

BILLET D'ÉTAT No. XXVII, 2007

12th December 2007

Page

Projet de Loi entitled “The Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007”	1
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PROJET DE LOI

ENTITLED

The Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007

THE STATES, in pursuance of their Resolutions of the 28th September, 2005^a, the 30th June, 2006^b, the 30th May, 2007^c the 25th July, 2007^d and the 26th September, 2007^e, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the islands of Guernsey and Herm.

Amendment of 1975 Law.

1. This Law amends the Income Tax (Guernsey) Law, 1975, as amended^f ("the Law of 1975").

2. In sections 5(1), 8(2A)(c), 36(1), 51(4), 51A(2), 52(1), 153(1)(a),

^a Article XII of Billet d'État No. XIV of 2005.

^b Billet d'État No. XI of 2006.

^c Article XI of Billet d'État No. XIV of 2007.

^d Article VIII of Billet d'État No. XIX of 2007.

^e Articles IV and VI of Billet d'État No. XX of 2007.

^f Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; the Income Tax (Guernsey) (Amendment) Law, 2007; and the Income Tax (Zero 10) (Guernsey) Law, 2007; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

153(5), 153(6), 157A(5A), 157AA(1), and 157C(3) of the Law of 1975^g for references to the "standard rate" substitute references to the "appropriate rate".

3. For section 5(1)(d) of the Law of 1975^h substitute the following paragraph -

"(d) in the case of an individual or company not resident in Guernsey, in accordance with the provisions of Chapter IV of Part IV."

4. In subsection 5(1A) of the Law of 1975ⁱ -

(a) for "paragraphs (b) and (d) of subsection (1) of this section, dividends" substitute "paragraph (b) of subsection (1) of this section, distributions",

(b) in paragraphs (a) and (b) the words "or company" are repealed, and

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

"For the avoidance of doubt, and without limitation, "any other income of a similar nature" does not include income arising or accruing from the ownership of lands and buildings situate in Guernsey."

5. In subsection 5(1B) of the Law of 1975^j after paragraph (ii) insert the

^g Paragraph (d) of section 5(1) was substituted by Vol. XXVI, p. 200.

^h Paragraph (d) of section 5(1) was substituted by Vol. XXVI, p. 200.

ⁱ Subsection (1A) of section 5 was inserted by No. XXIII of 1989.

following words –

"Income falling within paragraphs (i) or (ii) shall be "**disregarded partnership income**".".

6. After section 6(3A) of the Law of 1975 insert the following subsection

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"(3B) Notwithstanding the provisions of subsection (3) -

(a) the deemed cessation of trading at midnight on 31 December 2007 does not prevent the company from carrying forward losses available at that date for the purpose of being set-off, in accordance with the provisions of this Law, against profits or income arising in subsequent years, and

(b) in addition -

(i) the proviso in subsection (2) shall apply as if the words from and including "except the year of charge in which the business is commenced" to the end of the subsection were omitted, and

(ii) that deemed cessation of trading does not constitute a permanent discontinuance of the business for the

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Subsection (1B) of section 5 was inserted by No. V of 1996.

purposes of section 142."

7. After section 7A of the Law of 1975^k insert the following section -

"Calculation of income from activities regulated by OUR.

7B. For the avoidance of doubt, income from activities regulated by the Office of the Director General of Utility Regulation shall be calculated in the same manner as income from any other business."

8. After section 8(7)(b) of the Law of 1975 insert the following paragraph -

"(c) the director is non-resident."

9. After section 9(3) of the Law of 1975 insert the following subsection-

"(4) For the purposes of this Law income from the ownership of land and buildings (Class 2(1)(c) income, in the case of an individual, or Class 2(2)(c) income, in the case of a company) includes income from property development.

However -

- (a) income from property development shall be computed for the purposes of this Law in the same manner as if it were income from business, and

^k Section 7A was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

- (b) the only allowances and deductions available in respect thereof shall be those available in respect of income from business."

10. In sections 9, 10, 12, 13 and 16 of the Law of 1975 the words "situate in Guernsey" and "situated in Guernsey", wherever appearing, are repealed.

11. In Chapter IV of Part IV of the Law of 1975, immediately before section 48 insert the following sections -

"CHAPTER IV NON-RESIDENTS

Introduction

Overview of Chapter.

47A. (1) This Chapter provides for limits on the liability to income tax of non-residents.

(2) See sections 47B to 47D in the cases of a non-resident individual.

(3) See sections 47G to 47H in the case of a non-resident company.

Liability to tax for non-resident individuals

Liability to income tax for non-resident individuals.

47B. Subject to the provisions of this Chapter, a non-resident individual is liable to be charged income tax on his income arising or accruing from –

- (a) businesses carried on in Guernsey,
- (b) offices or employments held or exercised in Guernsey,
- (c) the ownership of lands and buildings situate in Guernsey, and
- (d) any other source in Guernsey.

Limit for non-resident individuals

Limit on liability to income tax of non-resident individuals.

47C. (1) This section applies to income tax to which a non-resident individual is liable.

(2) The non-resident individual's liability to income tax for a year of charge is limited to the sum of amounts A and B.

(3) Amount A is the sum of -

- (a) any sums representing income tax deducted from the non-resident individual's disregarded individual income for the year of charge (see section 47D),
- (b) any sums representing income tax that are treated as deducted from or paid in respect of that income, and

(c) any tax credits in respect of that income.

