

ORDER IN COUNCIL

X
2017

ratifying a Projet de Loi

ENTITLED

The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017

(Registered on the Records of the Island of Guernsey
on the 13th November, 2017.)



2017

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 13th day of November, 2017 before Sir Richard Collas, Bailiff; present:- Barbara Jean Bartie, Stephen Murray Jones, Esquire, Claire Helen Le Pelley, Constance Helyar-Wilkinson, David Percy Langley Hodgetts, Esquire, L.V.O., Niall David McCathie, Terry John Ferbrache, David Allan Grut, Steven John Morris, David James Mortimer, Esquires, Joanne Marie Wyatt and Alan Stevenson Boyle, Esquire, Jurats.

The Bailiff, having this day placed before the Court an Order of Her Majesty in Council dated 11th October, 2017 approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED that the said Order be registered on the records of this Island.

S.SIMMONDS
Her Majesty’s Deputy Greffier.



At the Court at Buckingham Palace

THE 11th DAY OF OCTOBER 2017

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolutions of 15th December 2011, and 17th May 2017 the States of Deliberation at a meeting on 17th May 2017 approved a *Projet de Loi* entitled the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017 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 Document Duty (Anti-Avoidance) (Guernsey) Law, 2017, and to order that it shall have force of law in the Island of Guernsey.

“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 Island of Guernsey 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.

Richard Tilbrook

PROJET DE LOI

ENTITLED

The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017

ARRANGEMENT OF SECTIONS

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2. Exempt transactions.
3. Family transactions.
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PROJET DE LOI

ENTITLED

The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017

THE STATES, in pursuance of their Resolutions of the 15th December, 2011^a and 17th May, 2017^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

Document duty (anti-avoidance) duty.

1. (1) Duty is payable to the Greffier, for the account of the States, in accordance with and subject to the provisions of this Law, in respect of any relevant transaction unless it is an exempt transaction.

(2) Subject to subsection (4), a transaction is a relevant transaction if -

- (a) in consideration for a payment in money or money's worth to, or for the benefit of, any person ("**the transferor**"), it confers on any person ("**the transferee**") a significant benefit arising from, or relating to, any real property ("**the property**"), and

^a Billet d'État No. XXII of 2011.

^b Article IV of Billet d'État No. X of 2017.

- (b) the transaction is not a transaction in respect of which document duty is payable under the Document Duty (Guernsey) Law, 2017.

(3) For the purposes of this section, and subject to subsection (4), a transaction confers a significant benefit if, as a result of the transaction, the transferee acquires, whether directly or indirectly -

- (a) any right or opportunity to occupy, or to control the occupation of, the property,
- (b) any right or opportunity to receive, or to direct the distribution of, any rents or other money or money's worth arising from the property, or
- (c) any right or opportunity to enjoy, or control the enjoyment of, the property in any way whatsoever.

(4) A transaction shall not be treated as conferring a significant benefit for the purposes of this section if the right or opportunity acquired by the transferee, which would but for this subsection fall within one of the categories set out in subsection (3), arises only by virtue of one of the following -

- (a) by succession to an interest in the property of a deceased person (whether under a will or otherwise),
- (b) by an order of court including, without limitation -

- (i) an order made pursuant to a divorce or judicial separation,
- (ii) an administration order made under Part II of the Law Reform (Inheritance and Miscellaneous Provisions) Law, 2006^c,
- (iii) an order made under Part II (provision for family and dependants) of the Inheritance (Guernsey) Law, 2011^d,
- (iv) a vesting order made pursuant to saisie proceedings,
- (c) a lease or a licence to occupy,
- (d) the creation, variation or discharge of a servitude, wayleave or covenant,
- (e) the transfer of shares of a company which is listed on a stock exchange recognised by the Registrar under the Companies (Recognised Stock Exchanges) Regulations, 2009^e,

^c Order in Council No. IV of 2008.

^d Order in Council No. XIII of 2011; amended by No. V of 2016.

^e GSI No. 25 of 2009; amended by GSI No. 76 of 2014.

