

ORDER IN COUNCIL

V
2011

ratifying a Projet de Loi

ENTITLED

The Income Tax (Zero 10) (Guernsey) Law, 2007

(Registered on the Records of the Island of Guernsey
on the 4th April, 2011.)



2011

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

4th day of April, 2011 before John Russell Finch Esq, Judge of the Royal Court;
present:- Stephen Edward Francis Le Poidevin, Esquire, Barbara Jean Bartie,
John Ferguson, Stephen Murray Jones, Esquires, Claire Helen Le Pelley, Peter
Sean Trueman Girard, Esquire, Constance Helyar-Wilkinson, David Percy
Langley Hodgetts L.V.O., Niall David McCathie, Esquires, Margaret Ann
Spaargaren, David Allan Grut, Esquire, Jurats.

Judge Finch, having this day placed before the Court an Order of
Her Majesty in Council dated 16th March, 2011, approving and ratifying a Projet de Loi entitled
“The Income Tax (Zero 10) (Guernsey) Law, 2007”, 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 16th DAY OF MARCH 2011

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 Resolutions of 28th September 2005, 30th June 2006, 30th May 2007, and 25th July 2007, the States of Deliberation at a meeting on 26th September 2007 approved a *Projet de Loi* entitled the Income Tax (Zero 10) (Guernsey) Law, 2007 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 (Zero 10) (Guernsey) Law, 2007, 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.

Judith Simpson

PROJET DE LOI

ENTITLED

The Income Tax (Zero 10) (Guernsey) Law, 2007

THE STATES, in pursuance of their Resolutions of the 28th September, 2005^a, the 30th June, 2006^b, the 30th May, 2007^c and the 25th July, 2007^d, 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. This Law amends the Income Tax (Guernsey) Law, 1975, as amended^e ("**the Law of 1975**") and other related legislation.

2. For section 2 of the Law of 1975, substitute –

"General provisions as to income and the computation thereof.

^a Article XII of Billet d'État No. XIV of 2005.

^b Billet d'État No. XI of 2006.

^c Article XI of Billet d'État No. XIV of 2007.

^d Article VIII of Billet d'État No. XIX of 2007.

^e 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; No's. V, VI and XVII of 2005; and No's. II and VII of 2006; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

2. (1) An individual's income in respect of which tax is chargeable shall be income of one or other of the following classes namely -

- (a) income from businesses,
- (b) income from offices and employments,
- (c) income from the ownership of lands and buildings, and
- (d) income from other sources.

(2) A company's income in respect of which tax is chargeable shall be income of one or other of the following classes namely -

- (a) income from banking business (as defined in the Fourth Schedule, which may be amended by regulations made by the Department),
- (b) income from activities regulated by the Office of the Director General of Utility Regulation,
- (c) income from the ownership of lands and buildings, and
- (d) income from businesses (other than businesses referred to in any other paragraph of this subsection), offices and employments, and other sources.

(3) The income for any year of charge in respect of which tax is chargeable (in this Law referred to as "assessable income") shall in the case of each particular class be computed in such manner and by reference to such year of computation or other period as is mentioned in this Law."

3. For section 5(2) of the Law of 1975, substitute –

"(2) For any year of charge the rates of income tax shall be as set out in the Fifth Schedule, which may be amended by Resolution of the States in respect of that year."

4. After section 6(2) of the Law of 1975^f insert the following subsections –

"(3) Where prior to 1 January 2008 a company's income falls within Class 2(2)(a) or Class 2(2)(d) in whole or in part, that company shall be deemed to have ceased trading at midnight on 31 December 2007 and immediately recommenced on 1 January 2008 for the purposes of this Law.

(3A) If under section 5(2) the States by Resolution alter the rates of tax chargeable then the accounting period and the year of computation of every business shall end on the day before the day on which the alteration of the rates takes effect and subsection (4) shall apply in calculating the profits for the year of computation."

^f Subsection (3) of section 6 was repealed by No. V of 2005.

5. In section 6(4) of the Law of 1975^g after the words "makes a determination under subsection (2)(b)," insert "or where subsection (3) or (3A) applies,".

6. After section 7 of the Law of 1975 insert the following section -

"Calculation of income from banking business."

