

# ORDER IN COUNCIL

**II**  
**1974**

ratifying a Projet de Loi

ENTITLED

## **The Income Tax (Amendment) (Guernsey) Law, 1974**

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(Registered on the Records of the Island of Guernsey  
on the 7th day of May, 1974.)

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1974

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 7th day of May, 1974, before John Henry Loveridge, Esquire, C.B.E., Bailiff; present:— Bertram Guy Blampied, Esquire, O.B.E., Claude Fortescue Nason, Esquire, Gilbert Carey de Jersey, Esquire, C.B., D'Arcy George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Jean Le Pelley, Walter Francis Robin, Richard Alan Kinnersty, Esquires, Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Richard Brook Sutcliffe and Richard Oliver Symons, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order dated the 20th day of February, 1974, of the Counsellors of State in Council on behalf of Her Majesty, being authorised thereto by Letters Patent dated the 24th day of January, 1974, ratifying a *Projet de Loi* entitled "The Income Tax (Amendment) (Guernsey) Law, 1974", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

## At the Court of Saint James

The 20th day of February 1974

PRESENT,

### The Counsellors of State in Council

WHEREAS Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 24th day of January 1974, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

AND 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 15th day of February 1974, 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 Resolution of the 28th day of September 1973, the States of Deliberation at a meeting held on the 12th day of December 1973, approved a Bill or “Projet de Loi” entitled “The Income Tax (Amendment) (Guernsey) Law, 1974” 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 (Amendment) (Guernsey) Law, 1974" 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."

NOW, THEREFORE, Her Majesty Queen Elizabeth The Queen Mother and Her Royal Highness The Princess Margaret, Countess of Snowdon, being authorised thereto by the said Letters Patent, have taken the said Report into consideration, and do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf approve of and ratify the said Projet de Loi, and order, as it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey and Herm.

AND do 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*

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

## PROJET DE LOI

ENTITLED

### **The Income Tax (Amendment) (Guernsey) Law, 1974**

THE STATES, in pursuance of their Resolution of the twenty-eighth day of September, nineteen hundred and seventy-three, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of Law in the Islands of Guernsey and Herm.

1. (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—
- (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
- Interest payable by certain trading companies to non-residents.

liability to pay the interest was incurred wholly or mainly for the purposes of activities of that trade, wherever carried on,

then, notwithstanding the provisions of section thirty-three of the principal 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.

Amend-  
ments to  
the principal  
Law.

2. The principal Law is hereby amended as follows:—

- (a) in the definition of the expression “double taxation relief” in subsection (3) of section twenty-three B thereof, the words “or under section forty-seven of the Income Tax (Amendment) (Guernsey) Law, 1964” are repealed;
- (b) section twenty-three D thereof is repealed and the following section is substituted therefor:—

“Unilateral provisions with regard to relief from double taxation.

23D. (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 twenty-three 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:—

- (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 section twenty-three 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 section thirteen A 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 sub-section (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.”.

Amendments to the Law of 1964.

3. The Income Tax (Amendment) (Guernsey) Law, 1964(a) is hereby amended as follows:—

(a) in the proviso to section fourteen thereof, the comma after the word “Law” and the words “or in accordance with the provisions of section forty-seven of this Law” are deleted;

(b) section forty-seven thereof is repealed.

Saving in respect of years of charge before the commencement of this Law.

4. Notwithstanding the provisions of sections two and three of this Law, the provisions of any enactment repealed or amended thereby shall continue to apply in relation to tax for any year of charge before the commencement of this Law to the same extent as they would have applied thereto if this Law had not been passed.

Interpretation.

5. (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

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(a) Ordres en Conseil Vol. XIX, p. 235; No. XIII of 1973.

“The Administrator” has the meaning assigned to it by section eighty-eight of the principal Law;

“a body of persons” includes a partnership;

“control” means—

- (i) 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 body corporate, that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person;
- (ii) 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;
- (iii) 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;

“Guernsey” includes the island of Herm;

“the principal Law” means the Income Tax (Guernsey) Law, 1950(b);

“resident” has the meaning assigned to it by sections three and four of the principal Law and the expression “not resident” shall be construed accordingly;

“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.

(2) Except in so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as repealed and re-enacted, amended, extended or applied by or under any other enactment including this Law.

Commence-  
ment,  
construction  
and citation.

6. (1) This Law shall be deemed to have come into force on the first day of January, nineteen hundred and seventy-three.

(2) This Law may be cited as the Income Tax (Amendment) (Guernsey) Law, 1974, and this Law and the Income Tax (Guernsey) Laws, 1950 to 1973, shall be construed as one and this Law and those Laws may be cited together as the Income Tax (Guernsey) Laws, 1950 to 1974.

R. A. MALLET,

Her Majesty's Deputy Greffier.