

*Consolidated text*

# PROJET DE LOI

ENTITLED

## **The Income Tax (Year of Computation) (Guernsey) Law, 2000 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. IV of 2000; as amended by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009).

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## **The Income Tax (Year of Computation) (Guernsey) Law, 2000**

### ARRANGEMENT OF SECTIONS

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## **The Income Tax (Year of Computation) (Guernsey) Law, 2000**

**THE STATES**, in pursuance of their Resolution of 29<sup>th</sup> July, 1999<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.

*Change to current year basis of assessment except  
for income from business*

### **Year of computation to be the year of charge.**

1. In section 6(1) of the Income Tax (Guernsey) Law, 1975<sup>b</sup> for "the calendar year preceding the year of charge" substitute "the year of charge".

### **Deductions and reliefs to be allowed by reference to the year of charge.**

2. (1) In paragraphs (b) and (d) of section 11 of the Law for "the basis period", wherever appearing, substitute "the year of charge".

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<sup>a</sup> On Article 10 of Billet d'État No. XIV of 1999.

<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; Nos. IV and VIII of 1993; No. XXV of 1994; Nos. III and VII of 1995; No. V of 1996; Nos. IV and XXII of 1997; No. \* of 1999.

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(2) In section 14(1) of the Law the words "the basis period relating to the said income for" are repealed.

(3) In section 14(2) of the Law the words "basis period for any" are repealed.

(4) Section 14(3) of the Law is repealed.

(5) In sections 15 and 16(1) of the Law the words "the basis period for", wherever appearing, are repealed.

(6) In section 16(2) of the Law for "two years"<sup>c</sup> substitute "three years".

(7) In section 38 of the Law<sup>d</sup> –

(a) at the beginning of subsection (1) for "Subject to the succeeding provisions of this section, where" substitute "Where",

(b) for paragraphs (b) and (c) of subsection (1) and the proviso thereto substitute –

"(b) in any other case, the amount of interest payable in the year of charge:

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<sup>c</sup> The words "two years" were substituted for "one year" by s. 1(g), Income Tax (Amendment) (Guernsey) Law, 1982 (Ordres en Conseil Vol. XXVII, p.565).

<sup>d</sup> Section 38 was substituted by s. 1(k), Income Tax (Amendment) (Guernsey) Law, 1982 (Ordres en Conseil Vol. XXVII, p.565).

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Provided that no deduction shall be allowed to any individual who became principally resident in the year of charge for interest payable by him in respect of any period prior to the date on which he first arrived in Guernsey in that year.",

- (c) subsections (2) and (3) are repealed.

*Consequential amendments*

**Changes of residence etc.**

3. (1) For section 5(3) of the Law substitute –

"(3) When an individual who was not resident in Guernsey in the year preceding the year of charge becomes solely or principally so resident in a year of charge he shall be assessed and charged in that year of charge in respect of assessable income from sources outside Guernsey, other than income from the carrying on of a business, on the following bases –

- (a) in respect of any such income which he commenced to possess after the date on which he first arrived in Guernsey in the year of charge, on the income arising or accruing from that source in the year of charge,
- (b) in respect of any such income which he possessed on the date on which he first arrived in Guernsey in the year of charge and

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continued to possess throughout that year of charge, on the same proportion of the income arising or accruing from that source during the year of charge as the period of his residence in Guernsey during the year of charge bears to a period of twelve months or to the period during which he possessed the source in the year of charge if that period is less than twelve months,

- (c) in respect of any such income which he possessed on the date on which he first arrived in Guernsey and ceased to possess during the year of charge in which he became solely or principally resident as aforesaid, on the income arising or accruing from that source between the date on which he first arrived in Guernsey in the year of charge and the date on which he ceased to possess the source." <sup>1</sup>

- (2) For section 5(4) of the Law substitute –

"(4) When an individual who was solely or principally resident in Guernsey in the year preceding the year of charge permanently departs from Guernsey he shall be assessed and charged in the year in which he so departs in respect of assessable income from sources outside Guernsey, other than income from the carrying on of a business, on the following bases –

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- (a) in respect of any such income which he possessed in the year preceding the year of charge and continued to possess on the date on which he permanently departed from Guernsey, on such proportion of the income arising or accruing from that source in the year of charge as the period during which he resided in Guernsey during the year of charge bears to a period of twelve months,
- (b) in respect of any such income which he possessed at the commencement of the year of charge but ceased to possess before the date on which he permanently departed from Guernsey, on the income arising or accruing from that source during the year of charge,
- (c) in respect of any such income which he commenced to possess after the commencement of the year of charge but before the date on which he permanently departed from Guernsey, on the income arising or accruing from that source before the date on which he so departed." <sup>2</sup>

(3) Section 6(7) of the Law is repealed.

