

ORDRE EN CONSEIL

**XIV.
1939**

Ratifiant un Projet de Loi intitulé

**Loi portant modification aux Lois de
1920, 1924 et de 1936 ayant rapport
à la Taxe sur le Revenu (1939).**

(Enregistré sur les Records de l'Île de Guernesey le
23 décembre 1939.)



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1940.

ORDRE EN CONSEIL.



A LA COUR ROYALE DE L'ILE DE GUERNESEY

Le vingt-trois décembre mil neuf cent trente-neuf, par devant Victor Gosselin Carey, écuyer, Baillif: présents : Jean Allès Simon, John Roussel, Osmond Priaulx Gallienne, Arthur Dorey, Ernest de Garis, Jean Nicolas Robin, Cyril de Putron, Aylmer Mackworth Drake, John Leale, James Frederick Carey, écuyers, Messire Abraham James Lainé, K.C.I.E., et Dan Alfred Aubert, écuyer, Jurés.

Monsieur le Baillif ayant ce jour communiqué à la Cour un Ordre de Sa Majesté en Conseil en date du onze décembre mil neuf cent trente-neuf ratifiant un Projet de Loi intitulé " Loi portant modification aux Lois de 1920, 1924 et de 1936 ayant rapport à la Taxe sur le Revenu (1939) ",—la Cour, après avoir eu lecture du dit ordre, ouïes les conclusions des Officiers du Roi a ordonné que le dit Ordre en Conseil sera enregistré sur les Records de cette Ile, duquel Ordre la teneur suit :—

LE 23 DECEMBRE 1939.

At the Court at Buckingham Palace,

The 11th day of December, 1939.

Present,

The King's Most Excellent Majesty

LORD PRESIDENT

VISCOUNT HAILSHAM

LORD PRIVY SEAL

MR. OLIVER STANLEY

LORD HANKEY

Whereas there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 8th day of December, 1939, in the words following, viz. :—

“**Your Majesty** having been pleased by Your General Order of Reference of the 18th day of December, 1936, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth :—

‘ 1. That on the 18th day of November, 1939, the Royal Court adopted a Bill or “**Projet de Loi**” intituled “**Loi portant modification aux Lois de 1920, 1924 et de 1936 ayant rapport à la Taxe sur le Revenu (1939)**,” and requested the Bailiff to submit the same to the States for their approval: 2. That on the 1st day of December, 1939, the said Bill or “**Projet de Loi**” was duly considered by the States, when a resolution was passed approving the same and authorizing the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto: 3. That the

said Bill or "Projet de Loi" is in the words and figures set forth in the Schedule herunto annexed. And most humbly praying that Your Majesty would be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey intituled "Loi portant modification aux Lois de 1920, 1924 et de 1936 ayant rapport à la Taxe sur le Revenu (1939)," and to order and direct that the same shall have the force of Law in the Island of Guernsey.'

"The Lords of the Committee, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

His Majesty having taken the said Report into consideration is pleased, by and with the advice of His Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

And His Majesty, doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor or Commander-in-

Chief of the Island of Guernsey, the Bailiff and Jurats, and all other His Majesty's Officers, for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly..

RUPERT B. HOWORTH.

PROJET DE LOI referred to in the foregoing Order in Council.

PROJET DE LOI

INTITULÉ

“LOI PORTANT MODIFICATION AUX LOIS DE 1920, 1924 ET DE 1936 AYANT RAPPORT À LA TAXE SUR LE REVENU (1939).”

VU la délibération des Etats en date du 7 juillet 1939 :
LES ETATS ont approuvé les dispositions suivantes lesquelles, moyennant la Sanction de Sa Très Excellente Majesté en Conseil, auront force de Loi en cette Ile :—

1.—Article 2 of the Law entitled “Loi ayant rapport à la Taxe sur le Revenu ” registered on the Records of this Island on the 10th day of January, 1920 (the said Law hereinafter called “ the principal Law ”) shall be modified in manner following that is to say :—

- (a) The words “ and shall be at a rate per pound, to be fixed in or for each year of assessment by the States of Deliberation on the amount of profits or income chargeable under this law ” shall be omitted from that Article and the following words and figures shall be substituted therefor and shall henceforth form part of that Article :—

