

PROJET DE LOI

ENTITLED

The Income Tax (Business Profits) (Guernsey) (Amendment) Law, 2004 *

[CONSOLIDATED TEXT]

NOTE

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* No. V of 2005; as amended by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 472); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. ** of 2018).

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ARRANGEMENT OF SECTIONS

- 1-18. Amendment of 1975 Law.
- 19. Power to make Ordinances; and transitional provisions.
- 20. Interpretation.
- 21. Citation.
- 22. Commencement.

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The Income Tax (Business Profits) (Guernsey) (Amendment) Law, 2004

THE STATES, in pursuance of their Resolution of the 29th September, 2004^a, 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.

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975, as amended^b ("**the Income Tax Law**"), is further amended in accordance with the provisions of this Law.
2. In sections 5(3) and 5(4)^c of the Income Tax Law the phrase ", other than income from the carrying on of a business," is repealed.
3. For the proviso to section 6(1) of the Income Tax Law substitute the

^a Article X of Billet d'État No. XIV of 2004.

^b Ordres en Conseil Vol XXV, p. 124; Vol XXVI, pp. 146, 200 and 292; Vol XXVII, pp. 84, 118, 200, 333 and 565; Vol XXVIII, pp. 184, 278, 353 and 409; Vol XXIX, p. 214; Vol XXXI, pp. 406 and 473; Vol XXXII, p. 307; No. IV of 1991; No. VI of 1992; Nos. IV and VIII of 1993; No. XXV of 1994; Nos. III and VII of 1995; No. V of 1996; Nos. IV and XXII of 1997; Nos. II and VI of 1999; No. IV of 2000; Nos. VI and XVII of 2001; No. VII of 2002; Nos. IV, XVIII and XXVI of 2003; the Income Tax (Guernsey) (Amendment) Law, 2004; the Income Tax (Guernsey Tax Tribunal) (Amendment) Law, 2004; and the Income Tax (Pension Amendments) (Guernsey) Law, 2004.

^c Subsections (3) and (4) were substituted by Order in Council No IV of 2000.

following –

"Provided that in the case of a business the year of computation shall be the accounting period ending within the year of charge."

4. In section 6(2) of the Income Tax Law –

(a) in paragraph (b) the words "not exceeding twelve months" are repealed, and

(b) after paragraph (b) add the following proviso to subsection (2) –

"Provided that in the case of a business every year of charge must have an accounting period ending within it, except the year of charge in which the business is commenced; and where a business is commenced, the first year of charge of the business shall be the year of charge within the first accounting period of the business (which shall not exceed 18 months) ends."

5. Section 6(3) of the Income Tax Law is repealed.¹

6. In section 6(4) of the Income Tax Law after the word "Where" insert "the Administrator makes a determination under subsection (2)(b), and".²

7. After section 8(5) of the Income Tax Law, insert the following subsections –

"(6) Subject to subsection (7), the office of director, by

whatever name called, of a company incorporated in Guernsey shall be treated as held in Guernsey.

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

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

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

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

(ii) the company has been granted an exemption from tax under an Ordinance made under section 40A." ³

8. Sections 30, 31(1), 33, 35 and 42(2) of the Income Tax Law are repealed.

9. In section 54(1) of the Income Tax Law, paragraph (b) of the proviso is repealed.

10. For section 57(2) of the Income Tax Law substitute –

" (2) Subsection (1) of this section shall, in relation to a

dividend paid by a company resident in Guernsey, be construed as authorising the deduction of tax from the full amount paid out of profits and gains of the company which have been charged, or which are chargeable, to tax."⁴

11. In section 61 of the Income Tax Law the words "and the credit shall be applied towards the payment of any tax and any penalty which may be payable by that person" are repealed.

12. In section 67 of the Income Tax Law after "transaction" wherever appearing insert "or arrangement".⁵

13. In section 109(1) of the Income Tax Law the words "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" are repealed.

