

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE INCOME TAX (GUERNSEY) (AMENDMENT) (NO. 2) ORDINANCE, 2019

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2019", 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

Section 2 of this Ordinance amends paragraph (b) of Section 5C of the Income Tax (Guernsey) Law, 1975 with effect from the 1 January, 2019 to clarify that, when a person elects to pay the standard charge, his or her liability to pay tax on his non-Guernsey income in that year of charge is satisfied by the payment of the standard charge. This change to the existing text is purely for clarification and does not change the legal position or the liability of the tax payer. Its purpose, as set out in paras 6.39 to 6.41 of the Policy Letter, is to ensure that a person who is resident only for income tax purposes can continue to benefit from the double taxation provisions with the UK which came into force in the UK in April, 2019.

Sections 3, 4 and 5 amend the Sixth Schedule to the Income Tax (Guernsey) Law, 1975, in implementation of paragraph 6.42 of the Policy Letter, so as to exclude from the tax cap: triviality payments paid from an approved pension scheme, retirement annuity scheme and retirement annuity trust scheme which are paid in full commutation of or in lieu of a pension where the fund value does not exceed a specified sum; and lump sums paid out of such a scheme to the extent that they are above the tax-free limit, in each case to the extent only that the sums paid relate to Guernsey tax-relieved contributions. In such cases, the effect of exclusion from the tax cap in Schedule 6 is that tax will be paid on such amounts over and above the amount of the limit otherwise specified as the tax cap.

The Income Tax
(Guernsey) (Amendment)
(No. 2) Ordinance, 2019

THE STATES, in pursuance of their Resolution of the 5th November, 2019^a, and in exercise of the powers conferred on them by sections 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 amended as follows.

2. For paragraph (b) of section 5C, substitute -

"(b) his liability to pay tax on his income arising or accruing elsewhere than in Guernsey in that year of charge is satisfied by his payment of the standard charge,".

3. In paragraph 1 of the Sixth Schedule (individuals resident in Guernsey (but not in Alderney)), for the sentence beginning "However, notwithstanding the preceding provisions of this Schedule" (including items (i) and

^a Billet d'État No. XXI of 2019 (propositions 15 and 16).

^b Ordres en Conseil Vol. XXV, p. 124; the Sixth Schedule was substituted in accordance with a Resolution of the States on Billet d'Etat No. XX of 2017 (proposition 10); and amended by Ordinance No. LI of 2019. Section 5C was inserted by Order in Council No. IX of 2011. There are other amendments not relevant to this Ordinance.

(ii) of that sentence), substitute -

"However, notwithstanding the preceding provisions of this Schedule, an individual resident in Guernsey in receipt of non-qualifying income may, within a period of six years immediately after the end of any year of charge, elect to pay in respect of that year of charge in respect of both qualifying and non-qualifying income, other than non-qualifying income arising or accruing in the circumstances set out below (the tax on which is, for the avoidance of doubt, payable in addition to the amount of the limit on tax specified in this Schedule), a maximum of £260,000 in tax, and in that case -

- (a) the maximum figure specified above of £130,000 in tax in the year of charge in respect of qualifying income does not apply, and
- (b) the individual shall pay in respect of that year of charge in respect of both qualifying and non-qualifying income, other than non-qualifying income arising or accruing in the circumstances set out below (the tax on which is, for the avoidance of doubt, payable in addition to the amount of the limit on tax specified in this Schedule) a maximum of £260,000 in tax.

The circumstances referred to above are that the non-qualifying income arises or accrues from the ownership of land and buildings situate in Guernsey, or arises -

- (i) from the payment of a lump sum out of or under the provisions of an approved scheme in full

commutation of or in lieu of a pension under section 153A(1),

(ii) from the payment of a lump sum out of or under the provisions of an approved retirement annuity scheme or approved retirement annuity trust scheme in full commutation of or in lieu of a pension under section 157CA(1),

(iii) from the payment of a lump sum out of or under the provisions of an approved scheme in commutation of or in lieu of a pension as referred to in section 153(1) to the extent to which such lump sum is not exempted from tax under section 153(2),

(iv) from the payment of a lump sum under the terms of -

(A) an approved retirement annuity scheme by way of commutation of part of an annuity in accordance with the proviso to section 157A(2)(c), or

(B) an approved retirement annuity trust scheme in accordance with that proviso as it has effect in relation to a retirement annuity trust scheme by virtue of section 157A(4),

to the extent to which such lump sum is not exempted from tax under section 157A(5B),

to the extent only, in relation to income arising in the circumstances set out in items (i) to (iv) above, that the payment referred to relates to contributions which have been the subject of any allowance or relief (or would have been had there been no limitation on the amounts so available in the relevant year of charge) against sums which would otherwise have been assessable to tax under this Law."

