

TREASURY & RESOURCES DEPARTMENT

MISCELLANEOUS AMENDMENTS TO INCOME TAX LEGISLATION

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

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Dear Sir

1. Executive Summary

This Report proposes a number of amendments to income tax legislation as set out below:

- 1.1 In order to continue the programme of simplifying the Guernsey tax system, it is proposed that customers of the Income Tax Office will no longer be required to appeal against an interim (estimated) assessment. Provisions will be enacted permitting a customer who has been issued an interim assessment to request a suspension of part or the whole of the tax charged, if they consider it to be excessive, pending submission of the relevant tax return, along with a right of appeal, in the event of disputes. To deal with instances where a customer, who has been issued an interim assessment, fails to file a return for the relevant year within the time allowed, it is also proposed that the Income Tax (Guernsey) Law, 1975, as amended, (“the Income Tax Law”) be revised to enable the Director of Income Tax (“the Director”) to issue the person concerned with a final assessment (including estimates, as required), against which there would be a right of appeal.
- 1.2 That the Regulations governing the operation of the ETI Scheme be amended to require that coding notices, direction notices and other correspondence relating to the operation of the ETI Scheme, that pass between the Director and employers, should be transmitted by electronic means, unless, at his discretion, the Director agrees an alternative, in the case of any particular employer.
- 1.3 That section 62AC of the Income Tax Law, which was repealed with effect from 1 January 2013, be reinstated.
- 1.4 That the Income Tax Law be revised to authorise the Director, in his sole discretion, to make a payment to a person who provides information (subject to procedures to be set out by the Director in a Statement of Practice) which aids an

investigation by the Director and leads directly to the recovery of taxes which have been unpaid due to evasion of tax, by another person.

1.5 To reduce the burden for customers, the Director is expanding the number of customers who will not be required to complete an annual return of income. It is proposed, therefore, that the Income Tax Law is amended to provide that in specified cases the contents of the assessment, issued by the Director, are treated as if they were the contents of a return made by that customer. The Income Tax Law would then also place an obligation on the customer to notify the Director of any deficiencies, errors or other irregularities contained in the assessment, so that the Director is given the opportunity to revise the assessment to correct those. Any customer who receives an assessment that contains such deficiencies etc, and who did not notify the Director, would be treated, under the Income Tax Law, as having filed an incorrect return, in the event that the Director subsequently becomes aware of those deficiencies etc.

1.6 To amend both the Income Tax Law and:

(i) the States Housing (Rent and Rebate Scheme) (Guernsey) Regulations, 2005;

(ii) the Housing (Control of Occupation) (Guernsey) Law, 1994; and

(iii) the Right to Work (Limitation and Proof) (Guernsey) Law, 1990;

together referred to as “the Housing Legislation”, in order to provide for the exchange of information, between the Director and the Housing Department, and vice versa, for the purpose of ensuring the more efficient administration of that legislation.

1.7 To amend the Income Tax Law to make it clear that following the issue of an additional assessment, a right of appeal exists only in relation to the additional aspects of the assessment, and not to the elements that were in previous iterations of the assessment in respect of which the appeal process has already been exhausted, or the right to appeal has otherwise expired.

1.8 To amend section 51(5) and section 51A (2A) of the Income Tax Law to entitle an individual who is non-resident, or who is resident but not solely or principally resident, for income tax purposes, to 1/52nd of the annual amount of personal allowances to which a person who is solely or principally resident would be entitled, for each 7 days that they are in receipt of a Guernsey Old Age Pension, subject to the other provisions of those sections.

2. Report

2.1 Interim assessment procedures

Background

- 2.1.1 Section 73(2)(a) of the Income Tax Law permits the Director of Income Tax to issue, in respect of any source of income, an interim assessment for a year of charge to any person, at any time after the commencement of that year, on the estimated amount of their income for the whole of that year. In accordance with section 81(1), tax charged in an interim assessment is payable in two equal instalments. The first instalment is due on or before 30 June in that year, or within 30 days of issue, if the interim assessment has not been made before 1 June in that year. The second instalment is due on or before 31 December in that year, or within 30 days of issue, if the assessment is made after 1 December in that year.
- 2.1.2 Approximately 5,000 interim assessments are issued, normally in May, each year, mostly to those individuals who are self-employed or have significant investment income, or other income which does not have tax deducted at source. Interim assessments are not issued to persons such as the employed/pensioners, whose tax liability is met substantially by deductions at source (e.g. under the ETI Scheme).

Interim assessments are also issued to companies with income taxable at the intermediate (10%) or higher (20%) company rates.

- 2.1.3 The purpose of the interim assessment procedure is to ensure timely collection of tax during the year in which the income accrues (because tax is due to be paid at the end of June and the end of December in the relevant year) in advance of the relevant tax return being filed.
- 2.1.4 In the normal course of events, a person receiving an interim assessment will lodge an appeal within the 30 day time limit prescribed by section 76 and make a suggestion to the Director of the amount of tax that should be paid on account of the ultimate liability, if they believe the interim assessment to be too high (or, indeed, too low). It is at the Director's discretion whether such an application is accepted, although, as most applications are made on a reasonable basis, rejections of applications are rare. Underpayment of tax on an interim assessment, subsequently found to have been due, may result in late payment surcharges being imposed at a later date, and so most customers do not make requests for excessive suspension of tax. Tax advisers generally lodge "bulk" appeals against interim assessments on behalf of their clients. Many unrepresented customers will lodge appeals on their own behalf. Once the relevant tax return has been filed, the interim assessment is then revised (to become a "final assessment") and the customer will make a payment of any additional tax due, or receive a repayment of any amount overpaid. Recognising that not everyone is represented by a tax adviser, and may not understand the appeals process, it has been the practice of the Director, and his predecessors, over many years, to revise interim assessments after

receipt of a return, notwithstanding that a formal appeal may not have been lodged. This has been a convenient administrative practice to ensure that customers are not left with excessive tax bills due to their lack of understanding of the appeals system.

