

ORDER IN COUNCIL

IV
1991

ratifying a Projet de Loi

ENTITLED

The Income Tax (Pension Amendments) (Guernsey) Law, 1991

(Registered on the Records of the Island of Guernsey
on the 21st May, 1991.)



1990

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 21st day of May, 1991 before Sir Charles Frossard, Kt., Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe and Lawrence Oscar Ozanne, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 16th day of April, 1991, approving and ratifying a Projet de Loi entitled “The Income Tax (Pension Amendments) (Guernsey) Law, 1991”, 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 Clerk of the Court of Alderney for registration on the records of that Island of which Order in Council the tenor followeth:—

At the Court at Windsor Castle

The 16th day of April 1991

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 8th day of April 1991 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 Resolutions of the 13th day of December 1989, the 28th day of November 1990 and the 13th day of December 1990, the States of Deliberation at a meeting held on the said 13th day of December 1990 approved a Bill or “Projet de Loi” entitled “The Income Tax (Pension Amendments) (Guernsey) Law, 1991”, 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 as 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 (Pension Amendments) (Guernsey) Law, 1991”, and to order that the same shall have force of law in the Island of Guernsey.’

“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 Island of Guernsey.

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.

G. I. de Deney

PROJET DE LOI

ENTITLED

The Income Tax (Pension Amendments) (Guernsey) Law, 1991

ARRANGMENT OF SECTIONS

Section

Pension Schemes

1. Benefit limits.
2. Transfers from approved pension schemes.
3. Previously approved pension schemes.
4. Payments to employers.

Residents' annuity schemes

5. Payment of tax by instalments.
6. Residents without relevant earnings.
7. Transfers into and out of approved annuity schemes.

Non-residents' annuity schemes

8. Exemption of certain annuities etc.
9. Exemption of certain investment income.

Miscellaneous and supplementary

10. Profits of certain annuity business.
11. Interpretation and construction.
12. Citation.
13. Repeal and collective title.
14. Commencement.

PROJET DE LOI

ENTITLED

The Income Tax (Pension Amendments) (Guernsey) Law, 1991

THE STATES, in pursuance of their Resolutions of 13th December, 1989(a), 28th November, 1990(b) and 13th December, 1990(c), have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

Pension Schemes

Benefit limits

1. (1) Immediately after the words in paragraph (k) of section 150(2) of the principal Law, insert:—

“

Provided that such regulations may permit the Administrator to approve a pension scheme under which retirement or other benefits may exceed such limits if the Authority so resolves in relation to that particular scheme and subject to any conditions specified in the Authority's resolution”.

(2) In section 157A(9)(b) of the principal Law(d), between “which are” and “the maximum benefits” insert “(disregarding any provision of regulations permitting augmentation of benefits which are in payment or deferred)”.

(a) on Article XV of Billet d'Etat No. XXV of 1989.

(b) on Article V of Billet d'Etat No. XXII of 1990.

(c) on Article XV of Billet d'Etat No. XXIV of 1990.

(d) section 157A was inserted by the Income Tax (Amendment) (Guernsey) Law, 1983: Ordres en Conseil Vol. XXVIII, p. 278.

Transfers from approved pension schemes

2. (1) Immediately after paragraph (m) of section 150(2) of the principal Law insert—

“(n) each person to whom the scheme relates is entitled under the scheme, if he ceases to be a member of the scheme at a time when he has five years of qualifying service or less, to a refund of his contributions (if any);

(o) each person to whom the scheme relates is entitled under the scheme, if he ceases to be a member of the scheme at a time when he has more than five years of qualifying service but has not reached normal retirement age, to choose between—

(i) a refund of his contributions (if any); or

(ii) deferred benefits; or

(iii) the making of a transfer payment into another approved scheme; or

(iv) the making of a transfer payment into a retirement annuity scheme or a retirement annuity trust scheme;

(p) if the scheme permits the making of transfer payments in relation to people with five years of qualifying service or less into other approved schemes, it must permit the making of transfer payments in relation to such people, on terms which are no less favourable, into retirement annuity schemes and retirement annuity trusts schemes.”.

