

The Income Tax (Guernsey) (Amendment) Ordinance, 2021

THE STATES, in pursuance of their Resolution of the 12th December, 2019^a, and in exercise of the powers conferred on them by sections 75Q, 203A and 208C of the Income Tax (Guernsey) Law, 1975^b and all other powers enabling them in that behalf, hereby order:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975 is further amended as follows.
2. In section 4(2)(c)(i)(B) –
 - (a) after “the provisions of” insert “an approved international agreement or”, and
 - (b) after “made” insert “in either case”.
3. In section 68(1AAA)(b) after the words “thinks fit” insert “or made on the official website of the States of Guernsey Revenue Service”.
4. In section 75C(1) –

^a Article XVII of Billet d'État No. XXIV of 2019.

^b Ordres en Conseil Vol. XXV, p. 124; sections 75Q and 203A were inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011. There are other amendments not material to this Ordinance.

- (a) for the words “Subject to subsection (2), the Director may exercise” substitute “The Director shall exercise”, and
- (b) after the words “request for information” insert “or for assistance in collection”.

5. (1) Section 75C(2) is repealed.

(2) The repeal made by subsection (1) has effect in relation to requests for information made by the competent authority of a requesting state only when made after the date of the repeal.

6. In section 75C(3) after the words “request for information” insert “or for assistance in collection”.

7. In section 75C(4) –

- (a) after the definition of “approved international agreement” insert the following definition –

“**assistance in collection**” means an arrangement for the enforcement of tax debts due in another territory, or claims or judgments for the collection, recovery or payment of tax so due, or other revenue claims, corresponding to the arrangement set out in Article 27 (“assistance in the collection of taxes”) of the double taxation agreement between the States of Guernsey and the Government of the United Kingdom of Great Britain and Northern Ireland for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital Gains and the

Prevention of Tax Evasion and Avoidance and Protocol given effect by an exchange of letters between the two governments on the 2nd July, 2018^c, implemented by Part VIII B of this Law,”

- (b) in the definitions of “competent authority” and “requesting state” after the words “request for information” insert “or for assistance in collection”.

8. In section 75I(2)(d) after “to such an inquiry,” insert “or any document or evidence relevant to the performance of the Director’s functions,”.

9. In section 75K(6) after the words “request for information” wherever appearing insert “or for assistance in collection”.

10. In section 75L(3) after “this Part” wherever appearing insert “or Part VIIIA or VIII B”.

11. After section 75M(1)(e) insert the following paragraph –

“or (f) Part VIIIA or VIII B,”.

12. After section 75M(2)(e) insert the following paragraph –

^c The agreement was specified in a Resolution of the States of Deliberation under section 172 of the Law on the 12th December, 2018 (Billet d’État XXVII of 2018, Article XXIII), and therefore has effect for the purposes of that section; and was also specified, pursuant to section 75C of the Law, as an approved international agreement for the purposes of the Law by the Income Tax (Guernsey) (Approval of Agreement with the United Kingdom) Ordinance, 2018.

“or (f) Part VIIIA or VIIIB,”.

13. In section 75O after the definition of “approved international agreement” insert the following definition –

““**assistance in collection**” has the meaning given by section 75C,”.

14. After section 83 insert the following Parts –

“PART VIIIA

ONSITE VISITS IN RESPECT OF BUSINESS PREMISES

Powers to enter premises and inspect documents.

83A. (1) The Director may, during normal business hours or at any other reasonable time, if the Director considers it necessary to do so for the prescribed purposes -

- (a) enter any business premises, and
- (b) inspect the premises and any business documents therein.

(2) The “**prescribed purposes**” are -

- (a) the purposes of ascertaining whether the provisions of this Law or any Ordinance or regulation under it or of any approved international agreement or international tax

measure (the “**relevant tax provisions**”) are applicable,

- (b) the purposes of ascertaining compliance with the relevant tax provisions,
 - (c) otherwise, the purposes of the relevant tax provisions, or
 - (d) the purposes of the performance of the Director’s functions in respect of the relevant tax provisions.
- (3) The entry and inspection may only take place if -
- (a) the occupier of the premises consents,
 - (b) the Director has given the occupier at least 7 days’ written notice of the entry and inspection and when it will take place (and written notice under this paragraph may be served by the Director in the same manner as a notice of assessment may be served under section 73A(1)), or
 - (c) the entry and inspection has been approved by the Bailiff under section 83B and the Director complies with section 83C.

