

# ORDER IN COUNCIL

XV  
1983

ratifying a Projet de Loi

ENTITLED

## **The Income Tax (Amendment) (Guernsey) Law, 1983**

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(Registered on the Records of the Island of Guernsey  
on the 8th November, 1983.)

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# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 8th day of November, 1983 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:—Albert Richard McCartney Straw, Esquire, Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Donald Pescott Plummer, Esquire, Sydney Haydn Heard, Esquire, M.B.E., Brian Ernest Herbert Joy, Esquire, Charles Henry Hodder, Esquire, O.B.E., Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode, Geoffrey Ernest Le Page and Stanley Walter John Jehan, Esquires, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th day of October, 1983, ratifying a *Projet de Loi* of the States of Guernsey entitled "The Income Tax (Amendment) (Guernsey) Law, 1983", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island of which Order in Council the tenor followeth:—

# At the Court at Buckingham Palace

The 19th day of October 1983

PRESENT,

## The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 31st day of August 1983 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 23rd day of February 1983 the States of Deliberation at a meeting held on the 25th day of May 1983 approved a Bill or “Projet de Loi” entitled “The Income Tax (Amendment) (Guernsey) Law, 1983”, 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 attached. 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, 1983”, and to order that the same shall have force of law in the Islands of Guernsey and Herm.’

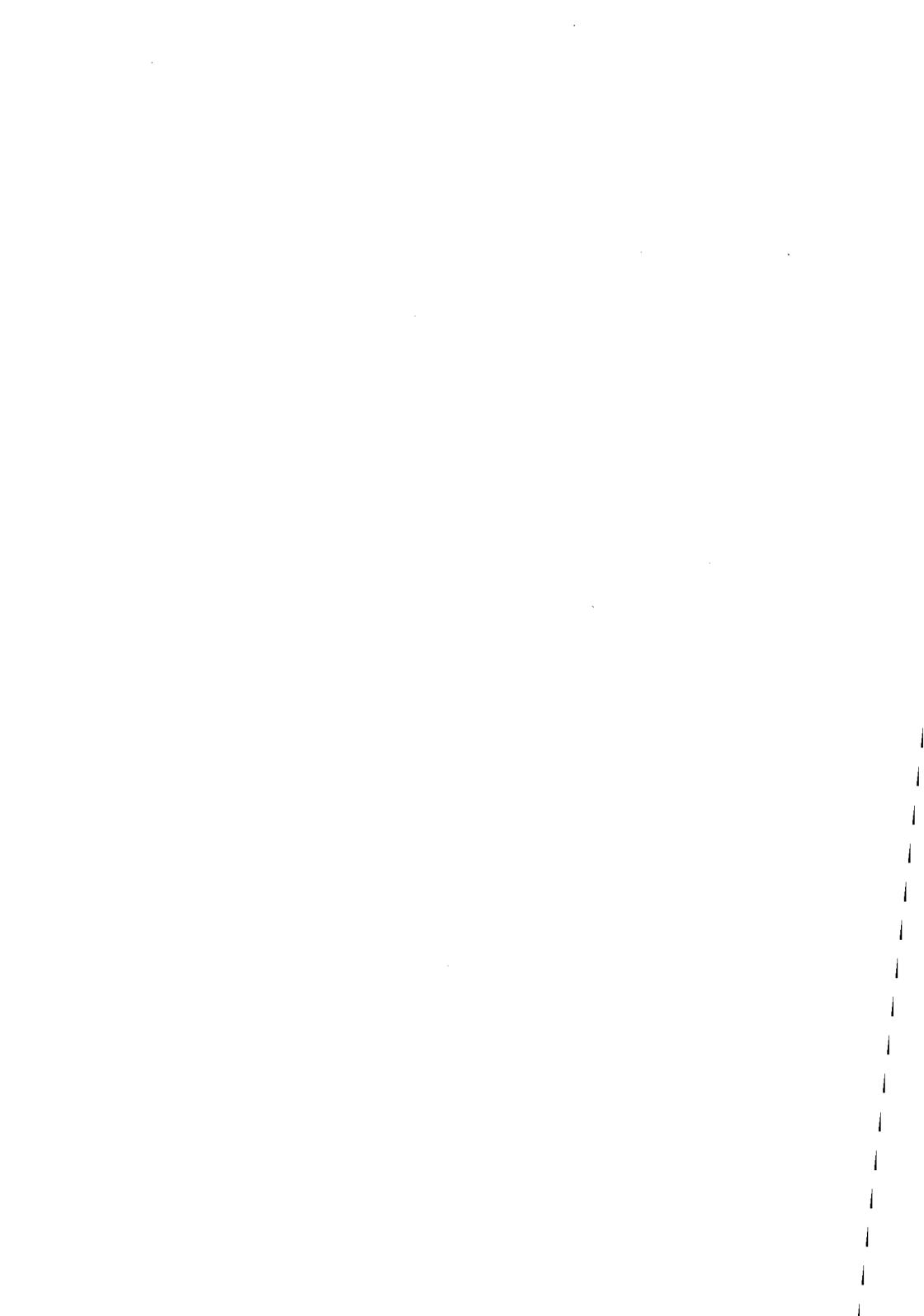
“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer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