Proposals

- 2.1.5 In light of this administrative practice, the Department has reviewed the desirability of continuing with the existing statutory appeals process in relation to interim assessments, and the present regime under which a customer could seek a deferral of payment of part of the tax charged in the interim assessment. The purpose of the review was to determine whether the legislation, and the consequent administrative processes linked to it, could be revised in the interests of achieving greater simplicity and easing administrative burdens for customers, as well as the Income Tax Office (which currently has to process several thousand such appeals each year, most of which are subsequently resolved simply by the affected person filing the relevant tax return).
- 2.1.6 The Department and the Director firmly believe that there needs to be certainty, both for the customer and the Income Tax Office, in what amounts will be payable following the issue of an interim assessment. For example, absent express conditions, and if the appeal provisions were repealed for interim assessments, some customers may not take action to make a recommendation for deferral of part of the tax charged in the interim assessment until the tax is already overdue and collection enforcement procedures are underway, which may interfere with the proper collection of tax. Whilst, arguably, the provisions of the late payment surcharge regime would mitigate against such behaviour, it would seem reasonable, if the necessity to appeal was to be removed (and replaced with an obligation on the Director to revise the assessment, to a final assessment, on receipt of the relevant return), for any request for suspension of part of the tax charged in the interim assessment to be made within a certain time frame. A common time frame within the Income Tax Law is 30 days (and, indeed, that is currently the time allowed for a customer to lodge an appeal against an assessment), although provision could be made for the Director to admit requests made outside of that period, if he considered it appropriate to do so (the granting of such an extension being at his discretion).
- 2.1.7 There could be occasions when a customer requests suspension of all or part of the tax charged in an interim assessment, but the Director believes that the request is excessive. At present, because suspensions of tax are currently at the discretion of the Director, there is no right of appeal against a refusal to defer payment of tax (although there may be a right to judicial review or appeal under the Administrative Decisions Law). The Department believes, therefore, that if the provisions relating to appeals

against interim assessments are to be repealed, there should be an express provision introduced into the legislation permitting a right of appeal to the Guernsey Tax Tribunal against a refusal by the Director to defer payment of tax charged in an interim assessment (because, at present, a customer could appeal against an interim assessment and, as a consequence of that appeal, the Tribunal could reduce the amount of the interim assessment – based on evidence given during the appeal hearing by the appellant – which would, in turn, reduce the amount of tax payable under the interim assessment).

2.1.8 The removal of the appeal provisions in respect of interim assessments would create a practical issue, however, in respect of those (albeit relatively few) customers who receive an interim assessment but then fail to submit the relevant return within the time allowed. Under the present mechanism:

- (i) if an appeal had been lodged against the interim assessment, that would be listed for a hearing by the Guernsey Tax Tribunal, and if the customer continued to fail to file the return, the appeal would probably be dismissed and the assessment confirmed; or
- (ii) if an appeal was not lodged, the tax in the interim assessment would be pursued and, if the Director considered it appropriate, an additional assessment would be issued.

2.1.9 In order to deal with the above, the Department proposes that, combined with the proposals above, a new procedure be introduced into the Income Tax Law whereby, at a time determined by the Director, for those customers who have received interim assessments but have not filed their returns (notwithstanding that the time limit for filing the returns had passed), the Director may issue a final assessment (including further estimates, as required) and would then pursue any tax owing on that final assessment, any deferral of collection being solely at his discretion. If the customer appealed the final assessment, that appeal would be listed for a hearing by the Guernsey Tax Tribunal, and if the Tribunal dismissed that appeal the assessment would then be “final and conclusive” under section 79(2) of the Income Tax Law (and would thereafter not be revised, even if the relevant return was subsequently submitted).

2.1.10 One significant advantage of a system as set out above is that instead of the Income Tax Office having, potentially, several thousand appeals against interim assessments to deal with each year, the number of appeals would be limited to those customers who received interim assessments and who then failed to submit their returns (in recent years this has been approximately 80 persons per annum only) and any customers who have a dispute with the Director over a refusal by him to agree a request for deferral of payment of tax charged in an interim assessment (and based on

historical experience, this is expected to be the exception rather than the rule). In addition, customers who do not wish to request a deferral of any of the tax payable in an interim assessment, because they are prepared to accept it as a reasonable estimate of their likely final liability, will know that, notwithstanding that they have not submitted an appeal to the Director, their assessment will be revised when their return is submitted, as a consequence of the operation of the Income Tax Law, rather than relying on administrative practice, which is the case at present.

2.1.11 For the avoidance of doubt, the proposal would be that in the case of a final assessment, deferral of tax charged in the assessment would only be at the discretion of the Director (as is currently the case for all kinds of assessments). The right to have recourse to the Tribunal in relation to a refusal to agree a deferral of tax would only exist in connection with an interim assessment. This would be for the reason that, in relation to an interim assessment, there would be no right of appeal against the assessment itself, but in the case of a final assessment such a right of appeal would continue to exist. In this way, the customer will not be disadvantaged, overall.

