

ORDER IN COUNCIL

XVII
2005

ratifying a Projet de Loi

ENTITLED

The Income Tax (Guernsey) (Amendment) Law, 2005

(Registered on the Records of the Island of Guernsey
on the 5th December, 2005.)



2006

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of December, 2005 before Geoffrey Robert Rowland, Esquire, Bailiff; present: - David Charles Lowe, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Derek Martin Le Page, Alan Cecil Bisson, David Michael Jory, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, Barbara Jean Bartie and David Osmond Le Conte, Esquire, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 15th day of November, 2005 approving and ratifying the Projet de Loi entitled "The Income Tax (Guernsey) (Amendment) Law, 2005", 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.

At the Court at Buckingham Palace

The 15th DAY OF NOVEMBER 2005

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22 February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolutions of 21 June 2004 and 29 June 2005, the States of Deliberation at a meeting on 29 June 2005 approved a *Projet de Loi* entitled The Income Tax (Guernsey) (Amendment) Law 2005, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction The Income Tax (Guernsey) (Amendment) Law 2005, and to order that it shall have force of law in the Islands of Guernsey, Alderney and Herm.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it.”

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Alderney and Herm and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Income Tax (Guernsey) (Amendment) Law, 2005

THE STATES, in pursuance of their Resolutions of the 21st June, 2004^a and the 29th June, 2005^b, 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, Alderney and Herm.

Amendment of Law of 1975.

1. The Income Tax (Guernsey) Law, 1975, as amended^c ("**the Law of 1975**"), is further amended in accordance with the provisions of this Law.

2. In section 68(1) of the Law of 1975, after the words "such accounts or other information" insert "relating to any such return or the contents thereof".

^a Billet d'État No. VIII of 2004.

^b Article I of Billet d'État No. IX of 2005.

^c 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; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; the Income Tax (Pension Amendments) (Guernsey) Law, 2004; and the Income Tax (Business Profits) (Guernsey) (Amendment) Law, 2004.

3. After section 68(1) of the Law of 1975, insert the following subsection -

"(1AA) Section 75L(3) applies in relation to statements, documents and information given in purported compliance with a duty or requirement imposed by or under this section or otherwise for the purposes of this section."

4. After section 68(2) of the Law of 1975, insert the following subsections -

"(3) The Administrator may under this section require different information, accounts and statements for different periods or in relation to different descriptions of sources of income or in relation to different descriptions of person.

(4) For the avoidance of doubt, the provisions of this section are in addition to the provisions of Part VIA of this Law."

5. After Part VI of the Law of 1975, insert the following Part -

"PART VIA
INFORMATION

Power to call for documents, etc, from taxpayer.

75A. (1) Subject to the provisions of this section, the Administrator may by notice in writing, for the purposes of performing his functions, require a person -

(a) to deliver to him such documents as are in that

person's possession or power and which in the Administrator's opinion contain, or may contain, information relevant to -

- (i) any liability to tax to which that person is or may be subject, or
 - (ii) the amount of any such liability,
- (b) to furnish him with such information as the Administrator may require as being relevant to, or to the amount of, any such liability, and
- (c) without prejudice to the generality of paragraphs (a) and (b), to furnish him with such evidence of residence, in Guernsey or elsewhere, as the Administrator may require.

(2) Before a notice is given to a person by the Administrator under this section, the person must be given a reasonable opportunity to deliver the documents in question or to furnish the information or evidence in question, unless the Administrator believes that that would prejudice the inquiry to which the document, information or evidence relates or the performance by the Administrator of his functions.

(3) A notice under subsection (1) does not oblige a person to deliver documents or furnish information created for the purposes of any pending appeal in respect of tax by him -

- (a) under this Law, or

(b) under the laws relating to taxation in force in any other territory.

(4) To comply with a notice under subsection (1), copies of documents may be delivered instead of originals, but -

(a) the copies must be in such form as the Administrator may specify, and

(b) if so required by the Administrator, the originals of the documents must be made available for inspection by the Administrator in accordance with the requirement,

and a failure to comply with a requirement under this subsection constitutes a failure to comply with the notice under subsection (1).