(4) Amount B is the amount that, apart from this section, would be the non-resident individual's liability to income tax for the year of charge, if the following were left out of account -

(a) the non-resident individual's disregarded individual income for the year of charge, and

(b) any allowance to which the non-resident individual is entitled for the year of charge as a result of -

(i) section 51, or

(ii) double taxation arrangements under Part XV.

Meaning of "disregarded individual income".

47D. (1) For the purposes of this Chapter income arising or deemed to have arisen to a non-resident individual is "**disregarded individual income**" if it is -

(a) income consisting of distributions where it has been proved to the satisfaction of the Administrator that the person to whom the income arose or was deemed to have arisen was a non-resident individual,

(b) income consisting of interest,

- (c) income consisting of royalties,
- (d) any other income of a similar nature to income described in paragraph (a), (b) or (c),
- (e) disregarded deemed income (see section 47E),
- (f) disregarded transaction income (see section 47F),
- (g) disregarded partnership income (see section 5(1B)),
- (h) the emoluments of the office of director, or
- (i) income of such other description as the Department may by regulations designate for the purposes of this section.

(2) For the avoidance of doubt, and without limitation, **"any other income of a similar nature"** does not include income arising or accruing from the ownership of lands and buildings situate in Guernsey.

(3) However, if the non-resident individual carries on business in Guernsey through a permanent establishment situate in Guernsey in such circumstances that the profits arising from, or attributable to, the permanent establishment are chargeable to tax as income derived from business, then any income to be taken into account in computing the profits so chargeable is not disregarded individual income for the purposes of this Chapter.

Meaning of "disregarded deemed income".

47E. (1) In this Chapter -

"deemed income" means -

- (a) a deemed distribution within the meaning of Chapter VIIIA, and
- (b) a qualifying loan within the meaning of Chapter XII, and

"disregarded deemed income" means deemed income in respect of which it has been proved to the satisfaction of the Administrator that the person to whom the income arose or was deemed to have arisen was a non-resident individual or a non-resident company.

Meaning of "disregarded transaction income".

47F. (1) Subsection (2) applies if a non-resident individual carries on (alone or in partnership) a business through a broker in Guernsey.

(2) Income is **"disregarded transaction income"**, subject to subsection (3), if -

- (a) it arises from sales or transactions, and
- (b) the independent broker conditions are met in relation to the sale or transaction in question.

(3) This section needs to be read with -

- (a) section 47J (the independent broker conditions),
and
- (b) section 47K (transactions through brokers).

Liability to tax for non-resident companies

Liability to income tax for non-resident companies.

47G. Subject to the provisions of this Chapter, a non-resident company is liable to be charged income tax on its income arising or accruing from –

- (a) banking business carried on in Guernsey,
- (b) activities in Guernsey regulated by the Office of the Director General of Utility Regulation,
- (c) the ownership of lands and buildings situate in Guernsey, and
- (d) any other businesses (other than businesses referred to in any other paragraph of this section), offices and employments, and other sources, in Guernsey.

Limit for non-resident companies

Limit on liability to income tax of non-resident companies.

47H. (1) This section applies to income tax to which a non-resident company is liable.

(2) The non-resident company's liability to income tax for a year of charge is limited to the sum of amounts A and B.

(3) Amount A is the sum of -

- (a) any amounts representing income tax deducted from the non-resident company's disregarded company income for the year of charge (see section 47I),
- (b) any amounts representing income tax that are treated as deducted from or paid in respect of that income, and
- (c) any tax credits in respect of that income.

(4) Amount B is the amount that, apart from this section, would be the non-resident company's liability to income tax for the year of charge if the non-resident company's disregarded company income for the year of charge were left out of account.

Meaning of "disregarded company income".

47I. (1) For the purposes of this Chapter income arising or deemed to have arisen to a non-resident company is "**disregarded company income**" if it is –

- (a) income consisting of distributions,
- (b) income consisting of interest,
- (c) income consisting of royalties,

- (d) any other income of a similar nature to income described in paragraph (a), (b) or (c),
- (e) disregarded deemed income (see section 47E),
- (f) income arising from a transaction carried out on behalf of the non-resident company in the course of the company's trade through a broker in Guernsey, in relation to which the independent broker conditions are met,
- (g) disregarded partnership income (see section 5(1B)),
- (h) the emoluments of the office of director, or
- (i) income of such other description as the Department may by regulations designate for the purposes of this section.

(2) For the avoidance of doubt, and without limitation, **"any other income of a similar nature"** does not include income arising or accruing from the ownership of lands and buildings situate in Guernsey.

(3) However, if the non-resident company carries on business in Guernsey through a permanent establishment situate in Guernsey in such circumstances that the profits arising from, or attributable to, the permanent establishment are chargeable to tax as income derived from business, then any income to be taken into account in computing the profits so

chargeable is not disregarded company income for the purposes of this Chapter.

- (4) This section needs to be read with -
 - (a) section 47J (the independent broker conditions),
 - (b) section 47K (transactions through brokers).

The independent broker conditions

The independent broker conditions.

47J. The independent broker conditions are met in relation to a transaction carried out on behalf of a non-resident company or individual by a broker in Guernsey if the following conditions are met -

- (a) that at the time of the transaction the broker is carrying on the business of a broker,
- (b) that the transaction is carried out by the broker in the ordinary course of that business, and
- (c) that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-resident individual is not less than is customary for that class of business.

Transactions through brokers.