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, 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.*



# PROJET DE LOI

ENTITLED

## **The Income Tax (Amendment) (Guernsey) Law, 1983**

THE STATES, in pursuance of their Resolution of the twenty-third day of February, nineteen hundred and eighty-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. The Income Tax (Guernsey) Law, 1975(a), as amended (b), is hereby further amended as follows:—

Amend-  
ments to the  
Law of 1975.

- (a) in the Arrangement of Sections thereto—
- (i) immediately after the heading “PART XIII” the words “PENSION SCHEMES” are deleted and the following words are substituted therefor:—
- “PENSION SCHEMES, RETIREMENT ANNUITY SCHEMES AND RETIREMENT ANNUITY TRUST SCHEMES.”;
- (ii) there is inserted immediately after the entry relating to section one hundred and fifty-seven thereof, the entry—
- “157A. Approval of retirement annuity schemes and trust schemes.”;

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

(b) Ordres en Conseil Vol. XXVI, pp. 146, 200 and 292; No. IV of 1979; No. VII of 1979; No. II of 1980; No. VIII of 1981; No. XI of 1982.

- (b) in paragraph (b) of section forty the words “pension scheme” are repealed and the following words are substituted therefor:—  
“pension scheme or retirement annuity trust scheme”;
- (c) immediately after the heading “PART XIII” the words “PENSION SCHEMES” are deleted and the words “PENSION SCHEMES, RETIREMENT ANNUITY SCHEMES AND RETIREMENT ANNUITY TRUST SCHEMES” are substituted therefor;
- (d) immediately after section one hundred and fifty-seven thereof there is inserted the following section:—

“Approval of retirement annuity schemes and trust schemes.

157A. (1) In this Part of this Law the expressions “retirement annuity scheme” and “retirement annuity trust scheme” mean, respectively, an annuity contract approved by the Administrator in accordance with the provisions of sub-section (2) of this section and a trust scheme approved by the Administrator in accordance with the provisions of sub-section (4) of this section.

(2) The Administrator may approve a contract if it is shown to the satisfaction of the Administrator that the following conditions are satisfied:—

- (a) the contract is made by an individual who is in receipt of relevant earnings subject to income tax under the provisions of this Law with a company, resident in Guernsey or carrying on business through a permanent establishment situate in Guernsey, and carrying on in Guernsey the business of granting annuities on human life;
- (b) subject to the provisions of sub-section (3) of this section, the contract does not—
  - (i) provide for the payment by the company during the life of the individual of any sum except sums payable by way of annuity to the individual; or
  - (ii) provide for the annuity payable to the individual to commence before he attains the age of sixty years or after he

attains the age  
of seventy years;  
or

(iii) provide for the  
payment by the  
company of any  
other sums except  
sums payable by  
way of annuity to  
the surviving  
spouse of the  
individual and  
any sums which,  
in the event of  
no annuity  
becoming payable  
either to the  
individual or his  
surviving spouse,  
are payable by  
way of return of  
premiums, by way  
of reasonable  
interest on pre-  
miums or by way  
of bonuses out of  
profits; or

(iv) provide for the  
annuity, if any,  
payable to the  
surviving spouse  
of the individual  
to be of a greater  
annual amount  
than that paid or  
payable to the  
individual; or

- (v) provide for the payment of any annuity otherwise than for the life of the individual or his surviving spouse; or
  - (vi) provide for the payment of any premium which, together with any other premium payable under a contract of a similar nature with the same or another company, shall exceed such limits as the Authority may from time to time by regulation prescribe;
- (c) the contract does include provision securing that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment:

Provided that the contract may give the individual the right to receive, by way of commutation of part

of the annuity payable to him, a lump sum not exceeding three times the annual amount of the remaining part of the pension and shall make any such right depend on the exercise by the individual of an election at or about the time when the annuity first becomes payable to him.

