

ORDER IN COUNCIL

**VII
1995**

ratifying a *Projet de Loi*

ENTITLED

The Income Tax (International Bodies) (Guernsey) Law, 1995

(Registered on the Records of the Island of Guernsey
on the 22nd August, 1995.)



1995

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 22nd day of August, 1995 before Sir Graham Dorey, Bailiff; present:— Stanley Walter John Jehan, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe, Lawrence Oscar Ozanne, John Richard Rowe Henry, David Charles Lowe, Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page and Stephen Edward Francis Le Poidevin, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 28th day of June, 1995, approving and ratifying a *Projet de Loi* entitled “The Income Tax (International Bodies) (Guernsey) Law 1995”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ordered that the said Order in Council be registered on the records of this Island; of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 28th day of June 1995

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the affairs of Guernsey and Jersey dated the 13th day of June 1995 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble petition of The States of the Island of Guernsey setting forth:—

‘1. That, in pursuance of their Resolution of the 24th day of February 1993 the States of Deliberation at a Meeting held on the 30th day of June 1993 approved a Bill or “Projet de Loi” entitled “The Income Tax (International Bodies) (Guernsey) Law, 1995”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Income Tax (International Bodies) (Guernsey) Law, 1995”, and to order that the same shall have force of law in the Islands of Guernsey and Herm.’”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey and Herm.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. H. Nicholls

PROJET DE LOI

ENTITLED

The Income Tax (International Bodies) (Guernsey) Law, 1995

THE STATES, in pursuance of their Resolutions of 24th February, 1993(a) and 30th June, 1993(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.

International Bodies

1. In the Income Tax (Guernsey) Law, 1975(c), as amended(d), immediately after Part XVII there is inserted:

"

PART XVIIIA

INTERNATIONAL BODIES

Qualifications for international tax status applicants

188A. This Part of this Law applies to any body of persons (whether incorporated or not) which -

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- (a) on Article 10 of Billet d'État No. III of 1993.
 - (b) on Article 3(1) of Billet d'État No. X of 1993.
 - (c) Ordres en Conseil Vol. XXV, p.124.
 - (d) Ordres en Conseil 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; Nos. XIV and XXIII of 1989; No. XXVI of 1990; No. IV of 1991; No. VI of 1992; Nos. IV and VIII of 1993; No. XXV of 1994; No. III of 1995.

- (a) is liable to pay tax in Guernsey on some or all of its income by virtue of-
 - (i) being resident in Guernsey, or
 - (ii) carrying on business in Guernsey; and
- (b) derives no income from trading with any person who is resident in Guernsey other than a body to which international tax status has been granted under section 188D of this Law; and
- (c) is wholly beneficially owned by persons who are not resident in Guernsey, or to whom international tax status has been granted under section 188D of this Law; and
- (d) is not, and has not at any time been -
 - (i) a bank; or
 - (ii) a registered or exempt insurer, other than an insurer whose gross premium income arising from any domestic business which it carries on does not exceed five per centum of its total gross premium income; and
- (e) has never been granted any exemption from tax in accordance with any

Ordinance made under section 40A of this Law; and

- (f) has never carried on business or exercised functions in Guernsey (or, in the case of a Bailiwick body, anywhere in the world) without international tax status.

Beneficial ownership requirements

188B(1) For the purposes of this Part of this Law a body is not wholly beneficially owned by persons who are not resident in Guernsey if any person resident in Guernsey has any beneficial interest in it other than an interest:

- (a) as the holder of a share or debenture in a quoted body corporate which itself has a beneficial interest in the body; or
- (b) as a loan creditor of the body, if that person is a bank; or
- (c) as a nominee or trustee.

(2) In this Part of this Law "beneficial interest" in relation to any body means any interest, whether vested or contingent and whether direct or through another body or trust, and a person has a beneficial interest in a body -

- (a) if he has a right to acquire, dispose of, or vote in respect of, any interest in it; or

(b) if his consent is necessary for the exercise of any of the rights of any other person interested in the body; or

(c) if any other person interested in the body can be required or is accustomed to exercise his rights in accordance with instructions given by the first-mentioned person.

