

# ORDER IN COUNCIL

VII  
2006

ratifying a Projet de Loi

ENTITLED

## **The Income Tax (Surcharges and Supplements) (Guernsey) (Amendment) Law, 2005**

(Registered on the Records of the Island of Guernsey  
on the 22nd May, 2006.)



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2006

## ORDER IN COUNCIL



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

*The 22nd day of May, 2006 before Geoffrey Robert Rowland, Esquire, Bailiff; present:- Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, O.B.E., Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, and Barbara Jean Bartie, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 9<sup>th</sup> day of May, 2006 approving and ratifying the Projet de Loi entitled “The Income Tax (Surcharges and Supplements) (Guernsey) (Amendment) Law, 2005”, 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 9th DAY OF MAY 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 28 September 2005, the States of Deliberation at a meeting on 30 November 2005 approved a *Projet de Loi* entitled *The Income Tax (Surcharges and Supplements) (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 (Surcharges and Supplements) (Guernsey) (Amendment) Law, 2005*, 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.

*A. K. Galloway*

# PROJET DE LOI

ENTITLED

## **The Income Tax (Surcharges and Supplements) (Guernsey) (Amendment) Law, 2005**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> September, 2005<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>, hereinafter called "**the Law of 1975**", is further amended as follows.

2. In section 40 of the Law of 1975, after paragraph (ff)<sup>c</sup> insert the following paragraph -

"(gg) any supplement or additional supplement payable by the Administrator under section 199A."

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<sup>a</sup> Article XII of Billet d'État No. XIV of 2005.

<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; and No's. V and VI of 2005.

<sup>c</sup> Paragraph (ff) was inserted by No. XVIII of 2003.

3. In sections 44(1)(c), 73(2)(b), 81(1)(a) and (b), 126(4), 130(1) and (2), 132C(3)<sup>d</sup>, 155(5) and 157A(7B)<sup>e</sup> of the Law of 1975 for "twenty one days" and "21 days" substitute "30 days".

4. In section 76 of the Law of 1975 -

(a) before "shall be entitled to appeal" insert "or by any surcharge or additional surcharge under section 199 or any supplement or additional supplement under section 199A,"

(b) for "twenty one days" substitute "30 days",

(c) after "or other order or direction" insert ", or (as the case may be) the date of notification of the surcharge, additional surcharge, supplement or additional supplement", and

(d) after the proviso add the following second proviso -

"and provided also that in the case of an appeal in respect of -

(a) the imposition of, or the amount of, a surcharge or additional surcharge under section 199, the sole grounds of appeal are that -

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<sup>d</sup> Section 132C was inserted by No. IV of 1993.

<sup>e</sup> Section 157A(7B) was inserted by No. VI of 2005.

- (i) the surcharge or additional surcharge is not payable,
  - (ii) the surcharge or additional surcharge has been miscalculated, or
  - (iii) in the case of an additional surcharge, and in the circumstances set out in section 199(6)(a), the additional surcharge has become payable by virtue of an unreasonable delay of not less than six months between the receipt by the Administrator of the fully completed return of income and the making by the Administrator of an assessment or additional assessment on the basis of that return,
- (b) the non-payment of, or the amount of, a supplement or additional supplement under section 199A, the sole grounds of appeal are that the supplement or additional supplement is payable or that it has been miscalculated."

5. In section 79(1) of the Law of 1975, after paragraph (c) insert the following paragraphs -

- "or (d) in the case of an appeal in respect of a surcharge or additional surcharge under section

199, confirm or annul the imposition thereof or increase or reduce the amount thereof;

or (e) in the case of an appeal in respect of a supplement or additional supplement under section 199A, confirm or annul the non-payment thereof or increase or reduce the amount thereof."

6. Section 193A(3)<sup>f</sup> of the Law of 1975 is repealed.

7. For section 199 of the Law of 1975 substitute the following sections -

**"Surcharges for late payment.**

199. (1) A person becomes liable to a surcharge if any amount due from him under this Law (including, for the avoidance of doubt, any penalty) is not paid on or before the settlement date.

(2) The settlement date is the date on or before which the amount in question is payable.

