

# ORDER IN COUNCIL

**XXIV  
2009**

ratifying a Projet de Loi

ENTITLED

## **The Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009**

(Registered on the Records of the Island of Guernsey  
on the 7th December, 2009.)



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2009



## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

7<sup>th</sup> day of December, 2009 before Sir Geoffrey Rowland, Bailiff; present:- Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, and Michael John Tanguy Esquires, Susan Mowbray, The Reverend Peter Gerald Lane, Barbara Jean Bartie, and David Osmond Le Conte, Esquire, Stephen Murray Jones, Esquire, Claire Helen Le Pelley, Constance Helyar-Wilkinson, and Terry George Snell Esquire, Jurats

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 17<sup>th</sup> November 2009 approving and ratifying a Projet de Loi entitled “The Income Tax (Miscellaneous Provisions) (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.



*At the Court at Buckingham Palace*

THE 17th DAY OF NOVEMBER 2009

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 24th September 2008, the States of Deliberation at a meeting on 28th January 2009 approved a Projet de Loi entitled the Income Tax (Miscellaneous Provisions) (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 (Miscellaneous Provisions) (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 (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> September, 2008<sup>a</sup>, 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<sup>b</sup> ("the Law of 1975") is further amended as follows.

2. After section 7(2)(g)<sup>c</sup> of the Law of 1975 insert the following paragraphs -

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<sup>a</sup> Article VI of Billet d'État No. XII of 2008.

<sup>b</sup> 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; and the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

<sup>c</sup> Section 7(2)(g) was inserted by Vol. XXXI, p. 473.

- "(h) any payment made, or any expenditure incurred in making a payment, where the making of the payment constitutes or facilitates the commission of a criminal offence,
- (i) any payment made, or any expenditure incurred in making a payment, outside Guernsey or to or for the benefit of a person outside Guernsey where the making of a corresponding payment in Guernsey or to or for the benefit of a person in Guernsey would constitute or facilitate a criminal offence there, or
- (j) any payment made, or any expenditure incurred in making a payment, where the payment is induced by a demand constituting the commission in Guernsey of the offence of blackmail under section 23 of the Theft (Bailiwick of Guernsey) Law, 1983<sup>d</sup>".

3. After section 17(1)(b) of the Law of 1975<sup>e</sup> insert the following paragraph -

"or (c) any payment or expenditure mentioned in section 7(2)(h), (i) or (j),".

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<sup>d</sup> Ordres en Conseil Vol. XXVIII, p. 5.

<sup>e</sup> Paragraph (b) of section 17(1) was inserted by Vol. XXXI, p. 473.

4. In section 27(2)(m) of the Law of 1975<sup>f</sup> after the words "section 9 of the Social Insurance (Guernsey) (Amendment) Law, 1999"<sup>g</sup> insert "or any bereavement payment payable on or after the date of commencement of the Social Insurance (Guernsey) (Amendment) Law, 2003".

5. In section 48(2) of the Law of 1975 after the words "or to a non-resident" insert ", and for the avoidance of doubt includes, in the case of a person paying income to a non-resident, such a person whether he has previously received the income from some other person on behalf of, or for onward transmission to, the non-resident, or whether he is making the payment on his own account".

6. After section 48 of the Law of 1975 insert the following section -

**"Power to charge occupier on behalf of non-resident tenant, etc.**

**48A.** (1) This section applies where -

- (a) a person ("**the occupier**") occupies any land or building situate in Guernsey,
- (b) the owner of the land or building ("**the owner**") is a non-resident person who is liable to tax in respect of any income arising directly or indirectly from or in respect of a tenancy of the land or building, and

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<sup>f</sup> Section 27(2) was substituted by Vol. XXVII, p. 333 and amended by Vol. XXXII, p. 307 and No. VI of 1999.

<sup>g</sup> Those words were inserted by No. VI of 1999.

- (c) neither the occupier nor any other person in Guernsey is an agent of the owner within the meaning of section 48 in respect of any income mentioned in paragraph (b) and accordingly chargeable under that section on the owner's behalf with tax in respect of that income.

In this section -

- (i) the "**owner**" of the land or building includes any person who has an interest in it and who is in receipt of any income arising directly or indirectly from or in respect of it, and
- (ii) a "**tenancy**" of the land or building includes a lease, a sub-lease and any other agreement or arrangement, formal or informal, under which a person has or may be granted possession, occupation or enjoyment, whether exclusive or not.

(2) Where this section applies the Administrator may serve notice on the occupier directing him, on or before such date or within such time as may be specified in the notice, to account for tax in respect of any income mentioned in subsection (1)(b) in accordance with this section and any regulations made under subsection (12).