(2) Immediately after section 150(2) of the principal Law insert—

“ (2A) For the purposes of subsection (2) of this section—

(a) “qualifying service”, in relation to a member of an occupational pension scheme, means the aggregate of any period during which the person concerned has in fact been a member of

(i) that scheme; or

(ii) any other scheme in respect of which a transfer payment has been received by that scheme in relation to the person concerned;

(b) “deferred benefits” means benefits payable at a later date (but commencing not later than the date when the person concerned reaches his normal retirement age) which are of the same type as the benefits payable under the scheme in respect of a member who retires at his normal retirement age, and which are no less in value than whichever is the greater of—

(i) the benefits which would be payable under the scheme to the person concerned if he retired at his normal retirement age having been a member of the scheme for the length of time, and in all the circumstances, that he has in fact been a member of the scheme; or

(ii) the benefits which could be provided by investment of his contributions (if any) between the date when he ceases to be a member of the scheme and the date when he reaches his normal retirement age;

(c) a “transfer payment” means a payment equal to the value at the time when the transfer payment is made, as determined by a Fellow of the Institute of Actuaries, a Fellow of the Faculty of Actuaries or a person holding other actuarial qualifications approved by the Administrator, of the deferred benefits which the person concerned is entitled to choose under the scheme concerned;

(d) a person’s “normal retirement age ” is the age at which the scheme concerned entitles that person to immediate benefits on his retirement, irrespective of his state of health;

and, both in subsection (2) and in the foregoing definitions in this subsection, references to a person’s contributions are to the aggregate of any contributions which he has made in accordance with the scheme concerned and any contributions which he has made in accordance with any other scheme in respect of which a transfer payment has been received in relation to him by the scheme concerned.”.

(3) In the proviso to section 153(6) of the principal Law—

(a) for “subsection (1) of section twenty-six of the Finance Act 1970” substitute “section 612(1) of the Income and Corporation Taxes Act 1988”;

(b) for “Board” substitute “Commissioners”;

(c) for “section two hundred and eight of the Income and Corporation Taxes Act 1970” substitute “section 590 of the Income and Corporation Taxes Act 1988”;

(d) for “subsection (1) of section twenty-one of the Finance Act 1970” substitute “section 592(1) of the Income and Corporation Taxes Act 1988”.

(4) Immediately after section 153(6) of the principal Law insert—

“ (6A) Subsection 6 of this section also applies, with the necessary modifications, where a person ceases to be a member of an approved scheme in Guernsey and

(a) becomes a member of a superannuation fund to which paragraph (o) of section 40 of this Law applies; or

(b) effects a contract for the purposes of an annuity to which paragraph (ee) of section 40 of this Law applies.”.

Previously approved pension schemes

3. Immediately after section 150(3) of the principal Law insert—

“ (4) A pension scheme or part of a pension scheme which—

(a) was approved by the Administrator in accordance with the provisions of subsection (2) of this section, or

(b) was deemed to be an approved scheme by virtue of subsection (3) of this section,

before the date when paragraphs (n), (o) and (p) of subsection (2) of this section came into force shall cease to be an approved scheme on 1st January 1992 unless it is shown to the satisfaction of the Administrator before 1st January 1992 that the conditions contained in each of those paragraphs are satisfied.”.

Payments to employers

4. For section 152(3) of the principal Law substitute—

“ (3) Where—

(a) any sum paid by an employer for the purpose of providing benefits under an approved scheme is applied to any other purpose, or

(b) any payment is made to an employer out of funds which are or have been held for the purposes of an approved scheme,

it shall be deemed to be income arising to the employer in the year of charge in which it is so applied or made and shall be charged to tax at the standard rate in force in that year of charge.”.

Residents' annuity schemes

Payment of tax by instalments

5. In section 81A of the principal Law^(e)—

(a) in subsection (2), for “1991” substitute “1992”;

(b) immediately after paragraph (b) of subsection (2) insert—

“(bA) any payment is made of an annuity which is treated by virtue of section 157A(5) of this Law as earned income arising in Guernsey; or”;

^(e) Section 81A was inserted by the Income Tax (Amendment) (No. 2) (Guernsey) Law, 1979: Ordres en Conseil Vol. XXVII, p. 118, and amended by the Preferred Debts (Guernsey) Law, 1983 (Ordres en Conseil Vol. XXVIII, p. 184) and the Income Tax (Amendment) (Guernsey) Law, 1990 (No. XXVI of 1990).