47K. (1) For the purposes of this Chapter a person is regarded as carrying out a transaction on behalf of another if the person -

- (a) undertakes the transaction, whether on behalf of or to the account of the other, or
- (b) gives instructions for it to be so carried out by another.

(2) In the case of a person who acts as a broker as part only of a business, this Chapter has effect as if that part were a separate business."

12. In section 48 of the Law of 1975 –

- (a) in subsection (1), for the words "section fifty of this Law", substitute "this Chapter", and
- (b) in subsection (2), the second proviso is repealed.

13. In section 53(1) of the Law of 1975 for the words "standard rate" substitute "appropriate rate (as if it were income of the person beneficially entitled to that income)".

14. After section 53(1) of the Law of 1975 insert the following subsection

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"(1A) If the income to which subsection (1) relates arises under or is comprised in a settlement which is deemed by section 65(3) to be revocable, references in subsection (1) to the person beneficially entitled to such income and other references of a similar nature may, at the discretion of the Administrator, and without prejudice to the liability of the trustee and the person beneficially entitled, be deemed to include references to the settlor.

For the purposes of this subsection "**settlement**" and "**settlor**" have the meanings given by section 65(4)."

15. In sections 56, 61, 62, 69, 173(5), 173(7) and 174 of the Law of 1975 for the word "dividend" substitute "distribution".

16. For the heading to Chapter VIII of Part IV of the Law of 1975 ("Matters relating to dividends") substitute "Matters relating to distributions".

17. In section 57 of the Law of 1975 -

- (a) for the word "dividend" substitute "distribution", and
- (b) after the words "entitled to receive them" insert ", or deemed to have received them in accordance with section 62AB,".

18. For sections 58 and 59 of the Law of 1975 substitute the following sections -

"Computation of gross income represented by Guernsey distributions."

58. Subject as hereinafter provided, a distribution paid by a company resident in Guernsey shall, to the extent to which it is paid out of profits and gains, be deemed, for all the purposes of this Law, to represent income of such an amount as would, after deduction of tax in accordance with section 81B, be equal to the net amount received.

Guernsey distributions paid without full deduction of tax.

59. (1) Where any distribution from which deduction of tax is required by section 81B is paid without deduction of tax, the amount received in respect thereof shall, for the purposes of this Law, be deemed to be a net

amount received in respect of a distribution from the gross amount of which such deduction as is required by that section has been made, and the provisions of -

- (a) section 58, and
- (b) section 60 (which relates to the form of dividend warrants and other documents),

shall apply accordingly.

(2) The provisions of this section shall apply where, though a deduction is made from a distribution, that deduction is less than the full amount required, as it applies where no deduction is made."

19. In section 60 of the Law of 1975 -

- (a) in subsection (1), after the words "distribution was" insert "actually", and
- (b) in subsection (1B)^I the words "a dividend and" are repealed.

20. In section 61 of the Law of 1975 -

- (a) for "beneficially entitled to a dividend from which tax is authorised to be deducted under the provisions of section fifty-seven of this Law shall, on receiving the

^I Section 60(1B) was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

said dividend and" substitute "the beneficial member in respect of a distribution from which tax is required to be deducted under the provisions of sections 81B and 81BB, shall", and

(b) for the word "authorised" substitute "required".

21. In section 62 of the Law of 1975 the words "distribution or" are repealed^m.

22. After section 62 of the Law of 1975 insert the following sections -

"Meaning of distribution."

62AA. (1) For the purposes of this Law a "**distribution**" shall include any distribution made out of the assets of a company including a dividend, save that it shall not include any repayment of capital to the member or the amount of value of any new consideration given by the member for that distribution.

(2) Subsection (1) may be amended by regulations of the Department.

Person to whom the distribution is made for the purposes of this Law.

62AB. (1) For the purpose of this Law, where the person ("Person A") to whom the distribution has actually been made is -

(a) resident in Guernsey, the distribution shall be deemed to have been made to the beneficial

^m The word "distribution" was substituted for the word "dividend" by section 15 of this Law.

member unless Person A requests that it be deemed to have been made to them, or

- (b) not resident in Guernsey, the distribution shall be deemed to have been made to the beneficial member.

(2) The beneficial member referred to in subsection (1) shall be the "**beneficial member**" of a company in respect of that distribution.

(3) For the avoidance of doubt, this section does not require a company to pay a distribution other than to those entitled to receive that distribution."

23. In Part IV of the Law of 1975, insert the following Chapter after Chapter VIII -

**"CHAPTER VIIIA
DEEMED DISTRIBUTION OF INCOME**

Deemed distribution of company profits and income.

62A. (1) Where a company has undistributed income -

- (a) the company shall be deemed to have distributed the income in the cases or circumstances, at the times and to the persons mentioned in section 62B,
- (b) the deemed distribution shall comprise income in those persons' hands and shall be assessable and tax shall be charged accordingly,

- (c) the company must account for tax on the income in accordance with section 81B, and
- (d) this Law (including for the avoidance of doubt section 40A and any Ordinance under it) applies in relation to the deemed distribution in the same way as it applies in relation to company income which has been distributed.

(2) In this Chapter "**undistributed income**" means income which is assessable to income tax (including disregarded company income) and which has arisen or accrued on or after the 1st January, 2008, and -

- (a) which has not been distributed, or
- (b) which has not previously been deemed under this Chapter to have been distributed,

but excludes income which has been taxed at the company higher rate or any numerically equivalent or higher rate imposed by any other jurisdiction.

