

ORDER IN COUNCIL

IV
1997

ratifying a Projet de Loi

ENTITLED

The Income Tax (Group Loss Relief Amendment) (Guernsey) Law, 1997

(Registered on the Records of the Island of Guernsey
on the 4th March, 1997.)



1997

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 4th day of March, 1997 before de Vic Graham Carey, Esquire, Deputy Bailiff; present:—Stanley Walter John Jehan, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Lawrence Oscar Ozanne, John Richard Rowe Henry, David Charles Lowe, Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page and Stephen Edward Francis Le Poidevin, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 12th day of February, 1997, approving and ratifying a Projet de Loi entitled “The Income Tax (Group Loss Relief Amendment) (Guernsey) Law, 1997” THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island; and
2. 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 is in Council the tenor followeth:—

At the Court at Buckingham Palace

The 12th day of February, 1997

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 3rd day of February 1997 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 27th day of June 1996, the States of Deliberation at a meeting held on the 30th day of October 1996 approved a Bill or “Projet de Loi” entitled “The Income Tax (Group Loss Relief Amendment) (Guernsey) Law, 1997”, 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 as 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 (Group Loss Relief Amendment) (Guernsey) Law 1997”, 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, and 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. H. Nicholls

The Income Tax (Group Loss Relief Amendment)
(Guernsey) Law, 1997

THE STATES, in pursuance of their Resolution of 27th June 1996^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.

Group Loss Relief

1. In Part XI of the Income Tax (Guernsey) Law, 1975^b:

(a) immediately after section 142 there is inserted:

"Group loss relief

142A (1) Where this section applies, and the computation of the assessable income of a business carried on by a company (the surrendering company) calculated in accordance with this Law results in a net loss over an accounting period relevant to any year of charge, that loss may be surrendered to another company (the claimant company) to the extent that relief cannot be given for it under section 133, 134, 135 or 137 of this Law, to be set off against the assessable income of the claimant company for any year of charge based in whole or in part on the same accounting period:

^a on Article 9 of Billet d'État No. XIII of 1996.

^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, 178, 353 and 409; Vol. XXIX, p.214; Nos. XIV and XXIII of 1989; No. XXVI of 1990; No. IV of 1991; No. VI of 1992; Nos. IV and VIII of 1993; No. XXV of 1994; Nos. III and VII of 1995.

PROVIDED that if any such assessable income of the claimant company is based partly on the same accounting period and partly on another accounting period, the net loss of the surrendering company may only be set off against such proportion of that assessable income as is referable to that same accounting period.

(2) This section only applies if the Administrator is satisfied -

(a) that at all times during the relevant accounting period -

(i) both companies were either incorporated in Guernsey or carrying on business in Guernsey through a permanent establishment in Guernsey; and

(ii) both companies were members of the same group; and

(b) that neither company has in respect of any year of charge concerned -

(i) been granted an exemption from tax under any Ordinance made under section 40A of this Law, or

- (ii) made an election under section 187A of this Law, or
 - (iii) been granted international tax status under section 188D of this Law; and
- (c) where an election has been made under section 115 of this Law and the allowance which falls to be made includes an allowance brought forward under section 114(2) of this Law, that the conditions set out in paragraphs (a) and (b) of this subsection are satisfied throughout all of the years for which the allowance brought forward was originally available.

(3) A claim for relief under this section must be made by the claimant company within two years after the end of the calendar year in which the relevant accounting period ended, and must be accompanied by a declaration by the surrendering company that it consents to the surrender.

(4) An assessment granting relief under this section shall not be altered except to the extent that any adjustment is required -

- (a) by virtue of section 30 or 31 of this Law, or
- (b) in consequence of a determination under section 79 or judgment under section 80 of this Law, or

- (c) in consequence of the withdrawal of an allowance under section 132C of this Law, or
- (d) because, for any other reason, the relief granted is found to have been or to have become excessive.

(5) Any payment made by a claimant company to a surrendering company in respect of an amount surrendered under this section (being a payment not exceeding that amount) shall not be taken into account in computing the profits or losses of either company.";

- (b) section 143 is renumbered as "143(1)" and immediately thereafter there is inserted:

"(2) In so far as relief has been given to a claimant company under section 142A of this Law the surrendering company shall not be entitled to claim relief under any other provision of this Part of this Law in respect of the loss surrendered.";

- (c) immediately after section 148(2) there is inserted:

"(3) For the purposes of this Part of this Law two or more companies are members of the same group if

- (a) one of those companies is beneficially entitled to 90% or more of the capital of the other, or

- (b) a third company, or one individual, or one individual with his or her spouse, is beneficially entitled to 90% or more of the capital of each of those companies;

and for the purposes of this definition entitlement to capital means entitlement to any profits available for distribution to members, and to any assets available on a winding up for distribution to members."

Citation

2. This Law may be cited as the Income Tax (Group Loss Relief Amendment) (Guernsey) Law, 1997.

Application

3. This Law applies in respect of any accounting period ending on or after 1st January 1992.

Transitional provision

4. In the case of an accounting period ending before the registration of this Law that period is deemed to have ended for the purposes of section 142A(3) of the Income Tax (Guernsey) Law, 1975 (as inserted by section 1 of this Law) on the date of registration of this Law.