(4) The Director may not inspect -

- (a) any part of the premises used solely as a dwelling,
- (b) items subject to legal professional privilege within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (but for the purposes of this section items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege), or
- (c) a document relating to the conduct of any appeal relating to tax or taxation.

(5) The powers of inspection conferred by this section include power to obtain and record information (whether electronically or otherwise) relating to business premises and business documents inspected.

(6) In this Part of this Law -

"business documents" means documents which relate to the carrying on of a business and which -

- (a) are of a class or description required under this Law (or any Ordinance or regulation under it) to be kept in respect of the business, or

- (b) contain or may contain information relevant to any of the prescribed purposes,

"**business premises**" means premises or any parts of premises which the Director has reason to believe are used in connection with the carrying on of a business.

Approval of entry and inspection by Bailiff.

83B. (1) The Director shall, where the Director wishes to obtain approval of an entry and inspection for the purposes of section 83A(3)(c), make a written application accompanied by information on oath to the Bailiff.

(2) The application must specify the reasons for making it and identify the premises, the occupier and the business documents or class or description of business documents to which the application relates.

(3) The application may, with the approval of the Bailiff, and subject to such terms and conditions as the Bailiff may direct, be made ex parte.

(4) The Bailiff may give approval in writing if satisfied that the Bailiff is reasonably justified in doing so in all the circumstances of the case.

(5) The approval may be given on such terms and conditions (including, without limitation, a term or condition that the Director must or may be accompanied by any person specified, or of a class or description specified, in the approval) and subject to such penalty as the Bailiff thinks just.

(6) In this Part of this Law the "**Bailiff**" means the Bailiff, Deputy-Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué and, where the premises in question are in Alderney, includes the Chairman of the Court of Alderney or, if the Chairman is unavailable, a Jurat thereof.

Notice requirement for entry and inspection.

83C. The Director must, when entering premises pursuant to the approval of the Bailiff under section 83B, give notice -

- (a) to the occupier of the premises, if the occupier is present,
- (b) if the occupier is not present, to another person who appears to be in charge of the premises, or
- (c) if there is no such person, by leaving the notice in a prominent place in the premises.

Power to require reasonable assistance.

83D. (1) This section applies if the Director has entered business premises pursuant to the approval of the Bailiff under section 83B.

(2) The Director may require a person described in subsection (3) who is present on the premises to give the Director all such assistance as may reasonably be requested to facilitate the execution of the search for, accessing, inspection or removal of any document and otherwise to enable the performance of the Director's functions for the purposes of the entry and inspection (an "**assistance requirement**").

- (3) The persons referred to in subsection (2) are -
- (a) the person whose tax position, business or activities are being examined (the "**investigated person**"),
 - (b) a tax adviser of the investigated person,
 - (c) anyone employed or engaged by the investigated person or the tax adviser to perform work at the business premises, and
 - (d) any other person on the premises appearing to have charge of, or to be otherwise concerned in the operation of, the management, recording or storage of any document which is on or accessible from the premises, whether or not stored or recorded in electronic form, or any system, arrangement or technology in or by virtue of which any such document is stored, recorded or accessed.

(4) When making an assistance requirement of a person, the Director must inform the person in writing that a contravention of the requirement is an offence under this Law.

Other provisions in respect of documents.

83E. (1) The Director may take copies of or extracts from any business document.

(2) The Director may -

(a) at any reasonable time, remove any business document and retain it for a reasonable period, or

(b) take any steps which appear to be necessary for preserving any business document or preventing interference with it.

(3) The Director may require any person who was required to produce a business document –

(a) to attend at such time and place as may be required and to give an explanation of and to answer questions relating to it or anything in it, and

(b) if the document is not produced, to state, to the best of his knowledge and belief, where it is.

(4) If a business document is stored or recorded in electronic form, the Director may require the document to be produced in a form -

(a) in which it can be taken away, and

(b) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(5) The Director must, if the owner of any business document removed and retained under this section so requests at any time, give the owner -

(a) a receipt for the document, and

(b) if the owner reasonably requires the document for any immediate purpose, and the Director does not wish to return it, a copy of the document, which must be given free of charge.