7A. Without prejudice to the provisions of section 7, income from banking business shall be calculated net of the proportion of the bank's overhead costs laid out or expended wholly and exclusively for the purposes of earning that income."

7. In section 8(1) of the Law of 1975 replace the words "of Class (2) under the provisions of section two of this Law" with "from offices and employments".

8. In section 10(4)(b) of the Law of 1975 replace the words "class (4) under the provisions" with "Class (1)(c) or Class (2)(c)".

9. In section 12(1) of the Law of 1975 -

(a) in paragraph (a) replace the words "five per centum" with "2½ %",

(b) for paragraph (b) substitute-

"(b) where the annual rental value is that of a dwelling house let furnished, the said deduction

^g Those words were inserted by No. V of 2005.

shall be 15% of the annual rental value,"

(c) for paragraph (c) substitute –

"(c) where the annual rental value is that of a glasshouse or other building, other than a dwelling house let furnished, the said deduction shall be 10% of the annual rental value."

10. In section 27(1) of the Law of 1975^h replace the words "class (2) in pursuance of the provisions" with "Class (1)(b)".

11. After section 39A of the Law of 1975ⁱ insert the following section –

"Limit on amount of tax payable by a resident individual."

39B. (1) For any year of charge the limit on the amount of income tax payable by a resident individual on qualifying income shall be as set out in the Sixth Schedule, which may be amended by Resolution of the States.

(2) For the purposes of this section the qualifying income shall be calculated net of all applicable allowances, reliefs and deductions, in order to determine whether or not the limit will apply.

(3) If the individual is resident in Guernsey for only part of a year of charge the limit may be pro rated by reference to the amount of time spent in Guernsey in the year of charge."

^h Section 27(1) was substituted by Vol. XXVII, p. 333.

ⁱ Section 39A was inserted by No. XVII of 2001.

12. Section 40(q) of the Law of 1975 is repealed.

13. In section 48(4) of the Law of 1975 for the words "the penalty for late payment prescribed in section one hundred and ninety-nine of this Law, and for the purposes of computing the penalty" substitute "a surcharge or additional surcharge under section 199, for the purposes of calculating which".

14. Section 50 of the Law of 1975 is repealed.

15. In section 54(1) of the Law of 1975 after "penalty" wherever appearing (but not in the proviso) insert "or surcharge or additional surcharge".

16. In section 57 of the Law of 1975 -

(a) in subsection (1), all the text after "share, right or title thereto" is repealed, and

(b) subsections (2)^j, (3) and (4) are repealed.

17. In section 60 of the Law of 1975 -

(a) for subsection (1) substitute the following subsections -

"(1) Where a company resident in Guernsey distributes any of its undistributed income, the company shall send to the person to whom the distribution was made a statement in writing showing -

^j Subsection (2) was substituted by No. V of 2005.

- (a) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount paid or deemed to have been paid,
- (b) the rate and the amount of income tax appropriate to such gross amount, and
- (c) the net amount actually paid or deemed to have been paid.

(1A) Every warrant, cheque or other order drawn or made, or purporting to be drawn or made, in payment of any such distribution shall have annexed to it or be accompanied by the statement required by subsection (1).

(1B) In this section a "distribution" by a company of undistributed income includes a dividend and a deemed distribution of undistributed income under Chapter VIIIA of Part IV, and related expressions shall be construed accordingly.",

- (b) in subsection (2) replace the words "a penalty not exceeding ten pounds" with "a penalty not exceeding level two on the uniform scale", and
- (c) delete the proviso to subsection (2).

18. In section 61 of the Law of 1975^k after "penalty" insert "and any

^k Section 61 was amended by No. V of 2005.

surcharge and additional surcharge".

19. In section 65(4) of the Law of 1975¹ in the definition of "**settlement**" after the words "shall be construed accordingly" insert "and includes any person who has provided or caused to be provided funds or other property for a settlement or for any entity owned or controlled directly or indirectly by the trustees of the settlement".

20. After section 65 of the Law of 1975 insert the following section -

"Duty of settlor to declare settlement to Administrator."

65A. (1) A person who is or who has at any time been the settlor of a settlement, in each case within the meaning of section 65(4), which is or which has been in existence at any time during a year of charge in which the settlor is or was resident in Guernsey, shall notify the Administrator of that fact by the 31st March in the following year of charge.