- (f) the transfer of shares of a company from a person who holds those shares as nominee for the beneficial owner ("A") of those shares -
 - (i) to A, or
 - (ii) to another person who, immediately after such transfer, will hold those shares as nominee for A,
- (g) any purchase or sale by or on behalf of a collective investment scheme within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^f or any issue, transfer or redemption of any units in such a collective investment scheme,
- (h) an agreement giving a person an option to purchase any property, whether real or personal, at some time in the future (provided that, for the avoidance of doubt, nothing in this paragraph shall prevent the exercise of such an option being treated as conferring a significant benefit for the purposes of this section),
- (i) a transaction of which the bona fide principal purpose is to secure the repayment of a loan,

^f Ordres en Conseil, Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXVII, p. 24; Order in Council Nos. XV and XXXII of 2003; No. XVIII of 2008; No. XIII of 2010; Recueil d'Ordonnances, Tome XXIV, p. 324. There are other amendments not relevant to this provision.

- (j) a transaction of which the bona fide principal purpose is the management of real property on an arm's length basis, or
- (k) a transaction of a description prescribed for the purposes of this section by Ordinance.

(5) The States may by Ordinance amend subsection (4) so as to remove or amend any of the classes of transaction which are not to be treated as conferring a significant benefit for the purposes of this section.

(6) For the avoidance of doubt, and without prejudice to the generality of subsection (2), a transaction may be a relevant transaction in the following circumstances -

- (a) the property is owned by a company which is limited by shares and the transaction is a transfer of the legal or beneficial ownership of any of the shares of that company,
- (b) the property is owned by a company limited by guarantee and the transaction is a transfer or creation (for the benefit of the transferee) of any right or interest in that company,
- (c) the property is owned by a foundation and the transaction has the effect of conferring a significant benefit on the transferee in respect of that property,

- (d) the property is owned by the trustees of a trust and the transaction is a transfer or creation of any interest in that trust or of any expectation that the trustees of the trust will confer any significant benefit on the transferee in respect of that property,
 - (e) the property is owned by a partnership, limited partnership or limited liability partnership and the transaction is a transfer or creation of any interest in such partnership, limited partnership or limited liability partnership.
- (7) A transaction may be a relevant transaction whether or not -
- (a) any party to the transaction is present, or resident, in Guernsey, and
 - (b) any legal person being the owner of the property is registered, or has a presence, in Guernsey.

Exempt transactions.

2. (1) A transaction is an exempt transaction if -
- (a) it is a "**family transaction**" within the meaning of section 3,
 - (b) the transferee is -

- (i) a Guernsey Registered Charity (registered in accordance with the Charities and Non-Profit Organisations (Registration) (Guernsey) Law, 2008^g,
 - (ii) a friendly society registered under the Friendly Societies Act 1974^h or registered and incorporated under the Friendly Societies Act 1992ⁱ,
 - (iii) a housing provider within the meaning of the Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004^j, or
 - (iv) the States of Guernsey,
- (c) its effect is the transfer of an interest in any property (whether real or personal) owned by a company to –
- (i) the beneficial owner of all the shares in the transferor,

^g Order in Council No. XXVI of 2008; amended by No. III of 2010; No. VIII of 2011; Ordinance Nos. XXXVI and XLIX of 2008; No. XXIX of 2010; No. VI of 2015; No. IX of 2016.

^h An Act of Parliament (1974 c. 46).

ⁱ An Act of Parliament (1992 c. 40).

^j Order in Council No. X of 2005; amended by Ordinance No. IX of 2016.

- (ii) another company the shares in which are all in the same beneficial ownership as the shares in the transferor,
 - (iii) another company which is a wholly-owned subsidiary of the transferor or of which the transferor is a wholly-owned subsidiary, or
 - (iv) another company where both the transferor and the transferee are wholly-owned subsidiaries of the same holding company,
- (d) it is the transfer of an interest in any property (whether real or personal) owned by or on behalf of -
- (i) all or some of the partners of a partnership, not being a partnership within subparagraph (ii) or (iii),
 - (ii) a limited partnership with legal personality, or
 - (iii) a limited liability partnership,
- to another partnership within subparagraph (i), (ii) or (iii), or to a company, where
- (A) the partners of the transferor partnership are the same as the partners

of the transferee partnership or the members of the transferee company (as the case may be) and

- (B) the share of the partnership or company assets to which any such partner or member would be entitled, in the event that the transferee partnership (or the transferee company) was dissolved immediately following such transfer, is not materially different to the share of the partnership assets to which such partner or member would have been entitled had the transferor partnership been dissolved immediately prior to such transfer,
- (e) it is the transfer of shares in a company ("A") where the significant benefit conferred arises from, or relates to, any real property which is owned by A, or by any subsidiary of A, and the principal use of that real property is the carrying on by A, or by any subsidiary of A, of a business, trade or undertaking, other than the letting out (howsoever described) of such real property for money or money's worth,
- (f) it is the transfer of an interest in any property (whether real or personal) owned by or on behalf of a partnership ("P"), as described in subparagraph (d)(i),

(ii) or (iii), where the significant benefit conferred arises from, or relates to, any real property which is owned by or on behalf of P, and the principal use of that real property is the carrying on by P of a business, trade or undertaking, other than the letting out (howsoever described) of such real property for money or money's worth, or

(g) it is a transaction of a description prescribed for the purposes of this section by Ordinance.

