

Island of



Guernsey

## Ordinance of the States

**VII**  
**2015**

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Made ..... 15th December, 2014

Coming into Operation ..... 1st January, 2015

Laid before the States ..... 25th February, 2015

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## **The Income Tax (Guernsey)** **(Amendment) (No. 2)** **Ordinance, 2014**



## **The Income Tax (Guernsey) (Amendment)**

### **(No. 2) Ordinance, 2014**

**THE STATES LEGISLATION SELECT COMMITTEE**, in pursuance of the States' Resolutions of the 2<sup>nd</sup> October, 2009<sup>a</sup> and the 11<sup>th</sup> December, 2013<sup>b</sup>, and in exercise of the powers conferred on the States by sections 75Q, 203A and 208C of the Income Tax (Guernsey) Law, 1975<sup>c</sup> and all other powers enabling the States in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>d</sup>, hereby orders:-

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

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

2. After section 39D insert the following section -

#### **"Effect of tax cap on distributions made from taxed company income.**

**39E.** (1) Notwithstanding any other provision of this Law, when any income of a company has been taxed or is taxable in the company's hands at the company intermediate rate or the company higher rate, and in any year of charge the company distributes or is deemed to have distributed that income to an individual resident in Guernsey, then -

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<sup>a</sup> Article VII.9 of Billet d'État No. XXIV of 2009.

<sup>b</sup> Article IX of Billet d'État No. XXIV of 2013.

<sup>c</sup> Ordres en Conseil Vol. XXV, p. 124; sections 75Q and 203A were inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

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

- (a) no credit in respect of that year of charge for tax paid by the company may be allowed to the extent to which it would exceed the income tax liability (as limited by virtue of section 39B and the Sixth Schedule) in respect of that year of charge of the individual to whom the distribution was made or (if different) the individual claiming the credit,
  - (b) accordingly, no repayment shall be made to that individual in respect of the amount by which, apart from this section, the credit would have exceeded the amount of his income tax liability.
- (2) For the purpose of calculating -
- (a) the amount of credit due to the individual in that year of charge, and
  - (b) the amount (if any) of any repayment of tax due to him in that year of charge,

there shall be taken into account, before taking into account the amount of the company's distribution or deemed distribution, the amount of any other income of any different class, description or source arising or accruing to the individual in that year of charge from which tax has been deducted or in respect of which tax has already been paid."

3. In section 71 for "one hundred and eighty-two days or more" substitute "91 days or more in the aggregate".

4. In section 73A(4)(b) after "section 199" insert ", any surcharge or additional surcharge, or anything else required to be stated, under section 199AA".

5. After section 75K insert the following section -

**"Provision of returns as to interest payments."**

**75KA.** (1) A person carrying on banking business in Guernsey, including a person carrying on such business through a branch in Guernsey, (the "**bank**"), must, with effect from the 1<sup>st</sup> January 2015, provide the Director with -

- (a) a return of the amount of any interest paid or credited by the bank, in any calendar year specified by notice of the Director, not being a calendar year preceding 2014, to an individual resident in Guernsey (the "**depositor**"),
- (b) a return of the amount of any interest paid by an individual resident in Guernsey (the "**borrower**") in any calendar year specified by notice of the Director, not being a calendar year preceding 2014, to the bank on borrowed money secured against any land or building, wherever situate, or otherwise borrowed for the acquisition of any land, or the acquisition, construction, reconstruction or repair (including extension and renovation) of any

building, wherever situate,

- (c) in the case of a return relating to a calendar year after 2014, the tax identification number (the "TIN") of the depositor or (as the case may be) the borrower (and for the purposes of this paragraph the TIN means the social insurance registration number allocated to the individual in question under the Social Insurance (Contributions) Regulations, 2000 or such other identification number, word or expression as the Director may specify),
- (d) where the bank made or received no payment described in paragraph (a) or (b), a return containing a statement to that effect,
- (e) such other documents or information or class or description of documents or information as may be required for the purposes of this section or the performance by the Director of his functions and as the Director may by notice specify.

(2) Returns and other documents and information required to be provided by or under subsection (1) must be provided in such form and manner, by such means and at such times or intervals as the Director may by notice require.

(3) For the purposes of, but without prejudice to the

generality of, subsections (1) and (2) -

- (a) the notices referred to in those subsections may require a bank to register with the Director and to use and to provide information and documents by means of an electronic portal specified in the notices for that purpose,
- (b) the notices may be given or published in such form and manner, by such means and at such times or intervals and for such period as the Director thinks fit, including (without limitation) by publication on the official website of the States of Guernsey Income Tax office or by being set out in a statement of practice issued under section 204.

