

ORDER IN COUNCIL

V
2012

ratifying a Projet de Loi

ENTITLED

The Income Tax (Guernsey) (Amendment) Law, 2008

(Registered on the Records of the Island of Guernsey
on the 31st May, 2012.)



2012

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

31st day of May, 2012 before Richard James McMahon, Esquire, Deputy Bailiff; present:- Stephen Edward Francis Le Poidevin, Peter Sean Trueman Girard, Esquires, Constance Helyar-Wilkinson, Terry George Snell, David Percy Langley Hodgetts L.V.O., Terry John Ferbrache, David Allan Grut and Jonathan Grenfell Hooley, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 13th July, 2011 approving and ratifying a Projet de Loi entitled the “Income Tax (Guernsey) (Amendment) Law, 2008”, 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 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 be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney for registration on the records of that Island.



At the Court at Buckingham Palace

THE 13th DAY OF JULY 2011

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 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolutions of 28th May 2008 and 30th July 2008, the States of Deliberation at a meeting on 26th November 2008 approved a Projet de Loi entitled the Income Tax (Guernsey) (Amendment) Law, 2008 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, 2008, and to order that it shall have force of law in the Islands of Guernsey 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 and Herm 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.

Judith Simpson

PROJET DE LOI

ENTITLED

The Income Tax (Guernsey) (Amendment) Law, 2008

THE STATES, in pursuance of their Resolutions of the 28th May, 2008^a and the 30th July, 2008^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 and Herm.

Amendment of Income Tax Law - information powers.

1. In section 75C(1) of the Income Tax (Guernsey) Law, 1975, as amended^c ("**the Law of 1975**") for "subsection (2)" substitute "section 75CA".

2. Section 75C(2) of the Law of 1975 is repealed.

3. After section 75C of the Law of 1975 insert the following section -

"Scrutiny of requests for information under TIEA's.

75CA. (1) The Administrator may not exercise his powers under sections 75A and 75B by virtue of section 75C unless a member of the Guernsey Tax Tribunal appointed for the purpose by the President (or in his

^a Article XIX of Billet d'État No. VII of 2008.

^b Article XVI of Billet d'État No. XI of 2008.

^c Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by No. XVII of 2005.

absence the Vice-President) thereof ("**the appointed member**") has reviewed the request for information and considers that it is, on its face, made in accordance with the formal and procedural requirements of the approved international agreement pursuant to which it is made.

(2) For the avoidance of doubt the appointed member is not under any duty to inquire into the substantive issues of law or fact raised in or relating to the request for information including, without limitation, any liability or alleged liability, or the circumstances of or giving rise to any liability or alleged liability, to tax under the law of the requesting state.

(3) No appeal lies against a decision of the appointed member under this section.

(4) A member of the Guernsey Tax Tribunal -

(a) when exercising his functions under this section is not acting on behalf of or as a member of the Guernsey Tax Tribunal but is exercising an independent office, and

(b) in the case of the appointed member, may not sit as a member of the Guernsey Tax Tribunal when it is hearing any appeal, question or issue connected or relating to the subject matter of the request.

(5) A member of the Guernsey Tax Tribunal may not perform any function under this section unless he has taken an oath or made an affirmation of confidentiality under section 206(1).

(6) No liability shall be incurred by any member of the Guernsey Tax Tribunal in respect of anything done or omitted to be done in the discharge or purported discharge of any function under this section unless the thing is done or omitted to be done in bad faith or is attributable to his own fraud or wilful misconduct.

(7) The Policy Council may determine the costs, fees, expenses and allowances payable to a member of the Guernsey Tax Tribunal in respect of the performance of any functions under this section."

4. In section 75K of the Law of 1975^d -

- (a) in subsection (3) for "10 days" substitute "30 days",
- (b) in subsection (5)(b) after "the Bailiff's decision" insert "or such longer period as the Court of Appeal may in any particular case allow",
- (c) in subsection (6) -
 - (i) in paragraph (a) after "some other error of law" insert "(not being one mentioned in paragraph (b))",
 - (ii) for "section 75B" substitute "section 75A or 75B", and
 - (iii) after "the ground mentioned in paragraph (b)" insert "unless the Bailiff, when giving leave to appeal under

^d Section 75K was inserted by No. XVII of 2005.

subsection (3), is satisfied -

- (i) that the material error as to the facts relates to the notice itself (including, without limitation, facts relating to the identity of the taxpayer or other person to whom the notice is addressed) and not to the circumstances of or giving rise to the liability or alleged liability to tax under the law of the requesting state, and
 - (ii) that it would be just and convenient for the decision to be challenged on that ground in the courts of Guernsey", and
- (d) in subsection (7)(a) after "subsection (3) or (5)" insert "or such longer period as the Royal Court may in any particular case allow".

