

# PROJET DE LOI

ENTITLED

## **The Income Tax (Pension Amendments) (Guernsey) Law, 1991 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* Ordres en Conseil Vol. XXXIII, p. 91; as amended by the Income Tax (Amendment) (Guernsey) Law, 1992 (Ordres en Conseil Vol. XXXIV, p. 201); the Income Tax (Pension Amendments) (Guernsey) Law, 1993 (Ordres en Conseil Vol. XXXIV, p. 440); the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013 (No. IV of 2014).

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## **The Income Tax (Pension Amendments) (Guernsey) Law, 1991**

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## **The Income Tax (Pension Amendments) (Guernsey) Law, 1991**

**THE STATES**, in pursuance of their Resolutions of 13<sup>th</sup> December, 1989<sup>a</sup>, 28<sup>th</sup> November, 1990<sup>b</sup> and 13<sup>th</sup> December, 1990<sup>c</sup>, 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.

### Pension Schemes

#### **Benefit limits.**

**1.** (1) Immediately after the words in paragraph (k) of section 150(2) of the principal Law, insert –

" Provided that such regulations may permit the Administrator to approve a pension scheme under which retirement or other benefits may exceed such limits if the Authority so resolves in relation to that particular scheme and subject to any conditions specified in the Authority's resolution".<sup>1</sup>

(2) ...

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**a** on Article XV of Billet d'État No. XXV of 1989.

**b** on Article V of Billet d'État No. XXII of 1990.

**c** on Article XV of Billet d'État No. XXIV of 1990.

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**NOTE**

*In section 1, subsection (2) was repealed by the Income Tax (Pension Amendments) (Guernsey) Law, 1993, section 3(2)(a), with effect from 24th August, 1993.*

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**Transfers from approved pension schemes.**

2. (1) Immediately after paragraph (m) of section 150(2) of the principal Law insert –

"(n) each person to whom the scheme relates is entitled under the scheme, if he ceases to be a member of the scheme at a time when he has five years of qualifying service or less, to a refund of his contributions (if any),

(o) each person to whom the scheme relates is entitled under the scheme, if he ceases to be a member of the scheme at a time when he has more than five years of qualifying service but has not reached normal retirement age, to choose between –

(i) a refund of his contributions (if any), or

(ii) deferred benefits, or

(iii) the making of a transfer payment into another approved scheme, or

(iv) the making of a transfer payment into a retirement annuity scheme or a

retirement annuity trust scheme,

- (p) if the scheme permits the making of transfer payments in relation to people with five years of qualifying service or less into other approved schemes, it must permit the making of transfer payments in relation to such people, on terms which are no less favourable, into retirement annuity schemes and retirement annuity trusts schemes."<sup>2</sup>

(2) Immediately after section 150(2) of the principal Law insert –

" (2A) For the purposes of subsection (2) of this section –

- (a) "**qualifying service**", in relation to a member of an occupational pension scheme, means the aggregate of any period during which the person concerned has in fact been a member of –
  - (i) that scheme, or
  - (ii) any other scheme in respect of which a transfer payment has been received by that scheme in relation to the person concerned,
- (b) "**deferred benefits**" means benefits payable at a later date (but commencing not later than the date when the person concerned reaches his normal retirement age) which are of the same

type as the benefits payable under the scheme in respect of a member who retires at his normal retirement age, and which are no less in value than whichever is the greater of –

- (i) the benefits which would be payable under the scheme to the person concerned if he retired at his normal retirement age having been a member of the scheme for the length of time, and in all the circumstances, that he has in fact been a member of the scheme, or
  - (ii) the benefits which could be provided by investment of his contributions (if any) between the date when he ceases to be a member of the scheme and the date when he reaches his normal retirement age,
- (c) a "**transfer payment**" means a payment equal to the value at the time when the transfer payment is made, as determined by a Fellow of the Institute of Actuaries, a Fellow of the Faculty of Actuaries or a person holding other actuarial qualifications approved by the Administrator, of the deferred benefits which the person concerned is entitled to choose under the scheme concerned,
- (d) a person's "**normal retirement age**" is the age

at which the scheme concerned entitles that person to immediate benefits on his retirement, irrespective of his state of health,

and, both in subsection (2) and in the foregoing definitions in this subsection, references to a person's contributions are to the aggregate of any contributions which he has made in accordance with the scheme concerned and any contributions which he has made in accordance with any other scheme in respect of which a transfer payment has been received in relation to him by the scheme concerned."<sup>3</sup>

- (3) In the proviso to section 153(6) of the principal Law –
  - (a) for "subsection (1) of section twenty-six of the Finance Act 1970" substitute "section 612(1) of the Income and Corporation Taxes Act 1988";
  - (b) ...
  - (c) ...
  - (d) for "subsection (1) of section twenty-one of the Finance Act 1970" substitute "section 592(1) of the Income and Corporation Taxes Act 1988".