(3) The information set out in subsection (4) of this section must be disclosed to the Financial Services Commission -

(a) immediately prior to the making of an application under section 188C of this Law; and

(b) whilst a body has international tax status, on each anniversary of the date with effect from which it was granted; and

(c) on the occurrence of any change in the information set out in paragraph (a) of that subsection.

(4) The information referred to in subsection (3) of the section is -

(a) the names and addresses of the people who are for the time being the ultimate beneficial owners of the body, or,

where any shares or other interests are held on trust, the names and addresses of the trustees, the settlor, and any other person who provided the trust property, and the name of the trust; and

- (b) such other information as the Financial Services Commission may require in any particular case.

Application for international tax status

188C(1) An application for international tax status may only be made-

- (a) on behalf of a proposed Bailiwick company, prior to the date of registration of its constitutive documents; or
 - (b) on behalf of any existing or proposed body other than a Bailiwick company, prior to its commencing operations in Guernsey or first holding a board meeting in Guernsey.
- (2) An application for international tax status-
- (a) must be made in writing to the Authority and be in such form (if any) and signed by such person (if any) as the Authority may from time to time determine;
 - (b) must be accompanied by:

- (i) a copy of the body's proposed or existing constitutive documents; and
 - (ii) a declaration that section 188B(3) has been complied with;
- (c) must specify the rate at which it is proposed that the body should be charged to tax ("the specified tax rate");
- (d) must contain or be accompanied by sufficient information, verified in such manner (if any) as the Authority may require, to satisfy the Authority:
- (i) that the body concerned will, upon the registration of its constitutive documents or upon commencing operations or first holding a board meeting in Guernsey as the case may be, be a body to which this Part' of this Law applies; and
 - (ii) that the body's intended activities are such as to make the granting to it of international tax status appropriate; and
 - (iii) that the specified tax rate is appropriate to the body and in

the best economic interests of Guernsey.

(3) Upon receipt of an application under this section the Authority may require the applicant to furnish it with such further information, verified in such manner (if any) as the Authority may specify, as the Authority considers necessary to facilitate its determination of the application; and the Authority may refuse to consider or determine the application unless or until that further information is so furnished.

(4) The specified tax rate referred to in this Part of this Law must be a percentage rate of more than zero but not more than thirty.

Grant or refusal of international tax status

188D(1) If on receipt of an application, and any further information required by it under section 188C(3), the Authority is satisfied of all of the matters referred to in section 188C(2)(d), the Authority may grant the application and, subject to subsection (2) of this section, issue a certificate of international tax status setting out:

- (a) the name of the body concerned and such further details as the Authority considers desirable to facilitate its accurate identification;
- (b) the date (not being earlier than the beginning of the calendar year in which the application is granted) with effect

from which international tax status is to apply to the body;

(c) the date (not being later than five years after the date set out in accordance with paragraph (b) of this subsection) on which, subject to section 188F, international tax status will cease to apply to the body;

(d) the specified tax rate at which the body is to be charged to tax on its assessable income whilst international tax status applies to it.

(2) When the Authority grants an application made in respect of a body prior to the registration of its constitutive documents the grant is conditional on such registration taking place within three months thereafter, and the certificate of international tax status referred to in subsection (1) of this section must, subject to section 188F(3), be issued upon such registration.

(3) If the Authority is not satisfied of all of the matters referred to in section 188C(2)(d) then it must refuse the application and notify the applicant accordingly.

(4) It is hereby declared that international tax status cannot be claimed as of right by any body, that the Authority's discretion to refuse it is totally unfettered, that no reasons need be given for its refusal, and that no appeal lies against its refusal in any circumstances.

Effect of international tax status

188E(1) For so long as international tax status applies to a body its assessable income is to be charged to tax, notwithstanding any other provision of this Law, at the specified tax rate applicable to that body as set out in the certificate referred to in section 188D(1).

