

ORDER IN COUNCIL

VII
2011

ratifying a Projet de Loi

ENTITLED

The Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009

(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, etc) (Guernsey) (Amendment) Law, 2009”, 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.



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 Resolution of 28th January 2009, the States of Deliberation at a meeting on 29th April 2009 approved a Projet de Loi entitled the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009 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, etc) (Guernsey) (Amendment) Law, 2009, 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, etc) (Guernsey) (Amendment) Law, 2009

THE STATES, in pursuance of their Resolution of the 28th January, 2009^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 1975 Law.

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

^a Article XII of Billet d'État No. II of 2009.

^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; 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; the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008; (with effect from the 1st January, 2009) section 6 of the Income Tax (Guernsey) (Amendment) Law, 2008; and (with effect from the 28th January, 2009) by the Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

2. In section 39B of the Law of 1975^c -

- (a) in subsection (2) for "applicable allowances, reliefs and deductions" substitute "allowances, reliefs and deductions which may under this Law be set off against that income",
- (b) after subsection (3) insert the following subsections -

"(4) For the purposes of Part XV, the amount of income tax payable or chargeable in respect of any income against which tax payable in respect of that income in another territory is to be credited shall be calculated as if the limit on the amount of income tax payable imposed by subsection (1) and the Sixth Schedule were not applicable.

(5) In this section "**qualifying income**" means income of the classes or descriptions for the time being specified in the Sixth Schedule."

3. For section 47G(d) of the Law of 1975^d substitute the following -

"(d) any other businesses (other than businesses referred to in any other paragraph of this section) carried on, offices and employments held or exercised, and other sources, in Guernsey."

^c Section 39B was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

^d Section 47G was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

4. In section 47J(c) of the Law of 1975^e before the word "individual" insert "company or".

5. After section 48(6) of the Law of 1975 insert the following subsection -

"(7) Notwithstanding the provisions of this section, and for the avoidance of doubt, an agent is not chargeable with tax, and tax is not deductible by an agent, in respect of disregarded individual income within the meaning of section 47D or disregarded company income within the meaning of section 47I."

6. After section 62AB of the Law of 1975^f insert the following section -

"Exempt bodies: distributions to resident beneficial members."

62AC. (1) Notwithstanding any other provision of this Law, where a person ("person X") is resident in Guernsey and is a beneficial member of an exempt Guernsey company ("company Y"), then, so far as concerns the distributions of -

- (a) company Y, and
- (b) any other company in respect of shares in that company held by company Y,

^e Section 47J was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^f Section 62AB was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

person X is taxable, and the provisions of section 81B apply to him, only in respect of distributions actually made by company Y.

(2) In this section -

"**distributions**" of a company include deemed distributions within the meaning of Chapter VIII A,

"**exempt Guernsey company**" means a company incorporated in Guernsey which has been granted an exemption from tax under an Ordinance made under section 40A, and

"**shares**" includes any interest in a company entitling the holder of the shares to participate in distributions of the company."

7. In section 62A(2) of the Law of 1975^g -

- (a) for "In this Chapter" substitute "In this Law",
- (b) after "which is assessable to income tax" insert "or, in the case of a non-resident company, which would be assessable to income tax were the company resident in Guernsey", and
- (c) for "but excludes income which has been taxed at the company higher rate or any numerically equivalent or higher rate imposed by any other jurisdiction" substitute the

^g Section 62A was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

following -

"but excludes income which has been taxed -

- (i) in Guernsey at the company higher rate, or
- (ii) in the case of income arising from a source outside Guernsey, at any numerically equivalent or higher rate imposed by any other jurisdiction".

8. For section 62A(7) of the Law of 1975^h substitute the following -

"(7) For the purposes of calculating the amount of a deemed distribution, and for the avoidance of doubt, amounts at any time comprising undistributed income -

- (a) shall be deemed to remain undistributed income in the company's hands for the purposes of this Law unless and until distributed or deemed to be distributed, and
- (b) shall accordingly be included in the amount of a deemed distribution in any of the cases or circumstances, and at the times, set out in section 62B(1).

This subsection applies notwithstanding -

^h Section 62A was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

- (i) any rule of law relating to the circumstances in which a company may lawfully make a distribution, and
- (ii) the provisions of section 62B(2).".

9. After section 62B(2) of the Law of 1975ⁱ insert the following subsections -

"(3) Where subsection (1)(a), (b) or (c) applies, the person described in subsection (4) shall, as soon as is reasonably practicable after the date of the transaction, death or (as the case may be) change of residence, give written notice to the company of the occurrence of that event and provide the company with all such information and documents relating to it as the company may reasonably require for the purpose of enabling it to calculate the amount of the deemed distribution.

(4) The person is -

- (a) in the case of subsection (1)(a), the beneficial member of the company whose shares in the company were the subject of the disposal, repurchase and/or redemption,
- (b) in the case of subsection (1)(b), the personal representatives of the beneficial member of the

ⁱ Section 62B was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

company who has died, and

- (c) in the case of subsection (1)(c), the beneficial member of the company who has ceased to be resident in Guernsey.

(5) If the person described in subsection (4) fails without reasonable excuse to give notice, or to provide any information or documents, in accordance with subsection (3), he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale."

10. In section 62C(1)(a) and (b) of the Law of 1975^j for "of this Chapter" substitute "of this Law".

11. After section 62D(4) of the Law of 1975^k insert the following subsection -

"(5) If there is no individual who has or who can reasonably be identified as having a beneficial interest or any part of a beneficial interest in a share or any part of a share in a company then, notwithstanding subsection (1) and (2), the beneficial member of the company in relation to that share or part of a share shall be deemed to be the person who holds the legal title to it."

