

Island of



Guernsey

## Ordinance of the States

**XXIV**  
**2012**

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Made .....26th March, 2012  
Coming into Operation.....26th March, 2012  
Laid before the States .....30th May, 2012

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### **The Income Tax (Pension Amendments) (Guernsey) Ordinance, 2012**



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**THE STATES LEGISLATION SELECT COMMITTEE**, in pursuance of the Resolution of the States of the 6<sup>th</sup> March, 2012<sup>a</sup>, and in exercise of the powers conferred on the States by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975<sup>b</sup> and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>c</sup>, and all other powers enabling the States in that behalf, hereby orders:-

### **Amendment of 1975 Law.**

1. The Income Tax (Guernsey) Law, 1975, as amended, is further amended as follows.

2. After section 157D insert the following sections -

### **"Exempt pension contracts and exempt pension trusts.**

**157E.** (1) For the purposes of this Law the expressions "**exempt pension contract**" and "**exempt pension trust**" mean, respectively, a contract approved by the Director in accordance with the provisions of subsection (2) and a trust approved by the Director in accordance with the provisions of subsection (4).

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<sup>a</sup> Article IX of Billet d'État No. V of 2012 (Vol. 1).

<sup>b</sup> Ordres en Conseil Vol. XXV, p. 124; section 203A was inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

(2) The Director may, subject to any conditions he thinks proper to impose, approve a contract as an exempt pension contract if the following conditions are satisfied -

(a) the contract is made by an individual, whether or not he is in receipt of relevant earnings subject to income tax under the provisions of this Law, and called a "**member**" in this section and sections 157F to 157L, with a company that is -

(i) resident in Guernsey or carrying on business through a permanent establishment situate in Guernsey,

(ii) carrying on in Guernsey the business of the administration, management and granting of annuities on human life, and

(iii) carrying on business under the authority and in accordance with the conditions of a licence, registration or authorisation granted under any of the regulatory laws,

(b) the contract has for its sole or main purpose the provision of pension savings to provide benefits

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- (i) to the member on attaining an age of not less than 55 years, and/or
- (ii) to the surviving spouse, civil partner, children or other dependants of the member on the death of that member,

and, in either case, subject to the provisions of subsection (3),

- (c) the contract's rules provide that at least 70% of the member's UK tax-relieved scheme funds, if any, are designated by the administrator or other person having the management of the contract for the purpose of providing that member with an income for the life of that member,
- (d) without prejudice to any provisions in the contract for the matters set out in subsection (3)(d), the contract provides that no income payable under it shall be capable in whole or in part of surrender, commutation or assignment provided that the contract may give the member the right at any time on attaining the age of not less than 55 years to receive, by way of commutation of part of the income payable to him, a lump sum not exceeding 30% of the funds accumulated under the contract at the date on which such lump sum is paid,

- (e) resident individuals and non-resident individuals are eligible to enter into the contract.

(3) Provided that the conditions set out in subsection (2)(a), (c), (d) and (e) are satisfied the Director may, if he thinks fit, and subject to any conditions he thinks proper to impose, approve a contract otherwise satisfying the conditions contained in subsection (2)(b) notwithstanding that the contract provides for one or more of the following matters -

- (a) for the payment of a lump sum to the personal representative of a deceased member, or to the surviving spouse, civil partner, children or other dependants of a deceased member on the death of the member prior to the date on which an income for life would have become payable to the member had he not died,
- (b) for the payment after the death of the member of an income for life to the surviving spouse, civil partner, children or other dependants of that member,
- (c) for the payment of an income to any person to continue for a term certain, not exceeding ten years, notwithstanding his death within that term,

- (d) for the payment to the member of an income for life commencing before the age of 55 years, where the administrator or other person having the management of the contract accepts qualified medical advice to the effect that the member is and will continue to be medically incapable either physically or mentally as a result of injury, sickness, disease or disability of continuing the member's current occupation and as a result of such injury, sickness, disease or disability ceases to carry on that occupation,
- (e) in the case of an income which is to continue for a term certain, for the income to be assignable by will, and in the event of any person dying entitled to it, for it to be assignable by the personal representatives in the distribution of his estate.

