii) if he proves that if he had made a return he would not have been liable to pay any tax in respect thereof, the penalty shall not exceed five pounds.

Penalty for negligence in return as to income.

191. A person who delivers a return of income which is incorrect or incomplete in any material particular, shall, if he acted negligently, be liable to a penalty not exceeding the aggregate of a sum of twenty pounds and a sum equal to three times the difference between the amount of tax which would have been chargeable if a correct and complete return had been made and the amount of tax which would be chargeable on the assumption that the return actually made was correct and complete:

Provided that if at any time before the Administrator institutes enquiries as a result of which it is discovered that an incomplete or incorrect return has been delivered such person delivers a correct and complete return he shall not be liable to any penalty.

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192. A person who delivers a return of income which is incorrect or incomplete in any material particular shall, if he acted fraudulently, be liable to a penalty not exceeding the aggregate of the sum of twenty pounds and a sum equal to three times the total amount of tax which he would be liable to pay for the year of charge to which the return relates, no reduction being made in respect of any of the allowances to individuals.

Penalty for fraud in return as to income.

193. (1) A person who fails to deliver to the Administrator a return other than a return of income within the time prescribed for that purpose shall be liable to a penalty not exceeding fifty pounds and he shall in addition be liable to a further penalty not exceeding ten pounds for every day after the date of the imposition of the original penalty during which the failure continues:

Penalties in respect of returns not relating to income.

Provided that if at any time before the Administrator issues the notice referred to in section two hundred of this Law such person delivers a correct and complete return he shall not be liable to any penalty.

(2) A person who delivers a return, other than a return of income, to the Administrator which is incorrect or incomplete in any material particular shall be liable to a penalty not exceeding—

- (i) if he acted negligently, one hundred pounds:

Provided that if at any time before the Administrator issues the notice referred to

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in the said section two hundred the person delivers a correct and complete return he shall not be liable to any penalty;

- (ii) if he acted fraudulently, five hundred pounds.

(3) For the purposes of this section, the expression "return" includes any list, statement, particulars, accounts or other information which the Authority or the Administrator may require any person to furnish under the provisions of this Law.

Liability of companies for penalties.

194. Where the person responsible for delivering the return is by virtue of section seventy-two of this Law the secretary or other officer of a company, the company and not the secretary or other officer shall be liable to any pecuniary penalty entailed by any failure, negligence or fraud on the part of the secretary or other officer in connection with the return.

Penalties for negligence or fraud in connection with claims.

195. (1) A person who on his own behalf makes a claim in connection with any relief or allowance from or in respect of tax which is incorrect or incomplete in any material particular, or who in connection with such claim produces any false evidence, shall if he acted negligently be liable to a penalty not exceeding the aggregate of twenty pounds and a sum equal to three times the difference between the relief or allowance which would be allowable on the assumption that the claim actually made was correct and the relief or allowance which would have been allowable if a correct claim had been made; and if he acted fraudulently to a penalty not exceeding the aggregate of twenty pounds and a sum equal to three times the total amount of tax which he would be liable to bear for the year of charge to which the claim relates, no reduction being made in respect of any of the allowances to individuals.

(2) A person who on behalf of another person makes any such claim as aforesaid shall, if he acted

negligently, be liable to a penalty not exceeding one hundred pounds, and if he acted fraudulently, to a penalty not exceeding five hundred pounds.

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196. A person who in order not to be charged with tax or to be charged with a less amount of tax than that with which he ought to be charged, is guilty of any fraud whatsoever, shall be liable to the penalty imposed by section one hundred and ninety-two of this Law.

Penalty for fraudulent practices.

197. A person who wilfully aids or abets another person in committing any offence against the provisions of this Law shall, if the said offence involves fraud, be liable to a penalty not exceeding five hundred pounds.

Penalties for aiding and abetting.

198. A person duly summoned to appear as a witness at any hearing before the Authority who refuses or fails without reasonable cause to appear at such hearing or who, having appeared, refuses to answer any lawful question touching the matter under consideration shall be liable to a penalty not exceeding twenty pounds.

Penalties on witnesses at appeals.

199. A person who fails or neglects to pay any amount due from him under this Law, including any penalty imposed thereunder, within one month of the date of such amount becoming due shall be liable to a penalty calculated at a rate not exceeding five per centum per mensem of such amount.

Penalty for late payment.

200. (1) If the Administrator is of opinion that there are prima facie grounds for believing that a person is liable to a pecuniary penalty under any section of this Part of this Law other than section one hundred and ninety-eight of this Law, he may send to such person a notice in writing stating the grounds of his belief, and subject to the provisions of this section may, if he finds such person liable, make an order directing him to pay a penalty.

