

**THE INCOME TAX (GUERNSEY) (AMENDMENT) ORDINANCE, 2016**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Amendment) Ordinance, 2016", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Income Tax (Guernsey) Law, 1975 ("the 1975 Law") as follows –

(a) clauses 2, 3, 4 and 5 modify sections 51 and 51A of the 1975 Law to provide that a person who is non-resident, or resident but not solely or principally resident, is entitled to 1/52nd of the personal income tax allowances for each 7 days that they are in receipt of a Guernsey Old Age Pension,

(b) clause 6 reinstates section 62AC of the 1975 Law (repealed in 2013 with the deemed distribution regime), thus making it absolutely clear that Guernsey resident beneficial members of exempt companies are only liable to the deduction of tax on distributions made to the exempt company in respect of shares held by it in other companies when the distributions are actually made to them,

(c) clause 7 allows the Director to notify taxpayers in appropriate cases (eg, where all their income is believed to be subject to the deduction of tax at source) that they are not obliged to submit an income tax return. In these cases, the Director makes an assessment on the basis of the information held by him and the taxpayer is deemed to have submitted a return containing the information on which the assessment is based; if the assessment is inaccurate or incomplete, they must give an amendment notice to the Director setting out the omissions or other error, in which case the Director will issue a further notice of assessment,

(d) clauses 8, 9, 10, 11, 12 and 13 modify the provisions of the 1975 Law relating to interim assessments by removing the statutory right of appeal against an interim assessment. However, the taxpayer has a right to make representations to the Director explaining why, having regard to the contents of the interim assessment, collection of the tax due under it should be suspended or deferred in whole or in part pending submission by the taxpayer of a fully completed return of income. The taxpayer then has a right of appeal against a decision of the Director in respect of the suspension or deferral of the tax due. Surcharges arise under section 199AA of the 1975 Law where

the suspension or deferral of tax is based on misleading information provided by or on behalf of the taxpayer.

The amendments also crystallise the right of the Director to make a final assessment on an estimated basis where a fully completed return of income is not received within the permitted time. A right of appeal arises in the usual way against such an assessment. In addition, where the Director issues an additional assessment, an appeal against it may only relate to the additional aspects of the assessment, not to information contained in a previous iteration of the assessment the time for appealing against which has expired,

(e) clause 14 makes provision for a "reward scheme" whereby payments may be made by the Director to persons who provide information leading to the recovery of unpaid taxes. A similar scheme is operated in the UK under the Commissioners for Revenue and Customs Act 2005. The administrative details of the scheme will be set out in a statement of practice.

## **The Income Tax (Guernsey) (Amendment) Ordinance, 2016**

**THE STATES**, in pursuance of their Resolution of the 10<sup>th</sup> December, 2015<sup>a</sup>, and in exercise of the powers conferred on them by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

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

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

2. In section 51(5)<sup>c</sup> after "the deduction of tax under this Law" insert "or a Guernsey old age pension the entitlement to which arises under section 33 of the Social Insurance (Guernsey) Law, 1978".

3. In section 51(6)<sup>d</sup> after "described in section 81A(2)(bA)" insert "and includes a Guernsey old age pension the entitlement to which arises under section 33 of the Social Insurance (Guernsey) Law, 1978".

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<sup>a</sup> Article XIV of Billet d'État No. XX of 2015.

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

<sup>c</sup> Section 51(5) was inserted by the Income Tax (Guernsey) (Amendment) Law, 2009 (Order in Council No. IX of 2011).

<sup>d</sup> Section 51(6) was inserted by the Income Tax (Guernsey) (Amendment) Law, 2009 (Order in Council No. IX of 2011).

4. In section 51A(2A)<sup>e</sup> after "the deduction of tax under this Law" insert "or a Guernsey old age pension the entitlement to which arises under section 33 of the Social Insurance (Guernsey) Law, 1978".

5. In section 51A(2B)<sup>f</sup> after "described in section 81A(2)(bA)" insert "and includes a Guernsey old age pension the entitlement to which arises under section 33 of the Social Insurance (Guernsey) Law, 1978".