(3) The surcharge shall be at such rate and computed in such manner as may be determined by the Treasury and Resources Department by regulation.

(4) If the whole or any part of -

(a) the amount outstanding at the expiration of the

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<sup>f</sup> Section 193A was inserted by Ordres en Conseil Vol. XXVII, p. 118.

settlement date, and/or

- (b) the amount of any surcharge payable thereon or of any additional surcharge payable under this subsection,

remains unpaid at the expiration of a period of six months immediately after the settlement date, or at the expiration of any successive period of six months, an additional surcharge is payable on the total of the amounts then outstanding.

(5) The additional surcharge is payable at the rate for the time being specified in regulations under subsection (3).

(6) Notwithstanding the provisions of subsections (1) and (2), if as respects any year of charge -

- (a) the Administrator receives a fully completed return of income after whichever of the following is later -

- (i) the 15<sup>th</sup> January in the year following the year in which the return was issued,

or

- (ii) the expiration of one year after the date of issue of the return,

and makes an assessment or an additional assessment on the basis of that return, or

(b) otherwise than as mentioned in paragraph (a), the Administrator makes an assessment or an additional assessment under section 75 as a consequence of -

(i) a failure to give notice of liability to be charged to tax in accordance with section 68(2), or

(ii) an error or omission in any information, return, account or other document delivered under any provision of this Law,

surcharges and additional surcharges (including arrears thereof) are payable in respect of the tax arising in the same manner, and in the same amount, and with effect from the same dates, as if the tax had been charged in an assessment made in respect of that year of charge in sufficient time to enable the tax to have been paid on the 30<sup>th</sup> June and the 31<sup>st</sup> December in that year.

(7) Surcharges and additional surcharges are not payable -

(a) where their total amount is less than the sum specified by regulations of the Treasury and Resources Department, or

(b) in such other cases as may be prescribed by regulations of the Treasury and Resources Department or any statement of practice issued

by the Administrator.

(8) Surcharges become payable on the 30<sup>th</sup> day after the settlement date; and surcharges and additional surcharges are recoverable as a civil debt.

(9) Subsection (8) is without prejudice to any other legal remedy available in respect of defaults in the payment of amounts due under this Law.

(10) For the purposes of subsection (2), the date on or before which an amount due under this Law is payable pursuant to the provisions of section 81 is not affected by any forbearance or failure by the Administrator to enforce payment of the amount, unless -

- (a) the Administrator has expressly agreed that the amount due may remain unpaid, and
- (b) on or before the later of the dates mentioned in subparagraphs (i) and (ii) of subsection (6)(a) he receives a fully completed return of income the examination of which discloses that the amount is due,

in which case, for the purposes of subsection (2), the date on or before which the amount is payable is the final day of a period of 30 days from the date of issue of the assessment or order which declares the sum to be due.

(11) For the avoidance of doubt -

- (a) when a surcharge or additional surcharge ("the original surcharge") becomes payable in respect of an amount due under this Law, the original surcharge remains payable notwithstanding any subsequent reduction of the amount on which the original surcharge was based, and
- (b) if as respects any year of charge the Administrator receives a fully completed return of income on or before whichever of the following is later -
  - (i) the 15<sup>th</sup> January in the year following the year in which the return was issued, or
  - (ii) the expiration of one year after the date of issue of the return,

and makes an assessment or an additional assessment on the basis of that return, and any tax falling due in consequence of that assessment or additional assessment is paid on or before the settlement date, then no surcharge or additional surcharge is payable in respect of the tax so falling due.

(12) In this section a fully completed return of income means a return which is complete and in respect of which any supporting

documentation and information required by the Administrator has been supplied; and a fully completed return is deemed to be received by the Administrator only when it and all required supporting documentation and information is received by him.

**Supplements for late repayment.**

**199A.** (1) If as respects any year of charge the Administrator receives a fully completed return of income the examination of which discloses an overpayment of tax, then, if the amount of tax overpaid is not repaid on or before the repayment date, a supplement is payable in addition to the tax repayable.

(2) The repayment date is the day of the expiration of one year after the end of the month in which the return was received by the Administrator.