(6) If a business document is lost or damaged before it is returned to the owner, the Director must compensate the owner for any costs reasonably incurred in the document's replacement or repair.

Offences of obstruction, etc.

83F. A person who, without reasonable excuse, contravenes an assistance requirement made of that person under section 83D or otherwise obstructs or fails to comply with any requirement imposed by a person exercising or purporting to exercise any power conferred by or under this Part of this Law is guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale.

Other powers of investigation, etc, not prejudiced.

83G. The provisions of this Part of this Law are in addition to and not in derogation from any other provision of this Law or any Ordinance or regulation under it.

PART VIII B
ASSISTANCE IN COLLECTION
OF OVERSEAS TAX DEBTS

Implementation of provisions of approved international agreements about assistance in collection.

83H. (1) The purpose of this Part of this Law is to implement (within the meaning of section 75CC) the provisions of Article 27 (“assistance in the collection of taxes”) of the double taxation agreement between the States of Guernsey and the Government of the United Kingdom of Great Britain and Northern Ireland for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital Gains and the Prevention of Tax Evasion and Avoidance and Protocol given effect by an exchange of letters between the two governments on the 2nd July, 2018^d.

(2) This Part of this Law has effect notwithstanding any rule of private international law (applied in *Government of India v. Taylor*^e, and however expressed) prohibiting or restricting the enforcement in Guernsey,

^d The agreement was specified in a Resolution of the States of Deliberation under section 172 of the Law on the 12th December, 2018 (Billet d'État XXVII of 2018, Article XXIII), and therefore has effect for the purposes of that section; and was also specified, pursuant to section 75C of the Law, as an approved international agreement for the purposes of the Law by the Income Tax (Guernsey) (Approval of Agreement with the United Kingdom) Ordinance, 2018.

^e (1955) A.C. 491.

directly or indirectly, of –

- (a) tax debts due to,
- (b) claims for the collection, recovery or payment of taxes or other revenue claims by, or
- (c) judgments for the payment of taxes given by the courts of,

another territory.

(3) The Committee may by regulation provide that the provisions of this Part of this Law apply (with such exceptions, adaptations and modifications as may be specified in the regulations) in respect of the provisions of an approved international agreement or international tax measure specified in the regulations as they apply in respect of the provisions of the double taxation agreement with the Government of the United Kingdom referred to in subsection (1).

Meaning of “revenue claims”.

83I. (1) The claims which can be collected under this Part of this Law (“revenue claims”) are for –

- (a) amounts owed in respect of United Kingdom tax, and
- (b) interest, administrative penalties and costs of collection and conservancy related to such

amounts (including, without limitation and for the avoidance of doubt, costs and fees incurred in respect of proceedings in the courts of Guernsey).

- (2) In this Part of this Law –
- (a) “**United Kingdom tax**” means any tax or duty imposed under the domestic law of the United Kingdom including, without limitation, income tax, corporation tax, capital gains tax, VAT and excise duties, and
 - (b) “**United Kingdom**” means the United Kingdom or any part thereof.

Collection of revenue claims.

83J. (1) When a revenue claim of the United Kingdom is, at any time –

- (a) enforceable under the law of the United Kingdom, and
- (b) owed by a person who, at that time, cannot, under the law of the United Kingdom, prevent its collection,

that revenue claim shall, at the request of the competent authority of the United Kingdom, be accepted for the purposes of collection by the Director.

(2) For the avoidance of doubt and without limitation, it is not necessary for the competent authority of the United Kingdom to have obtained a court judgment in the United Kingdom in respect of a revenue claim for it to be owed, for the purposes of subsection (1), by a person who cannot, under the law of the United Kingdom, prevent its collection.

(3) For the purposes of subsection (1) a revenue claim shall be deemed –

(a) to be enforceable under the law of the United Kingdom, and

(b) to be owed by a person who cannot, under the law of the United Kingdom, prevent its collection,

if the Director has received from the competent authority of the United Kingdom a certificate called for the purposes of this Part of this Law an **“Instrument Permitting Enforcement”** stating that the circumstances specified in paragraphs (a) and (b) are made out and particularising the identity of the debtor, the amount of the claim and the description of United Kingdom tax in respect of which the claim is owed.