- (c) in paragraph (a) of subsection (12) for “paragraph (b) or (c)” substitute “paragraph (b), (bA) or (c)”.

Residents without relevant earnings

6. In section 157A of the principal Law—

- (a) in paragraph (a) of subsection (2), for “an individual who is” substitute “an individual, resident in Guernsey, whether or not he is”;
- (b) immediately after the words in sub-paragraph (b)(vi) of subsection (2) insert “(and such regulations may prescribe different limits for different cases and circumstances generally, and in particular in relation to those individuals who are, and those who are not, in receipt of relevant earnings)”;
- (c) for paragraph (b) of subsection (4) substitute:
- “ (b) is established for the purpose of providing retirement annuities for individuals, with or without subsidiary benefits for their families or dependants, and”;
- (d) in subsection (10) for “an individual”, wherever occurring, substitute “an individual in receipt of relevant earnings”.

Transfers into and out of approved annuity schemes

7. (1) Immediately after section 157A of the principal Law(d) insert—

“Transfers into approved annuity schemes. 157B. (1) In this section “an approved inward transfer payment” means a payment made on behalf of an individual into a retirement annuity scheme or a retirement annuity trust scheme approved

by the Administrator under section 157A of this Law, from—

- (a) a retirement annuity scheme, or a retirement annuity trust scheme, approved by the Administrator under section 157A of this Law; or
- (b) a pension scheme approved by the Administrator under section 150 of this Law; or
- (c) a superannuation fund of a description set out in paragraph (o) of section 40 of this Law; or
- (d) a contract entered into for the purposes of an annuity to which section 40(ee) of this Law applies; or
- (e) a pension scheme, annuity scheme, or annuity trust scheme which, in the opinion of the Administrator,—
 - (i) is situated in a place outside Guernsey; and
 - (ii) is approved or exempted by the competent authority in that place under

the laws relating to
income tax there;
and

- (iii) provides benefits of a nature similar to a scheme which may be approved under section 157A of this Law.

(2) It is hereby declared that the making of an approved inward transfer payment does not constitute or involve—

- (a) the application to another purpose of a sum paid by an employer or contributor for the purpose of providing benefits under a pension scheme, within the meaning of sections 150(2)(j), 150(2)(1) or 152(3) of this Law; or
- (b) the provision of a benefit by a pension scheme within the meaning of section 150(2)(k) of this Law; or
- (c) the surrender of a benefit under a pension scheme, within the meaning of section 150(2)(m) of this Law; or

- (d) the payment of a lump sum in commutation or in lieu of a pension, within the meaning of section 153(1)(a) of this Law; or
- (e) the payment of a sum otherwise than by way of annuity, within the meaning of section 157A(2)(b)(i) or 157A(2)(b)(iii) of this Law; or
- (f) the payment of a premium or contribution, within the meaning of section 157A(2)(b)(vi) or 157A(10) of this Law; or
- (g) the surrender, commutation or assignment of an annuity within the meaning of section 157A(2)(c) of this Law.

Transfers out of approved annuity schemes.

157C. (1) In this section “an approved outward transfer payment” means a payment made on behalf of an individual out of a retirement annuity scheme or a retirement annuity trust scheme approved by the Administrator under section 157A of this Law, into—

- (a) a retirement annuity scheme, or a retirement annuity trust scheme, approved by the Administrator under section 157A of this Law; or

- (b) a contract entered into for the purposes of an annuity to which section 40(ee) of this Law applies; or
- (c) an annuity scheme or annuity trust scheme which, in the opinion of the Administrator,—
 - (i) is situated in a place outside Guernsey; and
 - (ii) is approved or exempted by the competent authority in that place under the laws relating to income tax there; and
 - (iii) provides benefits of a nature similar to a scheme which may be approved under section 157A of this Law.

(2) It is hereby declared that the making of an approved outward transfer payment does not constitute or involve—

- (a) the payment of a sum otherwise than by way of annuity, within the meaning of section 157A(2)(b)(i) or 157A(2)(b)(iii) of this Law; or

(b) the payment of a premium or contribution, within the meaning of section 157A(2)(b)(vi) or 157A(10) of this Law; or

(c) the surrender, commutation or assignment of an annuity within the meaning of section 157A(2)(c) of this Law.