(2) The States may by Ordinance amend subsection (1) so as to remove or amend any of the classes of transaction which are exempt transactions.

Family transactions.

3. (1) A transaction is a family transaction for the purposes of this Law if all the parties to the transaction are associated with each other within the meaning of subsection (2).

(2) A person is associated with another person for the purposes of subsection (1) if, in relation to that other person –

(a) they are, or have been, spouses or civil partners of each other,

(b) they are cohabitants, or former cohabitants,

(c) he or she is -

- (i) a parent, stepparent, child, stepchild, grandparent, grandchild, great-grandparent, great-grandchild, or
- (ii) a sibling, uncle, aunt, nephew or niece (whether of the full blood or of the half blood),

of that other person or of that other person's spouse, civil partner or cohabitant.

(3) For the purposes of subsection (2) –

- (a) “**cohabitants**” means two people who are not spouses or civil partners of each other but are living together as if they were married, and “**cohabitant**” shall be construed accordingly,
- (b) a reference to a person's spouse, civil partner or cohabitant includes (without limitation) a reference to -
 - (i) a deceased spouse, civil partner or cohabitant who had been the spouse, civil partner or cohabitant of that person until his or her death, and
 - (ii) a person who has the bona fide intention of becoming the spouse or civil partner of that person.

(4) Any reference in this section, however expressed, to any relationship between two persons shall be construed without regard to whether either of those persons, or any person through whom the relationship is deduced, is legitimate or illegitimate.

(5) The States may by Ordinance amend the definition of “**family transaction**” set out in this section.

Amount of duty payable.

4. (1) The amount of duty payable under this Law in respect of a relevant transaction which is not an exempt transaction shall be such percentage of the assessable market value of the significant benefit as may from time to time be prescribed by Ordinance.

(2) For the purposes of subsection (1) the assessable market value of the significant benefit shall be its market value at the date of the relevant transaction.

Duty of self-assessment.

5. (1) The transferee and the transferor in a relevant transaction (“**the parties**”) are jointly and severally liable to comply with the requirements imposed by or under this Law and, in so doing, must make full and frank disclosure of all facts which may be material and generally demonstrate utmost good faith in their dealings with the Greffier and the Director of Income Tax.

(2) The parties must furnish to the Greffier, in such form and manner as the Greffier may from time to time require, within 28 days of the date of the relevant transaction -

- (a) a description of the relevant transaction, accompanied by supporting documentation, together with -
 - (i) except where the parties claim that the transaction is an exempt transaction, a statement of the assessable market value of the significant benefit transferred, and
 - (ii) such other information as the Greffier may from time to time require,
- (b) a calculation of the duty, if any, payable in respect of the relevant transaction,
- (c) payment of the duty payable, if any, in respect of the relevant transaction,
- (d) payment to the Greffier, for the account of the States, of such fee as may from time to time be prescribed by regulations of the Committee,
- (e) where the parties claim that the transaction is an exempt transaction, a declaration stating the grounds on which it is claimed that the transaction is exempt, and
- (f) a joint declaration by the parties that the statement is complete and accurate to the best of their knowledge and belief and that the amount of duty tendered, if

any, is correct.

(3) The Greffier may, within 60 days after receipt of a return under subsection (2), require the applicant to provide such additional information and documents, including (for the avoidance of doubt) a statement, or further statement, of the assessable market value of the significant interest transferred, as the Greffier may reasonably require for the purpose of assessing any liability to duty under this Law.

(4) The Greffier shall keep a register of all relevant transactions in respect of which returns under subsection (2) are received, or which are otherwise notified to the Greffier, containing such information as the Greffier may consider necessary or expedient, including (without limitation) –

- (a) the names of the parties,
- (b) the date of the relevant transaction,
- (c) a brief description of the relevant transaction,
- (d) the real property in relation to which the relevant transaction occurred and the assessable market value of the significant benefit,
- (e) the amount of any duty paid, and
- (f) where the transaction is exempt, the reason for such exemption,

and the Greffier shall, upon payment of such fee as may from time to time be prescribed by regulations of the Committee, supply copies of any entry on the register upon application by, or on behalf of, a party to the transaction.