2.1.12 The Taxation Sub-Committee of the Guernsey Society of Chartered and Certified Accountants has been consulted in respect of this proposal, as its members and their clients would be affected by it, and has indicated that it has no substantive concerns, and appreciates the administrative savings that would accrue to customers and the Income Tax Office.

The members of the Guernsey Tax Tribunal have also been consulted and have agreed that the proposals are reasonable and a better use of the Tribunal's resources.

2.1.13 In summary, the Department proposes:

2.1.13.1 that the right of appeal, in respect of a person who is aggrieved by an interim assessment, is repealed;

2.1.13.2 that, subject to 2.1.13.5 below, the Income Tax Law should specify that an interim assessment would be revised to become a final assessment, once the relevant return had been filed, notwithstanding the absence of an appeal;

2.1.13.3 that provisions be enacted permitting a person served with an interim assessment to request a suspension of part or the whole of the tax charged in the interim assessment, if they consider it to be excessive, such a request to be made within thirty days of the date of issue of the assessment (or longer, at the discretion of the Director);

2.1.13.4 that provision be made for disputes, in relation to a refusal by the Director to admit an application for deferral of payment, to be resolved by way of a hearing by the Guernsey Tax Tribunal;

2.1.13.5 that, in order to deal with instances where a person, who is served with an interim assessment, fails to file a return for the relevant year within the time allowed, the Income Tax Law be revised to permit the Director to issue the person concerned with a final assessment (including estimates, as required), against which there would be a right of appeal, but any request subsequently made for suspension of tax charged in that assessment would be admitted only at the discretion of the Director, with no right of appeal if such application is denied.

2.2 Electronic Communications under the ETI Scheme

Background

2.2.1 Under section 81A(4) of the Income Tax Law, the Department may make Regulations in relation to the operation of the ETI Scheme. Under section 81A(5), however, any such Regulations shall not have effect unless and until approved by Resolution of the States.

2.2.2 Since 2009, the Regulations have provided that where a document is required to be submitted to the Director, by an employer, that document shall be submitted by electronic means, or by such other means as the Director may require, in any particular case or class of cases. This has led to substantial administrative efficiencies in the operation of the ETI Scheme, whilst providing protection for those, relatively few, employers who, for whatever reason, do not have, or are unable to use, electronic methods for submitting documents to the Director, and who the Director has excused from this requirement.

2.2.3 There is no similar requirement to correspond using electronic means in relation to coding notices, direction notices or other correspondence relating to the ETI Scheme, which pass from the Director to the employer, or from the employer to the Director, however.

Proposals

2.2.4 The Department believes that permitting the Director to require an employer to accept coding notices, direction notices and other correspondence relating to the ETI Scheme, by electronic means, and requiring employers to correspond in relation to such matters with the Director by electronic means, could give further efficiencies in the operation of the ETI Scheme.

- 2.2.5 Whilst, for many employers, routinely corresponding with the Income Tax Office electronically is already commonplace (because the majority already do so in relation to documents they are required to submit under the ETI Regulations), as noted above, this is currently voluntary.
- 2.2.6 The Department proposes, therefore, that the ETI Regulations should be revised accordingly, but should include a similar protection for those (exceptional) cases where the Director agrees, on a case by case basis, that it would be inappropriate to require electronic communication to and from an employer (and, in practice, the Department anticipates that this proviso would affect, in the main, those employers for whom a special arrangement already exists in relation to the submission, by them, of documents under the ETI Scheme).

2.3 Distributions by exempt, and related, companies

Background

- 2.3.1 Following the introduction of “zero 10”, and with effect from 29 April 2009, the general principle in the Income Tax Law has been that when a distribution was made by a company, or was deemed to be made by a company, that distribution was deemed to be received by the beneficial member of the company making the distribution (which may be a different person to the person actually receiving the distribution – for example, where there was a chain of companies between the company making the distribution and the ultimate beneficial owner).
- 2.3.2 In order to avoid administrative difficulties for Guernsey’s substantial fund industry (within which most exempt companies operate) a provision was introduced into the Income Tax Law – section 62AC – which provided that a beneficial member of an exempt company would only be taxable in respect of any actual or deemed distributions of the exempt company, or of any other company the shares in which were held by the exempt company, when they were paid by the exempt company (that is, distributions and deemed distributions related to shares held as assets of the exempt company would be ignored for this purpose unless actually paid out by the exempt company).
- 2.3.3 Following a decision by the EU Code of Conduct Group, that Guernsey’s deemed distribution regime was considered “harmful”, the States agreed that the provisions of the deemed distribution regime be repealed. As a consequence, a number of sections of the Income Tax Law had to be revised or repealed. One of the sections repealed was section 62AC.
- 2.3.4 It has become apparent, however, that repeal of section 62AC has left a potential residual issue in relation to the provisions of section 62AB of the Income Tax Law.

- 2.3.5 Under the provisions of section 62AB, and by way of an example, if the shares in a Guernsey resident company are owned by an exempt company (and for the purposes of the Income Tax Law an exempt company is treated as not resident in Guernsey) any actual distribution made by the resident company is deemed to have been made to the beneficial member of the exempt company. In effect, therefore, some of the issues that the enactment of section 62AC were designed to avoid remain, notwithstanding the repeal of the deemed distribution rules.