(4) Upon receipt of an Instrument Permitting Enforcement in respect of a revenue claim -

(a) the revenue claim shall, for the purposes of enforcement, collection and recovery, be treated

under the law of Guernsey in all respects as if the amount owed were a liability to tax under this Law arising in consequence of a final assessment the time limit for appealing against which under section 76 has expired,

- (b) the Director shall –
 - (i) issue a notice to the person named in the Instrument Permitting Enforcement stating that the revenue claim is to be collected from that person, and
 - (ii) pursue the collection of the revenue claim in Guernsey from that person in accordance with the provisions of this Law and the law of Guernsey applicable to the enforcement, collection and recovery of a liability to tax under this Law, and
- (c) the settlement date in respect of the revenue claim for the purposes of section 199(1) shall be the 30th day immediately following the date of the notice referred to in paragraph (b)(i).

(5) Service of an Instrument Permitting Enforcement and a notice of the Director under subsection (4)(a) shall be effected in accordance with section 73A in all respects as if the Instrument and notice were a notice of

assessment, and the provisions of sections 73A and 73B shall apply accordingly.

(6) In enforcing, collecting and recovering a revenue claim under this section, the Director may rely in all respects upon –

- (a) the Instrument Permitting Enforcement, and
- (b) all information, documents and particulars provided by the competent authority of the United Kingdom in support of it.

(7) In any legal proceedings (criminal or otherwise), whether or not under the provisions of or for the purposes of this Law, an Instrument Permitting Enforcement is admissible in evidence in any court, tribunal or administrative review body and irrefutable proof of the matters stated therein.

(8) The Director may ask the competent authority of the United Kingdom for further information, documents and particulars in support of an Instrument Permitting Enforcement.

Conservancy measures.

83K. (1) When a revenue claim of the United Kingdom is a claim in respect of which the United Kingdom may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of the United Kingdom, be accepted for the purposes of taking measures of conservancy by the Director (including, without limitation and by way of example, *arrêts conservatoires* and

injunctions).

(2) The Director shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of this Law and the law of Guernsey as if the revenue claim were a liability to tax under this Law even if, at the time when such measures are applied, the revenue claim is not enforceable in the United Kingdom or is not owed by a person who cannot, under the law of the United Kingdom, prevent its collection.

(3) In taking measures of conservancy in pursuance of a request under this section, the Director may rely in all respects upon –

- (a) the request, and
- (b) all information, documents and particulars provided by the competent authority of the United Kingdom in support of it.

(4) In any legal proceedings (criminal or otherwise), whether or not under the provisions of or for the purposes of this Law, a request to take measures of conservancy is admissible in evidence in any court, tribunal or administrative review body and irrebuttable proof of the matters stated therein.

(5) The Director may ask the competent authority of the United Kingdom for further information, documents and particulars in support of a request to take measures of conservancy.

Prescription and preferences not applicable.

83L. Notwithstanding the provisions of section 83J and 83K, a revenue claim of the United Kingdom accepted by the Director for the purposes of those sections shall not, in Guernsey –

- (a) be subject to the time limits or accorded any priority applicable to a claim for the enforcement, collection and recovery of a liability to tax under this Law by reason of its nature as such, or
- (b) have any priority or preference applicable to such a claim under the law of Guernsey.

Merits of revenue claim not justiciable in Guernsey.

83M. (1) Proceedings with respect to the existence, validity or amount of a revenue claim of the United Kingdom shall not, provided that the Director has received the Instrument Permitting Enforcement referred to in section 83J(4) or the request to take measures of conservancy referred to in section 83K, be brought before the courts, tribunals or administrative review bodies of Guernsey by or on behalf of the person who owes or is alleged to owe the revenue claim.

(2) The Instrument Permitting Enforcement and the request to take measures of conservancy are irrebuttable evidence of the existence, validity and amount of a revenue claim of the United Kingdom and evidence seeking to rebut statements of those matters in the Instrument Permitting Enforcement or request to take measures of conservancy may not be adduced before any court or tribunal in Guernsey.”

