

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE INCOME TAX (GUERNSEY) (AMENDMENT) (NO. 2) ORDINANCE, 2022

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, 2022", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Income Tax (Guernsey) Law, 1975 and completes the legislation needed to implement the 2018 resolutions concerning the establishment of the Revenue Service. The effect of those resolutions was to transfer to the Revenue Service the income tax functions of the previous office of Director of Income Tax and the social insurance contribution functions previously vested in the Committee for Employment and Social Security and Administrator.

Sections 2, 3, 4, 6, 9 and 12 contain consequential amendments relating to the changes made by section 7.

Section 5 inserts a new section 204A which empowers the Director of the Revenue Service to grant administrative relief from the liability to pay tax in exceptional cases where the administrative effort of pursuing a debt would clearly outweigh the benefit of recovering it.

Section 7 inserts new clauses which replace the existing confidentiality provisions whereby only persons who have taken a formal oath administered under the Law can be prosecuted for disclosing information about a person's income, profits or tax—

- (a) section 205A, which prohibits the disclosure of information forming part of the official records of the Committee or relating to the business, property or affairs of any person by anyone who has obtained such information or otherwise gained access to it,
- (b) section 205B, which lists the windows by which the disclosure of such information may lawfully be made (eg, to Her Majesty's Procureur as to any suspected offence or with the express consent of the person to whom it relates), and

- (c) section 205C, which prohibits, without lawful authority or reasonable excuse, gaining access to information comprised in the official records of the Committee.

Section 8 repeals section 206 which contains the now-replaced oath provisions.

Section 10 repeals other sections which relate to the disclosure of information and are now subsumed by the new section 205B.

Section 11 replaces section 208A with modern boiler-plate clauses relating to the liability of directors, etc, for criminal offences committed by incorporated and unincorporated bodies.

Section 13 repeals the ordinances setting out the form of oath.

Section 14 amends the Social Insurance (Guernsey) Law, 1978 by inserting new clauses—

- (a) section 91A, which empowers the Director of the Revenue Service to issue statements of practice for the purpose of providing practical guidance in respect of the Law and its administration in relation to contributions (the section is based on the corresponding section of the Income Tax Law), and
- (b) section 91B, which empowers the Director to grant administrative relief from the liability to pay contributions in exceptional case where the administrative effort of pursuing a debt would clearly outweigh the benefit of recovering it (the section is based on the new income tax section 204A above).

Sections 15 and 16 deal with citation and commencement.

The Income Tax (Guernsey)

(Amendment) (No. 2) Ordinance, 2022

THE STATES, in pursuance of their Resolutions of the 18th April, 2018^a and the 4th June, 2020^b, and in exercise of the powers conferred on them by sections 203A, 206B and 208C of the Income Tax (Guernsey) Law, 1975^c, section 115A of the Social Insurance (Guernsey) Law, 1978^d and all other powers enabling them in that behalf, hereby order:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975 ("**the Law**") is further amended as follows.
2. Section 75CB(6) is repealed.
3. In section 172(3) for the words " the obligation as to secrecy imposed by section two hundred and six of this Law" substitute "the prohibition on the disclosure of information imposed by section 205A".
4. In section 177 for the words "the obligation as to secrecy imposed by section two hundred and six of this Law" substitute "the prohibition on the disclosure

^a Article 3 of Billet d'État No. XI of 2018.

^b Article X of Billet d'État No. XI of 2020.

^c Ordres en Conseil Vol. XXV, p. 124; this enactment has been amended.

^d Ordres en Conseil Vol. XXVI, p. 292; this enactment has been amended.

of information imposed by section 205A".

5. After section 204 insert the following section –

"Statements of practice in relation to administrative relief."

204A. (1) Without prejudice to the generality of section 204, statements of practice thereunder may make provision in respect of the granting by the Director of relief from liability to pay tax ("administrative relief") in any particular and exceptional case where, in the Director's absolute discretion, the administrative effort (whether by reason of the potential expenditure of time, resources or money, or otherwise) of pursuing the debt would clearly outweigh the benefit (financial, fiscal or other) of recovering it.

(2) For the avoidance of doubt, there is no enforceable right or expectation to be granted administrative relief."

6. Section 205(3) is repealed.

7. After section 205 insert the following sections –

"Prohibition on disclosure of information."

205A. (1) Subject to the provisions of section 205B -

(a) no person who under the provisions of or for the purposes of this Law, or any Ordinance, regulation or resolution made under it, receives information –

(i) comprised in or forming part of the

official records of the Committee, or

- (ii) relating to the business, property or affairs of any person or body,

(b) no person who –

- (i) obtains any such information directly or indirectly from a person who has so received it, or

- (ii) otherwise gains access to any such information,

shall disclose the information without the consent of the person, if any, to whom it relates and (if different) the person from whom it was so received or obtained or from whom, or through or by means of whom, access to it was so gained.