(5) A person who without reasonable excuse fails to comply with any provision of a notice under this section is guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale and to a further fine not exceeding level 3 on the uniform scale for each day on which the failure to comply continues after the date of conviction.

Power to call for documents, etc, relating to taxpayer.

75B. (1) The powers conferred by this section may be used for the purpose of inquiring into the liability to tax of any person ("**the taxpayer**") in any case in which the Administrator believes it necessary or desirable to do so for the purposes of performing his functions.

(2) Subject to the provisions of this section, the Administrator may by notice in writing require any person other than the taxpayer to deliver to the Administrator or, if so required by the Administrator, to make available for inspection by the Administrator such documents, and to furnish the Administrator with such information, as are in that person's possession or power and which (in the Administrator's opinion) are, or may be, relevant to -

- (a) any liability to tax to which the taxpayer is or may be, or may have been, subject, and
- (b) the amount of any such liability.

(3) Before a notice is given to a person by the Administrator under subsection (2), that person must be given a reasonable opportunity to deliver or make available the documents in question or to furnish the information in question, unless the Administrator believes that that would prejudice the inquiry to which the document or information relates or the performance by the Administrator of his functions.

(4) The Administrator may direct a person to whom a notice is given under subsection (2) that he must not -

- (a) inform, or cause or permit to be informed, the taxpayer that the notice has been given, or
- (b) disclose, or cause or permit to be disclosed, to any person (including the taxpayer) any information or matter which is likely to

prejudice the inquiry to which the notice relates or the performance by the Administrator of his functions,

and a person who fails to comply with such a direction is guilty of an offence and liable on summary conviction to fine not exceeding twice level 5 on the uniform scale, unless he can show -

- (i) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself and by any person under his control, or
- (ii) in the case of an offence under paragraph (b), that he did not know or suspect that the disclosure was likely to be prejudicial to the inquiry or to the performance by the Administrator of his functions;

and, for the avoidance of doubt, the institution and prosecution of an appeal under section 75K against the decision of the Administrator to give the notice under subsection (2) does not of itself constitute a failure to comply with a direction under this subsection.

(5) To comply with a notice under subsection (2), copies of documents may be delivered instead of originals, but -

- (a) the copies must be in such form as the

Administrator may specify, and

- (b) if so required by the Administrator, the originals of the documents must be made available for inspection by the Administrator in accordance with the requirement,

and a failure to comply with a requirement under this subsection constitutes a failure to comply with the notice under subsection (2).

(6) A person who without reasonable excuse fails to comply with any provision of a notice under subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale and to a further fine not exceeding level 3 on the uniform scale for each day on which the failure to comply continues after the date of conviction.

(7) For the avoidance of doubt, and without limitation, the persons to whom a notice may be given under subsection (2) include States departments and committees and officers and servants thereof.

(8) A notice under subsection (2) shall name the taxpayer with whose liability the Administrator is concerned unless the Administrator is satisfied -

- (a) that the notice relates to a taxpayer whose identity is not known to him or to a class of taxpayers whose individual identities are not known to him, and

- (b) that the information which is likely to be contained in the documents to which the notice relates is not readily available to the Administrator from another source.

Notices under section 75A and 75B: requests for information.

75C. (1) Subject to subsection (2), the Administrator may exercise his powers under sections 75A and 75B if, pursuant to the provisions of an approved international agreement, a request for information is made to him by the competent authority of a requesting state.

(2) The Administrator must be satisfied that the request for information is made in accordance with the provisions of, and for the purposes of, the approved international agreement pursuant to which it is made.

(3) The Administrator may ask the competent authority for further information, documents and particulars in support of a request for information.