*Consequential amendments*

**Income from sources outside Guernsey.**

4. (1) Chapter III of Part I of the Law is repealed.
- (2) Section 161 of the Law is repealed.

**Commencements and cessations.**

5. (1) In section 30 of the Law –
  - (a) for "any other source" substitute "any business carried on outside Guernsey",
  - (b) the words "(a) Income from business –" are repealed,
  - (c) paragraph (b) is repealed.<sup>3</sup>
- (2) In section 31 of the Law –
  - (a) in the proviso to subsection (1) for "the provisions of subsection (2) of this section shall apply" substitute "the provisions of this section shall similarly apply",<sup>4</sup>
  - (b) subsections (2) and (3) are repealed.
- (3) Sections 32 and 34 of the Law are repealed.

(4) In the proviso to section 61 of the Law<sup>e</sup> the words "or, in a case to which the provisions of subsection (2) of section thirty-one of this Law apply, for the year of charge to which the provisions of paragraph (b) of the said subsection apply," are repealed.

**Returns and assessments.**

6. (1) Immediately after section 68(1) of the Law there is inserted the following additional subsection –

"(1A) In the case of any source of income in respect of which the year of charge is also the year of computation the return referred to in subsection (1) of this section shall include –

- (a) the actual income from that source of the person required to deliver the return for the calendar year preceding the year of charge, and/or
- (b) a bona fide estimate of the income of that person from that source for the year of charge,

as the notice may require."

(2) Section 73 of the Law is redesignated as section 73(1), and the following additional subsections are inserted immediately thereafter –

"(2) In the case of any source of income in respect of

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<sup>e</sup> The proviso to section 61 was substituted by s. 1(d), Income Tax (Amendment) (Guernsey) Law, 1977 (Ordres en Conseil Vol. XXVI, p.200).

which the year of charge is also the year of computation –

- (a) an interim assessment for that year of charge (hereafter referred to as an "**interim assessment**") may be made on any person at any time after the commencement of that year, taking into account the estimated amount of that income for the whole of that year; and the tax charged in consequence of an interim assessment shall be payable, subject to section 81A of this Law, in the manner prescribed by section 81 of this Law,
  
- (b) a final assessment for that year of charge (hereafter referred to as a "**final assessment**") may be made on any person, subject to sections 54(1) and 75 of this Law, at any time; and the tax charged in consequence of a final assessment shall be payable within 21 days from the date of the issue of the notice of assessment:

Provided that in determining the amount of tax to be charged in consequence of the final assessment a deduction shall be made equal to the amount of any tax which has been charged in consequence of any interim assessment made in respect of any such income for the same year of charge.

(3) When the tax paid in consequence of an interim assessment for any year of charge is found to exceed the tax charged in consequence of a final assessment for the same year of charge, the excess shall be applied in payment or part payment of any tax which has been charged, either in respect of the year of charge in which the final assessment has been made, or in respect of any year of charge prior to that year of charge, and which has not been paid; and where there is no such tax charged and unpaid the excess shall be repaid."<sup>5</sup>

*Supplementary provisions*

**Consequential repeals.**

7. Paragraph 1(d) of the Income Tax (Amendment) (Guernsey) Law, 1976<sup>f</sup>, paragraphs 1(g), 1(h) and 1(j) of the Income Tax (Amendment) (Guernsey) Law, 1982<sup>g</sup>, and paragraph 1(g) of the Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989<sup>h</sup>, are repealed.

**Transitional provisions.**

8. The provisions set out in the Schedule to this Law shall have effect.

**Interpretation and construction.**

9. (1) In this Law "the Law" means the Income Tax (Guernsey) Law, 1975, as amended.