(3) Where an occupier is directed to account for tax in

accordance with this section, he is liable for the amount thereof as if it were tax due from him (after deduction of all applicable allowances, reliefs and deductions) in respect of his own income from the ownership of land or buildings; and (subject to the provisions of this section) the provisions of this Law apply accordingly.

(4) A direction of the Administrator under subsection (2) has effect notwithstanding -

- (a) that when the direction is made no assessment has been made in respect of the income to which the direction relates,
- (b) that the income is in whole or in part income which may be chargeable to tax for some year of charge other than the year of charge during which the direction is made.

(5) Any tax accounted for in accordance with this section shall be applied towards the payment of any tax charged or chargeable on the owner for the year of charge in which the income in question arises and for any year of charge prior to that year of charge and any penalty and surcharge and additional surcharge payable by him; and where any tax so accounted for is greater than such tax payable by the owner and any penalty and surcharge and additional surcharge payable by him, the appropriate repayment shall be made by the Administrator.

(6) For the avoidance of doubt if any income in respect of which tax has been accounted for in accordance with this section has not been included in any assessment of tax made under section 73(2)(a) then the

tax accounted for shall not, under subsection (5), be applied towards the payment of tax due from that assessment.

(7) Any tax to be accounted for in accordance with this section shall be payable by the occupier in such manner and at such times as may be directed by the Administrator or as may be prescribed by or under regulations made under subsection (12).

(8) Where an occupier accounts for tax in accordance with this section the amount thereof is recoverable by him from the owner as a civil debt due to him.

(9) Where an occupier fails to account to the Administrator for tax in accordance with this section, the amount is (without prejudice to the liability of the occupier and any other remedy or penalty under this Law) recoverable by the Administrator from the owner.

(10) This section has effect notwithstanding the provisions of any agreement or arrangement between the occupier and the owner.

(11) Sections 73A and 73B apply in respect of a notice of the Administrator under this section as they apply in respect of a notice of assessment required by section 73(1).

(12) The Department may make regulations for the purpose of carrying out the provisions of this section.

(13) Nothing in this section affects the liability of the owner to be charged in his own name.

(14) For the avoidance of doubt, the civil debt owed to the occupier by virtue of subsection (8) is by way of a private law indemnity and is not to be characterised as a penal, revenue or public law debt."

7. For section 73(1) of the Law of 1975<sup>h</sup> substitute the following subsection –

"(1) Assessments shall be made by the Administrator, and a notice giving particulars of the assessment (a "**notice of assessment**") and stating the amount of tax chargeable in consequence of the assessment shall be served on the person concerned."

8. After section 73 of the Law of 1975 insert the following section -

**"Service of notices of assessment and other documents.**

**73A.** (1) Service of a notice of assessment required by section 73(1) is deemed to be effected if the notice is -

- (a) addressed to the person concerned -
  - (i) at his usual or last known place of residence or at his relevant address, or
  - (ii) in the case of a company, at its principal place of business or at its relevant address, and
- (b) delivered by hand, posted or transmitted to that

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<sup>h</sup> Section 73 was amended by Order in Council No. IV of 2000.

place or address,

and in this section -

"**posted**" means prepaid and sent by registered post, recorded delivery service or ordinary letter post (and, in the case of a notice which is posted, service is deemed to be effected when the notice would be delivered in the ordinary course of post),

"**relevant address**" means an address with which, in the opinion of the Administrator, the person concerned has a personal, business or other connection and at which a document served is likely to come to his attention and (without limitation) includes, in the case of a company, its registered office, and

"**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication.

(2) A notice of assessment required to be served under section 73(1) must contain a statement -

- (a) that a right of appeal is conferred by this Law,  
and
- (b) of the time within which notice of appeal must  
be given.

(3) For the avoidance of doubt, an assessment is valid notwithstanding that the notice of assessment required to be served under section 73(1) is not received by the person concerned.

(4) This section and section 73B apply in relation to any notice or notification of -

- (a) any penalty, direction or order imposed or made by the Administrator under this Law (but not a notice given under section 75A or 75B),
- (b) any surcharge or additional surcharge under section 199 or any supplement or additional supplement under section 199A, or
- (c) any decision or determination of the Administrator or the Department not covered by paragraph (a) or (b) but in respect of which a right of appeal or right to have a case stated under Part VII is conferred by this Law,

as they apply in relation to a notice of assessment required to be served under section 73(1).

**Proof of delivery, posting or transmission under section 73A.**

**73B.** For the purposes of section 73A(1), a document shall be deemed to have been -

- (a) addressed to the person concerned, and

- (b) delivered by hand or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered or transmitted (as the case may be), in accordance with that section."