(2) A notification under subsection (1) shall be in such form, shall contain such information and particulars and shall be accompanied by such documents (verified in such manner) as may be required by the Administrator.

(3) If there is a failure to comply with this section -

(a) the provisions of section 75 ("additional assessments") shall apply in relation to the person in default in all respects as those provisions apply in relation to a person by or

¹ Section 65(4) was substituted by Vol. XXVII, p. 84.

on behalf of whom any form of fraud has been committed in connection with or in relation to tax for the year 1950 or any subsequent year of charge, and

- (b) the provisions of section 189 ("penalty for failure to give notice of liability") shall apply in relation to the person in default in all respects as those provisions apply in relation to a person who fails to give the Administrator notice of his liability to be charged with tax (and the other provisions of Part XVIII of this Law shall apply accordingly)."

21. For section 67 of the Law of 1975 substitute the following -

"General provision against legal avoidance.

67. (1) Where the effect of a transaction or series of transactions is the avoidance, reduction or deferral of the liability of any person ("**the person concerned**") to tax under this Law, the Administrator may, in his discretion, make such adjustments as respects the liability of the person concerned to tax as may in his opinion be appropriate to counteract the avoidance, reduction or deferral of liability which would otherwise be effected by or as a result of that transaction or series of transactions.

(2) For the purposes of this section, a transaction includes any arrangement, agreement, operation, scheme or event, or any action, omission, decision or concurrence, whether or not -

- (a) enforceable by legal proceedings,

- (b) involving or dependent on any action by, or any omission, decision or concurrence of, the person concerned or any other person, or more than one person,
- (c) brought to a conclusion, or
- (d) involving or dependent on any other transaction.

(3) For the purposes of this section, and for the avoidance of doubt, it is immaterial -

- (a) when or where the transaction or series of transactions (or any of the series of transactions) occurs,
- (b) whether or not the transaction or series of transactions (or any of the series of transactions) -
 - (i) occurs in a year of charge in which an avoidance, reduction or deferral of liability is effected by or as a result of it,
 - (ii) was undertaken by or on behalf of, or in conjunction with, the person concerned, or

- (iii) was undertaken by or on behalf of, or in conjunction with, more than one person, or
- (c) whether or not the avoidance, reduction or deferral of liability -
 - (i) was an intended effect of the transaction or series of transactions, or any of the series of transactions, or
 - (ii) was the only or principal effect.

(4) In this section the expression "avoidance, reduction or deferral" of liability to tax under this Law includes (without limitation) an increase or enhancement in the entitlement of the person concerned to a repayment of tax under this Law."

22. After section 73(3) of the Law of 1975^m insert the following subsections –

"(4) Where a company's income is comprised solely of income from other sources within section 2(2)(d), the Administrator may, in his discretion, decide not to make an assessment on that company in accordance with subsection (1).

(5) If the Administrator decides not to make an assessment

^m Section 73(3) was inserted by No. IV of 2000.

in accordance with subsection (4) -

- (a) the company may request such an assessment when it sends the Administrator its return of income in accordance with section 68, and
- (b) his decision does not affect the status of the company's income as assessable income."

23. For the proviso to section 75 of the Law of 1975 substitute the following -

"Provided that -

- (a) where any form of fraud has been committed by or on behalf of any person in connection with or in relation to tax for the year 1950 or any subsequent year of charge, an assessment or additional assessment on that person to tax for that year may, for the purpose of making good to the States any loss of tax attributable to the fraud, be made at any time,
- (b) where there has been any negligence by or on behalf of any person in connection with or in relation to tax for the year of charge 2001 and any subsequent year of charge, an assessment or additional assessment on that person to tax for that year may, for the purpose of making good to the States any loss of tax attributable to

the negligence, be made at any time not later than 20 years after the end of that year of charge,

notwithstanding that, apart from this section, the time limited by law for the making of the assessment or additional assessment has expired."

24. In section 81A of the Law of 1975ⁿ –

(a) the title of the section is replaced by the following –

"Collection of tax on certain emoluments and pensions by instalments.",

(b) in subsection (1) for "under the provisions of class (2) of section two of this Law and upon any income chargeable under any other class of the said section two" substitute "arising from offices and employments and any other income chargeable under this Law",

(c) in subsection (2)(c) for "of a class mentioned in section two of this Law other than class (2) thereof" substitute "other than income arising from offices and employments", and

(d) in subsection (3) after "penalty" wherever appearing insert "and any surcharge and additional surcharge".

