

ORDER IN COUNCIL

**IX
2011**

ratifying a Projet de Loi

ENTITLED

The Income Tax (Guernsey) (Amendment) Law, 2009

(Registered on the Records of the Island of Guernsey
on the 4th July, 2011.)



2011



In the Royal Court of the Island of Guernsey

The 4th day of July, 2011 before Richard John Collas, Esquire, Deputy Bailiff; present:- Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Esquires, Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte, John Ferguson, Stephen Murray Jones, Peter Sean Trueman Girard, Esquires, Constance Helyar-Wilkinson, David Percy Langley Hodgetts L.V.O., Niall David McCathie, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, Esquire, Jurats.

The Deputy Bailiff, having this day placed before the Court an Order of Her Majesty in Council dated 8th June, 2011, approving and ratifying a Projet de Loi entitled “The Income Tax (Guernsey) (Amendment) Law, 2009”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur 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 Greffier of the Court of Alderney for registration on the records of that Island.

J. Torode

J TORODE

Her Majesty’s Deputy Greffier



At the Court at Buckingham Palace

THE 8th DAY OF JUNE 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 Resolution of 28th January 2009 and 29th September 2009, the States of Deliberation at a meeting on 27th October 2009 approved a *Projet de Loi* entitled the Income Tax (Guernsey) (Amendment) Law, 2009 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, 2009, 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 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.

Judith Simpson

PROJET DE LOI

ENTITLED

The Income Tax (Guernsey) (Amendment) Law, 2009

THE STATES, in pursuance of their Resolutions of the 28th January, 2009^a and the 29th September, 2009^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 1975 Law.

1. The Income Tax (Guernsey) Law, 1975, as amended^c, is further amended as follows.

^a Article XII of Billet d'État No. II of 2009.

^b Article VII of Billet d'État No. XXIV (Vol. 1) of 2009.

^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; No's. V, VI and XVII of 2005; No's. II and VII of 2006; No. XXI of 2007; the Income Tax (Zero 10) (Guernsey) Law, 2007; the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007; the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008; the Income Tax (Guernsey) (Amendment) Law, 2008; the Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009; and the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII) and the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009.

2. In section 5 -

(a) for subsection (1)(b)^d substitute the following -

"(b) in the case of an individual resident in Guernsey but not solely or principally resident therein, in accordance with the provisions of Chapter IA,"

(b) in subsection (1A)^e after "paragraph (b) of subsection (1) of this section"^f insert "and Chapter IA",

(c) in subsection (1B)^g after "subsection (1) of this section" insert "and Chapter IA".

3. After section 5 insert the following Chapter -

"CHAPTER IA
INDIVIDUALS RESIDENT BUT NOT SOLELY
OR PRINCIPALLY RESIDENT

"Taxation of individuals resident but not solely or principally resident."

5A. This Chapter applies to individuals resident in Guernsey but not solely or principally resident therein ("**relevant individuals**") and

^d Subsection (1)(b) was amended by No. II of 2006.

^e Subsection (1A) was inserted by No. XXIII of 1989.

^f Those words were inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^g Subsection (1B) was inserted by No. V of 1996.

provides for their liability to tax.

Right to elect to pay standard charge.

5B. (1) Subject to the provisions of this Chapter, a relevant individual may, within a period of two years immediately after the end of any year of charge commencing after 2008, elect to pay, in respect of his income in that year of charge, a charge to tax called the "**standard charge**".

(2) The standard charge is £25,000 or such other sum as the Department may determine by regulation.

(3) The election to pay the standard charge shall be made in such form and manner, and shall be accompanied by such information and documents, as the Director of Income Tax may require.

Effect of election.

5C. Where in accordance with the provisions of this Chapter a relevant individual elects, in respect of any year of charge, to pay the standard charge -

- (a) he is liable to pay tax on his total income arising or accruing in Guernsey in that year of charge, other than any interest arising in Guernsey upon money deposited with a licensed institution or other person exempted from the requirement to be licensed under the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (b) he is not liable to pay tax on his income arising

or accruing elsewhere than in Guernsey in that year of charge,

- (c) the amount he has paid by way of the standard charge may be set off against the amount of tax which would otherwise be chargeable by virtue of paragraph (a) on his income arising or accruing in Guernsey in that year of charge, and
- (d) he is not entitled to the allowances, reliefs and deductions which may under this Law be set off against the income of an individual (other than deductions which may be made in computing the amount of the profits of a business which are to be charged to tax or which are eligible for relief for a loss under Part XI).

