ISSUE 2011

STATES OF GUERNSEY INCOME TAX
TREASURY AND RESOURCES DEPARTMENT

STATEMENTS OF PRACTICE
(INCLUDING INTERPRETATIONS OF LAW)
AND EXTRA STATUTORY CONCESSIONS

All references to "the Law" and section references are to the
Income Tax (Guernsey) Law 1975, as amended, unless otherwise stated.
Cross-references to parts or sections of the Law are for
guidance only and should not be regarded as exhaustive

With effect from 1 January 2008, references to "taxable", "assessable",
"liability" and similar expressions should be construed in the context
that companies may be liable at 0%, 10% and/or 20%

NOVEMBER 2011

Schedule of amendments (unless otherwise stated) since June 2007 issue.

The relevant sections of the Law have been added to the titles of all paragraphs and "Director" has been substituted for "Administrator".

Only substantial amendments to the text of paragraphs are noted here. These amendments are also indicated by vertical lines in the right margin.

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17	B2	Amended
18	B3(a)	Amended
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72	C44	Added
72	C45	Added
74	C46	Added
75	E1	Amended
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79	E11	Amended
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109	M8(a)	Amended
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128	M41	Added
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States of Guernsey Income Tax

STATEMENTS OF PRACTICE (INCLUDING INTERPRETATIONS OF LAW) AND EXTRA STATUTORY CONCESSIONS

Introduction

This document contains Statements of Practice issued by the Director of Income Tax for the States of Guernsey. As with all Statements of Practice now issued by the Director, any changes to the contents have been discussed with the Statements of Practice Working Party (which consists of representatives from the Income Tax Office and the Taxation Sub-Committee of the Guernsey Society of Chartered & Certified Accountants) and notified to the Treasury & Resources Department before being published.

NOTE 1

The Director has issued these Statements of Practice in accordance with section 204 of the Income Tax (Guernsey) Law, 1975, as amended ("the Law"). This publication is updated periodically on the Guernsey Income Tax Office website, as and when appropriate. When relying on a Statement of Practice, it is important that the taxpayer and their adviser ensure that they refer to the relevant version and not just, for example, a previously printed copy, which may have subsequently become out of date with the passage of time. The Statements of Practice ought to be read in conjunction with section 204 of the Law.

NOTE 2

On the Guernsey Income Tax Office website there are also various "stand alone" documents, separate to this publication, setting out Statements of Practice and Codes of Practice on various issues:

- Statement of Practice on keeping, maintaining and retaining records.
- Statement of Practice on penalties for incorrect returns.
- Complaints procedure.
- Data protection.
- Retirement Annuity Trust Schemes.

States of Guernsey Income Tax

STATEMENTS OF PRACTICE
(INCLUDING INTERPRETATIONS OF LAW)
AND EXTRA STATUTORY CONCESSIONS

T A B L E O F C O N T E N T S

BUSINESSES

B1 LLOYDS UNDERWRITERS (section 7)

Basis of Assessment

(a) The basis of assessment will follow the United Kingdom 'distribution year' basis, e.g. the profits or losses of the 2006 Underwriting Account, which closed on 31 December 2008, will be treated as profits or losses of 2009 and should be declared on the return for the year 2009. However, it is recognised that completion of the UK tax return for the year 2009/10 would first be required in order to complete the Lloyds Underwriting details for 2009 (please refer to the Lloyds Underwriting explanatory notes (form 621) which are available on the website at www.gov.gg/tax under "Explanatory Guides" and "Other Explanatory Guides").

(b) Non-syndicate (personal) expenses, income from funds at Lloyds and other Lloyds receipts will be treated as expenses/income of the calendar year in which they are paid/received. For assessment purposes such expenditure/income will be treated as part of the business of underwriting.

Cessation of Business

Where income is assessed in accordance with section 7, cessation will be determined on the same basis as it is determined for United Kingdom purposes.

The resignation of membership of Lloyds by a Name does not constitute a cessation of the business of Underwriting for Guernsey income tax purposes.

Syndicates which are running off

The rules which govern the treatment of a Name's share of profits or losses of syndicates which are running off for United Kingdom purposes will also apply for Guernsey purposes.

Published: 1987
Revised: 1994 / 1995 / 1998 / 2006 / 2011

B2 SMALL GUEST HOUSES (sections 2, 7 and 17)

Where the gross receipts of a guest house business do not exceed **£9,400** (Year of Charge **2011)** the taxpayer may elect to be assessed on a basis of 40% of the gross receipts of the business instead of submitting accounts. Once the election has been made it must be adhered to so long as the gross receipts do not exceed the prescribed limit, which is reviewed from time to time.

This basis may also be used for private householders who take in lodgers.

Limits for earlier years:

£8,300 Year of Charge 2007
£8,700 Year of Charge 2008
£9,100 Year of Charge 2009
£9,200 Year of Charge 2010

Published: 1987
Revised: every year since 1988

B3 (a) BED AND BREAKFAST ESTABLISHMENTS (sections 2, 7 and 17)

For small guest houses or boarding houses providing only bed and breakfast, where gross receipts do not exceed **£9,400** (Year of Charge **2011)**, the taxpayer may elect to be assessed on a basis of 65% of the gross receipts of the business instead of submitting accounts. Once the election has been made it must be adhered to so long as the gross receipts do not exceed the prescribed limit, which is reviewed from time to time.

This basis may also be used for private householders who take in lodgers.

Limits for earlier years:

£8,300 Year of Charge 2007
£8,700 Year of Charge 2008
£9,100 Year of Charge 2009
£9,200 Year of Charge 2010

(b) SLEEPING OUT ACCOMMODATION (sections 2, 7 and 17)

Where sleeping out accommodation is provided the taxpayer may elect to be assessed on a basis of 80% of the gross receipts instead of submitting an expense claim. There is no upper income limit.

This basis may also be used for private householders who provide this facility.

Published: 1987
Revised: every year since 1988

B4 ANNUAL ALLOWANCES (Part IX)

Motor Cars

The limit of expenditure to be taken into account for motor vehicles used for both business purposes and private purposes is **£22,400** in respect of a motor vehicle purchased on or after **1st January 2010**.

Limits for earlier years:

£19,900 for 2006
£20,900 for 2007
£22,100 for 2008 and 2009

Published: 1987
Revised: most years since 1987

B5 OIL BURNER CONVERSIONS (section 7)

Costs of conversion by growers, of -

(a) oil burners from light to heavy oil,

(b) oil burners to coal burners,

(c) oil or coal burners to L.P.G. (Liquid Propane Gas),

are treated as revenue expenses and are allowed as deductions in the basis periods for which they are incurred.

Published: 1987
Revised: 1995 / 2011

B6 SUCCESSION TO A BUSINESS (section 35)
APPLIES UNTIL 31 DECEMBER 2004

(See also C17)

DELETED

B7 NON-RESIDENT ENTERTAINERS - EXPENSES CLAIMS (sections 7 and 48)

Introduction – Statutory Position

All public entertainers, such as stage, film or radio artistes, musicians and athletes, who appear in Guernsey and who are not resident in Guernsey for income tax purposes, are liable to income tax in respect of any fees or payments made either directly or indirectly in connection with the appearance.

The Law provides that where a non-resident person is liable to tax in respect of any income and has an agent in Guernsey, the agent is chargeable on his behalf with tax in respect of any such income which arises directly or indirectly from or through the agent. The tax charged may be deducted by the agent from any sum payable by or through him to the non-resident. Section 48(2) of the Law provides that the expression “agent” includes a manager and any person receiving or paying income on behalf of, or to, a non-resident.

Concessional Treatment

Fees of less than £2,500

Where a fee of less than **£2,500** is received (£2,000 to 31 December 2010, £1,000 to 31 December 2005) no tax will be due. The Guernsey agent will not be required to report details of such engagements to the Income Tax Office.

Fees of £2,500 or more

Previously, claims for expenses incurred in respect of each performance had to be agreed before the element of "profit" could be computed. However, the Director is prepared to accept tax at a flat rate of 15%, on the **gross** fee paid to the non-resident entertainer, in lieu of any expense claim.

Should the non-resident entertainer wish to make a claim for expenses (either the £2,500 or actual expenditure incurred) he may continue to do so, but tax would then be payable on the net amount agreed, at the individual standard rate (20%).

Groups

If the act performing consists of more than 1 artist, for example a band, it will be necessary to determine the amount due to each member separately. This is because each individual is entitled to their own exemption of £2,500, but any unused exemptions cannot be transferred to another member of the group. If an individual band member wishes to claim expenses other than the £2,500, then the group's expenses will be proportioned on the same basis as the fee apportionment.

For example:

A band consisting of 4 members comes to Guernsey to play for 2 nights.

The agent receives a sum of £12,000 for the performances. The agent will have to determine the amount due to each individual member of the group, before expenses, in order to calculate the tax due. If the payments are determined as:

Singer	£5,000
Guitarist	£4,000
Drummer	£2,000
Pianist	£1,000

The singer and the guitarist will be the only members of the band liable to Guernsey income tax, as they are the only ones to receive an amount over the standard expense allowance of £2,500.

The tax due would then be calculated as follows:

Singer	£5000 - £2500 (standard expense allowance) = £2500 taxable @ 20% = £500
Guitarist	£4000 - £2500 (standard expense allowance) = £1500 taxable @ 20% = £300

Alternatively, rather than the standard expense allowance, the artist may make a claim for actual expenses incurred, with tax payable on the balance @ 20%, or no claim for expenses is made and the fee is taxed @15%.

If the agent is not provided with details of the relevant apportionment of the fee, or details of expenses, he would calculate the tax due on the basis of the total gross fee paid, i.e. £12,000, taxable @ 15% = £1800.

The costs of travel and accommodation met by the promoter may be disregarded.

Published: 1990
Revised: 1998 / 2006 / 2011

B8 TRADING ACTIVITIES ON BEHALF OF CHARITIES (sections 7 and 40(k))

The profits of bazaars, jumble sales, gymkhanas, carnivals, firework displays and similar activities arranged by voluntary organisations for the purposes of raising funds for charity, shall be regarded as exempt from tax provided that:

(a) the organisation or charity is not regularly carrying on these trading activities;

(b) the activity is not in competition with other traders;

(c) the public support the activity mainly because they recognise that the profits will go to charity; and

(d) the profits are transferred to charities or are otherwise applied for charitable purposes accepted as such by the Director.

Published: 1990
Revised: 1991 / 2011

B9 CHANGE OF ACCOUNTING BASIS (section 6)

Following the enactment of the Income Tax (Business Profits) (Guernsey) (Amendment) Law 2004, where a change of accounting date of a business is made where no accounting period falls in a year, the Director would determine the accounting period in accordance with the provisions of section 6(2)(b) of the Income Tax (Guernsey) Law 1975, as amended, and where possible take successive periods of 12 months. For example, a change of accounting date from 31 December 2006 to 31 March 2008 would be treated as follows:

Year of Charge 2007	12/15 x period 1/1/07 – 31/3/08
Year of Charge 2008	3/15 x period 1/1/07 – 31/3/08

Published: 1992
Revised: 2006 / 2007 / 2011

B10 TERMINATION PAYMENTS - ALLOWANCE IN THE EMPLOYER'S HANDS (section 7)

(See also E11)

Strictly, whether or not such payments may be allowed as a deduction in computing profits of the employer will continue to depend on whether they have been incurred wholly and exclusively for the purposes of the business. However, by concession, an allowance will be given at least equal to the sum that has been subject to tax in the employee's hands.

Published: 1995
Revised: 1996 / 2011

B11 INITIAL ALLOWANCES FOR HOTELS (section 132C)

Under the provisions of section 132C(1), the transfer of a hotel from the sole ownership into a company would result in the withdrawal of any initial allowances granted to the sole trader. By concession, whilst the company remains in the beneficial ownership of the sole trader, the allowance will not be withdrawn. Should the ownership of the company change hands or if the premises cease to be used wholly for the business of the hotelier, whether by sale or otherwise, within six years after the end of the year of charge in which the allowance is first made, then the allowance will be withdrawn.

Published: 2000
Revised: 2011

B12 **PRE-TRADING EXPENDITURE (section 7)**

Any revenue expenditure incurred within the twelve months prior to the commencement of trade, which would have been allowable had it been incurred on the first day of trading, may be allowed as a deduction in computing the profits of the first accounting period.

Published: 2000
Revised: 2011

B13 **WEBSITE CONSTRUCTION COSTS (section 7)**

Although these costs may be capital, having been incurred once and for all, they may be claimed as a revenue deduction where incurred wholly and exclusively for the purposes of a business carried on in Guernsey.

Published: 2001
Revised: 2011

B14 **BUSINESS RECOVERY SITUATIONS (section 5 and the Guernsey/Jersey Double Taxation Arrangement)**

For the purposes of article 3(2) of the Guernsey/Jersey Double Taxation Arrangement, a Jersey enterprise shall not be deemed to have a permanent establishment in Guernsey, provided that:

(a) the enterprise is only temporarily relocated to Guernsey and solely as part of a business recovery plan, and

(b) the profits of the enterprise continue throughout to be charged to Jersey tax.

If an operation is relocated to Guernsey from another territory then the overseas operation will be carrying on a business in Guernsey and would be subject to Guernsey income tax. However, if:

(a) an overseas operation has an agreement with the Guernsey operation under which the Guernsey operation receives regular payments, in return for which the Guernsey operation would, in the event of a disaster occurring, provide facilities for the overseas operation relocating to Guernsey (that is, something akin to disaster recovery insurance), or

(b) in the event of a disaster occurring the Guernsey operation was "properly" remunerated for the services provided to the overseas operation,

the Director would be prepared to accept that the taxing of the payments received by the Guernsey operation was sufficient discharge of any Guernsey income tax liability (such that the activities of the overseas operation then carried on in Guernsey would not give rise to any further tax liability). However, as particular circumstances are likely to vary considerably from organisation to organisation, the above would be on consideration of the facts on a "case by case" basis.

Published: 2002
Revised: 2011

B15 BUSINESS EXPENSES - USE OF HOME AS AN OFFICE (section 7)

Introduction – Statutory Position

Section 7 of the Law states that the profits of a business shall be computed in accordance with the ordinary commercial principles applicable to the computation of profits of that business. No deduction shall be permitted in respect of expenditure "except so far as it is laid out or expended wholly and exclusively for the purposes of the business".

Where part of the home is used as an office, "wholly and exclusively" is not interpreted as meaning that business expenditure must be separately billed or that part of the home must be permanently set aside for business purposes to the exclusion of any other purpose. However it does mean that, when part of the home is being used for the business, it is the sole purpose of that part of the home at that time.

If part of a self employed person's home is set aside solely for business purposes for a period of time, then a claim for a deduction in respect of the additional costs incurred, on that part of the building for that period, is allowable. The additional costs would include the cost of lighting and heating the part of the home used, but would not include a proportion of general costs such as, for example, cadastre, as these costs would apply to the whole house regardless of whether there is any business use of a part of it. What is allowable would depend on the particular facts of the case, including the extent and nature of the business activities undertaken in the home and a claim should provide sufficient information to show how the amount claimed has been computed.

Concessional Treatment

Where part of the home is used as an office the Director is prepared to accept a standard deduction of £3 per week as a claim for the additional costs incurred, in place of a full computation under the strict statutory basis.

Published: 2011

COMPANIES

C1 **INTERNATIONAL LOAN BUSINESS (DEFINED AS COMMERCIAL LOANS BETWEEN NON-RESIDENT LENDERS AND BORROWERS) - SPECIAL DEDUCTIONS PERMITTED (section 7)**
APPLIES UNTIL 31 DECEMBER 2007

For those banks, whether subsidiaries or branches of non-resident parents, who conduct international loan business in Guernsey, a special deduction of 90% of the profit from such business is allowed. The terms and conditions for such an allowance are as follows:-

(a) the contracted loans are introduced to the Guernsey entity by other members of the group or the group's representatives or affiliates;

(b) no bad debts arising from such business will be allowed for Income Tax purposes;

(c) the special deduction is allowed on the basis that it is an expense to cover introductory fees, plus annual charges and commissions incurred. It may therefore be charged as a debit in the Profit and Loss Account or be made as an adjustment in the Income Tax computation.

The Director would not object, as an alternative to booking the loan business directly through a Guernsey subsidiary bank, to the formation of a separate Guernsey resident finance company to which loan business could be booked. Such a finance company could pay to the Guernsey bank as a Management Fee, the profit arising on such business and the special deduction would still be allowed to the Guernsey bank in respect of the profit arising on the international loan business. In the hands of the Guernsey bank the special deduction would be allowed against the Management Fee paid to it by the Guernsey finance company.

Published: 1987
Revised: 2011

C2 **OFFSHORE INSURANCE COMPANIES REGISTERED UNDER SECTION 7 OF THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002 – BASIS OF ASSESSMENT AND THE CONCESSIONARY TREATMENT AVAILABLE TO THEM (sections 7 and 187A)**
APPLIES UNTIL 31 DECEMBER 2007

Each year an Offshore Insurer will decide which of the three bases of assessment set out in (a), (b) and (c) below is to apply. Any existing arrangements will continue to be honoured until such time as an insurer wishes to change to one of these bases. Thereafter it will not be possible to revert to any former arrangements.

(a) Section 187A of the Law contains a sliding scale basis of assessment.

Section 187A does not permit the sliding scale basis where the insurer carries on any long term business unless that business is confined to contracts expressed to be for a term of not more than five years and neither renewable nor convertible into any other form of long term business.

By concession the sliding scale basis will be available to an insurer carrying on long term business other than that described, provided such business does not exceed 5% of the total business.

(b) The Income Tax (Exempt Bodies: Offshore Insurers) Ordinance, 1992 enables an offshore insurer to elect for tax exempt status.

(c) Where no election is made under (a) or (b) above the results of the business are computed in accordance with ordinary commercial principles (section 7 of the Law).

An additional facility is, however, available to an insurer who is assessed to tax on this basis. He may also elect at the time of submission of the relevant form of return of income to postpone payment of the tax liability until such time as claims are actually finalised or the period of risk expires.

Details are as follows:-

(i) The profit for tax purposes ("adjusted profit") should be calculated as normal. Tax at 20% is calculated on this figure.

(ii) The postponed element of tax is calculated thus:-

$$\text{Tax x} \quad \frac{\text{claims reserved c/fwd}}{\text{net premium income + claims reserved b/fwd}}$$

(iii) Carry the postponement forward to the next year's income tax payment computation to be added to that year's tax charge.

(iv) Apply the same postponement formula to the aggregate of the charge for the following year plus the element of postponed tax brought forward.

The election, which is <u>not</u> available to any insurer electing for the sliding scale basis of assessment will remain in force until notice of withdrawal is given in writing to the Director. Upon withdrawal of the election any tax postponed will become due and payable in the normal way.

Published: 1987
Revised: 1989 / 1990 / 1992 / 1993 / 2003 / 2011

C3 <u>INSURANCE COMPANY LIFE FUNDS</u> (sections 7 and 182 – 188)

The assessable profits derived from any life fund, whether offshore or domestic, may be computed on the basis of section 7 of the Law, provided that the company gives an irrevocable undertaking that the profits are to be computed on that basis.

Published: 1987
Revised: 1997 / 2011

C4 GUERNSEY RESIDENT LIQUIDATORS – NON-RESIDENT COMPANIES (THIS INCLUDES EXEMPT COMPANIES OTHER THAN EXEMPT INVESTMENT SCHEMES) (sections 4, 5 and 40A)
APPLIES UNTIL 31 DECEMBER 2007

Where a company appoints a Guernsey resident liquidator and at the time of the appointment the company is non-resident or is regarded as non-resident for Guernsey income tax purposes, any income arising to the liquidator will not be charged to tax except in respect of Guernsey source income other than bank interest.

A Guernsey resident company which appoints a non-resident liquidator will continue to be subject to Guernsey income tax until such time as it has been wound up.

Published: 1987
Revised: 1989 / 1996 / 2011

C5 LIQUIDATION OF COMPANIES REGISTERED AS EXEMPT INVESTMENT SCHEMES UNDER THE INCOME TAX (EXEMPT BODIES) (GUERNSEY) ORDINANCES, 1989 AND 1992 (sections 4, 5 and 40A)

When a liquidator who is resident in Guernsey is appointed for a company which is exempt from Guernsey income tax under the Income Tax (Exempt Bodies) (Guernsey) Ordinances, 1989 and 1992, no liability to Guernsey income tax arises during any period of liquidation for which exempt status has been granted, provided that the conditions for granting of exempt status continue to be complied with during the remainder of that period.

For any subsequent year, where the liquidation continues and where the liquidator's sole activity is the realisation of the company's assets, settling the company's indebtedness and making the final distribution, his liability to Guernsey income tax will be restricted to Guernsey source income other than bank interest.

Published: 1987
Revised: 1989 / 1990 / 1992 / 2005 / 2011

C6 INTEREST PAYABLE BY INVESTMENT COMPANIES TO NON-RESIDENTS OUT OF INCOME OR PROFITS BROUGHT INTO CHARGE (sections 164 and 165)
APPLIES UNTIL 31 DECEMBER 2007

(See also M22)

Interest paid by an investment company to a United Kingdom or Jersey bank out of income or profits brought into charge may be allowed as a deduction when computing profits despite sections 164 and 165, PROVIDED THAT:

(a) the paying company does **NOT** deduct and retain tax when paying the interest; and

(b) when relevant returns and computations for the paying company are submitted, sufficient information is provided to show that the recipient bank would be exempt from Guernsey income tax.

Similarly, interest paid to any non-resident on a loan to acquire an overseas property may be allowed as a deduction in computing profits, provided that the paying company does not deduct and retain tax.

Published: 1987
Revised: 1999 / 2011

C7 TREATMENT OF CLUBS AND ASSOCIATIONS, RESIDENTIAL ESTATE MANAGEMENT COMPANIES AND SIMILAR BODIES (sections 2(2), 62A(4), 62D, 81B, 209(1) and Fifth Schedule)

(See also C25 and C26)

Statutory Position

The Law defines a company as "any body of persons corporate or unincorporate, not being a partnership". This means that for all purposes of the Income Tax legislation, clubs and associations and similar bodies are treated as companies, irrespective of their legal structure, i.e. whether or not they are, in fact, incorporated. There are also a number of companies set up for specific non-profit making purposes, such as companies established to maintain common areas of housing estates; generally such companies will be in receipt of investment income.

Thus their income is assessable on the basis of the classes of income described in section 2(2) of the Law and at the rates set out in respect of companies in the Fifth Schedule to the Law. To the extent they are regarded as beneficial members, as defined in section 62D, members will be subject to tax on distributions and deemed distributions accordingly and the companies would be required to make returns in respect of distributions and deemed distributions under section 81B of the Law, as appropriate. However, if the member's interest in the body is less than 1%, the deemed distribution regime will not apply, and only actual distributions would be taxable and will need to be declared on quarterly returns.

Concessional Treatment

The Director recognises that the strict application of the Law creates an anomalous situation whereby larger clubs, i.e. those where each member has an interest of 1% or less in the club, will not be subject to the deemed distribution regime, whereas smaller clubs, because their members have an interest of more than 1%, will be caught. Thus the burden of making the appropriate deemed distribution returns in respect of investment income will fall upon the smaller clubs more heavily and a tax charge is also more likely to apply to their members.

In order to ensure that all clubs and the like are treated equitably, with effect from 1 January 2009 the Director is prepared to treat all "relevant bodies" as having no members who hold an interest of more than 1% in that body, resulting in the removal of all relevant bodies from the effects of the deemed distribution regime.

For these purposes "relevant bodies" would include clubs, associations and any other company set up for a specific non-profit making purpose. This would mean that there would be no financial benefit to the members themselves from the club's activities or investments and thus investment clubs, for example, would not be able to qualify for this exemption.

If in any case the Director was of the opinion that a relevant body, or the content of this Statement of Practice, was being exploited for tax avoidance purposes by any person then the strict statutory treatment would apply.

Published: 1991
Revised: 1995 / 17 March 2008 / 5 March 2009 / 3 June 2009 / 2011

C8 DIVIDEND MATTERS (sections 57, 59, 60 and 69) APPLIES UNTIL 31 DECEMBER 2007

(a) Dividend Lists - other than in respect of companies and unit trusts exempted under Category A, B or C of The Income Tax (Exempt Bodies) (Guernsey) Ordinances, 1989 and 1992

In order to reduce the amount of work which is normally undertaken in providing dividend lists, companies are no longer required to submit such information to the Director even though section 69 of the Law authorises him to request details by notice.

Any company wishing to continue to submit dividend lists may do so, however, but otherwise each time a dividend is declared the following information will be required:-

1. the date of declaration of the dividend;

2. if the dividend has been paid after deduction of tax, the total gross amount paid and the total amount deducted;

3. a cheque for the total amount of tax deducted or an explanation as to why such a cheque has not been enclosed with the letter;

4. where the dividend is paid without deduction of tax notice of the fact that the dividend has been so paid and the total amount of the dividend paid without deduction of tax.

This simplified procedure may only be adopted if the company undertakes to maintain records of all dividends paid for a period of at least six years.

(b) Dividends paid by Offshore Insurers and Guernsey registered International Companies

General

Section 57 of the Law authorises (but does not insist upon) the deduction of tax at the standard rate from dividends paid out of profits and gains which have been charged to tax. Where tax has been deducted it must be remitted to the Director within one month. Any tax so remitted is treated as a payment on account of the company's liability and, where appropriate, a repayment is made.

If tax is not deducted from such dividends, section 59 of the Law provides that the amount of the dividend paid is to be deemed a net amount after deduction of tax at the standard rate as authorised by section 57.

Section 60 requires every warrant or cheque in payment of a dividend to be accompanied by a statement in writing (the dividend voucher) showing:-

(a) the gross amount;

(b) the rate and amount of tax appropriate to the gross amount;

(c) the net amount; and

(d) the net Guernsey rate where Double Taxation Relief is involved.

There is no authority to deduct tax from profits or gains which have not been charged to tax.

Offshore Insurers

An offshore insurer which has elected for the scale basis of assessment will have both taxed and untaxed retained profits. Tax can only be attributed to that part of the dividend paid out of the taxed profits. Any dividend paid out of untaxed profits cannot have tax attributed to it so the amount paid is both gross and net.

The Director is prepared to accept any allocation of a dividend between taxed and untaxed profits provided there are sufficient profits of each kind to cover the allocation.

Where a dividend is paid out of both taxed and untaxed profits the amount paid out of the taxed profits should be identified and tax at the standard rate attributed to that amount. It is not correct to attribute the relevant amount of tax to the whole of the dividend and to show an average rate of tax.

A dividend paid out of profits taxed under the scale basis of assessment must have tax at the standard rate attributed to it, even though the insurer's effective rate of tax might be much lower.

Guernsey registered International Companies

A dividend paid out of profits taxed at a rate other than the standard rate of income tax, must have tax deducted at the standard rate attributed to it, even though the International Company's rate of tax might be higher or lower.

Published: 1992
Revised: 1994 / 2002 / 2011

C9 INVESTMENT COMPANIES REGISTERED OUTSIDE OF GUERNSEY / TAX EXEMPT STATUS (sections 5, 40A and 169) APPLIES UNTIL 31 DECEMBER 2007

For income tax purposes an investment company, as defined in section 169 of the Law, does not "carry on business" - it performs "activities". This enables a company which is:

- an investment company, and
- registered outside Guernsey, and
- in the beneficial ownership of persons who are not resident in Guernsey,

to appoint Guernsey resident directors and for those directors to hold their meetings in Guernsey without:-

(1) the necessity for registration as a Category D Guernsey tax exempt company in accordance with the provisions of section 40A of the Law; and

(2) those activities being construed as the carrying on of business (which otherwise would attract a liability to tax in accordance with the provisions of section 5(1)(d)(i) of the Law).

Published: 1996
Revised: 2006 / 2011

C10 INVESTMENT MANAGERS (section 7)

Any profit arising to a Guernsey resident investment manager from the disposal of purchase entitlements or incentive units will not be brought into charge to Guernsey income tax.

Published: 1997
Revised: 2011

C11 EXEMPT COMPANIES BECOMING RESIDENT (sections 4 and 40A)
APPLIES UP TO 31 DECEMBER 2007

Where an exempt company becomes resident in Guernsey by virtue of the beneficial owner moving to the island, the company may be treated as becoming resident from the date that the beneficial owner moves to the island rather than from the 1st January in that year of charge. The reverse situation may apply when the beneficial owner leaves the island or dies.

Published: 1998
Revised: 1999 / 2011

C12 SPECIAL PURPOSE FUND MANAGERS (section 188A)
APPLIES UP TO 31 DECEMBER 2007

In some cases, and usually for marketing purposes, a fund promoter will prefer to incorporate a separate manager with a name closely associated with itself or the fund. In the absence of any local establishment, and of necessity, such a "special purpose fund manager" will in turn be provided with administrative and management services by a fund manager located in Guernsey.

A special purpose fund manager is eligible to apply for International Tax Status, subject to the following:

1. that the minimum rate of tax to be levied on it is no less than 2%;

2. that the "secretarial and managerial, etc." activities which, by virtue of Schedule 2 to the 1989 Exempt Company Ordinance, are required to be carried out by a person resident in Guernsey, are in fact so carried out by a person chargeable at the standard rate.

The arrangement is intended for new situations only, i.e. in respect of the management, etc. of investment schemes which are making application for tax exempt status for the first time.

Published: 1999
Revised: 2011

C13 INVESTMENT SCHEMES/TAX EXEMPT STATUS (section 40A)

DELETED

C14 AMALGAMATION OF COMPANIES (sections 6 and 7)

The Amalgamation of Companies Ordinance 1997 allows two or more companies to amalgamate.

The legislation enables a "Guernsey company" to amalgamate with a non-Guernsey company, subject to the consent of the Financial Services Commission. The amalgamated company may then be a completely new company or one of the original companies.

The consequence of amalgamation, in summary, is that the amalgamated company retains all the rights and obligations of the companies it absorbs. To all intents and purposes, therefore, the legal personality of the amalgamated company is the same as that of the companies which it has absorbed.

The tax implications are as follows:

(a) All tax debts and liabilities of the absorbed companies are acquired by, and are the responsibility of, the amalgamated company.

(b) Any claims (such as losses brought forward, annual allowance written down values and the like) in the absorbed companies are available to the amalgamated company, provided that the relevant statutory conditions are met (for example, for losses, the conditions of section 139 would need to be satisfied).

(c) It will be necessary to ascertain whether the new amalgamated company is controlled in Guernsey or carrying on business in Guernsey. This will be a question of fact.