(3) A payment which is an approved outward transfer payment by virtue of paragraph (b) or paragraph (c) of subsection (1) of this section shall be chargeable to tax at one half of the standard rate in force for the year of charge in which the transfer is made.”.

(2) In consequence of subsection (1) of this section, paragraph (g) of section 157A(3) of the principal Law is repealed.

Non-residents' annuity schemes

Exemption of certain annuities etc.

8. Immediately after paragraph (dd) of section 40 of the principal Law(f) insert—

“(ee) any annuity or lump sum paid pursuant to:

(i) a retirement annuity contract entered into with a company resident in Guernsey or carrying on business through a permanent establishment

(f) paragraph (dd) was inserted by the Attendance and Invalid Care Allowances (Guernsey) Law, 1984: Order in Council No. II of 1984.

situate in Guernsey and carrying on in Guernsey the business of granting annuities on human life, or

- (ii) a retirement annuity trust scheme established under irrevocable trusts under the law of Guernsey, and administered in Guernsey,

if the annuity or lump sum is paid:

- (a) to an individual who was not when he entered into the contract or scheme, and who has not been at any time since, resident in Guernsey within the meaning of this Law or resident in Jersey for the purposes of income tax in that island; or
- (b) to a spouse or dependant of, or to an individual beneficiary under the will of, such a person, if neither the individual who entered into the contract or scheme nor the payee has been so resident at any time since it was entered into.”.

Exemption of certain investment income

9. For the definition of “pension business” in section 188 of the principal Law(g) substitute—

““pension business” means—

- (a) any contract with the trustees or other persons having the management of an approved pension scheme approved under the provisions of Part XIII of this Law; or

(g) the previous definition of “pension business” was substituted by the Income Tax (Amendment)(Guernsey) Law, 1983: Order in Council No. XV of 1983.

- (b) any contract entered into with an individual for the purposes of a retirement annuity scheme approved under the provisions of Part XIII of this Law; or
- (c) any contract entered into with the trustees of a retirement annuity trust scheme approved under the provisions of Part XIII of this Law; or
- (d) any contract with the trustees or other persons having the management of a superannuation fund to which the provisions of paragraph (o) or (q) of section 40 of this Law apply; or
- (e) any contract or scheme entered into with an individual for the purposes of an annuity to which paragraph (ee) of section 40 of this Law applies;

entered into for the purposes only of that approved scheme, that fund, or that annuity, as the case may be;”.

Miscellaneous and supplementary

Profits of certain annuity business

10. Immediately after section 157C of the principal Law(*h*) insert—

“Profits of certain annuity business.	157D. It is hereby declared for the avoidance of doubt that a company or trust which, anywhere in the world, enters into—
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- (a) a contract for the purpose of providing an annuity or lump sum to which paragraph (ee) of section 40 of this Law applies; or

(*h*) which is inserted by section 7 of this Law.

(b) a retirement annuity scheme, or a retirement annuity trust scheme, approved by the Administrator under section 157A of this Law,

is thereby carrying on business in Guernsey, and that income arising or accruing to that company or trust in consequence of that contract or scheme is accordingly income arising or accruing to it from business carried on in Guernsey.”.

Interpretation and construction

11. (1) This Law is to be construed as one with the principal Law.

(2) In this Law “the principal Law” means the Income Tax (Guernsey) Law, 1975(i) as amended(j).

Citation

12. This Law may be cited as the Income Tax (Pension Amendments) (Guernsey) Law, 1991.

Repeal and collective title

13. (1) Section 7 of the Income Tax (Amendment) (Guernsey) Law, 1990 is repealed.

(2) This Law, the Income Tax (Guernsey) Laws, 1975 to 1989 and the Income Tax (Amendment) (Guernsey) Law, 1990 may be cited together as the Income Tax (Guernsey) Laws, 1975 to 1990.

(i) Ordres en Conseil Vol. XXV, p. 124.

(j) 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; No. XIII of 1986; Nos. XIV and XXIII of 1989; No. XXVI of 1990.

Commencement

14. This Law shall come into force as follows:—

- (a) section 4 shall be deemed to have come into force on 23rd November, 1990;
- (b) section 5 shall come into force on 1st January, 1992;
- (c) the remaining provisions shall come into force on the day after the registration of this Law on the records of the Island of Guernsey.