

# ORDER IN COUNCIL

VI  
2012

ratifying a Projet de Loi

ENTITLED

## **The Income Tax (Pension Amendments) (Guernsey) Law, 2011**

(Registered on the Records of the Island of Guernsey  
on the 2nd July, 2012.)



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2012

## ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

2<sup>nd</sup> day of July, 2012 before Richard John Collas, Esquire, Bailiff; present:- Stephen Edward Francis Le Poidevin, Esquire, Susan Mowbray, David Osmond Le Conte, Esquire, Constance Helyar-Wilkinson, Terry George Snell, David Percy Langley Hodgetts L.V.O., Niall David McCathie, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache and David Allan Grut, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 30<sup>th</sup> May, 2012 approving and ratifying a Projet de Loi entitled “The Income Tax (Pension Amendments) (Guernsey) Law, 2011”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED that the said Order be registered on the records of this Island.

J. TORODE  
Her Majesty’s Greffier



*At the Court at Buckingham Palace*

THE 30th DAY OF MAY 2012

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 November 2010, the States of Deliberation at a meeting on 27th April 2011 approved a *Projet de Loi* entitled the Income Tax (Pension Amendments) (Guernsey) Law, 2011 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 (Pension Amendments) (Guernsey) Law, 2011, 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.

*Ceri King*

# PROJET DE LOI

ENTITLED

## **The Income Tax (Pension Amendments) (Guernsey) Law, 2011**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> November, 2010<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>, is further amended as follows.

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<sup>a</sup> Article IX of Billet d'État No. XXIII of 2010 (Volume 1).

<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's. VII and XXI 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; No. XXVI of 2008; the Income Tax (Guernsey) (Amendment) Law, 2008; the Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009; the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009; the Income Tax (Guernsey) (Amendment) Law, 2009; and the Income Tax (Guernsey) (Amendment) Law, 2010. Also amended by Ordinance No. XXXIII of 2003 and Ordinance No. VII of 2009.

2. In section 8(2A)(b)<sup>c</sup> after the words "and may include" insert "(or may authorise the Department to prescribe by regulation)".

3. In section 8(3)(b) after the words "section one hundred and fifty-one of this Law" insert ", subject to any limitations, conditions, restrictions and qualifications prescribed by or pursuant to that section".

4. After section 8(3)(b) insert the following paragraph -

"(bb) the amount of any contribution to a retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax in accordance with the provisions of section 157A(2) or (4), subject to any limitations, conditions, restrictions and qualifications prescribed pursuant to sections 36 and 157A(10),".

5. In section 36(1) after the words "and the conditions applicable to such allowances" insert ", and for the avoidance of doubt any such Resolution may authorise the Department to prescribe any matter relating to any such allowance (including, without limitation, any limitations, conditions, restrictions and qualifications) by regulation".

6. In section 150(2)(b) the words "wholly or partly in Guernsey" are repealed.

7. For the proviso to section 151(1) substitute the following -

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<sup>c</sup> Subsection (2A) of section 8 was inserted by Order in Council No. III of 1995 (Vol. XXXVI, p. 71).

"Provided that no such deduction shall be made in respect of contributions to the extent that they exceed, in the aggregate, the lesser of the following amounts -

- (a) an amount equal to 100% of the aggregate of the said income and any other income of the individual in question in respect of which tax is chargeable and arising or accruing in the year of computation, or
- (b) such amount as the Department may prescribe by regulation."

**8.** After section 151(1) insert the following subsection -

"(1A) Where in any year of computation an individual has made contributions described in subsection (1) of an aggregate amount which is less than the maximum amount he is entitled to deduct from his income in that year by virtue of the proviso to that subsection -

- (a) he may carry forward the unused balance to any succeeding year not being later than the sixth year immediately following the year of computation in which the unused balance accrued,
- (b) in that succeeding year the maximum deduction that may be made in respect of such contributions shall not exceed the aggregate of-

- (i) the maximum amount he is entitled to deduct in that succeeding year by virtue of the said proviso, and
  - (ii) the amount of the unused balance carried forward, and
- (c) any such contribution made in any succeeding year which exceeds the maximum amount an individual is entitled to deduct in that succeeding year by virtue of the said proviso shall be set off against the amount of the unused balance carried forward irrespective of whether the result of such setting off is to reduce the amount of tax payable by him in respect of that year."