Referral to Director of Income Tax.

6. The Greffier may, at the Greffier's discretion, refer any transaction to the Director of Income Tax and in relation to any such transaction the Director shall have the powers and duties set out in this Law.

Assessment by Director of Income Tax.

7. (1) If, in relation to any transaction referred by the Greffier -
- (a) the Director of Income Tax is of the opinion that a transaction is a relevant transaction within the meaning of this Law, and the parties have failed to comply with the duties imposed on them by section 5, or
 - (b) the parties have purported to comply with the duties so imposed but, in the opinion of the Director -
 - (i) any document furnished is not authentic,
 - (ii) any statement or declaration furnished is false, misleading or incomplete in any particular,
 - (iii) any calculation of the duty payable under this Law is inaccurate, or
 - (iv) where the parties claim that the transaction is

an exempt transaction, the transaction is not exempt,

then the Director may exercise the powers under this section to make a formal assessment of the liability to duty under this Law and in connection therewith may exercise the powers under sections 8, 9 and 10.

- (2) A formal assessment under this section shall -
 - (a) be made in writing,
 - (b) specify the duty assessed,
 - (c) identify separately the amount and basis of any penalty imposed in accordance with section 9, and any direction given in accordance with section 10,
 - (d) set out the information and assumptions on the basis of which the duty and any penalty has been assessed or imposed,
 - (e) be served on the parties and copied to the Greffier,
 - (f) contain a statement of the right of appeal under section 11, and
 - (g) be conclusive, subject to any appeal, of the liability to duty under this Law, and of liability to any penalty thereby imposed.

(3) The powers of the Director under this section are without prejudice to the provisions of section 12.

Production of documents and information.

8. (1) Where the Director of Income Tax has reason to believe that a transaction may fall within section 7(1) the Director may, by notice in writing served on the parties, require them to furnish, within such reasonable time as may be specified in the notice, such information or documents, verified in such manner if any as may be so specified, as the Director may require as being relevant for the purpose of determining whether or not the transaction is liable to any duty under this Law, and, if so, the amount of that duty.

(2) The Director must give written reasons for such belief when exercising the powers under this section.

Penalties and recovery of unpaid duty.

9. (1) When making an assessment under section 7, the Director of Income Tax may include within it by way of penalty a fixed sum of an amount not exceeding 100% of the total amount of duty thereby assessed.

(2) Any duty due and not paid in accordance with the provisions of this Law and any penalty levied under subsection (1) shall be recoverable by the States as a civil debt.

Provision against legal avoidance.

10. (1) Where the effect of a transaction or series of transactions is the avoidance, reduction or deferral of the liability of any person ("the person concerned") to duty under this Law, the Director of Income Tax may, in the

Director's discretion, make such adjustments as respects the liability of the person concerned to duty as may in the Director's opinion be appropriate to counteract the avoidance, reduction or deferral of liability which would otherwise be effected by or as a result of that transaction or series of transactions and, without limitation, may give such directions as provided for in subsections (2) and (3) as the Director thinks fit.

(2) The Director may include in an assessment made under section 7 a direction that -

- (a) such liability to duty shall be imposed upon the relevant transaction, or
- (b) such adjustments shall be made in respect of the liability of that relevant transaction to that duty,

as may in the opinion of the Director be appropriate to counteract the avoidance, reduction or deferral of liability which would otherwise be effected by or in consequence of the arrangement; and that relevant transaction shall, subject to section 11, be liable accordingly.

(3) The Director may in any particular case direct that -

- (a) duty shall be charged on a relevant transaction which, but for the direction, would not be liable to that duty or would not be so liable to the same extent,
- (b) duty shall be charged on any transaction in a greater amount than would be chargeable but for the direction,

and the parties to the relevant transaction shall, subject to section 11, be liable accordingly.

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

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

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

- (a) when or where the transaction or series of transactions (or any of the series of transactions) occurs,
- (b) whether or not the transaction or series of transactions (or any of the series of transactions) -
 - (i) was undertaken by or on behalf of, or in

conjunction with, the person concerned, or

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

Appeals against decisions of Director.