(2) A person who discloses information in contravention of this section is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding two years, or to a fine not exceeding twice level 5 on the uniform scale, or to both.

(3) For the avoidance of doubt, and without limitation, the prohibition on the disclosure of information imposed by this section –

- (a) is binding on persons to whom it applies in perpetuity,

(b) applies to persons –

(i) who receive, obtain or gain access to the information unintentionally or in an unauthorised or accidental manner, or

(ii) who are authorised to perform any function or task in the course of which they may receive, obtain or gain access to such information, and

(c) applies to –

(i) past and present members of, and clerks or deputy clerks to, the Guernsey Revenue Service Tribunal and the former Guernsey Tax Tribunal, including past and present members in respect of the exercise by them of the functions of an appointed member under section 75CB, and

(ii) past and present members of the Committee.

(4) The "**official records of the Committee**" means –

(a) any information under the control of the

Committee or the Director relating to the income or profits of, or to any tax paid or payable by, any identifiable individual, other person or body, or

- (b) any other information obtained, received or created under the provisions of or for the purposes of this Law or any Ordinance, regulation or resolution made under it,

whether held in electronic or non-electronic form.

Cases where disclosure is permitted.

205B. (1) Section 205A does not preclude the disclosure by the Director or any person authorised by the Director of information -

- (a) which at the time of disclosure is or has already been made available to the public from other sources,
- (b) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (c) for the purpose of enabling or assisting the Director to perform the Director's functions,
- (d) to any person for the time being authorised to

carry out any functions in connection with the operation of this Law or any Ordinance, regulation or resolution made under it,

(e) to any person, body or authority for the purposes of –

(i) an approved international agreement (within the meaning of section 75C),

(ii) an international tax measure (within the meaning of section 75CC(1B)), or

(iii) regulations made under section 171A (regulations in respect of substance requirements),

(f) under the authority of or in accordance with the requirements of any other provision of this Law or the provisions of any other enactment,

(g) in connection with or for the purposes of any proceedings, penalty, action, sanction or remedy (civil, criminal or administrative) arising out of or under the provisions of this Law or any Ordinance, regulation or resolution made under it,

(h) with the express consent of the person to whom

it relates,

- (i) without prejudice to paragraph (g), for the purposes of legal proceedings to obtain or enforce an order for the making of payments for the maintenance or education of a spouse, former spouse, child or dependant,
- (j) to Her Majesty's Procureur as to any suspected offence under the provisions of this Law or otherwise (and whether in the Bailiwick or elsewhere),
- (k) to any of the following persons, bodies or authorities for the purpose of enabling or assisting them to perform their respective functions -
 - (i) the Administrator appointed under section 94 of the Social Insurance (Guernsey) Law, 1978, provided that the information disclosed may only be –
 - (A) the name and address of any person,
 - (B) information relating to the income of any person, and

- (C) information relevant to any liability to tax, or contributions under the Social Insurance (Guernsey) Law, 1978, to which any person is or may be subject, or the amount of any such liability,
- (ii) the electronic census supervisor, or any census officer, appointed under the Electronic Census (Guernsey) Ordinance, 2013, provided that the information disclosed may only be information relating to the income of any person,
- (iii) the Registrar of Beneficial Ownership of Legal Persons appointed under the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,
- (iv) the Registrar of Beneficial Ownership of Legal Persons in Alderney appointed under the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
- (v) the Registrar of Companies appointed under section 495(1) of the Companies (Guernsey) Law, 2008,

- (vi) the person appointed to the office of Greffier under section 20 of the Government of Alderney Law, 2004, in respect only of the functions of Registrar arising out of or under the provisions of the Companies (Alderney) Law, 1994,
- (vii) Her Majesty's Greffier, in respect only of the functions of Her Majesty's Greffier arising out of or under the provisions of the Document Duty (Guernsey) Law, 2017 and the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017,
- (viii) an officer appointed under section 13(1) of the Minimum Wage (Guernsey) Law, 2009, in cases where a breach of any provision of the Minimum Wage (Guernsey) Law, 2009 is suspected, provided that the information disclosed may only be –
 - (A) the name and address of any employer suspected of breaching any provision of that Law,
 - (B) the name, address, tax number and social insurance number of

any employee in respect of whom
such a breach is suspected, and

(C) the evidence upon which it is
suspected that there has been
such a breach,

(ix) the supervisor, deputy supervisor and
economic statistics officers appointed
under the provisions of the Economic
Statistics (Guernsey and Alderney) Law,
2019,

(x) the Administrator of Population
Management, the office of which was
established by section 1 of the Population
Management (Guernsey) Law, 2016,

and information disclosed by the Director or any
person authorised by the Director by virtue of
this paragraph to any of the persons, bodies or
authorities specified in the above subparagraphs
may, without prejudice to the provisions of any
other enactment restricting or authorising the
disclosure and use of information, be used by
them for the purpose of enabling or assisting
them to perform their respective functions.