“ and shall, for the year of assessment 1940 and every subsequent year of assessment, instead of being charged at a single rate, be charged at the rate prescribed by Resolution of the States of Deliberation as the standard rate of Income Tax in respect of that year of assessment (such rate being hereinafter in this Law referred to as ‘ the standard rate ’) on the total statutory profits and income of a taxpayer and, in the case of a taxpayer, being an individual who is not a non-resident and whose total statutory profits and income exceeds the amount specified in any such Resolution operative as regards that year

of assessment, at such rate or rates in excess of the standard rate as is or are prescribed in any such Resolution in respect of any part or parts of that individual's income exceeding that amount as are specified in any such Resolution so operative, such Income Tax as is chargeable at a rate or rates in excess of the standard rate being hereinafter, in Articles 15, 15(A), 15(B), 15(C), 16, 19 and 27, referred to as 'sur-tax', and

(b) the following words shall be omitted from that Article at the end thereof:—

“ provided nevertheless that profits or income other than profits or income arising from sources in or connected with the Island of Guernsey upon which English Income Tax has been paid or deducted at the source shall be exempt from the tax imposed by this Law in so far only as the tax so imposed by this Law if paid could not be recovered from the English Inland Revenue.”

2.—Articles 14 and 15 of the principal Law, being the Articles so numbered which, under the provisions of the Laws entitled respectively “ Loi portant modification à la Loi sur la Taxe sur le Revenu, 1924 ” hereinafter called “ the Law of 1924 ” and “ Loi portant modification à la Loi sur la Taxe sur le Revenu, 1936 ”, were substituted for the Articles so numbered and originally contained in the principal Law, and Article 16 of the principal Law, are hereby repealed.

3.—The following Articles numbered respectively 14, 15, 15(A), 15(B), 15(C), 16 and 16(A) shall henceforth be deemed to form part of the principal Law:—

“ ARTICLE 14.

Commencing with the year of assessment 1940, the allowance or allowances which shall be claimable

by an individual by way of relief from liability to Income Tax in any year of assessment shall be such allowance or allowances as are prescribed by Resolution of the States of Deliberation as regards that year of assessment and any such allowance or allowances shall only be claimable by an individual who is not a non-resident and no such allowance or allowances shall be claimable otherwise than by way of relief from liability to Income Tax at the standard rate.”

“

ARTICLE 15.

With a view to preventing the avoidance of the payment of sur-tax through the withholding from distribution of income of a company which would otherwise be distributed, the following provisions shall have effect :—

(1) Where it appears to the Administrator of Income Tax that any company to which this Article applies has not, within a reasonable time after the end of any year or other period ending on any date subsequent to the 31st day of December, 1938, for which accounts have been made up, distributed to its members in such manner as to render the amount distributed liable to be included in the returns to be made by the members of the company of their total profits and income for the purposes of Income Tax, a reasonable part of its actual income from all sources for the said year or other period, the Administrator of Income Tax may, by notice in writing to the company, direct that for purposes of assessment of surtax, the said income of the company shall, for the year or other period specified in the notice, be deemed to be the income of the members, and the amount thereof shall be apportioned among the members and sur-tax shall be assessed and charged under the provisions of this Article in respect of the sum so apportioned after deducting in the case of each member any amount which has been distributed

to him by the company in respect of the said year or period in such manner that the amount distributed falls to be included in the statement of total profits and income to be made by that member for the purposes of Income Tax.

Provided that, in determining whether any company has or has not distributed a reasonable part of its income as aforesaid, the Administrator of Income Tax shall have regard not only to the current requirements of the company's business but also to such other requirements as may be necessary or advisable for the maintenance and development of that business.

For the purpose of this section any such sum as is hereinafter described shall be regarded as income available for distribution among the members of the company and not as having been applied or being applicable to the current requirements of the company's business or to such other requirements as may be necessary or advisable for the maintenance and development of that business, that is to say:—

(A) Any sum expended or applied, or intended to be expended or applied, out of the income of the company—

(i) in or towards payment for the business undertaking or property which the company was formed to acquire or which was the first business, undertaking or property of a substantial character in fact acquired by the company; or

(ii) in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor; or

(iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property ; or

(iv) in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital or debt) issued or incurred otherwise than for adequate consideration :

(B) Any sum expended or applied, or intended to be expended or applied, in pursuance or in consequence of any fictitious or artificial transaction.