Individual making election must file declaration.

5D. (1) A relevant individual may only elect, in respect of any year of charge, to pay the standard charge if he makes a declaration, which must be submitted to the Director of Income Tax with his election, of his income arising or accruing in Guernsey in that year, other than any interest arising in Guernsey upon money deposited with a licensed institution or other person exempted from the requirement to be licensed under the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

(2) The declaration shall be made in such form and manner, and shall be accompanied by such information and documents, as

the Director of Income Tax may require.

(3) The individual making the declaration shall furnish to the Director of Income Tax, within such period as the Director of Income Tax may specify, such accounts and other information (including, without limitation, accounting records required to be kept by a company under section 238 of the Companies (Guernsey) Law, 2008) relating to the declaration or the contents thereof as the Director of Income Tax may require.

(4) The accounts and other information referred to in subsection (3) shall be certified, if the Director of Income Tax so requires, by an accountant -

- (a) who is a member of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland or the Association of Chartered Certified Accountants, or
- (b) who holds an equivalent qualification approved by the Director of Income Tax.

(5) An individual who makes a declaration under this section in respect of any year of charge is not obliged, unless the Director of Income Tax directs otherwise, to deliver a return as to his income in respect of that year in accordance with section 68.

False declarations, etc.

5E. This Law applies in relation to a declaration under section 5D(1) as it applies in relation to a return as to income required to be submitted under section 68.

Tax liability where no election and declaration made.

5F. A relevant individual who does not in accordance with the provisions of this Chapter elect, in respect of any year of charge, to pay the standard charge -

- (a) must deliver a return as to his income in accordance with section 68 on the basis of his total income, wherever such income may arise or accrue, in that year of charge,
- (b) is liable to pay tax on his total income, wherever such income may arise or accrue, in that year of charge, and
- (c) is entitled to the allowances, reliefs and deductions which may under this Law be set off against the income of a relevant individual.

Categorisation of standard charge.

5G. Without prejudice to the provisions of this Chapter -

- (a) the standard charge shall be regarded for the purposes of this Law as tax, and

- (b) this Law applies in relation to the standard charge as it applies in relation to tax.

Interpretation of Chapter 1A.

5H. In this Chapter -

"**relevant individual**" means an individual resident in Guernsey but not solely or principally resident therein, and

"**standard charge**" means the charge to tax which a relevant individual may, subject to the provisions of this Chapter, elect to pay in respect of his income in a year of charge.

Transitional provisions in respect of year of charge 2009.

5I. (1) Section 5F only has effect in respect of any year of charge after 2009.

(2) Accordingly, in respect of the year of charge 2009, the liability to tax and the entitlements and obligations in respect thereof of a relevant individual who does not in accordance with the provisions of this Chapter elect, in respect of that year of charge, to pay the standard charge shall be governed by the provisions of this Law as they had effect immediately prior to the enactment of the Income Tax (Guernsey) (Amendment) Law, 2009 (and as if that Law had not been enacted)."

4. In section 8(2A)^h -

- (a) in paragraph (d) for "£10,000" substitute "£30,000", and

^h Section 8(2A) was inserted by No. III of 1995.

(b) after paragraph (d) insert the following paragraph -

"(e) any emoluments arising from any employment as a merchant seaman and constituting overseas earnings.

However -

- (i) where in relation to any year of computation a deduction from the emoluments of an individual's employment is claimed by virtue of this paragraph, then he is not entitled, in relation to that year of computation, to any other allowance, relief or deduction in respect of his income or that of his spouse, and
- (ii) a deduction from the emoluments of an individual's employment may only be claimed by virtue of this paragraph where the individual, within a period of two years immediately after the end of the year of computation to which the claim relates (being a year of computation commencing after 2008), submits an application to the Director of Income Tax, in such form and manner and accompanied by such information and documents as the Director of Income Tax may require, containing particulars of his claim."