Proceedings in respect of penalties.

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(2) If within seven days of the receipt of such a notice the person to whom the notice was sent sends to the Administrator a notice in writing requesting that proceedings against him shall be taken before the Royal Court, sitting as an Ordinary Court, the Administrator shall take no further action in the matter but may within three months of the date of the said notice, cause penalty proceedings to be instituted before that Court.

(3) If the Authority is satisfied that a person is liable to a penalty under section one hundred and ninety-eight of this Law, it shall, before directing such person to pay a penalty, inform him that he may request that proceedings against him shall be taken before the Royal Court sitting as an Ordinary Court. If such person so requests, the Authority shall take no further action in the matter but may, within three months of the date of such request, cause penalty proceedings to be instituted before that Court.

(4) In no case shall the Authority or the Administrator order the payment of a penalty unless the person liable has had a reasonable opportunity of stating his case.

Discretion to prosecute before the Royal Court in cases involving fraud.

201. Notwithstanding any of the provisions of this Law, any person who knowingly makes a false statement or representation in any return or fraudulently does any other act for the purpose of obtaining a relief or exemption from tax or a repayment of tax under this Law either on his own behalf or on that of any other person, shall be liable, in lieu of having proceedings taken against him by the Administrator under the last preceding section, to be prosecuted before the Royal Court, whereupon he shall on conviction be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding the maximum penalty which the Admin-

istrator could have imposed had the case been dealt with by him, or to both such imprisonment and such fine:

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Provided that no prosecution may be instituted under this section otherwise than at the joint request of the Administrator and the Authority.

## PART XIX

### GENERAL AND ADMINISTRATION

202. (1) Where a person acquires the right to receive the amount (with or without interest) stated in a certificate of deposit issued to him or any other person, any profits arising to him from the disposal of that right or, except so far as it is a right to receive interest, from its exercise shall, if not falling to be taken into account as a business receipt, be treated as income chargeable to tax under Class (4) of section two of this Law.

Transactions  
in certificates  
of deposit.

(2) Where a person sustains a loss in a transaction which, if a profit had arisen from it, would be chargeable to tax by virtue of subsection (1) of this section, then, if he is chargeable to tax in respect of the interest payable on the amount stated in the certificate of deposit concerned, in computing the amount of interest chargeable to tax the amount of his loss shall be deducted from the interest.

(3) In this section "certificate of deposit" means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognises an obligation to pay a stated amount to the bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest is transferable.

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Regulations  
to be laid  
before the  
States.

203. Any regulations made by the Authority under the provisions of this Law shall be laid before a meeting of the States as soon as may be after the making thereof and if, at that meeting or the next subsequent meeting, the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done thereunder or to the making by the Authority of any new regulations.

The  
Authority.

204. The President and Members of the Authority shall be elected by the States, and the constitution of the Authority shall be such as the States may from time to time by Resolution appoint.

The  
Adminis-  
trator and  
his staff.

205. Subject to the general direction and control of the Authority, Income Tax shall be under the care and management of an Administrator, to assist whom there may be appointed an Assistant Administrator of Income Tax. The States Civil Service Board shall appoint such clerks and other persons as may be necessary, and such clerks and other persons shall be under the control of the Administrator.

Oath of  
secrecy.

206. (1) Every person discharging any official function under this Law shall, before he begins to act in execution of this Law, take an oath in the form prescribed from time to time by the States by Ordinance and appropriate to his office, and such oath shall be taken—

- (a) in the case of a Member of the Authority, the Administrator and Assistant Administrator, before the Royal Court sitting as an Ordinary Court; and
- (b) in any other case, before any Member of the Authority, who shall have power to administer such oath in any such case.

(2) Where such oath has been taken by any person before a Member of the Authority, the

Authority shall cause an entry to be made in the minutes of the Authority to the effect that such oath has been taken by that person and shall cause a copy of such entry, signed by that person and certified by the Administrator as being a correct copy, to be furnished to Her Majesty's Greffier, who shall keep the same in safe custody.

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(3) A person violating such oath shall be guilty of an offence and liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine.

207. For the purpose of audit the Administrator is authorised to place at the disposal of the States Auditor all books and information that he may require. Audit.

208. The Authority may from time to time employ a qualified person to inspect the work of the Administrator and his staff, and to make a report thereon. Provision as to inspection.

## PART XX

### COMMENCEMENT, CONSTRUCTION, INTERPRETATION, REPEALS, ETC.

209. (1) In this Law, unless the context otherwise requires— General interpretation.