For the purposes of this section share or loan capital or debt shall be deemed to be issued or incurred otherwise than for adequate consideration if—

(A) it is issued or incurred for consideration the value of which to the company is substantially less than the amount of the capital or debt (including any premium thereon) : or

(B) it is issued or incurred in or towards, or for the purpose of raising money applied or to be applied in or towards, the redemption or repayment of any share or loan capital or debt which itself was issued or incurred for such consideration as is mentioned in the last foregoing paragraph or which represents, directly or indirectly, any share or loan capital or debt which itself was issued or incurred for such consideration.

References in this section to money applied or to be applied for any purpose shall be deemed to include references to money applied or to be applied in or towards the replacement of that money.

Provided that this section shall not apply as respects any company unless it appears to the Administrator of Income Tax, not only that income of the company has been or is to be expended or applied for one or more of the purposes mentioned in this section, but also that the company has not in fact

distributed a reasonable part of its actual income in such manner as to render the amount distributed liable to be included in the returns to be made by the members of the company of their total profits and income for the purposes of Income Tax.

(2) (a) Any sur-tax chargeable under this Article in respect of the amount of the profits and income of the company apportioned to any member of the company, shall be assessed upon that member in the name of the company, and, subject as hereinafter provided, shall be payable by the company, and all the provisions of this Law and any Ordinances made thereunder relating to sur-tax assessments and the collection of sur-tax shall, with any necessary modification, apply to sur-tax assessments and to the collection of sur-tax charged under this Article.

(b) Where sur-tax charged in respect of any member of a company has been assessed upon that member in the name of the company and has been paid by the company, the company shall be entitled to recover the sur-tax so paid by deduction from any sum or sums payable by or through the company to that member or by any other means.

(3) A notice of charge to sur-tax under this Article shall in the first instance be served on the member of the company on whom the tax is assessed, and if that member does not within twenty-eight days from the date of the notice elect to pay the tax a notice of charge shall be served on the company and the tax thereupon become payable by the company ;

Provided that nothing in this section shall prejudice the right to recover from the company the sur-tax charged in respect of any member who has elected as aforesaid but who fails to pay the tax by the 30th day of September in the year of assessment or within twenty-eight days of the date on which he so elected, whichever is later.

Where a notice of charge is served on a company or the liquidator of a company under this section and

the tax thereupon becoming payable is not paid by the company by the 30th day of September in the year of assessment or within twenty-eight days of the date of the notice, the tax shall thereupon, without prejudice to the right to recover it from the company, be recoverable from the member on whom the tax was assessed.

(4) Any undistributed income which has been assessed and charged to sur-tax under this Article shall, when subsequently distributed, be deemed not to form part of the total profits and income from all sources for the purposes of sur-tax of any individual entitled thereto.

Where a member of a company has been assessed to and has paid sur-tax otherwise than under this Article in respect of any profits or income which has also been assessed and upon which sur-tax has been paid under this Article, he shall, on proof to the satisfaction of the Administrator of Income Tax of the double assessment, be entitled to repayment of so much of the sur-tax so paid by him as was attributable to the inclusion in his total profits and income from all sources of the first-mentioned profits or income.

(5) This Article shall apply to any company which is under the control of not more than five persons and which is not a subsidiary company nor a company in which the public are substantially interested.

For the purpose of this section—

- (i) A company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this section apply, or of two or more companies none of which is a company to which those provisions apply ;
- (ii) A company shall be deemed to be a company in which the public are substantially inter-

ested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year or other period for which the accounts of the company have been made up as aforesaid beneficially held by, the public (not including a company to which the provisions of this Article apply).

- (iii) The expression 'company' means a company incorporated under the provisions of the Guernsey Companies Law, 1908.
- (iv) A company shall be deemed to be under the control of not more than five persons—
 - (a) if any five or fewer persons together exercise, or are able to exercise, or are entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing words, if any five or fewer persons together possess, or are entitled to acquire, the greater part of the share capital or voting power of the company ;
or
 - (b) if any five or fewer persons together possess, or are entitled to acquire, either the greater part of the issued share capital of the company, or such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle them to receive the greater part of the amount so distributed ; or
 - (c) if, on the assumption that the company is a company to which this Article applies,

more than half of its income (including any income which has been apportioned to it, or could on that assumption be apportioned to it, under this Article) could be apportioned among not more than five persons.

