

ORDER IN COUNCIL

II
2006

ratifying a Projet de Loi

ENTITLED

The Income Tax (Residence)
(Guernsey) (Amendment)
Law, 2005

(Registered on the Records of the Island of Guernsey
on the 13th March, 2006.)



2006

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 13th day of March, 2006 before John Russell Finch, Esquire, Lieutenant Bailiff;
present: - David Charles Lowe, Derek Martin Le Page, Stephen Edward Francis Le
Poidevin, Alan Cecil Bisson, Keith Bichard, OBE, Esquires, The Reverend Peter
Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan
Mowbray, and David Osmond Le Conte, Esquire, Jurats.*

The Lieutenant Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 14th day of February, 2006 approving and ratifying the *Projet de Loi* entitled "The Income Tax (Residence) (Guernsey) (Amendment) Law, 2005", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller 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.

At the Court at Buckingham Palace

The 14th DAY OF FEBRUARY 2006

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 22 February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolution of 27 day of October 2004, the States of Deliberation at a meeting on 29 day of June 2005 approved a Projet de Loi entitled The Income Tax (Residence) (Guernsey) (Amendment) Law 2005, 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 (Residence) (Guernsey) (Amendment) Law 2005, and to order that it shall have force of law in the Islands of Guernsey, Alderney 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, Alderney 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.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Income Tax (Residence) (Guernsey) (Amendment) Law, 2005

THE STATES, in pursuance of their Resolution of the 27th October, 2004^a, 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 Law of 1975.

1. The Income Tax (Guernsey) Law, 1975, as amended^b, hereinafter called "the Law of 1975", is further amended as follows.

2. For section 3 of the Law of 1975 substitute the following section -

"Definition of "resident", "solely resident" and "principally resident" in the case of an individual.

3. (1) An individual shall be treated as being "**resident**" in

^a Article IX of Billet d'État No. XVIII of 2004.

^b 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; the Income Tax (Pension Amendments) (Guernsey) Law, 2004; and the Income Tax (Business Profits) (Guernsey) (Amendment) Law, 2004.

Guernsey in any particular year of charge if -

- (a) he spends 91 days or more in Guernsey in that year of charge, or
- (b) he spends 35 days or more in Guernsey in that year of charge and, during the four preceding years of charge, he has spent 365 days or more in Guernsey.

(2) An individual shall be treated as being "**solely resident**" in Guernsey in any particular year of charge if -

- (a) he is resident in Guernsey, within the meaning of subsection (1), in that year of charge, and
- (b) he is not resident in any other place in that year of charge; and for the purposes of this paragraph an individual shall be treated as being resident in any other place in any particular year of charge only if he spends 91 days or more in that place in that year of charge.

(3) An individual shall be treated as being "**principally resident**" in Guernsey in any particular year of charge if -

- (a) he spends 182 days or more in Guernsey in that year of charge, or

- (b) he spends 91 days or more in Guernsey in that year of charge and, during the four preceding years of charge, he has spent 730 days or more in Guernsey, or
- (c) he takes up permanent residence in Guernsey in that year of charge; and for the purposes of this paragraph an individual shall be treated as taking up permanent residence in Guernsey in any particular year of charge if -
 - (i) he is resident in Guernsey, within the meaning of subsection (1), in that year of charge, and
 - (ii) he is solely or principally resident in Guernsey in the following year of charge.

(4) For the purposes of this Law an individual shall be regarded as being in Guernsey or in any other place on any particular day, or as spending any particular day in Guernsey or in any other place, if he is in Guernsey or, as the case may be, in that other place at midnight on that day."

3. In section 5(1)(b) after "year of charge" insert ", and for the purposes of this paragraph any amount not so arising or accruing and brought into or received by that individual in Guernsey in that year of charge shall be presumed to be income unless he can establish otherwise to the satisfaction of the Administrator".

4. In section 209(1) of the Law of 1975 insert the following definitions at the appropriate places -

"**day**", for the purposes of determining whether an individual is in Guernsey or in any other place on any particular day, or spends any particular day in Guernsey or in any other place, shall be construed in accordance with section 3(4);

"**non-resident**", in the case of any person, means that he is not resident or solely or principally resident;

"**principally resident**", in the case of an individual, shall be construed in accordance with section 3;

"**resident**", in the case of an individual or a company, shall be construed in accordance with section 3 or (as the case may be) section 4;

"**solely resident**", in the case of an individual, shall be construed in accordance with section 3;"

Repeal.

5. In section 1 of the Income Tax (Amendment) (Guernsey) Law, 1981^c, paragraphs (a) and (b) are repealed.

Citation.

6. This Law may be cited as the Income Tax (Residence) (Guernsey)

^c Ordres en Conseil Vol. XXVII, p. 333.

(Amendment) Law, 2005.

Commencement.

7. This Law shall come into force on the 1st January, 2006.