For the purposes of this Chapter the Administrator may issue a statement of practice as to the method of calculation of undistributed income.

(3) The States may by Ordinance provide that for the purpose of computing the amount of a company's undistributed income deemed under this Chapter to have been distributed, the income shall (without prejudice to any other provision of this Law relating to allowable deductions from income) be subject to such deductions and allowances as may be specified in the Ordinance.

(4) The Department may by Regulation amend, adapt, modify or disapply -

- (a) any provision of this Chapter, and
- (b) any other provision of this Law relating to undistributed income and the deemed distribution thereof,

either generally or in its application to -

- (i) any company or group of companies or class or description thereof,
- (ii) any member or class or description thereof,
- (iii) any distribution or class or description thereof.

For the purposes of this Chapter a "group" of companies means a number of companies associated in the manner specified in the regulations made under this subsection.

(5) Any income which has been taxed as a deemed distribution pursuant to this Chapter is not liable to be taxed again -

- (a) as an actual or deemed distribution, or
- (b) as income in the company's hands.

(6) Any income which has been taxed in the company's hands at the company intermediate rate is only liable to be taxed as a deemed distribution pursuant to this Chapter at a rate equivalent to the difference between the company intermediate rate and the company higher rate.

(7) If a company with undistributed income is deemed pursuant to the provisions of this Part to have made a distribution, the distribution shall be deemed to have been made from the company's undistributed income and only from the company's capital to the extent that the company's undistributed income is insufficient to cover the amount of the distribution; and the provisions of this Part of this Law shall apply accordingly.

Cases in which income is deemed to have been distributed.

62B. (1) For the purposes of section 62A -

- (a) immediately prior to the date of a transaction consisting of the disposal, repurchase and/or redemption of a beneficial member's shares in the company, there shall be deemed to have been distributed to him an amount of the company's undistributed income equivalent to the amount which would have been payable to him had the company distributed all that income at that time,
- (b) immediately prior to the date of the death of a beneficial member, there shall (subject to such provision as the Administrator may by statement of practice make in respect of relief

by way of deferral of tax) be deemed to have been distributed to him an amount of the company's undistributed income equivalent to the amount which would have been payable to him had the company distributed all that income at that time,

- (c) immediately prior to the date of a beneficial member ceasing to be resident in Guernsey, there shall be deemed to have been distributed to him an amount of the company's undistributed income equivalent to the amount which would have been payable to him had the company distributed all that income at that time,
- (d) immediately prior to the date of the migration of a company registered in Guernsey pursuant to the Migration of Companies Ordinance, 1997ⁿ, there shall be deemed to have been distributed to each beneficial member an amount of the company's undistributed income equivalent to the amount which would have been payable to him had the company distributed all that income at that time,
- (e) immediately prior to the date of the amalgamation of a company there shall be deemed to have been distributed to each beneficial member an amount of the company's

ⁿ Order in Council No. XXVI of 1997.

undistributed income equivalent to the amount which would have been payable to him had the company distributed all that income at that time,

- (f) immediately prior to the date of the dissolution of a company, there shall be deemed to have been distributed to each beneficial member an amount of the company's undistributed income equivalent to the amount which would have been payable to him had the company distributed all that income at that time,
- (g) in the case of undistributed investment income arising or accruing to a company, there shall be deemed to have been distributed to each beneficial member an amount of that income equivalent to the amount which would have been payable to him had the company distributed all that income on the last day of the calendar quarter in which it arose or accrued,
- (h) immediately prior to the date of the permanent cessation of the whole, or substantially the whole, of a company's business there shall (subject to such provision as the Administrator may by statement of practice make in respect of relief by way of deferral of tax) be deemed to have been distributed to each beneficial member an amount of the company's undistributed income equivalent to the amount which would have been payable to him had the company

distributed all that income at that time,

- (i) there shall be deemed to have been distributed any other undistributed income in respect of which the Administrator has, pursuant to section 67, made an adjustment as respects the liability of any person to tax in order to counteract any avoidance, reduction or deferral of liability.

(2) For the purposes of this section an amount is considered to be "**payable**" to a person if he has rights entitling him, or which in any circumstances whatsoever would entitle him, to receive any such amount from the company, directly or indirectly.

Transitional provisions.

62C. (1) Assessable income of a company which has accrued or arisen on or prior to the 31st December, 2007 and which on that date –

- (a) has been assessed but on which tax has not been paid, shall be deemed to be undistributed income for the purposes of this Chapter on the 1st January, 2008 ("**the operative date**"), or
- (b) has not been assessed but which is later assessed, and on which tax has not been paid by the reporting date of the calendar quarter after the quarter in which the liability to tax arose, shall be deemed to be undistributed income for the purposes of this Chapter on that reporting date ("**the operative date**"),

unless payment of all outstanding liabilities to tax, penalties, surcharges and additional surcharges is made to the satisfaction of the Administrator in accordance with arrangements approved by the Administrator.

On the operative date there shall be deemed to have been distributed to each beneficial member an amount of the company's undistributed income equivalent to the amount which would have been payable to him had the company distributed all that income immediately prior to that date.

(2) When income described in subsection (1) is deemed to be distributed, any tax deducted on the deemed distribution pursuant to sections 62A and 81B shall be set off against the liability of the company in respect of the unpaid tax on that income.

(3) For the avoidance of doubt, surcharges and additional surcharges shall cease to accrue in respect of tax on income which is deemed to be distributed, and is taxed accordingly, under this section.