11. (1) A person aggrieved by a decision of the Director of Income Tax under this Law -

- (a) that a transaction is a relevant transaction within the meaning of this Law,
- (b) that a transaction is not an exempt transaction within the meaning of this Law,
- (c) as to the amount of duty properly payable under this Law in relation to any transaction,
- (d) to levy a penalty under section 9, or as to the amount of the penalty so levied, or

- (e) in relation to any other matter arising from the application of this Law,

may appeal to the Court against the decision.

- (2) The grounds of an appeal under this section are that -
 - (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.
- (3) An appeal under this section must be instituted -
 - (a) within a period of 28 days immediately following the date of the assessment served under section 7, and
 - (b) by summons served on the Director stating the grounds and material facts on which the appellant relies.

(4) The Director may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution, and upon hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^k.

(5) On an appeal under this section the Court may -

- (a) set aside the decision of the Director, or
- (b) confirm the decision, in whole or in part,

and, in either case, if the Court considers it appropriate to do so, remit the matter to the Director with such directions as the Court thinks fit.

(6) On an appeal under this section against a decision of the Director the Court may, on the application of the appellant and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

^k Order of the Royal Court No. IV of 2007.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section, "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting alone, and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

Offences.

12. (1) A person who is knowingly concerned in the fraudulent evasion of duty payable under this Law by that person or any other person is guilty of an offence.

(2) A person who, without reasonable excuse, fails to comply with the requirements of section 5 is guilty of an offence.

(3) A person who, for the purposes of section 5 of this Law, or for the purposes of purported compliance with any other provision of this Law, does any of the following: -

- (a) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(4) A person who fails to provide the Greffier or the Director of Income Tax with any information which is in that person's possession, knowing or having reasonable cause to believe -

- (a) that the information is relevant to the exercise by the Greffier or the Director of any functions under this Law, and
- (b) that the withholding of the information is likely to result in the Greffier or Director being misled as to any matter which is relevant, and of material significance, to the exercise of those functions,

is guilty of an offence.

- (5) A person guilty of an offence under this section is liable -
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both.

Criminal liability of directors etc.

13. (1) Where an offence under this Law is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a body corporate, any director, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in any capacity described in paragraphs (a) to (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

Criminal proceedings against unincorporated bodies.

14. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership (not being a limited partnership with legal personality or a limited liability partnership), any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Law must be paid from the funds of the body.

Service of documents.

15. (1) Any notice or document other than a summons to be served under or for the purposes of this Law may be served on -

- (a) an individual, by being delivered to that individual, or by being left at, or sent by post or transmitted to, that individual's usual or last known place of abode,
- (b) a legal person with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,
- (d) an unincorporated body -
 - (i) by being served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or

- (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) the Greffier, by being left at, or sent by post or transmitted to, the Greffe,
- (f) the Director of Income Tax, by being left at, or sent by post or transmitted to, the offices of the Director of Income Tax.

(2) Where the provisions of this Law authorise or require a document to be served on a person who is a minor or a person under legal disability, the document may be served on –

- (a) in the case of a minor, the minor's parent or guardian,
- and
- (b) in the case of a person under legal disability, that person's guardian,

and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of those provisions.

(3) Subsections (1) and (2) are without prejudice to any other

lawful method of service and to the provisions of section 16.

(4) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions of this Law to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

(5) For the purposes of the provisions of this Law, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(6) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be served on the Greffier or the Director of Income Tax under or for the purposes of this Law shall be deemed to have been served until it is received.

(7) In this section -

"non-business day" means -

- (a) a Saturday, a Sunday, Christmas Day and Good

Friday, and

- (b) any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958¹,

"**summons**" includes any document compelling a person's attendance before a court, and

"**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

Submission, etc., of documents in electronic form.

16. (1) Any document to be served on the Greffier or the Director of Income Tax under or for the purposes of this Law shall or, as the case may be, may be in such electronic form and served by such electronic means as the Greffier or the Director (as the case may be) may require or, as the case may be, permit, whether in any particular case or class of cases or generally.

(2) Accordingly, where under this Law any information or document is required to be in such form or to be served by such means, or anything is required to be done in such manner, as (in whatever words) the Greffier or the Director of Income Tax may require, the Greffier or the Director (as the case may be)

¹ Ordres en Conseil Vol. XVII, p. 384; amended by Vol. XXIV, p. 84; Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367.

may, without limitation, require the information or document to be in electronic form or, as the case may be, to be served, or the thing to be done, by electronic means.

- (3) This section is without prejudice to -
 - (a) section 15(6), and
 - (b) the Electronic Transactions (Guernsey) Law, 2000^m.

General provisions as to Ordinances and regulations.