Published: 2000
Revised: 2006 / 2011

C15 PROTECTED CELL COMPANIES (sections 7, 40A, Part XI, sections 187A and 188A)

Background

Investors in and creditors of a PCC will be entering into transactions with the PCC on the understanding that it is regarded as a single entity. They will expect it to be treated in the same way for tax purposes.

The tax treatment adopted in Guernsey therefore reflects this status whilst at the same time protecting the investors in and creditors of one particular cell from the tax liability attributable to the profits of other cells.

Tax Status

Exempt Companies

The legislation under which a company registered in Guernsey can elect for exempt status deals with "companies" and not parts of companies. Election for exempt status will therefore apply to the company as a whole and not to particular cells.

The fee payable by a PCC for exempt status will not be dependent on the number of cells comprised within the company.

Up until 31 December 2007: International Companies

The legislation under which a company is granted international company status similarly deals with "companies" and not parts of companies. International status will therefore apply to a PCC as a whole.

A single rate of tax will apply to the company's taxable profits as a whole.

Other Companies

Other elections affecting the tax status of the company concerned which apply to a particular entity will also apply to the company as a whole.

Computation of taxable income

The taxable profits of each cell should be computed separately with the profits and losses being apportioned between the cells and the core cell in accordance with arrangements set out in the articles of association of the company or in the other relevant agreements entered into by the company.

If the company carries on business activities any profits attributable to individual cells, as opposed to the core cell, will be computed on the basis that each cell carries on a separate business. Amongst other things this will affect:

- the availability of relief for business losses, and
- the availability of relief for capital allowances.

Business losses attributable to the core or to a particular cell will potentially be relievable against the profits attributable to the core or other cells under the provisions of sections 133, 134, 135 or section 137 as the case may be. An election will be required in all cases, as well as a formal claim under section 137.

A payment by one cell to another or to or from the core for the benefit of being able to claim relief for these losses will fall outside the scope of tax.

Assessment and Collection

A single assessment will be raised on the PCC. However, the liability will be apportioned between the different cells and the core cell according to their entitlement to profit.

The statement will detail the liability of each cell.

Published: 2000
Revised: 2011

C16 MIGRATION OF COMPANIES (sections 6, 7 and 40A)

The Migration of Companies Ordinance, 1997 enables Guernsey companies to be removed from the Register of Companies for the purposes of becoming incorporated under the law of another district, territory or place.

Applications for consent have to be accompanied by confirmation, in writing, from the Director that he has no objection to the removal of the company from the Register.

To effect written confirmation from the Director the following procedure has to be followed:

1. The written request must be made at least two months prior to the proposed date of migration.

2. The request must be accompanied by:

   (a) any outstanding tax returns, accounts, computations and distribution returns, together with a remittance for any tax arising;

   (b) a remittance for all tax assessed but not paid, including any deductions made under the Employees Tax Instalment Scheme, which have been withheld but not yet paid over;

   (c) an estimate of any further liability in respect of the periods prior to the date of migration, with a remittance for any tax due;

   (d) particulars of the arrangements that the company proposes to make before migration for payment of any further tax which may become due, if for any reason payment in full is not made at the time. It should be sufficient if a bank or other reputable person stands as guarantor.

The Ordinance also allows for the migration of companies to Guernsey. If a company which is incorporated outside Guernsey has been granted exempt status and is then registered as a Guernsey company during the year of charge, it will not be necessary to pay a further exempt fee.

Published: 2000
Revised: 2006 / 2011

C17 SUCCESSIONS (section 35)
APPLIES UNTIL 31 DECEMBER 2004
(See also R4)

DELETED 2011

C18 UNILATERAL AND DOUBLE TAX RELIEF (Part XV) APPLIES UNTIL 31 DECEMBER 2007

Where a Guernsey resident company has a trading branch or subsidiary in another territory, with the profits thereof being chargeable to tax in Guernsey, subject to double taxation or unilateral relief (DTR), the situation may arise where over the whole period of trading such relief is not available in respect of all the tax paid in the other territory. This is because DTR is granted on an annual basis, taking each year in isolation.

As the method of calculation of taxable profits differs between territories, particularly in respect of the rates of capital allowances, a mismatch may arise resulting in the DTR granted over the whole period of trading being lower than it would have been if the taxable profits in each territory had corresponded on an annual basis.

In such circumstances adjustments may be made to ensure that full DTR is granted for overseas tax paid.

As the particular circumstances will differ from case to case it is not possible to be specific about adjustments which may be made and it will be necessary to obtain agreement on an individual basis. However, the assessable income will be computed in accordance with the normal Guernsey rules to allow losses and annual allowances etc before the claim for DTR. The onus will be on the claimant company to keep records of which assessable profits are taxed, in which years and at what rate, in order to show that the profits have been doubly taxed and that DTR is due.

For the avoidance of doubt, it should be noted that this only refers to trading profits and not to income from property, which will continue to be treated as investment income for Guernsey income tax purposes.

Published: 2003
Revised: 2006 / 2011

C19 INCORPORATED CELL COMPANIES

Background

Each cell ("IC") of an incorporated cell company ("ICC") has its own legal personality.

The tax treatment adopted in Guernsey reflects the fact that each cell is treated as if it was a separate entity for tax purposes. A differentiating factor between an ICC and a PCC (see C15 above), therefore, is that each IC will have its tax status determined on its own merits.

It is possible for an ICC to have ICs that will be resident for Guernsey tax purposes as well as ICs which are able to claim exemption (whether under Category B or Category C of the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989).

Claiming Exemption for an IC

Each IC will be responsible for claiming exemption, where appropriate. The fee for each IC will be £600.

Income Tax Paying ICs

Each IC which has a Guernsey tax liability (i.e. those not qualifying for exempt status) will have a separate income tax record created for them, will receive income tax returns and income tax assessments in their own right and will be responsible for paying their respective income tax liabilities, if any, and for accounting for tax deductions made under the Employees Tax Instalment Scheme, or in respect of distributions or deemed distributions, if relevant.

Published: 2007
Revised: 2011

C20 THE ADOPTION OF INTERNATIONAL FINANCIAL REPORTING STANDARDS (section 7)

- Accounts drawn up in accordance with international financial reporting standards (IFRS) form an acceptable basis on which to compute the assessable profits of a business. For consolidated accounts, copies of the accounts and the relevant computations should be provided with the return for each relevant company.

- A business that commences to draw up its accounts in accordance with IFRS may, by agreement with the Director of Income Tax, continue to compute its assessable profits using accounts drawn up in accordance with any other generally accepted accounting principles provided that this basis is applied consistently from one accounting period to the next, is used for good reason and does not confer an undue advantage to the company.

- Ordinarily, transitional adjustments arising on the adoption of IFRS are taxed and allowed in the year in which IFRS is first adopted. However, the Director of Income Tax will be prepared to agree that the tax effect of these adjustments may be spread over a longer period where there is good reason to do so.

Published: 2007
Revised: 2011

C21 TRANSITIONAL – DEEMED CESSATION OF COMPANIES ON 31 DECEMBER 2007 (section 6(3)

Introduction

Section 6(3) of the Law deems all companies to have ceased trading at midnight on 31 December 2007 and immediately recommenced on 1 January 2008

Further Explanation

The statutory deemed cessation of trade on 31 December 2007 results in an obligation either to produce final accounts to that date, or to apportion accounts which do not have a 31 December year end.

Annual allowance calculations will then be apportioned on the same time basis as the profits into those attributable to the period up to 31 December 2007 and that starting on 1 January 2008.

For accounts which do not have a 31 December year end, any tax calculated for the period to 31 December 2007 will relate to profits which form part of the accounting period ending in 2008 and hence the tax would be due along with the tax return (issued at the beginning of 2009) by 15 January 2010.

For example, a company prepares accounts for the year ended 31 March 2008. Its taxable profits for the year are £40,000. The company time apportions the profits so that £30,000 relates to the period to 31 December 2007. So long as the tax return covering the accounts for the year to 31 March 2008 as well as the tax payable of £6,000 are submitted by 15 January 2010, surcharges will not be imposed. This applies notwithstanding that the tax relates to the Year of Charge 2007.

Published: 29 February 2008
Revised: 17 February 2009

C22 BANKING BUSINESS (INCLUDING THE PROVISION OF "CREDIT FACILITIES") (section 2(2)(a) and Fourth Schedule to the Income Tax (Guernsey) Law 1975

Introduction

Banks and providers of credit facilities receive income from a number of discrete income streams. Although the company standard rate of income tax is 0%, the income from certain specified banking activities will be subject to the 10% intermediate rate.

The underlying principle is that any company having more than one class of income chargeable to income tax at more than one rate will compute its tax liability accordingly.

The categorisation of banking profits which are subject to income tax at the 10% rate of income tax is set out below.

Banking Profits Chargeable at 10%

The categorisation under the Fourth Schedule imposing the 10% rate on banking profits is based on an analysis of how the assets giving rise to those profits have been funded.

- Only profits derived from assets funded by way of customer deposits or funded by the amount of capital needed to satisfy the bank's minimum regulatory requirement will be liable for tax at 10%.

- Profits derived from assets funded in other ways (e.g. from inter-group funding, including fiduciary deposits, or by capital that is excess to a bank's minimum regulatory requirement) will be liable to tax at 0%.

- The profits for these purposes will include interest on income, gains and losses (including exchange gains and losses) on the relevant assets, payments and receipts from transactions in related derivatives together with any associated fee income.

- The profits concerned will be computed after allowing for the relevant cost of funding and after allowing for the appropriate proportion of the bank's overhead costs and allocation of any specific costs.

- A bank will be allowed to specify which assets and related sources of profit will be associated with which source of funds. However a bank will, by way of default, be allowed to deduct such costs on a rateable basis.

- Any free funds available to a branch of a bank trading in Guernsey will be treated for these purposes as though it was capital that was in excess of its regulatory requirement.

- Income from non-banking activities, e.g. fee income from fiduciary services, safe custody, fund administration, etc, will be liable to tax at 0%.

The 10% rate will therefore apply to the income derived from customer deposits and the minimum regulatory capital, including but not limited to:

- Net mainstream interest income.

- Fees and commissions from banking services, such as foreign exchange, account management charges, payment transfer fees, etc.

- Trading income from the purchase and sale of securities and liquid assets held on the balance sheet.

- That part of net interest income arising from the minimum regulatory capital requirement by the GFSC, i.e. applying the same proportion of net interest income which relates to the proportion of total liabilities which is represented by the minimum regulatory capital.

The 0% rate will therefore apply to all categories of banking income other than those derived from customer deposits and the minimum regulatory capital. The following will therefore NOT be chargeable at the 10% rate:

- That part of net interest income, fees, commission, foreign exchange, management charges, etc, which arises from the capital base of the bank (made up of Tier 1 and Tier 2 capital) which is surplus, i.e. in excess of the minimum regulatory capital requirement of the GFSC (applying the same proportion of total liabilities represented by “surplus capital” to net interest income).

- That part of net interest income represented by intra-group activities, including group funded treasury and group funded lending business (syndicated and non-syndicated).

- That part of fee and commission income represented by group funded activities – both achieved by using the proportion of total liabilities represented by group deposits applied to net interest income and fee and commission income respectively.

- That part of net interest income represented by fiduciary deposits (regarded as inter-bank deposits in Guernsey), i.e. the proportion of total liabilities represented by fiduciary deposits applied to net interest income.

- Fund management, administration and support services, such as custodial services.

- Non-banking services and administration charges. This would cover all activities that would be charged at the standard rate of 0% if carried on by a non-banking entity, such as insurance, trust and corporate services.

- Income from non-Guernsey land and property.

Further Guidance

The Director is aware that different institutions attach different descriptions to income streams for their own internal or group purposes. It is the Director's intention that, irrespective of the descriptions used by the respective institutions, income streams which are of fundamentally the same nature will be taxed at the same rate of income tax.

Income from deposit taking

Customer deposit taking and its related activities represents a primary business stream of a bank or provider of credit facilities. All income arising from the re-investment or utilisation of client deposits will be subject to tax at 10% irrespective of how that income is earned. The phrase "client deposits" should be construed as including current, call, omnibus, notice, and fixed deposit accounts, certificates of deposit, bonds, structured products and other similar investment products.

Ancillary income arising from deposit taking activities will also be charged at the 10% rate; e.g. income from the issuing of cheque books, transaction fees, account management and servicing fees, foreign exchange charges, debit and credit card fees, money transmission fees (BACS/CHAPS/SWIFT) etc.

Income from capital and reserves

One of the regulatory conditions attached to the holding of a banking licence is for a minimum amount of capital to be held (a combination of share capital and such other reserves as are required for risk asset ratio purposes). As this minimum regulatory capital is related to banking business, income arising from it will be taxed at the 10% rate. Income arising from capital surplus to regulatory requirements will be chargeable at the standard income tax rate of 0%.

Income arising other than from client deposits

Income arising from sources of funding other than client deposits, such as group funded lending, is not banking business as defined and will therefore be chargeable at the standard 0% rate. Similarly where group funds or funds other than client deposits are used for activities such as leasing and hire purchase, participation in syndicated loan business, sub-participation lending and asset securitisation, income arising will be chargeable at the standard 0% rate.

Fiduciary deposits

Fiduciary deposits involve the specific commissioning by a client of their own bank to invest their assets with a third party bank.

As the interest is paid by the third party bank to the client bank, and subject to the Director being satisfied that a Guernsey bank is acting in a bona fide third party fiduciary capacity, it is accepted that the funds involved will be inter-bank placements and not client deposits and that income earned from them will be chargeable at the general 0% rate.

Other non-banking business

It is recognised that many banks will provide services and generate income from activities such as assurance, insurance, custody, foreign exchange trust and corporate services and investment management services. As all such activities would be charged at 0% rate of tax if undertaken by any other company, it follows that the 0% rate will apply to such income received by banks. Where a bank is in receipt of other income (e.g. from land or property in Guernsey) which is taxed for all companies at the 20% rate, the bank will be taxed on that income at 20%.

Centres of excellence

When groups restructure or create centres of excellence, new business activities may be undertaken by a pre-existing bank and initially might appear to be ancillary income arising from banking business within the terms of this document and therefore taxable at 10% (e.g. proprietary dealing as compared to a group treasury function). Subject to agreement with the Director, where banking group functions are being centralised, income arising from group functions will normally be recognised as not being ancillary to the taking of deposits and therefore will be subject to the standard 0% rate.

Credit Facilities

Paragraph 1 of the Fourth Schedule extends the definition of "banking business" to include "any business that, in the usual course of its business, provides or makes available credit facilities".

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

(1) the provision, in connection with the supply of goods by hire-purchase, conditional sale or credit sale, of credit in instalments for which a separate charge is made and disclosed to the customer, and

(2) any assignment to the business of an advance or credit repayable to a third person."

For the avoidance of doubt, when income has been taxed under the provisions of paragraph 2(1) and (2) of the Fourth Schedule, it will not also be taxed under paragraph 1(1) and (2).

Concessional Treatment

The strict application of the definitions in paragraph 1(1) and (2) would catch a wide variety of activities, many of which would not ordinarily be regarded as "banking", for example intra-group financing or lines of credit in a retail business. The Director will, by concession, not seek to apply the company intermediate rate in the following situations:

- Where credit facilities are made available by a company to other companies within the same group of companies.

- Where the making of credit facilities is ancillary to the company's business, such as when a retail or wholesale business allows extended payment terms to customers.

- Where the borrower has no income or profits that are liable, under any part of the Law, to the individual standard rate, the company standard rate, the company intermediate rate or the company higher rate of income tax.

- In the case of providing credit facilities to a company that is subject to the company standard rate, a business will not be treated as falling within the definition of banking business if the business of the immediate borrower itself is comprised substantially of providing credit facilities that, under the terms of this concession, is not treated as a banking business.

- In any other circumstances, taking into account the principles set out above, if the Director considers it appropriate to do so.

Tax computations

Administration and general expenses should be allocated on a pro rata basis to the gross profits chargeable at the 0% or 10% rates of tax. This method of allocation will also apply to claims for annual allowances.

Where a bank or provider of credit facilities has income from land and property, it should submit a tax computation specific to that income source showing specific expenses.

Group/loss relief and brought forward losses

Group and loss reliefs will continue to be permitted but they will be restricted to profits chargeable at the same rate of tax; i.e. losses arising on activities subject to the general rate of 0% will not be relievable against profits taxed at 10%.

Any bank or provider of credit facilities requiring further clarification concerning income streams liable at the 10% rate should contact the Director.

Published: 1 December 2008

C23 BODIES EXEMPT UNDER CATEGORY A, B OR C OF THE INCOME TAX (EXEMPT BODIES) (GUERNSEY) ORDINANCE 1989 – THE HOLDING OF AN "INVESTMENT OR OTHER PROPERTY SITUATED IN GUERNSEY"

Statutory Position

Under Schedule 2 of the 1989 Ordinance, a body applying for exemption under Category A, B or C ("an exempt fund") is unable, as one of the conditions of eligibility under the Ordinance, to hold any "investment or other property situated in Guernsey, other than a relevant bank deposit or an interest in another body to which an exemption from tax has been granted".

Up to 2007, an exempt fund, or a wholly owned subsidiary of the exempt fund (which itself would be eligible for exemption) was able to hold an interest in a Guernsey company which was exempt under Category D of the 1989 Ordinance. Such vehicles were commonly used as holding companies.

From 1 January 2008, Category D exempt status was abolished, with the result that such companies became resident. An exempt fund (or a wholly owned subsidiary) may not own shares in a Guernsey resident company without breaching the condition of eligibility referred to above.

Concessionary Treatment

The Director will treat the holding of shares by an exempt fund (or a wholly owned subsidiary of an exempt fund) in a Guernsey resident company as not constituting an "... investment or other property situated in Guernsey ...", for the purposes of the 1989 Ordinance, so long as the Guernsey resident company has no Guernsey sources of income (other than from a relevant bank deposit – "relevant bank deposit" having the meaning prescribed to it in the 1989 Ordinance or from an interest in another body exempted under the 1989 Ordinance).

Published: 17 March 2008

C24 MEANING OF A COMPANY'S "INVESTMENT INCOME" FOR THE PURPOSES OF SECTION 62B(1)(g)

Statutory Position

Section 62B(1)(g) of the Law deems undistributed investment income arising or accruing to a company to have been distributed to beneficial members.

The "investment income" of a company falls within "other sources" in section 2(2)(d). It will not include any sources of income that fall within section 2(2)(a), (b) or (c).

Director's Interpretation

Notwithstanding the fact that certain sources of income (e.g. interest received by a bank, royalties received by an author) may be treated as trading income, for the purposes of section 62B(1)(g), investment income will normally include:

- Any interest or money, whether yearly or otherwise, or any annuity or other annual payment and including all discounts, income from securities bearing interest and all analogous payments.

- Income arising from securities and other company dividends and distributions other than those received from a company which is a related "nominated company" or "electing company" within the meaning of Statement of Practice "Groups of Companies – Distributions, Deemed Distributions and Loans to Participators".

This list should not be regarded as exhaustive.

Published: 29 February 2008

C25 DEEMED DISTRIBUTIONS – DE MINIMIS INVESTMENT INCOME (section 62B(1)(g))

(See also C26)

Introduction – Statutory position

The whole of the investment income of any company which is not distributed to the company's beneficial members is subject to the Deemed Distribution rules requiring returns to be made by the company on a quarterly basis.

Concessional Treatment

(a) In the case of a trading company which has a small amount of investment income which is incidental to the trading activity the Director accepts that it is appropriate to apply de minimis concessions, as follows:

- where the gross investment income (of whatever description) for the accounting period is unlikely to exceed £500, or

- where a company invests surplus trading income in an interest bearing account and the company has instant access to the funds whilst on deposit and the net interest arising on that account is unlikely to exceed £10,000 for the accounting period,

the investment/interest income may be aggregated with, and treated as, trading income for the purposes of calculating the undistributed profit and any deemed distribution.

(b) In the case of an investment company with Guernsey property income chargeable at 20% which also has investment income within the above limits (for example, bank interest arising on the net rent received), the above principles may also be applied. In this case, the investment income may be aggregated with the property income and included in the company's assessment to tax at 20%. The benefit of this concession is that the company avoids the need to make distribution and deemed distribution returns in respect of investment income arising up to these limits but will instead be chargeable to tax at 20% on this income as if it were Guernsey property income.

(c) In the case of any company, where the gross investment income (of whatever description) for the accounting period is unlikely to exceed £2,500, the whole of the investment income may be returned in the fourth quarter (i.e. the Director would not insist on the company returning details of investment income for quarters 1, 2 and 3).

For the avoidance of doubt, once a company becomes aware that its cumulative investment/interest income for the accounting period will exceed the levels shown above, it should return the whole of its investment/interest income for that accounting period, in the return for that quarter.

Published: 29 February 2008
Revised: 12 May 2009

C26 DEEMED DISTRIBUTIONS – REPORTING REQUIREMENT FOR INVESTMENT COMPANIES (section 81B(13))

(See also C25)

Introduction – Statutory position

The statutory reporting requirement is that an investment company should report distributions and deemed distributions quarterly

Concessional Treatment for Investment Companies

The Director is prepared to grant a dispensation, for investment companies only, waiving the requirement for quarterly returns, of deemed distributions, and authorising biannual (end of June and end of December) returns.

These biannual returns are intended to work in a similar way to interim income tax assessments (section 73) and will be “self-assessed” on the basis of the best information available to the company at that time with a “final self assessment revised biannual return” being made once the actual position is known (which will probably be when the accounts have been prepared).

In strictness, any revision that leads to an additional payment of tax being required would give rise to a surcharge, under section 199 (because that tax would be paid later than the 15th of the month following the end of the relevant quarter) subject to the de minimis rules. By concession, however, so long as the company provides the revised biannual return and the payment of any additional tax, to the Director, by 15 January in the second year following the year in which the relevant accounting period ends, no surcharge will be imposed, provided that the original estimate was made in good faith, on the basis described above.

For example, by 15 January 2009 Company A makes a biannual return of investment income which is deemed as distributed for July – December 2008. The company’s best estimate is that the tax due is £20,000 and it pays that amount. When the company’s accounts to 31st March 2009 are finalised, it transpires that the tax which should have been paid was £25,000. Under section 199, surcharges would arise, from 15 January 2009, on the additional £5,000. By concession, however, so long as the company files the revision to its biannual return, and pays the £5,000 tax by 15 January 2011 (i.e. 1 year and 15 days from the end of the year in which the relevant accounting period ends) no surcharges would be imposed.

For the avoidance of doubt, the concession will not apply in relation to property income, which is chargeable to income tax on the company at 20% and is not, therefore subject to the deemed distribution rules.

Published: 17 March 2008
Revised: 10 September 2008

C27 DEEMED DISTRIBUTIONS – TREATMENT OF ACCUMULATED UNDISTRIBUTED COMPANY INCOME WHEN (A) A BENEFICIAL MEMBER, WHO WAS PREVIOUSLY NOT RESIDENT, MOVES TO GUERNSEY, OR (B) A BENEFICIAL MEMBER WHO IS RESIDENT BUT NOT SOLELY OR PRINCIPALLY RESIDENT ("RESIDENT ONLY") BECOMES SOLELY OR PRINCIPALLY RESIDENT (sections 62A, 62B and 81B)

Statutory Position

Section 62B provides that on the happening of certain events, a deemed distribution will arise in respect of undistributed income. The charge is, in effect, on the amount of that income which would have been distributed to that beneficial member, had the company made a distribution to him at that time.

(A) Concessionary Treatment – individual previously not-resident, becoming solely or principally resident

When an individual, who is the beneficial member of a company, moves to Guernsey, there may be reserves of undistributed income in that company, as defined for Guernsey income tax purposes. On the occurrence of one of the deemed distribution trigger events (after the member has become resident in Guernsey for income tax purposes) a charge would, in strictness, arise on all undistributed income at that time attributable to that beneficial member, i.e. including income which arose prior to arrival in Guernsey (unless the income was otherwise outside the deemed distribution rules, e.g. if it had suffered tax overseas at a rate of 20% or more, in which case it would not constitute undistributed income for the purposes of section 62A).

The Director of Income Tax is, therefore, prepared to treat any undistributed income which arose prior to the date the beneficial member first arrived in Guernsey, and which would have been attributable to that beneficial member on the occurrence of a deemed distribution trigger event, as if it had all been distributed ("the imputed distribution") to that beneficial member immediately prior to his first day of residence for income tax purposes in Guernsey, so that it will not fall within the charge to Guernsey income tax under section 81B. This will mean that only income arising post arrival will create a tax charge, under section 81B, on the occurrence of a deemed distribution trigger event.

(B) Concessionary Treatment – individual previously resident only, becoming solely or principally resident

The same treatment as described in (A) above will also be afforded to a beneficial member of a company, who was previously resident only, when they become solely or principally resident for the first time, but in those circumstances the imputed distribution:

- would NOT apply to undistributed income derived from a Guernsey source which was taxable on the company at 0% or 10%, and

- would be treated as having taken place on 31 December of the year prior to the Year of Charge in which the individual becomes solely or principally resident.

Moreover, the imputed distribution would not be treated as subject to tax under section 81B nor as Guernsey source income or a remittance of income by the beneficial member.

This will mean that only:

- income arising from a Guernsey source that has not been taxed in Guernsey, or elsewhere, at 20% or more, or which has not already been deemed to have been distributed, and

- income arising after 1 January in the year in which the beneficial member becomes solely or principally resident,

will create a tax charge, under section 81B, on the occurrence of a deemed distribution trigger event.

Published: 20 October 2009

C28 DISTRIBUTIONS AND DEEMED DISTRIBUTIONS – CALCULATION OF UNDISTRIBUTED INCOME (FOR TAX PURPOSES) (section 62A(2))

Introduction

This Statement of Practice addresses the calculation of undistributed income for the purposes of section 62A(2). It should be read in conjunction with Statement of Practice "Information to be provided by companies to beneficial members.

Statutory Position

Under section 62A(2) of the Law:

""undistributed income" means income which is assessable to income tax and which has arisen or accrued on or after the 1st January, 2008, and –

(a) which has not been distributed, or

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

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

For the purposes of this Chapter the Director may issue a Statement of Practice as to the method of calculation of undistributed income."

Reserves at 31 December 2007

In order to provide a starting point from which to reconcile the distributable reserves used by a company to fund its distributions and deemed distributions from 1 January 2008 onwards, it will be necessary for a company to categorise and quantify its reserves brought forward from the notional cessation on 31 December 2007 under section 6(3).

Where possible, those reserves at 31 December 2007 should be analysed for tax purposes to differentiate between:

- income taxed at 20%,

- capital (and therefore untaxed) reserves.

The Director accepts that there will be cases in which the true quantification of these amounts for tax purposes does not accord with the accounting reserves reflected in the company's balance sheet, and will, therefore, accept any categorisation and quantification at 1 January 2008 which is demonstrated to him to be reasonable and just.

Further Explanation from 1 January 2008

It will be necessary for a company to maintain a reconciliation of its undistributed income (as defined under section 62A(2)), subsequent actual distributions and income which has been deemed to have been distributed.

The computation of a company's assessable income for income tax purposes for any accounting period is the starting point for this reconciliation.

Deductions are then made of any income taxed at the company higher rate, or at any corresponding or higher rate of tax imposed by another jurisdiction.

A further deduction is then made of any deemed distributions and the amount of distributions actually made in excess of the taxed income pools to give a net figure of undistributed "untaxed" income to be carried forward.

Subsequent distributions paid would, ordinarily, be treated as made out of the oldest of any accumulated undistributed income (although the company may determine the specific income sources from which a distribution is paid if it wishes to do so). Any distribution which is claimed to be a distribution of capital profits (and not of income) will, nevertheless, be regarded as first being made out of any undistributed income brought forward, and will be taxed as income.

Example

A Guernsey incorporated trading company is owned by a Guernsey resident shareholder. It prepares accounts to 31 December.

The company has assessable income for tax purposes of £200,000 in the year to 31 December 2008. This comprises:

Guernsey rental income (gross less expenses)	£10,000 (subject to company higher rate tax of £2,000)
Gross foreign dividend	£8,000 (foreign tax of 22% is suffered at source)
Guernsey bank interest	£12,000 (taxed in the company at 0%)
Trading income	£170,000 (taxed in the company at 0%)

It also has brought forward reserves at 1 January 2008 of £70,000 (i.e. income which has been taxed in the company's hands for the period up to 31 December 2007).

The calculation of undistributed income for tax purposes is set out below:

	Pre-2008 reserves	Gsy rental	Net Foreign dividend taxed at 20% or more	Bank Interest	Trading	Total
Assessable profits/income	£70,000	£10,000	£6,240	£12,000	£170,000	£268,240
Less: income arising before 1 January 2008	(£70,000)	0	0	0	0	(£ 70,000)
Less: income taxed at the company higher rate	0	(£10,000)	0	0	0	(£ 10,000)
Less: foreign income taxed at a rate equal to or higher than the company higher rate	0	0	(£6,240)	0	0	(£ 6,240)
Less: deemed distribution of investment income	0	0	0	(£12,000)	0	(£ 12,000)
Undistributed income for tax purposes	0	0	0	0	£170,000	£170,000

Published: 23 July 2008
Revised: 2011

C29 <u>DISTRIBUTIONS AND DEEMED DISTRIBUTIONS – INFORMATION TO BE PROVIDED BY COMPANIES TO BENEFICIAL MEMBERS</u> (Chapter VIII of the Income Tax (Guernsey) Law 1975 and the Income Tax (Tax Deductions from Company Distributions) Regulations 2008)

(This Statement of Practice should be read in conjunction with C28, C30 and C38)

<u>Statutory Position</u>

Section 60 of the Law and the Regulations require a company to provide certain information when it makes an actual distribution of undistributed income.

Section 61 then provides for the appropriate credit for any tax suffered to be given to the individual beneficial member as appropriate.

The purpose of this Statement of Practice

A fundamental principle of the new regime under zero/10 is that a company is responsible for deducting and accounting for tax, on behalf of its beneficial members, in respect of any distribution/deemed distribution (“distributions”) it makes. It follows that, in the hands of the individual beneficial member, distributions are to be treated as having a credit for the relevant tax attached to them.

This Statement of Practice sets out the information that should be provided by companies to beneficial members to enable the distributions and associated tax credits to be readily reconciled between the company’s income tax affairs and those of the individual. The aim is to avoid unnecessary work for all parties arising from situations where both income and tax credit cannot be easily reconciled and to reduce enquiries arising from the Income Tax Office.