(2) This Law is to be construed as one with the Law.

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<sup>f</sup> Ordres en Conseil Vol. XXVI, p. 146.

<sup>g</sup> Ordres en Conseil Vol. XXVII, p. 565.

<sup>h</sup> Ordres en Conseil Vol. XXXI, p. 473.

**Citation.**

**10.** This Law may be cited as the Income Tax (Year of Computation) (Guernsey) Law, 2000.

**Commencement.**

**11.** (1) Subject to subsection (2) of this section this Law shall come into force on 1<sup>st</sup> January, 2002.

(2) The States may by Ordinance defer commencement of this Law until 1<sup>st</sup> January in any year subsequent to 2002:

Provided that any such Ordinance is made by the States on or before 30<sup>th</sup> September in the year preceding that in which this Law would otherwise come into force, whether pursuant to subsection (1) of this section or pursuant to an Ordinance previously made under this subsection.

*Transitional provisions*

**Application of this Schedule.**

1. (1) This Schedule applies to any source of income assessable to tax in respect of which the year of computation, and the period by reference to which deductions and reliefs are to be allowed –

- (a) would, apart from this Law, be the calendar year preceding the year of charge, but
- (b) would by virtue of this Law, apart from this Schedule, become the year of charge.

(2) In this Schedule –

"**the transitional year**" means the first calendar year for which this Law is in force,

a "**relevant source**" of income means any source of income to which this Schedule applies.

**Normal basis of assessment for transitional year.**

2. Subject to paragraphs 3 and 4 of the Schedule, in respect of the transitional year a person's income from all relevant sources is liable to be assessed to tax on the following basis –

$$\left[ \frac{(\text{PYI} - \text{PYDR}) + (\text{TYI} - \text{TYDR})}{2} \right] - A$$

where:

PYI is that person's total income from all relevant sources during the calendar year preceding the transitional year,

PYDR is the total of all deductions and relevant reliefs which he is entitled to make or claim from that income for the purposes of the Law, as respects the calendar year preceding the transitional year,

TYI is his total income from all relevant sources during the transitional year,

TYDR is the total of all deductions and relevant reliefs which he is entitled to make or claim from that income for the purposes of the Law, as respects the transitional year,

A is the total of all allowances, other than relevant reliefs, which he is entitled to claim for the transitional year pursuant to any resolution of the States under section 36 of the Law,

and in the above definition "**relevant reliefs**" means relief pursuant to any resolution of the States under section 36 of the Law in respect of a premium or contribution to a retirement annuity scheme or a retirement annuity trust scheme.

**Election to treat income as permanently ceasing.**

3. (1) A person may elect that, instead of paragraph 2 of this

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Schedule applying in his case, his income from all relevant sources shall be assessed to tax as if all of that income had permanently ceased to be his income during either (at that person's election) –

- (a) the transitional year, or
- (b) the calendar year preceding the transitional year,

and as if section 5 of this Law had not been passed.

(2) An election under subparagraph (1) of this paragraph must be made in writing to the [Director] not later than eighteen months after the end of the transitional year.

**Provision for averaging.**

4. (1) If in the case of any relevant source of income –
- (a) the [Director] is of the opinion that a person has made or entered into arrangements as a result of which –
    - (i) income from that source has arisen at irregular intervals, or
    - (ii) income arising from that source at regular intervals has varied significantly in amount,over a period which includes all or part of the transitional year, or of the calendar year preceding the transitional year, and

- (b) that person does not satisfy the [Director] that those arrangements were made or entered into exclusively for bona fide commercial reasons,

then the [Director] may assess to tax the total income of that person from that source over the whole of that period as if it had arisen in equal monthly instalments throughout that period.

(2) This paragraph is without prejudice to the exercise by the [Director] of his powers under section 67, or under any other provision, of the Law.

(3) For the purposes of subparagraph (1)(b) of this paragraph the obtaining of a tax advantage is not a bona fide commercial reason.

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**NOTE**

*In the Schedule, the words in square brackets were substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.*

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<sup>1</sup> For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.

<sup>2</sup> For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.

<sup>3</sup> For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.

<sup>4</sup> For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.

<sup>5</sup> For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.