

Island of  Guernsey

Ordinance of the States **XXX**  
1989

Made ... .. 14th December, 1989.  
Deemed to have  
commenced 1st January, 1989.

**The Income Tax (Exempt Bodies)  
(Guernsey) Ordinance, 1989**

THE STATES, in pursuance of their Resolutions of the 15th day of December 1988 and the 26th day of July 1989 and in exercise of the powers conferred upon them by sections 40A and 40B of the Income Tax (Guernsey) Law, 1975(a), hereby order:—

1. A body is exempt from tax for any year of charge on its income other than Guernsey source income, and is accordingly to be treated (whether or not its Board meetings are held in Guernsey) as not being resident in Guernsey in that year of charge, if—

Eligibility  
for  
exemption  
from tax.

(a) it is a body of a description set out in Schedule 1; and

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(a) Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Nos. VIII and XV of 1983; Nos. II and IX of 1984; No. XIII of 1986; Nos. XIV and of 1989.

- (b) it applies for, and is granted, such exemption in accordance with the provisions of this Ordinance; and
- (c) it fulfils the appropriate conditions of eligibility for exemption specified in Schedule 2:
  - (i) in the case of a category A, B, or C body, on the date with effect from which the exemption is granted;
  - (ii) in the case of a category D company (but subject to paragraph 4 of Schedule 3), throughout the year of charge for which the exemption is granted.

Application  
for  
exemption.

2. (1) An application for an exemption from tax shall—

- (a) be made to the Authority in writing, and be in such form (if any) and signed by such person (if any) as the Authority may from time to time determine;
- (b) be made:
  - (i) in the case of a Guernsey company, on or before 31st March in the year of charge in respect of which it is made or, if later, within three months of the date of registration of its constitutive documents;
  - (ii) in any other case, not later than three months after the first Board meeting of the body in Guernsey during the year of charge for which it is made;

but the Authority may accept a later application if it is satisfied that there is reasonable cause for its not having been made within the time specified in this paragraph.

(2) Every such application shall be accompanied by—

- (a) sufficient information, verified in such manner (if any) as the Authority may require, to satisfy the Authority that the appropriate conditions of eligibility for exemption from tax specified in Schedule 2:
  - (i) have been fulfilled; or
  - (ii) will be fulfilled when the body commences to operate; or
  - (iii) in the case of an existing body, will be fulfilled with effect from the beginning of the year of charge for which the exemption is granted; and
- (b) the annual fee; and
- (c) in the case of a category A, B or C body:
  - (i) details of the investment policy to be pursued; and
  - (ii) a copy of its constitutive documents; and
  - (iii) a copy of the prospectus or similar document to be issued to investors; and
  - (iv) such other particulars as the Authority considers necessary to enable it to determine whether the exemption should be granted.

3. (1) The Authority, or a designated subcommittee comprising at least two members thereof, shall consider as soon as practicable any application made in accordance with section 2 for exemption of a body as a category A, B, or C body, and may—

Grant or refusal of exemption.

- (a) grant to it exemption from tax; or
- (b) refuse to grant such exemption; or
- (c) grant such exemption subject to such reasonable conditions (in addition to the appropriate conditions specified in Schedule 2) as the Authority may think it necessary or expedient to impose.

(2) The Authority shall consider as soon as practicable any application made in accordance with section 2 for exemption of a company as a category D company, and—

- (a) if satisfied that the company is a category D company and that the conditions specified in respect of category D companies in Schedule 2—
  - (i) are fulfilled; or
  - (ii) will be fulfilled when the company commences to operate; or
  - (iii) in the case of an existing company, will be fulfilled with effect from the beginning of the year of charge for which the exemption is granted,

shall grant to it exemption from tax on its income other than Guernsey source income;  
or

- (b) if not so satisfied, shall refuse to grant such exemption.

(3) The Authority shall, as soon as practicable, notify the applicant in writing of the decision made in respect of his application and, if that decision is to refuse to grant the exemption applied for, of the reasons for that refusal.