(3) The Administrator may, if he thinks fit, and subject to any conditions he thinks proper to impose, approve a contract otherwise satisfying the conditions contained in sub-section (2) of this section notwithstanding that the contract provides for one or more of the following matters—

- (a) for the payment of a lump sum on the death of an individual who died prior to the date on which the annuity would have become payable;
- (b) for the payment after the individual's death of an annuity to a dependant not the

- surviving spouse of the individual;
- (c) for the annuity payable to any person to continue for a term certain, not exceeding ten years, notwithstanding his death within that term;
  - (d) for the payment to the individual of an annuity commencing before the age of sixty years, if the annuity is payable on his becoming incapable through infirmity of body or mind of carrying on his own occupation or any occupation of a similar nature for which he is trained or fitted;
  - (e) if the individual's occupation is one in which persons customarily retire before attaining the age of sixty years for the annuity to commence before he attains that age but not before he attains the age of fifty years;

- (f) in the case of an annuity which is to continue for a term certain, for the annuity to be assignable by will, and in the event of any person dying entitled to it, for it to be assignable by his personal representatives in the distribution of the estate;
- (g) for the individual or his surviving spouse or dependant having accrued rights under a contract (in this paragraph referred to as "the annuitant") to require a sum representing those accrued rights under the contract to be paid by the company with which the contract is made to such other company, being a company which falls within the provisions of paragraph (a) of subsection (2) of this section, as he may specify, where that sum is to be applied as the premium or

other consideration for a second annuity contract made between the annuitant and that other company where such second annuity contract is approved by the Administrator under the provisions of this section.

(4) The preceding provisions of this section shall apply, with the necessary adaptations, in relation to the approval of a retirement annuity trust scheme by the Administrator as they apply in relation to the approval of a retirement annuity scheme, with the modification that for the condition as to the Company with which the contract is made, there shall be substituted a condition that the scheme—

- (a) is established under the law of the United Kingdom or of Guernsey and is administered in the United Kingdom or in Guernsey, and
- (b) is established for the benefit of individuals engaged in or connected with a parti-

cular business or occupation (or one or other of a group of occupations) and for the purpose of providing retirement annuities for them, with or without subsidiary benefits for their families or dependants, and

(c) is so established under irrevocable trusts.

(5) Any annuity payable under the terms of a contract or a retirement annuity trust scheme approved under the preceding provisions of this section to an individual who has contributed under such contract or scheme or to his surviving spouse or dependant shall, for all the purposes of this Law, be treated as earned income arising in Guernsey.

(6) For the purposes of this section a married woman's relevant earnings shall not be treated as her husband's relevant earnings, notwithstanding that her income chargeable to tax is treated as his income.

(7) Any person who is aggrieved by a condition imposed by the Administrator upon, or by the refusal by the

Administrator of, his approval of a retirement annuity scheme or a retirement annuity trust scheme under the preceding provisions of this section 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 issue to that person of the Administrator's decision.

(8) 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.

(9) In this section—

(a) the expression "relevant earnings" in relation to any individual means any income of his chargeable to tax, being—

(i) income arising in respect of emoluments from an office or employment held by

him other than a pensionable office or employment, or

- (ii) income which is chargeable under class (2) of section two of this Law and is immediately derived by him from the carrying on or exercise by him of his trade, profession or vocation either as an individual, or in the case of a partnership, as a partner personally acting therein;
- (b) the expression "pensionable office or employment" means an office or employment if, and only if, service in it is service which is taken into account for the purposes of providing for an individual, through a pension scheme approved under the provisions of section one hundred and fifty of this Law, retirement or other benefits payable on or after his retirement which

are the maximum benefits which may be provided under the provisions of that section.

(10) Any premium paid by an individual under a retirement annuity scheme and any contribution paid by an individual under a retirement annuity trust scheme shall be eligible for any allowance which may be claimable under the provisions of section thirty-six of this Law, subject to any conditions which may be applied thereunder.”;

(e) In section one hundred and fifty-eight thereof the definition of the expression “dependant” is repealed and the following definition is substituted therefor:—

““dependant” means an individual who is dependent for the ordinary necessities of life upon—

(a) an employee who is a member of a pension scheme approved under this Part of this Law, or

(b) a person who contributes under an annuity contract approved under this Part of this Law;”;

(f) the fullstop at the end of section one hundred and fifty-nine thereof is deleted and a comma and the following words are substituted therefor:—

“retirement annuity schemes and retirement annuity trust schemes.”;

- (g) in section one hundred and eighty-eight thereof the definition of the expression “pension business” is repealed and the following definition is substituted therefor:—

“pension business” means—

- (a) any contract with the trustees or other persons having the management of an approved pension scheme approved under the provisions of Part XIII of this Law; or
- (b) any contract entered into with an individual for the purposes of a retirement annuity scheme approved under the provisions of Part XIII of this Law; or
- (c) any contract entered into with the trustees of a retirement annuity trust scheme approved under the provisions of Part XIII of this Law; or
- (d) any contract with the trustees or other persons having the management of a superannuation fund to which the provisions of paragraphs (o) or (q) of section forty of this Law apply;

entered into for the purposes only of that approved scheme or fund, as the case may be;’.

Commence-  
ment.

2. This Law shall come into force on the first day of January, nineteen hundred and eighty-four.

3. (1) This Law may be cited as the Income Tax (Amendment) (Guernsey) Law, 1983. Citation and collective title.

(2) This Law and the Income Tax (Guernsey) Laws, 1975 to 1982 may be cited together as the Income Tax (Guernsey) Laws, 1975 to 1983.

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