(2) Section 205A does not preclude the disclosure of

information –

- (a) in connection with or for the purposes of any proceedings (civil, criminal or administrative), whether arising out of or under the provisions of this Law or otherwise, or
- (b) in compliance with an order of the court.

Prohibition on unauthorised access to information.

205C. (1) A person who, without lawful authority or reasonable excuse, gains access to information comprised in the official records of the Committee is guilty of an offence and liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(2) For the purposes of this section persons have lawful authority to gain access to information comprised in the official records of the Committee if –

- (a) those persons themselves are entitled to control access of the kind in question to the information,

or

- (b) those persons have consent to such access by them from any person who is so entitled."

8. Section 206 is repealed.

9. In section 206ZA(4) for "in accordance with his oath taken under section 206" substitute "in accordance with the provisions of section 205B".

10. Sections 206A, 206AA and 206B are repealed.

11. For section 208A substitute the following sections -

"Criminal liability of directors, etc.

208A. (1) Where an offence under the provisions of this Law or any Ordinance or regulations made under it is committed by an incorporated company or other legal person and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any of the following persons -

- (a) in the case of an incorporated company, any director, secretary or other similar officer thereof,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a limited liability partnership, any

member,

- (d) in the case of a foundation, any foundation official, or
- (e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d),

that person as well as the company or other legal person (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of an incorporated company or other legal person are managed by its members, subsection (1) applies to a member in connection with that member's functions of management as if that member were a director.

Criminal proceedings against unincorporated bodies.

208AA. (1) Where an offence under the provisions of this Law or any Ordinance or regulations made under it is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any of the following persons -

- (a) in the case of -
 - (i) a partnership, any partner thereof, but subject to the provisions of subparagraph (ii),

- (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under the provisions of this Law or any Ordinance or regulations made under it is alleged to have been committed by an unincorporated body, proceedings for the offence shall, without prejudice to subsection (1), be brought in the name of that body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under the provisions of this Law or any Ordinance or regulations made under it shall be paid from the funds of that body."

12. In section 209(1) –

- (a) in the definition of "oath" the words after "affirmation" are repealed,
- (b) after the definition of "oath", insert the following definition –

""official records of the Committee" : see section 205A(4),".

Repeal of Ordinances as to forms of oath.

13. The Income Tax (Forms of Oath) Ordinance, 1992^e and the Income Tax (Forms of Oath) (Amendment) Ordinance, 2009^f are repealed.

Amendment of Social Insurance Law.

14. After section 91 in Part VI of the Social Insurance (Guernsey) Law, 1978 insert the following sections and cross heading –

*"Director of the Revenue Service:
Statements of practice*

Statements of Practice.

91A. (1) The Director of the Revenue Service (the "**Director**") may issue statements of practice for the purpose of providing practical guidance in respect of any provision made by or under this Law in relation to

^e Recueil d'Ordonnances Tome XXVI, p. 1.

^f No. XVIII of 2009 (Recueil d'Ordonnances Tome XXXIII, p. 530).

contributions and in connection with the administration of this Law in relation to contributions.

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

(3) The Director 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 Director shall publish statements of practice and any revision thereof in such manner as the Director considers appropriate.

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

(6) In any proceedings –

(a) before the Social Insurance Tribunal or Guernsey Revenue Service Tribunal under the provisions of this Law, or

(b) before the Ordinary Court on a reference or appeal from either of those Tribunals,

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

(7) Section 116 applies to statements of practice as it applies to regulations.

(8) References in this section to this Law include references to any Ordinance or regulations made under it.

Statements of practice in relation to administrative relief.

91B. (1) Without prejudice to the generality of section 91A, statements of practice thereunder may make provision in respect of the granting by the Director of the Revenue Service (the "**Director**") of relief from liability to pay contributions ("**administrative relief**") in any particular and exceptional case where, in the Director's absolute discretion, the administrative effort (whether by reason of the potential expenditure of time, resources or money, or otherwise) of pursuing the debt would clearly outweigh the benefit (financial, fiscal or other) of recovering it.

(2) For the avoidance of doubt, there is no enforceable right or expectation to be granted administrative relief."

Citation.

15. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2022.

Commencement.

16. This Ordinance shall come into force on the 1st October, 2022.