Notwithstanding anything in this section, a company which is deemed for the purposes of this section to be under the control of not more than five persons shall not be deemed to be a subsidiary company, unless it can be deemed to be under the control of not more than five persons only by including among the persons mentioned in sub-paragraph (a), (b) or (c) of the last foregoing paragraph or in section (3) of Article 15(C) of this Law, a company to which the provisions of this Article do not apply and which is not the nominee of any other person.

In determining for the purposes of this section whether a company is or is not under the control of not more than five persons, persons who are relatives of one another, persons who are nominees of any other person together with that other person, persons in partnership, and persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, shall respectively be treated as a single person and for the purposes of this paragraph—

- (a) the expression 'relative' means a husband, wife, ancestor, lineal descendant, brother or sister ;
- (b) a person shall be deemed to be the nominee of another person if, whether directly or indirectly, he possesses on behalf of that other person, or may be required to exercise on the direction of or on behalf of that other person, any right or power which, by virtue of any of the provisions of this Law, is material in determining whether a company is or is not to be deemed to be under the control of not more than five persons.

(6) In this Article the expression 'member' shall include any person having a share or interest in the capital or profits or income of a company."

" ARTICLE 15(A)

(1) Where an order has been made or a resolution passed for the winding-up of a company to which Article 15 applies, the income of the company for the period from the end of the last year or other period for which accounts of the company have been made up to the date of the order or resolution for winding-up shall, for the purposes of the said Article, be deemed to be income of that period available for distribution to the members of the company, and, as respects that period and the next preceding year or other preceding period or periods ending within that next preceding year for which accounts have been made up, the said Article shall apply as if the words 'within a reasonable time' in section (1) of the said Article were omitted therefrom.

(2) Any notice required under the provisions of the said Article to be served upon a company may, where the company is in liquidation, be served upon the liquidator of the company, and the liquidator shall be responsible for doing all matters or things required to be done by or on behalf of the company, and the liquidator shall be responsible for the due payment of any sur-tax payable by or recoverable from the company under the provisions of the said section.

(3) The income apportioned to a member of a company for the period from the end of the last year or other period for which accounts have been made up to the date of the order or resolution for winding-up shall, for the purposes of sur-tax, be deemed to have been received by him on the date of that order or resolution."

ARTICLE 15(B).

(1) Where a member of a company (in this Article referred to as 'the first company'), the income of which for any year or period has been deemed to be the income of its members and has been the subject of an apportionment (in this Article referred to as 'the original apportionment') under Article 15 of this Law, is itself a company (in this Article referred to as 'the second company') to which the provisions of that Article apply, the excess of the amount so apportioned to the second company over the amount, if any, which has been received by the second company out of the income as aforesaid of the first company in such manner as would, in the case of an individual, render the amount so received liable to be included in the return of his profits and income for the purposes of sur-tax, shall for the purposes of the said Article be deemed to be income of the members of the second company and shall be apportioned among them in accordance with their respective interests in that company, and the provisions of the said Article shall, with any necessary modifications, apply accordingly.

(2) The second company shall, on being required by notice in writing to that effect given to it by the Administrator of Income Tax, furnish the Administrator with a statement showing the names and addresses and particulars of the respective interests of all its members as on the last day of the year or other period the income of which formed the subject of the original apportionment, and the income apportioned as aforesaid to the members of the second company shall, for the purposes of sur-tax, be deemed to have been received by those members on the date on which the income apportioned as aforesaid to the members of the first company is deemed to have been received by them.

(3) Any sur-tax chargeable by reference to the

provisions of the said Article 15 in respect of the amount of the income of the first company apportioned to any member of the second company shall be assessed upon that member in the name of the first company, and shall, subject to the provisions of the said Article as to payment by the member, be payable by the first company, and the provisions of the said Article as to the assessment, collection and recovery of sur-tax chargeable in respect of the income of a company apportioned to any member thereof shall, with any necessary modifications, apply accordingly.

(4) Where a member of any such second company as aforesaid is itself a company to which the said Article 15 applies, the income apportioned to it under the foregoing provisions of this Article shall in turn be deemed to be the income of its members and apportioned to them, for the purposes of assessment to sur-tax, in accordance with their respective interests, and so on successively where any member to whom income of a company has been apportioned is itself a company to which the said Article applies, so that successive apportionments shall in like manner be made until the entire amount of the income which was apportioned under the provisions of this Article among the members of the second company has been apportioned to persons other than a company to which the said Article applies, and the said Article shall with any necessary modifications apply to such successive apportionments and to the furnishing of statements and to the assessment, collection and recovery of sur-tax in respect of income apportioned thereunder, and, in particular, the date on which any such income is to be deemed to have been received by the member to whom it is apportioned shall be the date mentioned in section (2) of this Article, and any sur-tax which is chargeable in respect of income apportioned to a member being an individual shall be assessed and

charged upon that member in the name of the first company.”