“Administrator” means the Administrator referred to in section two hundred and five of this Law;

“Authority” means the Authority constituted under the provisions of section two hundred and four of this Law;

“basis period” has the meaning assigned to it by section one hundred and eighteen of this Law;

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“business” includes any profession, trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

“company” means any body of persons corporate or unincorporate, not being a partnership;

“control” has the meaning assigned to it in section one hundred and twenty-two of this Law;

“the Court of Appeal” means the Court of Appeal established by the Court of Appeal (Guernsey) Law, 1961(p);

“director”, in relation to a company, means a member of the board of directors or other managing body of the company by whatever name called;

“emoluments”, in relation to an office or employment, includes any salary, stipend, fees, wages, perquisites, earnings and profits whatsoever arising therefrom;

“earned income” has the meaning assigned to it by section one hundred and forty-eight of this Law;

“glasshouse” includes boilers, pipes, mills, pumps and other ancillary apparatus of a substantially similar and permanent nature used in connection with the glasshouse;

“Guernsey” includes Herm;

“owner”, in relation to any real property means—

- (a) where that real property is the subject of saisie proceedings which have resulted in the making of a preliminary vesting order or an interim vesting order, the person in whose favour such order has been made;

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- (b) where that real property is not the subject of such saisie proceedings but is the subject of a vested right of usufruct, the usufructuary;
- (c) where that real property is not the subject of such saisie proceedings or of such vested right of usufruct—
- (i) the beneficial owner, if that real property is not held in trust, or
  - (ii) the trustees, if that real property is held in trust;

and the expressions “owned” and “ownership” shall be construed accordingly;

“personal representative” includes any person to whom has passed any legal or beneficial interest in the real or personal estate of a deceased individual;

“States” means the States of Guernsey;

“year of computation” means the year by reference to the income of which assessable income is to be computed.

(2) Except where the context otherwise requires, any reference in this Law to any other enactment shall be construed as including a reference to that enactment as amended, repealed, replaced, extended or applied by or under any other enactment including this Law.

(3) Any power conferred by this Law to make an Ordinance or regulations shall be construed as including a power exercisable in the like manner to vary or repeal the Ordinance or regulations.

210. The enactments set out in the Second Schedule to this Law (hereinafter referred to as “the repealed Laws”) are hereby repealed: Repeals and savings.

Provided that the provisions of this Law shall not apply to income tax for the year of charge nineteen

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hundred and seventy-three or to any previous year of assessment or charge and the provisions of the repealed Laws shall continue to apply to income tax for any such year to the same extent that they would have applied thereto if this Law had not been enacted.

Saving of  
appoint-  
ments.

211. (1) Subject to the provisions of subsection (2) of this section, any person who was appointed to any office under the repealed Laws and who was holding such office on the first day of January, nineteen hundred and seventy-four, shall be deemed to have been appointed to that office under this Law.

(2) Any person to whom this section applies shall, before the expiration of the period of six months commencing on the date of the registration of this Law, take an oath in the appropriate form required by section two hundred and six of this Law and—

- (a) if he fails to do so, his appointment shall be deemed to be terminated; and
- (b) until he does so, the provisions as to impartiality and secrecy contained in the repealed Laws shall apply to him to the same extent as they would have applied if this Law had not been enacted.

Continuity  
and  
construction  
of references  
to old and  
new law.

212. (1) The continuity of the operation of the law relating to income tax shall not be affected by the substitution of this Law for the repealed Laws.

(2) Any reference, whether express or implied, in any enactment, instrument or document (including this Law) to, or to things done or falling to be done under, or for the purposes of, any provision of this Law shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circum-

stances or purposes in relation to which the corresponding provision in the repealed Laws has or had effect, a reference to or, as the case may be, to things done or falling to be done under or for the purposes of, that corresponding provision.

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(3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed Laws and enactments, instruments and documents passed or made after the passing of this Law) to, or to things done or falling to be done under, or for the purposes of, any of the repealed Laws shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Law has effect, a reference to or, as the case may be, to things done or deemed to be done or falling to be done under, or for the purposes of, that corresponding provision.

(4) Subject to the provisions of section two hundred and eleven of this Law (which relates to the saving of appointments made under the repealed Laws), the repeals made by this Law shall not affect any enactment or instrument made or other thing done under the repealed Laws and, if it was made or done under any enactment reproduced in this Law, this Law shall have effect as if it had also been made or done under the corresponding provision of this Law.