Proposals

- 2.3.6 For that reason, the Department proposes that the provisions of section 62AC be reinstated so that where an exempt company owns shares in another company, actual distributions by that other company, to the exempt company, are not treated as income of the beneficial member.

2.4 Payments for information

Background

- 2.4.1 Within the Income Tax Office, the primary responsibility for detecting and overseeing the investigation of tax evasion and avoidance is delegated, by the Director, to the Compliance & Investigation Unit (“CIU”).
- 2.4.2 The CIU uses a number of methods to identify cases which would warrant investigation. The aim is to identify cases where a positive result (by way of recovery of tax, late payment surcharges and penalties) is more likely than not and where the costs of making that recovery are outweighed considerably by the amount of the recovery itself.

These methods include, inter alia, the use of information received from one person who has knowledge relevant to the tax affairs of another.

Information currently received in this way is generally anonymous and so, even in those cases where the information could be potentially beneficial, there is often no way of making contact with the person providing the information, to seek clarification/additional information. Even if contact could be made, the person concerned may be reluctant to assist further.

- 2.4.3 In the United Kingdom, section 26 of the Commissioners for Revenue & Customs Act 2005 gives authority for payments to be made to persons providing information. The actual wording of the legislation is:

“The Commissioners may pay a reward to a person in return for a service which relates to a function of:

- (a) the Commissioners, or
- (b) an officer of Revenue & Customs.”

HM Revenue and Custom’s website contains the following explanation:

“You may receive a cash reward for your information. However, this will depend on what is achieved as a direct result of the information you provide and is awarded at the discretion of HM Revenue & Customs.”

Other similar regimes, albeit with variations, exist in other countries, such as the United States and Canada.

Applicability of such a scheme in Guernsey

- 2.4.4 As indicated above, the Director already receives information, of varying degrees of quality and, in some circumstances, he is unable to utilise it to its full extent.

It is probable, however, that there are other persons who will be aware of the tax evasion activities of Guernsey taxpayers, and if that information was provided to the Director this could enable the CIU to commence an investigation that otherwise may not be commenced or to progress an ongoing investigation more quickly and efficiently than would otherwise be the case. This could have the dual benefit of increasing general revenue whilst also reducing the amount of resources that the CIU has to invest in the actual investigation process. A facility for making payments to persons providing such information may increase the number of instances where this occurs.

- 2.4.5 In most cases, it is probable that any payment would be less than the amount of any late payment surcharges and penalties that the tax evader would be required to pay (in addition to the tax evaded). If, therefore, a system was introduced in Guernsey, similar to that existing in the United Kingdom, whereby, in certain circumstances, those providing information may receive a payment for the information provided, this should ultimately prove beneficial to the Island’s general revenue.

- 2.4.6 It is anticipated that such a system could operate in Guernsey as follows (and it is proposed that the following outline would be included in a Statement of Practice to be issued by the Director):

- 2.4.6.1 A person wishing to claim a reward would identify themselves to the Director at which point they would be expected to outline the nature of the information that they hold.

- 2.4.6.2 It would be made clear that no promise could be made in advance that a reward would be paid as this would depend solely upon the value of the information to any investigation, which could only be determined at the end of the investigative process. The person would also be advised that it would not be possible to advise them of the actual outcome of the investigation.
- 2.4.6.3 Nevertheless, if it was determined that their information was of significant benefit to the investigation, at the Director's discretion a reward may be paid, of up to 15% of the amount of tax actually collected as a consequence of the investigation, which had not been assessed previously, owing to omissions of income or other irregularities in another person's submitted income tax returns or owing to a failure by another person to submit a tax return in the first place. The reward would not, however, take into account any late payment surcharges or penalties which may be imposed. It is currently proposed that the maximum reward that could be paid in any single instance of information being provided would be limited to £250,000.
- 2.4.6.4 The person would then be asked to provide all of the information that they hold which they consider to be of relevance. If they wish to continue to be eligible for a reward, they would also have to undertake to answer reasonable requests from the Director for additional information which they hold and to provide clarification on the information they have already provided, if required.
- 2.4.6.5 The investigative process would then be undertaken and at the conclusion of that process, and once the additional amount of tax collected as an immediate consequence of the investigation, was known, the investigating officer would prepare a report for the Director in which he evaluated how useful the information was to the successful conclusion of the investigation, taking into account (as well as any other matter relevant to the case):
- (i) the amount of investigative time, and therefore resource, that provision of the information saved;
 - (ii) the amount of tax, late payment surcharges and penalties which were generated at the formal termination of the investigation and, in the case of the tax, the amount actually collected if different to the amount due, and the extent to which they were directly attributable to the information provided;

- (iii) an overall evaluation of how useful the information received had been to the successful outcome;
- (iv) how co-operative the person had been in providing additional information/explanations if requested to do so; and
- (v) the investigating officer's recommendation of the level of reward, if any, that should be paid, subject to the limits set out in paragraph 2.4.6.3 above.

2.4.6.6 The Director would then consider the investigating officer's proposal and reach a conclusion on whether a payment should be made and, if so, the amount.

2.4.6.7 For the avoidance of doubt, in order to qualify for consideration of such a payment, the person seeking the reward would need to approach the Director voluntarily, and without prior prompting from the Director, providing details of the suspected evasion of income tax. A payment would not be made available to anyone who was approached by the Director and asked, formally or otherwise, to provide information concerning another person. In addition, payments would not be made to

- any person who came into the possession of the relevant information disclosed to the Director as a consequence of any function, duty or task that they may have undertaken for or on behalf of the States of Guernsey, or as a Member of the States, or as a non-elected Member of a States Department or other States entity; or
- members of professions who were under a professional or ethical obligation to make disclosure, or other persons in a corresponding position.