Information to be provided

Clearly it is good practice, irrespective of any legislative requirement, for a company to provide a voucher to its beneficial members when distributions arise, whether actual or deemed, to show, for example, the amount of the distribution and the amount and rate of any tax which has been deducted. In most cases, the final tax position may only be determined at a later date and hence further documentation will be required to be issued to the beneficial member, as described below.

Since undistributed income (as defined for tax purposes in section 62A(2)) means income assessable to income tax, the final tax liability for the year (for Guernsey resident beneficial members and the company) and the amount of undistributed income carried forward can only be calculated once the company's tax computations have been completed. To determine the final amount of tax arising on undistributed income in the year and to provide a basis for the declaration of such income by the beneficial member on his/her tax return in relation to any deemed or actual distributions, the following process should be followed.

When the company's tax returns, financial accounts and income tax computations are submitted to the Director, they should be accompanied by:

(a) A schedule setting out, for each income stream, the distributions made from that income and any balances carried forward to the following year (see example attached and Statement of Practice "Distributions and deemed distributions – calculation of undistributed income for tax purposes").

(b) For each beneficial member, a reconciliation should be prepared, in the recommended format attached, showing details relevant to each beneficial member, and this should include:

- the amount of each actual distribution and deemed distribution and in the case of an actual distribution the date paid;
- the pool(s) of income from which the distribution has been paid, i.e.
    - pre-2008 income,
    - income taxed at 20% post 1 January 2008, e.g. Guernsey rental income,
    - income taxed at 20% or more overseas (with a separate pool for each territory) including the amount or rate of that overseas tax, and
    - income taxed at less than 20% overseas (with a separate pool for each territory) including the amount or rate of overseas tax,
    - income already subject to a charge as a deemed distribution which has been distributed subsequently,
    - non-taxable income such as repayments of capital or the excess of accounting reserves over undistributed income;
- the amount paid.

A copy of this reconciliation should also be given to the beneficial member for inclusion with their personal tax return. The reconciliation should be prepared in the format shown in the following example, using the template form 680, and should, for example, be expanded, as appropriate, if extra fields are needed (e.g. if there is overseas income from a number of different territories). Form 680 ("Final Tax Certificate") is available on the website www.gov.gg/tax under "Printable Forms".

A copy of the reconciliation, in the recommended format shown in the following example and using the template provided (form 680), for each beneficial member resident in Guernsey, should be submitted to the Director of Income Tax with the company's income tax return, accounts and computations. The Director will review the documents and confirm his agreement or otherwise. Whilst it is not essential that companies wait for this confirmation before issuing a copy of the reconciliation to their members, it may well be that, from a practical point of view, this is the best approach, to avoid the need to issue amended reconciliations. The beneficial member should include his copy of the reconciliation with his personal tax return.

If an individual completes his tax return before he receives final details of the reconciliation, he should submit the return using the information available to him at that time (i.e. enclosing information from Distribution Remittance advices received in the calendar year covered by their personal tax return).

Where the final reconciliation shows figures which are different to those which the individual has submitted with his tax return, no surcharges or supplements will apply to the individual, as set out in the Statement of Practice "Surcharges and supplements for individuals in respect of distributions and deemed distributions".

EXAMPLE

Single beneficial member owning 100% of shares personally
Accounting period ends on 30th September

Pre-1.1.08 business income 1.10.07 – 31.12.07 (assume no other income in this period) £70,000

APE 30.9.08 – Accounting profits	**Gross**	**Tax**	**Net**
Guernsey business income (1.10.07 – 31.12.07)	£ 87,500	£17,500	£ 70,000
Guernsey business income (1.1.08 – 30.9.08)	£170,000	0	£170,000
Guernsey rental income (net of expenses)	£ 10,000	£ 2,000	£ 8,000
Untaxed investment income	£ 12,000	0	£ 12,000
Foreign dividend income (taxed at 22% in Germany)	£ 8,000	£ 1,760	£ 6,240
Foreign dividend income (taxed at 7% in Japan)	£ 10,000	£ 700	£ 9,300
Accounting profit			£275,540

No dividend paid

Reserve pools of tax adjusted profits (income available for distribution)

	Pre-2008 profits	Gsy rent	Net foreign dividend taxed at more than 20%	Net foreign dividend taxed at less than 20%	Bank interest	Trading post 1.1.08	Amounts not taxable when distributed	Total actual Distributions (date paid)
Pool b/f	0	0	0	0	0	0	0	
Profits/income y/e 30.9.08	£70,000	£8,000	£6,240	£9,300	£12,000	£170,000		
Deemed distributions				-£9,300	-£12,000		£21,300	
Actual distributions								
Pool c/f 30.9.08	£70,000	£8,000	£6,240	0	0	£170,000	£21,300	

APE 30.9.09 – Tax adjusted profits

	Gross	Tax	Net
Guernsey business income	£150,000	0	£150,000
Guernsey rental income (net of expenses)	£ 10,000	£ 2,000	£ 8,000
Untaxed investment income	£ 11,000	0	£ 11,000
Foreign dividend income (taxed at 22% in Germany)	0	0	0
Foreign dividend income (taxed at 7% in Japan)	£ 10,000	£ 700	£ 9,300
Accounting profit			£178,300

Net dividend paid of £114,240 on 30.9.09

Reserve pools of tax adjusted profits (income available for distribution)

	Pre-2008 profits	Gsy rent	Net foreign dividend taxed at more than 20%	Net foreign dividend taxed at less than 20%	Bank interest	Trading post 1.1.08	Amounts not taxable when distributed	Total actual Distributions (date paid)
Pool b/f	£70,000	£ 8,000	£6,240	0	0	£170,000	£21,300	
Profits/income y/e 30.9.09		£ 8,000		£9,300	£11,000	£150,000		
Deemed distributions				-£9,300	-£11,000		£20,300	
Actual distributions	-£70,000	-£16,000	-£6,240			-£ 12,000	-£10,000	£114,240
Pool c/f (30.9.09)	0	0	0	0	0	£308,000	£31,600	
See Notes	**1**	**1**	**2**	**3**	**4**	**5**	**6**	

NOTES – see also Statement of Practice C30 "Distributions & deemed distributions – Accounting for tax to the Director"

1. Guernsey tax suffered by company at 20% - no further deduction required when distributed.
2. Overseas tax suffered at 20% or more – no deduction required when distributed; credit for overseas tax will be given to beneficial member.
3. Overseas tax suffered at less than 20% - deemed distribution arises and tax should have been deducted accordingly in the course of the year using Distribution Reporter; credit for overseas tax suffered will be given to beneficial member.
4. Deemed distribution arises and tax should have been deducted accordingly using Distribution Reporter.
5. Income subject to deduction when distributed, or if a deemed distribution event occurs; tax to be accounted for using Distribution Reporter.
6. In this column include income which is not taxable when distributed e.g. income previously deemed distributed (as in this example) or repayments of capital.

FINAL TAX CERTIFICATE

STATEMENT OF SHAREHOLDER'S ASSESSABLE INCOME
(Copy to be submitted with shareholder's personal tax return)

Company: X Limited
Tax Reference No: 1C.12345
Beneficial Member: Dr X

Accounting Period Ended: 30 September 2008

Deemed distributions of assessable income under section 62B in the accounting period			
(Income taxed at less than 20% and untaxed income)	**Income[1]**	**Overseas rate of tax suffered, if any**	**Tax paid on shareholder's behalf via Distribution Reporter**
Deemed distribution of untaxed investment income (s62B(1)(g))	£12,000		£2,400
Deemed distribution of untaxed investment income (s62B(1)(g)) (Japanese div)	£ 9,300	7%	£1,300
Other deemed distributions under s62B(1)			
Total	£21,300		£3,700

Actual dividend paid: NONE paid in AP

Consisting of:

Share of company income subject to income tax at company higher rate	**Income[1]**	**Tax Credit**
Assessable income arising before 31.12.07		
Income from ownership of Guernsey property		
Income assessable under section 2(2)(b)		
Income assessable under section 2(2)(a)		
Total	-	-

Share of company overseas income subject to tax at a rate of 20% or more		
Identify the jurisdiction, the income subject to tax in that jurisdiction, the rate of tax and the actual tax suffered		
	Income[1]	**Rate**
Jurisdiction		
Total	-	

Share of company assessable undistributed income included in dividend paid	**Income[1]**	**Tax paid on shareholder's behalf via Distribution Reporter**
Business income under s2(2)(d)		
Total	-	-

	Income[1]
Balance paid from amounts not taxable when distributed:	-

[1] Income shown is net of company expenses, overseas tax paid and any tax assessed directly on the company, but does not include tax accounted for using Distribution Reporter.

FINAL TAX CERTIFICATE

STATEMENT OF SHAREHOLDER'S ASSESSABLE INCOME
(Copy to be submitted with shareholder's personal tax return)

Company: X Limited
Tax Reference No: 1C.12345
Beneficial Member: Dr X

Accounting Period Ended: 30 September 2009

Deemed distributions of assessable income under section 62B in the accounting period			
(Income taxed at less than 20% and untaxed income)	**Income**[1]	**Overseas rate of tax suffered, if any**	**Tax paid on shareholder's behalf via Distribution Reporter**
Deemed distribution of untaxed investment income (s62B(1)(g))	£11,000		£2,200
Deemed distribution of untaxed investment income (s62B(1)(g)) (Japanese div)	£ 9,300	7%	£1,300
Other deemed distributions under s62B(1)			
Total	£20,300		£3,500

Actual dividend paid	£114,240
Date Paid:	30.09.2009

Consisting of:

Share of company income subject to income tax at company higher rate		
	Income[1]	**Tax Credit**
Assessable income arising before 31.12.07	£70,000	£17,500
Income from ownership of Guernsey property	£16,000	£ 4,000
Income assessable under section 2(2)(b)		
Income assessable under section 2(2)(a)		
Total	£86,000	£21,500

Share of company overseas income subject to tax at a rate of 20% or more

Identify the jurisdiction, the income subject to tax in that jurisdiction, the rate of tax and the actual tax suffered

	Income[1]	**Rate**
Jurisdiction		
Germany	£6,240	22%
Total	£6,240	

Share of company assessable undistributed income included in dividend paid		
	Income[1]	**Tax paid on shareholder's behalf via Distribution Reporter**
Business income under s2(2)(d)	£12,000	£2,400
Total	£12,000	£2,400

	Income[1]
Balance paid from amounts not taxable when distributed:	£10,000

[1] Income shown is net of company expenses, overseas tax paid and any tax assessed directly on the company, but does not include tax accounted for using Distribution Reporter.

Published: 5 August 2009
Revised: 2011

C30 DISTRIBUTIONS AND DEEMED DISTRIBUTIONS – ACCOUNTING FOR TAX TO THE DIRECTOR (section 81B)

(See also C26 and C42)

Introduction

Every company has a statutory obligation to account for any income tax which is due, on behalf of the beneficial member, whenever it makes a distribution of undistributed income (as defined in section 62A(2)), or when a deemed distribution has been triggered.

This Statement of Practice addresses practical issues to be considered by companies when determining the amount of tax which must be paid to the Director in respect of distributions and deemed distributions.

Explanation

A company will be expected to exercise best judgement in relation to tax which should be accounted for to the Director, and if the tax is not accounted for both in full and by the due date, the penalty and surcharge provisions may be applied.

Whilst the majority of cases will be straightforward, the following explanations/concession may assist companies in making the appropriate deductions. For the purposes of the first three bullet points that follow, it is important that companies maintain adequate records to enable them to identify the source(s) from which distributions are made. This will involve keeping records of income pools that will have been deemed distributed for tax purposes or have actually been paid away by dividend. Please refer to Statement of Practice "Distributions and Deemed Distributions – Calculation of Undistributed Income for tax purposes". Companies may choose the income sources from which to pay dividends or from which the dividends should be treated as paid. In the absence of any specific identification, the default position will be that dividends will be treated as coming first from taxed income reserves that arose prior to 1 January 2008, then out of those income pools that will be subject to tax at the company higher rate or have suffered foreign taxes at a rate greater than 20%, and then those with underlying tax credit of less than 20%, and finally out of untaxed income.

- The company will generally account for tax at the individual standard rate in respect of beneficial members who are resident in Guernsey. However, no deduction need be made if:

  - the distribution is paid out of a pool of income which has already been deemed distributed, or

  - the distribution is from income which has had overseas tax deducted from it at a rate not less than the individual standard rate, or

  - the distribution has suffered Guernsey tax at not less than the individual standard rate (e.g. currently, Guernsey rental income charged at the company higher rate).

- Furthermore, where the income from which a distribution or deemed distribution is made has underlying overseas tax of less than the individual standard rate attached to it, the company should exercise its best judgement in calculating the amount of underlying overseas tax attached to that source of income and account for Guernsey income tax at the difference between the underlying overseas tax rate and the individual standard rate in its quarterly or bi-annual return (see Statement of Practice "Deemed Distributions – Reporting Requirements for Investment Companies") and must submit its computation with the relevant accounts, in reconciliation, to the Director.

- No tax should be accounted for in respect of beneficial members who are not Guernsey resident. In any case in which the company is uncertain about the residence status of the beneficial member it must account for tax on the basis that the beneficial member must be treated as being a resident of Guernsey.

<u>Example 1</u>

A Guernsey incorporated trading company, formed on 1 January 2009, is owned by a Guernsey resident beneficial member. It prepares accounts to 31 December.

In the first quarter to 31 March 2009 the company has Guernsey bank interest of £15,000 and assessable income from Guernsey property of £30,000.

The company will be required to account for Guernsey income tax of £3,000 being 20% of the assessable Guernsey bank interest that will be deemed distributed to the Guernsey resident beneficial member on 31 March 2009. The tax will be due and payable by 15 April 2009. Note that the company will not be required to account for tax in respect of the assessable Guernsey rental income as this will be subject to tax by assessment on the company and will not, therefore, form part of the deemed distribution on 31 March 2009.

<u>Example 2</u>

A Guernsey incorporated company, formed on 1 January 2009, is owned by a Guernsey resident beneficial member. It prepares accounts to 31 December.

The company had assessable income in the year to 31 December 2009 of:

Guernsey trading income	£100,000	
Guernsey rental income	£ 50,000	
Guernsey bank interest	£ 20,000	£170,000

On 25 September 2011, the company paid a dividend of £100,000 out of accounting profits for the year ended 31 December 2009 payable on 31 October 2011. The company also received Guernsey bank interest of £5,000 in the quarter ended 31 December 2011.

The company will be required to account for Guernsey income tax of £7,000 being 20% of the Guernsey bank interest that will be deemed distributed on 31 December 2011 (£1,000) together with income tax of 20% on that part of the dividend that is paid out of undistributed trading income (£30,000 x 20% = £6,000). The tax of £7,000 will be due and payable to the Director of Income Tax by 15 January 2009.

Published: 31 July 2008
Revised: August 2008 / 19 February 2009 / 2011

C31 DEEMED DISTRIBUTIONS – UNDISTRIBUTED INCOME ARISING ON THE OCCASION OF A CESSATION OF A BUSINESS/SUBSTANTIAL SCALING-DOWN OF A BUSINESS (section 62B(1)(h))

Statutory Position

Under section 62B(1)(h) of the Income Tax Law, on the occasion of the cessation of the whole, or substantially the whole, of a company's business, a deemed distribution will take place of undistributed income.

That charge is subject to such provision as the Director may by Statement of Practice make in respect of relief by way of deferral of tax.

Relief by way of deferral of tax

If the company claims that:

- a new business is to be commenced/acquired, or
- there is to be a return to the same scale of activity of the existing business,

within a period of twelve months of the cessation/substantial scaling-down, as appropriate, the payment of the tax will be deferred and the deemed distribution will be treated as if it did not occur, if the acquisition/recommencement/increase in activities of the business comes to fruition. In the event that acquisition/recommencement/increase in activities does not take place as expected, the tax will become due at the expiry of the 12 months deferral period and surcharges/additional surcharges will become due 15 days after the end of the quarter in which the cessation/scaling down originally took place.

Where the date of cessation/substantial scaling-down is not immediately apparent, the Director will endeavour to reach agreement with the company, taking into account all the available documentation and other information.

Notwithstanding the above, there will be occasions where, whilst the company intends to commence a new business, or return the existing business to its previous level of activity, it has been unable to do so within the twelve month period set out above. On being satisfied that, at the expiry of the twelve month period, the company is actively in the process of acquiring/establishing a new business, or returning the business to its previous level of activity, the Director may agree to extend the twelve month period subject to any terms and conditions he considers appropriate (which may include the payment of surcharges/additional surcharges from the expiry of the initial twelve month statutory period permitted by this Statement of Practice).

For the avoidance of doubt, where a new business is commenced/acquired, the normal rules relating to the set-off of losses, between different businesses, would apply.

Published: 29 February 2008

C32 **COMPANY DEEMED DISTRIBUTIONS – DEFERRAL OF TAX ON THE DEATH OF A BENEFICIAL MEMBER** (section 62B(1)(b))

Introduction

One of the contingencies which triggers a potential tax charge in respect of the deemed distribution of undistributed company profits is the death of a beneficial member.

The States has recognised, however, that there may be instances in which a charge triggered by such a death could justify some concessional further deferment because of lack of liquidity on the part of the company, the executors or the beneficiaries, and this Statement of Practice sets out the circumstances in which the Director will permit a further deferment of the income tax liability on the deemed distribution arising on the death of a beneficial member.

Statutory Position

An income tax charge on a deemed distribution of a company's undistributed income arises to a beneficial member. The company has an obligation to deduct and pay tax to the Director.

A deemed distribution charge triggered by the death of a beneficial member under section 62B(1)(b) of the Law is therefore a tax charge on the estate of the deceased in respect of the undistributed income of the company equivalent to the amount which would have been payable to the beneficial member had all that undistributed income been distributed to the beneficial member on the date of death. The company retains the same obligation to deduct and pay the tax due to the Director.

Concessional Deferment of Liability

Where the interest of the deceased in the shares of a company passes to the surviving spouse of the deceased, the Director will permit an income tax charge on a deemed distribution triggered by the death to be deferred for a period up to a maximum of three years from the end of the calendar quarter in which the death occurred if the Director is satisfied that to require payment by the normal due date would cause financial hardship to the company/executors/beneficiaries (although, where, in his opinion, the circumstances warrant it, the Director may allow a longer deferral period).

Within that period, the actual distribution of all or part of such income and the tax payable in respect of such a distribution will be matched with, and offset against, the deferred liability.

The liability deferred will otherwise become due and payable wholly at the end of the agreed deferral period, unless some other contingency has arisen which would otherwise trigger a tax charge on a deemed distribution, in which case the deferment period will end at that time.

Concessional deferment, as described above, will only be available on application to the Director by the executors of the deceased within 3 months of the end of the calendar quarter in which the shareholder died.

A further concessional deferment will not be permitted where a surviving spouse, who has inherited shares, subsequently dies after remarriage.

In a case where the deceased's shares are not inherited by the surviving spouse, but in which the company, the executors or the persons inheriting the shares are of the view that the degree to which undistributed income has been invested in business assets merits some deferment, the Director will be prepared to consider the case on its merits. Any deferment will be conditional upon such conditions as the Director may impose.

Further Conditions

In order to protect the Island's revenues, the Director may make any deferment conditional on the volunteering of a charge upon assets to the value of the liability deferred, e.g. giving of security, at the taxpayer's cost, over personal assets, in favour of the Director.

Any agreement to defer a liability will be void if, in the opinion of the Director, arrangements have been entered into for the purpose of the avoidance or reduction of an income tax liability.

Late payment surcharges and additional surcharges will be due, on any deferred liability, in the normal way (i.e. from 15 days after the end of the calendar quarter in which the shareholder died).

Published: 29 February 2008

C33 DISTRIBUTIONS AND DEEMED DISTRIBUTIONS – CAPITAL REDUCTIONS; DISAPPLICATION OF SECTION 62B(1)(a)

Introduction

This statement addresses the possible disparity between the capitalisation of companies by way of share capital as opposed to loan finance and the consequent effect of section 62B (1)(a) of the Law.

Statutory Position

A loan made by a shareholder to a Guernsey company can be repaid by that company, either in part or in full, without any Guernsey tax consequence, regardless of whether or not the company is in receipt of undistributed income as defined by section 62A(2) of the Law.

In contrast, section 62B (1)(a) of the Law provides that a transaction consisting of the disposal, repurchase or redemption of a beneficial member's shares in a company shall trigger a deemed distribution to the shareholder of an amount of the company's undistributed income equivalent to the amount which would have been payable to him had the company distributed that income at that time. Thus, the shareholder who finances his company by way of share capital as opposed to debt could potentially be disadvantaged.

Concessional Treatment

The purpose of this Statement of Practice is to ensure that a shareholder may effectively extract his capital from a company (in circumstances such that his effective percentage shareholding in the company does not change), for example, by the company purchasing its own shares, without there being triggered a deemed distribution of undistributed income.

Where the shareholders of a company introduce new capital into a company, in exchange for which they receive shares issued by the company, the subsequent disposal of those shares at a value of no more than the amount originally provided for their acquisition (and taking into account the value of any connected or otherwise related transaction or transactions) will be treated as not giving rise to a disposal for the purposes of section 62B(1)(a). The effect of this Statement of Practice is conditional upon the shareholder holding the same interest (in terms of both proportion and value) in the undistributed income of the company immediately after the disposal as he held before it.

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Revised: 2011

C34 DISTRIBUTIONS AND DEEMED DISTRIBUTIONS – COMPANY REORGANISATION INCLUDING AMALGAMATIONS, RECONSTRUCTIONS AND DEMERGERS WITH SAME BENEFICIAL OWNERSHIP (section 62B(1))

Introduction – Statutory Position

The strict statutory position is that a company reorganisation is an event which triggers deemed distributions of undistributed income.

Concessional Treatment

Where the Director is satisfied that the beneficial members and the extent of their interests (both in size and value) are fundamentally the same before and after the reorganisation, then he will be prepared to treat the reorganisation as not giving rise to a deemed distribution.

Example 1

Mr A owns 100% of the shares in Company X, which is valued at £500,000

Mr B owns 100% of the shares in Company Y, which is also valued at £500,000

The two companies amalgamate into new Company Z, valued at £1,000,000 in which Mr A and Mr B each hold 50% of the shares.

Because the beneficial members and their interests are fundamentally the same before and after the amalgamation, the Director will accept that neither Mr A nor Mr B should be treated as in receipt of a deemed distribution.

Example 2

Mr A owns 100% of the shares in Company X, which is valued at £500,000

Mr B owns 100% of the shares in Company W, which is valued at £750,000

The two companies amalgamate into new Company T, valued at £1,250,000 in which Mr A and Mr B each hold 50% of the shares (i.e. Mr B has effectively transferred value of £125,000 to Mr A).

Because the interests of the beneficial members are not fundamentally the same before and after the amalgamation, the deemed distribution rules will apply to the undistributed income but only to the extent of the proportion of the value of Company W (£125,000) which has been transferred/foregone.

Published: 29 February 2008

C35 DISTRIBUTIONS AND DEEMED DISTRIBUTIONS – DISREGARDED DEEMED INCOME (sections 47D(1)(e) and 47E)

(*See also C37*)

Introduction

This Statement of Practice sets out how a company can satisfy the Director under section 47D(1)(e), that income was distributed to a non-resident, and section 47E, that deemed income is "disregarded deemed income".

Statutory Position under section 47E

"Deemed income" means a deemed distribution (within the meaning of Chapter VIIIA) and a qualifying loan (within the meaning of Chapter XII).

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

Director's Requirements

For a Guernsey registered company, with a local director or company service provider, this can be achieved by the director/corporate service provider being satisfied that the beneficial member is non-resident, and in coming to that conclusion, so long as they have followed procedures equivalent to anti-money laundering "know your customer" rules, this will be accepted as satisfying the Law, in the absence of evidence of dishonesty, fraud, etc. The director/company service provider/company should retain sufficient evidence of the actual procedures followed to demonstrate to the Director that these requirements have been met, should the Director require this.

Published: 17 March 2008

C36 DISTRIBUTIONS AND DEEMED DISTRIBUTIONS – INTERACTION BETWEEN SECTION 62A ET SEQ AND SECTION 65

Introduction

This Statement of Practice clarifies the position where company income both falls to be treated as the income of the settlor of a revocable trust for the purposes of section 65 and the income is deemed to have been distributed for the purposes of section 62A.

Explanation

Provided the Director is satisfied that the potential avoidance of tax is not an issue, section 62A (deemed distribution) will take precedence over section 65, so long as the Guernsey resident settlor of a revocable trust accepts that he should be treated as the beneficial member for all of the purposes of the application of the deemed distribution rules in section 62A.

The purpose of this concession is to ensure that the inter-relationship between section 62A and section 65 will never result in double taxation of the same income and that a company is not denied the benefits of the distribution/deemed distribution regime simply because it is part of a revocable settlement arrangement.

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Revised: 5 March 2008

C37 DISTRIBUTIONS AND DEEMED DISTRIBUTIONS OF INCOME – THE DISREGARDED INCOME AND DISREGARDED DEEMED INCOME OF NON-RESIDENT INDIVIDUALS (sections 47B – 47D and 81B)

Introduction

This Statement of Practice provides examples of a distribution or deemed distribution of company income which includes income which is disregarded income in the hands of a non-resident beneficial member.

Further Explanation

Income which is "disregarded income" or "disregarded deemed income" because it is the income of a non-resident individual (sections 47B to 47D of the Law) does not give rise to any further income tax charge in Guernsey.

Example 1

A company has assessable trading income of £100,000 for the 12 month accounting period ending 31 December 2008 and £80,000 of that income is distributed. Beneficial Member A is a resident of Guernsey and holds 60 of the 100 issued shares. Beneficial Member B is non-resident and holds the other 40 shares.

When the distribution is made, the company has an obligation to deduct and account for £9,600 tax under section 81B in respect of the distribution to the Guernsey resident beneficial member (£48,000 @ 20%) but it has no obligation to deduct tax from the £32,000 distributed to the non-resident beneficial member because the distribution is "disregarded income".

Example 2

The same company has assessable income of £120,000 for the following 12 month accounting period ending 31 December 2009. This comprises:

Trading income £112,000
Taxed foreign income £ 8,000 (foreign tax accounted for at 22%)

(a) It makes no distribution during the accounting period but on 31 December 2009, Beneficial Member A sells his shareholding to new Beneficial Member C.

Irrespective of the residence status of Beneficial Member C, the disposal of shares by A triggers a deemed distribution, and the company must account for tax in respect of the proportion of undistributed profits to which A would be entitled on 31 December 2009.

The charge in respect of A's deemed distribution will be:

- 60% of £20,000 undistributed income brought forward from 2008 (£12,000 @ 20%).
- 60% of £112,000 trading income of the year (£67,200 @ 20%).
- 60% of £8,000 taxed foreign income (£4,800 but no charge arises in respect of this because it has suffered foreign tax at a rate of 20% or more).

(b) Again, it makes no distribution during the accounting period but on 31 December 2009 the non-resident Beneficial Member B sells his shareholding to new Beneficial Member D.

Again, irrespective of the residence status of D, the disposal of shares by B triggers a deemed distribution, and the company must account for any tax due in respect of the proportion of undistributed profits to which B would be entitled on 31 December 2009.

B's deemed distribution will be:

- 40% of £20,000 undistributed income brought forward (£8,000 @ 20%). This is disregarded deemed income and there is no tax to be accounted for in respect of it.
- 40% of £112,000 trading income of the year (£44,800 @ 20%). This is disregarded deemed income and there is no tax to be accounted for in respect of it.
- 40% of £8,000 taxed foreign income (£3,200) which, because it has suffered foreign tax at a rate of 20% or more, carries a tax credit at 20%. This is, in any event, disregarded deemed income and there is no further tax to be accounted for in respect of it.

<u>Example 3(a)</u>

M is not resident in Guernsey, and is resident in France. He is a beneficial member of two Guernsey companies and has the following sources of Guernsey income –

- Guernsey employment income, with tax deducted under the ETI Scheme.
- Guernsey bank deposit interest (received gross).
- Guernsey loan interest (received gross).
- Guernsey property income (where tax is deducted by a Guernsey agent).
- Distributions from a Guernsey property company P.
- A deemed distribution from a zero rated Guernsey company R (where there is some underlying foreign tax credit).

This example highlights the importance of companies maintaining an accurate reconciliation of their income, distributions and deemed distributions, categorised into the various sub-sources, and the underlying tax credits, if applicable.

The income of property company P has been subject to Guernsey income tax at 20%, and the distribution made to M will carry a tax credit in respect of the tax accounted for by the company. M will therefore suffer no further Guernsey income tax liability in respect of this income.

M's entitlement to the deemed distribution of income from company R amounts to a total of £20,000, of which £ 5000 is subject to an underlying foreign tax credit at a rate of 12%. Because M is not resident in Guernsey, the whole of the £20,000 is "disregarded deemed income", and the company is not, therefore, liable to account for any further Guernsey income tax. The £5000 which is subject to the underlying foreign tax credit nevertheless carries a credit of £600.

For the purposes of sections 47B to 47D of the Law, M's position will be –

Section 47B – all his sources of Guernsey income (other than the Guernsey bank interest which is specifically exempted by section 40(cc)) are liable to be charged to Guernsey income tax, but subject to the other provisions of the Chapter.

Section 47C(2) – his liability to income tax for the year of charge is limited to the sum of amounts A and B, which are defined in the Law as follows:

"Amount A is the sum of -

(a) any sums representing income tax deducted from the non-resident individual's disregarded individual income for the year of charge (see section 47D),

(b) any sums representing income tax that are treated as deducted from or paid in respect of that income, and

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

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

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

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

  (i) section 51, or

  (ii) double taxation arrangements under Part XV."

"Disregarded individual income" is defined in section 47D(1) as –

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

(b) income consisting of interest,

(c) income consisting of royalties,

(d) any other income of a similar nature to income described in paragraph (a), (b) or (c),

(e) disregarded deemed income (see section 47E),

(f) disregarded transaction income (see section 47F),

(g) disregarded partnership income (see section 5(1B)),

(h) the emoluments of the office of director, or

(i) income of such other description as the Department may by regulations designate for the purposes of this section."

As a consequence, M's disregarded individual income comprises –

- Distributions from Guernsey property company P – section 47D(1)(a).
- Guernsey loan interest (received gross) – section 47D(1)(b).
- The deemed distribution from zero rated Guernsey company R (where there is some underlying foreign tax credit) – section 47D(1)(e).