ⁿ Section 81A was inserted by Vol. XXVII, p. 118.

25. After section 81A of the Law of 1975^o insert the following section -

"Collection of tax on distributions and deemed distributions by instalments.

81B. (1) The provisions of this section have effect for the purpose of requiring tax to be deducted when a company distributes any of its undistributed income, subject to and in accordance with regulations made by the Department under this section, notwithstanding -

- (a) that when the distribution is made no assessment has been made in respect of the income to which that distribution relates,
- (b) that the income is in whole or in part income which may be chargeable to tax for some year of charge other than the year of charge during which the distribution is made,
- (c) the provisions of section 43(1) which prescribe the circumstances in which the income of a married woman living with her husband shall be treated as the income of the husband.

(2) Where any distribution of a company's undistributed income is made, tax shall be deducted and withheld therefrom by the person making the distribution in accordance with the provisions of this section.

(3) Tax shall be deducted at -

^o Section 81A was inserted by Vol. XXVII, p. 118.

- (a) the individual standard rate (where the person to whom the distribution or deemed distribution is made is an individual), or
- (b) the company higher rate (where the person to whom the distribution or deemed distribution is made is a company).

(4) Any tax deducted in accordance with the provisions of subsection (2) shall be applied towards the payment of any tax charged or chargeable upon the person who has borne the deduction for the year of charge in which the distribution is made and for any year of charge prior to that year of charge and any penalty and surcharge and additional surcharge payable by him and where any tax so deducted is greater than such tax payable by that person and any penalty and surcharge and additional surcharge payable by him, the appropriate repayment shall be made by the Administrator.

(5) For the avoidance of doubt if any income from which tax has been deducted has not been included in any assessment of tax made under section 73(2)(a) then the tax deducted from such income shall not, under subsection (4), be applied towards the payment of tax due from that assessment.

(6) The Department may from time to time make regulations for the purposes of carrying out the provisions of this section.

(7) Any regulations made under subsection (5) do not have effect unless and until approved by a resolution of the States.

(8) Any tax deducted by a company from a distribution in accordance with this section shall be payable by the company in such manner and at such times as may be prescribed by or under regulations made under subsection (6).

(9) Where a company fails to deduct from a distribution of undistributed income the tax which it is required to deduct under this section, the amount of the tax shall be payable by the company as if it had been so deducted, and where the amount of any such tax is paid by the company -

- (a) that amount shall be deemed to be tax deducted in accordance with subsection (2),
- (b) that amount shall be recoverable by the company from the person to whom the distribution was made as a civil debt due to the company, and
- (c) that amount is not recoverable by the Administrator from the person to whom the distribution was made.

(10) Where a company fails to pay to the Administrator any tax deducted by it from a distribution in the manner and at the times prescribed by or under this section, the amount is (without prejudice to any other remedy or penalty under this Law) recoverable by the Administrator from the person to whom the distribution was made.

(11) Every agreement for the making without deduction of tax of any distribution to which this section relates is void.

(12) Where any distribution is made, the company shall make a quarterly return to the Administrator detailing -

(a) the name of the person to whom the distribution is made,

(b) the date and amount of the distribution, and

(c) the date and amount of tax paid.

(13) The quarterly return required under subsection (12) must be filed with the Administrator within 15 days of the relevant reporting date, together with payment for any income tax due under this section and Chapter VIII A of Part IV.

(14) If the Administrator believes that a company has not complied with the requirements of subsection (13), the Administrator may make an assessment of the tax due or an additional assessment under section 75.

(15) In this section a "distribution" by a company of undistributed income includes a dividend and a deemed distribution of undistributed income under Chapter VIII A of Part IV, and related expressions shall be construed accordingly."

26. After section 81B of the Law of 1975 (as inserted by section 25 of this Law) insert the following section -

"Income from service companies.