4. In paragraph 2 of the Sixth Schedule (individuals resident in Alderney), for the definition of "**Alderney non-qualifying income**" substitute -

""**Alderney non-qualifying income**" means -

- (a) income arising or accruing from the ownership of lands and buildings situate in Guernsey (including, for the avoidance of doubt, Alderney), and
- (b) income arising -
 - (i) from the payment of a lump sum out of or under the provisions of an approved scheme in full commutation of or in lieu of a pension under section 153A(1),
 - (ii) from the payment of a lump sum out of or under the provisions of an approved retirement annuity scheme or approved retirement annuity trust scheme in full commutation of or in lieu of a pension under section 157CA(1),

(iii) from the payment of a lump sum out of or under the provisions of an approved scheme in commutation of or in lieu of a pension as referred to in section 153(1) to the extent to which such lump sum is not exempted from tax under section 153(2),

(iv) from the payment of a lump sum under the terms of -

(A) an approved retirement annuity scheme by way of commutation of part of an annuity in accordance with the proviso to section 157A(2)(c), or

(B) an approved retirement annuity trust scheme in accordance with that proviso as it has effect in relation to a retirement annuity trust scheme by virtue of section 157A(4),

to the extent to which such lump sum is not exempted from tax under section 157A(5B),

to the extent only, in relation to income arising in the circumstances set out in items (i) to (iv), that the payment referred to relates to contributions which have been the subject of any allowance or relief (or would have been had there been no limitation on the amounts so available in the relevant year of charge) against sums which would otherwise have been assessable to tax under this Law,

and such income shall not be subject to the limit (and, for the avoidance of doubt, the tax on such income is payable in addition to the amount of the limit on tax specified in this Schedule).".

5. In paragraph 3 of the Sixth Schedule (open market property), for the sentence commencing "The open market tax cap shall apply" substitute -

"The open market tax cap shall apply in respect of both qualifying and non-qualifying income as defined in paragraph 1, other than non-qualifying income arising or accruing in the circumstances set out below (the tax on which is, for the avoidance of doubt, payable in addition to the amount of the limit on tax specified in this Schedule).

The circumstances referred to above are that the non-qualifying income arises or accrues from the ownership of land and buildings situate in Guernsey, or arises -

- (i) from the payment of a lump sum out of or under the provisions of an approved scheme in full commutation of or in lieu of a pension under section 153A(1),
- (ii) from the payment of a lump sum out of or under the provisions of an approved retirement annuity scheme or approved retirement annuity trust scheme in full commutation of or in lieu of a pension under section 157CA(1),
- (iii) from the payment of a lump sum out of or under the provisions of an approved scheme in commutation of

or in lieu of a pension as referred to in section 153(1) to the extent to which such lump sum is not exempted from tax under section 153(2),

(iv) from the payment of a lump sum under the terms of -

(A) an approved retirement annuity scheme by way of commutation of part of an annuity in accordance with the proviso to section 157A(2)(c), or

(B) an approved retirement annuity trust scheme in accordance with that proviso as it has effect in relation to a retirement annuity trust scheme by virtue of section 157A(4),

to the extent to which such lump sum is not exempted from tax under section 157A(5B),

to the extent only, in relation to income arising in the circumstances set out in items (i) to (iv) above, that the payment referred to relates to contributions which have been the subject of any allowance or relief (or would have been had there been no limitation on the amounts so available in the relevant year of charge) against sums which would otherwise have been assessable to tax under this Law."

Citation.

6. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2019.

Commencement.

7. This Ordinance shall come into force as follows -
- (a) section 2 shall be deemed to have come into force on the 1st January, 2019, and
 - (b) the remainder of this Ordinance shall come into force on the 1st January, 2020.