5. In section 8(2B)ⁱ insert the following definitions at the appropriate places -

"**British ship**" has the meaning given by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^j, but does not include a fishing vessel within the meaning of that Law,

"**merchant seaman**" means an individual employed or engaged as an officer or member of the crew of a British ship,

"**overseas earnings**" means emoluments -

- (a) which are derived from employment as a merchant seaman, and
- (b) which arise or accrue in respect of duties performed -
 - (i) outside the Bailiwick of Guernsey, the Bailiwick of Jersey and the United Kingdom, and
 - (ii) during a continuous period of 365 days or more spent by the individual in question in any place or places outside Guernsey, and the requirements of this subparagraph are satisfied if the individual does not during that period of absence -

ⁱ Section 8(2B) was inserted by No. III of 1995.

^j No. VIII of 2004.

(A) spend more than 183 days continuously in Guernsey, or

(B) spend more than 50% in aggregate of the total number of days comprised in that period of absence in Guernsey,".

6. In section 27(1) -

(a) the words "and any sum on account of an allowance in pursuance of the provisions of the Family Allowances Law" and "or such sum" are repealed, and

(b) for "they were" substitute "it were".

7. In section 27(2) paragraphs (d), (k) and (l) are repealed.

8. (1) In section 39B^k -

(a) in subsection (1) after "qualifying income" insert "and on non-qualifying income",

(b) in subsection (2) -

(i) after "qualifying income" insert "and non-qualifying income", and

^k Section 39B was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

- (ii) after "will apply" insert ": provided that those allowances, reliefs and deductions shall first be set off against the individual's qualifying income",
- (c) in subsection (5)¹ for "**qualifying income**" means substitute "**qualifying income**" and "**non-qualifying income**" mean".

(2) After section 39B insert the following sections -

"Effect of tax cap on credits and repayments."

39C. (1) Where in any year of charge -

- (a) the amount of income tax payable by an individual is, by virtue of section 39B, limited as set out in the Sixth Schedule, and
- (b) the individual receives a distribution from a company consisting of income which -
 - (i) arose or accrued to the company in a year of charge before 2008, and
 - (ii) in the individual's hands carries a credit for tax paid or deemed to have been

¹ Subsection (5) was inserted by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

paid by the company,

then the following provisions have effect.

(2) Without prejudice to his entitlement to the credit, the individual is not entitled to any repayment of tax in respect of that credit.

(3) For the purpose of calculating -

(a) the amount of credit due to the individual in that year of charge, and

(b) the amount (if any) of any repayment of tax due to him in that year of charge,

there shall be taken into account, before taking into account the amount of the company's distribution, the amount of any other income of any different class, description or source arising or accruing to the individual in that year of charge from which tax has been deducted or in respect of which tax has already been paid.

Effect of tax cap on rolled-forward business profits.

39D. (1) Where in any year of charge -

(a) the amount of income tax payable by an individual is, by virtue of section 39B, limited as set out in the Sixth Schedule, and

(b) the individual receives a distribution from a company consisting of income which -

- (i) arose or accrued to the company from the carrying on of a business in Guernsey, and
- (ii) in the individual's hands is non-qualifying income and, in consequence of the individual having made an election in respect of that year of charge in accordance with the Sixth Schedule, is subject to the limit on the amount of income tax payable as set out in that Schedule,

then the following provisions have effect.

(2) There shall be calculated the amount of additional tax that would have been payable by the individual in the year of charge in which the income arose or accrued to the company had the income been distributed by the company in that year of charge.

(3) That amount of tax -

- (a) shall be payable by the individual in respect of the year of charge in which he received the distribution referred to in subsection (1)(b), notwithstanding that (apart from this section) the amount of income tax payable by him would, by virtue of section 39B, have been limited as set out in the Sixth Schedule, and

- (b) shall be payable in addition to the amount of income tax that would have been payable (but for this section) by the individual pursuant to the provisions of section 39B and the Sixth Schedule.

(4) In this section a "**distribution**" from a company includes a deemed distribution within the meaning of Chapter VIIIA of Part IV, and related expressions shall be construed accordingly."