14. In section 118(2) of the Income Tax Law, the proviso is repealed.

15. Sections 118(3) and 122(5) of the Income Tax Law are repealed.

16. In section 137 of the Income Tax Law –

- (a) immediately after subsection (1)(c) for the words "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" substitute the following –

"then –

- (i) any income or profits, or that person's share of any income or profits, of the business in respect of which the loss was sustained, or (as the case may be),
- (ii) any income or profits arising or accruing, or deemed to arise or accrue, to that person from the source in respect of which the loss was sustained,

which, but for this section, would be assessable to tax in the previous year of charge, shall be reduced by the amount of the excess:",

- (b) for subsection (2) substitute the following –

"(2) Nothing in subsection (1) of this section shall prevent tax for the said year of charge being charged and payment being enforced but an appropriate repayment of tax shall be made by the Administrator provided that the claim for repayment under this section is made within two years after the end of the year of charge in which the loss was sustained."⁶

17. Section 142A(4)(a)^d of the Income Tax Law is repealed.

18. In section 209(1) of the Income Tax Law, in the definition of "year of computation", after the words "means the year" insert "or other period".

^d Section 142A was inserted by Order in Council No IV of 1997.

Power to make Ordinances; and transitional provisions.

19. (1) The States, if they consider it necessary or expedient to do so for the purpose of carrying into effect this Law and the amendments to the Income Tax Law effected by it, may by Ordinance amend any provision of the Income Tax Law insofar as it concerns or relates to the taxation of income from the carrying on of a business.

(2) The [Policy & Resources Committee] ("**the [Committee]**") may by regulation make such provisions as they consider necessary or expedient for effecting the transition, in relation to the taxation of income from the carrying on of a business, from the law in force immediately before the commencement of this Law to the law which will be in force at the termination of any transitional arrangements provided for by the regulations.

(3) Regulations under this section –

- (a) may, without limitation, include anti-avoidance provisions and provisions enabling the [Director] to make such adjustments to liabilities, and to grant such reliefs, as he thinks fit,
- (b) may provide that any provision of the Income Tax Law shall have effect subject to such exceptions, adaptations and modifications as are specified in the regulations, and
- (c) shall be laid before a meeting of the States as soon as possible after being made and, if at that or the next meeting, the States resolve that the regulations be annulled, they shall cease to have effect, but without prejudice to anything done under them or to the making

by the [Committee] of new regulations.

- (4) An Ordinance and regulations under this section –
 - (a) may be amended or repealed by a subsequent Ordinance or regulations, as the case may be,
 - (b) may contain such consequential, incidental and supplementary provisions as may appear to be necessary or expedient, including (without limitation) provision as to the creation and punishment of offences.

(5) Any power conferred by this Law to make an Ordinance or regulations may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

NOTES

In section 19,

the words in, first, the first and, second, the second pairs of square brackets in subsection (2) and, third, the word "Committee" in square brackets wherever else occurring were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 15(a), section 5(1), Schedule 3, paragraph 1 and section 5(1), Schedule 3, paragraph 1, with effect from 1st May, 2016;

the word in square brackets in paragraph (a) of subsection (3) was substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.⁷

The following Regulations have been made under section 19:

Income Tax (Business Profits) (Commencement and Transitional Provisions) (Guernsey) Regulations, 2005.

Interpretation.

20. In this Law –

"[Committee]" means the [Policy & Resources Committee],

"Income Tax Law" means the Income Tax (Guernsey) Law, 1975, as amended.

NOTES

In section 20, the words in the first and second pairs of square brackets in the definition of the expression "Committee" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 1 and section 5(1), Schedule

3, paragraph 1, with effect from 1st May, 2016.

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Citation.

21. This Law may be cited as the Income Tax (Business Profits) (Guernsey) (Amendment) Law, 2004.

Commencement.

22. By virtue of the States' resolution of the 29th September, 2004^e, and under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992^f, this Law shall have effect, from the 1st January, 2005, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey, and shall come into force on the day appointed by regulations of the [Department].

NOTE

The Law was brought into force on 1st September, 2005 by the Income Tax (Business Profits) (Commencement and Transitional Provisions) (Guernsey) Regulations, 2005, regulation 1.

^e Article X of Billet d'État No. XIV of 2004.

^f Order in Council No. XI of 1992.

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- ¹ For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
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- ⁴ For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- ⁵ For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- ⁶ For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- ⁷ These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.