^j Section 62C was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^k Section 62D was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

12. In section 66B(1) of the Law of 1975^l for "before the reporting date" substitute "within 15 days of the reporting date".

13. After section 67(4) of the Law of 1975^m insert the following subsection -

"(5) For the avoidance of doubt, and without limitation, the powers conferred on the Director of Income Tax by this section do not apply in relation to non-resident individuals or non-resident companies to the extent that, but for any transaction or series of transactions with an effect described in subsection (1), their liability to income tax would be limited pursuant to the provisions of Chapter IV of Part IV of this Law."

14. In section 68A of the Law of 1975ⁿ after paragraph (a) insert the following paragraph -

"(aa) to pay any tax in accordance with section 66C, or".

15. In section 73(2)(a) of the Law of 1975^o for "section 81A" substitute "sections 66C, 81A and 81B".

16. In section 81(1) of the Law of 1975 for "section eighty-one A of this

^l Section 66B was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^m Section 67(4) was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

ⁿ Section 68A was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^o Section 73(2) was inserted by No. IV of 2000.

Law"^p substitute "sections 66C, 81A and 81B".

17. In section 81B(7) of the Law of 1975^q for "subsection (5)" substitute "subsection (6)".

18. After section 81B(16) of the Law of 1975^r insert the following subsections -

"(17) If a company makes a distribution within the meaning of section 62AA, the distribution shall be deemed to have been made from the company's undistributed income and only from the company's capital to the extent that the company's undistributed income is insufficient to cover the amount of the distribution; and the provisions of this section shall, subject to the provisions of section 62A(5), apply accordingly.

(18) The provisions of this section are subject to the provisions of section 62AC(1)."

19. In section 83 of the Law of 1975^s -

(a) after "including any tax" insert "payable under the provisions of section 66C or", and

^p Those words were inserted by Vol. XXVII, p. 118.

^q Section 81B(7) was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

^r Section 81B(16) was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^s Section 83 was amended by Vol. XXVII, p. 118.

(b) for "eighty-one A of this Law" substitute "81A or 81B".

20. In section 139A(1) of the Law of 1975^t for paragraph (b) substitute -

"(b) in relation to any preceding year of charge after 2007 that company has undistributed income of Class 2(2)(d),".

21. In sections 170(2)(b) and 174(1), (2) and (4) of the Law of 1975 for the word "authorised" substitute "required".

22. After section 178 of the Law of 1975 insert the following section -

"Effect on double taxation relief of limit on individual income tax.

178A. The provisions of this Part are subject to the provisions of section 39B(4).".

23. In section 193B of the Law of 1975^u -

(a) before "81B" wherever appearing insert "66C or", and

(b) in subsection (2) after "member" insert ", participator or other person".

24. In section 200 of the Law of 1975^v -

^t Section 139A was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^u Section 193B was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

- (a) in subsections (1), (4) and (5), after "section 193A" insert "or section 193B",
- (b) in subsection (6) after "193A(1) or 193A(2)" insert "or 193B(1) or 193B(2)".

25. After section 201A(1) of the Law of 1975^w insert the following subsection -

"(1A) A person who fails to pay tax to the Director of Income Tax in accordance with the provisions of section 66C or any regulations thereunder is guilty of an offence and liable on conviction to -

- (a) imprisonment for a term not exceeding 12 months, or
- (b) a fine not exceeding level 5 on the uniform scale, or
- (c) both."

26. In section 203 of the Law of 1975^x for "eighty-one A thereof" substitute "66C, 81A or 81B".

27. In section 209(1) of the Law of 1975 -

^v Section 200 was amended by Vol. XXXIV, p. 201 and No. VII of 2006.

^w Section 201A was inserted by Vol. XXXII, p. 307.

^x Section 203 was amended by Vol. XXVII, p. 200.

- (a) after the definition of "appropriate rate"^y insert the following definition -

"banking business" has the meaning assigned by the Fourth Schedule,"

- (b) after the definition of "limited partnership"^z insert the following definition -

"loan creditor", in relation to a company, means a creditor -

- (a) in respect of any redeemable loan capital issued by the company, or

- (b) in respect of any debt incurred by the company -

(i) for any money borrowed or capital assets acquired by the company,

(ii) for any right to receive income created in favour of the company, or

(iii) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of

^y That definition was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^z That definition was inserted by No. V of 1996.

the debt (including any premium thereon),

but does not include -

- (A) any person in respect of any loan capital issued or debt incurred by the company for the supply by him of goods or services in the ordinary course of his business unless the period of credit given exceeds 6 months or is longer than that normally given to his customers, or
- (B) any person authorised by the Guernsey Financial Services Commission, or by any person or body exercising, in a place outside the Bailiwick, functions corresponding to the functions of the Commission, to carry on a business which includes the lending of money in respect of any loan capital issued or debt incurred by the company for money advanced by that person to the company at his normal commercial rate,"
- (c) in the definition of "qualifying loan"^{aa}, for "section 66A(8)"

^{aa} That definition was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

substitute "section 66A(1)",

- (d) after the definition of "trust relationship"^{bb} insert the following definition -

"undistributed income" has the meaning assigned by section 62A(2),".

Citation.

28. This Law may be cited as the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

Commencement.

29. This Law shall have effect, by virtue of the States' resolution of the 29th April, 2009^{cc}, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992^{dd}, on and from the 29th April, 2009, 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 Deputy Greffier.

^{bb} That definition was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^{cc} Article ** of Billet d'État No. ** of 2009.

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

**Copies may be purchased from
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