(4) Without prejudice to any other duty or power arising or imposed by or under this Law -

- (a) in the case of accounts established or (as the case may be) loans made on or after the 1<sup>st</sup> January, 2015, the bank must request the depositor's or (as the case may be) the borrower's TIN,
- (b) the depositor or (as the case may be) the borrower must upon request provide the bank and the Director with his TIN,

(c) the Director may himself disclose the TIN to the bank, and

(d) the TIN must (unless the Director determines otherwise) be used in all communications between the bank and the Director relating to the depositor or (as the case may be) the borrower.

(5) A person who without reasonable excuse fails to comply with any provision of subsection (4)(a) or (b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(6) Without prejudice to subsections (2) and (3), section 68(1AAA) (giving of notice from Director) applies in relation to a notice of the Director under subsection (1) or (2) or otherwise given by him under or for the purposes of this section as it applies in relation to a notice of the Director requiring a person to deliver a return as to his income, and references (however expressed) in this Law to the giving or receipt of such a notice shall be construed accordingly.

(7) Section 68AA (returns to be submitted in electronic form and by electronic means) applies in respect of this section as if -

(a) references in subsections (1) and (2) of that section to section 68 included references to this section,

(b) references in subsection (1) of that section to a

return as to a person's income included references to a return or other document or information required or authorised to be provided by, under or for the purposes of this section,

- (c) paragraph (a) of subsection (1) of that section and, in paragraph (b) thereof, the words "in the case of a company" were omitted."

6. In section 75M(1)(a) and (2)(a) after "75F" in each paragraph add "or 75KA".

7. In section 76 -

- (a) after "section 199" where first appearing insert "or 199AA",

- (b) for "the date of notification of the surcharge" substitute "the date of the issue of the notification of the surcharge",

- (c) after paragraph (a) insert the following paragraph -

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

- (i) the imposition of the surcharge or additional surcharge is unreasonable as

a matter of law, having regard to all facts and circumstances of the case, or

(ii) the surcharge or additional surcharge has been miscalculated,".

**8.** In section 79(1)(d) after "section 199" insert "or 199AA".

**9.** In section 153(3), the proviso is repealed.

**10.** In section 153(4), the text after "shall apply accordingly" is repealed.

**11.** In section 153(7) the words "notwithstanding the provisos to subsections (3) and (4) of this section" are repealed.

**12.** In section 199(6)(a) the words "whichever of the following is the later" are repealed.

**13.** In section 199(6)(a)(i) for "the year in which the return was issued" substitute "the year in which the notice from the Director of Income Tax referred to in section 68(1) requiring a person to deliver a return as to his income was published in La Gazette Officielle in accordance with section 68(1AAA)(b) (in the case of persons to whom the notice was addressed or to whom it applied)".

**14.** In section 199(6)(a)(ii) for "of issue of the return" substitute "on which the notice requiring delivery of their return was given (in the case of any other persons)".

**15.** After section 199(6)(b) insert the following paragraph –

"(c) for the avoidance of doubt, a return of income is made consequent to a failure to give notice as referred to in paragraph (b)(i),".

16. In section 199(11)(b) immediately before the words "if as respects any year of charge" insert "in respect of a surcharge or additional surcharge (including arrears thereof) payable by virtue of subsection (6)(a),".

17. In section 199(11)(b)(i) for "the year in which the return was issued" substitute "the year in which the notice from the Director of Income Tax referred to in section 68(1) requiring a person to deliver a return as to his income was published in La Gazette Officielle in accordance with section 68(1AAA)(b) (in the case of persons to whom the notice was addressed or to whom it applied)".

18. In section 199(11)(b)(ii) for "of issue of the return" substitute "on which the notice requiring delivery of their return was given (in the case of any other persons)".

19. After section 199 insert the following section -

**"Surcharges in cases of appeal to the Tribunal.**

**199AA.** (1) Notwithstanding subsections (1), (2), (10) and (11) of section 199, if as respects any year of charge -

- (a) the Director has made an interim assessment,
- (b) the taxpayer has, under section 76, appealed to the appropriate body against that assessment,
- (c) the Director has, under section 82(1), agreed to

suspend or defer collection of the tax due under that assessment in whole or in part pending the determination of the appeal,

- (d) the Tribunal has determined the appeal, and
- (e) the Director has reasonable cause to believe that his decision to suspend or defer collection of the tax due under the assessment in whole or in part was based on information, submissions or calculations provided or made by the taxpayer or any person acting on the taxpayer's behalf unreasonably, negligently, fraudulently or in bad faith, or without proper regard to the amount likely to be payable,

the Director may serve a notice under subsection (2).

