

The Income Tax (Guernsey)

(Amendment) (No. 2) Ordinance, 2018

THE STATES, in pursuance of their Resolution of the 6th November, 2018^a, and in exercise of the powers conferred on them by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975^b and all other powers enabling them in that behalf, hereby order:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975 is further amended as follows.
2. For section 4 substitute -

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

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

- (a) it is controlled in Guernsey in that year of charge, or
- (b) it is incorporated in Guernsey and has not been granted an exemption from tax for that year of charge under any Ordinance made under

^a Billet d'État No. XXIV of 2018 (propositions 16, 17, 18, 22, 23, 24 and 25).

^b Ordres en Conseil Vol. XXV, p. 124; section 203A was inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

section 40A of this Law.

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

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

(b) the company's business is centrally managed and controlled in Territory A,

(c) either -

(i) the company is tax resident in Territory A under the domestic law of Territory A by virtue of -

(A) arrangements for double taxation entered into with Territory A and approved by Resolution of the States under section 172, or

(B) the provisions of an international tax measure specified for the purposes of this Law by Resolution of the States under

section 75CC(1C) made with
Territory A,

in which a tie-breaker clause applies, or

(ii) the highest rate of tax on a company in
Territory A is at least 10%, and

(d) the company's tax resident status in Territory A
is not motivated by the avoidance, reduction or
deferral of the liability of any person to tax
under this Law.

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

3. In section 40, after paragraph (mm) insert the following paragraph -

"(nn) any lump sum or pension, annuity or other income
paid out of or under the provisions of a gratuity
scheme within the meaning of section 2(1)(e) of the
Regulation of Fiduciaries, Administration Businesses
and Company Directors, etc. (Bailiwick of Guernsey)
Law, 2000, the formation, management or
administration of which, and the provision of advice in
relation to the formation, management or
administration of which, is a regulated activity within

the meaning of that Law, provided that -

- (i) the beneficiaries of the scheme are non-resident and
- (ii) all income paid out of or under the provisions of the scheme is income from non-Guernsey sources, other than any interest arising in Guernsey on money deposited with a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 or other person exempted by the provisions of that Law from the requirement to be licensed thereunder."

4. In the proviso to section 153(6) before the words "the other scheme is" insert "(in the case only of a scheme referred to in subparagraph (i), (ii) or (iii) below) the transfer is made either in respect of a person who has not been resident in Guernsey at any time or in respect of a person who is resident in the UK, and that".

5. In section 157A(11)(a) after the words "the unused balance accrued" insert "to the extent that the unused balance would not have been withdrawn by the withdrawal of personal allowances as prescribed by Resolution of the States had it been claimed".

6. For section 173(1A) substitute the following subsection -

"(1A) Where the person entitled to the income is a company,
and -

- (a) the income is liable to be taxed in the company's hands at the company intermediate rate or the company standard rate, or
- (b) the company is incorporated in Guernsey or controlled in Guernsey within the meaning of section 122,

then, if the company distributes that income or any part thereof -

- (i) to an individual resident in Guernsey, or
- (ii) 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 (with effect from the 1st November 2015, in the case of paragraph (b)) be deemed to be the person entitled to the income and shall for the purposes of this section (with effect from that date, in the case of paragraph (b)) be entitled to the credit against tax or the balance of the credit by way of double taxation relief accordingly."

7. The Sixth Schedule is amended as follows -

- (a) substitute "£130,000" for "£110,000 (£100,000 for Years of

Charge 2008-2011)" wherever it appears,

- (b) replace paragraph (2) under the definition of "Qualifying income" with the following -

"(2) Income derived from a body which has been granted an exemption from tax for that year of charge under an Ordinance made under section 40A, including for the avoidance of doubt income from the ownership of lands and buildings situate in Guernsey but excluding income arising or accruing from an office or employment held or exercised in Guernsey.",

- (c) substitute "£260,000" for "£220,000 (£200,000 for Years of Charge 2008-2011)" wherever it appears,

- (d) in the paragraph under the heading "2. Individuals resident in Alderney" for "2020" substitute "2025",

- (e) for the definition of "Alderney qualifying income" substitute -

"Alderney qualifying income" means income from any sources (including income derived from a body which has been granted an exemption from tax for that year of charge under an Ordinance made under section 40A, including for the avoidance of doubt income from the ownership of lands and buildings situate in Guernsey (including, for the avoidance of doubt, Alderney)) except Alderney non-qualifying income.",
and

(f) in the paragraph under the heading "3. Individuals principally resident in Guernsey who have purchased a Part A open market property" -

(i) delete the word "principally" in the heading and the paragraph, and

(ii) in subparagraph (ii) substitute "twelve" for "six".

Amendment of Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007.

8. In section 1(2)(a)(i) of the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007^c, after "Guernsey" insert "(and for the avoidance of doubt this does not include an individual acting in the capacity of a trustee)".

Citation.

9. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2018.

Commencement.

10. This Ordinance shall come into force on the 1st January, 2019.

^c Ordinance No. I of 2008; as amended by Ordinance No. XX of 2014.