6. After section 62AB<sup>g</sup> insert the following section -

**"Exempt bodies: distributions to resident beneficial members."**

**62AC.** (1) Notwithstanding any other provision of this Law, where a person ("person X") is resident in Guernsey and is a beneficial member of an exempt Guernsey company ("company Y"), then, so far as concerns the distributions of -

(a) company Y, and

(b) any other company in respect of shares in that company held by company Y,

person X is taxable, and the provisions of section 81B apply to him, only in respect of distributions actually made by company Y.

(2) In this section -

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<sup>e</sup> Section 51A(2A) was inserted by the Income Tax (Guernsey) (Amendment) (No. 3) Ordinance, 2014.

<sup>f</sup> Section 51A(2B) was inserted by the Income Tax (Guernsey) (Amendment) (No. 3) Ordinance, 2014.

<sup>g</sup> Section 62AB was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007 (Order in Council No. VI of 2011).

**"distributions"** of a company include deemed distributions within the meaning of Chapter VIIIA, as that Chapter had effect immediately prior to the 1<sup>st</sup> January, 2013,

**"exempt Guernsey company"** means a company incorporated in Guernsey which has been granted an exemption from tax under an Ordinance made under section 40A, and

**"shares"** includes any interest in a company entitling the holder of the shares to participate in distributions of the company."

7. After section 73 insert the following section -

**"Assessments where no return is required to be made."**

**73AA.** (1) This section applies to any person who has been notified by the Director that, in respect of any year of charge, and notwithstanding the provisions of section 68, he is not required to deliver to the Director a return as to his income.

The notification from the Director -

- (a) may be given in such manner as the notice from the Director referred to in section 68(1) requiring a person to deliver a return as to his income may be given (and section 68(1AAA) shall apply accordingly), and
- (b) may have effect in respect of any year of charge or any particular year of charge (whether or not the year of charge is particularised in the

notification).

(2) Persons to whom this section applies are referred to in this section as "**relevant taxpayers**".

(3) Subject to the provisions of subsections (4) and (5), a relevant taxpayer on whom a notice of assessment is served by the Director under section 73(1) is deemed for the purposes of this Law to have delivered a return as to his income under section 68(1) -

(a) declaring the same sources and amounts of income, and

(b) claiming the same personal and other allowances, reliefs and deductions,

as are set out in the assessment.

(4) A relevant taxpayer shall, within a period of 30 days immediately following the date of the issue of a notice of assessment under section 73(1), or such longer period as the Director may in his absolute discretion determine in any particular case, give written notice (an "**amendment notice**") to the Director, in such form and manner and accompanied by such information and documents as may be required by the Director, setting out any error, defect, omission or other mistake or irregularity in the assessment.

(5) Where the relevant taxpayer gives an amendment notice to the Director in accordance with subsection (4), then -

(a) the Director shall, within a period of 30 days

immediately following the date of receipt of the notice, issue confirmation of receipt of the amendment notice (and sections 73A and 73B apply in relation to any such confirmation as they apply in relation to a notice of assessment required to be served under section 73(1)), and

- (b) the return as to his income that the taxpayer is deemed to have delivered to the Director by virtue of subsection (3) shall be deemed for the purposes of this Law to consist of the assessment made by the Director under section 73(1) -

- (i) incorporating any exceptions, adaptations, modifications and other amendments set out in the amendment notice, and

- (ii) with every part, element or component of the assessment that was not subject to any such exceptions, adaptations, modifications and other amendments continuing to be included therein and remaining unchanged.

(6) If the relevant taxpayer does not give an amendment notice to the Director in accordance with subsection (4), then the tax due under the assessment shall thereupon be payable in accordance with the provisions of this Law.

(7) If the relevant taxpayer gives an amendment notice to the Director in accordance with subsection (4), the Director shall take the notice into account, and having done so shall, without prejudice to the provisions of section 73(2)(b), issue a further notice of assessment or confirm his earlier notice of assessment.

(8) For the avoidance of doubt, a right of appeal arises in accordance with the provisions of section 76 in respect of any assessment issued or confirmed in accordance with subsection (7).