4. (1) A body to which an exemption from tax has been granted for a year of charge may apply to the Authority for the renewal of that exemption for the next year of charge. Renewal of exemption previously granted.

(2) A renewal application shall—

(a) be made in writing, and in such form (if any) and signed by such person (if any) as the Authority may from time to time determine; and

(b) be made on or before the 31st March of the year of charge for which it is made (but the Authority may accept a later application if it is satisfied that there is reasonable cause for its not having been made within that time); and

(c) be accompanied by:

(i) sufficient information, verified in such manner (if any) as the Authority may require, to satisfy the Authority that the conditions of the exemption (including any conditions imposed as mentioned in section 3(1)(c)) continue to be fulfilled; and

(ii) the annual fee.

(3) Upon receipt of a renewal application made in accordance with this section the Authority shall—

(a) if it is satisfied as to all of the matters mentioned in paragraph (c) of subsection (2) of this section, renew the exemption from tax for the year of charge for which the renewal application is made, and notify the applicant accordingly in writing as soon as practicable; or

- (b) if it is not so satisfied:
- (i) institute such inquiries as it considers necessary; then
  - (ii) decide whether to renew the exemption; and
  - (iii) notify the applicant in writing as soon as practicable of its decision and, if that decision is to refuse to renew the exemption, of the reasons for refusal.

**Annual Fee.** 5. (1) The annual fee—

- (a) in the case of an application made under section 2 in respect of a category D company whose constitutive documents are registered, or which holds its first Board meeting in Guernsey, during the year of charge for which the application is made, is

$$\frac{(\pounds 500)}{(12)} \quad \times \quad (M + 1),$$

where M is the number of complete months between the date of registration of its constitutive documents, or the date of its first Board meeting in Guernsey, and the end of that year of charge; and

- (b) in any other case, is  $\pounds 500$ .

(2) When an application under section 2 or section 4 is refused and the refusal is finally confirmed, the annual fee accompanying the application shall be refunded to the applicant.

(3) For the purposes of this section a refusal is “finally confirmed”—

- (a) when the time limited by the Law for a request to state and sign a case for submission to the Royal Court has expired without such a request being made; or
- (b) if such a request is made, when the Royal Court has determined every question of law arising on the case and has affirmed the refusal.

6. Without prejudice to any other provision of this Ordinance, the Authority may from time to time—

Requirements to provide information.

- (a) require any category A, B or C body to furnish it with the name and address of every person who, on a date specified by the Authority, was resident in Guernsey and had any beneficial interest in the body, together with details of the nature and extent of the beneficial interest of each such person;
- (b) require any body to which any exemption from tax has been granted to provide such information (other than information required under condition 2 of Category D in Schedule 2 to be disclosed to the Financial Services Commission), verified in such manner (if any) as it may specify, in order to satisfy itself that the body continues to fulfil the conditions (including any conditions imposed as mentioned in section 3(1)(c)) of the exemption.

7. (1) In this Ordinance, unless the context otherwise requires,—

Interpretation and construction.

“the Administrator” means the Administrator of Income Tax referred to in section 205 of the Law;

“the annual fee” means the fee specified in section 5(1);

“the Authority” means the Authority referred to in section 204 of the Law;

“beneficial interest”, in relation to a company, means any interest, whether vested or contingent and whether direct or through a body corporate or trust, and a person has a beneficial interest in a company—

(a) if he has a right to acquire or dispose of any share or debenture in that company, or any interest therein, or to vote in respect thereof; or

(b) if his consent is necessary for the exercise of any of the rights of other persons interested in the company; or

(c) if other persons interested in the company can be required or are accustomed to exercise their rights in accordance with his instructions;

“Board meeting” in relation to a company means a meeting of its directors (by whatever name called), and in relation to any other body means a meeting of the members of that body’s governing organ (by whatever name called);

“constitutive documents” means—

(a) in the case of a Guernsey company, the memorandum and articles of association;

(b) in the case of a unit trust, the trust deed;