“ ARTICLE 15(C).

(1) The following provisions of this Article shall have effect as respects companies (hereafter in this Article referred to as ‘ investment companies ’) the income whereof consists mainly of investment income, that is to say, income which, if the company were an individual, would not be earned income as defined in section (8) of this Article.

Provided that, for the purposes of this section, any income apportioned to a company under Article 15 of this Law, shall be deemed to be income of the company and to be investment income.

(2) For the purpose of section (1) of the said Article 15 the sums which are to be regarded as income available for distribution among the members of an investment company, and not as having been applied or being applicable to the current requirements of the company’s business or to such other requirements as may be necessary or advisable for the maintenance and development of that business, shall include any sum expended or applied, or available to be expended or applied, out of the income of the company in or towards the redemption, repayment, or discharge of any loan capital or debt (including any premium thereon) in respect of which any person is a loan creditor of the company.

(3) Without prejudice to the provisions of Article 15 of this Law, an investment company shall be deemed for the purposes of section (5) of that Article to be under the control of not more than five persons if any five or fewer persons would, if the company were wound up, be entitled as members or loan creditors of the company to receive more than half of the assets of the company which would be available for distribution to members and loan creditors.

(4) Where an investment company is deemed by virtue of the last foregoing section to be under the control of not more than five persons by reason that any five or fewer persons would, if the company were wound up, be entitled as loan creditors to receive more than one-half of the assets therein referred to (whether or not it would otherwise be deemed to be under such control)—

- (a) the definition of the expression 'member' shall, for the purposes of the said Article 15 and any provisions of this or any other Law relating thereto, be extended so as to include any loan creditor of the company; and
- (b) a loan creditor shall be deemed to have an interest in any income of the company to be apportioned under the said Article 15 to the extent that that income, or assets representing it, has or have been expended or applied or is or are available to be expended or applied in redemption or repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor:

Provided that—

- (i) where by virtue or in consequence of any settlement, a loan creditor has been or could be required by some other person (hereafter referred to as a 'beneficiary') to pay to the beneficiary the whole of any sums which have been or might be paid to that loan creditor by the company in redemption, repayment or discharge of the loan capital or debt (including any premium thereon) in respect of which he is a loan creditor, or to pay or transfer to the beneficiary the whole of any sums or assets representing directly or indirectly any such sums as aforesaid, the beneficiary and

not the loan creditor shall be deemed, for the purposes of the said Article 15 of this Law and any provisions of this or any other Law relating thereto, to be a member of the company and to have the interest in the income of the company which the loan creditor would, but for this provision, be deemed to have by virtue of the foregoing provisions of this section ; and

- (ii) where a loan creditor has been or could be required as aforesaid to pay or transfer to the beneficiary a part only of any such sums or assets as aforesaid, the beneficiary, as well as the loan creditor, shall be deemed to be a member of the company for the purposes of the said Article 15 of this Law and any provisions of this or any other Law relating thereto, and the interest which the loan creditor is deemed to have in the income of the company by virtue of the foregoing provisions of this Article shall be apportioned by the Administrator of Income Tax between the beneficiary and the loan creditor.

(5) In relation to an investment company Article 16 of this Law shall have effect as if references to shares included references to loan capital.

(6) Where an order has been made or a resolution passed for the winding-up of an investment company to which Article 15 of this Law applies, the following provisions shall have effect :—

- (a) the actual income of the company from all sources since the date of the order or resolution shall, for purposes of assessment to sur-tax, be deemed to be the income of the members ;
- (b) the Administrator of Income Tax shall from time to time by notice in writing to the

liquidator direct that the amount of that income for the year or period specified in the notice shall be deemed for those purposes to be the income of the members for that year or period, and the amount thereof shall be apportioned and sur-tax assessed and charged accordingly ;

- (c) the provisions of the said Article 15 and any provisions of this or any other Law relating thereto shall, with any necessary modifications, apply in relation to any such directions, apportionments and assessments as they apply in relation to directions, apportionments and assessments under section (1) of the said Article 15.