(9) The following sections -

- (a) section 68 (other than subsections (1AAA) and (2)),
- (b) section 68AA (insofar as it relates to accounts, statements and other documents), and
- (c) section 68A,

apply in respect of a relevant taxpayer in the same manner as if he had received a notice from the Director under section 68(1) requiring him to make a return as to his income.

(10) The provisions of this section -

- (a) are without prejudice to any other provision of this Law in respect of the making of inquiries, the obtaining of information, the making of assessments, directions or orders or the imposition of penalties, surcharges or additional



surcharges,

- (b) are without prejudice to the first proviso in section 76 (power of appropriate body to admit appeal out of time in specified circumstances), and
- (c) have effect in respect of assessments made and notices of assessment served in respect of relevant taxpayers under any provision of this Law as they have effect in respect of assessments made and notices of assessment served under section 73(1)."

8. In section 73(2)(a) for "sections 66C, 81A and 81B"<sup>h</sup> substitute "sections 66C, 76A, 81A and 81B".

9. In section 76 -

- (a) after the words "Any person aggrieved by an assessment made upon him by the Director" insert "(other than an interim assessment made under section 73(2)(a))",
- (b) after the words "(but not a notice given under section 75A or 75B)," insert "or by a decision of the Director under section 76A(1)(c) in respect of the suspension or deferral of tax due under an interim assessment (whether as to the amount of the suspension or deferral or otherwise)",

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<sup>h</sup> Those words, figures and letters were inserted by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009 (Order in Council No. VII of 2011).

- (c) after the words "the date of the issue of the notification of" insert "the decision in respect of the suspension or deferral or",
- (d) after paragraph (b) in the second proviso<sup>i</sup> add the following paragraphs -
  - "(c) an additional assessment made by the Director under section 75, the appeal may only be instituted in respect of any new, additional or modified part, element or component of the assessment, and not in respect of any part, element or component included in and unchanged from a previous assessment in respect of which the time for appealing has expired or which is or has been the subject of a previous appeal,
  - (d) a decision of the Director under section 76A(1)(c) in respect of the suspension or deferral of tax due under an interim assessment, 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."

10. After section 76 insert the following section -

**"Procedure in respect of interim assessments."**

**76A.** (1) Where the Director has made an interim assessment under section 73(2)(a) -

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<sup>i</sup> The second proviso was inserted by the Income Tax (Surcharges and Supplements) (Guernsey) (Amendment) Law, 2005 (Order in Council No. VII of 2006).

- (a) the taxpayer may, within a period of 30 days immediately following the date of the issue of the interim assessment, make written representations to the Director explaining why, having regard to the contents of the assessment, collection of the tax due under it should be suspended or deferred in whole or in part pending submission by the taxpayer of a fully completed return of income (within the meaning of section 199(12)) and the issue of a final assessment,
- (b) if the taxpayer does not make such representations within that 30 day period, then the tax due under the interim assessment shall thereupon be payable in accordance with the provisions of this Law,
- (c) if the taxpayer, within that 30 day period (or such longer period as the Director may in his absolute discretion determine in any particular case), makes such representations to the Director, the Director shall take the representations into account, and having done so shall -
  - (i) decide whether or not to suspend or defer in whole or in part the tax due under the interim assessment, and
  - (ii) if he decides not to suspend or defer in

whole or in part the tax due under the interim assessment in accordance with the taxpayer's representations, serve on the taxpayer a notice in writing stating -

- (A) the terms of his decision, and
- (B) that the taxpayer may, within a period of 30 days immediately following the date of the issue of that notice, appeal against the decision to the appropriate body in accordance with the provisions of section 76,

and if the Director does not serve such a notice within a period of 30 days immediately following the date of receipt of the taxpayer's representations, then he shall be deemed to have decided to suspend or defer in whole or in part the tax due under the interim assessment in accordance with the taxpayer's representations,

- (d) subject to paragraph (e) -
  - (i) a decision of the Director to suspend or defer the tax due under the interim assessment in whole or in part shall have effect for the purposes of this Law, and

- (ii) the balance (if any) due under the interim assessment shall thereupon be payable in accordance with the provisions of this Law, and
- (e) a taxpayer aggrieved by a decision of the Director under paragraph (c) in respect of the suspension or deferral of tax due under an interim assessment may appeal against the decision to the appropriate body in accordance with the provisions of section 76.