15. In section 76 –

- (a) immediately before the words “or by any surcharge or additional surcharge under section 199” insert “or by the acceptance for the purposes of collection of a revenue claim pursuant to section 83J following receipt by the Director of an Instrument Permitting Enforcement under that section,”,
- (b) after the words “or (as the case may be)” insert “the date of the issue of the notice of the Director under section 83J(4)(b), or”,
- (c) after paragraph (d) insert the following paragraph –

“(e) the acceptance for the purposes of collection of a revenue claim pursuant to section 83J following receipt by the Director of an Instrument Permitting Enforcement under that section, the sole ground of appeal is that the notice of the Director under section 83J(4)(b) is, having regard to section 83J(7) (Instrument Permitting Enforcement is admissible in evidence and irrebuttable proof of matters stated therein), invalid.”.

16. In section 83 –

- (a) for the heading substitute “Enforcement of payment and service of summons”,
- (b) the text is numbered as subsection “(1)”,

- (c) after subsection (1), as so numbered, insert the following subsections -

“(2) Service of a summons on a person to appear before the Royal Court, Magistrate’s Court or Court of Alderney for the payment of income tax, penalties, surcharges or additional surcharges under this Law or for the enforcement, collection or recovery of a revenue claim pursuant to section 83J is deemed to be effected, and shall enable the matter to proceed in all respects, if the summons is –

- (a) addressed to the person concerned –

(i) at his or her usual or last known place of residence or at his or her relevant address, or

(ii) in the case of a company, at its principal place of business or at its relevant address, and

- (b) delivered by hand or posted to that place or address,

and in this subsection -

"**posted**" means prepaid and sent by tracked delivery, recorded delivery or signed for delivery (and, in the case of a summons which is posted, service is deemed to be effected when the summons is delivered),

"**relevant address**" means an address with which, in the opinion of the Director, the person concerned has a personal, business or other connection and at which a document served is likely to come to his or her attention and (without limitation) includes, in the case of a company, its registered office.

(3) For the purposes of subsection (2), a summons shall be deemed to have been –

- (a) addressed to the person concerned, and
- (b) delivered by hand or posted to a place or address,

if the person effecting service certifies that it was addressed, and delivered or posted (as the case may be), in accordance with that subsection.

(4) Subsections (2) and (3) are in addition to and not in derogation from the provisions of the Royal Court Civil Rules, 2007, the Court of Alderney Civil Rules, 2005 and any other enactment or rule of law relating to the service of documents.”.

17. In section 73A(1), in the definition of “posted”, for “registered post, recorded delivery service” substitute “special delivery, recorded or signed for delivery”.

18. In section 73A(4)(c) for the words “under Part VII is conferred by this Law” substitute “is conferred by this Law or by any Ordinance or regulation made

under it”.

19. In section 73B -
 - (a) in paragraph (b) after “delivered by hand” insert “, posted”, and
 - (b) in the text following paragraph (b), after “delivered” insert “, posted”.

20. After Part XIVA insert the following Part –

“PART XIVB
FINANCIAL INSTITUTIONS – REGISTRATION REQUIREMENT,
INSPECTORS AND OTHER PROVISIONS

Duty of financial institutions to register with Revenue Service.

- 171C.** (1) A person or entity which is –
- (a) a Guernsey Financial Institution within the meaning of the Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014^f (the “**FATCA regulations**”),
or

^f G.S.I. 2014 No. 55; there are amendments not material to this enactment.

- (b) a Financial Institution in Guernsey within the meaning of the Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015^g (the “**CRS regulations**”),

must register with (and, to the extent required by notice of the Director, make disclosures, and provide information and documents, by means of) an electronic portal specified by notice of the Director.

(2) A person or entity described in subsection (1)(a) or (b) is referred to in this Part of this Law as a “**relevant institution**”.

(3) Registration under subsection (1) by a relevant institution must contain a declaration -

- (a) of the institution’s classification as a Reporting Financial Institution, Non-Reporting Financial Institution, Participating Jurisdiction Financial Institution or Non-Participating Financial Institution, and the category, class or description of such institution into which it falls, under the FATCA or CRS regulations, or
- (b) where paragraph (a) is inapplicable, that it is not an institution of any such classification.

^g G.S.I. 2015 No. 97; there are amendments not material to this enactment.

(4) Registration under subsection (1) shall be effected in such form and manner and by such means, and accompanied by such information and documents, as the Director may by notice require.

(5) A relevant institution must also, in each calendar year before the final day of February, submit a return to the Director (an “**annual validation**”), in such form and manner and by such means, and containing or accompanied by such information and documents, as the Director may by notice require.

(6) The information and documents contained in or accompanying the annual validation shall be correct and complete as at the date of submission.