Amount A is therefore the sum of –

- Tax accounted for on the Guernsey loan interest (in this example, nil).
- Tax accounted for by company P in respect of its distributions. (again, in this example, nil).
- The 20% tax paid by company P in respect of property income distributed.
- Tax accounted for by company R in respect of its distributions (which is nil).
- The £600 underlying foreign tax credit attaching to that distribution.

Amount B is the sum of –

- The tax deducted under the ETI Scheme in respect of Guernsey employment income,
- The tax deducted by the Guernsey agent from the Guernsey property income.

<u>Example 3(b)</u>

The facts are as set out in example 3(a), except that the non-resident has two sources of Guernsey employment income.

One is the emoluments of the office of director, and the other is not.

In respect of the emoluments of the office of director, the Director will authorise the paying company not to operate ETI. This source will be disregarded individual income, with the nil tax accounted for included in the calculation of sum A.

<u>Example 3(c)</u>

In addition to the sources of income set out in example 3(a), M has income from a trading activity conducted in Guernsey (a shop in St Peter Port).

This is not disregarded individual income, and has suffered no deduction of income tax.

This trading income is therefore assessed on M, and the tax paid by him is included in the calculation of B.

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C38 PAYMENT OF TAX ON DEEMED DISTRIBUTIONS (sections 81B(13) and 199)

Introduction

Generally an event giving rise to a deemed distribution will occur during the course of an accounting period and accounts will not be available at the date of the event.

The company will, therefore, be expected to account for tax for the relevant quarter on the basis of the best information which is then available to it, and to review the position and make any appropriate revision as soon as the next accounts are available. The distribution return should be submitted by the company tax return filing deadline.

Statutory Position

The statutory position is that any payment made later than the 15th of the month following the end of the relevant quarter would give rise to a surcharge, under section 199, subject to the de minimis rules.

Concessional Treatment

By concession, however, so long as the company provides the distribution return and the payment of any additional tax, to the Director, within 1 year and 15 days from the end of the year in which the relevant accounting period ends, no surcharge will be imposed, provided that the original estimate was made in good faith, on the basis described above.

For example, by 15 January 2012 Company A makes a quarterly payment of tax due on a deemed distribution event, occurring on 1 December 2011. The company's best estimate is that the tax due is £10,000 and it pays that amount. When the company's accounts to 31 March 2012 (covering 1 December 2011) are finalised, it transpires that the tax which should have been paid was £12,000. Under section 199, surcharges would arise, from 15 January 2012, on the additional £2,000. By concession, however, so long as the company files the distribution return, and pays the £2,000 tax by 15 January 2014 (i.e. 1 year and 15 days from the end of the year in which the relevant accounting period ends) no surcharges would be imposed.

For the purposes of computing the profits up to the date of the deemed distribution event, the results shown in the accounts which cover the event would be time apportioned unless another apportionment method would be more appropriate.

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Revised: 29 November 2011

C39 LOANS TO PARTICIPATORS – TIMING ISSUES (sections 66A – C)

Introduction – Statutory Position

The charge to income tax in respect of "qualifying loans" advanced to company participators applies to any loan advanced on or after 1 January 2008 by a company with income taxed at a rate other than the company higher rate, irrespective of the source of the funds advanced.

Companies deriving their income solely from Guernsey land and buildings (which is taxable, on the company, at the company higher rate) and investment holding companies, which have no income and no undistributed income, as defined in section 62A(2) of the Law, cannot make "qualifying loans" for the purposes of section 66A so that no charge to income tax arises when a loan is advanced to a participator.

Further Explanation

For the avoidance of doubt, it should be noted that the provisions of sections 66A–C will apply to any loan advanced on or after 1 January 2008, even if it is funded from taxed income that arose prior to 1 January 2008.

In order to prevent potential tax avoidance the charge arises immediately a loan is made, even though the tax is not actually payable until the end of the reporting period (see Statements of Practice "Deemed distributions – de minimis investment income (section 62B(1)(g))" or "Deemed distributions – reporting requirement for investment companies (section 81B(13))".

The Director reserves the right to consider the use of the anti-avoidance provisions in any case in which it appears that there have been arrangements to secure the repayment of one loan and the advancement of another (eg, back to back or bed and breakfast arrangements).

Concessional Treatment

The Director will, by concession, waive a charge arising on a loan made by an investment company if by the end of the reporting period in which the loan was made the company has no "undistributed income", as defined in section 62A(2).

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C40 LOANS TO PARTICIPATORS – UNINTENDED CIRCUMSTANCES (section 66A(3))

Introduction

Section 66A(3) of the law is an anti-avoidance provision which applies where a qualifying loan has been made to a person who is not resident in Guernsey, and deems that loan to have been made to any Guernsey resident participator or officer with whom that person is connected (as defined).

Concessional Treatment

The Director will, nevertheless, consider claims to concessional relief from a charge under section 66A, if he is of the opinion that a Guernsey resident is "caught" by section 66A(3) in unintended circumstances.

It will be necessary for the claimant to demonstrate both that the charge to tax is outside the spirit of the legislation and that to extend relief will not give rise to any loss of tax beyond that chargeable under section 66A.

Published: 29 February 2008

C41 PROPERTY RENTS – SUBLETTING OF SURPLUS SPACE IN BUSINESS PREMISES BY TRADING COMPANIES (sections 17 and 62B(1)(g))

Statutory Position

The rent which a trading company receives from subletting a property it does not own forms a discrete stream of income which should be the subject of a separate computation for income tax purposes under section 17 of the Law. Whilst that income would be taxed at 0%, in the company's hands, it would be deemed as distributed as investment income, on a quarterly basis, under section 62B(1)(g).

Concessional Treatment

Where the subletting is of a part of premises which are otherwise substantially in use for the purposes of the trading activity, and the sub-lessee uses the sublet area otherwise than for a domestic or residential purpose the Director will not require the production of a separate rental income computation and will permit the rent received to be set off against any head rent which is claimed as a deduction from the trading income.

For the purposes of this Statement of Practice, what constitutes "substantially in use for the purposes of the trading activity" is to be agreed on a case by case basis but the Director will always accept that if the property is used at least 90% for that purpose then the concessional treatment will apply.

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C42 REPORTING ARRANGEMENTS FOR ASSOCIATED COMPANIES (sections 62A-D, 66A-C, 81B and 142A)

Statutory Position

Irrespective of any association between one or more companies ("associated companies", for this purpose, being those which share the same beneficial member or members) each company has its own obligation to report and, where appropriate, account for tax, in respect of its annual tax return and assessment, distributions, deemed distributions and loans to participators.

Concessional Treatment – Introduction

The Director has formulated this concession to enable certain inter-company flows to be ignored for the purpose of the deemed distribution and loans to participator rules so that they do not give rise to unnecessary or duplicated reporting. Such inter-company flows include:

- dividend and interest flows,
- loans,
- changes in the proportionate share ownership of associated companies (which do not alter the proportions of the ultimate beneficial interests in the companies concerned or the identity of the individuals holding those interests),
- rents.

In addition, the Director wishes to reduce the administrative burden on associated companies arising from the reporting obligations under the deemed distribution and loans to participators rules.

However this concession does not apply to an intragroup distribution which is made as a consequence of a "65% election" made under The Income Tax (Deemed Distributions) (Exemptions) Regulations, 2009. In this case the company is NOT exempted from the requirement to account for the tax on that particular distribution.

Concessional Treatment – Detail

Income flows between associated companies may be disregarded

Companies with some form of common ownership may elect to be treated as "associated" for the purposes of this Statement of Practice. The effect of the election is that a "ring" is created around the electing companies which become "associated" for the purpose of this concession so that any flows of income or expense between them are disregarded for the purposes of the deemed distribution and loans to participators rules. Transactions must be reported and tax paid at such time as there is an actual or deemed distribution or a qualifying loan is made, or deemed as made, to a party outside the ring – namely to a non corporate entity or to a company which is not associated for these purposes or has not elected to be treated as associated.

A company may not elect to be treated as "associated" with more than one group of companies at any one time.

For example, if a Guernsey resident individual X owns Company A which owns company B, a trading company, dividends paid by B to A would not be treated as investment income in A and therefore would not be deemed to be distributed to X as long as A and B had elected to be associated under the terms of this concession.

Using the same example, if Company A lent money to Company B and charged an amount of interest, such interest received by A would not be treated as investment income in A and therefore not be deemed to be distributed to X, as long as A and B had elected to be associated.

The election for associated treatment has to be made to the Director in writing, no later than the reporting date for the first quarter for which the election is to apply, by each of the entities that will be treated as associated for the purposes of this concession. As a transitional measure, any election made by 15 July 2009 may be backdated to cover any earlier quarter of 2008 and/or 2009. Such election must include the name of each of the relevant entities, their Guernsey tax residence status and details of shares held by and between the associated entities, or by the ultimate beneficial owner(s). The election should be signed by an authorised person (e.g. the directors) of each of the affected companies.

Consolidated Reporting

In addition, the Director is prepared, on application in writing, no later than the reporting date for the first quarter for which the election is to apply, to accept consolidated returns and payments of tax from a "nominated company" in respect of itself and the associated "electing companies", subject to certain conditions.

A "nominated company" (which need not be the holding company) will give an undertaking to the Director that it will make consolidated returns to the Director of all information required and pay all amounts which would otherwise be reportable/payable by itself and all its listed "electing companies" individually.

Every "electing company" must notify the Director, also in writing, at the time of the election, that it agrees to the "nominated company" making these returns and tax payments on its behalf and that it accepts that its election is without prejudice to its statutory obligations to make annual returns and report and account for tax, which obligations will continue to apply to the "electing company" in the event of any failure by the "nominated company".

The "nominated company" and "electing companies" must indicate to the Director what shared beneficial membership interests exist between them, and provide any other information that the Director may require before this concessionary treatment may be extended to those companies.

Applications for subsequent amendments to the election may be made (e.g. to add or remove an "electing company" or to change a "nominated company") no later than the reporting date for the first quarter for which the addition, removal or other change is to apply.

It should be noted that companies may elect to be treated as associated for the purpose of ignoring inter-company flows but are not obliged to report on a consolidated basis as set out above. Companies may also elect to be associated within the meaning of this concession to take advantage of consolidated reporting even if there are no intercompany flows.

Other Conditions

This concession relates exclusively to certain intercompany flows and reporting requirements for entities that are associated for the purposes of this concession. It is without prejudice to the statutory provisions which continue to apply in respect of Group Loss Relief (section 142A).

The concessional treatment will not absolve any company of its obligation to maintain proper records (at the level of each separate company) in order to reconcile any transactions which it undertakes.

The election is subject to the approval of the Director and the concessionary treatment may be refused, or may be withdrawn, if it appears that the provisions of section 67 of the Law should be applied or if the Director otherwise believes that the election is being made for reasons outside the spirit of the concession. Approvals, refusals and withdrawals of election will be confirmed in writing.

A "nominated company" making an annual return which includes information on behalf of an electing company (or companies) will be permitted to submit consolidated accounts in support.

Where not all related companies have co-terminus year ends, there must, nevertheless, be consistency of reporting from one year to another and the Director will consider any logical, consistent and reasonable basis for making the returns.

It will be admissible for overseas companies to make an application to be included in this concessional treatment, whether as the "nominated" company or as an "electing" company.

Where an election for consolidated reporting under this concession is effective, all investment income (other than inter-company flows which the Director accepts are to be disregarded for the purposes of this concession) remains subject to the provisions of section 62B(1)(g), but the concessional £500, £2,500 and £10,000 thresholds may be applied by the nominated company in respect of itself and each of its electing companies. For example, if there are eight companies which participate in an election, each company is entitled to its own £500/£2,500/£10,000 threshold but any surplus between the actual investment income received and the threshold may not be transferred to other companies. Where the income exceeds the threshold for any one company, the whole of that income is reportable (see Statement of Practice "Deemed Distributions – De Minimis Investment Income").

Where two or more related companies are of the view that an application for the full concessional treatment is not appropriate for them, the Director will, nevertheless, be prepared to consider an application for "associated company", "nominated company" and "electing company" status, which is restricted to reporting and accounting for tax in respect of specified transactions or classes of transactions only, with the result that the normal statutory obligations will continue to apply to the respective companies in respect of non-specified transactions.

Income Subject to Tax at Company Intermediate and Higher Rates (e.g. making of credit facilities and rental of Guernsey property)

It is possible that there will be situations where transactions between associated companies would constitute income subject to the company intermediate and higher rates of tax. In such situations, the Director will only be prepared to extend this concession, in relation to such transactions, if the associated companies are part of a group as defined at Section 148(3) of the Law.

For example, Mr A and Mr B jointly own trading Company Z. They trade from premises owned by Company Y, which is wholly owned by Mr A. Rent is paid from Company Z to Company Y. There is, therefore, in effect, a transfer of value from Mr B to Mr A in respect of 50% of the rent paid and, because Company Y would not be part of a group with Company Z under section 148(3), rent will be taxed at 20% in the hands of Company Y (in accordance with the statutory basis).

If however company Y was wholly owned by company Z, (the effect of which is that it would also be owned by Mr A and Mr B) the two companies would form a group as defined in section 148(3) and no tax need be paid by Y on the rents received from Z. This is because both companies are in substantially the same beneficial ownership (90% or more – see section 148(3) of the Law).

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Revised: 20 October 2009

C43 **“SERVICE COMPANIES” OWNED BY GUERNSEY RESIDENTS, WHICH PROVIDE SERVICES TO COMPANIES SITUATED IN A COUNTRY WITH WHICH GUERNSEY HAS A FULLY COMPREHENSIVE DOUBLE TAXATION AGREEMENT (“DTA”) (sections 66A – 66C, 67, 81C and 209(1))**

Introduction

Under section 81C, where a person provides his services through a company with which he has a corporate or partnership relationship (as defined in section 66A(8)) then the company may be obliged to operate the provisions of the Employees Tax Instalment (“ETI”) Scheme on the payments it receives for the provision of those services as if those monies were employment income of the individual providing the services.

For the purposes of section 81C:

- the individual providing the services is known as “the worker”,
- the company through which the worker provides the services is known as “the third person”, and
- the person receiving the ultimate benefit of those services is known as “the client”,

The client will make payments to the third person and it is the third person that is required to operate the ETI Scheme on those payments as if they were employment income of the worker.

Where the worker owns the third person and the client, there are ways in which the client could pay for the services it has received (such as a dividend paid directly to the worker arising from his ownership of shares in the client company) which, ultimately, would have the effect of negating the provisions of section 81C (because the third person would have no, or a reduced amount of, income on which the ETI Scheme would be operated) and this could, ultimately, result in less tax being payable in Guernsey than would have been payable if the third party company’s income had been taxed at the company standard rate (0%) and subjected to the distribution/deemed distribution rules.

Concession

Whilst the Director of Income Tax could consider using the legal avoidance provisions of the Law (section 67) to negate the tax effect of such arrangements, and subject to certain conditions, he is prepared to treat the third person company as chargeable to Guernsey income tax at the company standard rate (0%) on payments it receives for the services provided through the worker with the consequence that tax would only be accounted for, in relation to those profits, to the extent they were distributed or deemed as distributed, or became subject to the provisions of sections 66A – 66C inclusive (the “loans to participators” legislation).

The conditions to be satisfied before this concession may apply are that:

- the worker wholly owns the client and the third person company,

- the whole of the income of the client is subject to a rate of tax equivalent to, or higher than, the company higher rate (20%), imposed by a jurisdiction with which Guernsey has a fully comprehensive DTA (presently limited to the United Kingdom and Jersey), and

- the third person company is not liable to tax in Guernsey on the income it receives for the services provided by "the worker", at the company intermediate rate (10%) or the company higher rate (20%).

The Director of Income Tax may consider extending this concession to situations where the worker has less than a 100% interest in the client, on application, if he considers it appropriate to do so (and in reaching this decision the Director will have regard to the extent to which payment of Guernsey tax may be avoided/deferred as a consequence of the concession). In no circumstances, however, will the concession be extended to cases where the worker does not "control" the client company ("control" for this purpose being interpreted in accordance with the definition contained in section 209(1) of the Law).

This concession is only available on application. The application should be made by the third person company. No specific form of application is required but the application should contain the following information:

- the full name and address of the third person,

- the full name and address of the worker,

- the full name and address of the client,

- confirmation that the worker wholly beneficially owns the client and the third person,

- confirmation that all of the income of the client has suffered United Kingdom or Jersey tax at a rate equivalent to, or higher than, the Guernsey company higher rate (20%).

The election should be accompanied by a request that the Director of Income Tax waives the provisions of section 81C and, in its place, the third person accepts that its income will be subject to the provisions of section 81B and sections 66A – 66C of the Law.

Upon receipt of written confirmation from the Director of Income Tax that the concession has been extended to the named third person, the responsibility of the third person to operate the ETI Scheme on any income it receives will be suspended.

In the event that the third person should fail to comply with the provisions of section 81B and/or sections 66A – 66C, the concession will be treated as void *ab initio* with the result that the third person will become responsible for payment of all tax that it should have paid over, under the provisions of section 81C, and surcharges for late payment will arise accordingly.

Once the concession has been extended to a company, it will remain valid until:

- it has been withdrawn by the third person, by written notice to the Director of Income Tax, or

- the Director of Income Tax considers it appropriate to revoke the concession (provided that revocation instigated by the Director of Income Tax would not be retrospective to a calendar quarter prior to that in which the notice is given unless revocation relates to a failure by the company to comply with the provisions of section 81B and/or sections 66A – 66C of the Law).

Published: 20 October 2009

C44 DISTRIBUTIONS – TREATMENT FOR THE PURPOSES OF THE TAX CAP (section 39D)

Statutory Position

Section 39D of the Law specifies the tax treatment where an individual receives a distribution from a company which is regarded as Guernsey source and, in that year, he is subject to the tax cap. The effect is that any such distribution is taxed as if it had arisen in the same year as the company's underlying income from which the dividend was paid (or deemed).

Concessionary Treatment

Where a distribution is paid which consists of company income relating to several years, a decision will need to be made as to which year the income relates for the purposes of applying section 39D.

The Director is prepared to allow a taxpayer, when making that decision, to select themselves to which year(s) the distribution relates. However, the company/taxpayer should retain sufficient records to demonstrate the undistributed income available for distribution (for tax purposes) in the relevant year (see C28).

Published: 8 June 2010
Revised: 2011

C45 SPECIAL ARRANGEMENTS IN RESPECT OF DISTRIBUTION REPORTS (sections 81B(12) and (13), and Regulation 5 of the Income Tax (Tax Deductions from Company Distributions) Regulations, 2008

In accordance with the provisions of Regulation 5 of the above Regulations, the Director is willing to enter into a special arrangement with any company, on the basis set out below:

(a) Distribution reports need not be made on a quarterly basis, notwithstanding the provisions of sections 81B(12) and (13) of the Law.

(b) In accordance with Regulation 4(1)(a) of the Regulations, the relevant tax deducted from distributions and deemed distributions must still be paid over quarterly within 15 days of the reporting date, accompanied by details of the company's name, reference number (beginning 'P' or 'Q') and the quarter to which it relates. Investment companies may continue to make payments half-yearly.

(c) When the company's accounts and tax computations are finalised for the relevant year, they should be submitted with the company tax return to the Director accompanied by:

- a reconciliation between the Statement of Shareholder's Assessable Income, the distribution return and the company's accounts and income tax computations, if not apparent from those documents (see C29 for examples of distribution and deemed distribution information to be provided to beneficial members);

- Statement of Shareholder's Assessable Income for each beneficial member (see C29 for examples of distribution and deemed distribution information to be provided to beneficial members);

- a distribution report for the year (which may be on the basis of the company's accounting period) which should be completed showing that it is for the last quarter of the relevant year(/period);

- payment of any additional tax for the year (or confirmation that such tax has been, or will be, paid separately, e.g. by bank transfer), or a repayment claim as appropriate.

(d) Whilst the Director is willing to offer this special arrangement to all companies on a global basis, the purpose of this Statement of Practice is to increase the efficiency of the process of deducting tax, accounting for it to the Director and enabling the Director to process it.

This is dependent upon the documentation set out at (c) above being submitted at the appropriate time (i.e. by the company tax return due date) and in the correct format (i.e. via the company distribution reporter software).

The Director will monitor the position and retains the right to withhold the special arrangement if he deems it appropriate, in respect of any company. This could happen if the procedure above is not adhered to, or if the Director is of the opinion that the company is using the special arrangement to artificially manipulate the dates on which tax is paid. He will also monitor the process in order to establish whether it is expedient to continue to offer the special arrangement globally, and thus retains the right to withdraw it for <u>all</u> companies at any time.

(e) No specific application or election is required to take advantage of this Statement of Practice.

(f) The requirement of Regulation 4(1)(b) of the Regulations, that a tax deduction record must be submitted for each quarter, will be suspended with effect from 1 January 2012, for any company wishing to enter into this special arrangement, and instead one tax deduction return for the year (or company's accounting period falling within that year) must be returned by the company filing deadline with the company's tax return.

(g) Surcharges for late payment will continue to apply by reference to the appropriate payment date (i.e. 15 days after the end of the relevant quarter). For example, if a distribution is paid in quarter 2 of 2011, the tax deducted should be paid over to the Director by 15 July 2011 if a surcharge is to be avoided. However, provided the original estimates of tax due are made in good faith and the final return and payment of additional tax is provided to the Director within 1 year and 15 days after the end of the year in which the relevant accounting period ends, no surcharges will be imposed (see also C38).

(h) So far as supplements are concerned, the "repayment date" (i.e. the date when a supplement becomes payable) will be one year from the end of the month in which the documentation specified in (c) above is submitted.

Published: 2011

C46 TREATMENT OF CAPITAL DISTRIBUTIONS (sections 62AA, 62AC, 62A and 81B)

(See also Statement of Practice C33 "Distributions and deemed distributions – Capital reductions: disapplication of section 62B(1)(a))

Introduction

This Statement sets out the Director's practice in relation to distributions of capital made by a company. It also covers the position in relation to deemed distributions (under section 81B) and the position of exempt companies.

Under section 62AA(1), a "distribution" is defined as including: "… any distribution made out of the assets of a company including a dividend, save that it shall not include any repayment of capital to the member or the amount of value of any new consideration given by the member for that distribution".

As a consequence, therefore, if a company was to distribute to a member capital (other than a repayment of capital to a member, or the amount of value of any new consideration given by a member for that distribution) strictly in accordance with the Law, that capital distribution would be a "distribution" for all the purposes of the Law.

Director's Interpretation

It is a long standing practice of the Director not to treat as a "distribution", for tax purposes, a distribution of capital made by a company which arises from the disposal of assets or similar. By way of an example, if a company disposed of a property, and thereby made a capital profit on that disposal, that capital profit could be paid by way of a "distribution" without any Guernsey income tax implications, unless the provisions of section 81B(17) apply.

Section 81B(17) has the effect of deeming a distribution made from a company's capital to have been made from the company's undistributed income, to the extent that it has such undistributed income.

It should be noted that in the case of a company which has been granted exemption from tax under an Ordinance made under section 40A, section 81B(19) disapplies section 81B in relation to that company. This means that the provisions of section 81B(17) will not apply to an exempt company. As a consequence of the interaction of sections 81B(19) and 62AC(1), a beneficial member of an exempt company is only taxable in respect of distributions which are actually made to him and then only to the extent to which those distributions are actually made out of undistributed income (i.e. capital distributions would not be taxed, notwithstanding the provisions of section 81B(17)).

Published: 2011

EMPLOYMENT

E1 AIRLINE PILOTS (section 8)

(a) With effect from the Year of Charge 2007, a deduction of £850 may be granted to airline pilots in respect of the cost of uniforms, renewal of licences and legal fees, etc (£560 for Years of Charge 2002 to 2006 inclusive, £400 prior to this).

Note: This limit will not be reviewed again until at least 2013.

(b) Pilots often receive flight pay, or the equivalent, which is generally intended to cover the pilots' expenses when away on their tour of duty. In such cases it is usual for an element of the flight pay to be agreed between the airline and HM Revenue & Customs to be treated as not taxable – to reflect this element of reimbursed expenditure.

In the case of Guernsey resident pilots based at UK airports, the Director will accept the same proportion of taxable and non-taxable flight pay as that agreed between the particular airline and HM Revenue & Customs, unless there is already in place an agreement with the Director in this regard.

The onus of proof or clarification regarding the level or nature of monies considered to be taxable/non-taxable by HM Revenue & Customs in this regard shall lie with the claimant.

Published: 1987
Revised: 1988 / 1989 / 1991 / 1992 / 1996 / 2002 / 2007 / 2011

E2 UNIFORM CLEANING ALLOWANCES (section 8)

Post Office Employees

A deduction of £50 is allowed to all uniformed Postmen and Postmen Higher Grade, who are required, in accordance with their conditions of employment, to clean at their own expense the uniforms with which they are provided.

Police Officers and Traffic Wardens

A deduction of £100 is allowed to all uniformed officers who are required, in accordance with their conditions of employment, to clean at their own expense the uniforms with which they are provided.

Prison Officers

A deduction of £100 is allowed to all uniformed officers who are required, in accordance with their conditions of employment, to clean at their own expense the uniforms with which they are provided.

St John Ambulance Personnel

A deduction of £100 is allowed to all ambulance personnel who are required, in accordance with their conditions of employment, to clean at their own expense the uniforms with which they are provided.

Published: 1987
Revised: 1988 / 1989 / 1994 / 1995 / 1998 / 2005 / 2011

E3 NURSING STAFF (section 8)

A deduction of £100 is allowed to nursing staff in respect of replacements of shoes where the wearing of a prescribed type is obligatory.

A deduction is allowed to members of the Royal College of Nursing in respect of their subscription to the publication "The Nursing Standard".

Published: 1987
Revised: 1988 / 1989 / 1991 / 1992 / 1994 / 1999 / 2011

E4 BENEFITS IN KIND - TAX PAID BY EMPLOYER (section 81A)

(a) The position to 31 December 2008

Where an employer who provides benefits (e.g. staff travel concessions) which would be chargeable to tax in the employees' hands wishes to pay the tax on behalf of the employees, he may do so by making a payment of tax at the standard rate on the grossed-up value of the benefits. For example:

Value of benefits		£5,000
Grossed-up at 20%	100	£1,250
	80	£6,250
Tax thereon at 20%		£1,250

The tax so paid will be an allowable deduction in computing the employer's assessable profits.

(b) The position from 1 January 2009

With effect from 1 January 2009, benefits must be included in the gross pay of employees and the ETI Scheme operated accordingly. If an employer wishes to pay the tax on behalf of employees he may still do so, but the method for dealing with this has changed. The tax paid on behalf of the employee is also considered to be a taxable emolument. In order to achieve the same result as in the “grossed up basis” shown in (a) above, that was applicable to 31 December 2008, the following will need to apply:

(i) The benefits involved must be included in the employee’s gross pay and the ETI Scheme operated in the normal way.

(ii) The tax on the benefit paid by the employer (as calculated above) must also be included in the employee’s gross pay and the ETI Scheme operated in the normal way.

(iii) The tax due from the employer on the benefit should be paid to the employee rather than remitted to the Income Tax Office, to reimburse him for the tax deducted from his salary (the tax deducted from the salary should be included in the remittance of tax to the Income Tax Office by the employer in the normal way under the ETI Scheme).

This is illustrated by way of an example:

Benefits included in employees' gross pay	£5,000
Tax deducted from employee and remitted to the Income Tax Office	£1,000
Net benefit to employee	£4,000
Tax equivalent paid to the employee by the employer to meet the tax liability on the benefit and this sum must also be included in the gross pay of the employee for tax purposes	£1,250
Tax deducted from the employee and remitted to the Income Tax Office	£ 250
Net benefit to the employee	£1,000

It can be seen from the example that:

(i) The net benefit to the employee is still the same at £5,000 (i.e. £4,000 + £1,000).

(ii) The payment made by the employer is still the same at £1,250.

(iii) The tax remitted to the Income Tax Office is still the same at £1,250 (i.e. £1,000 + £250).

The tax equivalent so paid by the employer will be an allowable deduction in computing the employer's assessable profits.

Published: 1987
Revised: 1992 / 2011

E5 <u>TEXT BOOKS USED BY SCHOOL TEACHERS</u> (section 8)

A deduction for "specialist" text books used by school teachers in the classroom as an aid to teaching pupils is granted where the teacher provides the books at his or her own expense. The claim for such a deduction must be made on Form Reference No. 273 (obtainable from the Income Tax Office), completed by the Director of Education or his Deputy, to ensure that the claim is a valid one and is recognised as such.

Published: 1987
Revised: 2011

E6 <u>PAYMENTS TO EMPLOYEES PASSING PROFESSIONAL EXAMINATIONS</u> (section 8)

Where an employer makes an ex gratia payment to an employee for passing professional examinations, which are relevant to the individual's employment, no liability to Income Tax arises in respect of that payment, provided the following conditions are satisfied:-

(a) The award is made at the sole discretion of the employer (i.e. the employer is under no obligation, contractual or otherwise, to make the award).

(b) It is not a condition of the employee's employment that they sit and pass the examinations (e.g. dismissal does not automatically follow failure).

(c) The award takes the form of a lump sum paid once and for all.

(d) The aggregate of the awards per annum does not exceed £500, or equivalent if paid in non-cash form (e.g. vouchers). For the avoidance of doubt, any award made which is higher than £500 will be taxable to the extent that it exceeds £500 (and tax must be accounted for, accordingly, through the ETI Scheme).

Published: 1987
Revised: 20 October 2009 / 2011

E7 LIFEBOATMEN CALL-OUT/EXERCISE PAY (section 8)

Call-out and Exercise payments made to lifeboatmen ("Wet Sock Allowance") will be deemed to be covered by expense claims which the lifeboatmen would be entitled to make under section 8 of the Law.

Consequently, there will be no requirement in future for these Call-out/Exercise fees or the relevant claims for expenses to be declared on the lifeboatmen's return of income.

All other payments will continue to be charged to tax in the normal way.

Published: 1989
Revised: 2011

E8 TERRITORIAL ARMY BOUNTIES (section 8)

Payments of bounty made to members of the Reserve and Auxiliary Forces in consideration of their undertaking prescribed training and attaining a prescribed standard of efficiency are not regarded as income for tax purposes.