(4) In this Part of this Law -

"approved international agreement" means an agreement or arrangement providing for the obtaining and exchanging of information in relation to tax which is made between the States of Guernsey and the government of another territory and which is specified for the purposes of this Law by Ordinance of the States,

"competent authority" means the person or authority designated by the requesting state as the competent authority for the

purposes of the approved international agreement pursuant to which the request for information is made, and

"**requesting state**" means the party to the approved international agreement on behalf of which the request for information is made.

(5) This section is without prejudice to the generality of sections 75A and 75B.

Sections 75A and 75B: supplementary.

75D. (1) The persons who may be treated as the taxpayer for the purposes of section 75B include a company which has ceased to exist and an individual who has died.

(2) In sections 75A and 75B -

(a) references to documents do not include items subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^d), and

(b) references to information do not include information contained in such items.

(3) Subject to the provisions of subsection (2), references in sections 75A and 75B to documents and information are to documents and

^d Order in Council No. XXIII of 2003.

information specified or described (or of a class or description specified or described) in the notice in question, and -

- (a) the notice shall require documents to be delivered or made available, or information to be furnished, within such time, in such form, and authenticated and attested in such manner, as may be specified in the notice, and
- (b) the person to whom they are delivered, made available or furnished may take copies of them or extracts from them.

(4) Where a notice is given to a person under section 75A or 75B, the Administrator may require him -

- (a) to give an explanation of and to answer questions relating to any document or information produced or anything in it, and for that purpose to attend at such time and place as may be required,
- (b) if any document specified or described in the notice is not produced, to state to the best of his knowledge and belief its whereabouts,
- (c) to make any statement or give any information on oath or affirmation (administered, if the Administrator thinks fit, by himself),

and a failure to comply with a requirement under this subsection constitutes a failure to comply with the notice under section 75A or 75B.

(5) Where the Administrator intends to give a notice to a person under section 75A or 75B, the Administrator may by notice require him -

- (a) to tell him what documents he has in his possession or power which are or may be relevant to the liability to tax to which the notice under section 75A or 75B would relate or the amount thereof,
- (b) not to remove, tamper with, falsify or destroy any documents to which the notice under section 75A or 75B would relate or cause or permit them to be removed, tampered with, falsified or destroyed, and
- (c) to take any steps which appear to be necessary for preserving them or preventing interference with them,

and a failure to comply with a requirement of a notice under this subsection is punishable in the same manner as a failure to comply with a notice under section 75A or 75B.

Court orders for delivery of documents, etc, from taxpayer.

75E. (1) The Royal Court may make an order under this section if satisfied by information on oath given by the Administrator -

- (a) that a notice has been served under section 75A(1) and there are reasonable grounds for suspecting -
 - (i) that the notice has not been complied with, or
 - (ii) that any information or document furnished pursuant to the notice is false, misleading, inaccurate or incomplete,
- (b) that it is not practicable to serve a notice under that section, or
- (c) that there are reasonable grounds for suspecting that if such a notice were served -
 - (i) it would not be complied with, or
 - (ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or
 - (iii) the service of the notice might seriously prejudice the performance by the Administrator of his functions.

(2) An order under this section is an order requiring the person to whom the notice under section 75A(1) was or could be given -

(a) to deliver to the Administrator such documents as are in that person's possession or power and as contain, or may contain, information relevant to -

(i) any liability to tax to which that person is or may be subject, or

(ii) the amount of any such liability,

and, if so required by the Administrator, to give an explanation of any such document,

(b) if any document specified or described in the order is not produced, to state to the best of that person's knowledge and belief its whereabouts,

(c) to furnish to the Administrator such information as the Court may specify as being relevant to, or to the amount of, any such liability, and

(d) without prejudice to the generality of paragraphs (a), (b) and (c), to furnish to the Administrator such evidence of residence, in Guernsey or elsewhere, as the Court may specify.

Court orders for delivery of documents, etc, relating to taxpayer.

