

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Income Tax (Guernsey) Amendment Law, 1953.

(Registered on the Records of the Island of Guernsey
on the 21st day of November, 1953.)



1953.

XIII

1953

ORDER IN COUNCIL.



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 21st day of November, 1953, before Sir Ambrose James Sherwill, C.B.E., M.C., Bailiff; present :— Sir John Leale, Arthur Falla, Walter John Sarre, William Robert Freaake Clark, Ernest Francis Lainé, Bertram Bartlett, Esquires, Donald Carey Brock, Esquire, C.B.E., Osmond Priaulx, Stephen James Falla, Wilfred John Corbet and Théophile Le Messurier Allez, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th day of November, 1953, ratifying a *Projet de Loi* entitled "The Income Tax (Guernsey) Amendment Law, 1953",—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, of which Order in Council the tenor followeth :—

At the Court at Buckingham Palace.

The 19th day of November, 1953.

PRESENT,

The Queen's Most Excellent Majesty.

LORD PRESIDENT
 MARQUESS OF READING
 LORD KEITH OF AVONHOLM
 MR. CHANCELLOR OF THE EXCHEQUER
 SIR ALAN LASCELLES
 MR. MACLEOD
 SIR MICHAEL ADEANE

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 13th day of November, 1953, 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 29th day of April, 1953, the States of Deliberation at a meeting held on the 6th day of November, 1953, approved a Bill or “Projet de Loi” entitled “The Income Tax (Guernsey) Amendment Law, 1953” 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 (Guernsey) Amendment Law, 1953" and to order that the same shall have the 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, as 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.

W. G. AGNEW.

Projet de Loi referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

The Income Tax (Guernsey) Amendment Law, 1953.

THE STATES, in pursuance of their Resolution of the twenty-ninth day of April, nineteen hundred and fifty-three, 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.

1. In this Law the expression "the principal Law" means the Income Tax (Guernsey) Law, 1950, as amended by the Income Tax (Guernsey) Amendment Law, 1951, and the Income Tax (Guernsey) Amendment (No. 2) Law, 1951.

2. Section eight of the principal Law is hereby repealed and the following sections eight, eight A, eight B, eight C, eight D and eight E are hereby substituted therefor:—

"Deduction
of tax from
Guernsey
dividends.

8. (1) The profits or gains to be charged on any company shall be computed in accordance with the provisions of this Law on the full amount of the same before any dividend thereof is made in respect of any share, right or title thereto, and where the company paying the dividend is a company resident in Guernsey it shall be entitled to deduct tax at the standard rate for the year in which the amount payable is declared:

PROVIDED that a company resident in Guernsey which has, before the first day

of January, nineteen hundred and fifty-four, declared a dividend which would, immediately before the commencement of this section have been treated as a permissible deduction in computing the assessable income of the company for the year of charge nineteen hundred and fifty-four and which has not been treated as a permissible deduction in computing the assessable income of the company for any year prior to the said year of charge may, in computing the assessable income of the company for the said year of charge, treat any such dividend as if it were a permissible deduction.

(2) Subsection (1) of this section shall, in relation to a dividend paid by any company resident in Guernsey, be construed as authorising the deduction of tax from the full amount paid out of profits and gains of the said company which have been charged to tax or which, under the provisions of this Law, would fall to be included in computing the liability of the said company to assessment to tax for any year if the said provisions required the computation to be made by reference to the profits and gains of that year and not by reference to those of any other year or period.

(3) Where any tax has been deducted under the foregoing provisions of this section—

(a) the company by which the said tax has been so deducted shall, notwithstanding the provisions of subsection (1) of section sixty-seven of

this Law (which relate to the date of payment of tax), remit the tax to the Administrator within one month of the date of the deduction and shall furnish such particulars of the dividend in respect of which the deduction has been made as the Administrator may require; and

- (b) if the company fails or neglects to remit the said tax within the said period it shall be liable to a penalty calculated in the manner prescribed in section eighty of this Law (which relates to penalty for late payment) as if the said tax was an amount which became due and payable on the date on which the deduction was made; and
- (c) proceedings for the imposition of a penalty under this subsection may be instituted by the Administrator in accordance with the provisions of Section eighty-one of this Law (which relates to proceedings in respect of penalties).

