

ORDER IN COUNCIL

VII
1979

ratifying a Projet de Loi

ENTITLED

The Income Tax (Amendment) (No. 2) (Guernsey) Law, 1979

(Registered on the Records of the Island of Guernsey
on the 21st day of August, 1979.)



ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 21st day of August, 1979, before Charles Keith Frossard, Esquire, Deputy Bailiff; present:— Stanley Walter Gavey, Esquire, O.B.E., D'Arcy George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Walter Francis Robin, Richard Alan Kinnersly, Richard Oliver Symons, Albert Richard McCartney Straw, Esquires, Frederick William Winslow Chandler, Esquire, D.S.O., D.F.C., Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Donald Pescott Plummer, Esquire and Sydney Haydn Heard, Esquire, M.B.E., jurats.

The Deputy Bailiff having this day placed before the Court an Order dated the 26th day of July, 1979 of the Counsellors of State in Council on behalf of Her Majesty, being authorised thereto by Letters Patent dated the 16th day of July, 1979, ratifying a *Projet de Loi* entitled "The Income Tax (Amendment) (No. 2) (Guernsey) Law, 1979", 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 and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney for registration on the records of that Island, of which Order in Council the tenor followeth:—

At the Court of Saint James

The 26th day of July 1979

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 16th day of July 1979, 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 18th day of July 1979 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 February 1979, the States of Deliberation at a meeting held on the 28th day of March 1979 approved a Bill or “Projet de Loi” entitled “The Income Tax (Amendment) (No. 2) (Guernsey) Law, 1979”, 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) (No. 2) (Guernsey) Law, 1979", 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 His Royal Highness The Prince Charles, Prince of Wales, 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) (No. 2) (Guernsey) Law, 1979

THE STATES, in pursuance of their Resolution of the twenty-eighth day of February, nineteen hundred and seventy-nine, 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.

**Amend-
ments to
Law of 1975.**

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

(a) in the Arrangement of Sections thereto there are inserted the following entries—

(i) immediately after the entry relating to section eighty-one thereof, the entry—
“81A Tax on certain emoluments and pensions to be paid by instalments.”;

(ii) immediately after the entry relating to section one hundred and ninety-three thereof, the entry—

“193A Penalties for contravention of regulations made under section 81A of this Law.”;

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

(b) Ordres en Conseil No. X of 1976; No. I of 1977; No. IV of 1979.

(b) subsection (4) of section fifty-one thereof is repealed and the following subsection is substituted therefor:—

“(4) Notwithstanding the provisions of subsection (1) of this section, any non-resident person who satisfies the Administrator that he is or has been employed in Guernsey in any year of charge shall, in respect of that year of charge, be entitled to a proportion of the personal and other allowances prescribed in pursuance 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, such proportion not to exceed one fifty-second part of such personal and other allowances in respect of each week or part of a week for which that person is employed in Guernsey in such year of charge:

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

(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.”;

(c) in subsection (1) of section eighty-one thereof the word “Tax” at the commencement of the said subsection is repealed and the words “Subject to the provisions of section

eighty-one A of this Law, tax” are substituted therefor;

- (d) immediately after section eighty-one thereof there is inserted the following section:—

“Tax on certain emoluments and pensions to be paid by instalments. 81A. (1) The provisions of this section shall have effect for the purpose of requiring tax to be deducted upon the making of any payment of, or on account of, any income chargeable to tax under the provisions of class (2) of section two of this Law and upon any income chargeable under any other class of the said section two specified herein, subject to and in accordance with regulations made by the Authority under this section, not withstanding—

- (a) that when the payment is made no assessment has been made in respect of the income to which that payment relates;
- (b) that such income is in whole or in part income which may be chargeable to tax

for some year of charge other than the year of charge during which the payment is made;

- (c) the provisions of subsection (1) of section forty-three of this Law which prescribe the circumstances in which the income of a married woman living with her husband shall be treated as the income of the husband.

(2) Where, on or after the first day of January, nineteen hundred and eighty—

- (a) any payment of, or on account of, emoluments is made by an employer carrying on business or exercising functions in Guernsey; or
- (b) any payment of, or on account of, a pension, superannuation or other allowance given to an individual in respect of the past

services of that individual or the past services of any deceased person is made; or

- (c) any payment, other than a payment to which paragraph (a) of this subsection applies, is made by a person carrying on business or exercising functions in Guernsey to an individual in respect of manual labour personally performed by that individual, notwithstanding that the amount of the payment may be chargeable to tax upon the recipient as income of a class mentioned in section two of this Law other than class (2) thereof;

tax shall be deducted and withheld therefrom by the person making the said payment in accordance with the provisions of this section.