2.4.7 As any such system would amount to payments out of general revenue to a third party, such payments would have to be based upon an appropriate legislative provision authorising them to be made by the Director (such as is contained in the United Kingdom's Commissioners for Revenue & Customs Act 2005, as set out above).

Proposals

2.4.8 It is proposed that the Income Tax Law be revised to allow for payments to be made to a person who provides information, which facilitates an investigation by the Director and leads directly to the recovery of taxes which have been unpaid due to evasion of tax by another person, subject to

conditions, within which the Director will exercise his discretion to make a payment (such as the maximum payment that may be made in any one instance), to be set out in a Statement of Practice by the Director.

2.4.9 The Income Tax Law would also be revised to provide that:

2.4.9.1 payments under the scheme are taxable;

2.4.9.2 the Director be indemnified from any claim of breach of confidentiality, under the provisions of the Income Tax Law, in connection with any aspect of the administration of the scheme.

2.4.9.3 the Director can lawfully use the information for the purposes of his functions under the Income Tax Law;

2.4.9.4 the operation of the scheme will be without prejudice to the other powers available to the Director (including, for example, his powers to serve an information notice under section 75B of the Income Tax Law); and

2.4.9.5 the information received is to be confidential and would be disclosed only in limited circumstances (e.g., for the investigation of crime or pursuant to an order of the court).

2.5 Assessments not based on income tax returns

Background

2.5.1 As part of the ongoing review of the income tax system, to identify efficiencies and to reduce administrative burdens, both for the taxpaying public and the Income Tax Office, the Director has identified a number of situations in which individuals could be relieved of the annual burden of completing an income tax return.

2.5.2 The first group of individuals to benefit from this are those who have the most straightforward tax affairs. For those individuals who receive only Guernsey employment income or occupational pensions (where the majority of tax due is already deducted under the provisions of the ETI Scheme) the Director already holds sufficient information, from periodic returns made by employers and pension providers, to be able to generate assessments without the need for the affected individuals to complete a tax return. This process is already under way.

2.5.3 The Director is looking at ways of increasing the number of individuals who could be included in this group, however, and a number of other initiatives will assist in that. In December 2013, the States approved proposals for details of interest to be reported directly to the Director by

Guernsey financial institutions. In addition, through the formal information gateway that exists between the Director and the Social Security Department, agreement has been reached for the Social Security Department to provide to the Director, on an annual basis, details of Guernsey Old Age Pension payments.

Going forward, therefore, where an individual's income consists only of one or more of:

- Guernsey employment income,
- Guernsey occupational pension,
- Guernsey bank interest,
- Guernsey Old Age Pension,

and they claim no allowance or deduction other than the basic personal allowances, the Director may be able to issue assessments without the need for that person to complete an income tax return each year.

2.5.4 These initiatives have the potential to have a considerable impact on the administrative obligations placed on a significant proportion of the taxpaying public, with consequent benefits for those individuals and the Income Tax Office.

Proposals

2.5.5 Such a move does come with an element of risk for general revenues, however, if the information available to the Director was incorrect (for example, because an employer or a financial institution had sent the Director information which was incomplete or otherwise erroneous, or if the Director was not aware of the full extent of someone's income, because an employer or a pension provider had not reported income under the ETI Scheme when they ought to have done so, or if the person being assessed had commenced to receive a source of income of which, at that time, the Director was unaware).

2.5.6 It can be anticipated that if a person received an assessment that was excessive (that is, it included more income than the person being assessed had received, or it included fewer allowances and deductions than those to which the person being assessed was entitled) then the assessed person may raise those issues with the Director. Many persons would do the same if the assessment did not reflect all of the assessed person's income, or if it overstated the allowances or deductions to which the person was entitled. There is a possibility, however, that not every person would do so, with a consequential potential loss to General Revenue. To minimise this risk,

the Department proposes that the Income Tax Law be revised to provide a mechanism which would place an obligation on persons receiving an assessment, and who had been specifically relieved of the obligation to file an income tax return for the relevant year, to notify the Director of any deficiencies, errors or other irregularities contained in the assessment, and that the consequences for failing to do so would be the same as if the person concerned had made an incorrect or incomplete return.

2.5.7 In broad terms, it is proposed that the mechanism would work in the following way:

2.5.7.1 It would affect only those persons who had been notified by the Director, in writing, that they are excused from the requirement to make a return under the provisions of section 68 of the Income Tax Law, in respect of any year of charge.

2.5.7.2 It would affect notices of assessment sent to persons referred to in the subparagraph above, issued under any provision of the Income Tax Law.

2.5.7.3 The person receiving the assessment would be deemed to have made a return for that year of charge containing the same sources and amounts of income, and making the same claims to personal and other allowances, reliefs and deductions, as are contained in that assessment.

2.5.7.4 If, within thirty days of the date of the issue of the assessment, the person assessed notified the Director, in writing, of any deficiencies, errors or other irregularities contained in the assessment (an “amending notice”), the return that he or she is deemed to have made, for that year, will be deemed to have been made in accordance with the amending notice given to the Director and so much of the assessment as remained unaltered (and no adverse tax consequences would arise for the person concerned, such as a liability to penalties).