Published: 1990
Revised: 2011

E9 PROFIT SHARING SCHEMES (section 8)
APPLIES UNTIL 31 DECEMBER 2003

DELETED

E10 SAYE SHARE OPTION SCHEMES (section 8)
APPLIES UNTIL 31 DECEMBER 2003

DELETED

E11 TERMINATION PAYMENTS - ASSESSMENT IN THE EMPLOYEE'S HANDS (section 8)

All such payments will be brought into charge where they exceed £30,000 (£10,000 to 31 December 2008) in aggregate. For the avoidance of doubt, the first £30,000 of such payments will be exempt (£10,000 to 31 December 2008). Thus if the total payments arising from the termination of an employment equal £50,000, £20,000 will be brought into charge to tax and the Employees Tax Instalment Scheme should be operated on this amount.

Where a payment is made in lieu of the notice to which the employee would otherwise have been entitled, this is not considered to be a termination payment and will therefore be assessable in full.

Published: 1995
Revised: 1995 / 1997 / 2011

E12 BENEFITS IN KIND - APPLICATION OF THE £450 EXEMPTION (sections 8 and 63)

(*See also E13 re: cash payments to employees*)

It could be argued that the exemption provided to employees by The Income Tax (Exemption of Benefits) Ordinance, 1995 does not extend to certain items which would have been treated as emoluments prior to The Income Tax (Emoluments Amendments) (Guernsey) Law, 1995 coming into force (such as payments by employers to third parties which meet the pecuniary liability of the employee or the provision of benefits, not in cash, but which could be convertible to cash).

The exemption may be applied to such benefits, subject to the following exceptions:

(1) any benefits valued by reference to the benefit regulations;

(2) where the employer pays for any such items on behalf of an employee in respect of which the employee in normal circumstances would be entitled to claim income tax relief (for example, professional subscriptions to bodies approved under section 63 of the Law, retirement annuity premiums) the employee will still be able to claim whatever tax relief may be allowed as if he had made the payment himself;

(3) any sums assessable in accordance with paragraph E43 (profit sharing and other share option schemes) or payments from any similar schemes; and

(4) any payments made on behalf of controlling directors which have been allowed in the company accounts.

Published: 1997
Revised: 1999 / 2000 / 2001 / 2005 / 2011

E13 CASH PAYMENTS (section 8)

Many employers make payments of cash to employees, for example round sum allowances, accommodation costs, etc.

By way of clarification, payments in cash to the employee do not fall within the benefits legislation. Such payments would constitute emoluments in the same way as salaries, wages, commissions, etc.

If any part of such payments to an employee are subsequently used for any expense wholly, exclusively and necessarily incurred in the performance of the employee's duties then he may, in turn, make a claim for expenses under the provisions of section 8(3) of the Law.

Furthermore, any such payments being made by an employer must be included in, and returned under, the Employees Tax Instalment Scheme.

(An exception to the above would be if the Director had specifically agreed that, in any particular case, the amount paid by the employer covered no more than expenditure incurred wholly, exclusively and necessarily by the employee - in such circumstances the payment by the employer need not be returned as emoluments and the employee need not submit a formal claim for expenses - see also E21 below).

Notwithstanding the above, payments which fall within the following limits will not be charged to income tax nor will a formal expenses claim be required:-

	Lump sum payments made to employees in respect of duties carried on outside of the Island, including attendance at courses, conferences, etc.	**With effect from 1 January 2011**	**1 January 2005 - 31 December 2010**
1.	Incidental expenses allowance	up to **£12.00** daily	up to £10.00 daily
2.	Where bed & breakfast only is provided, a meal allowance	up to **£36.00** daily	up to £30.00 daily
3.	Where neither accommodation nor meals are provided	up to **£120.00** daily	up to £100.00 daily

Published: 1997
Revised: 1999 / 2001 / 2002 / 2004 / 2005 / 2011

E14 MEAL ALLOWANCE (section 8)

Where a meal allowance is paid by an employer to an employee who is working unsocial hours, then the first £3.00 (£2.50 to 31 December 2010) per working day may be exempt from income tax. Unsocial hours may be defined as where an employee is required to work after 8.00 p.m. in the evening or before 6.00 a.m. in the morning.

Published: 1995
Revised: 2011

E15 DEDUCTIONS FROM EMOLUMENTS IN RELATION TO THE PROVISION OF BENEFITS ("INCLUDING "SALARY SACRIFICE") (section 8)

Where deductions are made from salary, wages, etc. by an employer in relation to the provision of benefits to an employee then, following the decision in the case of Cordy v Gordon (9TC 304) the gross emoluments will still be charged to tax and any contributions made by the employee will be taken into account only in ascertaining the amount of the benefit to be charged to tax.

The same applies where an employee foregoes part of his emoluments in return for benefits ("salary sacrifice") and the treatment in such cases is as follows:

GUERNSEY INCOME TAX TREATMENT OF SALARY SACRIFICE ARRANGEMENTS (sections 8 and 67 of the Law)

Background

In recent years it has become more common for employers to offer their employees a remuneration package which involves the concept of a salary sacrifice. For the purposes of this Statement of Practice, a salary sacrifice occurs when an employee gives up the right to receive part of the cash remuneration due, under his contract of employment, in return for the employer's agreement to provide the employee with some form of non-cash benefit (as the term "benefit" is defined in section 8(2B)) that is attractive to the particular employee and that may have more advantageous consequences with regard to income tax and social insurance contributions. Typically a salary sacrifice arrangement may have a "menu" of such benefits from which the employee may choose.

Guernsey income tax treatment

If whatever is received under a salary sacrifice arrangement gives a lower tax liability than would arise on the amount of the salary sacrificed, then the tax charge would be equivalent to that which would have been charged on the salary, i.e. the salary sacrifice is tax neutral. The Guernsey income tax position, therefore, is that if an employee would receive less taxable remuneration under a salary sacrifice arrangement than would arise if the salary sacrifice was not implemented, then the employee will continue to be taxable for Guernsey income tax purposes on the original gross taxable pay as if the sacrifice had not occurred. The Director would be prepared to utilise the provisions of section 67 of the Law (the anti-avoidance provisions) if necessary.

The following is included as some practical guidance on the implementation of the above decision:

1. If a salary sacrifice occurs, and the benefit received by the employee under the arrangement gives a lower tax liability than would arise on the amount of the salary sacrificed, then the employee is taxable on the original gross taxable pay as if the sacrifice had not been implemented. The benefits that he receives in return for the salary sacrificed would then not be taxable on him since he is being assessed on the original gross taxable remuneration (i.e. he will not be taxed twice).

2. With regard to salary sacrificed in return for a contribution to an occupational pension scheme approved under the provisions of section 150 of the Income Tax (Guernsey) Law, 1975, as amended, it is still the case that an individual would be entitled to a deduction from his emoluments in respect of the amount of any ordinary contributions to the scheme or of any statutory or voluntary contributions made by him out of the income in the year of computation, provided no such deduction would be allowed in respect of contributions exceeding the limits in accordance with the provisions of section 151 of that Law.

   In other words, since the amount of salary "sacrificed" is still being treated as an emolument assessable on him, and since that amount is used to make a contribution to an approved occupational pension scheme, the Director is prepared to treat that contribution as a contribution made by the employee and qualifying for relief under section 151 subject to the limits contained in that section.

3. If the amount of the taxable remuneration after the salary sacrifice, plus the valuation of the benefit in kind received, would equate to a higher figure than the original gross taxable remuneration before the salary sacrifice took place, then the employee would be taxed on the higher figure. Any contribution made by the employee will be taken into account in ascertaining the amount of the benefit chargeable to tax.

Explanatory Note

This does not affect individuals where a salary sacrifice does not occur and who are provided with benefits in addition to their cash remuneration. Such persons would still be taxable on the relevant amount of their cash remuneration plus the amount of any taxable benefits in accordance with normal income tax and benefit in kind rules.

Published: 1997 / 20 October 2009
Revised: 2011

E16 "CONTROLLERS" OF COMPANIES - BENEFITS VALUED UNDER THE REGULATIONS (section 8)

Although the intention in relation to "controllers" of companies was that there would be no tax difference between the amount allowed to the company and the amount chargeable on the "controller", the effects of the present legislation are that the amount of any benefit ascertained under the Regulations may be reduced if the company can claim a lesser amount but it cannot be increased if the company is able to deduct a higher amount.

Note: The above only applies to "controllers" of companies who are directors/employees. It does not apply to other employees.

(Currently the Director does not propose taking any action to correct this situation but may do so if, at some time in the future, he believes that the provision is being exploited.)

Published: 1997
Revised: 2011

E17 MILEAGE ALLOWANCE (section 8)

With effect from **1st January 2011**, where a mileage allowance of **56** pence or less per mile is paid to an employee who is required to use his own car for business use, it is accepted that no personal benefit arises and the allowance may be paid without deduction of income tax.

Rates for earlier years:

44 pence for 2006
44 pence for 2007
51 pence for 2008
51 pence for 2009
55 pence for 2010

Published: 1995
Revised: 1997 / 1999 / 2000 / 2001 / 2002 / 2005 / 2006 / 2011

E18 LIMITED VEHICLE BENEFIT CHARGE - REIMBURSEMENT BY EMPLOYEE IN RESPECT OF PRIVATE MILEAGE (section 8)

Where a limited vehicle benefit charge arises in **2011** in respect of an employee under The Income Tax (Guernsey) (Valuation of Benefits in Kind) Regulations and the employer is able to certify that a record has been maintained of all private mileage and the employee has reimbursed the employer in respect of such mileage at a rate of at least **55** pence per mile, the Director will accept that no benefit will then be brought into charge to tax (notwithstanding that the total amount reimbursed by the employee to the employer in the year may be less than the limited vehicle benefit charge).

Rates for earlier years:

43 pence for 2006
43 pence for 2007
50 pence for 2008
50 pence for 2009
54 pence for 2010

Published: 1995
Revised: 1997 / 1999 / 2001 / 2003 / 2005 / 2006 / 2011

E19 MOTOR CAR USED FOR A MIXTURE OF CHARGEABLE AND EXEMPT PURPOSES (section 8)

Where someone is liable to a limited motor car benefit charge and uses the vehicle for a mixture of exempt/non-exempt purposes, the benefit charge will be reduced proportionately in respect of the exempt usage.

For example, if an employee is on call out duty one week out of every four then his benefit would be calculated as follows:-

$$£1,050 \times \frac{273 \text{ days}}{365 \text{ days}} = £785$$

[**NB**: If an employee uses a motor car to travel at lunchtime (whether to go home for lunch or to have lunch elsewhere), by concession, that travel will not be treated as being for private purposes.]

Published: 1997
Revised: 1999 / 2011

E20 MOTOR CARS - PROVISION OF FUEL / REIMBURSEMENT FOR FUEL (section 8)

Where an employee is provided with a motor car and fuel, no separate charge is levied in relation to the fuel.

If the employee is required to meet the cost of fuel used for private purposes, however, this is not treated as a reimbursement which may be deducted from the motor car benefit.

Published: 1997
Revised: 1999 / 2011

E21 ALLOWANCES PAID TO EMPLOYEE TO LEASE A CAR (sections 8 and 81A)

Where an employer pays a specific allowance to an employee so that the employee can lease a car (in place of the employer leasing the car or purchasing a car for the employee's use) then, notwithstanding E13 above, the Director is prepared to accept that the scale charge should still apply in these circumstances. If the allowance paid by the employer to the employee exceeds the actual cost of leasing the car, however, then the difference would constitute emoluments and should be included in, and returned under, the Employees Tax Instalment Scheme.

Published: 1997
Revised: 2011

E22 PLANT AND MACHINERY GIFTED TO EMPLOYEES WHICH HAVE BEEN USED IN THE EMPLOYER'S BUSINESS (sections 8 and 104)

If plant and machinery is gifted to an employee the value of the benefit will be taken as the full written down value of the plant and machinery.

Notwithstanding section 104(1)(c), a balancing allowance may be granted to the employer.

In the case of an expensive motor vehicle the balancing allowance would arise only on the restricted cost. In these circumstances the difference between the balancing allowance granted to the employer and the written down value which has been treated as a benefit in the employee's hands will be given as a deduction from profits.

This is on the basis that if the employer were to purchase a car for the sum of, say, £20,000 and immediately gift it to the employee, then a deduction of £20,000 would be allowed to the employer.

Published: 1997
Revised: 2011

E23 ASSETS HIRED BY AN EMPLOYER MADE AVAILABLE FOR PRIVATE USE OF AN EMPLOYEE (section 8)

For the purposes of the Income Tax (Guernsey) (Valuation of Benefits in Kind) Regulations, hiring would be considered to constitute short-term leasing.

Published: 1997
Revised: 2011

E24 ACCOMMODATION - PAYMENT OF UTILITY, ETC. BILLS / REIMBURSEMENT OF UTILITY, ETC. BILLS (section 8)

The charge for accommodation contained in Regulation 3(3) of the Income Tax (Guernsey) (Valuation of Benefits in Kind) Regulations does not include the costs of heating, lighting, water, etc. and these will be treated as an additional and separate benefit if paid directly by the employer or by reimbursement to the employee.

It follows, therefore, that if the employee pays these bills himself or reimburses the employer, this would not be treated as being a contribution towards the provision of the accommodation and could not be deducted from that benefit.

[**NB**: By contrast, the charges for accommodation arising under Regulation 3(1) and 3(2) are treated as including the costs of heating, lighting, water, etc.]

Published: 1997
Revised: 2011

E25 ACCOMMODATION - REPAIRS AND CAPITAL IMPROVEMENTS TO PROPERTY (section 8)

The Director is prepared to consider, on a case by case basis, whether costs of repairs and capital improvements met by the employee are deductible from any accommodation benefit.

Published: 1997
Revised: 2011

E26 BUILDINGS AVAILABLE FOR USE BY EMPLOYEES, OTHER THAN DWELLINGS (AND WHICH WOULD NOT ORDINARILY CONSTITUTE ACCOMMODATION) (section 8)

If an employee is allowed the use of a glasshouse, storage building or garage (or similar) then the benefit would ordinarily fall to be valued under Regulation 4 of the Income Tax (Guernsey) (Valuation of Benefits in Kind) Regulations and would be based on 20% of the market value of the structure.

If beneficial to the employee, the Director will accept that use of such a structure constitutes the use of land (such that the benefit would be based on 15% of emoluments. The open market value option would also be available.)

Published: 1997
Revised: 2011

E27 DOMESTIC EMPLOYEES (section 8)

Where accommodation is provided for domestic employees either "in house" or in separate accommodation (but not where a property is provided for the sole occupation of one employee and his dependants) then the Director will accept that the employees are in receipt of a benefit equivalent to that set out in Regulation 3(1) of the Income Tax (Guernsey) (Valuation of Benefits in Kind) Regulations as an "other employee" if this would be beneficial to the employee concerned. The effect of this would be that the accommodation benefit would be £20 per week or part of a week (no account is taken of a spouse or other dependent so long as they do not also work for the same employer).

Published: 1997
Revised: 2011

E28 EMPLOYEE WITH "SPLIT" EMPLOYMENT AND WHERE A SPOUSE ALSO HAS EMOLUMENTS (section 8)

(a) An employee may receive all or the majority of his emoluments from one employer and an accommodation benefit from another employer.

In such circumstances, in determining the amount of the benefit the emoluments from all sources are to be taken into account.

(b) It is appreciated that in some cases employers may not be aware that an employee has another employment or, even if they are aware, they will probably have no knowledge of the amount of the emoluments from that employment. In these circumstances the employer is simply required to calculate the benefit on the basis of the information which he could reasonably be expected to have. If any further recalculation of the benefit is required this will be dealt with by the Income Tax Office.

(c) Where a husband and wife are both employees of the same employer and a benefit is provided which is enjoyed by them both (e.g. accommodation) then, for the purposes of calculating the amount of any benefit, they will be treated as being one employee rather than two.

Provided that where the measure of the benefit is affected by the extent of private usage, the private usage of both husband and wife will be taken into account; and

Provided also that where the extent of the benefit is determined by reference to the level of emoluments (such as can be the case for accommodation) only the emoluments of the higher earning spouse will be taken into account.

(d) Where a husband and wife enjoy an accommodation benefit but only one of them is receiving the benefit by virtue of an office or employment, then the emoluments which will be taken into account will be the emoluments of that employee only and not the spouse.

(This will mean that where, say, a bank manager is provided with use of a property by his employer and his wife has a part-time job in, say, a shop, in arriving at the amount of the benefit the emoluments of the bank manager will be taken into account but those of the wife would be ignored.)

Published: 1997
Revised: 2011

E29 NON-RESIDENT EMPLOYEES/DIRECTORS (section 8)

(a) With effect from 1 January 2008, fees paid by Guernsey companies to non-resident directors are not liable to income tax and as a consequence a chargeable benefit will not arise in respect of accommodation provided to such individuals whilst visiting the island.

(b) If non-resident employees are provided with accommodation while visiting the island then a chargeable benefit does arise.

(c) Taking into account the very short periods of time that these persons often spend in the island and the relatively modest amount of income usually paid, in the majority of cases the benefit is likely to be minimal. However, there is still the requirement, from 1 January 2009, for the benefit to be included on the ETI returns submitted by the employer.

Published: 1997
Revised: 2011

E30 PROVISION OF ACCOMMODATION FOR CLERGYMEN (section 8)

(***See also E24***)

Under paragraph (q) of The Income Tax (Exemption of Benefits) Ordinance, 1995 the provision of accommodation for a clergyman or minister of any religious denomination is exempt where the accommodation belongs to any parochial authority, charity or ecclesiastical body. Where the accommodation is rented, any rent paid on behalf of the clergyman or minister by a parochial authority, charity or ecclesiastical body will similarly be exempt. This exemption does not apply to other disbursements such as utility bills, occupier's rates, etc.

Published: 1995
Revised: 2011

E31 REMOVAL EXPENSES

A The Income Tax (Exemption of Benefits) (Ordinance), 1995 provides exemption for the payment by an employer of actual reasonable expenditure incurred in relation to an employee newly recruited or transferred to Guernsey from a place outside of Guernsey in his removal and re-establishment including expenditure incurred in respect of:

1. removal to Guernsey of household furniture and effects including motor vehicles;

2. storage of household furniture and effects including motor vehicles for up to 12 months;

3. estate agents fees, legal fees, taxes and duties incurred in respect of the purchase of a dwelling in Guernsey and the disposal of a dwelling outside Guernsey which the employee owned and occupied immediately prior to his removal to Guernsey;

and, with effect from **1st January 2011**, **£10,764** of a disturbance allowance.

Limits for earlier years:

£ 8,448 for the calendar year 2006
£ 9,313 for the calendar year 2007
£ 9,585 for the calendar year 2008
£10,026 for the calendar year 2009
£10,195 for the calendar year 2010

It is confirmed that where the employer reimburses the employee direct for such expenditure, no charge to tax arises provided that such payments have not already been exempted under the terms of the Ordinance.

Although the Ordinance refers to expenditure in respect of a transfer to Guernsey, it may also apply to relocation expenses on leaving Guernsey. Only actual expenditure would be covered by this concession and full details would be required in each case. It would not extend to a disturbance allowance.

B The following will also not be charged to income tax in relation to an employee newly recruited or transferred to Guernsey from a place outside of Guernsey:

1. Travelling expenses, provided these are paid:

(a) for a period of no longer than four months from the date that the employee took up employment or commenced duties in the island, as appropriate, or until occupation of a dwelling in Guernsey on a permanent basis, whichever is the sooner; and

(b) notwithstanding (a), for so long as the employee's dwelling in the previous location continues to be available for his or his family's accommodation or, where appropriate, a positive effort is being made to dispose of it.

Such exempt travelling expenses will be limited to those relating to scheduled air/rail fares to/from the last working location outside Guernsey.

2. The cost of temporary accommodation, provided that exemption will be limited to a maximum period of four months from the date the employee took up employment or commenced duties in the Island, as appropriate, or until occupation of a dwelling in Guernsey on a permanent basis, whichever is the sooner.

Further provided that the total amount to be exempt from tax as a consequence of the concessions contained in 1 and 2 above is not to exceed £5,000 in aggregate unless, exceptionally, the Director agrees special circumstances apply such that this limit may be exceeded. (The above will apply whether the employer meets the costs of travel and temporary accommodation direct or makes reimbursement to the employee.)

Published: 1995
Revised: 1997 / 1999 / 2000 / 2002 / 2004 / 2005 / 2006 / 2007 / 2011

E32 PROFESSIONAL SUBSCRIPTIONS (sections 8 and 63)

Where an employer either pays or reimburses a subscription to a professional body, not being a body approved by the Director under section 63 of the Law, such payment or reimbursement will not be chargeable to tax in the hands of the employee so long as membership of the professional body concerned is, in the opinion of the Director, relevant to the employee's employment.

Published: 1995
Revised: 2011

E33 EXEMPTION OF TRAINING COSTS (section 8)

If an employer meets the cost of exam fees for an employee, these will be covered by the exemption contained in the Income Tax (Exemption of Benefits) (Ordinance), 1995.

Published: 1997
Revised: 2011

E34 AIR MILES AND SIMILAR INCENTIVE SCHEMES (section 8)

No benefit will be charged in respect of such schemes.

Published: 1997
Revised: 2011

E35 MOBILE PHONES (section 8)

If an employer provides a mobile phone for use by an employee then, as an alternative to the benefit being based on 20% of the market value, the Director will accept a benefit based on the cost of the rental/calls (if the mobile phone is used at least partially for business purposes then the benefit will be based on an apportionment of the cost of calls only).

Published: 1997
Revised: 2011

E36 BUSINESS TRIPS WITH A PARTIAL PRIVATE ELEMENT (section 8)

If a bona fide business trip is undertaken but the employee chooses to incorporate into the trip, or to extend the trip for, a private purpose (for example to take a holiday, to visit relatives, etc.), then the benefit would be based on the additional cost to the employer, if any, of the private element.

If, therefore, the cost of travel would have been the same if the trip had been purely business then that will not give rise to any benefit in the hands of the employee.

Published: 1997
Revised: 2011

E37 PROVISION OF CRECHE FACILITIES (section 8)

Where an employer provides creche facilities for employees generally, any benefit is exempted by the Income Tax (Exemption of Benefits) (Ordinance), 1995. This exemption may be extended to creche facilities which are available to certain groups or categories of employee, for example, to all female employees, or full time staff, to the exclusion of other groups or categories of employee, e.g. male employees or part time staff.

Published: 1995
Revised: 2011

E38 BENEFITS IN KIND ADMINISTRATION (section 8)

(a) If it is not possible for the employer to deal with the benefits through the ETI Scheme (i.e. those cases where there is no, or insufficient, cash from which to deduct the tax) a paper return will still be required. Returns for this purpose can be found on the Tax Office website www.gov.gg/tax under "Printable Forms".

(b) If it is discovered from a return made by an employer that benefits have been provided to an employee but the employee has failed to disclose the benefits on his personal tax return, then penalties would be considered in respect of the incorrect return only where it was believed the omission was other than a simple oversight.

(c) Where an employer provides a number of miscellaneous benefits to a number of employees and it is believed, under a global computation, that the total amount for each employee does not exceed the £450 exemption limit then the benefits would not need to be shown on the returns.

If an employer carries out such a calculation and the average per employee exceeds the £450 exemption limit, only the excess over £450, per employee, must be passed through the ETI Scheme.

(See, however, E12 above in relation to benefits not qualifying for the £450 exemption.)

The Director would only make approaches to the employer and/or the employee in order to calculate the level of benefit more accurately where he considered it necessary.

Published: 1997
Revised: 2001 – 2007 / 2011

E39 PROVISION OF ACCOMMODATION TO EMPLOYEES WHO ALREADY MAINTAIN ACCOMMODATION AT THEIR OWN EXPENSE IN GUERNSEY AND WHICH IS AVAILABLE FOR THEIR FULL-TIME OCCUPATION (section 8)

Some employees are provided with accommodation for use whilst they are performing their duties.

Where the Director is satisfied that the following conditions apply, no benefit will be treated as arising.

The conditions are that:

(1) the employer requires the employee to perform his duties at a specific location; and

(2) the employer provides the employee with accommodation situated at that location; and

(3) the accommodation provided is only used by the employee while he is performing his duties of his employer; and

(4) the employee maintains accommodation at his own expense elsewhere in Guernsey, which is occupied by the employee when he is not occupying the accommodation provided by his employer.

Published: 1998
Revised: 2011

E40 EMPLOYEES ON SECONDMENT (section 8)

Normally any remuneration of employees carrying out duties in Guernsey would be taxable and subject to deduction of Guernsey income tax under the Employees Tax Instalment Scheme, unless the provisions of paragraph 7 of the Double Tax Arrangements with Jersey and the United Kingdom applied.

The remuneration of an employee seconded to Guernsey may be regarded as exempt from Guernsey income tax if all of the following conditions apply:

(a) the secondee is in Guernsey in the year of charge for 90 days or less;

(b) the secondee continues to be remunerated by the overseas employer;

(c) the costs of remunerating the secondee, including associated costs such as travel and accommodation, are not allowable to the Guernsey employer, whether paid directly or by reimbursement to the overseas employer.

This is with effect from 1 January 2008. Up to 31 December 2007, the days in (a) above for the purpose of this Statement of Practice are 183 days or less – but where negotiations to bring a secondee to Guernsey were in progress prior to 1 January 2008 then the period of 183 days or less may be applied to any secondee whose duties are carried out during 2008.

Published: 1999
Revised: 31 January 2008 / 2011

E41 MOTOR CARS – ALTERNATIVE FUEL (section 8)

The additional cost of enabling a company car to run on road fuel gases may be ignored when calculating the benefit in kind.

This would include any premium on the price of a car manufactured to run on road fuel gases or the cost of conversion.

Published: 2001
Revised: 2011

E42 PROVISION OF ACCOMMODATION TO TEMPORARY EMPLOYEES WHO ALREADY MAINTAIN ACCOMMODATION AT THEIR OWN EXPENSE IN THE NORMAL COUNTRY OF RESIDENCE AND WHICH IS AVAILABLE FOR THEIR FULL-TIME OCCUPATION (section 8)

If an employee is seconded to Guernsey on a temporary basis and is not covered by paragraph 7 of the Double Taxation Arrangement, or by Extra Statutory Concession E40, no benefit will arise in respect of accommodation provided in Guernsey if the following conditions are satisfied:

1. the employee is in Guernsey for a period or periods not exceeding 12 months in aggregate;

2. he has been required by his overseas employer to come and work in Guernsey;

3. the employee continues to maintain accommodation at his own expense in his country of normal residence, which immediately prior to his move to Guernsey was used as his main residence and which is available for his immediate reoccupation on his return to his normal country of residence.

Where the accommodation consists of bed and breakfast only, and the above conditions are met, a subsistence allowance of up to £36 per day may also be exempt (£30 per day 1 January 2005 – 31 December 2010).

It should be noted that if the employee is in Guernsey for a period exceeding twelve months then no part of the accommodation or subsistence allowance would be exempt from Guernsey income tax.

Published: 2003
Revised: 2007 / 2011

E43 PROFIT SHARING AND OTHER SHARE OPTION SCHEMES WITH EFFECT FROM 1ST JANUARY 2004 (Section 8)

Introduction

This Statement of Practice is intended to provide some clarification regarding the treatment of such schemes, although it should be remembered that the treatment of each scheme is decided on its merits. It should also be remembered that the Director reserves the right to apply the provisions of section 67 of the Income Tax Law (the general provision against legal avoidance) if he considers it appropriate.

In order to assist taxpayers and professionals alike, the treatment of some schemes more commonly seen by the Income Tax Office is shown below:

A. Share Award Schemes

Where shares are acquired on behalf of, or are allocated to, participating employees, enabling them to acquire shares at a discount or at no cost to the employee, the taxation position is as follows:

(a) An emolument arises when the shares are awarded, acquired or allocated to the employee and not when the shares are finally vested in the name of the employee free of conditions (for instance, it is common for such schemes to include a condition that the individual remains in employment). However, see also (c) below.

(b) The amount taxable is the difference between the "arms length" market value of the share at the time the share is awarded to, acquired for or allocated to the employee and the amount paid by the employee. For example an employer acquires:

50 shares at the quoted price per share £45.00 for an employee.
Less price paid by employee £38.25, per share.
Discount per share £6.75 x 50 shares = £337.50 taxable

The employer may decide to provide an additional 50 shares at no cost to the employee to "match" the shares purchased by the employee: £45 x 50 shares = £2,250.00 taxable.

Total emoluments assessable £2,587.50.

(c) With effect from 1 January 2004, the previous practice of deferring payment of the tax until the shares were sold was discontinued. However, the Director has decided that deferring payment of the tax charged until the vesting of the shares may be allowed if the maximum permissible period, between the granting and the vesting of the shares, is three years.

In addition, if one of the following events occurs prior to vesting, the tax shall become payable forthwith (on any awards not forfeited due to the event occurring):

- an employee leaves employment of the group of companies of which the employer is a member;
- an employee leaves Guernsey even if still in service of the employer;
- an employee retires; or
- an employee dies.

If employers wish to take advantage of the deferral offered under this paragraph, they must confirm to the Director that they have in place proper procedures to ensure taxation of the emolument arising at the appropriate point and on the correct amount and this deferral will only be applied to awards made after the approach is made to the Director (it will not be applied retrospectively).

(d) Where the scheme incorporates a Save As You Earn Scheme, any interest or bonuses are taxed as income of the year of receipt.

(e) Dividends received by the employees are chargeable to tax in the normal way.

(f) There will be no further charge to tax when the shares are sold, unless the employee concerned is considered to be trading in shares (or the disposal gives rise to a charge on a deemed distribution of the related company's undistributed income, under section 62B(1)(a)).

In the event that shares are never received by the employee (for instance, if the employee left employment and shares originally awarded to him were forfeited) then the relevant assessment will be reduced accordingly. Before revising the assessment, a letter of confirmation will be required from either the employer or the scheme trustees.

For awards made up to 31 December 2008, details of each employee's taxable emoluments in respect of the previous calendar year should be submitted, on a benefit in kind return, to the Income Tax Office by 15 February of the following year. For awards made from 1 January 2009 onwards, the amount of the taxable emolument must be included in the employee's gross pay for income tax and social security purposes, and tax and social security should be deducted accordingly on the total amount. The only exception would be where it is not possible for deductions to be made in this way (for instance, the amount of the cash pay provided to the employee is insufficient for the deductions to be made). In such cases, it will still be necessary for a benefit in kind return to be completed at the beginning of the following year and such forms will be issued on request.

B. <u>Share Option Schemes</u>

Where an option is granted enabling employees to acquire shares at a discount, the taxation position is as follows:

(a) An emolument arises when the option is granted and not when it is exercised, and the shares finally vest in the name of the employee free of conditions (for instance it is common for such schemes to include the condition that the individual remains in employment). However, see also (c) below.