1
1

(3) Any tax deducted in accordance with the provisions of subsection (2) of this section shall be applied towards the payment of any tax charged or chargeable upon the person who has borne the deduction for the year of charge in which the payment is made and for any year of charge prior to that year of charge and any penalty payable by him and where any tax so deducted is greater than such tax payable by that person and any penalty payable by him, the appropriate repayment shall be made by the Administrator.

1
1

(4) The Authority may from time to time make regulations for the purposes of carrying out the provisions of this section.

(5) Any regulations made under the provisions of subsection (4) of this section shall not have effect unless and until approved by a resolution of the States.

(6) Any tax deducted by an employer from an employee in accordance with the provisions of this section shall be payable by the employer in such manner and at such times as may be prescribed by regulations made under the provisions of subsection (4) of this section.

(7) Where an employer fails to deduct from the emoluments of any employee the tax which he is required to deduct under the provisions of this section the amount of such tax shall be payable by the employer as if it had been so deducted and where the amount of any such tax is paid by the employer—

- (a) that amount shall be deemed to be tax deducted in accordance with the provisions of subsection (2) of this section;
- (b) that amount shall be recoverable by

the employer from the employee as a civil debt due to the employer;

- (c) that amount shall not be recoverable by the Administrator from the employee.

(8) Every agreement for payment without deduction of tax of any emoluments to which this section relates shall be void.

(9) Where an employee proves to the satisfaction of the Administrator that he has borne a deduction of tax from his emoluments he shall be entitled to have such deduction treated as a payment of tax made by him.

(10) In the event of any proceedings "en désastre" in respect of the personal property of an employer or of the compulsory or voluntary winding up of the affairs of an employer who is a body corporate, the amount of any tax

deducted by the employer from the emoluments of an employee in accordance with the provisions of this section which has not been paid shall rank for payment next after any debt privileged under the Law entitled "Loi au sujet des Privilèges pour Loyers des Maisons en cas de Faillite ou de Déconfiture" registered on the fourth day of January, eighteen hundred and ninety (c), and in priority to all other debts.

(11) Where an employee objects to the particulars shown on a notice issued to him by the Administrator specifying the manner in which his employer is to calculate the amount of tax to be deducted from his emoluments (hereinafter called a "coding notice") he may appeal to the Authority in accordance with the provisions of Part VII of this Law and for the

(c) Ordres en Conseil Vol. II, p. 318.

purposes of the said Part VII the coding notice shall be deemed to be a direction made by the Administrator.

(12) In this section and in any regulations made hereunder—

- (a) the person making any of the payments referred to in paragraph (b) or (c) of subsection (2) of this section shall be deemed to be the employer of the person to whom the payment is made;
- (b) the recipient of such payment shall be deemed to be the employee of the person making the payment;
- (c) the amount of such payment shall be deemed to be an emolument of employment.”;
- (e) in section eighty-three thereof, after the word “tax” there are inserted the words and commas “, including any tax deducted or deductible under the provisions of section eighty-one A of this Law,”;

- (f) immediately after section one hundred and ninety-three thereof there is inserted the following section:—

“Penalties for contravention of regulations made under section 81A of this Law. 193A (1) An employer who fails to submit to the Administrator any form which he is required to submit by regulations made under the provisions of section eighty-one A of this Law within the time prescribed by such regulations 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.

(2) An employer who fails to comply with any provision of such regulations requiring him to provide any document to an employee at or within a time prescribed by the regulations 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 the original penalty during which the failure continues.

(3) An employer who fails or neglects to pay any tax which he has deducted or which he is required to deduct in accordance with the provisions of section eighty-one A of this Law within the time prescribed for such payment by regulations made under the provisions of the said section shall be liable to a penalty calculated at a rate not exceeding five per centum per mensem of the amount of such tax.

(4) In this section the expression "employer" includes a person making any of the payments referred to in paragraph (b) or paragraph (c) of subsection (2) of section eighty-one A of this Law and the

expression "employee" includes a person receiving any such payment.

Amendment to Law of 1979.

2. Section three of the Income Tax (Amendment) (Guernsey) Law, 1979(d), is hereby repealed and the following section is hereby substituted therefor—

"Citation. 3. This Law may be cited as the Income Tax (Amendment) (Guernsey) Law, 1979."

Citation and collective title.

3. (1) This Law may be cited as the Income Tax (Amendment) (No. 2) (Guernsey) Law, 1979.

(2) This Law, the Income Tax (Guernsey) Laws, 1975 to 1977, and the Income Tax (Amendment) (Guernsey) Law, 1979, may be cited together as the Income Tax (Guernsey) Laws, 1975 to 1979.

R. H. VIDELO,
Her Majesty's Greffier.