5. After section 206(1)(b) of the Law of 1975 insert the following paragraph -

"(bb) is a member of the Tribunal, for the purposes of exercising the functions of an appointed member under section 75CA, or".

Amendment of Income Tax Law - taxation of benefits in kind.

6. (1) In section 68A of the Law of 1975^e -

^e Section 68A was inserted by the Income Tax (Zero-10) (Guernsey) (No. 2) Law, 2007.

- (a) in the title, after "chargeable" insert "or deductible",
- (b) after "a return as to his income" insert "or under section 70(1) requiring him to deliver a return as to his employees", and
- (c) in paragraph (a) after "which is chargeable to tax" insert "or from which tax is deductible (as the case may be)".

(2) After section 81A(12) of the Law of 1975^f insert the following subsection -

"(13) References in this section and in any regulations made under it to the payment of, or on account of, any income or emoluments arising or accruing from an office or employment include references to the provision of any benefit derived from that office or employment and comprised in the emoluments thereof.".

Amendment of Income Tax Law - exchange of information.

- 7. Section 206(7) of the Law of 1975^g is repealed.
- 8. After section 206 of the Law of 1975 insert the following sections -

"Exchange of information with Social Security Department.

206A. (1) Nothing in section 206 or in any oath taken in

^f Section 81A was inserted by Vol. XXVII, p. 118.

^g Section 206 was substituted by No. VI of 1992.

accordance with it precludes the Administrator from disclosing to the States Social Security Department or the Administrator thereof, for the purposes of enabling them to perform their respective functions under the Social Insurance (Guernsey) Law, 1978 (or any other enactment conferring functions on them) -

- (a) the name and address of any person,
- (b) information relating to the income of any person, and
- (c) information relevant to -
 - (i) any liability to tax, or contributions under the Social Insurance (Guernsey) Law, 1978, to which any person is or may be subject, or
 - (ii) the amount of any such liability.

(2) Information disclosed to the States Social Security Department or the Administrator thereof under subsection (1) may, without prejudice to the provisions of the Social Insurance (Guernsey) Law, 1978 (or any other enactment conferring functions on them) authorising the disclosure and use of information, be used by them for the purposes mentioned in subsection (1).

Power to amend sections relating to disclosure of information.

206B. (1) The States may by Ordinance amend any provision of section 206 or 206A.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances or regulations (and vice versa).

(3) The powers in section 208C(3) apply to an Ordinance under this section as they apply to an Ordinance under that section."

Amendment of Social Insurance Law - exchange of information.

9. After section 112 of the Social Insurance (Guernsey) Law, 1978, as amended^h insert the following sections -

"Exchange of information with Administrator of Income Tax.

112A. (1) Nothing in sections 111 to 112 precludes the Administrator or the Department from disclosing to the Administrator or Assistant Administrator of Income Tax, for the purposes of enabling them to perform their respective functions under the Income Tax (Guernsey) Law, 1975 (or any other enactment conferring functions on them) -

- (a) the name and address of any person,
- (b) information relating to the income of any person, and
- (c) information relevant to -

^h Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; No. V of 1990; Nos. V and XII of 1993; Ordinance No. XIV of 1993; Ordres en Conseil No. V of 1994, Nos. VI and XIII of 1995; No. I of 1998; No. VI of 1999; No. X of 2000; No. IX of 2001; No XXIV of 2003.

- (i) any liability to income tax, or contributions under this Law, to which any person is or may be subject, or
- (ii) the amount of any such liability.

(2) Information disclosed to the Administrator or Assistant Administrator of Income Tax under subsection (1) may, without prejudice to the provisions of the Income Tax (Guernsey) Law, 1975 (or any other enactment conferring functions on them) authorising the disclosure and use of information, be used by them for the purposes mentioned in subsection (1).

Power to amend sections relating to disclosure of information.

112B. (1) The States may by Ordinance amend any provision of sections 111 to 112A.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances or regulations (and vice versa).

(3) The powers in section 115A(1)(b) and (2) apply to an Ordinance under this section as they apply to an Ordinance under that section."

Citation.

10. This Law may be cited as the Income Tax (Guernsey) (Amendment) Law, 2008.

Commencement.

11. (1) Section 6 of this Law shall have effect, by virtue of the States' resolutions of the 30th July, 2008ⁱ and the 26th November, 2008, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992^j, on and from the 1st January, 2009, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

(2) The remainder of this Law shall come into force on the date of registration of this Law on the records of the Island of Guernsey.

S.M. SIMMONDS,
Her Majesty's Deputy Greffier.

ⁱ Article XVI of Billet d'État No. XI of 2008.

^j Order in Council No. XI of 1992.

**Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.**

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