(7) The annual validation –

(a) shall state that the information provided upon registration and subsequently as to classification and category, class or description remains correct and complete, or

(b) shall, if that information is not or is no longer correct and complete, and without prejudice to subsection (8), provide correct and complete information, specifying the manner in which the registered information has changed.

(8) If, in respect of a relevant institution, there is any change

of fact or circumstance, or any change to any of the information provided to the Director by or on behalf of the institution upon registration and subsequently (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the institution shall inform the Director of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Director may determine).

(9) Notices of the Director under this Part –

(a) may be given or published in such form and manner, by such means and at such times or intervals and for such period as the Director thinks fit, including (without limitation) by publication on the official website of the States of Guernsey Revenue Service or by being set out in statements of practice issued under section 204, and

(b) may be given to any particular relevant institution, or any particular person or entity reasonably believed to be a relevant institution, or to any category, class or description of such institutions, persons or entities, or to all such institutions, persons or entities.

(10) A person who contravenes any provision of this section is guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine,

and in either case to a further fine not exceeding level 3 on the uniform scale for each day on which the failure to comply continues after the date of conviction.

(11) In this Part of this Law an "**entity**" includes a scheme, trust, structure, arrangement and cell of a protected cell company.

(12) The duty to register imposed by subsection (1) does not come into effect until the 1st July 2021 or such later date as may be specified by regulations of the Committee.

Directions to non-compliant institutions.

171D. (1) The Director may by notice in writing give such directions to a relevant institution as appear to the Director to be necessary or desirable for the purposes of securing compliance with the international tax provisions.

- (2) The "**international tax provisions**" are –
 - (a) the provisions of any approved international agreement or international tax measure, and
 - (b) the provisions of this Law or any Ordinance or regulation under it implementing or applicable

in respect of any such agreement or measure.

(3) The Director may vary or rescind a direction by notice in writing served on the relevant institution.

(4) Without prejudice to the generality of subsection (1), directions thereunder may require the relevant institution to do or not to do any thing.

(5) A direction shall remain in force until rescinded by the Director, unless it is expressed to be of limited duration in which case it shall remain in force until -

- (a) the occurrence of such date, time, event or circumstance as may be specified in it,
- (b) such prohibitions, restrictions or requirements as may be so specified are complied with to the satisfaction of the Director, or
- (c) rescinded by the Director, if earlier.

(6) A person who contravenes any provision of a direction under subsection (1) is guilty of an offence and liable -

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

(7) In the event of failure by the relevant institution to comply with a direction under this section, the Director may, without prejudice to any other penalties, powers or proceedings in respect of the failure to comply, apply to the Royal Court for an order requiring the relevant institution to comply, in such manner as the Royal Court thinks fit, with the direction; and an order of the Royal Court under this subsection may contain such incidental, ancillary, consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the Royal Court thinks proper.

Appointment of independent inspectors.

171E. (1) The Director may, in relation to a relevant institution which has or is reasonably suspected of having contravened the international tax provisions set out in section 171D(2), and whether or not the Director has served a notice giving directions under section 171D(1), if the Director considers it necessary or desirable to do so for the purpose of investigating and securing compliance with the international tax provisions and any such direction, by notice in writing appoint, or require the relevant institution to appoint, one or more competent persons ("**inspectors**").

(2) Inspectors shall –

- (a) investigate the institution's compliance with the international tax provisions and any direction given by notice under section 171D(1),
- (b) oversee any necessary remedial measures, making such recommendations as they consider

necessary,

- (c) validate the effectiveness of the remedial measures in moving the institution into a position of compliance, and
- (d) report to the Director on such compliance, remediation and validation at such times and intervals and in such form and manner as the Director may require.

(3) A report of an inspector under this section shall be in such form as may be specified in the notice of the appointment referred to in subsection (1) or as the Director may otherwise determine.

(4) A person appointed as an inspector -

- (a) must, if appointed by the relevant institution, be nominated or approved by the Director, and
- (b) must appear to the Director to have the qualifications, skill and resources necessary to enable the inspector to conduct the investigation, and to make the report, in question.