(4) The preceding provisions of this section shall apply, with the necessary adaptations, in relation to the approval of an exempt pension trust by the Director as they apply in relation to the approval of an exempt pension contract, with the modification that for the condition in subsection (2)(a)(i), (ii) and (iii) as to the company with which the contract is made, there shall be substituted and added as appropriate the following conditions -

- (a) the trust is established under irrevocable trusts under the laws of the island of Guernsey and is administered and managed in Guernsey,

- (b) the number of trustees of the trust shall not be less than two, unless a corporate trustee is acting,
- (c) each trustee is resident in Guernsey,
- (d) each trustee carries on in Guernsey the business of the administration and management of trusts, and
- (e) each trustee carries on business under the authority and in accordance with the conditions of a licence, registration or authorisation granted under any of the regulatory laws.

**Tax treatment of payments into and income from exempt pension contracts and trusts.**

**157F.** (1) For the purposes of this Law -

- (a) no payment or contribution by a member to any exempt pension contract or any exempt pension trust shall be eligible for any allowance which may be claimable under the provisions of section 36,
- (b) no payment or contribution to any exempt pension contract or any exempt pension trust -

- (i) shall be an authorised deduction from the emoluments of an office or employment of a member for the purposes of section 8(3), or
- (ii) where made by an employer for the benefit of a member -
  - (A) may be exempted from tax by Ordinance under section 8(2A), or
  - (B) shall be left out of account in calculating the assessable income of any employment for the purposes of section 8(1), and
- (c) no payment or contribution to any exempt pension contract or any exempt pension trust to provide retirement or other benefits for any person employed in the business shall be permitted as a deduction under section 7(3)(g) in the computation of the amount of the profits of any business for any year of computation.

(2) Notwithstanding any other provision of this Law, tax shall not be chargeable in respect of any payment made, or income arising or accruing, to or for the benefit of a member by way of pension savings under an exempt pension contract or an exempt pension trust, whether the

member is a resident individual or a non-resident individual at the time the payment is made or the income arises or accrues.

(3) In accordance with section 40(b), income derived from investments or deposits forming part of an exempt pension contract or an exempt pension trust shall not be chargeable to tax under this Law and accordingly when paid out under the terms of the contract or trust shall be paid gross as being a benefit in respect of pension savings.

**Revocation, refusal or variation of approval.**

**157G.** (1) The Director may at any time -

- (a) revoke an approval of any exempt pension contract or any exempt pension trust given under section 157E if there is a contravention of or failure to comply with -
  - (i) any condition subject to which the approval was given, or
  - (ii) any restriction, obligation or requirement imposed by or under this Law or any other enactment in relation to the regulation of exempt pension contracts or exempt pension trusts or the administration or management thereof, or
- (b) vary any condition attached to any such approval.

- (2) Where the Director decides -
- (a) not to grant approval of an exempt pension contract or an exempt pension trust under section 157E or to grant approval subject to conditions, or
  - (b) to revoke any such approval or to vary any condition attached to any such approval,

he shall, as soon as is reasonably practicable, give written notice to the applicant (or, in the case of a revocation or variation, the person to whom the approval was given) of -

- (i) the decision,
- (ii) the reasons therefor, and
- (iii) in the case of a revocation or variation, the date (which may be a date prior to the notice) on which the revocation or variation is to take effect.

**Appeals against revocation, etc.**

**157H.** (1) A person aggrieved by a decision described in section 157G(2) may appeal on giving to the Director written notice, stating the grounds of appeal, within 30 days of the date of the notice of the Director's decision.

(2) The provisions of Part VII of this Law shall apply in the case of an appeal under the provisions of subsection (1) as they apply in the case of an appeal from an assessment, penalty, direction or order made or imposed by the Director, with such adaptations as may be necessary.

**Transfer payments into exempt pension contracts or trusts.**

**157I.** (1) In this section "**an exempt pension inward transfer payment**" means a payment or transfer of any property made on behalf of an individual into an exempt pension contract or an exempt pension trust for the benefit of that individual under the contract or trust as the case may be where the payment or transfer is from –

- (a) an exempt pension contract or an exempt pension trust,
- (b) a retirement annuity scheme or a retirement annuity trust scheme approved by the Director under section 157A,
- (c) a pension scheme approved by the Director under section 150,
- (d) a superannuation fund of a description set out in section 40(o),
- (e) a retirement annuity contract or a retirement annuity trust scheme of a description set out in section 40(ee),

- (f) with the prior written consent of the Director, a pension scheme, annuity scheme or annuity trust scheme which, in the opinion of the Director –
  - (i) is situated in a place outside Guernsey,
  - (ii) is approved or exempted by the competent authority in that place under the laws relating to income tax there,
  - (iii) provides benefits of a nature similar to a scheme which may be approved under section 157E, and
  - (iv) is not a scheme to which paragraph (g) applies,
- (g) a "registered pension scheme" within the meaning of section 153 of and Schedule 36 to the Finance Act 2004<sup>d</sup>, or
- (h) a States' scheme or a statutory scheme.