- (4) Immediately after section 153(6) of the principal Law insert –

" (6A) Subsection 6 of this section also applies, with the necessary modifications, where a person ceases to be a member of an approved scheme in Guernsey and –

- (a) becomes a member of a superannuation fund to which paragraph (o) of section 40 of this Law applies, or
- (b) effects a contract for the purposes of an annuity to which paragraph (ee) of section 40 of this Law applies."

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**NOTE**

*In section 2, paragraph (b) and paragraph (c) of subsection (3) were repealed by the Income Tax (Pension Amendments) (Guernsey) Law, 1993, section 3(2)(b), with effect from 24th August, 1993.*

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**Previously approved pension schemes.**

3. Immediately after section 150(3) of the principal Law insert –

- " (4) A pension scheme or part of a pension scheme which –
- (a) was approved by the Administrator in accordance with the provisions of subsection (2) of this section, or
  - (b) was deemed to be an approved scheme by virtue of subsection (3) of this section,

before the date when paragraphs (n), (o) and (p) of subsection (2) of this section came into force shall cease to be an approved scheme on 1<sup>st</sup> January 1992 unless it is shown to the satisfaction of the Administrator before 1<sup>st</sup> January 1992 that the conditions contained in each of those paragraphs are satisfied." <sup>4</sup>

**Payments to employers.**

4. For section 152(3) of the principal Law substitute –

" (3) Where –

- (a) any sum paid by an employer for the purpose of providing benefits under an approved scheme is applied to any other purpose, or
- (b) any payment is made to an employer out of funds which are or have been held for the purposes of an approved scheme,

it shall be deemed to be income arising to the employer in the year of charge in which it is so applied or made and shall be charged to tax at the standard rate in force in that year of charge."

**Residents' annuity schemes**

**Payment of tax by instalments.**

5. In section 81A of the principal Law<sup>e</sup> –

- (a) in subsection (2), for "1991" substitute "1992";
- (b) immediately after paragraph (b) of subsection (2) insert –

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<sup>e</sup> Section 81A was inserted by the Income Tax (Amendment) (No. 2) (Guernsey) Law, 1979. Ordres en Conseil Vol. XXVII, p. 118, and amended by the Preferred Debts (Guernsey) Law, 1983 (Ordres en Conseil Vol. XXVIII, p. 184) and the Income Tax (Amendment) (Guernsey) Law, 1990 (No. XXVI of 1990).

"(bA) any payment is made of an annuity which is treated by virtue of section 157A(5) of this Law as earned income arising in Guernsey, or",

(c) in paragraph (a) of subsection (12) for "paragraph (b) or (c)" substitute "paragraph (b), (bA) or (c)".

**Residents without relevant earnings.**

6. In section 157A of the principal Law –

(a) in paragraph (a) of subsection (2), for "an individual who is" substitute "an individual, resident in Guernsey, whether or not he is",<sup>5</sup>

(b) immediately after the words in sub-paragraph (b)(vi) of subsection (2) insert "(and such regulations may prescribe different limits for different cases and circumstances generally, and in particular in relation to those individuals who are, and those who are not, in receipt of relevant earnings)";

(c) for paragraph (b) of subsection (4) substitute –

"(b) is established for the purpose of providing retirement annuities for individuals, with or without subsidiary benefits for their families or dependants, and",

(d) in subsection (10) for "an individual", wherever occurring, substitute "an individual in receipt of

relevant earnings".<sup>6</sup>

**Transfers into and out of approved annuity schemes.**

7. (1) Immediately after section 157A of the principal Law<sup>d</sup> insert –

**"Transfers into approved annuity schemes.**

**157B.** (1) In this section "**an approved inward transfer payment**" means a payment made on behalf of an individual into a retirement annuity scheme or a retirement annuity trust scheme approved by the Administrator under section 157A of this Law, from –