(7) For the purpose of this Article, the expression 'loan creditor' means a creditor in respect of any debt incurred by the company—

- (a) for any money borrowed or capital assets acquired by the company ; or
 (b) for any right to receive income created in favour of the company ; or
 (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon) or in respect of any redeemable loan capital issued by the company :

Provided that a person carrying on the business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

(8) The expression 'earned income' means—

- (a) any profits or income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or compen-

sation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay, or not, including any annuity, pension or annual payment of a voluntary nature or which is capable of being discontinued; and

- (b) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual; and
- (c) any profits or income, excluding profits or income assessable in accordance with the provisions of Article 5 of this Law, immediately derived by the individual from the carrying on or exercise by him of his trade, profession, or vocation, either as an individual, or, in the case of a partnership, as a partner personally acting therein.”

“

ARTICLE 16.

The provisions contained in this Article shall have effect as to the computation of the actual income from all sources of the company, the apportionment thereof amongst members of the company, and otherwise for the purpose of carrying into effect, and in connection with, Articles 15, 15(A), 15(B) and 15(C) of this Law (such Articles being hereinafter in this Article referred to as ‘the said Articles’):—

(1) A Company which is aggrieved by any direction given under any of the said Articles may appeal to the Income Tax Authority against the direction

by giving notice of appeal to the Income Tax Administrator within 21 days after the date of the notice, and the Income Tax Authority shall hear and determine the appeal, and the provisions of this Law relating to appeals against assessments shall, with any necessary modification, apply for the purposes of an appeal under this Article.

(2) The Administrator of Income Tax may, at any time by notice in writing, require any company which appears to him to be a company to which any of the said Articles applies, to furnish him with—

- (a) a statement of the actual income of the company from all sources, together with a copy of the company's accounts for any year or other period for which the company's accounts have been made up and such particulars as the Administrator may reasonably require as to the income of the company and the manner in which the income has been dealt with ; and
- (b) a statement for the same period of the names and addresses and particulars of the respective interests of all members of the company.

(3) (a) Where the Administrator of Income Tax has—

- (i) issued a notice requiring any company to furnish him with any particulars under Section (2) of this Article as respects any year or other period ; or
- (ii) given a direction under Section (1) of Article 15 of this Law as respects any year or other period in relation to any company to which no such notice has been issued as respects that year or period ;

the directors of the company, if they are of opinion that there has not been and will not be any avoidance of the payment of sur-tax through failure to distribute to the members of the company a reason-

able part of its income for that year or period, may make a declaration in writing to that effect stating the facts and circumstances upon which their opinion is based and send such declaration to the Administrator of Income Tax within twenty-eight days of the issue of such a notice or the giving of such a direction as aforesaid.

(b) Upon the receipt of such a declaration as is mentioned in the last preceding subsection, the Administrator of Income Tax shall consider the same and, if he is satisfied that the opinion expressed therein is well founded, he shall take no further action in the matter but, where the Administrator of Income Tax is not so satisfied, he shall notify the Company in writing accordingly and, thereupon, the notice or direction aforesaid shall have effect as if it had been issued or given on the date on which notification under this subsection is given to the Company.

(4) In computing the actual income from all sources of a company for any year or period, the income from any source shall be arrived at in accordance with the provisions of this Law relating to the computation of income from that source.

(5) If any company fails or refuses on being so required in accordance with the provisions of this Article to furnish a statement of actual income from all sources or renders a statement with which the Administrator of Income Tax is not satisfied, the Administrator may make an estimate of that income to the best of his judgment.

(6) The apportionment of the actual income from all sources of the company shall be made by the Administrator of Income Tax in accordance with the respective interests of the members, and the income as apportioned to each member, (so far as assessable and chargeable to sur-tax under the said Articles) shall, for the purposes of sur-tax, be deemed to represent income from his interest in the company for the

year or other period and shall be included in the return of his total income or in an amended return of total income which the Administrator of Income Tax is hereby authorised to require and shall be deemed to be the highest part of that income.

(7) The income apportioned to a member of a company so far as assessable and chargeable to sur-tax under the said Articles shall for the purposes of that tax be deemed to have been received by him on the date to which the accounts of the company for the year or period were made up, or are deemed to be made up, or if an application in that behalf is made by the company to the Administrator of Income Tax at any time within the period limited by this Law for giving notice of appeal to the Income Tax Authority against the direction, on such date as the Administrator of Income Tax determines to be just, having regard to the dates on which distributions of income have been made by the company, and so as to avoid, as far as possible, the inclusion for the purposes of sur-tax for any year of income referable to more than one year. Notice of such determination shall be given by the Administrator of Income Tax, and such determination shall be subject to appeal to the Income Tax Authority.