(2) An interim assessment under section 73(2)(a) may (without prejudice to the provisions of section 73(2)(b)) be confirmed as, revised into or replaced by -

- (a) a final assessment, when the Director has received a fully completed return of income (within the meaning of section 199(12)) within the time permitted for the submission of the return (or such longer period as the Director may in his absolute discretion determine in any particular case), or
  - (b) a final assessment made in whole or in part on an estimated basis in cases where paragraph (a) does not apply.
- (3) For the avoidance of doubt -

- (a) a right of appeal arises in accordance with the provisions of section 76 in respect of any such final assessment as is mentioned in subsection (2)(a) or (b), but
- (b) there is no right of appeal against a refusal by the Director to exercise his power under section 82(1) (as that section has effect subject to subsection (4) below) to allow the tax charged in consequence of any such final assessment as is described in subsection (2)(a) or (b) or any part thereof to remain unpaid.

(4) In respect of any such final assessment as is described in subsection (2)(b), the power of the Director under section 82(1) to allow the tax charged in consequence of the assessment or any part thereof to remain unpaid does not apply unless the Director in his absolute discretion, on being satisfied that there were exceptional and compelling reasons for the failure of the taxpayer to submit a fully completed return of income (within the meaning of section 199(12)) within the time permitted for the submission of the return, determines otherwise in any particular case.

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

**11.** In section 79(1) -

- (a) in paragraph (a) after "in the case of an assessment" insert "(other than an interim assessment made under section 73(2)(a))",

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

"(cc) in the case of an appeal in respect of a decision of the Director under section 76A(1)(c) in respect of the suspension or deferral of tax due under an interim assessment, confirm or annul the decision and/or increase or reduce the amount of the suspension or deferral,".

**12.** In section 82(1) after the words "against an assessment" insert "(other than an interim assessment made under section 73(2)(a), in respect of which the provisions of section 76A apply)".

**13.** In section 199AA<sup>j</sup> -

(a) for the heading to the section substitute "Surcharges in cases of unjustified suspension or deferral of tax.",

(b) subsection (1)(b) is repealed,

(c) for subsection (1)(c) substitute the following -

"(c) the Director has, under section 76A, decided or been deemed to have decided to suspend or defer collection of the tax due under that assessment in whole or in part pending submission by the taxpayer of a fully completed return of income (within the meaning of

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<sup>j</sup> Section 199AA was inserted by the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2014 (laid before the States on the 25<sup>th</sup> February, 2015).

section 199(12)),",

- (d) subsection (1)(d) is repealed, and
- (e) in subsection (1)(e) after "his decision" insert "or deemed decision".

14. After section 206 insert the following section -

**"Power to make payments for information, etc."**

**206ZA.** (1) The Director may pay a reward to a person in return for a service which relates to the functions of the Director.

(2) Without prejudice to the generality of section 204, the Director may issue statements of practice under that section in relation to -

- (a) the payment and administration of rewards under this section, and
  - (b) the practice and procedure of the Director and the officers, employees and other persons under his control in respect thereof.
- (3) Any payment made by the Director under this section -
- (a) is assessable and taxable in the same way as income of class 2(1)(b), and
  - (b) is subject to the deduction of tax under section 81A as if the Director were an employer carrying on business or exercising functions in



Guernsey (except that regulations under subsection (4) of that section do not apply in respect of the payment).

(4) Documents and information received or obtained by the Director by virtue of this section may be disclosed and used for the purposes of the performance of his functions or otherwise in accordance with his oath taken under section 206.

(5) The receipt, obtaining, disclosure and use of documents or information by the Director by virtue of this section does not constitute a contravention on his part of any obligation as to confidentiality or other restriction on the disclosure of documents or information imposed by statute, contract or otherwise.

(6) This section is without prejudice to any other provision of this Law, or any other enactment conferring functions on the Director, authorising the obtaining, delivery, making available, furnishing, disclosure, use and/or exchanging of documents and information."

**Citation.**

15. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) Ordinance, 2016.

**Commencement.**

16. This Ordinance shall come into force on the 1<sup>st</sup> January, 2017.