- (a) a retirement annuity scheme, or a retirement annuity trust scheme, approved by the Administrator under section 157A of this Law, or
- (b) a pension scheme approved by the Administrator under section 150 of this law, or
- (c) a superannuation fund of a description set out in paragraph (o) of section 40 of this Law, or
- (d) a contract entered into for the purposes of an annuity to which section 40(ee) of this Law applies, or
- (e) a pension scheme, annuity scheme, or annuity trust scheme which, in the opinion of the

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<sup>d</sup> section 157A was inserted by the Income Tax (Amendment) (Guernsey) Law, 1983: Ordres en Conseil Vol. XXVIII, p. 278.

Administrator, –

- (i) is situated in a place outside Guernsey,  
and
- (ii) is approved or exempted by the  
competent authority in that place under  
the laws relating to income tax there,  
and
- (iii) provides benefits of a nature similar to a  
scheme which may be approved under  
section 157A of this Law.

(2) It is hereby declared that the making of an approved  
inward transfer payment does not constitute or involve –

- (a) the application to another purpose of a sum paid  
by an employer or contributor for the purpose of  
providing benefits under a pension scheme,  
within the meaning of sections 150(2)(j),  
150(2)(l) or 152(3) of this Law, or
- (b) the provision of a benefit by a pension scheme  
within the meaning of section 150(2)(k) of this  
law, or
- (c) the surrender of a benefit under a pension  
scheme, within the meaning of section  
150(2)(m) of this Law, or

- (d) the payment of a lump sum in commutation or in lieu of a pension, within the meaning of section 153(1)(a) of this Law, or
- (e) the payment of a sum otherwise than by way of annuity, within the meaning of section 157A(2)(b)(i) or 157A(2)(b)(iii) of this Law, or
- (f) the payment of a premium or contribution, within the meaning of section 157A(2)(b)(vi) or 157A(10) of this Law, or
- (g) the surrender, commutation or assignment of an annuity within the meaning of section 157A(2)(c) of this Law.<sup>7</sup>

**Transfers out of approved annuity schemes.**

**157C.** (1) In this section "**an approved outward transfer payment**" means payment made on behalf of an individual out of a retirement annuity scheme or a retirement annuity trust scheme approved by the Administrator under section 157A of this Law, into –

- (a) a retirement annuity scheme, or a retirement annuity trust scheme, approved by the Administrator under section 157A of this Law, or
- (b) a contract entered into for the purposes of an annuity to which section 40(ee) of this Law applies, or

*Consolidated text*

- (c) an annuity scheme or annuity trust scheme which, in the opinion of the Administrator, –
  - (i) is situated in a place outside Guernsey, and
  - (ii) is approved or exempted by the competent authority in that place under the laws relating to income tax there, and
  - (iii) provides benefits of a nature similar to a scheme which may be approved under section 157A of this Law.

(2) It is hereby declared that the making of an approved outward transfer payment does not constitute or involve –

- (a) the payment of a sum otherwise than by way of annuity, within the meaning of section 157A(2)(b)(i) or 157A(2)(b)(iii) of this Law, or
  - (b) the payment of a premium or contribution, within the meaning of section 157A(2)(b)(vi) or 157A(10) of this Law, or
  - (c) the surrender, commutation or assignment of an annuity within the meaning of section 157A(2)(c) of this Law.
- (3) A payment which is an approved outward transfer

payment by virtue of paragraph (b) or paragraph (c) of subsection (1) of this section shall be chargeable to tax at one half of the standard rate in force for the year of charge in which the transfer is made." <sup>8</sup>

(2) In consequence of subsection (1) of this section, paragraph (g) of section 157A(3) of the principal Law is repealed.