(8) Notice of any apportionment made by the Administrator of Income Tax shall be given by serving on the company a statement showing the amount of the actual income from all sources adopted by him for the purposes of the said Articles, or any of them, and either the amount apportioned to each member or the amount apportioned to each class of shares, as he thinks fit.

A company which is aggrieved by any notice of apportionment shall be entitled to appeal to the Income Tax Authority on giving notice to the Administrator of Income Tax within twenty-one days after the date of the notice, and the Income Tax Authority shall hear and determine the appeal and

all the provisions of this Law relating to appeals against assessments and to the reference of disputes to the Royal Court for determination shall, with any necessary modification, apply for the purposes of any such appeal.

(9) Any person in whose name any shares of a company are registered shall, if required by a notice in writing by the Administrator of Income Tax, state whether or not he is the beneficial owner of those shares, and if not the beneficial owner of those shares or any of them shall furnish the name and address of the person or persons on whose behalf the shares are registered in his name.

If any person, on being so required, neglects or fails to comply with the notice within the time limited by the notice, he shall, on proceedings before the Income Tax Authority brought at any time by the Administrator of Income Tax, be liable to a penalty not exceeding £10 or three times the amount of sur-tax that would be chargeable at the highest rate in respect of the amount of the income apportioned to such shares whichever is the greater."

“ ARTICLE 16(A).

(1) Any company to which Article 15 of this Law applies, may at any time after the general meeting at which the accounts of the company made up for any year or other period are adopted, forward to the Administrator of Income Tax for his consideration a copy of the said accounts, together with a copy of the report, if any, of the directors for that year or period, and such further information, if any, as it may think fit, and the Administrator of Income Tax shall, subject to the provisions of this Article, on receiving the said accounts and other documents, if any, proceed to consider the position of the company in relation to the said Article 15.

(2) The Administrator of Income Tax may as

soon as reasonably may be, but not later than twenty-eight days after the receipt of the said accounts and other documents, if any, call upon the company to furnish to him within twenty-eight days, or such extended period as he may subsequently allow, such further particulars as he may reasonably require :

Provided that if the particulars so required are not furnished to the Administrator of Income Tax within the period or extended period allowed for the purpose he may proceed under this Article upon the information before him.

(3) Where a company has under subsection (1) of this Article forwarded to the Administrator of Income Tax the accounts of the Company for any year or other period, whether with or without any other documents, the following provisions shall have effect :—

- (a) unless within three months after the receipt of the said accounts and other documents, or, if further particulars have been required as aforesaid, within three months after the receipt of those particulars, or the expiration of the period within which those particulars are to be furnished, as the case may be, the Administrator of Income Tax intimates to the company his intention to take further action in the case of the company under the said Article 15 in respect of that year or other period, the power of the Administrator of Income Tax to take any such further action in respect of that year or other period shall absolutely cease and determine ; and
- (b) notwithstanding that the Administrator of Income Tax has given such an intimation as aforesaid, he shall not after the expiration of six months from the date of the intimation have power in relation to that company to issue a notice under Section (2) of Article 16

of this Law with respect to that year or period or, unless such a notice has been issued before the expiration of the said period of six months, to give a direction in relation to the company under section (1) of Article 15 of this Law.”

4.—Article 19 of the principal Law is hereby repealed and the following Article designated “ Article 19 ” shall be substituted therefor and shall henceforth form part of the principal Law :—

ARTICLE 19.

(1) Subject to the provisions of Sections 3 and 4 of this Article, where neither a married woman nor her husband is a non-resident and the married woman is not judicially separated nor permanently living apart from her husband, the profits and income of that married woman shall be deemed the profits and income of the husband and shall be assessed and charged in his name and the tax payable thereon under the provisions of this Law shall be payable by him.

(2) In any other case, subject to the provisions of Article 21 of this Law, the profits and income of a married woman chargeable to tax under the provisions of this Law shall be assessed and charged in her name as if she were not married and the tax payable thereon shall be payable by her.