9. In section 40 -

(a) in paragraph (k)^m -

(i) before the words "if and so far" insert "or a charity not required to be registered in accordance with that Law," , and

(ii) at the end of the paragraph insert -

"and for the purposes of this paragraph "charity" -

(i) means any body of persons or trust established for charitable purposes only, and

(ii) where any property or fund the income

^m Paragraph (k) was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

whereof is applicable to charitable purposes only is entrusted to any person or body of persons, means, in relation to that property or fund and the income thereof, that person or body,"

(b) paragraphs (u), (v) and (aa)ⁿ are repealed,

(c) after paragraph (gg)^o add the following paragraphs -

"(hh) the income derived from the micro-generation of electricity,

(ii) any Premium Bond prize awarded by National Savings and Investments (a department of Her Majesty's Government)," and

(d) after paragraph (ii) [as inserted by paragraph (c) above] add the following paragraph -

"(jj) any sum on account of an allowance in pursuance of the provisions of the Family Allowances Law.".

10. In section 40A^p -

(a) for "the Department" wherever appearing substitute "the

ⁿ Paragraph (aa) was inserted by Vol. XXVII, p. 200.

^o Paragraph (gg) was inserted by No. VII of 2006.

^p Section 40A was inserted by Vol. XXVIII, p. 409.

Director of Income Tax",

- (b) in subsections (2) and (4) for "it" substitute "he",
- (c) subsection (5A)(b)^q is repealed.

11. In the proviso to section 43(2) the words after "section thirty-six of this Law" are repealed.

12. Section 51(2) and (3) is repealed.

13. After section 51(4) insert the following subsections -

"(5) Notwithstanding the provisions of subsection (1), any non-resident individual who is or has been in receipt of a pension arising or accruing or treated as arising or accruing in Guernsey in any year of charge shall, in respect of that year of charge, and provided that the pension is chargeable to tax and subject to the deduction of tax under this Law, be entitled to a proportion of the personal and other allowances prescribed under section 36(1) by way of relief from income tax at the appropriate rate and subject to the same conditions as if he were solely or principally resident in Guernsey, that proportion -

- (a) not to exceed one fifty-second part of those personal and other allowances in respect of every seven days for which he satisfies the Director of Income Tax that he is in receipt of that pension in that year of charge, and

^q Subsection (5A) was inserted by Vol. XXXI, p. 473.

(b) to be set off only against his income comprised in that pension (and not against any other income arising or accruing or treated as arising or accruing in Guernsey).

(6) In subsection (5) "pension" means a pension, superannuation or other allowance described in section 81A(2)(b) or an annuity described in section 81A(2)(bA)."

14. After section 51A(2)^r insert the following subsection -

"(3) Notwithstanding any provision of this section or section 51, an individual who is resident but not solely or principally resident in Guernsey in any year of charge, is not, in respect of that year of charge, entitled to a proportion of the personal and other allowances prescribed under section 36(1) by way of relief from income tax which exceeds in amount the personal and other allowances to which an individual who is solely or principally resident in Guernsey in that year of charge would be entitled."

15. In section 56(b)^s after "2008" insert "or a charity not required to be registered in accordance with that Law".

^r Section 51A was inserted by No. IV of 1993.

^s Section 56(b) was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

16. In section 62AC(1)^t for "the provisions of section 81B" substitute "the provisions of this Law".

17. In section 62A(2)^u after the words "in the case of a non-resident company" insert "(other than a company which has been granted an exemption from tax under an Ordinance made under section 40A)".

18. After Chapter X of Part IV insert the following Part -

*"Chapter XA
Donations to charity*

Application of Chapter.

64A. This Chapter provides for the treatment for income tax purposes of payments made in favour of charities ("**charitable donations**") on or after the 1st January, 2010.

Exempt donations.

64B. (1) A charitable donation is "**exempt**" for the purposes of this Chapter if and only if -

- (a) the donation is made to a Guernsey Registered Charity,
- (b) the donation is made by an individual from his

^t Section 62AC was inserted by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

^u Section 62A(2) was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007 and amended by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

income in respect of which he has been charged to tax and has paid tax at the individual standard rate in the year of charge in which the donation is made,

- (c) the amount of the donation, when aggregated with the amount of any other payment made by the same individual to the same Guernsey Registered Charity in the same year of charge, is at least £500,
- (d) the amount of the donation, when aggregated with the amount of any other payment made by the same individual to the same or any other Guernsey Registered Charity in the same year of charge, does not exceed £5,000,
- (e) the donation, and any other payment referred to in paragraph (c) or (d), is not made under a deed of covenant entered into before the 1st January, 2010, and
- (f) the individual making the donation makes a written declaration to the Guernsey Registered Charity that the conditions set out in paragraphs (a) to (e) are satisfied.