Interpretation.

62D. (1) For the purposes of this Law, a "**beneficial member**" of a company means an individual who has a beneficial interest or any part of a beneficial interest in a share or any part of a share in that company (but does not include an individual who holds only the legal title of any share or any part of a share).

(2) An individual has the "**beneficial interest**" in a share or any part of a share of a company if he is the beneficial owner thereof or if he has an equitable interest or contractual interest therein (but does not include a bare legal owner of any share or part of a share).

(3) In order to ascertain whether an individual has a beneficial interest in a company, the interest may be traced through any number of companies, partnerships, trusts, agreements or other arrangements of any description.

(4) For the purposes of this section -

(a) "**share**" includes stock, any interest of a capital nature and the capital interest of a member in a company limited by guarantee,

(b) an "**equitable interest**" includes an interest which arises under a trust, or which may in future arise under a trust as a result of -

(i) the exercise of a power or discretion by the trustees or other persons in accordance with the terms of the trust (whether or not with the consent of another),

(ii) the effluxion of time, or

(iii) a change of residence,

(c) without limitation, a person has a "**contractual interest**" where, under an agreement or arrangement -

(i) he is entitled or permitted to vote in respect of any share or stock,

- (ii) the exercise of any of the rights of other persons interested in the company or its shares or stock requires his consent, or
- (iii) other persons interested in the company can be required or are accustomed to exercise their rights in accordance with his instructions."

24. In section 65(3) of the Law of 1975 before "the wife or husband of the settlor" insert "(irrespective of whether she or he is resident in Guernsey)".

25. After section 65(3) of the Law of 1975 insert the following subsections

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"(3A) For the purposes of this section, references (however expressed) to income which may arise under or be comprised in a settlement, or arising by virtue or in consequence of a settlement, include the income of –

- (a) any company, or
- (b) other entity,

where that company or other entity is held by, vested in or otherwise under the control (direct or indirect) of the trustees of the settlement (whether alone or with any other person) for the purposes of the settlement, being income attributable to the settlement.

(3B) In ascertaining whether -

- (a) any income arises under or is comprised in a settlement, or
- (b) any company or other entity is held by, vested in or otherwise under the control (direct or indirect) of the trustees of a settlement for the purposes of the settlement,

the income or (as the case may be) the holding, vesting or control may be traced through any number of companies, partnerships, trusts, agreements or other arrangements of any description and, for that purpose, section 62D(2) shall apply (subject to the necessary modifications) in determining whether a person has an interest in any company, partnership, trust, agreement or arrangement through which the interest is traced.

(3C) For the avoidance of doubt -

- (a) income which arises under or is comprised in a settlement and which is not distributed does not, by reason of being accumulated, cease to be chargeable to tax under this Law,
- (b) income arising under or comprised in a settlement which has been taxed at the individual standard rate or the company higher rate in any person's hands is not liable to be taxed again in that or any other person's hands, and
- (c) income arising under or comprised in a settlement which has been taxed at the company

intermediate rate in any person's hands is only liable to be taxed again in that or any other person's hands at a rate equivalent to the difference between the company intermediate rate and the company higher rate.

(3D) Where a settlement is deemed revocable under this section, nothing in this section affects the liability of the trustee or any person beneficially entitled to or in receipt of the income to be charged in his own name, irrespective of whether the settlor is resident or non-resident."

26. In section 65(4) in the definition of "settlement" after the words "agreement or arrangement" insert "and any transfer of assets (including, without limitation, the making of any loan, advance or other transfer of funds or other assets on terms under which those assets will be repaid, or reimbursement will be made, or consideration will be provided in money or money's worth, but not including a bona fide transfer made at arms' length)".

27. After section 66(1) insert the following subsection -

"(1A) Nothing in this section affects the liability of the trustee or any person beneficially entitled to or in receipt of the income to be charged in his own name, irrespective of whether the settlor is resident or non-resident."

28. In Part IV of the Law of 1975, insert the following Chapter after Chapter XI -

"CHAPTER XII LOANS TO PARTICIPATORS

Loans to participators.

66A. (1) If a company with income taxed at a rate less than the company higher rate makes a loan to –

- (a) any participator of the company,
- (b) any officer of the company,
- (c) any person connected to a participator or officer of the company, or
- (d) a third person ("Person A") for the benefit of any person mentioned in paragraph (a), (b) or (c) ("Person B"),

it shall be a "**qualifying loan**".

(2) Where a qualifying loan has been made under the circumstances described in paragraph (d) of subsection (1), then the loan shall be deemed to have been made to Person B for the purpose of this Chapter, and references to the person to whom the loan was made and cognate expressions shall apply accordingly.

(3) Where a qualifying loan has been made to a person described in paragraph (c) of subsection (1) who is not resident in Guernsey, then the loan shall be deemed to have been made to the participator or officer to whom that person is connected for the purpose of this Chapter, and references to the person to whom the loan was made and cognate expressions shall apply accordingly.