81C. If an individual ("the worker") personally performs, or is under an obligation personally to perform, services for a business carried on by another person ("the client") and –

- (a) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third person,
- (b) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for the purposes of this Law as an employee of the client,
- (c) there is a corporate or partnership relationship between the worker and the third person, and
- (d) there is no corporate or partnership relationship between the client and the third person, unless the worker or any person connected to him -
 - (i) has, where the client is a company, directly or indirectly control of more than 5 per cent of the issued share capital of the client or any company connected with it, or
 - (ii) is, where the client is a partnership, a partner therein,

then the monies paid to, and all expenses of, the third person shall be deemed to be the Class 2(1)(b) income of, and the expenses of, the worker for tax purposes, and section 81A shall apply accordingly as if the worker were the employee of the third person."

27. In section 82(1) and (2) of the Law of 1975 after "penalty" wherever appearing insert "or surcharge or additional surcharge".

28. After section 90(2) of the Law of 1975 insert the following subsection -

"(3) For the purposes of this section the expression "machinery and plant" does not include furnishings."

29. In section 133 of the Law of 1975 after the words "more of those businesses, that person may require" insert ", subject to section 133A,".

30. After section 133 of the Law of 1975 insert the following section -

"Set off of losses between classes.

133A. Losses from one class may only be set off against the assessable income from another class where those losses and the income are taxed at the same rate, as set out in the Fifth Schedule."

31. In section 135 of the Law of 1975 insert the following subsection -

"(5) This section is subject to section 133A."

32. Paragraphs (ii) and (iii) of section 142A(2)(b)^P are repealed.

33. In section 153(1)(d) of the Law of 1975 for the words "the penalty prescribed for late payment in section one hundred and ninety-nine of this Law and for the purposes of computing the penalty" substitute "a surcharge or additional surcharge under section 199, for the purposes of calculating which".

34. In section 157A(5A)(c) of the Law of 1975^Q for the words "the penalty prescribed for late payment in section 198 of this Law, and for the purpose of computing the penalty" substitute "a surcharge or additional surcharge under section 199, for the purposes of calculating which".

35. In section 157A(9)(a)(ii) of the Law of 1975^R replace the words "class (1)" with "Class(1)(a)".

36. In section 158 of the Law of 1975, in the definition of "full-time working director/employee of a trading company"^S, replace the words "carrying on business of which the income is chargeable under Class 1 of section 2 of this Law" with "deriving income from business".

37. After section 159 of the Law of 1975 insert the following Part -

"PART XIII A

EMPLOYEE BENEFIT TRUSTS & SIMILAR ARRANGEMENTS

^P Section 142A was inserted by No. IV of 1997.

^Q Section 157A(5A)(c) was inserted by No. XXII of 1997.

^R Section 157A(9)(a)(ii) was inserted by Vol. XXVIII, p. 278.

^S The definition of "full-time working director/employee of a trading company" was inserted by No. XXII of 1997.

Employee benefit trusts, etc, and deferred benefits.

159A. (1) Where a scheme is established, whether or not as a settlement within the meaning of section 65(4), in connection with the carrying on of a business, and -

(a) the purpose or one or the purposes of the scheme is the provision of benefits for persons who are or who at any time have been or are to be -

(i) employed, or

(ii) the holders of offices,

in connection with the business,

(b) the person carrying on the business ("**the employer**"), or any person on his behalf, is a contributor to the scheme, and

(c) contributions (whether of money or other assets) made to the scheme by or on behalf of the employer are, pending their payment out of the scheme, held by or vested in persons other than persons for whose benefit they are (wholly or in part) to be paid,

then, for the purposes of this Law, but subject to the provisions of subsection (3), no contribution made to the scheme by or on behalf of the

employer may be deducted from the income of the employer (or of any other person who made the contribution on behalf of the employer) for the purpose of calculating his liability to tax under this Law unless and until, and except to the extent that -

- (A) the contribution, or money or other assets representing the contribution, has been paid out of the scheme to persons described in paragraph (a), and
- (B) the contribution, or money or other assets representing the contribution, so paid out comprises income which is chargeable to tax in those persons' hands.

(2) For the purposes of this section a contribution of monies or other assets is considered to be made to a scheme by or on behalf of an employer if the monies or other assets are set aside, reserved or otherwise earmarked for the scheme by him or on his behalf.