### Non-residents' annuity schemes

#### Exemption of certain annuities etc.

8. Immediately after paragraph (dd) of section 40 of the principal Law<sup>f</sup>(f) insert –

"(ee) any annuity or lump sum paid pursuant to –

- (i) a retirement annuity contract entered into with a company resident in Guernsey or carrying on business through a permanent establishment situate in Guernsey and carrying on in Guernsey the business of granting annuities on human life, or
- (ii) a retirement annuity trust scheme established under irrevocable trusts under the law of Guernsey, and administered in Guernsey,

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<sup>f</sup> paragraph (dd) was inserted by the [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984]: Order in Council No. II of 184.

if the annuity or lump sum is paid –

- (a) to an individual who was not when he entered into the contract or scheme, and who has not been at any time since, resident in Guernsey within the meaning of this Law or resident in Jersey for the purposes of income tax in that island, or
- (b) to a spouse or dependant of, or to an individual beneficiary under the will of, such a person, if neither the individual who entered into the contract or scheme nor the payee has been so resident at any time since it was entered into."

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**NOTE**

*In section 8, the words in square brackets in footnote (f) were substituted by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013, section 1(2), First Schedule, paragraph 1, with effect from 1st May, 2014.*

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**Exemption of certain investment income.**

9. For the definition of "pension business" in section 188 of the principal Law<sup>g</sup> substitute –

" **"pension business"** means –

- (a) any contract with the trustees or other persons

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<sup>g</sup> the previous definition of "pension business" was substituted by the Income Tax (Amendment) (Guernsey) Law, 1983: Order in Council No. XV of 1983.

having the management of an approved pension scheme approved under the provisions of Part XIII of this Law, or

- (b) any contract entered into with an individual for the purposes of a retirement annuity scheme approved under the provisions of Part XIII of this Law, or
- (c) any contract entered into with the trustees of a retirement annuity trust scheme approved under the provisions of Part XIII of this Law, or
- (d) any contract with the trustees or other persons having the management of a superannuation fund to which the provisions of paragraph (o) or (q) of section 40 of this Law apply, or
- (e) any contract or scheme entered into with an individual for the purposes of an annuity to which paragraph (ee) of section 40 of this Law applies,

entered into for the purposes only of that approved scheme, that fund, or that annuity, as the case may be,".

Miscellaneous and supplementary

**Profits of certain annuity business.**

10. Immediately after section 157C of the principal Law<sup>h</sup> insert –

**"Profits of certain annuity business.**

**157D.** It is hereby declared for the avoidance of doubt that a company or trust which, anywhere in the world, enters into –

- (a) a contract for the purpose of providing an annuity or lump sum to which paragraph (ee) of section 40 of this Law applies, or
- (b) a retirement annuity scheme, or a retirement annuity trust scheme, approved by the Administrator under section 157A of this Law,

is thereby carrying on business in Guernsey, and that income arising or accruing to that company or trust in consequence of that contract or scheme is accordingly income arising or accruing to it from business carried on in Guernsey."<sup>9</sup>

**Interpretation and construction.**

11. (1) This Law is to be construed as one with the principal Law.

(2) In this Law "**the principal Law**" means the Income Tax (Guernsey) Law, 1975<sup>i</sup> as amended<sup>j</sup>.

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<sup>h</sup> which is inserted by section 7 of this Law.

<sup>i</sup> Ordres en Conseil Vol. XXV, p. 124.

<sup>j</sup> Ordres en Conseil Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol XXVIII, pp. 184, 278, 353 and 409; No. XIII of 1986; Nos. XIV and XXIII of 1989; No. XXVI of 1990.

**Citation.**

12. This Law may be cited as the Income Tax (Pension Amendments) (Guernsey) Law, 1991.

**Repeal and collective title.**

13. (1) Section 7 of the Income Tax (Amendment) (Guernsey) Law, 1990 is repealed.

(2) ...

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**NOTE**

*In section 13, subsection (2) was repealed by the Income Tax (Amendment) (Guernsey) Law, 1992, section 8(1), with effect from 19th January, 1993.*

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**Commencement.**

14. This Law shall come into force as follows –

- (a) section 4 shall be deemed to have come into force on 23<sup>rd</sup> November, 1990,
- (b) section 5 shall come into force on 1<sup>st</sup> January, 1992,
- (c) the remaining provisions shall come into force on the day after the registration of this Law on the records of the Island of Guernsey.

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**NOTE**

*The Law was registered on the Records of the Island of Guernsey on 21st May, 1991.*

- 1** For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- 2** For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- 3** For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- 4** For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- 5** For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- 6** For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- 7** For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- 8** For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.
- 9** For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.