2.5.7.5 If, for whatever reason, it has not been possible for the Director to revise the assessment within 30 days of receiving an amending notice, the Director would issue confirmation of receipt of the notice.

2.5.7.6 After discussion with the person concerned, if necessary, the Director may then make a further assessment on them, taking into account the contents of the amending notice, if he considers it appropriate to do so.

2.5.7.7 An amended assessment, or a confirmation of receipt of an amending notice referred to in sub-paragraph 2.5.7.5 above, issued by the Director, will be treated as conclusive evidence, for all the purposes of the Income Tax Law, that a return was made in accordance with the notice of assessment, as adjusted by the amending notice or as set out in the amended assessment (as the case may be).

2.5.7.8 It is proposed, however, that the Income Tax Law would make it clear that this provision does not in any way limit the power of the Director to make any enquiry into any aspect of a person's income tax affairs, make any assessment, impose any penalty or make any order or direction or exercise any other relevant function that is otherwise allowed by law.

2.6 Information Exchange between the Income Tax Office and Housing Department

Background

2.6.1 As a consequence of an Oath of Secrecy that has to be taken by every person working in the Income Tax Office, there are significant restrictions on the persons to whom the Director may give information which has been provided to him. In 2008, the Income Tax Law was amended to permit information to be disclosed to the Social Security Department or the Administrator thereof, to assist in their respective functions under the Social Insurance (Guernsey) Law, 1978 (or any other enactment conferring functions on them). Similarly, amendments were made to the Social Insurance Law to permit the Administrator to disclose information to the Director to assist him in carrying out his functions under the Income Tax Law.

2.6.2 Under data protection legislation, the Housing Department is not permitted to disclose information to persons outside of that Department, without the consent of the person to whom the information relates, except disclosures for the purposes of criminal proceedings or for the investigation of crime.

2.6.3 Whilst the purposes of the Income Tax Office and the Housing Department differ substantially, there are occasions when information held by one would be of assistance to the other, in discharging its official functions. One example is in investigating possible infractions of the island's Right to Work or Rent Rebate legislation and procedures, it may assist the Housing Department to have details of a person's income, or sources of income, which are available in the Director's records.

Proposals

- 2.6.4. The Treasury and Resources Department proposes that the Income Tax Law be revised to provide that the Director may pass information, which he has received in the exercise of his official functions and which he has reason to believe may assist the Housing Department in fulfilling its functions under the Housing Legislation, and the Housing Department may in turn use the information so provided for the purpose of carrying out those functions.
- 2.6.5 The Housing Department proposes that the Housing Legislation be similarly revised to allow the Housing Department to pass information, which it has received in the exercise of its official functions and which it has reason to believe may assist the Director in fulfilling his functions under the Income Tax Law; and the Director may in turn use the information so provided for the purpose of carrying out those functions.
- 2.6.6 In bringing forward these proposals, the Treasury and Resources Department is mindful of the States' 2013 Resolutions (Billet d'Etat XI, 2013 refers) concerning the replacement of the Housing Control regime with a Population Management regime. It is with these impending changes in mind that the Treasury and Resources Department also proposes that, for the reasons explained above, similar provision for the exchange of information is included in the future Population Management Law.

2.7. Appeals against Additional Assessments

Background

- 2.7.1 The Income Tax Law provides for different types of income tax assessment. For example, under section 73(2), the Director is empowered to issue interim and final assessments. Interim assessments are based on the Director's estimate of a person's liability and are normally issued during the early part of the year to which they relate, to ensure that the person assessed makes a payment on account of their ultimate tax liability for that year, during the course of the year (normally in June and December). Final assessments are normally issued after a person submits their tax return for the relevant year (and a final assessment may be a revision of a previous interim assessment, or a "stand alone" assessment, if it has not been necessary for the Director to issue an interim assessment, as may be the case, for example if a person's tax liability is satisfied principally by deduction of tax under the ETI Scheme).
- 2.7.2 Whilst the vast majority of customers will only receive interim or final assessments, section 75 of the Income Tax Law provides for the issue of additional assessments in the event that the Director "... discovers that any income that ought to have been assessed has not been assessed, or that the assessment of any income is or has become insufficient" Additional assessments are used, for example, to enable the Director to assess

additional tax as a consequence of attempted tax avoidance, errors, negligence and fraud, that come to his notice after the issue of a final assessment.

- 2.7.3 From time to time, a person may attempt to use the occasion of the issue of an additional assessment to reopen matters which were included in a previous assessment issued for the same year of charge, notwithstanding that an appeal against that earlier assessment may have been made and dealt with (either by agreement between the appellant and the Director, or by determination by the Guernsey Tax Tribunal), or if the person concerned failed to lodge an appeal against that earlier assessment during the time allowed by law.

Proposals

- 2.7.4 The Department considers that an additional assessment should create a right of appeal only in respect of the additional elements of the assessment, and not in respect of elements of the assessment that are unchanged from the earlier assessment, or which have been determined by the Guernsey Tax Tribunal following an appeal against the earlier assessment. In the case of determinations by the Tribunal, this may be inferred from section 79(2) of the Income Tax Law, which provides that (subject to the right of appeal to the Royal Court, in the event of a claim that the determination was erroneous in law), "... orders made by the Tribunal shall be final and conclusive". However, it may be argued that the issue of a subsequent, additional, assessment creates a new right of appeal against the whole of the assessment, notwithstanding section 79(2). The situation is arguably even less clear cut in the event that the person assessed simply failed to exercise their right to appeal against the earlier assessment. The Department believes, however, that the same consequences should follow if a person does not lodge an appeal within the time allowed by law, as would follow from a determination by the Tribunal, and that the issue of an additional assessment should not provide an opportunity to re-open matters which could otherwise no longer be appealed.