(3) If an application is made for the purpose in such manner and form as may be prescribed by the Administrator of Income Tax, either by a husband or wife living with his wife or her husband and who and whose wife or husband is not a non-resident, on or before the 31st day of March in any year of assessment—

(a) tax chargeable under this Law for that year of assessment shall be assessed, charged and recovered on the profits and income of the hus-

band and on the profits and income of the wife as if they were not married, and all the provisions of this Law with respect to the assessment, charge and recovery of tax, and the penalties for failure to make a return of profits and income or to render information authorised to be required under this Law or for evading or attempting to evade payment of tax, shall apply as if they were not married ; and

- (b) the income of the husband and wife shall be treated as one in arriving at total income for the purpose of sur-tax, and the amount of sur-tax payable in respect of the total income shall be divided between and shall be recoverable from the husband and wife in proportion to their respective incomes, and the total amount of income tax (including sur-tax) payable shall not be less than it would have been if an application had not been made under this section ; and
- (c) any such application shall be deemed to apply not only to the year of assessment in which it is made but to every succeeding year of assessment in which such application remains unrevoked during the first three calendar months thereof.

(4) Where, on an application made for the purpose under the last foregoing section, income tax for any year of assessment is assessable and chargeable on the incomes of a husband and wife respectively as if they were not married—

- (a) all the provisions of this Law and of any States' Resolution passed thereunder relating to claims for allowances by way of relief from liability to tax and the proof to be given in relation thereto, shall apply as if they were not married ; and
- (b) the income of the husband and wife shall be aggregated in arriving at the amount of such

allowances and such amount shall not exceed the total amount claimable in respect of such allowances if such application as aforesaid had not been made ; and

- (c) the benefit of any such allowances shall be apportioned to the husband and the wife according to the amounts of their respective total incomes.

Provided that in the case of an allowance in respect of a child or in respect of a dependent relative, the allowance shall be made to that one of the married persons by whom the child or relative is maintained."

5.—In Article 20 of the principal Law, the words and figures " provided by Articles 14 and 15 " shall be omitted and the words and figures " prescribed under the provisions of Article 14 " shall be substituted therefor.

6.—At the end of Article 27 of the principal Law, there shall be inserted the following paragraph which shall be deemed henceforth to form part of that Article :—

" The provisions of this Article as respects the dates on or before which Income Tax shall be payable shall not be applicable as regards sur-tax which shall be payable in one amount on or before the 30th day of September in the year of assessment for which such sur-tax is charged or within twenty-eight days of the date of the notice to the taxpayer showing the amount of the assessment for the purpose of sur-tax applicable to the taxpayer in respect of such year of assessment, whichever is later."

7.—The provisions of the principal Law whereby—

- (a) in the case of a non-resident, the agent or other person, persons, company or other body, corporate or not corporate, receiving or paying

such profits or income on behalf of or to such non-resident shall be charged on behalf of such non-resident and shall be liable to pay the Income Tax on such profits or income as if such profits or income belonged to such agent, person, persons, company or other body and whereby the Income Tax so charged or agreed with the Administrator of Income Tax to be chargeable in due course may be recovered by such agent, person, persons, company or other body by deduction from any sum or sums payable by or through such agent, person, persons, company or other body to the non-resident or by any other means; and

- (b) a Company registered under the Guernsey Companies' Law shall be liable in any year of assessment to pay the Income Tax on the dividends and interest paid or payable by that Company during the calendar year preceding that year of assessment to non-residents and is empowered to deduct that Income Tax from such dividends and interest :

shall apply in respect of Income Tax at the standard rate but not further or otherwise.

8.—The words “ The abatements and exemptions provided for in this law commence to be operative in respect of the year of assessment One thousand nine hundred and twenty-four ” which appear at the end of the Law of 1924 are hereby repealed.

9.—The repeals and modifications effected by this Law shall not—

- (a) affect the previous operation of the provisions repealed or modified or anything duly done or suffered thereunder; or
- (b) affect any right, privilege, obligation, or liability acquired, accrued, or incurred thereunder; or

- (c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, or liability as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if such repeals and modifications had not been effected.

10.—(1) This Law may be cited as “ The Income Tax (Amendment) Law, 1939.”

(2) This Law shall be construed as one with the principal Law and the Law of 1924, and the principal Law, the Law of 1924 and this Law may be cited together as “ The Income Tax Laws, 1920 to 1939 ”.

A. J. ROUSSEL,

Greffier du Roi.