(2) For the purposes of subsection (1), a husband and wife-

- (a) may in any year of charge aggregate the donations and payments made by them to the same Guernsey Registered Charity for the purpose of calculating the minimum amount specified in paragraph (c) of that subsection, and
- (b) may in any year of charge each make donations and payments to Guernsey Registered Charities not exceeding in the aggregate the maximum amount specified in paragraph (d) of that subsection.

(3) The States may by Ordinance amend the amounts specified in subsection (1).

Form of declaration.

64C. (1) The declaration referred to in section 64B(1)(f) shall be made in such form and manner, and shall be accompanied by such information and documents, as the Director of Income Tax may require.

(2) Without prejudice to any other provision of this Law, where a declaration, or any document or information produced or furnished in connection with it or otherwise for the purposes of this Chapter, is incorrect or incomplete, or is false, deceptive or misleading, in a material particular, then the declaration is void, and -

- (a) the Guernsey Registered Charity concerned shall not, in respect of any payment to it to which the declaration related, be entitled to

claim a repayment of tax in accordance with section 64D, and

- (b) the amount of any tax repaid by the Director of Income Tax to the charity under section 64D in consequence of the declaration is repayable to him on a joint and several basis by -
 - (i) the individual by whom the declaration was made, and
 - (ii) the charity,

and may be recovered by him in the same manner as income tax due under this Law.

Consequences of exemption.

64D. (1) Where under section 64B a charitable donation to a Guernsey Registered Charity is "exempt" for the purposes of this Law -

- (a) the donation is considered to be a payment net of tax in the charity's hands,
- (b) the charity may claim a repayment of the tax paid in respect of the donation by the individual making the payment,
- (c) the Director of Income Tax shall pay the amount of the tax so paid to the charity, and

- (d) for the avoidance of doubt, the individual making the donation cannot set off the amount of the donation against his income for the purposes of calculating his liability to tax.

(2) However, any claim by a Guernsey Registered Charity for a repayment of tax under subsection (1) -

- (a) may only be made after the expiration of the year of charge in which the donation in question was made, and
- (b) shall be made in such form and manner, and shall be accompanied by such information and documents (including, without limitation, the declaration referred to in section 64B(1)(f)), as the Director of Income Tax may require.

Transitional provisions.

64E. (1) Where an individual entered into a deed of covenant prior to the 1st January, 2010, and the deed remains valid and enforceable on that date, the provisions of this Law as they had effect immediately prior to that date shall continue to apply in relation to that deed and the liability to tax of that individual in respect of covenanted donations made under it until the expiration of the deed.

(2) Without limitation, a deed of covenant is deemed to expire for the purposes of subsection (1) if, at any time after the 31st December, 2009 -

- (a) the covenantor ceases to be under any obligation to make any donations under it,
- (b) the deed is amended in any material respect, or
- (c) the obligations under the deed are extended or renewed.

(3) Covenanted donations to a charity under a deed of covenant entered into prior to the 1st January, 2010 cannot be an exempt charitable donation for the purposes of this Chapter; and accordingly the charity may not claim a repayment of the tax paid in respect of the donation by the individual making the payment.

Interpretation of Chapter XA.

64F. For the purposes of this Chapter -

"**charitable donation**" means a payment made in favour of a charity,

"**charity**" : see section 40(k),

"**deed of covenant**" means a settlement -

- (a) which contains a covenant by the settlor to make periodic payments to a charity, and
- (b) which complies with the requirements for settlements of that description for the time being prescribed by regulations of the

Department under section 65(1)^v,

"**exempt**", in relation to a charitable donation : see section 64B(1),

"**Guernsey Registered Charity**" means a charity registered in accordance with the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008. "

19. In section 65(1), the proviso^w is repealed.
20. Section 65(2)^x is repealed.
21. In section 65(4)^y the definitions of "approved sum" and "covenanted donation" are repealed.
22. After section 66B(4)^z add the following subsection -

"(5) For the avoidance of doubt, the provisions of

^v The current relevant regulations are the Income Tax (Guernsey) (Settlement) Regulations, 1979 (No. 20), as amended by the Income Tax (Guernsey) (Settlement) Regulations, 1993 (No. 35).