(4) Notwithstanding subsection (1), a loan shall not be a

qualifying loan if -

- (a) it was advanced at the company's normal commercial rate, and the company is authorised by the Guernsey Financial Services Commission, or by any person or body exercising, in a place outside the Bailiwick, functions corresponding to the functions of the Commission, to carry on a business which includes the lending of money,
- (b) it is a debt incurred for the supply by the company of goods or services in the ordinary course of its business unless the period of credit given exceeds 6 months or is longer than that normally given to the company's customers,
- (c) it is made to an officer or employee of the company, or an officer or employee of a company with whom the company is connected, unless the officer or employee and any person connected to him has, directly or indirectly, control of more than 5 per cent of the issued share capital of the company or any company connected with it, or
- (d) it is of such class or description, or satisfies such conditions, as may be prescribed by regulations of the Department; and regulations under this paragraph may in addition amend paragraphs (a), (b) and (c), whether by

prescribing additional conditions with which loans described in those paragraphs must comply with, or otherwise.

(5) A loan shall become a qualifying loan if it has been made to a person who did not, at the time the loan was made, meet the conditions of subsection (1), but who later meets any of those conditions.

(6) A qualifying loan shall not be permitted as a deduction in calculating the company's profits for the purposes of this Law.

(7) Where a company makes a qualifying loan –

(a) the loan shall be deemed to comprise income in the hands of the person to whom it was made and shall be assessable and tax shall be charged accordingly,

(b) the company must account for tax on the income in accordance with section 66C.

(8) For the purposes of this Law -

(a) a person is "**connected to**" another person if -

(i) there is a "**corporate relationship**" between them, which exists between a company and the person controlling that company, and between a company and any person with a partnership, personal, or trust relationship with the person

controlling the company, control for these purposes includes partial control or control together with other people,

- (ii) there is a "**partnership relationship**" between them, which exists between two partners in a partnership, and between a partner and any person with a personal relationship to another partner in the partnership,
- (iii) there is a "**personal relationship**" between them, which includes every form of relationship by blood, adoption, marriage or cohabitation (or any combination of those factors) regardless of whether the law recognises the validity, legitimacy or existence of the relationship, and includes a former personal relationship which has in law or in fact terminated,
- (iv) there is a "**trust relationship**" between them, which exists between co-trustees, between a trustee and settlor, between a trustee and beneficiary, and between trustees of related trusts, and between a trustee and any person with a corporate, partnership or personal relationship with a settlor or beneficiary, or

- (v) there is a corporate relationship, partnership relationship, personal relationship, or trust relationship between one of them and a third person, and there is a corporate relationship, partnership relationship, personal relationship, or trust relationship between the other of them and the same third person, and
- (b) **"participator"** means any member of the company or any person having a share or interest in the capital or income of the company and, without prejudice to the generality of the foregoing, includes -
 - (i) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,
 - (ii) any loan creditor of the company,
 - (iii) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by means of premium on redemption, and
 - (iv) any person who is entitled to secure that

income or assets (whether present or future) of the company will be applied directly or indirectly for such person's benefit.

(9) For the purpose of this Chapter "**loan**" includes a debt and any assignment of a loan or a debt due to a third person to the company.

Repayment of qualifying loans.

66B. (1) When a qualifying loan is repaid in whole or in part within 6 years of being made, then the person who paid the tax to the Administrator shall be entitled to claim repayment of the tax paid in respect of the loan or the part repaid.

However, any such claim must be made before the reporting date for the calendar quarter in which the loan or part thereof is repaid.

(2) Where more than one loan is made to a person, a qualifying loan shall only be considered to have been repaid once -

- (a) any qualifying loan made before it in time, or
- (b) any other loan made before the 1st January, 2008 which would have been a qualifying loan had this section then been in force,

has been repaid.

(3) Where a qualifying loan is written off (in whole or in part) the person to whom the loan was made shall be deemed –

- (a) to have received income in the amount of the loan written off and tax paid in respect of that amount, with a credit for that tax, and
- (b) if the tax was paid by the company, to have paid that tax, save that the deemed payment of tax shall not be permitted as a deduction in calculating that person's income tax liability.

(4) When a qualifying loan is not repaid in whole or in part within 6 years of being made, then the company shall be deemed to have written off the amount of the loan not repaid.

Collection of tax on qualifying loans to participators.

66C. (1) The provisions of this section have effect for the purpose of requiring tax to be paid when a company makes a qualifying loan, subject to and in accordance with regulations made by the Department under this section.

(2) A loan is chargeable to income tax in the calendar quarter in which it becomes a qualifying loan.

(3) For the purpose of calculating the tax payable on a qualifying loan, the loan shall be deemed to have been paid net of tax.

(4) Where any qualifying loan is made, tax shall be paid to the Administrator by the company that made the loan in accordance with the provisions of this section.

(5) Tax on a qualifying loan shall be paid at -

- (a) the individual standard rate (where the person to whom the qualifying loan is made is an individual), or
- (b) the company higher rate (where the person to whom the qualifying loan is made is a company).

(6) For the avoidance of doubt if any qualifying loan on which tax has been paid has not been included in any assessment of tax made under section 73(2)(a) then the tax paid on such loan shall not, under subsection (4), be applied towards the payment of tax due from that assessment.

(7) The Department may from time to time make regulations for the purposes of carrying out the provisions of this section.

(8) Any regulations made under subsection (7) do not have effect unless and until approved by a resolution of the States.

(9) Any tax paid by a company on a qualifying loan in accordance with this section shall be payable by the company in such manner and at such times as may be prescribed by or under regulations made under subsection (7).

(10) Where a company fails to pay to the Administrator any tax due on a qualifying loan in the manner and at the times prescribed by or under this section, the amount is (without prejudice to any other remedy or penalty under this Law) recoverable by the Administrator from the person to whom the qualifying loan was made.