- (c) in the case of any other body, the documents dealing collectively with the same or similar rights and duties as the memorandum and articles of association of a Guernsey company;
- “custodian services” means the services provided by a custodian who has the custody and care of property but not its beneficial ownership or management;
- “the Financial Services Commission” means the Guernsey Financial Services Commission, established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987(b);
- “Guernsey” includes Alderney and Herm;
- “Guernsey company” means a body incorporated under the Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée registered on 21st March 1908(c) (the Guernsey Company Law) or under the Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée registered on 22nd May 1894(d) (the Alderney Company Law);
- “Guernsey source income” means income arising or accruing from any source in Guernsey other than a relevant bank deposit;
- “the Law” means the Income Tax (Guernsey) Law, 1975;
- “limited partnership” means an arrangement entered into under the laws of a place outside Guernsey between two or more persons, under which the Authority is satisfied that—

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(b) Order in Council No. XIX of 1987.  
 (c) Ordres en Conseil Vol. IV, p. 178.  
 (d) Ordres en Conseil Vol. II, p. 451.

- (a) one or more of them is, or are jointly and severally, liable for all debts and obligations to third parties incurred pursuant to the arrangement; and
- (b) the others have (by whatever means) contributed specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amounts of their contributions;

“managerial and secretarial services” means, in relation to a unit trust or investment company, the managerial, secretarial, administrative and clerical functions, conducted and carried out generally in Guernsey to the satisfaction of the Authority, of the unit trust and of any company beneficially owned by it or, as the case may be, of the investment company and of any company wholly owned by it;

“quoted body corporate” means a body corporate in which the shares may be bought and sold in a market which is recognised as a stock exchange within the meaning of the law relating to stock exchanges of the country or territory where the market is established;

“relevant bank deposit” means a deposit of money with a person registered, or exempt from any requirement to register, under the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971(e);

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(e) Recueil d'Ordonnances Tome XVII, p. 225; Tome XVIII, pp. 24 and 55; Ordinance No. XXVII of 1985; Nos. IX and XVIII of 1988.

“renewal application” means an application made by a body which has been granted an exemption from tax for a year of charge for the renewal of that exemption for the next year of charge;

“tax” means income tax;

and other words and expressions defined in the Law have the meanings given to them by the Law.

(2) For the purposes of this Ordinance—

(a) a body which has been granted an exemption from tax is not to be regarded as having Guernsey source income by reason only of the fact that—

(i) its directors or other members of its governing organ (by whatever name called), or any of them, are resident in Guernsey; or

(ii) its Board meetings, or any of them, take place in Guernsey;

(b) a person is not to be regarded as being resident in Guernsey if that person is exempt from tax by virtue of section 40 of the Law.

(3) In this Ordinance, unless the context otherwise requires, a reference—

(a) to a category A, B, C, or D body, refers to a body described under that category in Schedule 1;

(b) to a numbered provision or Schedule, refers to the provision or Schedule which is so numbered in this Ordinance;

(c) to an enactment, refers to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment.

(4) This Ordinance and the Law shall be construed as one.

**Incidental and administrative provisions.**

8. Schedule 3 contains incidental and administrative provisions which shall have effect.

**Repeal, savings and transitional provisions.**

9. (1) The Income Tax (Exempted Companies and Trusts) (Guernsey) Ordinance, 1984(f) is repealed.

(2) Schedule 4 contains savings and transitional provisions which shall have effect.

**Citation.**

10. This Ordinance may be cited as the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989.

**Deemed commencement.**

11. This Ordinance shall be deemed to have come into force on 1st January, 1989.

## SCHEDULE 1      Section 1(a)

*Bodies eligible for exemption from tax*

## CATEGORY A

- (i) A unit trust being any arrangement made for the purpose, or having the effect, of providing facilities for participation by members of the public as beneficiaries under a trust established in Guernsey, in profits or income arising from the acquisition, holding, management or disposal of property, and
- (ii) a company which is in the beneficial ownership of such a unit trust.

## CATEGORY B

- (i) An investment company registered in Guernsey, the activities of which consist wholly or mainly in the acquisition, holding, management or disposal of property and the objects of which provide facilities for participation by members of the public in the profits or income arising therefrom, and
- (ii) a company which is a wholly owned subsidiary of such a company.