^w The proviso was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

^x Section 65(2) [apart from the proviso] was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

^y Section 65(4) was inserted by Vol. XXVII, p. 84 and amended by Recueil d'Ordonnances Tome XXVIII, p. 368.

^z Section 66B was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

subsections (3) and (4) -

- (a) do not create a second charge to tax, and
- (b) do not create any obligation on the company under section 81B to deduct and account for tax,

on the amount of a loan in respect of which tax has already been paid pursuant to section 66C."

23. In section 80A^{aa} -

- (a) in paragraph (a) for "the Department" substitute "the Guernsey Tax Tribunal established by the Third Schedule (and for the purposes of an appeal described in this paragraph a quorum of the Guernsey Tax Tribunal shall be a single member appointed by the President or, in his absence, the Vice President thereof)",
- (b) in paragraph (b) the words "established by the Third Schedule to this Law" are repealed.

24. After section 81B(18)^{bb} insert the following subsections -

^{aa} Section 80A was inserted by Vol. XXXII, p. 307.

^{bb} Section 81B(18) was inserted by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

"(19) For the avoidance of doubt, and subject to the provisions of regulations under subsection (20), the provisions of this section do not apply in relation to a company which has been granted an exemption from tax under an Ordinance made under section 40A.

(20) The Department may, notwithstanding any other provision of this Law, by regulations -

- (a) extend the application of this section to any specified class or description of company,
- (b) exempt any specified class or description of company from the application of this section,
- (c) prescribe conditions subject to which any such extension or exemption is to have effect, and
- (d) make consequential modifications to this section or any other provision of this Law in its application to any specified class or description of company.

"Specified" means specified in the regulations.

(21) The provisions of section 203 (requirement to lay regulations before a meeting of the States) apply to regulations made under subsection (20).".

25. In section 174(4) the definition of "distribution"^{cc} is repealed.

26. After section 176(1) insert the following subsection -

"(1A) Where the person entitled to the income is a company, and the income is liable to be taxed in the company's hands at the company intermediate rate or the company standard rate, then, if the company distributes that income or any part thereof -

- (a) to an individual resident in Guernsey, or
- (b) to a company resident in Guernsey in a case where the income is liable to be taxed in that company's hands at the company intermediate rate or the company higher rate,

that individual or company shall be deemed to be the person entitled to the income and shall for the purposes of this section be entitled to relief from taxation accordingly."

27. After section 178A^{dd} insert the following section -

"Meaning of "distribution" in Part XV.

178B. In this Part "**distribution**" means a distribution from which the deduction of tax is required by section 81B, and related expressions shall

^{cc} The word "distribution" in the definition was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^{dd} Section 178A was inserted by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

be construed accordingly."

28. In section 209(2) after "including this Law" insert "; and in this subsection "enactment" includes any regulation, order or rule".

29. In the Third Schedule^{ee} -

(a) after paragraph 3(1) insert the following subparagraphs -

"(1A) The Policy Council may also appoint a person who appears to the Council, after consultation with the Tribunal's President, to have appropriate qualifications and experience to be the deputy clerk to the Tribunal with authority to exercise the clerk's functions during any period in which the clerk is unavailable or unable to act or during any vacancy in that office.

(1B) A function exercised by a deputy clerk pursuant to an appointment under this paragraph is for all purposes exercised by the clerk; and every decision taken or other thing done by a deputy clerk pursuant to such an appointment has the same effect as if taken or done by the clerk.