9. After section 153 insert the following section -

**"Full commutation of benefits under pension schemes permitted in certain circumstances.**

**153A.** (1) Notwithstanding any provision of or under this Law imposing a limitation on the amount of a lump sum that may be paid out of an approved scheme in commutation of or in lieu of a pension (whether the limitation is expressed by reference to the years of service and final remuneration or to the value of the fund or otherwise), a lump sum may, at the discretion of the trustee or other person having the management of an approved scheme, be paid out of or under the provisions of the scheme in full commutation of or in lieu of a pension in the following circumstances -

(a) the individual in question has attained the age of 50 years and the aggregate value of the funds attributable to him and accumulated under -

(i) that scheme,

(ii) any other approved scheme of which he is a member, and

(iii) any retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax in accordance with the provisions of section 157A(2) or (4) of which he is a member,

does not exceed £30,000, the valuation being made immediately before the time of the making of the payment,

(b) the individual has attained the age of 50 years and the aggregate value of the fund attributable to him and accumulated under that scheme does not exceed £15,000, the valuation being made immediately before the time of the making of the payment, or

(c) the individual has not attained the age of 50 years and the aggregate value of the fund

attributable to him and accumulated under that scheme does not exceed £15,000, the valuation being made immediately before the time of the making of the payment.

(2) A lump sum paid to an individual by virtue of subsection (1) shall be treated as income of the year in which it is paid and tax in respect thereof shall be chargeable in accordance with the provisions of or under this Law -

- (a) in the case of a lump sum paid by virtue of paragraph (a) or (b) of subsection (1), at one half of the appropriate rate in force for the year of charge in which the lump sum is paid, and
- (b) in the case of a lump sum paid by virtue of paragraph (c) of subsection (1), at the appropriate rate in force for the said year of charge.

(3) For the purposes of this section the value of the fund accumulated under an approved scheme and attributable to an individual shall be calculated by the trustees or other persons having the management of the scheme on the advice of a Fellow of the Institute and Faculty of Actuaries or a person holding other actuarial qualifications approved by the Director of Income Tax, who shall have taken into account the formula used to calculate the value of a transfer payment (within the meaning of section 150(2A)) out of the scheme into another pension scheme approved by the Director of Income Tax in accordance with the provisions of section 150.

(4) The Department may by regulation amend this section."

10. In section 154(1) for "and shall be accompanied" substitute "and shall, if the Director of Income Tax so requires, be accompanied".

11. In section 157A(2)(a)<sup>d</sup> after "the contract is made by an individual," the expression "resident in Guernsey," is repealed.

12. In the proviso to section 157A(2)(c)<sup>e</sup> -

(a) for "25 per cent" substitute "30% (or such other percentage as the Department may prescribe by regulation)", and

(b) for "and shall make any such right depend on the exercise by the individual of an election at or about the time when the annuity first becomes payable to him" substitute -

"and may also give the individual the right to elect to take the lump sum or (subject to the aggregate amount taken by the individual by way of lump sum by virtue of the contract not exceeding the percentage amount for the time being specified in or under this proviso) any part thereof on attaining the age of 50 years or at any time after attaining that age.

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<sup>d</sup> Section 157A was inserted by Ordres en Conseil Vol. XXVIII, p. 278 and the words "resident in Guernsey," were inserted by Order in Council No. IV of 1991.

<sup>e</sup> Section 157A was inserted by Ordres en Conseil Vol. XXVIII, p. 278 and the proviso was amended by Order in Council No. XXII of 1997.

If, in the opinion of the Director of Income Tax, the individual's occupation is one in which persons customarily retire before attaining the age of 50 years, then the right to elect to take the lump sum or any part thereof may instead be exercised by the individual on attaining the customary age of retirement in respect of that occupation or at any time after attaining that age."

**13.** In section 157A(10) the words "in receipt of relevant earnings"<sup>f</sup> in both places where appearing are repealed.