(4) The amount of any tax deducted from any dividend and remitted, under the foregoing provisions of this section, by a company to the Administrator shall be a payment made by the company on account of tax charged or chargeable on the profits and gains of the company assessable to tax for the year of charge in which the deduction is made and for every year of assessment or charge prior to that year; and where the amount of tax charged or chargeable as aforesaid is

less than the amount of tax so remitted the appropriate repayment shall be made to the company by the Administrator.

(5) For the purposes of this Law dividends shall be deemed to arise and accrue to the person entitled to receive them at the date on which they are declared.

Computation of gross income represented by Guernsey dividends.

8A. Subject as hereinafter provided, a dividend paid by a company resident in Guernsey shall, to the extent to which it is paid out of such profits and gains as are mentioned in subsection (2) of the last preceding section, be deemed, for all the purposes of this Law, to represent income of such an amount as would, after deduction of tax as is authorised by subsection (1) of the said section be equal to the net amount received.

Guernsey dividends paid without full deduction of tax.

8B. (1) Where any dividend from which deduction of tax is authorised by subsection (1) of section eight of this Law is paid without deduction of tax, the amount received in respect thereof shall, for the purposes of this Law, be deemed to be a net amount received in respect of a dividend from the gross amount of which such deduction as is authorised by the said subsection (1) has been made, and the provisions of—

- (a) the last preceding section; and
- (b) section eight C of this Law (which relates to the form of dividend warrants and other documents);

shall apply accordingly.

(2) The provisions of this section shall apply where, though a deduction is made from a dividend, that deduction is less than the full amount authorised, as it applies where no deduction is made.

Explanation of income tax deductions to be annexed to dividend warrants, etc.

8C. (1) Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, in payment of any dividend distributed by any company resident in Guernsey shall have annexed thereto or be accompanied by a statement in writing showing—

- (a) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount actually paid; and
- (b) the rate and the amount of income tax appropriate to such gross amount; and
- (c) the net amount actually paid; and
- (d) where subsection (1) of section twenty-three B of this Law (which relates to the effect on dividends of double taxation relief) applies, the net Guernsey rate as provided by that subsection.

(2) If a company fails to comply with the provisions of this section, the company shall, in respect of each offence, incur a penalty not exceeding ten pounds:

PROVIDED that the aggregate amount of any penalties imposed under this section on any company in respect of offences connected with any one distribution of dividends or interest shall not exceed one hundred pounds.

(3) The provisions of section eighty-one of this Law (which relate to proceedings in respect of penalties) and applying in relation to a pecuniary penalty under Part IX, other than section seventy-nine thereof, of this Law shall apply in relation to a penalty under this section.

Credit in respect of dividends from which deduction of tax is authorised.

8D. Notwithstanding the provisions of section sixty-seven of this Law (which relates to the due date of payment of tax and penalty) and subject to the provisions of section twenty-three B thereof (which relates to the effect on dividends of double taxation relief), a person who is beneficially entitled to a dividend from which tax is authorised to be deducted under the provisions of section eight of this Law shall, on receiving the said dividend and on satisfying the Administrator that the dividend is one from which tax has been deducted as aforesaid and of the amount of tax so deducted, be entitled to a credit equal to the amount of the tax authorised to be deducted from the said dividend and the credit shall be applied towards the payment of any tax and any penalty which may be payable by that person and where the amount of the credit is greater than the tax payable by that person and any penalty payable by him, the appropriate repayment shall be made by the Administrator:

PROVIDED that no such repayment shall be made until the tax payable by the person so entitled to the dividend for the year of charge in which the dividend is declared and for every year of

assessment or charge prior to that year shall have been determined.

Companies
wound up
before 1956.