(b) The amount taxable is the difference between the "arms length" market value of the share at the time the option is granted and the option price paid by the employee. For example an employer acquires:

50 shares at the quoted price per share £45.00, for an employee
Less option price per share (paid by employee) £38.25
Discount per share £6.75 x 50 shares = £337.50 taxable

The employer may decide to provide an additional 50 shares at no cost to the employee to "match" the shares in respect of which the employee was given an option: £45.00 x 50 shares = £2,250.00 taxable.

Total emolument assessable £2,587.50.

(c) With effect from 1 January 2004, the previous practice of deferring <u>payment</u> of the tax until the shares were sold was discontinued. However, the Director has decided that deferring payment of the tax charged until the vesting of the shares may be allowed if the maximum permissible period, between the granting and the vesting of the shares, is three years.

In addition, if one of the following events occurs prior to vesting, the tax shall become payable forthwith (on any awards/options not forfeited due to the event occurring):

- an employee leaves employment of the group of companies of which the employer is a member;
- an employee leaves Guernsey even if still in service of the employer;
- an employee retires; or
- an employee dies.

If employers wish to take advantage of the deferral offered under this paragraph, they must confirm to the Director that they have in place proper procedures to ensure taxation of the emolument arising at the appropriate point and on the correct amount and this deferral will only be applied to awards made after the approach is made to the Director (it will not be applied retrospectively).

(d) Where the scheme incorporates a Save As You Earn Scheme, any interest or bonuses are taxed as income of the year of receipt.

(e) Dividends received by the employees are chargeable to tax in the normal way.

(f) If the employee exercises his option to acquire the shares and then sells the shares, there will be no further charge to tax when the shares are sold, unless the employee concerned is considered to be trading in shares (or the disposal gives rise to a charge on a deemed distribution of the related company's undistributed income, under section 62B(1)((a)).

In the event that the option is never exercised, including if the option is forfeited (for example, if the employee left employment) the relevant assessment will be reduced accordingly. Before revising the assessment, a letter of confirmation will be required, from either the employer or the scheme trustees.

For awards made up to 31 December 2008, details of each employee's taxable emoluments in respect of the previous calendar year should be submitted, on a benefit in kind return, to the Income Tax Office by 15 February of the following year. For awards made from 1 January 2009 onwards, the amount of the taxable emolument must be included in the employee's gross pay for income tax and social security purposes, and tax and social security should be deducted accordingly on the total amount. The only exception would be where it is not possible for deductions to be made in this way (for instance, the amount of the cash pay provided to the employee is insufficient for the deductions to be made). In such cases, it will still be necessary for a benefit in kind return to be completed at the beginning of the following year and such forms will be issued on request.

C. Deferred Bonus Schemes Linked to Share Valuations

Under some schemes, an award is made to an employee such that he may receive a cash bonus (which can only be in the form of cash) with absolutely no entitlement at any time to either shares or dividends or their equivalent, with the cash bonus being quantified by reference to the company's share price to determine the quantum of the cash to be paid. Under such schemes, the tax treatment would normally be that the cash bonus is taxable on the employee in the normal way (i.e. when the employee becomes entitled to the bonus) and should be included in normal payroll procedures and the ETI Scheme operated accordingly when the cash is paid to the employee.

Note: With regard to A and B above, it should be remembered that under section 62D of the Income Tax (Guernsey) Law, 1975, as amended, it may be that participants in such schemes would be subject to the "deemed distribution" regime from 1 January 2008 as they would be regarded as a "beneficial member" and having an "equitable interest" in a share(s). However, a minority beneficial member, who alone or with any person connected to him has a beneficial interest or any part of a beneficial interest in a share or any part of a share in a company which amounts to 1% or less by value of the total shares held in the company, is exempt from the application of the deemed distribution provisions. A minority beneficial member is not exempt in respect of actual distributions.

The above examples are not exhaustive, but are included to give guidance to taxpayers and practitioners.

Published: 2003
Revised: 2005 / 2006 / 2011

E44 TAX TREATMENT OF DIRECTORS' FEES RECEIVED (sections 8, 47D and 81A)

(a) **Partnerships**

Where fees are received in respect of directorships held by members of a professional partnership, in strictness they are assessable on the individual partners as income from employment, and the Employees' Tax Instalment Scheme should be operated. However, the fees may be paid gross in the following circumstances:

(i) the directorship is a normal incident of the profession and of the particular practice concerned;

(ii) the fees are only a small part of the profits; and

(iii) under the partnership agreement the fees are pooled for division among the partners.

(b) **Companies**

Similar treatment may be applied to directors' fees which are paid to companies in respect of the services of a director and where the fees are included in the company's profits.

Where such fees are paid to individuals, albeit an individual who is in business as a consultant, the normal procedures must apply and tax must be deducted under the provisions of the Employees' Tax Instalment Scheme.

(c) **Directors' fees paid by companies which were exempt, or would have been capable of claiming exemption, prior to 2008 (sections 4, 8, 40A, 66A and 81A)**

Prior to 1 January 2008, many companies exempt under section 40A paid fees to Guernsey resident directors for services rendered. This was particularly the case in the fund management and captive insurance sectors. Exempt companies were not resident in Guernsey under the Income Tax Law so directors' fees paid by exempt companies were technically non-Guernsey source income. Under the Law, therefore, there was no requirement for the paying company to operate ETI on the directors' fees.

There was still a responsibility for the Guernsey resident director to declare the fees on his personal return, however, and the tax due was collected by direct assessment.

Statutory Position

Following the abolition of exempt status for all companies apart from certain collective investment schemes, all companies incorporated in Guernsey (including formerly exempt companies) are now tax resident companies and, as such, directors' fees become Guernsey source income which, in accordance with the Law, should be paid subject to the deduction of tax under the ETI Scheme where applicable. This does not apply in the case of non-Guernsey resident directors, who are not liable to tax by virtue of section 8(7).

Concessionary Position

The Director recognises that requiring the set up and operation of ETI schemes for the many formerly exempt companies, for infrequent payments to a small number of individuals, would be unduly onerous. Therefore, as a concession, the Director will not require the operation of the ETI Scheme where the following conditions are met by the company in question:

- it has no Guernsey employees (other than directors);
- it has no Guernsey resident beneficial members;
- it has no income chargeable to Guernsey tax at the intermediate or higher rates;
- it has not made any qualifying loans to Guernsey residents, for the purposes of section 66A.

Guernsey resident directors will continue to pay income tax on their fees, from such companies, by direct assessment.

Published: 2004
Revised: 2005 / 1 December 2008 / 2011

E45 LUMP SUMS PAID UNDER OVERSEAS PENSION SCHEMES (section 8)

Income tax is not charged on lump sum benefits receivable by an employee, or by his personal representatives or any dependant, from an overseas retirement benefits scheme, where the employee's overseas service comprises:

(a) not less than 75% of his total service in that employment; or

(b) the whole of the last ten years of his service in that employment, where total service exceeds ten years; or

(c) not less than 50% of his total service in that employment, including any ten of the last twenty years where total service exceeds twenty years.

If an employee's overseas service is less than described above, relief from income tax will be given by reducing the amount of the lump sum which would otherwise be chargeable by the same proportion as the overseas service bears to the employee's total service in that employment.

Such treatment does not apply where a transfer payment has been made from an overseas scheme to a scheme approved under the provisions of section 150 of The Income Tax (Guernsey) Law 1975.

Published: 2004
Revised: 2011

E46 GROUP MEDICAL SCHEME AND EMPLOYEE PRIVATE ARRANGEMENTS (SECTION 8(2(d))

Statutory Position

The Income Tax (Exemption of Benefits) Ordinance 1995 provides that group insurance cover for medical costs, provided by an employer for his employees, is exempt from tax in the hands of the employee.

Where an individual arrangement for medical care is paid for by an employer, the taxpayer is liable to tax on the amount of the expense incurred as a benefit in kind.

Concessional Treatment - Introduction

The Director has issued this concession for those with individual arrangements, who have commenced with an employer and become eligible to join a company scheme, but do not wish to do so as they would lose cover for a pre existing condition.

Concessional Treatment – Detail

Where an individual has a private arrangement for medical care, and becomes eligible to join a company scheme, they may lose cover for an existing medical condition if they stop their individual arrangement and join the company scheme. If the employer agrees to pay for the individual arrangement, as opposed to the individual joining the company scheme, then, under the strict interpretation of section 8 the amount paid on behalf of the individual arrangement would be classed as a benefit in kind and the taxpayer would be assessed accordingly.

The Director is prepared to accept, where an ongoing serious medical condition would not be covered if the individual were to swap providers and the individual would be unable to gain cover for the condition subsequently, that the employer may undertake to pay the premiums on the individual's policy on their behalf, without the payments incurring a benefit in kind charge on the employee.

Information regarding the nature of the condition and the ongoing need for treatment must be provided.

Published: 3 November 2009

E47 PREFERENTIAL RATE LOANS TO EMPLOYEES – INTERACTION BETWEEN BENEFITS IN KIND AND LOANS TO PARTICIPATORS LEGISLATION (sections 8 and 66A(1))

Introduction

With effect from 1 January 2008, the "loans to participators" legislation contained in Chapter XII of the Law, came into effect. Section 66A(1) makes it clear that the legislation covers officers of the company and any person connected to an officer of the company (including loans to a third person for the benefit of an officer of the company or any person connected to an officer of the company).

With effect from 1 January 2008, changes were introduced which will, dependent on the purpose and in some cases the amount of the loan, restrict the amount of interest paid on money borrowed that can be claimed as a deduction for income tax purposes.

Since 1996, benefits in kind have been chargeable to income tax under section 8 of the Law. If an employer made a preferential rate loan (which is a loan at no interest or at a rate less than a normal commercial rate of the person advancing the loan) that preferential rate loan was excluded from being a benefit in kind to the extent that, had the loan been made at a commercial rate of interest, the interest that the employee would then have been required to pay would have qualified as a deduction under sections 14 and/or 38 of the Law.

A "commercial rate of interest" would generally be that which would be negotiated by persons who are not connected with each other.

From 1 January 2008, most interest paid will not qualify for tax relief (the main exception being interest paid on loans to acquire a main residence, up to a loan "ceiling" of £400,000). As a consequence, preferential rate loans, which are used for "non-qualifying" purposes (e.g. to purchase a car, boat, second home, etc) may, for the first time, become chargeable as benefits in kind. It is possible that those same loans could also be "qualifying loans" for the purposes of the loans to participators legislation. Therefore, one loan could give rise to two separate charges to tax.

Concession

To the extent that a loan gives rise to a charge under the loans to participators legislation, the Director would not impose an additional charge to tax, in respect of the same loan, under the benefits in kind legislation.

Published: 17 March 2008

INTEREST RELIEF

I1 INTEREST RELIEF – ACQUISITION, CONSTRUCTION, RECONSTRUCTION OR REPAIR OF A BUILDING

Introduction

Under the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007, interest which is paid on money borrowed for the acquisition of land, or the acquisition, construction, reconstruction or repair of a building, is allowable as a deduction for tax purposes (subject to certain restrictions set out in the Ordinance). Whilst some works may clearly qualify, for example the building of a garage, this may not be so obvious for some, minor, projects.

Guidance on expenditure that may qualify

For the avoidance of doubt, expenditure on the following will be treated as qualifying expenditure for the purposes of the Ordinance:

- fitted kitchens;
- fitted wardrobes;
- fixed central heating systems;
- fitted carpets;
- bathroom suites;
- UPVC windows/doors;
- conservatories;
- swimming pools and jacuzzis (other than those which are movable);
- garden landscaping;
- patios;
- surfacing of driveways (for example, tarmac, paving blocks, etc);
- solar panels;
- garden greenhouses/sheds.

This list is not exhaustive and generally, in determining whether or not expenditure qualifies (particularly for construction, reconstruction or repair) to the extent that it is not included in the list above, the Director will have regard to whether the expenditure gives rise to a permanent addition to the building/grounds or whether it is a temporary addition (such that if the property was to be sold, the seller would, ordinarily, take, or consider taking, the item with them when they left the property).

Published: 29 February 2008

I2 INTEREST RELIEF – LET PROPERTY OWNED BY A COMPANY (section 38 and the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance 2007)

Statutory Position

The Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance 2007 sets out the restrictions which are to be placed on tax relief in respect of interest paid for 2008 and later years. In respect of let property, the relief is restricted to the amount of income received from that property and is only available if the property is owned by the borrower.

Concessional Treatment

The Director recognises that it is common for property to be owned in Guernsey through a company. It is thus also common for properties to be acquired by purchasing the shares in the company which owns that property, rather than by purchase of the property itself, and the condition set out above, whereby the borrower of any monies must also own the property, would not be met. The Director recognises that it is equitable to give relief in such circumstances and he will, therefore, upon receipt of an election from the borrower, be prepared to allow the interest to the company (or part only of the interest, as is required, to reduce the company's chargeable income to nil) on the same basis as if it had in fact been paid by the company. This means that whilst relief will be given it will be limited to the amount of income received from that property in the company.

Provided that where the person paying the interest owns less than 100% of the shares in the company, the amount of relief granted will be restricted to the extent that the Director considers just and reasonable in all the circumstances.

Any remaining unrelieved interest paid can be set-off, against other income from property, by the payer, in accordance with section 2(2)(b) of the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007.

Published: 17 March 2008

I3 LOANS FOR MIXED USE (section 39A and the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance 2007)

Introduction

With effect from 1 January 2008, income tax relief for interest paid will be dependent on the purpose for which a loan is used and the amount of the loan. The most significant restriction is that interest relief will only be available in respect of a principal private residence ("PPR") to the extent that the loan does not exceed £400,000.

The question arises, therefore, as to how taxpayers should calculate the amount of interest that they claim in their income tax returns, where monies have been borrowed for both qualifying and non-qualifying purposes.

Basis of apportionment

The Director is prepared to accept any reasonable basis of apportionment, so long as the basis used is consistent from year to year.

Some examples may help to illustrate the options available:

1. At 31 December 2008, Mr A has a mortgage outstanding of £350,000. £300,000 was used to acquire his PPR. The balance of £50,000 was used to acquire a boat.

   For 2008 only the interest on the PPR qualifies for relief.

If the interest on the mortgage was £17,000 the Director would accept a claim for relief on the basis of:

$$\text{£}17{,}000 \times \frac{\text{£}300{,}000}{\text{£}350{,}000} = \text{£}14{,}571$$

The Director would also accept that the non-qualifying part of the mortgage is the first to be repaid.

If in the above example, therefore, by 31 December 2009 the balance on Mr A's mortgage had reduced to £310,000 and the interest for 2009 was £15,000, the Director would be prepared to accept a claim on the basis of:

$$\text{£}15{,}000 \times \frac{\text{£}300{,}000}{\text{£}310{,}000} = \text{£}14{,}516$$

Again, in the above example, once the balance of the mortgage reduced to £300,000 (and assuming that no further advances of a non-qualifying nature had been made) all of the interest would then qualify for relief.

2. The purchase of a PPR is funded from an overdrawn current account which is used for other, non-qualifying purposes. The interest paid for the year must be apportioned between that which is attributable to the qualifying purpose and that which is attributable to the other non-qualifying use, as in example 1 above.

3. A self-employed trader has an overdrawn account which is used for both business and private purposes. The proportion of the interest attributable to the private purposes must be disallowed in the computation of the trading profits. The private proportion disallowed may itself potentially qualify for interest relief (e.g. if the monies were used to repair the trader's PPR):

Overdraft interest 2008	£10,000
Actual business expenditure 2008 (including actual capital expenditure but excluding, for example, depreciation)	£25,000
Drawings 2008	£30,000

Therefore disallow interest of:

$$\text{£}10{,}000 \times \frac{\text{£}30{,}000}{\text{£}30{,}000 + \text{£}25{,}000} = \text{£}5{,}454$$

If a loan is taken out for a qualifying purpose (or partly for a qualifying purpose) and subsequently that loan is replaced by another loan (for example, a borrower consolidates his loans) relief will not be denied simply because the "consolidated" loan was not used to acquire, construct, reconstruct or repair a building. Relief will be given on that part of the "consolidated" loan that relates to the repayment of the original loan which was, in turn, used for a qualifying purpose. For example:

Mr A has three loans:

£300,000 which was to acquire his PPR
£ 50,000 which was to build a conservatory on his PPR
£ 50,000 which was used to acquire a boat.

Mr A consolidates those three loans into a single loan of £400,000. Mr A would be given relief on the basis of:

Amount of interest paid x $\frac{£350,000}{£400,000}$

4. At 31 December 2008, Mr B has a mortgage outstanding of £360,000. On 1 August 2009 he is advanced a further £120,000 to pay for an extension to his PPR. From that date the qualifying threshold is exceeded by £80,000.

If the interest on the mortgage was identifiable on a month by month basis, the Director would accept a claim for relief on the basis of:

The whole of the interest for the first 7 months January to July
plus $\frac{400,000}{480,000}$ x the interest for the final 5 months August to December

If there is only an annual figure for interest available, the Director would accept a claim based on the average outstanding balance for the year:

$(360,000 \times \frac{7}{12}) + (480,000 \times \frac{5}{12}) = 410,000$

i.e. interest x $\frac{400,000}{410,000}$

Published: 29 February 2008
Revised: 17 March 2008

I4 <u>RELIEF FOR INTEREST PAID ON CURRENT ACCOUNT/FLEXIBLE MORTGAGES</u> (sections 14 & 38 of the Law and the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance 2007)

(*See also I1 and I3*)

<u>Statutory Position</u>

Under the above Ordinance, relief in respect of interest paid is available on a loan to purchase a principal private residence but only up to a maximum loan value of £400,000 for the property. Interest paid on loans for most other purposes does not qualify for relief.

<u>Concessional Treatment</u>

Whilst the amount of interest which qualifies for relief is readily ascertainable for a traditional repayment or interest only mortgage loan, the position is less clear for flexible/current account mortgages. The Director understands that, in respect of such mortgages, it is possible to overpay and re-borrow during the life of the mortgage, and it is thus the case that any further borrowings might be for a non-qualifying purpose.

In order to avoid complex calculations in order to distinguish between allowable and non-allowable interest, the Director is prepared to allow total interest paid each year on a flexible/current account mortgage, provided that:

- the initial amount advanced at the granting of the loan is not exceeded during the life of the loan (but relief is subject always to the £400,000 limit);
- the whole of the initial amount advanced is used for a qualifying purpose; and
- at commencement, there is in place an agreed plan to repay the loan in, normally annual, stages over its term.

Published: 23 July 2008
Revised: 31 July 2008

I5 INTEREST RELIEF – FAMILY ARRANGEMENTS MADE TO ASSIST IN THE PURCHASE OF A FAMILY MEMBER'S PRINCIPAL PRIVATE RESIDENCE (The Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance 2007, section 17)

Introduction

It has come to the Director's attention that it is not uncommon for family members to obtain borrowings (often secured on their own principal private residence) for the purpose of advancing those funds to another family member to enable that person to purchase their own principal private residence. (For example, parents obtaining a mortgage on their own home to advance the monies to their son and daughter-in-law to supplement other financing, obtained by the son and daughter-in-law, to purchase a principal private residence for them. This example will be used throughout this Statement of Practice for illustration purposes.)

Such family arrangements are often loosely constructed such that a formal loan agreement may not exist between the family members but may entail the son and daughter-in-law merely repaying the amount of the monthly payments on the loan to the parents.

Statutory Position

It could be argued, particularly in the case of a loosely constructed family arrangement, that the son and daughter-in-law have not borrowed the money which has been obtained from the parents and that the borrowers who have obtained the monies from the bank are the parents. The requirements of section 1(1) of the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance 2007 ("the Ordinance") would not have been met and the son and daughter-in-law would not be entitled to relief in respect of the interest paid.

If it was accepted that the son and daughter-in-law were the borrowers, the parents may not be entitled to relief in respect of the interest under the Ordinance or under the Income Tax (Guernsey) Law 1975 ("the Law") but it could be argued that the parents are liable to income tax on the interest element of the payments being made to them by the son and daughter-in-law as income of class 2(1)(d) relating to income from other sources.

Director's Interpretation

The Director recognises that if the provisions of the Ordinance and the Law were applied strictly to situations such as those described in the introduction above, it may result in either relief being denied or persons being taxed in unintended circumstances. The Director is, therefore, prepared to interpret the Ordinance and the Law as described in the concessionary treatment below.

In this Statement of Practice, the example used is that of parents and their son and daughter-in-law, but other reasonable family arrangements may be considered on a case by case basis.

It will, however, be necessary for the claimant to demonstrate to the Director that to grant this concessionary treatment would not be outside the spirit of the legislation or this concession.

Concessionary Treatment

Provided the parties involved submit a declaration in the format shown below, with their annual income tax returns, and the person claiming the interest (in this example, the son and daughter-in-law) also attaches evidence of the amount paid to the parents in reimbursement of the interest and related repayments of capital they have paid then:

1. The Director will accept that the son and daughter-in-law should be treated as "borrowers" for the purposes of the Ordinance and will allow them income tax relief under the Ordinance, subject to the usual rules and limits.

2. The Director will interpret section 17(1) of the Law such that he accepts that the interest being received by the parents from the son and daughter-in-law need not be brought into charge, as long as that interest is no more than the interest being paid on the loan by the parents to the bank.

   This treatment is intended to leave the parents in a tax neutral position and to recognise that they are, in effect, merely a conduit for the additional borrowing applicable to the son and daughter-in-law. If there should be a surplus of interest paid to the parents, that will be taxable under section 17(1). If there should be a deficit suffered by the parents, the deficit will not be allowable for Guernsey income tax purposes since the interest would not normally be allowable to the parents in any event. **IMPORTANT** If the son and daughter-in-law do not reimburse the parents for capital as well as interest, the benefit of this concession may be withdrawn.

3. For the avoidance of doubt, as indicated in 2. above, the interest cannot be claimed as a deduction for income tax purposes by the parents.

Note

The concessionary treatment above will only apply to interest paid on any monies borrowed on or after 1 January 2008, by parents, or other family members, from a person resident in Guernsey or a company subject to tax in respect of income of class 2(2)(a) (income from banking business) at the company intermediate rate, such that the interest payable on the loan advanced to the parents is liable to Guernsey income tax.

Declaration

The declaration required to be made with the annual income tax returns by the parties is shown below. The declaration must be completed fully in both Parts A and B, signed by all of the parties concerned and attached to each of their respective income tax returns.

Published: 8 June 2010
Revised: 2011

E X A M P L E

This is an example for illustration purposes only
The version of this form that should be used for completion can be downloaded from the Tax Office website (www.gov.gg/tax) and is available under "Printable Forms/Declaration re Interest Relief (form 678)"

Declaration in accordance with Statement of Practice I5

Interest Relief – Family arrangements made to assist in the purchase of a family member's principal private residence

PART A (to be completed by family member borrowing from the bank)

I/we ___ [*name of parents or other family member*] confirm that I/we borrowed the sum of £___ from ___ [*name of bank*] on ___ [*date*] and that these funds were loaned on to ___ [*name of son and daughter-in-law or other family member*] to assist in the purchase of the property ___ [*name and address of property*] acquired by them. Their relationship to me/us is ___ [*complete nature of relationship*].

I/we confirm that the balance outstanding on the loan at 31 December ___ [*complete year*] was £___ and the amount of interest charged to me/us on the loan during the calendar year ___ [*complete year*] was £___ and that I/we have not claimed this interest on my/our Guernsey income tax return.

I/we attach evidence of the amount of interest we have been charged by the bank and confirm that we have received reimbursement for this interest and the loan repayments made from ___ [*name of son and daughter-in-law or other family member*].

Signature etc …..

PART B (to be completed by member of family reimbursing the person in Part A)

I/we ___ [*name of son and daughter-in-law or other family member*] confirm that during the calendar year ___ [*complete year*] I/we have reimbursed ___ [*name of parents or other family member*] the amount of £___ in respect of the monies loaned on to me/us in Part A of this declaration, of which the sum of £___ related to interest during that calendar year, and evidence of the payments made is attached.

Signature etc …..

MISCELLANEOUS

M1 (a) FURNISHED LETTINGS (sections 9 – 17)
APPLIES UNTIL 31 DECEMBER 2007

Where Guernsey property is let furnished, the element of income relating to the building is calculated by reference to five times the Annual Rental Value, the balance of income representing furniture hire. Where this would produce an inequitable result, then a basis of 60% rent and 40% furniture hire is used.

This basis would only apply to furnished houses and not to commercial property. Instead annual allowances should be claimed in respect of any plant and machinery and some of the rent should then be attributed to the letting of that plant and machinery. That portion of the rent would not then qualify for the statutory repairs allowance but it may be limited to the amount of the annual allowances, unless there is evidence to the contrary.

(b) HOLIDAY LETTING OF OWN RESIDENCE (sections 9 – 17)
APPLIES UNTIL 31 DECEMBER 2011

Where an individual lets his own residence while he is away on holiday for any period(s) not exceeding two months in a calendar year an overall deduction of 33 1/3rd% is allowed against the gross rent received in lieu of a claim on the strict statutory basis.

From 1 January 2012 onwards the statutory basis applies, i.e. any direct expenses should be deducted first, then the 15% statutory repairs allowance will be given by the Income Tax Office.

Published: 1987
Revised: 1991 / 2001 / 2003 / 2011

M2 FURNISHED LETTINGS - OVERSEAS DWELLINGS (section 17)

When computing income from overseas furnished lettings, an allowance representing wear and tear during the year on furnishings may be allowed by deducting 10% of the rent received (less the Occupier's Rates where an exclusive rent is payable). If the rental includes payments for services which would normally be borne by a tenant, these too should be subtracted before calculating the 10% deduction. Where the 10% deduction is allowed, no further deduction will be given for the cost of renewing:

1. long-life furnishings, e.g. suites, carpets, curtains; or

2. short-life furnishings, e.g. linen, crockery, cutlery; or

3. fixtures of a type which, in unfurnished accommodation, a tenant would normally provide for himself, e.g. cookers, storage heaters, etc.

The cost of renewing fixtures which are an integral part of the buildings in that they would not normally be removed if the property was vacated or sold, e.g. baths, washbasins, toilets, should be treated as expenditure on repairs.

The 10% deduction is an alternative to allowing the cost of renewals of both long-life and short-life furnishings and fixtures as they occur.

The "10% deduction" basis would be allowed on the understanding that it would be consistently applied.

Accountancy fees which are allowable for overseas tax purposes in computing income from property, may be deducted although, strictly speaking, they do not fulfill the conditions of section 17, i.e. they are not incurred wholly and exclusively for the purposes of earning the income. This does not mean that the rental income should be treated as business income and there would be no question of carrying forward any losses which may arise from such lettings.

Published: 1987
Revised: 1988 / 2000 / 2003 / 2011

M3 BANK INTEREST RECEIVED

DELETED

M4 PURCHASED LIFE ANNUITIES (Part XVI)

Where a non-resident person receives income from a Purchased Life Annuity to which the provisions of Part XVI of the Law apply, the "income" element may be paid without deduction of Guernsey income tax.

Published: 1987
Revised: 2011

M5 CHRISTMAS BONUSES TO PENSIONERS (sections 2(1)(b) and 27)

Christmas bonuses paid to Guernsey and United Kingdom Old Age Pensioners and Widows are not chargeable to Guernsey Income Tax and need not be included in Income Tax Returns.

Published: 1987
Revised: 2011

M6 REMUNERATION FOR SERVICES PERFORMED BY NON-RESIDENT PERSONS IN SHIPS OR AIRCRAFT (section 8)

Remuneration paid by a Guernsey resident employer to a non-resident of the island for services performed in ships or aircraft, is not liable to Guernsey income tax.

Published: 1987
Revised: 2011

M7 MAINTENANCE PAYMENTS - SECTION 43A OF THE LAW (COURT ORDERS MADE PRIOR TO 1 MARCH 2003*)

Section 43A of the Law provides as follows:

"Where under the order of any court of competent jurisdiction a person is required to pay alimony or maintenance, out of that person's income, to or for the benefit of that person's spouse or former spouse, any sum so paid shall be treated as the income of that person's spouse or former spouse and shall be allowed as a deduction in computing the income of that person".

As this is the only part of the Income Tax Law which deals with maintenance payments, a strict interpretation is applied when taxpayers make claims for relief in respect of payments made by them.

Where a Court Order specifies that an amount is to be paid to a person's spouse or former spouse for the maintenance of the child of the marriage it is the income of the spouse or former spouse, and the payer is entitled to a deduction for the amount paid. Where the payment is made under the order of a court other than a Guernsey court to a person's spouse or former spouse resident outside Guernsey, payments under the Court Order should be made without deduction of Guernsey income tax.

Where maintenance payments under a Court Order are payable to a child (and not payable to the spouse or former spouse) such payments are not regarded as the income of the spouse or former spouse so that if the payments are made to a child not resident in Guernsey they can be made without deduction of Guernsey Income Tax. To be allowable as a deduction within the meaning of section 43A of the Law, the payments must be made <u>to or for the benefit of that person's spouse or former spouse</u> and consequently payments not conforming with this requirement of the Law are not allowable deductions.

***Section 43A of the Law is repealed in respect of Court Orders made on or after 1 March 2003. No relief is therefore available in respect of maintenance payments under Court Orders made after this date, nor are such payments subject to Guernsey income tax.**

Published: 1987
Revised: 1990 / 2003 / 2011

M8 DOUBLE TAXATION RELIEF (Part XV)

(a) <u>United Kingdom</u>

General application up to 5 April 2010. After 5 April 2010 this would only apply where a taxpayer remains resident in the UK for tax purposes (as well as being resident in Guernsey for the same year) and remains liable to UK tax on the pension income.

Many taxpayers receive retirement pensions from the Department of Work & Pensions in the United Kingdom, together with a small amount of income which is taxed at source in the United Kingdom and which is relievable in Guernsey under the Arrangement for the Avoidance of Double Taxation. The type of case in question is one in which the retirement pension has not been taxed at source and a claim for proportional relief would not result in a repayment of United Kingdom tax.

In such cases, credit will be given for UK tax paid, so long as the following conditions are observed:-

(i) a computation is submitted which demonstrates that no repayment of United Kingdom tax is due;

(ii) the claimant's income for the relevant year does not include any income from dividends or debenture interest arising in the United Kingdom.

Double Taxation Relief is given upon the total income subject to relief (including the retirement pension) as if the tax borne upon the income which has been subjected to tax is the total tax due. The relief will not in any case exceed the amount of tax suffered.

