

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

12th December, 2018

Proposition No. P.2018/127

POLICY & RESOURCES COMMITTEE

THE INCOME TAX (GUERNSEY) (AMENDMENT) (NO. 2) ORDINANCE, 2018

AMENDMENT

Proposed by: Deputy G. A. St Pier

Seconded by: Deputy L. S. Trott

In the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2018, for section 2 (printed on p. 3 of the Ordinance), substitute the following section -

"2. For section 4 substitute -

"Definition of "resident" in the case of a company.

4. (1) Subject to subsection (2), a company shall be treated as resident in Guernsey in a year of charge if -

(a) it is controlled in Guernsey in that year of charge,
or

(b) it is incorporated in Guernsey and has not been granted an exemption from tax for that year of charge under any Ordinance made under section 40A of this Law.

(2) Notwithstanding subsection (1), a company shall not be treated as resident in Guernsey in a year of charge if it is proved to the satisfaction of the Director that, in that year of charge -

(a) the company is, under the domestic law of another territory (Territory A), tax resident in Territory A,

- (b) the company's business is centrally managed and controlled in Territory A,
- (c) either -
 - (i) the company is tax resident in Territory A under the domestic law of Territory A by virtue of -
 - (A) arrangements for double taxation entered into with Territory A and approved by Resolution of the States under section 172, or
 - (B) the provisions of an international tax measure specified for the purposes of this Law by Resolution of the States under section 75CC(1C) made with Territory A,
 - in which a tie-breaker clause applies, or
 - (ii) the highest rate of tax on a company in Territory A is at least 10%, and
- (d) the company's tax resident status in Territory A is not motivated by the avoidance, reduction or deferral of the liability of any person to tax under this Law.

(3) For the avoidance of doubt, the fact that a company is not treated as resident in Guernsey in a year of charge by virtue of subsection (2) is without prejudice to the application, in respect of the company, of the other provisions of this Law or any Ordinance or regulations made under it."

Explanatory Note

The amendment replaces section 2 of the draft Ordinance to provide that a Guernsey company which would otherwise be tax resident in Guernsey under the new s. 4 of the Income Tax Law will not be treated as resident in Guernsey in a year of charge if it is proved to the satisfaction of the Director that, in that year of charge, the conditions specified in paragraphs (a) to (d) of the new s. 4(2) are met, including a condition that the company is, under the domestic law of another territory, and by virtue of double taxation arrangements entered into with that territory, tax resident there.

This amendment would align the definition of corporate residence with the legislation in the Isle of Man, which requires the Assessor to be satisfied that the company is tax resident elsewhere by virtue of management and control, with an additional anti-avoidance provision. The practical effect of this is perceived to be limited, as it was clear that industry would want confirmation from the Revenue Service that corporates were non-resident (despite being Guernsey incorporated) in order to remove them from the requirement to file a return.

See also paragraph (e) of the explanatory memorandum.