(2) The trustees, administrators or other persons having management of an exempt pension contract or an exempt pension trust may, subject to the provisions of sections 157E to 157M, accept an exempt pension inward transfer payment of any property from any trustee,

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<sup>d</sup> An Act of Parliament (2004 c. 12).

administrator or other person having management of a scheme referred to in subsection (1).

(3) The making of an exempt pension inward transfer payment does not constitute or involve -

- (a) the application to another purpose of a sum paid by an employer or contributor for the purpose of providing benefits under a pension scheme, within the meaning of sections 150(2)(j), 150(2)(l) or 152(3),
- (b) the provision of a benefit by a pension scheme, within the meaning of section 150(2)(k),
- (c) the surrender of a benefit under a pension scheme, within the meaning of section 150(2)(m),
- (d) the payment of a lump sum in commutation or in lieu of a pension, within the meaning of section 153(1)(a),
- (e) the payment of a sum otherwise than by way of annuity, within the meaning of section 157A(2)(b)(i) or 157A(2)(b)(iii),
- (f) the payment of a premium or contribution, within the meaning of section 157A(2)(b)(vi) or 157A(10),

- (g) the surrender, commutation or assignment of an annuity, within the meaning of section 157A(2)(c), or
- (h) the surrender, commutation or assignment of any income, within the meaning of section 157E(2)(d).

**Duty to account for tax on exempt pension inward transfer payments.**

**157J.** (1) If the whole or any part of an exempt pension inward transfer payment comprises or is derived from Guernsey tax-relieved scheme funds then the whole or that part of the payment shall be deemed to be income arising to the trustee, administrator or other person having the management of the scheme from which the payment is made and shall be chargeable to tax at the individual standard rate.

(2) Where the whole or any part of an exempt pension inward transfer payment comprises or is derived from funds which were at any time prior to the date of the payment charged to tax at a rate of one half of the individual standard rate pursuant to sections 153(6), 153(6A) or 157C, then the whole or that part of the payment shall be deemed to be income arising to the trustee, administrator or other person having the management of the scheme from which the payment was made and shall be chargeable to tax at a rate of one half of the individual standard rate.

(3) The trustee, administrator or other person having the management of a scheme making an exempt pension inward transfer payment shall, when making the payment, deduct the amount of tax chargeable under subsection (1) or (2) from the payment and shall remit the

tax so deducted to the Director within one month of the date of deduction, and shall at the same time furnish to the Director, in such form and manner as the Director may require, an account of the payment and the exempt pension contract or the exempt pension trust to which the payment is made and of the tax deducted pursuant to subsection (1) or (2).

(4) Any person who fails to comply with the provisions of subsection (3) shall be liable to a surcharge or additional surcharge under section 199 for the purposes of calculating which the tax shall be deemed to be an amount becoming due on the date on which it was required to be deducted.

(5) Where any person has failed to deliver to the Director the account required by subsection (3) within the time set out in that paragraph or where the Director is not satisfied with the account so delivered, the Director may make an assessment on that person to the best of his judgment.

(6) In the event that tax due under subsection (1) or (2) is not paid the Director may collect the tax and any other sums due under subsection (4) as if it were the joint and several liability of -

- (a) the member,
- (b) any other person beneficially entitled to or in receipt of the exempt pension inward transfer payment, or
- (c) the trustee, administrator or other person having the management of the exempt pension

contract or the exempt pension trust to which the exempt pension inward transfer payment is made.

**Application by approved schemes for conversion to exempt contract or trust.**

**157K.** (1) On the application in writing by the trustee, administrator or other person having the management of a scheme referred to in section 157I(1)(b) or (c) (an "**approved transferor scheme**"), the Director may -

- (a) subject to receiving payment of any tax chargeable under this section, release the scheme from the application of section 150 or section 157A, as the case may be, and
- (b) subject to the provisions of section 157E, grant approval for the scheme as an exempt pension contract or an exempt pension trust, as the case may be, under that section.

Upon the granting of such release and approval, the scheme shall cease to be governed by section 150 or section 157A, as the case may be, and shall instead be governed by the provisions of sections 157E to 157M.