(b) Jersey

It is no longer necessary for a taxpayer to make a Proportional Allowance claim in Jersey before Double Taxation Relief is given, provided the gross income which is liable to Jersey tax is £1,000 or less. In such a case the gross amount of the income is included in the Guernsey assessment and the relief is equal to the Jersey tax paid except that, where necessary, the credit will be restricted to a sum equal to the Guernsey tax payable before Double Tax Relief.

Similarly, in a case where the Jersey taxable income exceeds £1,000 gross but the resulting repayment of Jersey tax would be minimal if a Proportional Relief claim were to be made, relief can still be given in Guernsey in the absence of a Jersey claim.

Published: 1987
Revised: 1991 / 1993 / 2011

M9 INFIRM PERSONS ALLOWANCE (section 36)

An Infirm Persons Allowance is granted where a person contributes to the Board of Health for the provision of a Home Help. The allowance must be restricted to either the cost of the Home Help or the amount of the Income Tax Infirm Persons Allowance, whichever is the lower.

Where a person engages the services of a Nursing Agency then, for the purposes of Infirm Persons Allowance, this will be accepted as being equivalent to employing an "individual". Again, any allowance due must be restricted to the cost of the Agency's services, or the amount of the Infirm Persons Allowance, whichever is the lower.

NB – no new claims will be admitted after 31 December 2008, although pre-existing claims will continue to be eligible for relief.

Published: 1987
Revised: 1988 / 1989 / 1990 / 2011

M10 INTEREST PAID ON PROPERTY LOANS PRIOR TO THE YEAR OF CHARGE 2002

DELETED

M11 <u>GUERNSEY OLD AGE PENSIONS</u> (sections 2(1)(b), 3(1) and 27)

(a) Guernsey Old Age Pensions paid to non-residents are not chargeable to Guernsey income tax.

(b) This applies only up to and including 2008 (or 2009 where section 51 applies). The amount of Guernsey Old Age Pension to be assessed in the hands of an individual who is resident but not solely or principally resident in the year of charge is restricted to the same proportion of the pension for the year of charge as the proportion of the personal and other allowances to which the individual is entitled.

Published: 1993
Revised: 2011

M12 <u>TRUSTS – A TRUSTEE'S LIABILITY TO GUERNSEY INCOME TAX</u> (sections 53, 65, 62A – D and 81B)

This Statement of Practice does not apply if a Guernsey resident individual is the settlor of a trust and they and their spouse have not been irrevocably excluded. In such a case, under section 65, the settlor will be taxable on the income of the trust, which would include the income of any entity underlying the trust (for example a company owned by the trust).

Under section 53, a Guernsey resident trustee may have a liability to Guernsey income tax.

Where the whole of the income of a trust is payable to beneficiaries resident outside Guernsey, the liability of the trustees will be restricted to the trust income which arises in Guernsey, apart from Guernsey bank interest. Where one or more of the beneficiaries is resident in Guernsey, the liability of the trustees will be restricted to the income to which the resident beneficiaries are entitled, plus any Guernsey income, apart from Guernsey bank interest, of the non-resident beneficiaries.

Where the trustees have power to accumulate income for the benefit of beneficiaries all of whom are resident outside Guernsey, no assessments will be raised on the trustees in respect of the accumulated income in so far as it does not arise from sources in Guernsey (for this purpose "sources in Guernsey" excludes Guernsey bank interest). If separate funds are set up within the settlement each can be looked at individually, if appropriate, in order to determine the trustees' liability to tax.

For the avoidance of doubt, income arising from unit trusts domiciled in Guernsey is not exempt in the same way as Guernsey bank interest.

Where one or more Guernsey resident trustees hold an interest in a company, in their capacity as trustees, and no other individual, resident in Guernsey, is a beneficial member of that company within the meaning of section 62D, the Guernsey resident trustees will not have any liability to Guernsey income tax in relation to distributions (including deemed distributions) from that company.

Furthermore, where no other Guernsey resident is a beneficial member of that company, within the meaning of section 62D <u>and</u> the trustee is deemed to be the beneficial member by virtue of section 62D(4) the Director will not treat the trustee as the beneficial member under section 62D(4) if he is satisfied that the trustee is acting as a trustee solely in a professional capacity.

Notwithstanding the above, where a minority of the beneficial members (within the meaning of section 62D) are resident in Guernsey, the Director may be prepared to apply the above principles to the distributions applicable to the resident beneficial members, on a case by case basis, so that the Guernsey resident trustees may not have any liability to Guernsey income tax in relation to distributions (including deemed distributions) from that company.

Published: 1991
Revised: 1996 / 2000/ 2003 / 3 June 2009

M13 DETERMINATION OF APPEALS BY THE TREASURY & RESOURCES DEPARTMENT (sections 14, 36, 38, 51, 79, 137 and 139) APPLIES UNTIL 03/07/11

Section 79(2) of the Income Tax Law provides that an order by the Treasury & Resources Department is "final and conclusive", except in the event of there being a request for a case stated.

Changes in practice will in future mean that on receipt of a completed return claims in certain circumstances will be entertained, despite there having been a determined assessment. These are in respect of claims for:-

(a) personal and other allowances - sections 36 and 51;

(b) section 137 relief (aggregate losses) and "deemed" section 137 losses, e.g. under sections 14 and 38.

(c) double tax and unilateral relief.

In such cases the claim itself would need to be made within the statutory time limits as any out-of-date claims will be refused.

In the majority of cases a "blanket" appeal is received against an assessment usually along the lines of "... it is not in accordance with the return/accounts which will follow ...". Such an appeal will only be taken as being against the "assessable income" assessed (i.e. income less charges) and will not be extended to anything else.

As the Law provides that certain deductions/allowances are reductions of assessable income, the consequences of the determination of an appeal will be that no subsequent claims will be entertained in respect of the following:-

- interest relief
- lost rent
- annual allowances
- loss relief (other than "137" aggregate losses - see (b) above).

Where in a particular case specific grounds of appeal have been lodged, details will be brought to the attention of the Treasury & Resources Department for its specific determination.

For the avoidance of doubt, once an appeal has been dismissed, any losses incurred in the year of computation for that year of charge and for any previous years will no longer be available to carry forward under the provisions of section 139.

Published: 1992
Revised: 2000 / 2006 / 2011

M14 UNITED KINGDOM STUDENTS WHO ARE NON-RESIDENT FOR GUERNSEY TAX PURPOSES (section 81A)

DELETED

M15 REPAYMENTS OF TAX ON UNITED KINGDOM DIVIDENDS (section 17)

Where the only United Kingdom taxable income of a Guernsey resident is from dividends and the taxpayer or his accountant advises at the time of submission of the Guernsey income tax return that no repayment claim on the United Kingdom authorities is to be made, the net dividend income is assessed. Where a claim is made, any repayment will be assessed in the year of receipt and should be included on the relevant income tax return.

Published: 1993
Revised: 1997 / 2006 / 2011

M16 FOSTER CARERS AND COMMUNITY FOSTER CARERS, FAMILY LINK SCHEME, FAMILY AND FRIENDS CARE AND RESIDENCE ORDERS (section 17)

(See also M20 re: adoption allowances.)

Payments (excluding skills payments) made by the States of Guernsey to foster carers and community foster carers are not chargeable to income tax. Skills payments are taxable and will be subject to the ETI scheme.

Payments made by the Health and Social Services Department under the Family Link scheme or Family and Friends Care scheme, and allowances paid under a Residence Order, are not chargeable to income tax.

Published: 1993
Revised: 1996 / 2011

M17 EXEMPTION OF GUERNSEY BANK INTEREST (section 40)

Guernsey bank interest arising to a non-resident person is exempt from Guernsey income tax in accordance with section 40(cc) of the Law. This includes cases where, during the administration of a Guernsey estate, such bank interest arises to non-resident beneficiaries.

Published: 1993
Revised: 2011

M18 LIFE ASSURANCE POLICIES (INCLUDING SINGLE PREMIUM LIFE ASSURANCE BONDS)

A tax liability may arise where the Director wishes to invoke the legal avoidance provisions of the Income Tax Law and he reserves the right to do so in all cases.

Generally this will not be done in the case of full or partial surrenders or maturity if the investment has remained untouched for at least ten years, i.e. has not given rise to income in any form.

If the investment is surrendered in full or matures before ten years have elapsed, any growth on the investment would generally be taxed as income. However, a sympathetic view will be taken if the investor has been forced to surrender the policy because of some external circumstances beyond his control.

Where a partial surrender is made (for example, to take a regular withdrawal) then that and any subsequent surrenders will be examined to ascertain the growth in the investment. Any such growth will be taxed.

The method of calculation will vary according to the nature of the investment. For unitised policies the income will be calculated by reference to the original unit cost and the number of units surrendered. In other cases the following formula may be used to ascertain the original cost:

$$\frac{A}{A + B}$$

Where A = the cash received
B = the value of the remaining investment after the partial surrender.

Clusters of policies would generally be treated as one investment so that the surrender of one policy would constitute a partial surrender of the whole.

Movements between funds within a bond would not be treated as partial surrenders and would not therefore in themselves give rise to a tax charge. The surrender or partial surrender of a bond in order to invest in another bond or another type of investment would be treated as a surrender or partial surrender, as the case may be, for the purposes of this Statement of Practice, but see M18A below.

No liability would arise on any death benefit paid.

A claim for relief in respect of Guernsey or foreign taxes already suffered on any income charged to tax under the above would only be given if the taxpayer can demonstrate that he suffered the tax personally rather than through a third party (for example tax suffered by the insurance company). The taxpayer would only be taxed on the net income received if a tax credit was not available.

As explained above, the Director reserves the right to invoke the legal avoidance provisions of the Law where appropriate. It has come to his attention that in some cases bonds are being purchased for the principal purpose of holding an underlying portfolio of investments (whether already owned or subsequently purchased) in order to obtain the protection of the "10 year" concession afforded by this Statement of Practice. He wishes to make it clear that, in such cases, there is a very strong likelihood that he will, in fact, invoke the anti-avoidance provisions in order to protect States revenues as this is not the intended purpose of the "10 year" concession.

This statement does not apply to Corporate Life Assurance Contracts, i.e. any life assurance policy held in the name of a company rather than an individual, where the treatment will vary according to the purpose for which the contract is taken out.

This statement does not apply to purchases of second-hand endowment policies and the whole of the profit on surrender or maturity will be charged to income tax.

Published: 1993
Revised: 1994 / 1995 / 1996 / 1997 / 2001 / 2002 / 2007 / 16.06.2009

M18A FURTHER CONCESSIONARY TREATMENT FOR 2009 REGARDING THE SWITCHING OF FUNDS IN SINGLE PREMIUM LIFE ASSURANCE BONDS

In view of the current financial climate, and particularly in view of concerns regarding investor protection, it has been agreed that, in certain circumstances, funds may be switched from one bond to another without the transfer breaking the 10 year rule, provided that:

- the switch has been made as a result of advice given by a professional adviser,
- it has been made for the sole purpose of giving greater protection to the underlying funds,
- the whole of the funds in the original policy are transferred to the new policy, and
- the switch was made by 31 December 2009.

Where all of the above criteria are satisfied, the commencement date of the original policy would remain as the relevant date when considering whether the funds have remained untouched for 10 years on any subsequent withdrawal/redemption.

Published: 16 June 2009
Revised: 20 October 2009

M19 GUERNSEY RESIDENTS - INVESTMENTS IN FUNDS (sections 17, 19 and 67)

Income will always be taxable, the only variations being the time it is brought into charge:-

(a) distributions in cash form are income of the year in which the distribution is declared;

(b) where a fund offers the investor the alternative of having distributions of income or a "roll-up" (or a mixture of both of these), then a tax charge will arise whether or not the distribution is taken in cash form;

(c) where under the terms of the fund income is not distributed but is accumulated (usually by enhancing the share or unit value), then a tax charge will not arise until the holding is disposed of. (On disposal the element of the proceeds relating to accumulated income will have to be determined). Cases will also be reviewed to consider whether any charge to tax arises on death or leaving the island.

Any other gains arising from the holding of an investment in a fund will give rise to a charge to income tax if:-

(a) in the opinion of the Director, section 67 of the Income Tax Law applies (general provision against legal avoidance); or

(b) the disposal forms a business or part of a business (section 19(a) of the Income Tax Law).

Published: 1993
Revised: 1995 / 2011

M20 ADOPTION ALLOWANCES

(See also M16)

Adoption allowances paid by the States of Guernsey are not chargeable to income tax.

Published: 1994
Revised: 2011

M21 SCRIP DIVIDENDS (sections 17, 62B, 67 and 81B)

Companies may give their shareholders an option to have a scrip dividend (shares in lieu of a dividend) instead of a cash dividend.

Position until 31 December 2007

Where the stockholder has an alternative right to receive cash, scrip dividends will be charged to tax under the legal avoidance provisions. Scrip dividends received in other circumstances will be reviewed on a case by case basis.

With regard to Guernsey dividends only, however, a recipient of a scrip dividend need not declare the value of the dividend as income and consequently would also not be entitled to a credit for Guernsey tax in respect of that dividend. Conversely, if a credit for Guernsey tax has been claimed in respect of such a dividend then the value of the dividend would be brought into charge.

Position from 1 January 2008

(a) Generally all scrip dividends will be taxable and, in accordance with the provisions of section 81B, tax must be deducted in respect of the element that relates to a company's undistributed income.

(b) If a scrip issue alters the percentage of the beneficial interest in the company, the statutory position is that under section 62B(1)(i) the Director could invoke the provisions of section 67 to deem that this change constituted a deemed distribution event. However, he would not do so if one of the following criteria was met:

(i) Where the Director is satisfied that the beneficial members and the extent of their interests (both in size and value) are fundamentally the same, before and after the scrip issue – following the principles of Statement of Practice C34 (for example, where a beneficial member's interest changed only insignificantly or fractionally (both in size and value)).

or

(ii) Where:

(a) the company involved is a publicly listed company; and

(b) returns for beneficial members derive mainly from capital appreciation of their ordinary shares and the return of proceeds from capital disposals.

The scrip dividend itself would still be taxable, however, as stated above.

Published: 1995
Revised: 2006 / 2011

M22 <u>INTEREST PAID TO BANKS ABROAD</u> (section 48)
<u>APPLIES UNTIL 31 DECEMBER 2007</u>

(See also C6)

Unless the interest is paid to a UK or Jersey bank (see paragraph R5) there is a requirement that tax should be accounted for under the provisions of section 48 of The Income Tax (Guernsey) Law, 1975. The only exception is where the loan is in the nature of a mortgage or a bond on a property situated outside of Guernsey. In these circumstances the source of the interest is deemed to be situated outside of Guernsey and there is then no requirement to account for any Guernsey income tax. This will apply whether or not the property is let.

Relief will still be given to the payer under the provisions of section 14 on a current year basis.

Published: 1996
Revised: 2011

M23 <u>DELAISSANCE (Legal arrangement between co-owners reducing the number of owners)</u>

DELETED

M24 <u>ORDER OF SET-OFF OF LOSSES</u> (sections 14, 38 and 133-139)

Under the provisions of section 133 of the Law, losses from one business may be set-off against assessable income from other businesses for the year of charge.

Under the provisions of section 134, where a taxpayer has more than one source of income from the same class other than businesses, the loss sustained from one source may be set-off against assessable income from the other sources in the same class for the year of charge.

Section 135 provides that where losses cannot be set-off in accordance with the provisions of sections 133 or 134, then the loss sustained on one class of income may be set-off against income of any other class in the year of charge.

It has been the practice to grant relief under the provisions of section 135 by apportioning the loss in accordance with the amount of income arising from each other class. Subject to the over-riding provisions of sections 133 to 135 of the Law, a taxpayer has the right to elect that losses should be set-off against a particular class of income in the way that is most advantageous to himself, i.e. to preserve double taxation relief and thereby reduce his liability to tax.

Charges, i.e. interest paid, which is allowed under sections 14 or 38, or maintenance payments, may be set off against other income prior to setting off trading losses so that the latter may be carried forward to set off against profits from the same business in a subsequent year of charge. Trading losses brought forward under the provisions of section 139 must be set off against profits of the same business before any deduction for charges.

Note: With effect from 1 January 2008, the above is subject to the provisions of section 133A, which provides that losses from one class may only be set-off against the assessable income from another class where those losses and the income are taxed at the same rate, as set out in the Fifth Schedule to the Law.

Published: 1987
Revised: 2000 / 2011

M25 OFFSHORE PENSION SCHEMES - EXEMPTION UNDER SECTION 40(o) OF THE INCOME TAX (GUERNSEY) LAW, 1975

This subsection exempts the income derived from investments and deposits of any superannuation fund established in Guernsey under irrevocable trusts in connection with the carrying on of a business or the exercise of functions wholly outside of Guernsey.

Only genuine pension funds established to provide benefits in retirement would qualify for the exemption and in general the benefits should take the form of an annual pension.

Lump sum benefits should only be available in the following circumstances:

(a) At normal retirement date, which date should be stated in the Rules. This should not be prior to the age of 50, other than in exceptional circumstances, i.e. because it would be normal in the particular occupation or in the country of employment for retirement to take place at an earlier age.

or

(b) Where the employer agrees to the termination of the employment prior to normal retirement date due to serious ill-health or redundancy.

It would not be permissible for lump sum benefits to be paid at the request of the employee on leaving the scheme prior to normal retirement date.

Published: 1999

M26 U.K. SOCIAL SECURITY BENEFITS (section 27)

Social Security benefits paid by the governments of the United Kingdom, the Isle of Man or Jersey may be exempt from Guernsey income tax where they are similar in nature to those exempted by section 27(2) of The Income Tax (Guernsey) Law 1975.

Published: 2000
Revised: 2011

M27 RETIREMENT ANNUITY TRANSFERS (sections 157B and 157C)

The legislation only allows for a transfer from one retirement annuity contract to another, where both contracts are in the same name. Where a husband and wife separate and there exist retirement annuity contracts held in the sole name of either spouse, the Director would be prepared to allow a transfer of the rights under such policies to a policy in the name of the other spouse, provided this was done following the written agreement of both parties or as a result of a Court Order.

Similar treatment may be applied to occupational pension funds, subject to individual application to the Director.

Published: 2000
Revised: 2001 / 2011

M28 ZERO COUPON BONDS (section 17)

Where such bonds are held to maturity, the difference between the purchase price and the maturity proceeds is taxable as income. However, where a Zero Coupon Bond is not held to maturity it is necessary to establish the income factor. This may be calculated by reference to the formula used in the United Kingdom, i.e. section 710 et seq of the Income & Corporation Taxes Act 1988, and will depend on the yield to maturity, which is usually known at the time of purchase.

Published: 2001
Revised: 2011

M29 PERMANENT HEALTH INSURANCE (sections 7, 8 and 36)

(a) **Individual Contracts**

There is no tax relief available on the premiums paid but the benefits received are not taxable.

(b) **Key Man Contracts**

If the premiums are paid by the employer and not the individual then tax relief would be given as a business expense if:

(i) the only relationship between the payer and the key man employee is that of employer and employee;

(ii) the insurance is to cover the loss of profits;

(iii) the key man has no significant shareholding where the employer is a company;

(iv) if the premiums are allowable then the benefits will be subject to Guernsey income tax.

(c) **Group Permanent Health Insurance**

The employer will receive tax relief on the premiums as a business expense, provided that conditions (i) and (iii) above are satisfied or where all employees receive comparable benefits.

The benefits received by the employer would then be treated as trading income but payment of those benefits to the employee would be a business expense.

The employee is then assessable to tax on the benefits as earned income and the employer would be obliged to operate the ETI Scheme in the normal way.

Benefits may be paid out of a group scheme directly to the employee and without any tax consequences in the employee's hands in the following circumstances:

(a) details of the scheme and the names and addresses of the employees participating are supplied to the Director from the inception of the scheme;

(b) the employer confirms that in no circumstances will any benefit be payable for which he would otherwise be contractually responsible under the terms of the employee's contract of employment, whether oral or written; and

(c) the employer undertakes to include the value of the premiums as a benefit in kind in the employee's gross taxable pay and operate the ETI Scheme on them accordingly.

Published: 2002
Revised: 2011

M30 ANNUAL ALLOWANCES AND RENTAL INCOME (Part IX)

Where an individual receives income from property there is no provision in the legislation for him to claim annual allowances in respect of expenditure on equipment for the management of that property. As this would appear to be inequitable the Director is prepared, by concession, to grant annual allowances in respect of plant and machinery used wholly and exclusively for the purposes of managing property which is let.

Published: 2003
Revised: 2011

M31 VOLUNTARY DISCLOSURES (sections 191, 192 and 201)

(See also the Statement of Practice on Penalties for Incorrect Returns, which is available on the website www.gov.gg/tax under "Statements of Practice/Interpretations of Law/Concessions".)

Section 191 of the Law includes a proviso that if at any time before the Director institutes enquiries, as a result of which it is discovered that an incomplete or incorrect return has been delivered, such person delivers a correct and complete return, he will not be liable to any penalty.

It should be noted, however, that section 191 of the Law deals with penalties for negligence.

Penalties for fraud (in connection with an incorrect or incomplete return) are dealt with in section 192.

Notwithstanding that a person may make a voluntary disclosure of omissions or errors, therefore, if there has been fraudulent conduct penalties may still be incurred. Indeed, in the most serious cases of fraud, the Director may request a prosecution under section 201 of the Law.

In a case involving fraud, if the Director is prepared to resolve the matter by imposing a penalty under section 192, the fact that the person made a voluntary disclosure is likely to result in a lower penalty than would otherwise be the case.

It should also be noted, however, that, under the terms of section 191, in order to avoid the imposition of penalties a full and complete disclosure must be made. If a voluntary disclosure is made which is not full and complete, penalties may still be charged but, once again, credit would ordinarily be given for the fact that the original disclosure was spontaneous in determining what level of penalties should be imposed.

Finally, section 191 provides that a disclosure has to be made prior to the Director commencing enquiries. Once a person's income tax affairs are already under enquiry, therefore, the protection of the proviso to section 191 is not available but, once again, a person who discloses errors in, and omissions from, their return voluntarily during the course of the Director's enquiries could normally expect to have a lesser penalty imposed as a result.

Published: 2004
Revised: 2011

M32 TAX TREATMENT IN GUERNSEY OF FILM AND TELEVISION PRODUCTION (sections 3, 5, 7, 8, 40A and 188A-188G)

(See also Statement of Practice B7 "Non-resident entertainers.)

- A non-Guernsey company making a film or television programme in Guernsey will generally not be regarded as having a taxable presence in Guernsey and hence will not be liable to tax in Guernsey on profits made from the production or subsequent distribution of the film or television programme.

- Until 31 December 2007, a company incorporated in Guernsey but owned by non-Guernsey residents could enjoy the same treatment by applying for tax exempt status. Such a company was not resident in Guernsey for tax purposes and thus could enjoy a similar freedom from taxation in Guernsey as a company incorporated elsewhere. From 1 January 2008, a company incorporated in Guernsey but owned by non-Guernsey residents will enjoy the same treatment because its income will be disregarded income.

- Until 31 December 2007, International Tax Status was available to companies that were owned by non-Guernsey residents and which did not trade with residents of Guernsey. Such a company was able to agree a rate of taxation at a level above 0% up to a maximum of 30%. Such a company was entitled to have a taxable presence in Guernsey and may be appropriate if, for example, the company concerned wished to establish a permanent office in Guernsey.

- Self-employed artistes working in Guernsey on the production of a film or television programme will generally not be regarded as carrying on a business in Guernsey and thus, in the absence of taking up residence in Guernsey, they will not be liable to taxation in Guernsey on their earnings.

- Work performed in Guernsey by employees of a non-resident production company that does not have a taxable presence in Guernsey is regarded as part of an employment carried on outside Guernsey. Thus, provided that the individual concerned is not treated as resident in Guernsey for tax purposes, the remuneration from such work will not be liable to tax in Guernsey.

- If the activity of producing and exploiting the film or television programme is arranged as a joint venture, possibly in the form of a partnership, the joint venture is not of itself subject to tax in Guernsey. Despite the fact that the film or television programme may be produced in Guernsey, non-Guernsey investors will not be regarded as having a taxable presence in Guernsey and thus will not be liable to tax in Guernsey.

Published: 2004
Revised: 2011

M33 <u>GUERNSEY RESIDENTS – INVESTMENT IN FILM OR TELEVISION PRODUCTION</u> (sections 7, 17 and 62A(2))

- As an alternative to the normal rules governing investments, Guernsey residents investing directly or indirectly in films or television programmes will, for up to five years after the date the initial investment is made, be able to elect to be regarded as carrying on a business of producing and exploiting the film, and therefore will be able to claim a business deduction for the cost of their investment in the film or television programme or in the vehicle holding the investment in the film or television programme. Any receipt from the exploitation of the film or television programme (e.g. sale of rights/royalties, etc) will be taxable as income from the business concerned, notwithstanding that the company paying the income may now itself have "undistributed income", as defined in section 62A(2).

- The investor will be able to claim relief for the cost of his investment as the expenditure is incurred. Thus if there is a surplus of expenditure over receipts in any accounting year, the excess will be relievable as a business loss in accordance with the general rules relating to business losses.

- The relief will be clawed back if the investor subsequently wishes to cancel the election within the five year period.

- If the election to treat the investment as a business is cancelled, the deduction will be added back in the year of charge in which the relief was originally claimed. However, no late payment penalty or surcharge on overdue tax will arise on the claw back of relief given in an earlier year of charge.

- Credit will be given for foreign withholding taxes on royalties, etc, in accordance with the normal rules under which a resident of Guernsey can claim credit relief for foreign taxes.

- A company with Guernsey resident shareholders that is established to invest in films or television programmes will be entitled to claim exempt status for tax purposes if it is operated as a fund, provided that it is not controlled by residents of Guernsey.

Published: 2004
Revised: 2011

M34 SURCHARGES IN RESPECT OF THE LATE PAYMENT OF TAX (section 199)

The legislation to impose surcharges automatically in respect of the late payment of tax has been introduced, replacing the previous provisions that enabled a penalty for late payment to be imposed. Surcharges on unpaid amounts (tax, penalties and any unpaid surcharges) have been automatically applied with effect from:

- 15 April 2006 regarding amounts payable by employers
- 30 June 2006 regarding all other amounts payable

The surcharge is currently at the rate of 5%.

The legislation also includes provisions whereby a surcharge may arise from the original due date in certain circumstances. For example:

(a) A taxpayer asks for some of the tax to be suspended on, say, an estimated assessment on the grounds that the tax will not be due and the return is not submitted by 15 January in the year following the year in which it was issued, (or within 12 months if the return was issued later), and it is clear on processing the return that some or all of that tax should have been paid.

Note: If the tax return is received by the Income Tax Office before 15 January in the year following that in which it was issued (or within 12 months if the return was issued later) then no surcharge would arise on the overdue tax from the original due date but it is important to note that the return must be fully completed.

(b) (i) In the case where a person has failed to give notice that he or she is liable to tax.

(ii) Where a taxpayer has made a return of income which is subsequently found to be incorrect.

For example, if it is discovered that tax is due on income that was not disclosed in the return, or that someone was not registered with the Income Tax Office, and it was discovered that they should have paid tax in earlier years.

In such cases surcharges will arise in relation to that tax as if it was due in June and December in the relevant year of charge.

Notes

1. A fully completed return means a return where all the relevant sections have been completed and, where relevant, supporting documentation (such as accounts and income tax computations) and information required has been supplied enabling the Director to make a "final assessment". A return with sections containing estimates and entries such as "accounts to follow" or "to be advised" would not be considered to be a fully completed return and the return would only be considered to be fully complete once the additional information has been provided.

2. There are exceptions whereby a surcharge will not actually be payable:

   (a) where it is under the £50 de minimis limit;

(b) where the tax involved is being collected through the ETI Scheme, and is paid in the Year of Charge in which it becomes due or the following year.

3. A taxpayer does have a right of appeal against a surcharge but only on the grounds that:

(a) the surcharge was imposed incorrectly under the Law;

(b) the surcharge was miscalculated;

4. In the case of an additional surcharge (but not the surcharge itself) a taxpayer has the right of appeal if there has been an "unreasonable delay" (not to be less than six months) between the receipt, by the Director, of a fully completed return and the making of the assessment that gives rise to the surcharge or additional surcharge. However, if upon the receipt of a return it was necessary for the Director to seek further information or clarification from the taxpayer or any other person before the assessment could be made or revised then the Director's view would be that the time it took to obtain that information or clarification should not be taken into account in determining whether the delay was reasonable or not.

For example, a return is received on 1st June and the Director makes an enquiry on 1st August with regard to the return. The Director does not receive a response to his enquiry until 1st November (3 months later). The Director would consider that so long as the assessment was raised within four months from the receipt of the response on 1st November, the delay would not be "unreasonable delay", although the return itself was received more than six months before the assessment was raised or revised.

Published: 2006
Revised: 2007 / 2011

M35 SUPPLEMENTS IN RESPECT OF THE LATE REPAYMENT OF TAX (section 199A)

In view of the introduction of automatic surcharges in respect of the late payment of tax, a system has also been introduced to automatically calculate supplements in respect of the late repayment of tax by the Income Tax Office to the taxpayer. Supplements in respect of amounts repaid late (and any supplements not repaid) will be applied automatically with effect from 1 January 2006 for all taxpayers.

If a supplement is to be applied it is currently at the rate of 5%.

A taxpayer is entitled to a repayment supplement in the following circumstances:

(a) the taxpayer has submitted a fully completed return for the year in question; and

(b) the repayment for the year in question is issued to the taxpayer more than one year after the end of the month in which the fully completed return for the year in question was received by the Income Tax Office.

Notes

1. It is important that a fully completed return is made by the taxpayer as the date that the fully completed return is received by the Income Tax Office is relevant when determining whether or not a supplement is due.

2. A fully completed return means a return where all the relevant sections have been completed and, where relevant, supporting documentation (such as accounts and income tax computations) and information required has been supplied enabling the Director to make a "final assessment". A return with sections containing estimates and entries such as "accounts to follow" or "to be advised" would not be considered to be a fully completed return and the return would only be considered to be fully complete once the additional information has been provided.