8E. If a company resident in Guernsey is wound up before the first day of January, nineteen hundred and fifty-six, and if, during the period commencing on the first day of January, nineteen hundred and fifty, and ending on the date of the winding-up of the company, both dates inclusive, the company has declared dividends which in the aggregate exceed the aggregate of the profits of the company for that period as computed in accordance with the provisions of this Law, tax on the amount of such excess shall be refunded to the company at the rate of five shillings in the pound:

PROVIDED that the amount of tax refunded shall not exceed the amount of the tax borne by the company on its own behalf under the provisions of the Income Tax Laws, 1920 to 1948, in respect of the six years next preceding the first day of January, nineteen hundred and fifty."

3. There are hereby inserted immediately after section twenty-three A of the principal Law the following sections twenty-three B, twenty-three C, twenty-three D and twenty-three E:—

"Effect on
dividends
of double
taxation
relief.

23B. (1) The amount of tax which is authorised by section eight of this Law (which relates to deduction of tax from Guernsey dividends) to be deducted from any dividends shall be determined without taking into account any reduction, by reason of double taxation relief, of the

Guernsey income tax payable directly or by deduction by the company, but

- (a) notwithstanding anything in this Law, no credit or repayment in respect of tax deducted or authorised to be deducted from any dividend shall be allowed at a rate exceeding the rate (hereinafter referred to as "the net Guernsey rate") of the Guernsey income tax payable directly or by deduction by the company after taking double taxation relief into account; and
- (b) where the Guernsey income tax payable directly or by deduction by the company is affected by double taxation relief, the particulars to be given by the company in the statement required by section eight C of this Law (which relates to explanation of income tax deductions to be annexed to dividend warrants and other documents) shall include particulars of the net Guernsey rate.

(2) In this section—

the expression "dividend" means a dividend from which deduction of tax is authorised by section eight of this Law;

the expression "double taxation relief" means any credit for tax payable in any territory outside Guernsey which is allowable against Guernsey income tax by virtue of arrangements having effect under section twenty-three of this Law or by way of relief from

double taxation under section twenty-three D thereof and includes any credit or relief which has been taken into account for the purposes of determining the net Guernsey rate applicable to any dividends received by the company;

the expression "the company" means the company paying a dividend.

Power to make regulations for carrying out preceding provisions.

23C. (1) The Authority may from time to time make regulations generally for carrying out the provisions of section twenty-three of this Law or any arrangements having effect thereunder and for carrying out the provisions of the last preceding section, and may, in particular, by those regulations provide—

- (a) for securing that relief from taxation imposed by the law of the territory to which any such arrangements relate does not enure to the benefit of persons not entitled thereto; and
- (b) for prescribing the principles upon which the net Guernsey rate is to be determined for the purposes of the last preceding section.

(2) The proviso to section forty-five of this Law shall apply in respect of every regulation made under this section as it applies to a regulation made under that section.

Relief in respect of Commonwealth and other income tax.

23D. (1) If any person resident in Guernsey, who has paid, by deduction or otherwise, or is liable to pay, tax under this Law for any year of charge on any

part of his income, proves to the satisfaction of the Administrator that he has paid, by deduction or otherwise, or is liable to pay income tax for that year under the law of any territory within the Commonwealth in respect of that part of his income, he shall be entitled to relief from tax in Guernsey paid or payable by him on the said part of his income at a rate thereon to be determined as follows:—

- (a) if the effective Commonwealth rate of tax does not exceed one-half of the effective rate of Guernsey tax the rate at which relief is to be given shall be the effective Commonwealth rate of tax;
- (b) in any other case the rate at which relief is to be given shall be one-half the effective rate of Guernsey tax.

(2) If any person not resident in Guernsey, who proves to the satisfaction of the Administrator that he is resident in any territory within the Commonwealth in which provision has been made by the law of that territory for relief in respect of tax charged on income both in that territory and in Guernsey in a manner similar to that provided by this section in relation to a person resident in Guernsey, and who has paid, by deduction or otherwise, or is liable to pay, tax under this Law for any year of charge on any part of his income, proves to the satisfaction of the Administrator that he has paid, by deduction or otherwise, or is liable to pay income tax

in that territory for that year of charge in respect of the said part of his income, he shall be entitled to relief from tax paid or payable by him under this Law on the said part of his income at a rate thereon to be determined as follows:—

- (a) if the effective Commonwealth rate of tax does not exceed the effective rate of Guernsey tax the rate at which relief is to be given shall be one-half of the effective Commonwealth rate of tax;
- (b) if the effective Commonwealth rate of tax exceeds the effective rate of Guernsey tax the rate at which relief is to be given shall be equal to the amount by which the effective rate of Guernsey tax exceeds one-half of the effective Commonwealth rate of tax.