9. In section 81(1) of the Law of 1975 -

- (a) in the proviso to paragraph (a), for "the tenth day of June" substitute "the first day of June", and
- (b) in the proviso to paragraph (b), for "the tenth day of December" substitute "the first day of December".

10. After section 81A(4A) of the Law of 1975<sup>i</sup> add the following subsection -

"(4B) Regulations under subsection (4) may, in relation to applications for and the grant and renewal of E.T.I. exemption certificates, empower the Administrator to levy fees of such amount and in respect of such matters as may be specified in the regulations."

11. After section 122 of the Law of 1975 insert the following section -

**"Amendment of Parts IX and X by regulation."**

**122A.** (1) The Department may by regulation amend -

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<sup>i</sup> Section 81A was inserted by Vol. XXVII, p. 118, and subsection (4A) was inserted by No. XXVI of 1990.

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

(2) Regulations under subsection (1) may make such provision as the Department thinks necessary or expedient for the purpose mentioned in subsection (1)(a) including, for the avoidance of doubt and without limitation, provision -

- (a) adding any annual or initial allowance, or any class or description thereof, to this Part or Part X of this Law,
- (b) removing, varying or suspending any such allowance, or any class or description thereof, for the time being specified in this Part or Part X of this Law, and
- (c) specifying or varying the rate of any such allowance, or of any class or description thereof, for the time being specified in this Part or Part X of this Law.

(3) Regulations under subsection (1), and any regulations amending or repealing such regulations, may be made by the Department only with the prior agreement of the Policy Council."

**12.** Section 129 of the Law of 1975 is repealed.

13. For section 206(3)(b)<sup>j</sup> of the Law of 1975 substitute the following paragraph -

"(b) in any other case -

- (i) before a member of the Department or the Administrator, who shall have power to administer the oath, or
- (ii) where the person who is to take the oath is not in the island of Guernsey, and in any other case where in the opinion of the Administrator it is not reasonably practicable for him to attend in person to swear the oath, by means of a written declaration signed by that person and containing the words of the oath."

14. After section 206(5)<sup>k</sup> of the Law of 1975 insert the following subsection -

"(5A) Where an oath required by this section has been taken by any person -

- (a) before the Administrator, or
- (b) by means of a written declaration pursuant to

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<sup>j</sup> Section 206(3) was substituted by No. VI of 1992.

<sup>k</sup> Section 206(5) was inserted by No. VI of 1992.

subsection (3)(b)(ii),

the Administrator shall make a note of the fact that the oath has been taken before him or, as the case may be, that a written declaration has been made and shall cause a copy of that note together with, where appropriate, a copy of the declaration, in each case certified by the Administrator as being a correct copy, to be furnished to Her Majesty's Greffier, who shall keep the same in safe custody."

15. After section 206(8)<sup>l</sup> of the Law of 1975 insert the following subsection -

"(9) For the purposes of this section and any Ordinance made under it, and for the avoidance of doubt, a person has the right, and shall be deemed always to have had the right, to make an affirmation instead of taking an oath."

16. After section 208C of the Law of 1975<sup>m</sup> insert the following section -

**"Formal defects not to invalidate assessments, etc.**

**208D.** No assessment, penalty, direction, order, notice, notification or other document issued by or on behalf of the Administrator or the Department under this Law is invalidated by any formal error, defect or omission, or any other error, defect or omission not going to the substance of the document, if the content and meaning of the document are clear and the document, in substance, is correct and conforms with, or is in

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<sup>l</sup> Section 206(8) was inserted by No. VI of 1992.

<sup>m</sup> Section 208C was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

accordance with the purposes of, this Law." .

17. In section 209(1) of the Law of 1975, after the definition of "non-resident" insert the following definition -

"**oath**" includes an affirmation and, for the purposes of section 206, a written declaration made pursuant to subsection (3)(b)(ii) of that section," .

18. In the Third Schedule<sup>n</sup> to the Law of 1975, paragraph 4 is repealed.

**Citation.**

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

**Commencement.**

20. This Law shall have effect, by virtue of the States' resolution of the 28<sup>th</sup> January, 2009<sup>o</sup>, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992<sup>p</sup>, on and from the 28<sup>th</sup> January, 2009, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

S.M.D. ROSS,

Her Majesty's Deputy Greffier.

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<sup>n</sup> The Third Schedule was inserted by Vol. XXXII, p. 307.

<sup>o</sup> Article I of Billet d'État No. II of 2009.

<sup>p</sup> Order in Council No. XI of 1992.



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