## CATEGORY C

- (i) An investment company registered in a place outside Guernsey, or a limited partnership formed under the laws of a place outside Guernsey, the activities of which consist wholly or mainly in the acquisition, holding, management or disposal of property and the constitutive documents of which

provide facilities for participation by members of the public in the profits or income arising therefrom, and

- (ii) a company which is a wholly owned subsidiary of such a company, or which is in the beneficial ownership of such a limited partnership.

#### CATEGORY D

A company which—

- (a) does not fall within category A, B or C; and
- (b) is not registered or authorised under, or exempted from a requirement to be so registered or authorised by virtue of, any provision of:
  - (i) the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971; or
  - (ii) the Insurance Business (Guernsey) Law, 1986(g).

SCHEDULE 2      Sections 1(c),  
2(2)(a) and 3(2)

*Conditions of eligibility for exemption from tax*

CATEGORY A

1. That the unit trust has contracted with, or has arranged for, a person resident in Guernsey to provide managerial and secretarial services in respect of its affairs for remuneration calculated on an arm's length basis.
2. That no investment or other property situated in Guernsey, other than a relevant bank deposit or an interest in another body to which an exemption from tax has been granted under this Ordinance, is acquired or held.

CATEGORY B

1. That the principal part of the capital of the company is derived from the issue of preference shares which are, or at the option of the company are liable, to be redeemed.
2. That the company has contracted on an arm's length basis with a person resident in Guernsey for the provision of managerial and secretarial services and, where appropriate, custodian services in respect of its affairs, unless the Authority is satisfied that in the circumstances of a particular case it would be unreasonable to require that custodian services are contracted with a person resident in Guernsey.
3. That no investment or other property situated in Guernsey, other than a relevant bank deposit

or an interest in another body to which an exemption from tax has been granted under this Ordinance, is acquired or held.

### CATEGORY C

1. That the body has contracted with a person resident in Guernsey for the provision of managerial and secretarial services in respect of its affairs or has consented to a substantial part of such services being sub-contracted to a person resident in Guernsey, for remuneration calculated on an arm's length basis.
2. That no investment or other property situated in Guernsey, other than a relevant bank deposit or an interest in another body to which an exemption from tax has been granted under this Ordinance, is acquired or held.
3. In the case of an investment company, that—
  - (a) the principal part of the capital of the company is derived from the issue of shares of a class, by whatever name called, which have preference over shares of other classes, and which are, or at the option of the company are liable, to be redeemed, or
  - (b) the entire capital of the company is derived from the issue of shares of one class which are, or at the option of the company are liable, to be redeemed.

### CATEGORY D

1. That no individual solely or principally resident in Guernsey, and no company resident in Guernsey, has any beneficial interest in the company, other than an interest which that person has—

- (a) as the holder of a share or debenture in a quoted body corporate which itself has a beneficial interest in the company; or
  - (b) as a loan creditor of the company, if that person is registered under, or exempted from a requirement to be registered by virtue of, the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971;
- or
- (c) as a nominee or trustee.
2. That disclosure has been made to the Financial Services Commission of—
    - (a) the names and addresses of the persons who are for the time being the ultimate beneficial owners of the shares of the company, or, where those shares are held on trust, the names and addresses of the trustees, the settlor, and any other person who provided the trust property, and the name of the trust; and
    - (b) where the Financial Services Commission so requests, the names of all persons who for the time being have a beneficial interest in the company.
  3. That the existence of any source of income in Guernsey other than a relevant bank deposit, and such details as the Administrator may require of the company's income arising or accruing from any such source, are notified to the Administrator.
  4. That no corporation tax payable by the company in respect of any previous year of charge, and no income tax for which the company has been assessed in respect of any previous year of charge, remains unpaid.