(2) All of the provisions of this Law apply as respects all matters of taxation of and in connection with any body to which international tax status applies without any modification, except that -

- (a) the reference in section 5(1) to a standard rate is to be construed as a reference to the specified tax rate applicable to that body;
- (b) notwithstanding section 61, the credit in respect of tax deducted or authorised to be deducted from any dividend paid by a body to which international tax status applies shall be restricted, where necessary, so as to secure that no relief in respect of tax so deducted shall be allowed, and no tax in respect thereof shall be repaid, at a rate exceeding the specified tax rate applicable to that body;
- (c) interest and other income of a similar nature paid by a body to which international tax status applies to a

person not carrying on business through a permanent establishment in Guernsey shall not be regarded in the hands of that person as arising or accruing from a source in Guernsey for the purposes of section 5(1)(d), and sections 165 and 166 do not apply in the case of interest so paid;

(d) an appeal by such a body under Part VII may not include any challenge to the specified tax rate applicable to that body;

(e) no such body may -

(i) be granted any exemption from tax under any Ordinance made under section 40A; or

(ii) make an election under section 187A.

(3) The Authority may from time to time require any body to which international tax status has been granted to provide such information (other than information required by section 188B(3) and (4) to be disclosed to the Financial Services Commission), verified in such manner (if any) as it may specify, in order to satisfy itself -

(a) that the body continues to be a body to which this Part of this Law applies; and

- (b) that its activities remain such that the application to it of international tax status is appropriate; and
- (c) that the specified tax rate applicable to it remains appropriate to the body and in the best economic interests of Guernsey.

Duration and loss of international tax status

188F(1) Subject to this section the international tax status of any body endures until, and expires on, the date (not being more than five years after that status commences) set out in that regard in its certificate issued in accordance with section 188D.

(2) The Authority may (in its absolute discretion) renew the international tax status of any body, either at the same specified tax rate or at a different specified tax rate, for any period of up to five years upon application being made to it during the currency of that status; and this Part of this Law, apart from section 188C(1), applies in all respects to such an application as it applies to a new application.

(3) If a body to which international tax status applies -

- (a) ceases to be a body to which this Part of this Law applies, or
- (b) fails to comply with section 188B(3) or with a requirement made under section 188E(3), or

(c) is found, in an application for international tax status, in a purported declaration under section 188B(3), in purported compliance with a requirement made under section 188E(3) or in any return made under or for the purposes of this Law, to have made a statement or furnished information which is false or misleading in a material particular,

it shall, subject to subsection (4) of this section, automatically lose that status forthwith and become liable to be charged to tax at the standard rate without regard to this Part of this Law in respect of all of its assessable income arising or accruing during the year in which its international tax status is so lost and during each year thereafter.

(4) If the Administrator is satisfied that a body's loss of international tax status under subsection (3) of this section is attributable -

- (a) to its having derived income from a person resident in Guernsey only through a transaction which, taking into account the nature and volume of the body's business, is an isolated and insignificant transaction, or
- (b) to a person resident in Guernsey having acquired a beneficial interest in the body in circumstances beyond the control of the body, or

(c) to an inadvertent failure to comply with section 188B(3) or with a requirement made under section 188E(3),

then he may certify that, notwithstanding subsection (3) of this section, international tax status shall continue to apply to the body provided that it takes all steps necessary to become once more a body to which this Part of this Law applies, or to rectify the failure as the case may be, and complies with such other reasonable conditions as he may require, by a specified date.

(5) On an appeal under Part VII of this Law against an assessment made following a body's loss of international tax status under subsection (3) of this section it is open to the appellant -

(a) to challenge the basis on which the loss of that status is alleged to have arisen, or

(b) if the appellant has requested the Administrator to exercise his discretion under subsection (4) of this section and the Administrator has refused to issue the certification referred to therein, to challenge the Administrator's decision in that regard.