(11) Where any qualifying loan is made, the company shall make a quarterly return to the Administrator detailing -

- (a) the name and address of the person to whom the loan is made,
- (b) the date and amount of the loan,
- (c) the date and amount of tax due or paid,
- (d) the dates and amounts of repayments of the loan, and
- (e) the amount of the loan outstanding at the reporting dates.

(12) The quarterly return required under subsection (11) must be filed with the Administrator within 15 days of the relevant reporting date, together with payment for any income tax due under this Chapter.

(13) If the Administrator believes that a company has not complied with the requirements of subsection (12), the Administrator may make an assessment of the tax due, in the same form and manner in which an additional assessment may be made under section 75."

29. In section 68 of the Law of 1975 after "such accounts or other information" insert "(including without limitation, accounting records required to be kept by a company under section 59 of the Companies (Guernsey) Law, 1994)".

30. After section 68 of the Law of 1975 insert the following section -

"Duty to declare income on which tax chargeable."

68A. Without prejudice to any other provision of this Law, a person shall, whether or not he has received a notice from the Administrator under section 68 requiring him to make a return as to his income, on discovering that he has failed -

- (a) to declare any income which is chargeable to tax, or
- (b) to deduct any tax from income in accordance with section 81A or 81B,

give notice of the fact within fourteen days thereafter to the Administrator."

31. In section 81B of the Law of 1975⁰ -

- (a) for subsection (3) substitute the following -

"(3) Tax shall be deducted at -

- (a) where the person to whom the distribution is made is an individual -

- (i) where the income from which the distribution was made has been taxed or is taxable at the company standard rate, the individual standard rate,

- (ii) where the income from which the

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Section 81B was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

distribution was made has been taxed or is taxable at the company intermediate rate, or where section 62A(6) applies, a rate equivalent to the difference between the company intermediate rate and the individual standard rate, and

- (iii) where the income from which the distribution was made has been taxed or is taxable at the company higher rate, the company standard rate,

and, where paragraph (ii) or (iii) applies, then for the purpose of –

- (A) section 58, the reference in that section to the deduction of tax in accordance with this section shall be construed as a reference to the deduction of,
- (B) section 61, the reference in that section to the amount of the tax credit shall be construed as a reference to a credit equal to,

the amount of tax paid or payable by the company in respect of that distribution plus the amount of tax deducted from that distribution pursuant to paragraph (ii) or (iii) as the case may be, and

(b) where the person to whom the distribution is made is a company, the company standard rate."

(b) in subsection (9) for the text preceding paragraph (a) substitute -

"Where a company fails to deduct from a distribution of undistributed income the tax which it is required to deduct under this section, the amount of tax payable shall be determined in accordance with section 59 and shall be payable by the company as if it had been deducted accordingly, and where the amount of any such tax is paid by the company -",

(c) in subsection (12)(a) after the words "the name" insert "and address",

(d) in subsection (15) the words "a dividend and" are repealed, and

(e) after subsection (15) insert the following subsection –

"(16) Where a distribution has been deemed to have been made to an individual ("Person A") under section 62AB or 62D, then references in this section (except subsection (12)) to the person to whom the distribution was made shall be construed as referring to Person A only.".

32. After section 81B of the Law of 1975 insert the following section -

"Collection of tax on disregarded individual income and disregarded company income.

81BB. Notwithstanding the provisions of Chapter XII of Part IV (in

the case of a qualifying loan within the meaning of that Chapter) and sections 81A and 81B, tax shall not be deducted on disregarded individual income within the meaning of section 47D or on disregarded company income within the meaning of section 47I."

33. After section 139 of the Law of 1975 insert the following section -

"Right to carry forward post-2007 profits to future years."

139A. (1) Where -

- (a) in relation to any year of charge after 2007 a company has sustained a loss, and
- (b) in relation to any preceding year of charge after 2007 that company has accrued assessed income of class 2(2)(d),

then the company may claim that the income or any part thereof against which any loss has not previously been offset shall be carried forward to the year of charge in relation to which the loss was sustained and, as far as may be, set off against that loss.

(2) However, if the States by Resolution change the company standard rate under section 5(2) then income taxed at the new rate may not be carried forward under this section unless the Resolution specifically so provides."

34. In section 152(3) of the Law of 1975 for the words "standard rate" substitute "appropriate rate (applicable in respect of the income from which the payment was made)".

35. Sections 164 to 168A of the Law of 1975 are repealed.

36. In section 170(2)(b) of the Law of 1975 for "section fifty-seven of the principal Law" substitute "section 81B".

37. After section 173(1) of the Law of 1975 insert the following subsection -

"(1A) Where the person entitled to the income is a company, and the income is liable to be taxed in the company's hands at the company intermediate rate or the company standard rate, then, if the company distributes that income or any part thereof -

- (a) to an individual resident in Guernsey, or
- (b) to a company resident in Guernsey in a case where the income is liable to be taxed in that company's hands at the company intermediate rate or the company higher rate,

that individual or company shall be deemed to be the person entitled to the income and shall for the purposes of this section be entitled to the credit against tax or the balance of the credit by way of double taxation relief accordingly."

38. In section 174(1) of the Law of 1975 for "section fifty-seven of this Law (which relates to deduction of tax from Guernsey dividends)" substitute "section 81B".

39. Section 174(3) of the Law of 1975 is repealed.

40. In section 174(4) of the Law of 1975 in the definition of "**distribution**"^P for "section fifty-seven of this Law" substitute "section 81B".