(3) This section does not apply in respect of -

- (a) a scheme which is an approved scheme within the meaning of Part XIII of this Law,
- (b) any amount paid into the scheme by or on behalf of the employer which, under any other provision of this Law, is chargeable to tax in the hands of a person described in subsection

(1)(a) for the year of charge in which the payment into the scheme is made,

(c) where the employer is a body corporate with a share capital, a scheme the sole purpose of which is to confer, on persons described in subsection (1)(a), options to acquire shares in the employer, or

(d) any contribution made by or on behalf of the employer before the date of commencement of the Income Tax (Zero 10) (Guernsey) Law, 2007."

38. In section 166(4) of the Law of 1975 for the words "the penalty prescribed for late payment in section one hundred and ninety-nine of this Law, and for the purposes of computing the penalty" substitute "a surcharge or additional surcharge under section 199, for the purposes of calculating which".

39. In section 179(1) of the Law of 1975 replace the words "class (4) under the provisions" with "Class (1)(d)".

40. Section 187A of the Law of 1975^t is repealed.

41. Part XVIIIA of the Law of 1975^u ("International Bodies" - sections 188A to 188G) is repealed.

^t Section 187A was inserted by No. XIV of 1989.

^u Part XVIIIA was inserted by No. VII of 1995.

42. For the heading to Part XVIII of the Law of 1975 ("Penalties") substitute "Penalties, surcharges and supplements".

43. After section 189(b) of the Law of 1975^V insert the following words—

"The amount of tax referred to in paragraphs (a) and (b) shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or classes in which the person's income falls."

44. In section 191 of the Law of 1975 after the words "the return actually made was correct and complete:" insert the following words –

"The amount of tax referred to in this section shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or classes in which the person's income falls."

45. In section 192 of the Law of 1975 after the words "in respect of any of the allowances to individuals." insert the following words –

"The amount of tax referred to in this section shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or classes in which the person's income falls."

46. After section 193A of the Law of 1975^W insert the following section -

^V Section 189(b) was inserted by No. VI of 1992.

"Penalties for contravention of section 81B and regulations made thereunder."

193B. (1) A company which fails to submit to the Administrator any form, schedule or list which it is required to submit by any provision of section 81B or of any regulations made thereunder within the time prescribed by that provision is liable to a penalty not exceeding £300 and in addition to a further penalty not exceeding £50 for every day after the date of the imposition of the original penalty during which the failure continues.

(2) A company which fails to comply with any provision of section 81B or of any regulations made thereunder requiring it to keep any record or provide any document to a member at or within a time prescribed by that provision is liable to a penalty not exceeding £300 and in addition to a further penalty not exceeding £50 for every day after the date of the imposition of the original penalty during which the failure continues."

47. In section 195(1) of the Law of 1975 after the words "no reduction being made in respect of any of the allowances to individuals." insert the following words -

"The amount of tax referred to in this paragraph shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or classes in which the person's income falls."

^w Section 193A was inserted by Vol. XXVII, p. 118.

48. In section 199(3) and 199(7) of the Law of 1975^x delete the words "Treasury and Resources".

49. After section 199(12) of the Law of 1975^y insert the following subsection -

"(13) For the avoidance of doubt a surcharge or additional surcharge -

(a) is not a penalty for the purposes of this Law,
and

(b) is payable in addition to any penalty under this Law."

50. In section 199A(3) of the Law of 1975^z delete the words "Treasury and Resources".

51. For section 201 of the Law of 1975 substitute the following -

"Discretion to prosecute in cases involving fraud, etc.

201. (1) Notwithstanding any provision of this Law, a person who contravenes subsection (4) or (5) is guilty of an offence and may be prosecuted.

(2) A prosecution for an offence under subsection (1) is

^x Section 199 was substituted by No. VII of 2006.

^y Section 199 was substituted by No. VII of 2006.

^z Section 199A was inserted by No. VII of 2006.

instead of any proceedings that might be taken by the Administrator against the person concerned under section 200 in relation to that contravention.

(3) A person prosecuted for an offence under subsection (1) is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding -

(i) twice the maximum penalty which the Administrator could have imposed had the case been dealt with by him, or

(ii) in a case where the Administrator could not have dealt with the matter by way of penalty, twice level 5 on the uniform scale,

or to both such imprisonment and fine,

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine -

(i) not exceeding four times the maximum penalty which the Administrator could have imposed had the case been dealt with by him, or

(ii) in a case where the Administrator could

not have dealt with the matter by way of penalty, of four times level 5 on the uniform scale,

or to both such imprisonment and fine.