(1C) An appointment under this paragraph of a deputy clerk -

(a) is subject to variation and termination in the

^{ee} The Third Schedule was inserted by Vol. XXXII, p. 307.

same manner as the appointment of the clerk, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,

- (b) does not prevent the exercise of the function by the clerk while the appointment subsists.",
- (b) in paragraph 3(6) after "this paragraph shall" insert ", subject to the provisions of any regulations of the Policy Council as to costs and fees and the recovery thereof under paragraph 5(5),",
- (c) for paragraph 5(1) substitute the following -

"(1) The Director of Income Tax shall -

- (a) at any time after receiving notice of an appeal in relation to any matter which may be referred to the Tribunal under any enactment, and
- (b) either of his own motion or at the request of the appellant,

forward the notice to the Tribunal, whose President or Vice-President shall convene sufficient members to constitute a quorum.",

- (d) in paragraph 5(2)(a) after "or is considering an application for

an adjournment," insert "or is hearing an appeal described in section 80A(a),",

(e) in paragraph 5(2)(g) after "subject to this Schedule" insert "and any regulations made under it",

(f) after paragraph 5(4) insert the following subparagraphs -

"(5) The Policy Council may by regulation make rules of procedure in relation to the hearing of cases by the Tribunal, including provision as to the form, manner, practice, conduct and administration of appeals and hearings and provision as to costs and fees and the recovery thereof.

(6) Rules under subparagraph (5) may (without limitation) make provision in connection with matters preparatory to and subsequent to hearings as well as in connection with the conduct of hearings."

30. In the Sixth Schedule^{ff} -

(a) for "£250,000" substitute "£100,000", and

(b) for the words "Income tax on income from any other sources shall not be subject to this limit." substitute -

"Income tax on income from any other sources (referred to in

^{ff} The Sixth Schedule was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

this Law as "**non-qualifying income**") shall not be subject to this limit.

However, notwithstanding the preceding provisions of this Schedule, an individual resident in Guernsey in receipt of non-qualifying income may, within a period of two years immediately after the end of any year of charge commencing after 2008, elect to pay in respect of both qualifying and non-qualifying income in that year a maximum of £200,000 in tax, and in that case -

- (i) the maximum figure specified above of £100,000 in tax in the year of charge in respect of qualifying income does not apply, and
- (ii) the individual shall pay in respect of both qualifying and non-qualifying income in that year a maximum of £200,000 in tax."

Repeal of Income Tax (Settlements) Ordinance.

31. The Income Tax (Settlements) Ordinance, 2000^{gg} is repealed.

Citation.

32. This Law may be cited as the Income Tax (Guernsey) (Amendment) Law, 2009.

Commencement.

33. (1) This Law shall have effect, by virtue of the States' resolution

^{gg} Recueil d'Ordonnances Tome XXVIII, p. 368.

of the 27th October, 2009^{hh}, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992ⁱⁱ, in accordance with the provisions of subsections (2) to (10), as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

(2) Sections 2 and 3 shall have effect in respect of any year of charge after 2008 (but subject to the transitional provisions set out in section 5I of the Income Tax (Guernsey) Law, 1975 as inserted by section 3 above).

(3) Sections 4, 5, 8(1), 9(c) and 30 shall have effect in respect of any year of charge after 2008.

(4) Sections 11, 12, 13 and 14 shall have effect in respect of any year of charge after 2009.

(5) Sections 6, 7, 8(2), 9(b), 9(d), 16, 17, 22 and 24 shall have effect on and from the 27th October, 2009 (the date of approval of this Law by the States).

(6) Sections 10, 23, 28 and 29 shall have effect on and from the date of registration of this Law on the records of the Island of Guernsey.

(7) Sections 9(a) and 15 shall be deemed to have had have effect on and from the 28th October, 2008.

(8) Sections 18, 19, 20, 21 and 31 shall have effect on and from the 1st January, 2010.

^{hh} Article I of Billet d'État No. XXVII of 2009.

ⁱⁱ Order in Council No. XI of 1992.

(9) Sections 25, 26 and 27 shall be deemed to have had effect on and from the 1st January, 2008.

(10) The States Treasury and Resources Department may by regulation, for the purposes of the commencement and implementation of this Law, make such savings and transitional provisions as it thinks fit and/or modify any date specified in subsections (2) to (9); and sections 203 and 203A of the Income Tax (Guernsey) Law, 1975 apply to such regulations as they apply to regulations under that Law.

J. TORODE,
Her Majesty's Deputy Greffier.

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