- 2.7.5 The Department proposes that the Income Tax Law be amended to put this beyond doubt on the face of the law.

2.8. Non-resident pensioners – entitlement to personal allowances

Background

- 2.8.1 Under section 51(5) of the Income Tax Law, an individual who is non-resident for Income Tax purposes is entitled to 1/52nd of the personal and other allowances to which a person who is solely or principally resident is entitled, for each 7 days they are in receipt of a pension from a Guernsey source, if the pension is taxable and subject to deduction of tax under the

Income Tax Law (this covers occupational pension schemes). The allowances can only be offset against the pension concerned, and not against other sources of income. Section 51(7) also limits the total allowances that such a person may receive for any year to those that could be claimed by a person who is solely or principally resident (so that someone with a number of occupational pensions does not receive multiple entitlements to personal allowances for the same year). Section 51A(2A) extends this entitlement to allowances, with similar restrictions (in section 51A(3)), to persons who are resident but not solely or principally resident.

- 2.8.2 At present, the entitlement to personal allowances, as set out above, does not extend to such recipients of the Guernsey Old Age pension because, although it is a taxable source of income in Guernsey, it is not subject to deduction of tax at source.
- 2.8.3 For many years there has been a Statement of Practice in place to the effect that tax would not be charged if a non-resident individual was in receipt of a Guernsey Old Age pension. This creates a potential anomaly for persons who receive such pensions but who also receive other sources of income from Guernsey sources, as the overall effect may be that those persons do not pay as much tax on their Guernsey sources as a solely or principally resident person would, in the same financial circumstances.

Proposal

- 2.8.4 The Department considers that, to regularise this anomaly, sections 51(5) and section 51A(2A) of the Income Tax Law should be revised to entitle a person who is non-resident, or who is resident but not solely or principally resident, for income tax purposes, to 1/52nd of the annual amount of personal allowances to which a person who is solely or principally resident would be entitled, for each 7 days that they are in receipt of a Guernsey Old Age Pension, subject to the other provisions of those sections. The Statement of Practice, referred to at 2.8.3, would then be repealed.

3. Legislation

- 3.1 Following Royal Assent to the Income Tax (Zero 10) (Guernsey) Law, 2007, the Income Tax Law was amended to introduce section 208C, which permits the States to amend the Income Tax Law by Ordinance. This is the process which will be used to give effect to all the amendments proposed in this Report, except for the amendment proposed in 2.2, which will be by Regulations.
- 3.2 The Law Officers have been consulted about these proposals.

4. Resource Implications

- 4.1 There will be a positive overall impact on staff resources at the Income Tax Office (and, in relation to 2.6 of this Report (Information Exchange between the Income Tax Office and Housing Department), staff resources of the Housing Department) if these proposals are approved.
- 4.2 The amendments to the Income Tax Law, as referred to in 2.4 (Payments for information), 2.6 (Information Exchange between the Income Tax Office and Housing Department), and 2.8 (Non-resident pensioners – entitlement to personal allowances) of this Report may have a beneficial impact on General Revenue, although the extent of this is currently not measurable.
- 4.3 If the proposals relating to interim assessments (paragraph 2.1.13) are approved, computer system changes would be required to accommodate the change, following which there would be a small positive impact on staff resources at the Income Tax Office.
- 4.4 If the proposals relating to persons who are assessed without having made an income tax return (paragraph 2.5.7) are approved, computer system changes would be required to accommodate the change, following which there would be a positive impact on staff resources at the Income Tax Office, which, in the long term, would allow the Director to deploy those resources to other purposes, such as dealing with persons whose tax affairs are of a complex nature, and the countering of domestic tax evasion and avoidance.
- 4.5 It is anticipated that the computer changes referred to above, and attendant costs of communicating the changes to the public, will cost approximately £33,000, which will be funded from within the Treasury and Resources Department's existing budget.

5. Recommendations

The Treasury & Resources Department recommends that the States agree that the Income Tax Law be revised and Regulations be made, as appropriate, as follows, all amendments to become effective from the date of enactment of the relevant Ordinance and Regulations:

- 5.1. In relation to the proposals relating to interim assessments set out in paragraph 2.1:
 - 5.1.1 that the right of appeal in respect of a person who is aggrieved by an interim assessment to appeal is repealed;
 - 5.1.2 to specify, subject to 5.1.5 below, that an interim assessment would be revised, to become a final assessment, once the relevant return had been filed, notwithstanding the absence of an appeal;