**14.** After section 157A(10) insert the following subsection -

"(11) Where in any year of computation an individual has paid premiums under a retirement annuity scheme or contributions under a retirement annuity trust scheme of an aggregate amount which is less than the maximum amount he is entitled to deduct from his income in that year by virtue of the Resolution of the States under section 36 which is applicable in respect of that year -

- (a) he may carry forward the unused balance to any succeeding year not being later than the sixth year immediately following the year of computation in which the unused balance accrued,

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<sup>f</sup> Section 157A was inserted by Ordres en Conseil Vol. XXVIII, p. 278 and the words "in receipt of relevant earnings" were inserted by Order in Council No. IV of 1991.

- (b) in that succeeding year the maximum deduction that may be made in respect of such premiums or contributions shall not exceed the aggregate of -
- (i) the maximum amount he is entitled to deduct in that succeeding year by virtue of the Resolution of the States under section 36 which is applicable in respect of that year, and
  - (ii) the amount of the unused balance carried forward, and
- (c) any such premium or contribution made in any succeeding year which exceeds the maximum amount an individual is entitled to deduct in that succeeding year by virtue of the Resolution of the States under section 36 which is applicable in respect of that year shall be set off against the amount of the unused balance carried forward irrespective of whether the result of such setting off is to reduce the amount of tax payable by him in respect of that year."

**15.** After section 157C<sup>g</sup> insert the following section -

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<sup>g</sup> Section 157C was inserted by Order in Council No. IV of 1991.

**"Full commutation of benefits under approved annuity schemes permitted in certain circumstances.**

**157CA.** (1) Notwithstanding any provision of or under this Law imposing a limitation on the amount of a lump sum that may be paid out of a retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax in accordance with the provisions of section 157A(2) or (4) in commutation of or in lieu of a pension (whether the limitation is expressed by reference to the value of the fund accumulated under the contract or trust or otherwise), a lump sum may, at the discretion of the company, trustee or other person having the management of such a scheme, be paid out of or under the provisions of the scheme in full commutation of or in lieu of a pension in the following circumstances -

- (a) the individual in question has attained the age of 50 years and the aggregate value of the fund attributable to him and accumulated under -
  - (i) that scheme,
  - (ii) any other retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax in accordance with the provisions of section 157A(2) or (4) of which he is a member, and
  - (iii) any approved scheme within the meaning of section 150(1) of which he is a member,

does not exceed £30,000, the valuation being made immediately before the time of the making of the payment,

- (b) the individual has attained the age of 50 years and the aggregate value of the fund attributable to him and accumulated under that scheme does not exceed £15,000, the valuation being made immediately before the time of the making of the payment, or
- (c) the individual has not attained the age of 50 years and the aggregate value of the fund attributable to him and accumulated under that scheme does not exceed £15,000, the valuation being made immediately before the time of the making of the payment.

(2) A lump sum paid to an individual by virtue of subsection (1) shall be treated as income of the year in which it is paid and tax in respect thereof shall be chargeable in accordance with the provisions of or under this Law -

- (a) in the case of a lump sum paid by virtue of paragraph (a) or (b) of subsection (1), at one half of the appropriate rate in force for the year of charge in which the lump sum is paid, and
- (b) in the case of a lump sum paid by virtue of paragraph (c) of subsection (1), at the

appropriate rate in force for the said year of charge.

(3) For the purposes of subsection (1)(a)(iii) the value of the fund accumulated under an approved scheme and attributable to an individual shall be calculated in accordance with the provisions of section 153A(3).

(4) The Department may by regulation amend this section. "

**Citation.**

16. This Law may be cited as the Income Tax (Pension Amendments) (Guernsey) Law, 2011.

**Commencement.**

17. This Law shall have effect, by virtue of the States' Resolution of the 27<sup>th</sup> April, 2011<sup>h</sup>, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992<sup>i</sup>, on and from the 27<sup>th</sup> April, 2011 and in respect of any year of charge after 2010, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

J. TORODE,  
Her Majesty's Greffier.

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<sup>h</sup> Article I of Billet d'État No. VI of 2011.

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

**Copies may be purchased from  
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