(2) If the whole or any part of the funds of an approved transferor scheme comprises or is derived from Guernsey tax-relieved scheme funds then the whole or that part of the funds of the scheme as at the date on which the scheme ceases to be governed by section 150 or section

157A, as the case may be, shall be deemed to be income arising to the trustee, administrator or other person having the management of the scheme as at that date and shall be chargeable to tax at the individual standard rate.

(3) The trustee, administrator or other person having the management of the approved transferor scheme shall deduct the amount of tax chargeable under subsection (2) from the funds of the scheme and shall remit the tax so deducted to the Director with the application under subsection (1) and shall at the same time furnish to the Director, in such form and manner as the Director may require, an account of the funds comprised in the scheme and of the tax deducted pursuant to subsection (2).

(4) Where the Director is not satisfied with the amount of tax paid or the account delivered pursuant to subsection (3), he may -

- (a) refuse to release the approved transferor scheme from the application of section 150 or section 157A, as the case may be, and any sums remitted to the Director with the application shall be returned forthwith, or
- (b) grant such release on condition that tax due under an assessment on the trustee, administrator or other person having the management of the scheme made by the Director in accordance with his best judgment is paid forthwith; and in this case, if the tax due is not paid, the release shall not be granted and the scheme shall not cease to be governed by section 150 or section 157A, as the case

may be, and any sums remitted to the Director with the application shall be returned forthwith.

**Transfer payments out of exempt pension contracts or trusts.**

**157L.** A transfer may only be made out of an exempt pension contract or exempt pension trust to a scheme which is -

- (a) an exempt pension contract or an exempt pension trust,
- (b) a retirement annuity scheme or a retirement annuity trust scheme approved by the Director under section 157A,
- (c) a pension scheme approved by the Director under section 150,
- (d) in the opinion of the Director –
  - (i) situated in a place outside Guernsey,
  - (ii) approved or exempted by the competent authority in that place under the laws relating to income tax there, and
  - (iii) a scheme which provides benefits of a nature similar to a scheme which may be approved under section 157E,

- (e) a superannuation fund of a description set out in section 40(o), or
- (f) a retirement annuity contract or a retirement annuity trust scheme of a description set out in section 40(ee),

and which has provisions in respect of benefits that comply with section 157E(2)(b), (c) and (d) and are otherwise no more generous to the member than those permitted under a contract which is, subject to section 157E(3), eligible for approval as an exempt pension contract under that section.

**Power to make regulations as to sections 157E to 157L.**

**157M.** The Department may by regulation amend sections 157E to 157L and make such other provision as they think fit for the purposes of carrying those sections into effect."

3. In section 158 insert the following definitions at the appropriate places -

**"approved transferor scheme"** : see section 157K(1),

**"civil partner"** means a person who has registered as the civil partner of the deceased under the Civil Partnership Act 2004, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled,

**"exempt pension contract"** and **"exempt pension trust"** : see section 157E(1),

**"exempt pension inward transfer payment"** : see section 157I(1),

**"Guernsey tax-relieved scheme funds"** means any funds (including income, profits and gains arising or accruing from the investment of such funds) which are or have been, or would have been had there been no limitation on the amounts so available in the relevant year of charge, the subject of -

- (a) any deduction against profits or income for the purposes of computing sums assessable to tax, or
- (b) any allowance or relief against sums which would otherwise be assessable to tax,

under the provisions of this Law,

**"member"** : see section 157E(2)(a),

**"pension savings"** means retirement or other benefits which are provided by a bona fide pension scheme, and which provide an income for life,

**"regulatory laws"** means -

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,

- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000,
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, and
- (f) any other enactment or statutory instrument prescribed for the purposes of this Part of this Law by regulations of the Department,

**"UK tax-relieved scheme funds"** means any funds which are UK tax-relieved scheme funds within the meaning of regulation 2(5) of the Pensions Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006<sup>e</sup>.

4. In section 159 for "retirement annuity schemes and retirement annuity trust schemes" substitute "retirement annuity schemes, retirement annuity trust schemes, exempt pension contracts and exempt pension trusts".

**Citation.**

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<sup>e</sup> United Kingdom S. I. 2006/206.

5. This Ordinance may be cited as the Income Tax (Pension Amendments) (Guernsey) Ordinance, 2012.

**Commencement.**

6. This Ordinance shall come into force on the 26<sup>th</sup> March, 2012.

D. J. ROBILLIARD,  
Her Majesty's Deputy Greffier.

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