(5) A relevant institution being investigated under this section and any person described in subsection (6) -

- (a) shall produce to an inspector, at such time and place and in such form and manner as the inspector may require, all documents in their custody or power relating to the relevant institution; and the inspector may take copies of or extracts from any documents produced under this paragraph,
- (b) shall attend before an inspector at such time and place as the inspector may require and answer such questions and give such explanations as the inspector may put or require in relation to the relevant institution, and
- (c) otherwise shall give an inspector all assistance in connection with the investigation that is reasonably able to be given.

(6) The persons referred to in subsection (5) are a person who is or has been a director, partner (or fellow member, in the case of a limited liability partnership), manager, employee, agent, banker, auditor, actuary, advocate or other legal adviser of a relevant institution being investigated under this section.

(7) An inspector shall, if so required, produce evidence of his or her authority.

(8) A person who without reasonable excuse -

- (a) contravenes any provision of subsection (5), or
- (b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any power conferred by this section,

is guilty of an offence and liable -

- (i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,
- (ii) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(9) A statement made by a person ("A") in response to a requirement imposed under this section -

- (a) may be used in evidence against A in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against A in criminal proceedings except -
 - (i) where evidence relating to it is adduced,

or a question relating to it is asked, in the proceedings by or on behalf of A, or

(ii) in proceedings for -

(A) an offence under subsection (8) or section 75L(3) or 201(4) (but only in relation to a requirement imposed by or under this section),

(B) some other offence where, in giving evidence, A makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(10) A requirement imposed under this section has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure, or by any other act or omission, pursuant to such a requirement.

(11) Nothing in this section compels the production or divulgence of a communication or item subject to legal professional privilege when it is in the possession of a person who is entitled to possession of it; but an advocate or other legal adviser may be required to give the name and address (including an electronic address) of any client.

(12) Where a person claims a lien on a document its production under this section is without prejudice to the lien.

(13) Subject to subsection (14), the costs, fees and expenses of an investigation and report under this section shall be met by the relevant institution which is being investigated under subsection (1); and those costs, fees and expenses may, subject as aforesaid, be recovered by the Director from the relevant institution as a civil debt.

(14) Any sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) may be recovered by the Director from a relevant institution as a civil debt except where and to the extent that the court is satisfied that -

- (a) the sum is not reasonable in amount or was not reasonably incurred, or
- (b) the Director acted unreasonably, frivolously or vexatiously in incurring that sum.

For the avoidance of doubt, the burden of establishing the matters referred to in paragraphs (a) and (b) lie on the person from whom recovery is sought.

(15) No liability is incurred by an inspector in respect of anything done or omitted to be done in connection with the preparation of a report under, or otherwise for the purposes of, this section except to the extent that the liability arises from the inspector's own fraud, wilful misconduct or gross negligence.

(16) The powers conferred by this section are in addition to and not in derogation from the powers conferred by section 171D (directions to non-compliant institutions).

Failure to obtain self-certification and freezing orders, etc.

171F. (1) Where a relevant institution is authorised or required under the FATCA or CRS regulations to rely on a valid self-certification of an account holder or other description of person but –

- (a) has been unable to obtain a self-certification, or
- (b) having obtained a self-certification from the account holder or other relevant description of person and reviewed it for validity, correctness and reliability in accordance with the due diligence procedures set out under the said regulations, knows or has reasonable grounds to suspect that the self-certification is or has subsequently become incorrect or unreliable,

the relevant institution must immediately notify the Director that the circumstances set out in paragraph (a) or (b) are made out.

(2) Notification under subsection (1) must be made in such form and manner and by such means, and must be accompanied by such information and documents, as the Director may by notice require.

(3) On receipt of notification under subsection (1) and at any time thereafter the Director –

(a) may require the relevant institution to provide any further information and documents or to make any further review or inquiry, and

(b) may make an order (a “**freezing order**”) prohibiting the relevant institution from –

(i) making any transfer, withdrawal or payment from, or

(ii) effecting any transfer, assignment or other dealing or arrangement in respect of,

the account holder’s financial account except under the authority of and in accordance with the conditions of a prior express written permission of the Director.

(4) A freezing order under subsection (3)(b) made against a relevant institution in respect of a financial account has effect, and must be

acted on by the institution, notwithstanding –

(a) any duty, obligation or commitment otherwise binding on the institution under any agreement, contract or other engagement, or

(b) any right, interest or power otherwise exercisable –

(i) by or on behalf of the account holder, or

(ii) in respect of the financial account or the funds or other assets comprised in it,

under any agreement, contract or other engagement.