75F. (1) The Royal Court may make an order under this section if satisfied by information on oath given by the Administrator -

- (a) that a notice has been served under section 75B(2) and there are reasonable grounds for suspecting -
 - (i) that the notice has not been complied with, or
 - (ii) that any information or document furnished pursuant to the notice is false, misleading, inaccurate or incomplete,
- (b) that it is not practicable to serve a notice under that section, or
- (c) that there are reasonable grounds for suspecting that if such a notice were served -
 - (i) it would not be complied with, or
 - (ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or
 - (iii) the service of the notice might seriously prejudice the performance by the Administrator of his functions.

(2) An order under this section is an order requiring the person who appears to the Court to have in his possession or power the documents specified or described in the order -

- (a) to deliver them to the Administrator,
- (b) if so required by the Administrator, to give an explanation of any of them, and
- (c) if any of them are not produced, to state to the best of his knowledge and belief their whereabouts.

Court orders under sections 75E and 75F: supplementary.

75G. (1) An order under section 75E or 75F must be complied with by the person on whom it is served -

- (a) within 7 days after the day on which notice of the order is served on him, or
- (b) within such shorter or longer period as may be specified in the order.

(2) If a person fails to comply with an order made under section 75E or 75F, he may be dealt with as if he had committed a contempt of court.

(3) Where an order under section 75E or 75F applies to a document stored or recorded in electronic form, the order shall be taken to

require the person to deliver the document in a form -

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(4) Sections 75E and 75F do not apply to items subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003).

Court orders under sections 75E & 75F: notice and procedure.

75H. (1) A person is entitled -

- (a) to at least 14 days' notice of an application for an order against him under section 75E or 75F,
- (b) to appear and be heard at the hearing of the application,

unless the Royal Court is satisfied that this would or may significantly prejudice the inquiry to which the order relates or the performance by the Administrator of his functions, in which case the Royal Court may reduce the period of notice to be given or order the application to be heard ex parte.

(2) A person who has been given notice of an application for an order under section 75E or 75F shall not -

- (a) conceal, destroy, alter or dispose of any

document to which the application relates, or

- (b) disclose to any other person information or any other matter likely to prejudice the inquiry to which the order relates or the performance by the Administrator of his functions.

(3) Subsection (2)(a) does not prevent anything being done-

- (a) with leave of the Royal Court,
- (b) with the written permission of the Administrator,
- (c) after the application for the order has been dismissed or abandoned, or
- (d) after any order made on the application has been complied with.

(4) Subsection (2)(b) does not prevent a professional legal adviser from disclosing any information or other matter -

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or
- (b) to any person -

- (i) in contemplation of, or in connection with, legal proceedings, and
- (ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering a criminal purpose.

(6) A person who contravenes subsection (2)(a) or (b) may be dealt with as if he had committed a contempt of court.

Entry with warrant to obtain material.

75 I. (1) If the Bailiff is satisfied by information on oath given by the Administrator -

- (a) that an order has been made under section 75E or 75F and there are reasonable grounds for suspecting -
 - (i) that the order has not been complied with, or
 - (ii) that any information or document furnished pursuant to the order is false, misleading, inaccurate or incomplete,
- (b) that it is not practicable to apply for an order under section 75E or 75F, or

(c) that there are reasonable grounds for suspecting that if an order under section 75E or 75F were made -

(i) it would not be complied with,

(ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or

(iii) the making of the order or any attempt to enforce it might significantly prejudice any inquiry to which the order would relate or the performance by the Administrator of his functions,

the Bailiff may issue a warrant authorising the Administrator or any other person named in, or of a class or description specified in, the warrant to enter any premises specified in the warrant, using such force as may be necessary for the purpose, at any time within 14 days from the time of issue of the warrant, and to search them.

(2) The premises which may be specified in the warrant are-

(a) premises which are occupied by the person against whom the order under section 75E or 75F was made,

(b) premises upon which the documents to which

the order relates are reasonably believed to be or upon which evidence as to the whereabouts of those documents is reasonably believed to be,

(c) where no order under section 75E or 75F has been made, premises which are occupied by the person against whom the order could be made or upon which the documents to which the order would relate are reasonably believed to be, or

(d) premises upon which any document relevant to an inquiry to which the order relates, or any evidence relevant to such an inquiry, is reasonably believed to be.