*Incidental and administrative provisions**Performance of Authority's functions by Administrator*

1. The Authority's functions under this Ordinance in relation to category D companies shall be performed on its behalf by the Administrator, and
  - (a) any application made to the Administrator, and
  - (b) any requirement or determination made, any consideration or notification given, any exemption granted or refused, and any inquiry instituted, by the Administrator

in relation to a category D company shall be deemed, subject to paragraph 2 of this Schedule, to have been made to, or, as the case may be, to have been made, given, granted, refused or instituted by, the Authority.

2. Notwithstanding paragraph 1 of this Schedule, a person aggrieved by any decision made by the Administrator for the purposes of this Ordinance under powers conferred on him by that paragraph may appeal to the Authority (and the powers, rights and duties of the Authority, the Administrator and the appellant shall in that event be the same) as if the decision were an order made by the Administrator under the Law.

*Role of H.M. Greffier*

3. (1) If an application for exemption (including a renewal application) is submitted by a category D Guernsey company to Her Majesty's Greffier, and is accompanied by the annual fee and the information required by section 2(2) or section 4(2) as the case may be, then—

(a) Her Majesty's Greffier shall as soon as practicable forward the application and accompanying information to the Authority, together with a certificate as to payment of the annual fee and the date of receipt of the application; and

(b) the application shall be deemed to have been made to the Authority on the date so certified.

(2) This paragraph applies in the case of a company incorporated under the Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée registered on 22nd May 1894 (the Alderney Company Law) with the substitution for "Her Majesty's Greffier", wherever appearing, of "the Clerk of the Court of Alderney".

*Power to grant Relief from loss of category D exempt status*

4. (1) This paragraph applies when a category D company to which an exemption from tax has been granted for any year of charge ceases in the course of that year of charge to fulfil a condition of eligibility specified in respect of category D companies in Schedule 2.

- (2) If, in a case to which this paragraph applies, the Authority is satisfied that the event or circumstance which has led to the company's failure to continue to fulfil the condition concerned was beyond the control of the company, the Authority may determine that, notwithstanding any other provision of this Ordinance, the company shall remain eligible for the exemption from tax granted to it for the year of charge concerned provided that it—
- (a) takes all necessary steps to satisfy the Authority that it is again complying with all appropriate conditions of eligibility by a specified date; and
  - (b) complies with such other reasonable conditions as the Authority may determine.

## SCHEDULE 4      Section 9(2)

*Savings and transitional provisions**Continued application of repealed Ordinance*

1. It is hereby declared for the purposes of section 19 of the Interpretation (Guernsey) Law, 1948(h) that this Ordinance repeals and re-enacts with modifications those provisions of the Income Tax (Exempted Companies and Trusts) (Guernsey) Ordinance, 1984 relating to category A, B and C companies and trusts.
2. Without prejudice to the general effect of paragraph 1 of this Schedule, but subject to paragraph 4 of this Schedule.—
  - (a) any exemption from tax granted under the Income Tax (Exempted Companies and Trusts) (Guernsey) Ordinance, 1984 before 1st January 1989 shall be deemed to have been granted under section 3 of this Ordinance; and
  - (b) all other rights and obligations arising under or by virtue of the Income Tax (Exempted Companies and Trusts) (Guernsey) Ordinance, 1984 shall continue to apply and may be enforced as if this Ordinance had not been passed.

*Existing Guernsey companies: beneficial ownership changes*

3. In the case of a Guernsey company whose constitutive documents were registered before

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(h) Ordres en Conseil Vol. XIII, p. 355.

1st January 1989, condition 2 under category D in Schedule 2 does not apply until 1st January 1991; but in the interests of clarity it is hereby declared that this paragraph does not in any way alter the applicability of condition 1 under category D in that Schedule to such a company.

*Existing investment schemes: partial refund*

4. (1) This paragraph applies where an existing category A, B or C company or trust has been granted an exemption from tax in accordance with the Income Tax (Exempted Companies and Trusts) (Guernsey) Ordinance, 1984 in respect of the year of charge 1989 and has paid the appropriate fee according to the scale set out in section 5(1) of that Ordinance.
- (2) Where this paragraph applies, the company or trust concerned shall be entitled to be repaid the difference between £500 and the fee which it has paid.

**K. H. TOUGH,**

**Her Majesty's Greffier.**