

Island of  Guernsey

Ordinance of the States **XXII**

**1984**

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Made ... .. 25th July, 1984.  
Came into Operation ... .. 25th July, 1984.

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**The Income Tax (Exempted Companies and Trusts) (Guernsey) Ordinance, 1984**

THE STATES, in pursuance of their Resolution of the 28th day of July, 1983, and in exercise of the powers conferred upon them by sections 40A(1) and 40B(1) of the Income Tax (Guernsey) Law, 1975, as amended(a), hereby order:—

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

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

“custodian services” means the services provided by a custodian who has the custody and care of property, but not its beneficial ownership or management;

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(a) Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, p. 146; Vol. XXVI, p. 200; No. IV of 1979; No. VII of 1979; No. II of 1980; No. VIII of 1981; No. XI of 1982; No. XV of 1983; No. XI of 1984.

“the foreign life fund” of a life assurance company means a fund which derives only from policies written on the lives of individuals who are not resident for tax purposes in Guernsey, Alderney or Herm;

“the Law” means the Income Tax (Guernsey) Law, 1975, as amended;

“manager” means, in relation to a unit trust or company, such person or persons who for reward carry out or undertake some or all of the services referred to in this section, other than custodian services;

“managerial and secretarial services” means, in relation to a unit trust or company, the provision of managerial, secretarial, administrative and clerical functions conducted and generally carried out in Guernsey to the satisfaction of the Authority; and for the purpose of this definition, the managerial, secretarial, administrative and clerical functions of a unit trust or company shall include those of any company beneficially owned by the unit trust or wholly owned by the company.

(2) Any reference in this Ordinance to any other enactment shall be construed as a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment, including this Ordinance.

2. The following categories of unit trusts or companies, as the case may be, may apply to the Authority for exemption from income tax:—

## CATEGORY A.

- (i) a unit trust being any arrangement made for the purpose, or having the effect, of providing facilities for the 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 securities or any other property whatsoever, and
- (ii) any company which is in the beneficial ownership of such 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 securities or any other property whatsoever and the objects of which provide facilities for the participation by members of the public in the profits or income arising therefrom, and
- (ii) any company which is a wholly owned subsidiary of such company.

## CATEGORY C.

- (i) an investment company registered in a place outside the Channel Islands and the United Kingdom, the activities of which consist wholly or mainly in the acquisition, holding, management or disposal of securities or any other property whatsoever and the objects of which provide facilities for the participation by members of the public in the profits or income arising therefrom, and

- (ii) any company which is a wholly owned subsidiary of such company.

Manner and form in which exemption is claimed and primary conditions to be fulfilled.

3. (1) For the purposes of claiming exemption under section 40A of the Law, a unit trust or company shall:—

- (a) make application in writing to the Authority;
- (b) submit, with the application:—
- (i) details of the investment policy to be pursued;
  - (ii) a copy of its memorandum and articles of association in the case of a company;
  - (iii) a copy of its trust deed in the case of a unit trust;
  - (iv) a copy of the prospectus or similar document to be issued to investors;
  - (v) the appropriate annual fee according to the scale set out in section 5(1) of this Ordinance;
  - (vi) such other particulars as are necessary to enable the Authority to determine whether exemption should be granted;
- (c) submit with the application sufficient information to satisfy the Authority that the primary conditions contained in subsection (2) of this section have been fulfilled or will be fulfilled when the unit trust or company commences to operate or in the case of an existing unit trust or company, from the date on which exemption is to be granted.

(2) The primary conditions referred to in the preceding subsection of this section are as follows:—

- (a) in respect of unit trusts within Category A:—

- (i) that units in the unit trust may not be beneficially owned either directly or indirectly by or on behalf of any person resident in Guernsey other than the manager of such trust in the ordinary course of his business:

PROVIDED that if prior to the 27th July, 1983 such units were so beneficially owned as aforesaid by any person resident in Guernsey and an undertaking in writing is given to the Authority that after the said date no such units have been or will be issued as aforesaid, the Authority may deem this condition to be fulfilled subject to such further conditions as it may consider necessary or expedient to impose;

- (ii) 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;

(b) in respect of companies within Category B:—

- (i) 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;

- (ii) that no such preference shares may be beneficially owned either directly or indirectly by or on behalf of any person resident in Guernsey other than the manager of such company in the

ordinary course of his business: PROVIDED that if prior to the 27th July, 1983 such preference shares were so beneficially owned as aforesaid by any person resident in Guernsey and an undertaking in writing is given to the Authority that after the said date no such shares have been or will be issued as aforesaid, the Authority may deem this condition to be fulfilled subject to such further conditions as it may consider necessary or expedient to impose;

(iii) where there are shares in the company other than the preference shares referred to in the preceding sub-paragraphs of this paragraph no such shares may be beneficially owned either directly or indirectly by or on behalf of a person resident in Guernsey if such shares rank for a right to any dividend, or on the winding-up of the company, rank for any surplus on such winding-up apart from the return of paid-up capital;

(iv) 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;

(c) in respect of companies within Category C:—

(i) 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;

(ii) that no such redeemable shares may be beneficially owned either directly or indirectly by or on behalf of any person resident in Guernsey other than the manager of the company in the ordinary course of his business:

PROVIDED that if prior to the 27th July, 1983, such redeemable shares were so beneficially owned as aforesaid by any person resident in Guernsey and an undertaking in writing is given to the Authority that after the said date no such shares have been or will be issued as aforesaid, the Authority may deem this condition to be fulfilled subject to such further conditions as it may consider necessary or expedient to impose;

- (iii) where there are shares in the company other than the redeemable shares referred to in the preceding sub-paragraphs of this paragraph no such shares may be beneficially owned either directly or indirectly by or on behalf of any person resident in Guernsey if such shares rank for a right to any dividend, or on the winding-up of the company, rank for any surplus on such winding-up apart from the return of paid-up capital;
  - (iv) that the company 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;
  - (d) in respect of all Categories, that no investment or property situated in Guernsey is acquired or held other than money deposited with a bank or other person registered or exempted from the requirement to register under the provisions of the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971, as amended(b).
- (3) For the purposes of this section the expression "resident in Guernsey" shall mean a person who is resident in Guernsey under the provisions of section 3 or 4 of the Law but shall not include any of the following:—

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(b) Recueil d'Ordonnances Tome XVII, p. 225; Tome XVIII, p. 55; No. XXXV of 1980.

- (i) any body of persons, trustees or company exempt from Income Tax by virtue of the provisions of section 40 of the Law;
- (ii) the foreign life fund of a life assurance company.

4. (1) Upon receipt of an application for exemption under section 40A of the Law, the Authority, or a designated sub-committee comprising at least two members thereof, shall as soon as may be practicable consider such application and may:—

Method of granting exemption.

- (a) grant the unit trust or company, as the case may be, exemption from income tax, or
- (b) refuse to grant such exemption, or
- (c) grant exemption subject to such reasonable secondary conditions as the Authority may think it necessary or expedient to impose.

(2) Where the decision of the Authority is to grant exemption under the provisions of section 40A of the Law, the Authority shall notify, in writing, the applicant of its decision as soon as may be practicable.

(3) Where the decision of the Authority is to refuse to grant such exemption, the Authority shall notify, in writing, the applicant of its decision as soon as may be practicable, stating the reasons why the exemption has not been granted.

5. (1) The annual fee to be paid to the Authority shall be according to the following scale:—

Annual fee.

- (a) in the case of a unit trust falling within Category A, described in section 2 of this Ordinance, the sum of £1,000.00;

- (b) in the case of an investment company registered in Guernsey and falling within Category B, described in section 2 of this Ordinance, the sum of £1,300.00;
- (c) in the case of an investment company registered in a place outside Guernsey and falling within Category C, described in section 2 of this Ordinance, the sum of £1,000.00.

(2) Where an application for exemption or for the renewal of such exemption under the provisions of section 40A of the Law is refused by the Authority, the amount of the annual fee paid in accordance with the provisions of the last preceding subsection shall be refunded to the applicant:

PROVIDED that where an application for exemption or for the renewal of such exemption, as aforesaid, is refused by the Authority, the said fee shall not be refunded until after the expiration of the period under which, by virtue of the provisions of section 40A of the Law, a request for the Authority to state and sign a case for submission to the Royal Court may be made and where such a request has been made, the said fee shall not be refunded until after the appeal has been determined.

Renewal and  
revocation of  
exemption  
previously  
granted.

6. (1) A unit trust or company which has been granted exemption from Income Tax under the provisions of section 40A of the Law may, prior to the 30th November in any year apply to the Authority for such exemption to be renewed for the subsequent year.

(2) Such application shall be made to the Authority in writing, and shall be accompanied by:—

- (a) a statement signed by the manager or other person approved by the Authority of the unit trust or company, as the case may be, certifying, that to the best of his knowledge and belief, the primary conditions relating to the granting of the exemption previously granted by the Authority and any secondary conditions attached thereto by the Authority continue to be fulfilled as at the date upon which the statement described in this paragraph is signed;
- (b) the appropriate annual fee according to the scale set out in section 5(1) of this Ordinance.

(3) Where the Authority is satisfied that the primary conditions and any secondary conditions relating to the granting of the exemption previously granted by the Authority continue to be fulfilled the Authority may decide to continue to grant the said exemption for the year to which the application relates and shall, as soon as may be practicable, notify the applicant in writing of its decision.

(4) Where the Authority is not satisfied that the primary conditions and any secondary conditions relating to the granting of the exemption previously granted by the Authority continue to be satisfied, the Authority shall:—

- (a) institute such enquiries as it considers **necessary**;
- (b) allow the claimant reasonable opportunity to make representations to the Authority;
- (c) decide whether the exemption should be **revoked**;

and the Authority shall, as soon as may be practicable, notify the applicant, in writing, of its decision and the reasons therefor.

(5) Notwithstanding the preceding provisions of this section, the Authority may, from time to time, require a company or trust to which exemption under section 40A of the Law has been granted to submit such information as it may require within such period as it may specify to satisfy itself that the primary conditions under which such exemption has been granted and any secondary conditions imposed by the Authority continue to be fulfilled.

Citation.        7. This Ordinance may be cited as the Income Tax (Exempted Companies and Trusts) (Guernsey) Ordinance, 1984.

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