(3) The powers conferred by a warrant under this section shall not be exercisable -

(a) outside such times of day as may be specified in the warrant,

(b) if the warrant so provides, otherwise than in the presence of an officer of police.

(4) A person acting under the authority of a warrant under this section may, when entering any premises under the authority of the warrant -

- (a) take with him such other persons as appear to him to be necessary,
- (b) seize and remove anything whatsoever found there which he has reasonable cause to believe-
 - (i) was required to be delivered by the order under section 75E or 75F,
 - (ii) if no such order was made, is of a class or description specified in the warrant, or
 - (iii) is relevant for the purpose of an inquiry described in subsection (1)(c)(iii) or (as the case may be) the performance by the Administrator of his functions, and
- (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such thing (but no person shall be searched except by a person of the same sex).

(5) In the case of any document which is stored or recorded in electronic form and which is accessible from the premises, the power of seizure under subsection (4) includes a power to require the document to be produced in a form -

- (a) in which it can be taken away, and

(b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(6) Nothing in subsection (4) authorises the seizure and removal of items subject to legal professional privilege within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003.

(7) Items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege.

(8) A person acting under the authority of a warrant under this section may also -

(a) instead of seizing and removing anything mentioned in subsection (4)(b), take any steps which appear to be necessary for preserving it or preventing interference with it,

(b) take copies of or extracts from any document which may be seized and removed, and

(c) require any person named in, or of a class or description specified in, the warrant -

(i) to state to the best of his knowledge and belief the whereabouts of any such document, and

(ii) to make an explanation of any such document.

(9) A person seeking to exercise the powers conferred by a warrant under this section or, if there is more than one person, whoever of them is in charge of the search -

(a) shall, if the occupier of the premises concerned is present at the time the search is to begin, supply a copy of the warrant endorsed with his name to the occupier,

(b) shall, if at that time the occupier is not present but a person who appears to be in charge of the premises is present, supply such a copy to that person, or

(c) shall, if paragraphs (a) and (b) do not apply, leave such a copy in a prominent place on the premises.

(10) A person entering any premises under the authority of a warrant under this section shall, if so requested by the occupier of the premises or, if the occupier is not present, by a person who appears to be in charge of the premises, produce evidence of his identity and office.

(11) Where entry to premises has been made with a warrant under this section, and the person making the entry has seized anything under the authority of the warrant, he shall endorse on or attach to the

warrant a list (or, if a list is impracticable, a description) of the things seized.

(12) The provisions of section 18 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 ("additional powers of seizure") apply to a person acting under the authority of a warrant under this section as they apply to a police officer.

(13) A person who without reasonable excuse obstructs or fails to comply with any requirement imposed by a person exercising or purporting to exercise any power conferred by this section or by a warrant under this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one year, to a fine not exceeding twice level 5 on the uniform scale, or to both.

Procedure where documents etc. are removed.

75J. (1) A person who removes anything in the exercise of the powers conferred by section 75I shall, if so requested by a person showing himself -

- (a) to be the occupier of the premises from which it was removed, or
- (b) to have had custody or control of it immediately before the removal,

provide that person with a record (which shall comprise a list or, if a list is impracticable, a description) of what has been removed.

(2) The record shall be provided within a reasonable time

from the making of the request for it.

(3) Where anything removed by any person in exercise of the powers conferred by section 75I is of such a nature that a photograph or copy of it would be sufficient -

(a) for use as evidence -

(i) in proceedings for an offence, or

(ii) in civil proceedings, whether before the Guernsey Tax Tribunal, the Royal Court or otherwise, or

(b) for the purpose of investigating -

(i) an offence, or

(ii) a liability to tax or the amount of any such liability,

it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.