213. This Law shall be deemed to have come into force on the first day of January, nineteen hundred and seventy-four.

**Commence-  
ment.**

214. This Law may be cited as the Income Tax Citation. (Guernsey) Law, 1975.

DEDUCTIONS IN RESPECT OF CERTAIN  
GLASSHOUSES

1. In the case of a person to whom the provisions of this Schedule apply there shall be calculated—

- (a) the written-down value of the glasshouse;
- (b) the amount which results from subtracting the written-down value from the actual cost of the glasshouse;
- (c) the amount which results from subtracting from the amount arrived at under sub-paragraph (b) the aggregate of the deductions allowed in respect of the depreciation of the glasshouse. •

2. Whenever such person incurs expenditure on repairs to the glasshouse which cannot be deducted under the provisions of section 7 (3)(f) of this Law an additional deduction shall be permitted equal to the amount of such expenditure, provided that the aggregate of such additional deductions shall not exceed the amount calculated in accordance with sub-paragraph (c) of paragraph 1 of this Schedule.

3. For the purpose of paragraph 1 of this Schedule “written-down value” means the actual cost of the glasshouse to the person to whom the glasshouse belongs reduced by the aggregate amount of the depreciation to which he would have been entitled if he had claimed a deduction for depreciation from the date on which he acquired the glasshouse or from the 1st day of January, 1920, whichever is the later, up to the end of the last accounting period ending on or before the 31st day of January, 1950, and “actual cost” means:—

- (a) where proper information is available—the cost of acquiring the glasshouse adjusted by the addition of the amount of any capital expenditure incurred upon the glasshouse since the date of acquisition:

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Provided that the amount of any capital expenditure which has been allowed as a deduction from profits shall be left out of account.

- (b) where proper information is not available—the amount arrived at by calculating the value of the glasshouse according to the following table:

Year of Acquisition	Value per foot (30 feet wide)	
	Heated	Cold
Prior to 1915	£1.50	£1.00
1915-1933	£2.50	£1.50
1934-1940	£3.00	£2.00

so however that if the width of the glasshouse is greater or less than 30 feet the value per foot shall be increased or reduced proportionately.

## SECOND SCHEDULE Section 210

### ENACTMENTS REPEALED

The Income Tax (Guernsey, Alderney, Herm and Jersey Reciprocal Exemption) (Guernsey) Law, 1949(a).

The Income Tax (Guernsey) Law, 1950(b).

The Non-Resident Traders Tax (Guernsey) Law, 1950(c).

(a) Ordres en Conseil Vol. XIV, p. 190.

(b) Ordres en Conseil Vol. XIV, p. 235.

(c) Ordres en Conseil Vol. XIV, p. 316.

1975. The Income Tax (Guernsey) Amendment Law, 1951(d).  
 The Income Tax (Guernsey) Amendment (No. 2) Law, 1951(e).  
 The Income Tax (Guernsey) Amendment Law, 1953(f).  
 The Income Tax (Guernsey) Law, 1955(g).  
 The Income Tax (Guernsey, Alderney, Herm and Jersey Reciprocal Exemption) (Savings) (Guernsey) Law, 1955 (h).  
 The Income Tax (Amendment) (Guernsey) Law, 1959(i).  
 The Income Tax (Amendment) (No. 2) (Guernsey) Law, 1959(j).  
 The Income Tax (Amendment) (Guernsey) Law, 1961(k).  
 The Income Tax (Amendment) (No. 2) (Guernsey) Law, 1962(l).  
 The Income Tax (Amendment) (Guernsey) Law, 1964(m).  
 The Income Tax (Amendment) (Guernsey) Law, 1968(n).  
 The Income Tax (Amendment) (Guernsey) Law, 1969(o).  
 The Income Tax (Amendment) (Guernsey) Law, 1973(p).  
 The Income Tax (Amendment) (Guernsey) Law, 1974(q).

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- (d) Ordres en Conseil Vol. XV, p. 55.  
 (e) Ordres en Conseil Vol. XV, p. 227.  
 (f) Ordres en Conseil Vol. XV, p. 489.  
 (g) Ordres en Conseil Vol. XVI, p. 283.  
 (h) Ordres en Conseil Vol. XVI, p. 344.  
 (i) Ordres en Conseil Vol. XVIII, p. 46.  
 (j) Ordres en Conseil Vol. XVIII, p. 88.  
 (k) Ordres en Conseil Vol. XVIII, p. 344.  
 (l) Ordres en Conseil Vol. XIX, p. 90.  
 (m) Ordres en Conseil Vol. XIX, p. 405.  
 (n) Ordres en Conseil Vol. XXI, p. 257.  
 (o) Ordres en Conseil Vol. XXII, p. 16.  
 (p) Ordre en Conseil No. XIII of 1973.  
 (q) Ordre en Conseil No. II of 1974.