

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE INCOME TAX (ZERO 10) (COMPANY HIGHER RATE) (AMENDMENT) (GUERNSEY)
ORDINANCE, 2019

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Zero 10) (Company Higher Rate) (Amendment) (Guernsey) 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

This Ordinance amends the Income Tax (Guernsey) Law, 1975 ("the Law") to provide for the taxation of income from –

- (a) the business of licensed cultivation or licensed use of cannabis plants, and
- (b) the business of licensed production or licensed use of controlled drugs, where such production or use is prescribed by regulations of the Policy & Resources Committee.

Section 2 of this Ordinance amends section 2(2)(bb) of the Law to provide for the taxation of a company's income from the business of the cultivation or use of cannabis plants, or the business of the prescribed production or prescribed use of controlled drugs.

Sections 3, 4, 5 and 7 add references to the new classes of company income to other sections of the Law which refer to the taxation of companies.

Section 6 of this Ordinance inserts several definitions in section 209(1) of the Law. The "business of cultivation of the cannabis plant" is defined by reference to cultivation of cannabis plants under the authority of a licence issued by the Committee for Health & Social Care under the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997. The "business of use of the cannabis plant" is defined by reference to the use of those plants or parts of those plants for the production of industrial hemp, supplements, cannabidiol, fibre, medicinal products or any other products or any other processing, activity or other use, where the production, processing, activity or other use is licensed

under the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 or the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997.

The "prescribed production of controlled drugs" is defined by reference to the production of controlled drugs under a licence issued under the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997, if prescribed by regulations of the Policy & Resources Committee. The "prescribed use of controlled drugs" is defined by reference to the use of those controlled drugs or parts of those controlled drugs for any production, processing, activity or other use where that production, processing, activity or other use is licensed under the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 or the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997 and prescribed by regulations of the Policy & Resources Committee.

Section 8 applies section 6(3A) of the Law (which brings a new accounting period for companies into operation when their rate of tax is amended) to companies to which the higher rate is applicable under this Ordinance.

Sections 9 and 10 deal with citation and commencement.

The Income Tax (Zero 10)
(Company Higher Rate)
(Amendment) (Guernsey) 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 orders:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975 is amended as follows.
2. After section 2(2)(bb)^c insert the following paragraphs -

"(bc) income from the business of the cultivation or use of the cannabis plant,

(bd) income from the business of the prescribed production or prescribed use of controlled drugs,".

^a Billet d'État No. XXI of 2019 (proposition 11).

^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. There are other amendments not material to this Ordinance.

^c Section 2(2)(bb) was inserted by the Income Tax (Zero 10) (Company Higher Rate) (Amendment) (Guernsey) Ordinance, 2015 (Ordinance No. LI of 2015).

3. In section 7BA^d, in the heading and in the body of the section, for "and large retail business" substitute ", large retail business, business of the cultivation or use of the cannabis plant and business of the prescribed production or prescribed use of controlled drugs".

4. After section 47G(bb)^e insert the following paragraphs -

"(bc) business of the cultivation or use of the cannabis plant
carried on in Guernsey,

(bd) business of the prescribed production or prescribed use
of controlled drugs carried on in Guernsey,".

5. After section 139(8)^f insert the following subsection -

"(9) In addition, subsection (2) does not apply in any year of
charge to the losses of a company where -

(a) in the year of charge 2019 the company's income
fell within class 2(2)(d),

(b) the company is carrying on the same business as

^d Section 7BA was inserted by the Income Tax (Zero 10) (Company Higher Rate) (Amendment) (Guernsey) Ordinance, 2015 (Ordinance No. LI of 2015).

^e Section 47G(bb) was inserted by the Income Tax (Zero 10) (Company Higher Rate) (Amendment) (Guernsey) Ordinance, 2015 (Ordinance No. LI of 2015).

^f Section 139(8) was added by the Income Tax (Zero 10) (Company Intermediate Rate) (Amendment) (Guernsey) Ordinance, 2018.

it was carrying on in the year of charge 2019, and

- (c) the company's income falls within class 2(2)(bc) or (bd).".

6. In section 209(1) insert the following definition at the appropriate place-

""**business of**" -

- (a) **the "cultivation of the cannabis plant"** means the business of the cultivation of plants of the genus *Cannabis* carried on under the authority of a licence issued by the Committee for Health & Social Care under section 11 of the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997,
- (b) **the "use of the cannabis plant"** means the business of the use of plants or any part of plants of the genus *Cannabis* cultivated under the authority of a licence mentioned in paragraph (a) for -
 - (i) the production of industrial hemp, supplements, cannabidiol, fibre, medicinal products or any other products, or
 - (ii) any processing, any other activity or any other use,

where the production, processing, activity or other use is carried on under the authority of a licence issued by the Committee for Health & Social Care under the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 or the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997,

- (c) **the "prescribed production of controlled drugs"** means the business of the production of controlled drugs carried on under the authority of a licence issued by the Committee for Health & Social Care under section 4 of the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997, where such production is prescribed by regulations of the Policy & Resources Committee, and
- (d) **the "prescribed use of controlled drugs"** means the business of the use of controlled drugs or any part of controlled drugs produced under the authority of a licence mentioned in paragraph (c), for any production, processing, activity or other use -
 - (i) carried on under the authority of a licence issued by the Committee for Health & Social Care under the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 or the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997, and
 - (ii) prescribed by regulations of the Policy & Resources Committee."

7. In the Fifth Schedule in the table therein insert the following entry immediately below the entry relating to "Income from large retail business"⁸ –

"2(2)(bc)	Income from the business of the cultivation or use of the cannabis plant	company higher rate	20%
2(2)(bd)	Income from the business of the prescribed production or prescribed use of controlled drugs	company higher rate	20%".

Year of computation: special provision.

8. Section 6(3A) of the Law applies to any company where the applicable rate of taxation of that company's income is altered by the provisions of this Ordinance *mutatis mutandis*.

Citation.

9. This Ordinance may be cited as the Income Tax (Zero 10) (Company Higher Rate) (Amendment) (Guernsey) Ordinance, 2019.

Commencement.

10. This Ordinance shall come into force on the 1st January, 2020.

⁸ The Fifth Schedule was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007 (Order in Council No. V of 2011).