- (4) A person shall not -
- (a) in any return, form, schedule, notification or other document which he, or any person on whose behalf he is acting, is required or authorised to provide by or under this Law or any Ordinance or regulation under it,
 - (b) for the purpose of obtaining -
 - (i) any relief or exemption from, or any repayment of, or any reduction in liability to, tax, penalties, surcharges or additional surcharges under this Law, or
 - (ii) any supplement or additional supplement under section 199A,either on his own behalf or on that of any other person,
 - (c) in purported compliance with any requirement imposed by or under, or otherwise for the

purposes of, this Law or any Ordinance or regulation under it,

- (d) in proceedings before the Department or the Guernsey Tax Tribunal, or
- (e) otherwise than as mentioned in paragraphs (a) to (d) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document made, produced or furnished by him would or might be used by the Administrator, the Department or the Guernsey Tax Tribunal for the purpose of exercising their respective functions,

do any of the following -

- (i) make a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, recklessly make a statement which is false, deceptive or misleading in a material particular,
- (iii) produce or furnish or cause or permit to be produced or furnished any information or document which he

knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(iv) dishonestly or otherwise, recklessly produce or furnish or recklessly cause or permit to be produced or furnished any information or document which is false, deceptive or misleading in a material particular, or

(v) fraudulently do, or omit to do, any other act whatsoever.

(5) A person shall not, without reasonable excuse -

(a) fail to give notice to the Administrator that he is chargeable to tax within such time, in such form and manner, and containing such information and particulars, as may be required by or under the provisions of this Law or any Ordinance or regulation under it, or

(b) fail to provide a return of income or any other return, form, schedule, notification or other document which he is required to provide by or under those provisions within such time, in such form and manner, and containing such information and particulars, as may be required by or under those provisions.

(6) In this section "**statement**" includes a written or oral statement or representation."

52. In section 202(1) of the Law of 1975 replace the words "class (4)" with "Class (1)(d) or Class (2)(d)".

53. In section 203A(1)(b) of the Law of 1975^{aa}, after "provision as to the creation and punishment of offences" insert "and provision amending any enactment".

54. Section 204 of the Law of 1975 is repealed.

55. After section 208B of the Law of 1975^{bb} insert the following section-

"Power to amend Law by Ordinance.

208C. (1) The States may by Ordinance -

(a) amend this Law, and

(b) make such other provision as they think fit for the purposes of carrying this Law into effect.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances or regulations (and vice versa).

^{aa} Section 203A was inserted by No. XVII of 2005.

^{bb} Section 208B was inserted by No. VII of 2006.

(3) An Ordinance under this section may, for the avoidance of doubt, and without limitation -

- (a) create new liabilities (including, without limitation, liabilities to new classes or descriptions of tax or enhanced liabilities to existing classes or descriptions of tax), obligations, penalties and offences,
- (b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law, and
- (c) empower the Department and any other body (including, without limitation, any court in Guernsey or Alderney) to make or issue orders, rules, regulations, codes or guidance as to matters in respect of which an Ordinance can be made under this Law."

56. In section 209 of the Law of 1975 -

- (a) insert the following definitions in the appropriate places -

"calendar quarter" means a period of 3 consecutive calendar months expiring on any of the reporting dates,

"class" means one of the classes of income set out in

section 2,

"**income from banking business**" has the meaning assigned to it in the Fourth Schedule,

"**reporting dates**" shall be 31 March, 30 June, 30 September and 31 December of any calendar year,

- (b) in the definition of "Department"^{cc} for "the Department constituted under the provisions of section two hundred and four of this Law" substitute "the Treasury and Resources Department".

57. After the Third Schedule to the Law of 1975^{dd} insert the following Schedules -

"FOURTH SCHEDULE

Section 2(2)(a)

BANKING BUSINESS

1. For the purposes of this Law "**banking business**" shall mean business carried on by a bank that is a licensed institution under the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

2. "**Income from banking business**" shall be any income -

^{cc} The word "Department" was substituted for the word "Authority" by Ordinance XXXIII of 2003.

^{dd} The Third Schedule was added by No. XXVI of 1990.