(2) A notice under this subsection must state -

- (a) that the Director proposes, by reason of the matters set out in subsection (1)(e) and any other relevant matters, to impose surcharges and additional surcharges (including arrears thereof) in respect of the tax arising in the same manner, and in the same amount, and with effect from the same dates, as if the tax had been charged in an assessment made in respect of the year of charge concerned in sufficient time to enable the tax to have been

paid on the 30<sup>th</sup> June and the 31<sup>st</sup> December in that year,

- (b) a reasoned explanation of the matters referred to in paragraph (a),
- (c) the amount and manner of calculation of the proposed surcharges and additional surcharges,
- (d) that the taxpayer may, within a period of 30 days immediately following the date of the issue of the notice, make written or oral representations to the Director explaining why, having regard to the contents of the Director's notice, the proposed surcharges and additional surcharges should not be imposed, and
- (e) that if the taxpayer does not make such representations within that period, then surcharges and additional surcharges (including arrears thereof) shall be payable in accordance with the Director's notice.

(3) If the taxpayer, within the 30 day period mentioned in subsection (2)(d), makes representations to the Director in accordance with that subsection, the Director shall review his notice, taking into account any representations made by the taxpayer, and having done so shall -

- (a) confirm or vary the proposed decision to impose surcharges and additional surcharges

(including arrears thereof), or rescind it and make a new decision as to the matter in question, and

(b) serve on the taxpayer a second notice in writing stating -

(i) the terms of, and the grounds for, the decision as confirmed or varied or, as the case may be, the new decision, and

(ii) that the taxpayer may, within a period of 30 days immediately following the date of the issue of the second notice, appeal against the decision under section 76.

(4) If the taxpayer, within the 30 day period mentioned in subsection (2)(d), does not make representations to the Director in accordance with that subsection -

(a) the proposed decision of the Director to impose surcharges and additional surcharges (including arrears thereof) is final,

(b) the taxpayer may not appeal against the decision under section 76, and

(c) the Director shall issue notification to the taxpayer of the surcharge and additional

surcharge.

(5) This section is without prejudice to the first proviso in section 76 (power of appropriate body to admit appeal out of time in specified circumstances)."

20. In section 200(1) and (4) after "section 199" insert "or 199AA".

21. Section 201(2)<sup>e</sup> is repealed.

22. In section 209(1) -

(a) for the definition of "Director of Income Tax"<sup>f</sup> substitute the following definition -

"the "**Director**" and the "**Director of Income Tax**" mean the Director of Income Tax referred to in section 205, and include the Deputy Director of Income Tax,"

(b) for the definition of "LLP"<sup>g</sup> substitute the following definition-

"**LLP**" means -

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<sup>e</sup> Section 201 was substituted by the Income Tax (Zero 10) (Guernsey) Law, 2007 (Order in Council No. V of 2011).

<sup>f</sup> See the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 pursuant to which the definition of the Director of Income Tax replaced that of the Administrator.

<sup>g</sup> The definition of "LLP" was substituted by Schedule 6 to the Limited Liability Partnership (Guernsey), 2013 (Order in Council No. VI of 2014).

- (a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey) Law, 2013, or
- (b) an entity formed under the laws of a place outside Guernsey, being an entity corresponding to an LLP described in paragraph (a),"

23. In the Sixth Schedule, for paragraph (2) of the table entitled "qualifying income" substitute the following paragraph -

- "(2) Income derived from a body which has been granted an exemption from tax for that year of charge under an Ordinance made under section 40A, other than income arising or accruing from an office or employment held or exercised in Guernsey."

24. In the Sixth Schedule, in the paragraph which begins "However, notwithstanding the preceding provisions of this Schedule" -

- (a) after the words "elect to pay in respect of both qualifying and non-qualifying income", insert "(other than non-qualifying income arising or accruing from the ownership of lands and buildings situate in Guernsey, the tax on which is, for the avoidance of doubt, payable in addition to the amount of the limits on tax specified in this Schedule)",

- (b) in subparagraph (ii) of that paragraph after the words "in respect of both qualifying and non-qualifying income", insert "(other than non-qualifying income arising or accruing from the ownership of lands and buildings situate in Guernsey, the tax on which is, for the avoidance of doubt, payable in addition to the amount of the limits on tax specified in this Schedule)".

**Citation.**

25. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2014.

**Commencement.**

26. This Ordinance shall come into force on the 1<sup>st</sup> January, 2015.





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