(3) A supplement payable by the Administrator shall be at such rate and computed in such manner as may be determined by the Treasury and Resources Department by regulation.

(4) If the whole or any part of -

(a) an overpayment of tax, and/or

(b) a supplement, or any additional supplement payable under this subsection,

remains unpaid at the expiration of a period of six months immediately after the repayment date, or at the expiration of any successive period of six months, an additional supplement is payable on the total of the amounts then

outstanding.

(5) The additional supplement is payable at the rate for the time being specified in regulations under subsection (3).

(6) In this section a fully completed return of income means a return which is complete and in respect of which any supporting documentation and information required by the Administrator has been supplied; and a fully completed return is deemed to be received by the Administrator only when it and all required supporting documentation and information is received by him."

8. In section 200 of the Law of 1975 -

(a) in subsection (1), after "section 198 of this Law," insert "not being a surcharge or additional surcharge under section 199,"

(b) subsection (2) is repealed,

(c) in subsection (4), after "section 193A of this Law" insert "and other than a surcharge or additional surcharge under section 199",

(d) subsection (5)(b)<sup>g</sup> is repealed, and

(e) after subsection (5), insert the following subsection -

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<sup>g</sup> Subsection (5) was inserted by No. VI of 1992.

"(6) An order imposing a penalty under section 190, 193(1), 193A(1) or 193A(2) may impose both the original penalty and the additional daily penalties provided for in those sections, and any additional daily penalties so imposed shall accrue after the date of the imposition of the original penalty without further notice; and accordingly, and for the avoidance of doubt, no separate notice or order is required to be served by the Administrator in respect of the additional daily penalties."

9. In section 201 of the Law of 1975 after "a repayment of tax under this Law" insert "or a supplement or additional supplement under section 199A".

10. After section 201A<sup>h</sup> of the Law of 1975 insert the following section-

**"Power to amend Part XVIII by Ordinance.**

**201B.** The States may by Ordinance amend this Part of this Law."

11. After section 208A<sup>i</sup> of the Law of 1975 insert the following section -

**"Power to amend penalties by Ordinance.**

**208B.** The States may by Ordinance amend any penalty specified in this Law which is expressed in a monetary amount."

**Transitional provisions.**

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<sup>h</sup> Section 201A was inserted by Vol. XXXII, p. 307.

<sup>i</sup> Section 208A was inserted by the Income Tax (Guernsey) (Amendment) Law, 2005.

12. (1) The provisions of section 199 of the Law of 1975 (as substituted by this Law) apply in relation to any amount which is due from a person under the Law of 1975 and which is outstanding at the date of commencement of this Law, and the surcharges and additional surcharges provided for by that section are payable accordingly, except in cases where -

(a) the Administrator has before the date of commencement of this Law made an order directing the payment of a penalty in respect of the amount due, or

(b) the amount due is itself a penalty,

and in those cases the amount due and/or the penalty are recoverable as if this Law had not been enacted.

(2) The provisions of section 199A of the Law of 1975 (as inserted by this Law) apply in relation to any amount of tax which has been overpaid by any person, and which has not been repaid by the Administrator, before the date of commencement of this Law, and the supplements and additional supplements provided for by that section are payable by the Administrator accordingly.

**Citation.**

13. This Law may be cited as the Income Tax (Surcharges and Supplements) (Guernsey) (Amendment) Law, 2005.

**Commencement.**

14. (1) By virtue of the States' resolution of the 30<sup>th</sup> November,

2005<sup>j</sup>, and under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992<sup>k</sup>, this Law -

- (a) shall have effect, from the 1<sup>st</sup> January, 2006, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey, and
- (b) shall come into force on the day appointed by Ordinance of the States<sup>l</sup>.

(2) An Ordinance under subsection (1) may appoint different dates for different provisions, different purposes and different cases or classes of cases (and references in section 12 to the date of commencement of this Law shall be read accordingly).

K H TOUGH  
Her Majesty's Greffier

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<sup>j</sup> Article II of Billet d'État No. XX of 2005.

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

<sup>l</sup> For provisions as to commencement, see Ordinance XXXIII of 2005.