- (1) arising from the reinvestment or utilisation of customer deposits including any ancillary or administrative income arising therefrom (including fees and commissions), or
- (2) which is funded by the amount of capital needed to satisfy the bank's minimum regulatory requirements under the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

including interest on income, gains and losses (including exchange gains and losses), payments and receipts from transactions in related derivatives together with any associated fee income.

For the avoidance of doubt, income arising from capital surplus to the bank's regulatory requirements is not income from banking business.

For the purpose of this paragraph "**customer deposits**" shall include current, call, omnibus, notice, and fixed deposit accounts, certificates of deposit, bonds, structured products and other similar investment products.

3. This Schedule may be amended by regulations of the Department.

FIFTH SCHEDULE

Section 5(2)

INCOME TAX RATES

Classes of individuals' income		Rate description	Rate
2(1)(a)	Income from businesses) individual standard rate	20%
2(1)(b)	Income from offices and employments		20%
2(1)(c)	Income from the ownership of lands and buildings		20%
2(1)(d)	Income from other sources.		20%
Classes of companies' income			
2(2)(a)	Income from banking business	company intermediate rate	10%
2(2)(b)	Income from trading activities regulated by the Office of the Director General of Utility Regulation) company higher rate	20%
2(2)(c)	Income from the ownership of lands and buildings		20%
2(2)(d)	Income from businesses, offices and employments, and other sources	company standard rate	0%

SIXTH SCHEDULE

Section 39B

LIMIT ON TAX PAYABLE BY AN INDIVIDUAL

An individual resident in Guernsey shall pay a maximum of £250,000 in tax in a year of charge, in respect of income from the following sources –

Qualifying income

- (1) Any income derived from non-Guernsey sources, including:
 - (a) income from businesses,
 - (b) income from offices and employments,
 - (c) income from the ownership of lands and buildings, and
 - (d) income from other sources.

- (2) Income derived from a body which falls within category A, B or C of the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989.
- (3) Any interest arising in Guernsey upon money deposited with a licensed institution or other person exempted from the requirement to be licensed under the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

Income tax on income from any other sources shall not be subject to this limit."

Amendments to the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989

58. In the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989, as amended^{ee} -

- (a) in section 1(1)(c)(i) for "a category A, B, C or E body" substitute "a category A, B or C body",
- (b) sections 1(1)(c)(ii) and 1(2) are repealed,
- (c) in paragraph (i) of the proviso to section 2(1) for "a category A, B, C or D body" substitute "a category A, B or C body",
- (d) paragraph (ii) of the proviso to section 2(1) is repealed,
- (e) section 2(2)(d) is repealed,

^{ee} Recueil d'Ordonnances Tome XXV, p. 106; Tome XXVI, p. 41; No. I of 1995; No. VI of 1996; (No. I of 1995 never came into force and was repealed by No. VI of 1996); No. XXXIX of 1997; and No. XXXVII of 2006.

- (f) in section 3(1) for "a category A, B, C or E body" substitute "a category A, B or C body",
- (g) section 3(2) is repealed,
- (h) section 3A is repealed,
- (i) for section 5(1) substitute -
"(1) The annual fee is £600.",
- (j) in section 6(b) the words "(other than information required under condition 2 of Category D in Schedule 2 to be disclosed to the Financial Services Commission)" are repealed,
- (k) in section 7(3)(a) for "a category A, B, C, D or E body" substitute "a category A, B or C body",
- (l) in schedule 1 the entries relating to categories D and E are repealed,
- (m) in schedule 2 the entries relating to categories D and E are repealed,
- (n) schedule 3 is repealed, and
- (o) in schedule 4, paragraphs 3 and 4 are repealed.

Citation.

59. This Law may be cited as the Income Tax (Zero 10) (Guernsey) Law, 2007.

Commencement.

60. (1) Subject to subsection (2) this Law shall have effect, by virtue of the States' resolution of the 26th September, 2007^{ff}, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992^{gg}, on and from the 1st January, 2008, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

(2) Section 51 ("discretion to prosecute in cases involving fraud, etc.") shall come into force on the day of the registration of this Law on the records of the Island of Guernsey.

J. TORODE,

Her Majesty's Deputy Greffier.

^{ff} Article IV of Billet d'État No. XX of 2007.

^{gg} Order in Council No. XI of 1992.

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