(3) For the purposes of this section—

- (a) the effective rate of Guernsey tax in respect of any person for any year of charge shall be taken to be the rate obtained by dividing the total amount of the income tax paid or payable by him under this Law for that year (before the deduction of any relief granted under this section or under section twenty-three of this Law) by the amount of his total income assessable to Guernsey tax for that year;
- (b) the effective Commonwealth rate of tax in relation to any territory within the Commonwealth and in

respect of any person for any year of charge shall be taken to be the rate determined as nearly as may be in accordance with the principles regulating the determination of the effective rate of Guernsey tax.

(4) Where a person is for any year of charge resident both in Guernsey and in any territory within the Commonwealth in which income tax is charged under the law of that territory he shall, for the purposes of this section, be deemed to be resident where during that year he resides for the longer period.

(5) A claim for relief under this section shall be made within the two years next following the year of charge to which it relates:

PROVIDED that such claim, though not made within the said two years, shall be admitted if made within the six years next following the said year of charge and within the six months next following the date on which the relevant amount of income tax under the law of the territory within the Commonwealth has been ascertained.

(6) In this section—

the expression “the Commonwealth” means Her Majesty’s dominions, India, the British protectorates and protected states and any trust or mandated territory administered by the Government of any part of Her Majesty’s dominions;

the expression "the effective Commonwealth rate of tax" and "the effective rate of Guernsey tax" have the meanings assigned to them by subsection (3) of this section.

(7) The provisions of this section shall have effect in relation to the Republic of Ireland, the Anglo-Egyptian Sudan and the New Hebrides as they have effect in relation to any territory within the Commonwealth.

(8) The provisions of this section shall not apply in relation to any person resident in, or any income derived from, any territory in respect of which any arrangement made under the provisions of section twenty-three of this Law is in force.

(9) The provisions of section thirteen A of this Law (which relates to deduction of annual taxes and rates) in so far as they apply to taxation on income shall not apply to any income in respect of which relief is claimed under this section.

Disclosure of
information.

23E. Where, under the law in force in any territory in relation to which the provisions of the last preceding section have effect, provision is made for the allowance of relief from income tax in respect of the payment of income tax in Guernsey, the obligation as to secrecy imposed by section eighty-five of this Law shall not prevent the disclosure to authorised officers of the Government of the territory in question of such facts as may be neces-

sary to enable the proper relief to be given in any case where relief is claimed from income tax in Guernsey or from income tax in that territory.”

4. Subsection (4) of section twenty-three of the principal Law is hereby repealed.

5. In section eighty-eight of the principal Law for the word “incorporate” in the definition of the expression “company” there is hereby substituted the word “unincorporate”.

6. In that part of the principal Law headed “ARRANGEMENT OF SECTIONS”—

(a) the words and figures “8 Deduction of dividends.” are hereby repealed and the following words and figures are hereby substituted therefor:—

“8 Deduction of tax from Guernsey dividends.

8A Computation of gross income represented by Guernsey dividends.

8B Guernsey dividends paid without full deduction of tax.

8C Explanation of income tax deductions to be annexed to dividend warrants, etc.

8D Credit in respect of dividends from which deduction of tax is authorised.

8E Companies wound up before 1956.”;

and

(b) after the words and figures “23A Tax Credits.” there are hereby inserted the following words and figures:—

“ 23B Effect on dividends of double taxation relief.

23C Power to make regulations for carrying out preceding provisions.

23D Relief in respect of Commonwealth and other income tax.

23E Disclosure of information.”

7. This Law and the Income Tax (Guernsey) Laws, 1950 to 1951, may be cited together as the Income Tax (Guernsey) Laws, 1950 to 1953.

8. This Law shall come into force on the first day of January, 1954.

JAMES E. LE PAGE,
Her Majesty's Greffier.