(4) Subject to the provisions of subsection (8), if a request for permission to be granted access to anything which -

(a) has been removed, and

(b) is retained for the purpose of investigating an

offence,

is made to the Administrator by a person who had custody or control of the thing immediately before it was removed or by someone acting on his behalf, the Administrator shall allow the person who made the request access to it subject to such terms and conditions as the Administrator thinks fit.

(5) Subject to the provisions of subsection (8), if a request for a photograph or copy of any such thing as is described in subsection (4) is made to the Administrator by a person who had custody or control of the thing immediately before it was removed or by someone acting on his behalf, the Administrator shall -

- (a) allow the person who made the request access to it under the supervision of the Administrator for the purpose of photographing or copying it, or
- (b) himself photograph or copy it or cause it to be photographed or copied.

(6) Where anything is photographed or copied under subsection (5)(b) the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the Administrator has

reasonable grounds for believing that to do so would prejudice -

- (a) the investigation of an offence for the purposes of which the thing was removed,
- (b) the investigation of another offence,
- (c) any criminal proceedings which may be brought as a result of any investigation mentioned in paragraph (a) or (b), or
- (d) the performance by the Administrator of his functions.

Right of appeal to Royal Court.

75K. (1) A person aggrieved by a decision of the Administrator to give him notice under section 75A or 75B may, subject to subsection (3), appeal against the decision to the Royal Court.

(2) A person appealing against a decision to give notice is referred to in this section as "**the appellant**".

(3) An appeal against a decision to give notice may not be instituted unless the Bailiff, on the application of the appellant made within a period of 10 days immediately following the date of the notice, gives leave to appeal.

(4) An application to the Bailiff for leave under subsection (3) must be instituted by summons served on the Administrator stating the grounds and material facts on which the appellant intends to rely on his

appeal to the Royal Court.

(5) An appeal from a decision of the Bailiff made under subsection (3) -

- (a) lies to the Court of Appeal on a question of law, and
- (b) must be instituted within a period of 7 days immediately following the date of the Bailiff's decision,

and for the purposes of this subsection -

- (i) the Court of Appeal may be constituted by any single judge of that Court (provided that that single judge may direct that the appeal shall be referred to the Court of Appeal sitting fully constituted), and
- (ii) the decision of the Court of Appeal (whether sitting fully constituted or as a single judge) is final.

(6) The grounds of appeal to the Royal Court against a decision to give notice under section 75A or 75B are -

- (a) that the decision was ultra vires or unreasonable in law or that some other error of

law has been made, or

- (b) that a material error as to the facts has been made,

but where the Administrator (pursuant to section 75C) gives notice under section 75B in response to a request for information made by the competent authority of a requesting state pursuant to the provisions of an approved international agreement then, provided that the request is made in accordance with the provisions of the agreement, the decision to give notice in response to the request cannot be challenged under the ground mentioned in paragraph (b).

(7) An appeal against a decision to give notice must be instituted -

- (a) within a period of 7 days immediately following the day on which leave to appeal was given pursuant to subsection (3) or (5), and
- (b) by summons served on the Administrator stating the grounds and material facts on which the appellant relies.

(8) The Administrator may, where an appeal against a notice, or against a decision of the Bailiff under subsection (3), has been instituted, apply to the relevant tribunal, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and, upon hearing such an application, the relevant tribunal may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the relevant tribunal may direct), or
- (b) make such other order as the relevant tribunal considers just,

and in this section "**the relevant tribunal**" means the Royal Court or, in cases where the Court of Appeal or a single judge thereof is seized of the matter, the Court of Appeal or, as the case may be, that single judge.

(9) The provisions of subsection (8) are without prejudice to the inherent powers of the court or to the provisions of rule 36(2) of the Royal Court Civil Rules, 1989^e.

(10) On an appeal against a decision to give notice the Royal Court may -

- (a) set the notice aside and, if the Court considers it appropriate to do so, remit the matter to the Administrator with such directions as the Court thinks fit, or
- (b) confirm the notice, in whole or in part.