(6) The Authority may, by giving written notice to a body to which international tax status applies, revoke that status with effect from the beginning of the year following the date of that notice

(notwithstanding that subsection (3) of this section does not apply in its case) if the Authority ceases to be satisfied -

(a) that the activities of the body remain such that the application to it of international tax status is appropriate, or

(b) that the specified rate of tax applicable to it remains appropriate to it and in the best economic interests of Guernsey.

(7) A body to which a notice is given under subsection (6) of this section may appeal under Part VII of this Law as if the notice were an order imposed or made by the Administrator; but it is hereby declared for the avoidance of doubt that if such an appeal is not instituted in accordance with this Law, or is withdrawn or dismissed, the notice may not thereafter be challenged in any appeal against an assessment made by the Administrator in consequence of it.

Interpretation of Part XVIIIA

188G(1) In this Part of this Law, unless the context otherwise requires -

"**Bailiwick body**" means a Bailiwick company and any unincorporated body whose principal place of business is in Guernsey;

"**Bailiwick company**" means a body incorporated under the Companies (Guernsey)

Laws, 1908 to 1990(e) or under the Companies (Alderney) Laws, 1894 and 1962(f);

"bank" means a body which is registered, or which is exempted from any requirement to be registered, under any Ordinance made under section 1 of the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969(g);

"beneficial interest" is to be construed in accordance with section 188B(2);

"board meeting" in relation to a body corporate means a meeting of its directors (by whatever name called), and in relation to any other body means a meeting of the members of that body's governing organ (by whatever name called);

"constitutive documents" means -

(a) in the case of a Bailiwick company, the memorandum and articles of association;

(b) in the case of any other body, the documents dealing collectively with the same or similar rights and duties as

(e) Ordres en Conseil Vol. IV, p.178; Vol. X, p.298; Vol. XVII, p.444; Vol. XX, p.17; Vol. XXIV, p.14; No. XXVII of 1990.

(f) Ordres en Conseil Vol. II, p.451; Vol. XIX, p.33.

(g) Ordres en Conseil Vol. XXII, pp.28 and 518; Vol. XXVI, p.225; Vol. XXVIII, p.171.

the memorandum and articles of association of a Bailiwick company;

"domestic business" has the meaning given in section 2 of the Insurance Business (Guernsey) Law, 1986(h);

"exempt insurer" means an insurer which is exempt from the requirement to register under the Insurance Business (Guernsey) Law, 1986(h) by virtue of section 8 of that Law;

"the Financial Services Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987(i);

"quoted body corporate" means a body corporate in which the shares may be bought and sold in a market which is recognised as a stock exchange within the meaning of the law relating to stock exchanges of the country or territory where the market is established;

"registered insurer" means an insurer which is registered under the Insurance Business (Guernsey) Law, 1986(h);

"registration" means-

(a) in relation to the constitutive

(h) Ordres en Conseil Vol. XXIX, p.214; Vol. XXX, p.243.

(i) Ordres en Conseil Vol. XXX, p.243.

documents of a Bailiwick company, registration under an Act of the Royal Court or the Court of Alderney as the case may be;

- (b) in relation to the constitutive documents of any other body, the judicial, administrative or other official measure by which its legal personality is publicly recorded;

"resident in Guernsey" means resident in Guernsey (whether or not, in the case of an individual, he is solely or principally so resident) for the purposes of this Law, and not exempt from tax by virtue of section 40 of this Law."

Transitional provision

2. Notwithstanding section 188C(1)(a) of the Income Tax (Guernsey) Law, 1975, as inserted by section 1 of this Law, an application for international tax status may be made, at any time before 1st October 1993, on behalf of an existing Bailiwick company the registration of whose constitutive documents took place on or after 9th December 1992.

Citation

3. This Law may be cited as the Income Tax (International Bodies) (Guernsey) Law, 1995.

Effective date

4. This Law shall have effect, by virtue of the States' Resolution of 30th June 1993(j), under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992(k), on and after 1st July 1993.

(j) on Article 3(3) of Billet d'État No. X of 1993.

(k) Ordre en Conseil No. XI of 1992.