41. In sections 191 and 192 of the Law of 1975 after the words "in any material particular," insert "or who fails to comply with section 68A,".

42. In section 199A of the Law of 1975^Q insert the following subsection -

"(7) A supplement is not payable in respect of the repayment of any tax deducted on the amount of a qualifying loan.".

43. In section 201A of the Law of 1975^R -

- (a) for the heading substitute "Offences relating to ETI certificates and deductions at source.",
- (b) after "81A" wherever appearing insert "or 81B", and
- (c) for "or under regulations made under subsection (4) of that section" substitute "that section or by regulations thereunder".

44. After section 203 of the Law of 1975^S insert the following section -

^P The word "distribution" was substituted for the word "dividend" by section 15 of this Law.

^Q Section 199A was inserted by No. VII of 2006.

^R Section 201A was inserted by No. XXVI of 1990.

^S The original section 204 was repealed by the Income Tax (Zero 10) (Guernsey) Law, 2007.

"Statements of Practice."

204. (1) The Administrator may issue statements of practice for the purpose of providing practical guidance in respect of any provision made by or under this Law and in connection with the administration of this Law.

(2) Statements of practice shall come into force on such date as the Administrator may appoint.

(3) The Administrator may revoke or vary any statement of practice, and a statement of practice may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(4) The Administrator shall publish statements of practice and any revision thereof in such manner as he considers appropriate.

(5) Statements of practice must be taken into account by the Administrator in exercising his functions under this Law.

(6) In any proceedings -

(a) before the appropriate body under section 76, or

(b) before the Royal Court on a reference or appeal from the appropriate body,

a relevant provision of a statement of practice may be relied on as tending to support or, as the case may be, defeat the Administrator's decision.

(7) The powers conferred by subsection (1) are without prejudice to any other power conferred by this Law to issue statements of

practice.

(8) Section 203A(2) applies to statements of practice as it applies to regulations."

45. (1) In section 209(1) of the Law of 1975 insert the following definitions in the appropriate places -

"appropriate rate" means the rate of income tax applicable to the class into which the income in question falls, as detailed in the Fifth Schedule,

"beneficial member" has the meaning assigned to it in section 62D(1),

"connected to" has the meaning assigned to it in section 66A(8)(a),

"corporate relationship" has the meaning assigned to it in section 66A(8)(a)(i),

"disregarded company income" has the meaning assigned to it in section 47I(1),

"disregarded individual income" has the meaning assigned to it in section 47D(1),

"distribution" has the meaning assigned to it in section 62AA,

"income from the ownership of land and buildings" means income from the ownership of land and buildings situate in Guernsey,

and cognate expressions shall be construed accordingly,

"participator" has the meaning assigned to it in section 66A(8),

"partnership relationship" has the meaning assigned to it in section 66A(8),

"personal relationship" has the meaning assigned to it in section 66A(8),

"property development" includes the exploitation of land by the exploration, excavation, excision, extrication, extirpation, exsiccation, expropriation or extraction or recovery of stone, minerals and other inorganic solid materials for the purpose of profit,

"qualifying loan" has the meaning assigned to it in section 66A(8),

"trust relationship" has the meaning assigned to it in section 66A(8).

(2) In section 209(1) of the Law of 1975 in the definition of "Guernsey" after "Herm" insert "and (for the avoidance of doubt) Alderney".

(3) In section 209(2) of the Law of 1975 before "amended" insert "from time to time".

46. In paragraph 1 of the Fourth Schedule to the Law of 1975^t after the words "Banking Supervision (Bailiwick of Guernsey) Law, 1994" insert -

"and any business that, in the usual course of its business, provides or makes available credit facilities.

"**Credit facilities**" means the making of any advance or the granting of any credit to customers and includes –

- (1) the provision, in connection with the supply of goods by hire-purchase, conditional sale or credit sale, of credit in instalments for which a separate charge is made and disclosed to the customer, and
- (2) any assignment to the business of an advance or credit repayable to a third person."

47. In paragraph 2 of the Fourth Schedule to the Law of 1975^u insert the following subparagraph -

"or (3) arising from the provision or making available of credit facilities."

48. In the Sixth Schedule to the Law of 1975^v after the words "Income tax on income from any other sources shall not be subject to this limit." insert -

^t The Fourth Schedule was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

^u The Fourth Schedule was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

^v The Sixth Schedule was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

"Income from non-Guernsey sources does not include any income arising or accruing from –

- (a) businesses carried on in Guernsey,
- (b) offices or employments held or exercised in Guernsey,
- (c) the ownership of lands and buildings situate in Guernsey, and
- (d) any other source in Guernsey,

and in determining for the purposes of this Schedule whether any income does arise in Guernsey the income may be traced through any number of companies, partnerships, trusts, agreements or other arrangements of any description and, for that purpose, section 62D(2) shall apply (subject to the necessary modifications) in determining whether a person has an interest in, or income arises from, any company, partnership, trust, agreement or arrangement through which the interest or income is traced."

Citation.

49. This Law may be cited as the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

Commencement.

50. This Law shall have effect, by virtue of the States' resolution of the 12th December, 2007^w, under and subject to the provisions of the Taxes and Duties

^w Article ** of Billet d'État No. ** of 2007.

(Provisional Effect) (Guernsey) Law, 1992^x, on and from the 1st January, 2008, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

^x Order in Council No. XI of 1992.