(11) Pending the determination of -

- (a) an application for leave to appeal against a

^e O.R.C. No. VII of 1989.

notice, and

- (b) an appeal against a decision to give notice,

the notice does not have effect unless the relevant tribunal, on the application of the Administrator and on such terms and subject to such modifications as the relevant tribunal thinks just, directs otherwise.

(12) The Bailiff, where an application is made to him for leave under subsection (3), or the relevant tribunal, where an appeal to it is instituted under this section, may order the applicant or appellant -

- (a) to lodge with the court all or any of the documents sought by the Administrator in his notice under section 75A or 75B,
- (b) to provide any information (whether or not under oath or affirmation) relating to any such documents or their whereabouts (including, without limitation, a list of documents), and
- (c) to enter into such undertakings on such terms as may be specified,

and a contravention of or failure to comply with an order or undertaking under this subsection is punishable as a contempt of court.

(13) An appeal from a decision of the Royal Court made under this section lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal on a question of law.

(14) Section 21 of the Court of Appeal (Guernsey) Law, 1961^f ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (13) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(15) The Royal Court sitting as a Full Court may by Order make rules for the purposes of appeals and applications under this section, and such rules may modify any provision of this section and may be amended or repealed by subsequent rules hereunder.

Offences in relation to falsification, etc, of documents.

75L. (1) Subject to the provisions of subsection (2), a person is guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which -

- (a) he has been required by a notice under section 75A or 75B or an order under section 75E or 75F, or
- (b) he has been given an opportunity in accordance with section 75A(2) or 75B(3),

to deliver or make available for inspection.

(2) A person does not commit an offence under subsection

^f Ordres en Conseil Vol. XVIII, p. 315.

(1) if he acts -

- (a) with the written permission of the Administrator,
- (b) after the document has been delivered to the Administrator and thereafter returned, or
- (c) after a copy has been delivered in accordance with section 75A(4) and the original has been inspected.

(3) A person who, in purported compliance with a requirement imposed by or under this Part of this Law or a notice or order under this Part of this Law, or in purported compliance with a duty or requirement imposed by or under section 68, or otherwise for the purposes of this Part of this Law or section 68 -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable

cause to believe to be false, deceptive or misleading in a material particular, or

- (d) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction to imprisonment for a term not exceeding two years, to a fine not exceeding twice level 5 on the uniform scale, or to both.

(5) For the avoidance of doubt, the provisions of this section are in addition to the provisions of sections 193 and 201.

Duties of confidentiality, liens, and self-incrimination.

75M. (1) A requirement imposed by or under -

- (a) section 75A, 75B, 75D, 75E or 75F,
- (b) a notice or order under any of those sections,
or
- (c) section 75I or a warrant granted thereunder,

has effect notwithstanding any obligation as to confidentiality or other

restriction on the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(2) Where a person claims a lien on a document, its production under -

- (a) section 75A, 75B, 75D, 75E or 75F,
- (b) a notice or order under any of those sections,
or
- (c) section 75I or a warrant granted thereunder,

is without prejudice to his lien.

(3) A direction given by the Administrator under section 75B(4) to a person that he must not -

- (a) inform, or cause or permit to be informed, the taxpayer that a notice has been given under that section, or
- (b) disclose, or cause or permit to be disclosed, to any person (including the taxpayer) any information or matter which is likely to prejudice the inquiry to which the notice relates or the performance by the Administrator of his functions,

has effect notwithstanding any contractual or other obligation to which the person to whom the direction was given is subject; and, accordingly, the obligation is not contravened by compliance with the direction.

(4) A statement made by a person in response to a requirement described in subsection (1) may not be used in evidence against him in criminal proceedings in Guernsey or elsewhere except -

- (a) in proceedings for an offence under section 75L(3), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it,

and for the purposes of this subsection proceedings under this Law in respect of the enforcement of a penalty or surcharge are not criminal proceedings.

Constitution of Royal Court under sections 75E and 75F.