- 17. (1) Any Ordinance or regulations made under this Law -
 - (a) may be amended or repealed by a subsequent Ordinance or regulations, as the case may be, hereunder, and
 - (b) may contain consequential, incidental, supplementary and transitional provisions.
- (2) Any power to make an Ordinance or regulations under this Law may be exercised -
 - (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or

^m Order in Council No. VIII of 2000; amended by Ordinance No. XXXIII of 2003; No. XIV of 2014 and No. IX of 2016.

classes of cases, and

- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the regulations, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Interpretation.

18. (1) In this Law, unless the context otherwise requires -

"**assessable market value**" - see section 4(2),

"**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délegué and a Judge of the Royal Court,

"**body corporate**" means a body of persons, of whatever description, incorporated with or without limited liability in any part of the world,

"**civil partner**" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004ⁿ, 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, and "**civil partnership**" shall be construed accordingly,

"**Committee**" means the States Policy & Resources Committee,

"**Director of Income Tax**" has the same meaning as in the Income Tax (Guernsey) Law, 1975^o, and "**Director**" shall be construed accordingly,

"**enactment**" means any Law, Ordinance or subordinate legislation and includes (without limitation) an enactment of the Parliament of the United Kingdom, of the Scottish Parliament and of the Northern Ireland Assembly, and a Measure of the National Assembly for Wales,

"**exempt transaction**" - see section 2,

ⁿ An Act of Parliament (2004 c. 33).

^o Ordres en Conseil Vol. XXV, p. 124; amended by Order in Council No. XVII of 2005; Ordinance No. VII of 2009; No. VII of 2015. There are other amendments not relevant to this provision.

"foundation" means -

- (a) a foundation created under the Foundations (Guernsey) Law, 2012^P, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (however named),

"foundation official" means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a) of this definition,

"general partner" means –

- (a) in relation to a limited partnership falling within paragraph (a) of the definition of **"limited partnership"**, a general partner within the meaning of

^P Order in Council No. I of 2013; amended by Ordinance No. IX of 2016.

the Limited Partnerships (Guernsey) Law, 1995^q, and

- (b) in relation to a limited partnership falling within paragraph (b) of the definition of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition,

"**the Greffier**" means Her Majesty's Greffier,

"**holding company**" has the meaning given in section 531 of the Companies (Guernsey) Law, 2008^r, and also includes a body corporate which would be a holding company within the meaning of section 531 but for the fact that it is an overseas company,

"**Judge of the Royal Court**" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008^s,

"**this Law**" includes any Ordinance or subordinate legislation made thereunder,

^q Ordres en Conseil Vol. XXXVI, p. 264; amended by Vol. XXXVI, p. 571; Vol. XLI, p. 158; Order in Council No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; Nos. IX of 2016; G.S.I. No. 89 of 2008; No. 51 of 2016.

^r Order in Council No. VIII of 2008; amended by Ordinance No. XXVI of 2015. There are other amendments not relevant to this provision.

^s Order in Council No. XXII of 2008; amended by Ordinance No. IX of 2016.

"limited liability partnership" means -

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

"limited partnership" means -

- (a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or
- (b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which -
 - (i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

^t Order in Council No. VI of 2014; amended by Ordinance No. XII of 2015; No. IX of 2016.

- (ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

"the parties" – see section 5,

"person" includes -

- (a) an individual,
- (b) a body corporate,
- (c) any other legal person, and
- (d) an unincorporated body of persons,

"the property" - see section 1,

"real property" means real property situate in the Island of Guernsey and includes (without limitation) any right or interest which by the law of Guernsey is or is deemed to be real property,

"relevant transaction" – see section 1,

"served" means served in accordance with sections 15 and 16 and includes given and submitted,

"significant benefit" - see section 1,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect but does not include an Ordinance,

"subsidiary" and **"wholly-owned subsidiary"**, in relation to a company, has the meaning given in section 531 of the Companies (Guernsey) Law, 2008 and also includes a body corporate which would be a subsidiary within the meaning of section 531 but for the fact that it is an overseas company,

"the transferee" - see section 1(2),

"the transferor" - see section 1(2),

"uniform scale" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^u, and

^u Ordres en Conseil Vol. XXXI, p. 278; amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Ordinance No. XXIX of 2006; Ordinance No. XXIX of 2013.

"units", in relation to a collective investment scheme, has the meaning given in the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

19. This Law may be cited as the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017.

Commencement.

20. (1) This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

(2) An Ordinance made under this section may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

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