(5) Any interest or increment accruing to the frozen account in respect of the funds or other assets comprised in it shall also be frozen and is to be added to the funds or assets on their release.

(6) A relevant institution which –

(a) fails to give notification under subsection (1), or

(b) contravenes or causes or permits the contravention of a freezing order under subsection (3)(b),

is guilty of an offence and liable -

- (i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,
- (ii) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(7) The powers conferred by this section are in addition to and not in derogation from the powers conferred by section 171D (directions to non-compliant institutions).

Right of appeal against decisions under sections 171D, 171E and 171F.

171G. (1) A person aggrieved by a decision of the Director –

- (a) to give a direction under section 171D,
- (b) to appoint, or require the appointment of, an inspector under section 171E,
- (c) to impose a requirement under section 171F(3)(a), or
- (d) to make a freezing order under section 171F(3)(b),

may appeal to the Guernsey Tax Tribunal on giving to the Director notice in writing, stating the grounds of appeal, within a period of 30 days beginning on the date of the notice of the Director's decision.

(2) The Guernsey Tax Tribunal may admit an appeal under subsection (1) after the expiration of the 30 day period if satisfied that owing to absence, sickness or other reasonable cause a person was prevented from giving notice of appeal within that period.

(3) In the case of an appeal against a decision described in subsection (1)(a) or (b), the sole grounds of appeal are that (as the case may require) –

(a) the institution on which notice of the decision was served -

(i) is not a relevant institution within the meaning of this Law,

(ii) is in compliance with the international tax provisions set out in section 171D(2),
or

(iii) is in compliance with any relevant directions given by the Director under section 171D, or

- (b) the decision is unreasonable as a matter of law, having regard to all facts and circumstances of the case.

(4) In the case of an appeal against a decision described in subsection (1)(c) or (d), the sole grounds of appeal are that the decision is unreasonable as a matter of law, having regard to all facts and circumstances of the case.

(5) In disposing of an appeal the Guernsey Tax Tribunal may –

- (a) confirm, annul or modify the decision in question, or
- (b) set the decision aside and remit it to the Director with such directions as the Tribunal thinks fit.

(6) Subject to section 80 of this Law, the decision of the Guernsey Tax Tribunal is final and conclusive.

(7) This section applies to the exclusion of sections 76 and 79 of this Law.

(8) Sections 77, 78, 78A and 80 of this Law apply in relation to an appeal under this section as they apply in relation to an appeal under section 76 of this Law.”.

21. In section 190(1), in paragraph (ii) of the proviso, the words following

“but this paragraph does not apply in respect of a company” are repealed.

22. In section 193(1) in the proviso for “issues the notice referred to in section two hundred of this Law” substitute “makes the order under section 200(5) directing the payment of the penalty”.

23. In section 199(6)(a)(i) and (11)(b)(i) the words “in La Gazette Officielle” are repealed.

24. In section 200(1), (4) and (5) after “section 190,” insert “section 193(1),”.

25. In section 205(2) after paragraph (b) insert “and the performance of all other functions in respect of the implementation and administration of any such agreement, measure or regulations (including, without limitation, functions relating to investigating, ascertaining, securing and validating compliance therewith)”.

26. In section 209(1) add the following definitions in the appropriate places

–

“annual validation” : see section 171C(5),

“business documents” : see section 83A(6),

“business premises” : see section 83A(6),

“CRS regulations” : see section 171C(1)(b),

“entity” : see section 171C(11),

“FATCA regulations” : see section 171C(1)(a),

“freezing order” : see section 171F(3),

“implementation” of an approved international agreement, etc : see section 75CC(2),

“inspectors” : see section 171E(1),

“international tax provisions” : see section 171D(2),

“Instrument Permitting Enforcement” : see section 83J(3),

“prescribed purposes” : see section 83A(2),

“relevant institution” : see section 171C(2),

“relevant tax provisions” : see section 83A(2)(a),

“revenue claim” : see section 83I(1),

“uniform scale” means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989,”.

Citation.

27. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) Ordinance, 2021.

Commencement.

28. This Ordinance shall come into force on the 15th July, 2021 or such later date as may be specified by regulations of the Policy and Resources Committee (and different days may be specified for different provisions or different purposes).