- 5.1.3 to permit a person served with an interim assessment to request a suspension of part or the whole of the tax charged in the interim assessment, if they consider it to be excessive, such a request to be made within thirty days of the date of issue of the assessment (or longer, at the discretion of the Director);
 - 5.1.4 to make provision for disputes, in relation to a refusal by the Director to admit an application for deferral of payment, to be resolved by way of a hearing by the Guernsey Tax Tribunal;
 - 5.1.5 in order to deal with instances where a person, who is served with an interim assessment, fails to file a return for the relevant year within the time allowed, to permit the Director to issue the person concerned with a final assessment (including estimates, as required), against which there would be a right of appeal, but any request subsequently made for suspension of tax charged in that assessment would be admitted only at the discretion of the Director, with no right of appeal if such application is denied.
- 5.2 That, as set out in paragraph 2.2, the Regulations governing the operation of the ETI Scheme be amended to require that coding notices, direction notices and other correspondence relating to the operation of the ETI Scheme, that pass between the Director and employers, should be transmitted by electronic means, unless, at his discretion, the Director agrees an alternative, in the case of any particular employer or class of employer.
- 5.3 To reinstate, as set out in paragraph 2.3, section 62AC of the Income Tax Law, which was repealed with effect from 1 January 2013.
- 5.4 In relation to the proposals to make payments for information set out in paragraph 2.4:
- 5.4.1 to allow for reward payments to be made to a person who provides information, which aids an investigation by the Director and leads directly to the recovery of taxes which have been unpaid due to evasion of tax by another person subject to conditions within which the Director will exercise his discretion to make such a reward payment (such as the maximum payment that may be made in any one instance), to be set out in a Statement of Practice, by the Director:
 - 5.4.2 to provide that payments under the reward scheme would be taxable;
 - 5.4.3 to indemnify the Director from any claim of breach of confidentiality, under the provisions of the Income Tax Law, in connection with any aspect of the administration of the reward scheme;

- 5.4.4 to provide that the Director can lawfully use the information for the purposes of his functions, under the Income Tax Law, and that the information received is to be confidential and only disclosable in limited circumstances (eg, for the investigation of crime or pursuant to an order of the court);
 - 5.4.5 the operation of the scheme will be without prejudice to the other powers available to the Director (including, for example, his powers to serve an information notice under section 75B of the Income Tax Law).
- 5.5 In relation to the proposals set out in paragraph 2.5 relating to assessments issued to persons who have not been required to complete an income tax return:
- 5.5.1 that the person receiving the assessment would be deemed to have made a return for that year of charge, under section 68 of the Income Tax Law, containing the same sources and amounts of income, and making the same claims to personal and other allowances, reliefs and deductions as are contained in that assessment;
 - 5.5.2 that if, within thirty days of the date of the issue of the assessment, the person assessed notified the Director, in writing, of any deficiencies, errors or other irregularities contained in the assessment (“an amending notice”), the return that he or she is deemed to have made, for that year, will be further deemed to have been made in accordance with the amending notice given to the Director and so much of the assessment as remained unamended;
 - 5.5.3 that, within 30 days of receiving an amending notice, the Director would be required to issue confirmation of receipt of the amending notice;
 - 5.5.4 that the Director may then make a further assessment on the person concerned, taking into account the contents of the amending notice, if he considers it appropriate to do so.
 - 5.5.5 that the confirmation of receipt of an amending notice, issued by the Director, or an amended assessment referred to in 5.5.4, will be treated as conclusive evidence, for all the purposes of the Income Tax Law, that a return was made in accordance with the notice of assessment, as adjusted by the amending notice or as set out in the amended assessment (as the case may be); and
 - 5.5.6 that this provision does not in any way limit the power of the Director to make any enquiry into any aspect of a person’s income tax affairs, make any assessment, impose any penalty or make any order or direction or exercise any other relevant function that is otherwise allowed by law.

- 5.6 As set out in paragraph 2.6, to amend the Income Tax Law to provide that the Director may pass information, which he has received in the exercise of his official functions, to the Housing Department, for the purpose of assisting the Housing Department in fulfilling its functions under the States Housing (Rent and Rebate Scheme) (Guernsey) Regulations, 2005, the Housing (Control of Occupation) (Guernsey) Law, 1994 and the Right to Work (Limitation and Proof) (Guernsey) Law, 1990 (“the Housing Legislation”); and that the Housing Department may in turn use the information so provided for the purpose of carrying out those functions.
- 5.7 As set out in paragraph 2.6, amend the Housing Legislation to provide that the Housing Department may pass information, which it has received in the exercise of its official functions, to the Director, for the purpose of assisting the Director in fulfilling his functions under the Income Tax Law; and that the Director may in turn use the information so provided for the purpose of carrying out those functions.
- 5.8 As set out in paragraph 2.6, include within the Population Management Law such provisions as are necessary (including but not limited to amendments to other legislation) to provide that the Population Office may pass information which it has received in the exercise of its official functions under the Population Management Law to the Director, for the purpose of assisting the Director in fulfilling his functions under the Income Tax Law; that the Director may pass information which he has received in the exercise of his official functions to the Population Office, for the purpose of assisting that Office in fulfilling its functions under the Population Management Law; and that the Population Office and the Director (as the case may be) may in turn use the information so provided for the purpose of carrying out those respective functions.
- 5.9 As set out in paragraph 2.7, to amend the Income Tax Law to the effect that, following the issue of an additional assessment, a right of appeal exists only in relation to the additional aspects of the assessment, and not to the elements that were in previous iterations of the assessment in respect of which the appeal process has already been exhausted, or the right to appeal has otherwise expired.
- 5.10 As set out in paragraph 2.8, to amend section 51(5) and section 51A(2A) of the Income Tax Law to entitle a person who is non-resident, or who is resident but not solely or principally resident, for income tax purposes, to 1/52nd of the annual amount of personal allowances to which a person who is solely or principally resident would be entitled, for each 7 days that they are in receipt of a Guernsey Old Age Pension, subject to the other provisions of those sections.

Yours faithfully

G A St Pier

Minister

J Kuttelwascher
Deputy Minister

A H Adam
R A Perrot
A Spruce

Mr J Hollis
(Non-States Member)