

THE INCOME TAX (PENSION AMENDMENTS) (GUERNSEY) ORDINANCE, 2017

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Pension Amendments) (Guernsey) Ordinance, 2017", 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

The Ordinance is made under the Income Tax (Guernsey) Law, 1975 and amends that Law to enable the Director of Income Tax to grant formal approval to pension schemes (in this case superannuation funds, retirement annuity contract or retirement annuity trust scheme) in respect of which exemptions from income tax apply by virtue of sections 40(o) and 40(ee) of that Law.

The option for these schemes to seek approval under the Law, together with associated regulations and rules made under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, will enable Guernsey firms to benefit from an exemption within the OECD Common Reporting Standard on financial account information reporting requirements for pension schemes (insofar as all of the relevant criteria are met). The OECD standard was implemented in Guernsey last year by the Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015 (also made under the Income Tax Law).

The Ordinance will also make provision for the reporting of information to the Director by approved schemes both when they apply for approval and periodically thereafter, enabling the Director to ascertain that they continue to comply with the conditions of their approval. At the same time, the reporting of information obligations in respect of other approved pension schemes, funds, contracts and trusts will be tidied up and regularised.

The Policy and Resources Committee is given power to make detailed regulations (which will need to be laid before the States) prescribing any limitations, conditions, restrictions and qualifications subject to which approvals may be granted and otherwise for carrying the relevant approval provisions into effect.

The Income Tax (Pension Amendments) (Guernsey) Ordinance, 2017

THE STATES, in pursuance of their Resolution of the 21st June, 2017^a, and in exercise of the powers conferred on them by sections 40B, 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, as amended, is further amended as follows.

2. In section 154 -

- (a) in subsection (1) after the words "such accounts have been drawn up" insert "and by such other documents as the Director may require", and
- (b) in subsection (2) after the words "such information" insert "and documents".

3. After section 154 insert the following section -

^a Article ** of Billet d'État No. **** of 2017.

^b 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.

"Application for approval of schemes, etc, exempted from tax under section 40.

154A. (1) This section applies to -

- (a) a superannuation fund to which section 40(o) applies,
- (b) a retirement annuity contract or retirement annuity trust scheme entered into with an individual for the purposes of an annuity or lump sum to which section 40(ee) applies, and
- (c) such other class or description of fund, contract, scheme or trust in respect of pensions as the Committee may prescribe by regulation, including (without limitation) any class or description of fund, contract, scheme or trust set out in any other paragraph of section 40.

(2) The relevant person may make an application for the approval of the fund, contract, scheme or trust by the Director for the purposes of this section.

(3) The application shall be in such form and shall contain such information and be accompanied by such documents as the Director may require.

(4) Upon receipt of an application under subsection (2), and at any time thereafter, the Director may require the relevant person to

supply him with such additional information and documents as he may require.

(5) The information and documents required to be provided by or under subsection (3) or (4) may include (without limitation) -

- (a) a copy of the instrument under which the fund, contract, scheme or trust is established,
- (b) a copy of the rules and of the accounts of the fund, contract, scheme or trust for the last year for which such accounts have been drawn up and any other year or accounting period specified by the Director, and
- (c) information and documents in respect of -
 - (i) contributions made to the fund, contract, scheme or trust,
 - (ii) the members or beneficiaries of the fund, contract, scheme or trust and any other persons in receipt of annuities, lump sums or other payments from it,
 - (iii) the amount of the annuities, lump sums or other payments,
 - (iv) particulars of contributions repaid, and

- (v) the accounts of the fund, contract, scheme or trust.

(6) The "**relevant person**" in subsection (2) means the trustee, administrator, employer or other person having the management of the fund, contract, scheme or trust or, as the case may be, the company referred to in section 40(ee) with whom the retirement annuity contract was effected."

4. In section 155 -

- (a) in subsection (1) for "the last preceding section" substitute "section 154 or 154A",
- (b) in subsection (1)(a) -
 - (i) after "part of the pension scheme" insert "or the fund, contract, scheme or trust", and
 - (ii) for "section one hundred and fifty of this Law" substitute "section 150 or 154A, as the case may be",
- (c) in subsection (1)(c) after "part of a scheme," insert "or such a fund, contract, scheme or trust",
- (d) in subsection (2) after "part of a pension scheme" insert "or a fund, contract, scheme or trust, as the case may be",

- (e) in subsection (4)(a) after "part of a scheme" wherever appearing insert "or a fund, contract, scheme or trust, as the case may be,".

5. For section 156 substitute the following section -

"Information and documents to be furnished."

156. (1) Where an approval has been granted by the Director under the provisions of section 150, 154A, 157A or 157E, the trustee, employer or other person having the management of the fund, contract, scheme or trust and any other person who is a relevant person within the meaning of section 154A(6) in relation to the fund, contract, scheme or trust must provide the Director with such information and documents or class or description of information or documents as may be required -

- (a) by, under or for the purposes of this Law or any regulations made under it, or
- (b) for the purposes of the performance by the Director of his functions,

and as the Director may by notice specify.

(2) The information and documents required to be provided by or under subsection (1) include (without limitation) any information and documents described in paragraphs (a) to (c) of section 154A(5).

(3) Information and documents required to be provided

by or under subsection (1) must be provided in such form and manner, by such means, at such times or intervals and in respect of such periods of time as the Director may by notice require.

(4) For the purposes of, but without prejudice to the generality of, subsections (1) and (3), the notices referred to in those subsections 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 Income Tax office or by being set out in a statement of practice issued under section 204.

(5) Without prejudice to subsections (3) and (4), section 68(1AAA) (giving of notice from Director) applies in relation to a notice of the Director under subsection (1) or (3) or otherwise given by him under or for the purposes of this section as it applies in relation to a notice of the Director requiring a person to deliver a return as to his income, and references (however expressed) in this Law to the giving or receipt of such a notice shall be construed accordingly.

(6) Section 68AA (returns to be submitted in electronic form and by electronic means) applies in respect of this section as if -

- (a) references in subsections (1) and (2) of that section to section 68 included references to this section,
- (b) references in subsection (1) of that section to a return as to a person's income included

references to a document or information required or authorised to be provided by, under or for the purposes of this section, and

- (c) paragraph (a) of subsection (1) of that section and, in paragraph (b) thereof, the words "in the case of a company" were omitted.

(7) Section 75M (duties of confidentiality, liens, and self-incrimination) applies in respect of this section and a notice or requirement of the Director under it as if -

- (a) in subsections (1(a) and (2)(a) the words "or 156" were included after "75KA", and
- (b) in subsection (4)(b)(ii)(A) of that section after the words "section 75L(3)" there was inserted "section 201(1) by virtue of a contravention of section 201(4)".

6. After section 156 insert the following section -

"Regulations as to approvals."

156A. (1) The Committee may by regulation -

- (a) prescribe any matter relating to approvals under section 150, 154A, 157A and 157E including, without limitation, any limitations, conditions, restrictions and qualifications, and

(b) make such other provision as they think fit for the purposes of carrying this Part of this Law, and any other provision of this Law so far as necessary for the purpose of giving effect to this Part, into effect.

(2) Any limitations, conditions, restrictions and qualifications prescribed by regulation under subsection (1) are (for the avoidance of doubt) in addition to and not in derogation from any conditions imposed by the Director in respect of an approval under section 150, 154A, 157A or 157E."

Citation.

7. This Ordinance may be cited as the Income Tax (Pension Amendments) (Guernsey) Ordinance, 2017.

Commencement.

8. This Ordinance shall come into force on the 30th June, 2017.