

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE INCOME TAX (GUERNSEY) (AMENDMENT) (NO. 2) ORDINANCE, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Income Tax (Guernsey) Law, 1975 as follows -

- (a) to introduce an exemption from tax in section 40 of that Law for regulated end of service/gratuity schemes where the beneficiaries are non-resident and all income of the scheme is non Guernsey source income apart from Guernsey bank interest,
- (b) to amend the 6<sup>th</sup> Schedule to that Law by increasing the income tax cap from £110,000 to £130,000 on qualifying income and from £220,000 to £260,000 on worldwide income; clarifying that income from land and buildings in Guernsey or Alderney will not be excluded from the income tax cap when the income is derived from an exempt body; amending the open market tax cap such that it may be claimed by an individual resident in Guernsey; extending the permitted period for an individual to purchase an open market property in order to be eligible to claim the open market tax cap from 6 months to 12 months; and enabling an individual to claim the Alderney income tax cap in any year of charge from 2016 to 2025;
- (c) to provide that a tax credit for the underlying tax suffered by a company may be claimed by an individual to whom a distribution is made by the company if it is incorporated or controlled in Guernsey, with effect from 1 November 2015;
- (d) to provide that the 10% charge on an outward transfer of funds from a Guernsey pension scheme to a UK scheme will be levied unless the transfer is made in respect of an individual resident in the UK except where the individual has not been resident in Guernsey at any time;

- (e) to provide that with effect from 1 January 2019, a company which is treated as non-resident under the terms of a double taxation arrangement with a country or territory where the highest rate at which any company may be charged to tax is 10% or higher will not be considered tax resident in Guernsey for domestic tax purposes.

This Ordinance also amends the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007 to provide for the avoidance of doubt that mortgage interest relief is not available where the loan on a principal private residence is from an individual acting as trustee.

The Ordinance comes into force on the 1<sup>st</sup> January, 2019.

# **The Income Tax (Guernsey)**

## **(Amendment) (No. 2) Ordinance, 2018**

**THE STATES**, in pursuance of their Resolution of the 6<sup>th</sup> November, 2018<sup>a</sup>, and in exercise of the powers conferred on them by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975<sup>b</sup> 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 it -

- (a) is controlled in Guernsey; or
- (b) is incorporated in Guernsey and has not been granted an exemption from tax for that year of charge under any Ordinance made under section 40A of this Law.

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

<sup>b</sup> 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.

(2) Notwithstanding subsection (1), a company shall not be treated as resident in Guernsey in a year of charge if, in that year of charge

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(a) in accordance with arrangements for double taxation entered into with another territory (Territory A) and approved by Resolution of the States under section 172, the Director deems that company to be tax resident only in Territory A, and

(b) the highest rate of tax on a company in Territory A is at least 10%."

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 "transfer is made either in respect of a person who has not been Guernsey resident at any time or in respect of a person 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 1<sup>st</sup> 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<sup>c</sup>, 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 1<sup>st</sup> January, 2019.

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<sup>c</sup> Ordinance No. I of 2008; as amended by Ordinance No. XX of 2014.