75N. (1) For the purpose of performing its functions under sections 75E and 75F -

- (a) the Royal Court is properly constituted if it consists of the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may, where it consists of the Bailiff so sitting, sit otherwise than in open court.

(2) Any order or finding made or other thing done pursuant to subsection (1) has effect for all purposes as if made or done by the Royal Court.

Interpretation of Part VIA.

75O. In this Part of this Law -

"**approved international agreement**" has the meaning given by section 75C,

"**Bailiff**" means the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué,

"**competent authority**" has the meaning given by section 75C,

"**document**" includes, subject to the provisions of section 75D(2) and 75G(4), information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form -

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

"**electronic form**", in relation to the storage or recording of

documents, includes storage or recording by means of any form of information storage technology,

"**requesting state**" has the meaning given by section 75C,

"**Royal Court**" means the Royal Court sitting as an Ordinary Court,

"**tax**" means -

- (a) income tax under this Law, and
- (b) any tax imposed by the laws of another territory and of a class or description specified in or under an approved international agreement,

"**taxpayer**" means the person whose liability to tax is being inquired into under this Part of this Law.

Regulations as to the keeping of records, etc.

75P. (1) The Department may by regulation make such provision as they think fit in relation to the making, maintenance, keeping and retention by any person of records and other documents in respect of tax and liability thereto.

(2) Regulations under subsection (1) may make provision as to criminal and civil sanctions, penalties and remedies in respect of contraventions of the regulations, including, without limitation, provision as to -

- (a) the creation of offences, whether in relation to the falsification, concealment, destruction or other disposal of documents or otherwise, and
- (b) the trial and punishment of offences,

but may not specify criminal penalties which exceed those for the time being specified by section 75L(4).

Power to amend Part VIA by Ordinance.

75Q. The States may by Ordinance amend -

- (a) this Part of this Law, and
- (b) any other provision of this Law for the purpose of giving effect to this Part of this Law as from time to time amended."

6. In section 76 of the Law of 1975, after the words "made by the Administrator under this Law" insert "(but not a notice given under section 75A or 75B)".

7. After section 203 of the Law of 1975, insert the following section -

"Ordinances, regulations and Orders.

203A. (1) Any Ordinance of the States, any regulations of the Department and any Order of the Royal Court under this Law -

- (a) may be amended or repealed by a subsequent

Ordinance, regulation or Order, as the case may be, and

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including (without limitation) provision as to the creation and punishment of offences.

(2) Any power conferred by this Law to make an Ordinance, regulation or Order 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."

8. In section 205 of the Law of 1975 -

- (a) number the existing text as subsection (1),
- (b) in subsection (1), as so numbered, for "clerks" wherever appearing substitute "officers", and
- (c) after subsection (1), as so numbered, insert the following subsections -

"(2) The Administrator's functions include, for the purposes of the implementation and administration of any approved international agreement (within the meaning of section 75C), the obtaining and exchanging of information in relation to -

- (a) income tax, or
- (b) tax of a class or description set out in the agreement.

(3) The obligation as to non-disclosure imposed by section 206 pursuant to an oath taken thereunder does not prevent the disclosure of information to any person, body or authority for the purposes of an agreement described in

subsection (2).".

9. After section 208 of the Law of 1975, insert the following section -

"Liability of directors, etc.

208A. (1) Where an offence under this Law is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, secretary or other similar officer of the company or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.".

10. In section 209(1) of the Law of 1975, for the definition of "**Administrator**" substitute the following -

"**Administrator**" means the Administrator referred to in section 205, and includes the Assistant Administrator,".

Citation.

11. This Law may be cited as the Income Tax (Guernsey) (Amendment) Law, 2005.

Commencement.

12. This Law shall come into force on the day appointed by Ordinance of the States^g, and different days may be appointed for different provisions and for different purposes including, without limitation, the purposes of -

- (a) the administration of income tax under the Law of 1975, and
- (b) any approved international agreement within the meaning of section 75C of the Law of 1975, as inserted by this Law.

^g In force 25th January, 2006 (Ordinance VI of 2006).