3. The only exceptions to a fully completed return that are permitted regarding the calculation of supplements are:

   (a) where a claim for double taxation relief/unilateral relief is estimated because the information to make the final claim is not yet available to the taxpayer or his advisers, as the amount of tax payable in the territory outside of Guernsey has not yet been finalised. However, a supplement may not be payable in such a case if:

      (i) the Director is of the view that a claim has been unreasonably delayed or inaccurate information provided (for example, if the amount of overseas tax forming the basis of a provisional claim for double taxation relief were to be significantly understated) in order to increase the amount of the repayment by a supplement, he may consider using the provisions of section 67 of the Law (legal avoidance) and will not add a supplement to any repayment;

      (ii) no reference to a possible claim for double taxation relief was made when the tax return was submitted, and so that return would not be regarded as fully complete for the purposes of the Law until such a claim was received.

   (b) Where the Director agrees, on a case by case basis, that the only reason for treating the return as incomplete is due to some minor or inconsequential error or mistake.

4. Prior to the introduction of the new legislation the Income Tax Office has often not insisted on a company submitting a completed income tax return where that company has submitted its accounts and income tax computations with, say, only a covering letter. However, with effect from the introduction of the new legislation a company's entitlement to a supplement will depend on it submitting its income tax return.

5. There is no de minimis limit with regard to repayment supplements.

6. A taxpayer does have the right of appeal regarding a supplement on the grounds that:

   (i) a supplement was due to be paid to him and was not paid; or

   (ii) the supplement was incorrectly calculated.

7. With regard to a transfer of credit at the taxpayer's request to another taxpayer's reference the onus will be on the taxpayer to request a supplement be included in this if due, if this is not noticed at the time the relevant transfer is made (on the basis that if the transfer had not been made but a repayment issued instead, a supplement would have been due.)

Published: 2006
Revised: 2011

M36 LETTING OF PROPERTY IN FRANCE – DEDUCTIONS FOR FRENCH PROPERTY TAXES (sections 17 and 176)

In computing the taxable income from property in France which is let, a deduction will be made for French property taxes, i.e. *Taxe d'Habitation* and *Taxes Foncières*.

Unilateral relief will be available in respect of any French income tax. It is understood that this tax may be calculated in one of two ways. The owner may be assessed on the actual rental income received or on a notional basis, which is calculated as three times the annual unfurnished rental value of the property, whichever is the greater. Relief will be given on a provisional basis until the relevant French assessment, showing the final figures, is available.

Published: 2006
Revised: 2011

M37 CIRCUMSTANCES IN WHICH SURCHARGES MAY BE RESCINDED (section 199A)

Although the Income Tax Law provides for the making of an appeal against the imposition of a surcharge, or an additional surcharge, the grounds are limited to:

- The surcharge is not due in Law.
- The surcharge has been incorrectly calculated under the Law.
- In the case of an appeal against an additional surcharge only (but not the surcharge itself), although the taxpayer did not submit a return within one year of the date of its issue (or 15th January in the following year if later), there was subsequently an unreasonable delay (not less than six months) in the Director processing that return.

The Law does provide, however, that surcharges may also not be imposed in certain circumstances which are published by Statement of Practice.

This Statement of Practice sets out two such situations:

1. where the payment could not be made by the due date due to the mental or physical infirmity of the person required to make the payment, or

2. the payment could not be made by the due date due to the death of a close relative of the person required to make the payment.

Where either of these events occur, the Director will consider rescinding any surcharge imposed provided that the person concerned could not have been expected to have made adequate provision for payment of the amount due on or before the due date and the payment was made as soon as possible after the due date as was reasonably practical in the circumstances.

Any person requesting that a surcharge be rescinded in accordance with this Statement of Practice may be asked to provide sufficient documentation to support the claim that the payment could not be made by the due date due to mental or physical infirmity, or the death of a close relative, as appropriate.

Published: 2007
Revised: 2011

M38 PENALTIES AND SURCHARGES (Part XVIII)

Introduction

Any error in or omission from an income tax return can result in statutory penalties and surcharges.

Director's approach to events, transactions and reporting requirements relating to the calendar year 2008

Without prejudice to the strict statutory position, the Director is conscious of the potential for innocent errors to occur as a result of the introduction of substantial changes in the income tax legislation.

The Director therefore proposes that he will not impose penalties and surcharges in those cases where he is satisfied both that the error or omission arose from a genuine innocent misinterpretation of the new "zero/10" legislation and that the error or omission was corrected without delay when it was discovered.

Published: 29 February 2008

M39 SURCHARGES AND SUPPLEMENTS FOR INDIVIDUALS IN RESPECT OF DISTRIBUTIONS AND DEEMED DISTRIBUTIONS (sections 199 and 199A)

Legal Position

Sections 199 and 199A of the Income Tax (Guernsey) Law 1975 ("the Law") provide, respectively, for a surcharge to be levied in respect of late paid tax, or a supplement paid on overpaid tax.

Clearly, as the final position regarding distributions and deemed distributions for a year of charge will not be known until some time after that year has ended, when the company's accounts and tax computations are prepared, it is likely that surcharges or supplements may arise on an individual beneficial member's income tax account if the final information relating to income from distributions and deemed distributions is not received from the company until after the end of the statutory period in which the individual must submit his own personal income tax return.

Concessionary Treatment

As the Law requires companies to make adjusted distribution returns when the company's final calculation of tax due differs from the tax deducted on distributions and deemed distributions during the accounting period, a surcharge/supplement may arise at the company's account if the company has not deducted sufficient tax from distributions and deemed distributions in that accounting period.

The Director will not, therefore, seek to impose a surcharge at the individual's tax account in respect of any tax liability arising on the same distributions and deemed distributions, nor will he pay a supplement where the additional tax or repayment, as appropriate, arises as a result of a final distribution return made by the company.

Published: 12 May 2009

M40 <u>TRANSACTIONS WITH SETTLEMENTS – INTERPRETATION OF "ARM'S LENGTH"</u> (section 65(4))

Introduction

This Statement of Practice explains the interpretation of "arm's length" in section 65(4).

Interpretation

For the purposes of section 65(4), a loan advanced to a settlement, or the transfer of an asset to a settlement on terms that would be negotiated by persons who are not connected with each other, and will therefore be subject to such payment, repayment, interest rates and other terms and conditions as would be appropriate to a transaction made on commercial terms in the open market will be regarded as made at "arms length".

Published: 29 February 2008

M41 <u>SETTLEMENTS – INCIDENTAL ARRANGEMENTS BETWEEN CONNECTED PERSONS</u> (section 65(4))

<u>Statutory Position</u>

The meaning of what constitutes a "settlement" is contained in section 65(4) of the Law and "… includes any disposition, trust, covenant, agreement or arrangement and any transfer of assets (including, without limitation, the making of any loan, advance or other transfer of funds or other assets on terms under which those assets will be repaid, or reimbursement will be made, or consideration will be provided in money or monies worth, but not including a bona fide transfer made at arms length)".

This definition could include relatively common arrangements between relatives and friends, for example, if an individual lends money to a friend, interest free, or at a lower than market rate of interest, and that friend invests the loan then, notwithstanding that the borrower may declare the interest received on his income tax return (and pay tax accordingly) the operation of section 65 of the Law results in that income also being charged on the lender (as he would be the "settlor" of a "settlement" which would be deemed as "revocable" under section 65, because at some point the money he lent to his friend would be, or could be, repaid to him).

Concessionary Treatment

Where a transaction, constituting a settlement, under section 65(4), is carried out between connected persons, other than at arms length, and the Director is satisfied that any income arising as a consequence of the settlement was enjoyed by the person receiving the transfer of assets (in the above example, the borrower) and that person disclosed the income arising on their own Guernsey income tax return and that there was no consequent loss of tax arising than would have been the case had the income been assessed on the person transferring the assets (in the above example, the lender), the Director would not invoke the provisions of section 65 of the Law in relation to that transfer of assets.

Published: 9 October 2008
Revised: 17 February 2009

M42 PENSIONS AND RETIREMENT ANNUITIES – TREATMENT FOR THE PURPOSES OF THE TAX CAP (section 39B and Sixth Schedule)

Statutory Position

Under sections 153(3) and 157A(5) of the Law, a pension or annuity paid from a scheme approved under section 150 (occupational pensions) or section 157A (retirement annuities) respectively is income arising in Guernsey for tax purposes.

Section 39B and the Sixth Schedule provide for a cap on the income tax payable by an individual in respect of income arising from sources outside Guernsey.

Concessional Treatment

Recognising that many pension schemes and retirement annuity contracts and trust schemes are funded by way of transfers from, often substantial, overseas pension schemes, the Director is prepared to treat that part of any pension or annuity that arises from such an inward transfer payment as constituting income from outside Guernsey, for the purposes of the tax cap. This means that it will form part of the income taken into account in arriving at the maximum amount of income tax payable, as provided for by the above legislation.

For the avoidance of doubt, any pension or annuity, or part thereof, which arises from contributions made after the scheme has received approval in Guernsey, will be regarded as constituting Guernsey source income and will not qualify for the tax cap.

Published: 23 July 2008

M43 REPORTING ARRANGEMENTS FOR INVESTORS WHERE ACCESS TO INCOME AND CAPITAL IS RESTRICTED DUE TO BANKS GOING INTO ADMINISTRATION OR LIQUIDATION (sections 2(1)(d), 62B(1)(g) and 81B)

Introduction

This Statement of Practice explains a concession which is available to individuals or companies (hereafter "depositors" or "taxpayers" as the context requires) who have bank interest credited to their bank account but where there is no prospect of some or all of the interest being received.

Statutory Position

Individuals

Irrespective of the fact that depositors may not have access to funds held on deposit with a bank, any interest income credited to an individual's account with that bank would normally be taxable on that individual under section 2(1) (d) of the Income Tax (Guernsey) Law 1975, as amended ("the Law"). Guernsey resident individuals are required to report all interest income credited to their bank accounts each year on their income tax returns.

Companies

Where interest is credited to the account of a company which has Guernsey resident beneficial members, such income is deemed to be distributed to those individuals under section 62B(1)(g) of the Law (subject to de minimis limits as set out under Statement of Practice "Deemed distributions – De minimis investment income") and tax is payable by the company on behalf of the individual beneficial owner of the income under section 81B of the Law.

Concessional Treatment – Introduction

Notwithstanding the strict legal position that interest credited to a bank account is taxable, the Director of Income Tax is prepared to make the following concession where a bank has become subject to administration or has gone into liquidation, and depositors have been unable to access funds held on account (including interest earned thereon). For the purpose of this Statement of Practice, banks in liquidation or administration are referred to as "affected banks".

Concessional Treatment – Detail

Individuals

Individuals must report all interest income credited to their account(s) with affected bank(s) when submitting their Guernsey income tax return. This is the case even where access to funds has been frozen and there is uncertainty whether interest credited to an account will ultimately be repaid to depositors.

Individuals should identify all interest income credited to accounts with affected banks and where access to funds has been frozen separately on their income tax return.

On provision of the information outlined below, the Director of Income Tax will assess all interest income (including interest income credited to accounts with affected banks) in the normal way. By concession, the Director of Income Tax will, on request, defer collection of the portion of the tax due for that year, to the extent that that tax relates to interest income credited to an account with an affected bank where access to those funds has been restricted during that year as a result of administration or liquidation.

Companies

As stated above, companies should report all income credited to their account(s) (subject to de minimis limits as set out under Statement of Practice "Deemed distributions – De minimis investment income") as a deemed distribution and deduct tax as required by section 81B. Strictly this would apply even though access has been frozen or where there is uncertainty whether the interest paid will ultimately be repaid to depositors.

By concession, however, the Director of Income Tax will, on request, defer collection of the portion of the tax due to the extent that the tax relates to interest income credited to an account with an affected bank and access to those funds has been restricted during the year as a result of administration/liquidation.

Companies will not, therefore, be required to report interest credited to their account with affected banks as a deemed distribution and no tax will be payable, at that point, under section 81B. The process for requesting suspension of this tax will take place when the company submits its annual income tax return. The relevant amount of interest income from an affected bank should be clearly identified on the company's annual income tax computation. The specific information required to be furnished to the Director of Income Tax when the company income tax return is submitted is covered in the relevant section below.

Concessional Treatment – Matching of payments by Administrators/Liquidators of an affected bank to accumulated income/capital

The balance of all accumulated taxed income and capital standing to the credit of a taxpayer's bank account with an affected bank as at 1 January in the year in which the bank goes into administration or liquidation will be treated as "capital" for the purposes of this Statement of Practice.

Where depositors (individuals or companies) have withdrawn monies during the calendar year in which the affected bank went into administration or liquidation, amounts withdrawn will be treated as withdrawal of funds matched in the following order:

- additional funds deposited on the account during the fiscal year that the affected bank went into administration or liquidation (excluding interest income credited to the account);

- capital accumulated at 1 January in that year;

- interest income credited to the account during the year in which the affected bank went into administration or liquidation.

Payments (or interim payments) made to depositors during the period of administration or liquidation will be matched in the same way as withdrawal of funds before the affected bank went into administration or liquidation.

The above matching rules will apply notwithstanding the way in which Administrators or Liquidators may calculate interim repayments of capital and accumulated income.

If withdrawals made before the affected bank went into administration or liquidation can be matched (under the above rules) with all (or a portion of) the interest income credited to an account during that year, the tax on that portion of the interest income will become payable in the normal way. An application for deferral of the tax charge under the terms of this concession will not be considered to the extent that tax is due on a portion of interest income that a depositor has withdrawn under the matching rules set out above.

If, at the date that the affected bank went into administration or liquidation, all (or a portion of) the interest credited to a depositor's account(s) during that year remains unmatched to withdrawals under the rules described above, then an application for deferral of tax under the terms of this concession will be considered. Concessional deferral of tax due will be granted provided that at the date of making the claim the following conditions are satisfied:

- no further payments (interim or final) have been made by the Administrators or Liquidators of the affected Bank that can be matched to that interest income (or a portion thereof), and

- access to funds is still frozen.

Information to be furnished to the Director of Income Tax requesting that tax be suspended on interest earned during the year that the affected bank went into administration or liquidation

In order for the Director of Income Tax to permit the concessional deferral of tax due in the circumstances described above, he must be furnished with the following information, together with the taxpayer's personal income tax return, or the company's annual income tax return:

- name and address of the affected bank;

- date that the affected bank went into administration or liquidation;

- balance of funds standing to the credit of a taxpayer's account(s) with affected bank(s) as at 1 January in the year the affected bank went into administration or liquidation, separately identified;

- details of all deposits/withdrawals of capital made from 1 January in the year the affected bank went into administration or liquidation, up to the date that the balance of funds held on account was frozen, separately identified;

- details of interim repayments of funds offered by the Administrators or Liquidators from the date that they were appointed (including interim repayments made after the year end and up to the date that the taxpayer's tax return is submitted). For clarity this includes offers to make interim payments of funds that were not taken up at the time of offer.

Ongoing responsibilities of the taxpayer, after submission by individual of Guernsey income tax return or by company of company tax return

Where a claim is made by a taxpayer for concessional relief described above, the taxpayer will have an obligation to make the disclosures below, to the Director of Income Tax.

Within 30 days of being notified by the affected bank that further payments will be made in respect of funds that are frozen, taxpayers must notify the Director of Income Tax that further funds will be released to them. This includes scenarios where interim repayment of capital may be obtained by application within a certain timeframe but the taxpayer does not elect to receive funds by interim repayment; they will still be deemed to have received such funds for the purposes of this concession.

To the extent that payments received (or offered but not taken up) can be matched to interest credited to the account during the year in which the affected bank went into administration or liquidation (in accordance with the rules described above) tax deferred as a result of this concession will become immediately payable. In the case of individuals, the tax due would already have been included in an assessment issued by the Income Tax Office. For companies, the tax would become payable under section 81B as part of a bi-annual or quarterly deemed distribution return covering that period.

In the event that any portion of the interest credited to the account is not ultimately repaid to investors, upon receipt of confirmation of this fact the Director of Income Tax will make the necessary adjustments to reflect the fact that the interest reported (or a portion thereof) was never received.

In the event that the interest is eventually capable of being withdrawn, no surcharges will be imposed on late payment of any of the tax suspended, provided the terms of this concession have been complied with and the tax is then paid within 30 days of the lifting of the suspension order.

Published: 3 June 2009

M44 <u>THE INCOME TAX TREATMENT OF VENTURE CAPITAL AND PRIVATE EQUITY LIMITED PARTNERSHIPS AND CARRIED INTEREST</u> (sections 2 and 8)

(See also E43)

<u>Introduction</u>

This statement of practice describes a typical venture capital/private equity ("PE") limited partnership fund structure and sets out the Guernsey income tax treatment of a carried interest in a limited partnership fund structured in this way.

Subject to satisfying the conditions set out in this Statement of Practice, Guernsey resident individual partners involved in the management of a PE limited partnership, whether as directors or employees of the general partner or any body corporate providing services to the general partner or otherwise, and who receive full arm's length remuneration for the services they perform as directors and employees, will not be considered to have acquired either their partnership interests or their interests in underlying investments of the partnership after they became partners by reason of rights conferred on them or opportunities offered to them as directors or employees for the purposes of section 2 (1) (b) of the Income Tax (Guernsey) Law 1975 ("the Law").

This Statement does not distinguish between the acquisition of a direct partnership interest or an indirect one received, for example, by the assignment of such an interest or by the use of a feeder partnership.

<u>Definitions</u>

In this document the following terms have the meanings described:

- "carried interest holders" - individuals who are partners in the fund partnerships (either directly or indirectly), who are employees or directors of the general partner or an associated company;

- "carried interest" – an interest in a partnership which provides that the holder is entitled to participate in the profit made by the fund which is allocated to the carried interest holders;

- "fund management or fund managers" - the management team of the fund (who will include the carried interest holders).

Income Tax Treatment

Where all the following conditions are satisfied:

(a) negotiations between investors and fund managers are at arm's length;

(b) the carried interest holder pays the same per unit of capital for his or her partnership interest as the investors or they pay an amount which is commensurate with the amount paid by investors for their equivalent interests;

(c) the only restrictions applying to a carried interest are leaver, vesting restrictions and general transfer restrictions;

then

(i) if a carried interest is acquired before the fund makes its first investment, the open market value of the carried interest (for the purposes of Statement of Practice E43) shall be taken as the amount actually paid for it, and

(ii) if a carried interest is acquired after the fund has started making investments then the open market value will remain equal to the price paid (as in subparagraph (i) immediately above) if it can be shown that the aggregate value of the fund's investments has not increased above their aggregate acquisition cost at that time. This will need to be considered case by case.

As a result, the carried interest will not be treated as an emolument from the holding of an office or employment in the hands of the carried interest holder and no income tax liability will arise under section 8 of the Law (but there could be a liability if any income arose from the carried interest itself, e.g. a dividend).

If the investor negotiations are not carried on at arm's length the tax treatment described above will apply provided it can be shown that the terms agreed conform to those in comparable cases involving unconnected third parties.

The PE fund is structured as a limited partnership which is transparent for Guernsey income tax purposes. As a result a carried interest represents a direct interest in the PE fund's underlying investment. Generally, the primary economic return from an investment in a PE fund arises on the disposal of the underlying investments. Typically, the receipt of such a return would be a capital receipt which is not subject to income tax in the hands of the carried interest holder.

Published: 9 October 2008

M45 SECTION 67 OF THE INCOME TAX (GUERNSEY) LAW 1975 – LEGAL AVOIDANCE

Introduction

The amendment to the anti-avoidance provisions contained in section 67 of the Law, which took effect for 2008 and beyond, followed two States Reports.

In the June 2006 States Report it was stated that effective anti-avoidance measures would be required to support the taxation strategy and to counter any hidden opportunities for legal avoidance which might result from the introduction of the zero/10 regime. That was qualified in the May 2007 States Report, when the Policy Council said that the anti-avoidance measures used in practice would depend on the experience of the new system over a period of time.

The Director of Income Tax ("the Director") accepts, therefore, that the States intended that whilst there should be sufficiently robust legislation to address any attempts at tax avoidance as they arise, the exercise of those measures will be tempered to the circumstances (and, in this regard, the Director acknowledges that commercial realities should not be ignored simply because the outcome of a transaction is the reduction, deferral, etc of a tax liability).

Guidance on the Income Tax Office application of the section 67 legislation

1. Section 67 will not be invoked in relation to any transaction which already gives rise to a tax charge on the whole of the income as a consequence of the operation of any other provision of the Law. (For example, section 67 would not be invoked in order to "double tax" income, either in the hands of one person or to tax the same income in the hands of two, or more, persons.) However, this should not be taken to mean that where a transaction falls to be taxed twice, the Director will accept the basis that gives rise to the lowest liability. For example, a company may have an asset which it allows an employer/"participator" (see section 66A(8)(b)) to use on which a benefit in kind arises (of, say, tax of £2,000) and a qualifying loan (of, say, tax of £10,000). Whilst the Director may pursue the liability on the qualifying loan, he would not, in addition, pursue the benefit in kind.

2. In accordance with the spirit of the States Resolutions, it is not intended that section 67 should be applied in relation to "ordinary life events" which are themselves isolated and do not form part of a series or chain of transactions or events.

   Examples are:

   - A person incorporating a business (even if with the principal purpose of having the benefit of the "distribution basis" of taxation of company income). However, section 67 would be invoked in the event an individual attempts to transfer, or otherwise attribute income personal to him to a company (e.g. with the purpose of benefiting from the distribution basis).

   - A company or trader scaling down a trade or ceasing to trade.

   - A company choosing not to distribute its profits.

- A subjective decision to apply funds to one particular project or investment in preference to any other (e.g. where the choice exists as between an investment giving rise to income and an investment with capital appreciation, section 67 would not be invoked to tax income foregone by choosing the latter) other than where a Statement of Practice exists in relation to a specific situation, such as life assurance policies (including single premium life assurance bonds) – M18 – and investments in funds – M19.

- A decision to borrow money for a particular purpose in preference to utilising available funds.

3. It should be anticipated that section 67 will be invoked in relation to "circular schemes" (e.g. where a person makes a payment, which is claimed as a deduction for tax purposes, and subsequently receives a payment – in money or in kind – in what is purported to be a capital, or otherwise not taxable, form), schemes that involve steps or transactions which have no real commercial purpose and "alchemy schemes" (e.g. where a transaction purports to convert income to capital). Regard will be given to the economic substance of the transaction rather than the legal form it takes.

4. Where a company has more than one class of shares in issue, the Director will make a direction under the provisions of section 67, if he is not satisfied that the operation of the differential share structure is for bona fide commercial purposes and if it gives rise to the avoidance or reduction of the liability to tax of any person.

Pre-transaction clearances

A taxpayer or their agent may seek advance clearance from the Director that he will not seek to apply the provisions of section 67. This will be based on a complete and accurate, written, disclosure being made of the transaction or transactions contemplated, along with an explanation of the rationale for their being entered into. Whilst any clearance issued by the Director as a result may be regarded as binding on him, if it subsequently transpires to have been issued based on incorrect or incomplete information or, if the transaction was not carried out in accordance with the facts presented to the Director, it will be void. If there are changes to the proposed transaction, the revised facts should be resubmitted for a further clearance.

Appeals process

Where the Director makes any adjustment to a person's income tax liability under the provisions of section 67, that adjustment is subject to the normal, long standing, appeals process set out in Part VII of the Law.

Published: 3 June 2009

RESIDENCE

R1 **"SETTING UP" A DWELLING-PLACE (section 3(1)(d)) – repealed with effect from 1 January 2006**
APPLIES UNTIL 31ST DECEMBER 2005

(a) Where a person acquires a dwelling in Guernsey but does not furnish it and his intention is to return to live in the island in a subsequent year of charge, he is not considered to have set up a dwelling for the purpose of section 3(1)(d) of the Law, nor is he considered to have been in Guernsey in that year with the intention of setting up a dwelling.

(b) Where a person acquires a dwelling in Guernsey and furnishes it and lets the dwelling immediately without residing in it himself, he is not considered to have set up a dwelling-place for the purpose of section 3(1)(d) of the Law.

(c) Where a person acquires a dwelling in Guernsey and furnishes it and lives in it, albeit for a short time, that person is considered to have set up a dwelling within the meaning of section 3(1)(d) of the Law. However, such an individual is not regarded as resident under section 3(1)(d) if he is not resident in Guernsey under any of the provisions of section 3(1), nor does he take up permanent residence, in the year of charge following the year in which the dwelling is so set up.

This would not, of course, prevent the individual being resident under some other subsection of section 3(1) in the year of charge in which he acquires the dwelling.

Published: 1987
Revised: 2000 / 2006 / 2011

R2 **INTERPRETATION OF THE PHRASE USED IN SECTION 25 OF THE LAW, "FIRST ARRIVED IN GUERNSEY"**

DELETED

R3 **GUERNSEY BANK INTEREST - NEW AND DEPARTING RESIDENTS (sections 2, 3 and 5)**

(a) In respect of a person who becomes solely or principally resident in Guernsey, no account is taken of Guernsey bank interest arising or accruing for any periods prior to the date of arrival. This also includes interest arising from funds held by an estate agent in respect of the purchase of property, which arises or accrues for the period prior to the date of arrival.

(b) In respect of a person who is solely or principally resident and who permanently departs from the island, no account is taken of Guernsey bank interest arising or accruing for any periods after the date on which he permanently departs from the island. Thus all interest arising or accruing prior to the date of departure will be subject to Guernsey income tax.

Published: 1987
Revised: 1992 / 2000 / 2001 / 2011

R4 (a) **FOREIGN COMPANIES CONTROLLED BY AN INDIVIDUAL RESIDENT BUT NOT SOLELY OR PRINCIPALLY RESIDENT IN GUERNSEY (sections 2 – 5)**
APPLIES UNTIL 31 DECEMBER 2007

A foreign company controlled by an individual who is resident but not solely or principally resident in Guernsey is regarded as resident in Guernsey by virtue of section 4 of the Law. However, the company will not be charged to income tax in Guernsey except on any Guernsey sources of income other than bank interest.

The individual controlling the company will be chargeable on any dividend income remitted to Guernsey which arises from his shareholding in the company. Similarly, if the individual controlling the company receives the income of the company in Guernsey in any other form, for example by way of a loan, then that too would constitute a remittance of income and be taxable in the individual's hands.

(b) **DISTRIBUTIONS AND DEEMED DISTRIBUTIONS – BENEFICIAL MEMBERS WHO ARE RESIDENT ONLY (sections 2 – 5 and 81B)**
THIS APPLIES ONLY TO 2008 (OR 2009 IN CIRCUMSTANCES WHERE SECTION 5I APPLIES)

Introduction

This Statement of Practice sets out concessional treatment which is available to a company which is satisfied that it has a beneficial member who is resident but not solely or principally resident in Guernsey.

Concessional Treatment

Irrespective of the provisions of section 81B, where a company, which has no Guernsey sources of income (other than bank deposit interest), is satisfied that a beneficial member is resident but not solely or principally resident in Guernsey (resident only), tax need only be deducted from actual distributions and only if they are remitted to Guernsey. Distributions will not be treated as remitted until they are actually paid to or for the benefit of the beneficial member and remitted to Guernsey.

Published: 1987
Revised: 1991 / 1992 / 1999 / 29.02.2008 / 21.05.2008 / 2011

R5 **LIABILITY TO TAX ACCORDING TO RESIDENCE - INTEREST PAID (sections 2 and 47D)**

(See also the Double Taxation Arrangements between Guernsey and the United Kingdom/Jersey)

Where interest, or any other income of a similar nature which is treated as income of section 2(1)(d) or 2(2)(d) of the Law, forms part of the commercial profits of a United Kingdom or Jersey enterprise, that income is not subject to Guernsey tax unless the enterprise is engaged in trade or business in Guernsey through a permanent establishment. If an enterprise is so engaged, tax is imposed on those profits by Guernsey but only so much of them as is attributable to the permanent establishment.

Published: 1987
Revised: 2011

R6 **REMITTANCES OF INCOME (sections 3 and 5)**
THIS APPLIES ONLY UP TO AND INCLUDING 2008 (OR 2009 WHERE SECTION 5I APPLIES)

Where a taxpayer is resident but not solely or principally resident in Guernsey, he is only liable to tax on remittances of income where the income arises during a year of charge in which he is resident in Guernsey and where the source of income is still in existence during the year in which the income is remitted to Guernsey.

Published: 1991
Revised: 2004 / 2011

R7 **TAXPAYERS WHO PERMANENTLY DEPART FROM GUERNSEY (sections 2, 3 and 5)**
APPLIES FROM 1 JANUARY 2007 TO 31 DECEMBER 2011

(see also paragraph R3(b))

An individual who is solely or principally resident in the four years of charge prior to the year of charge in which he departs from Guernsey with the intention that the departure will be permanent is treated as principally resident in the year of charge in which he departs. He will, therefore, be entitled to the full personal allowances and in accordance with the provisions of section 5(4) of the Law will only be taxable on Guernsey source income which he receives in the year of charge in which he departs. This will only apply, however, if the departure is in fact permanent; if he returns to Guernsey in the year following departure, he will be taxable on worldwide income for the year of departure and some, or all, of any tax refunded to him in respect of that year may need to be repaid.

Published: 1993
Revised: 1999 / 2006 / 2007 / 2011

R8 **BASIS OF ASSESSMENT WHERE ONE SPOUSE IS RESIDENT AND THE OTHER SPOUSE IS SOLELY OR PRINCIPALLY RESIDENT (sections 3, 5 and 43 – 47)**
THIS APPLIES ONLY UP TO AND INCLUDING 2008 (OR 2009 WHERE SECTION 5I APPLIES)

(*See also M4, M11, M12, M14 and M17 re: certain non-residents*)

Each spouse will be treated as a single person for income tax purposes and given the appropriate allowances according to their residential status. If the spouse who is solely or principally resident wholly maintains the spouse who is resident but not solely or principally resident then he or she shall be entitled to a married persons allowance but will be assessable on any income of the spouse arising in or remitted to Guernsey.

Published: 1999
Revised: 2011

R9 **GUERNSEY BANK INTEREST AND INCOME FROM NON-GUERNSEY INVESTMENTS HELD IN GUERNSEY BY AN INDIVIDUAL RESIDENT BUT NOT SOLELY OR PRINCIPALLY RESIDENT IN GUERNSEY (sections 2, 3 and 5)**
THIS APPLIES ONLY UP TO AND INCLUDING 2008 (OR 2009 WHERE SECTION 5I APPLIES)

In respect of Guernsey bank interest and income arising or accruing from non-Guernsey investments that are held in Guernsey, an individual who is resident but not solely or principally resident in Guernsey will be liable to tax on the basis of the same proportion of the income arising or accruing from those sources during the year of charge as the period of his residence in Guernsey during the year of charge bears to a period of twelve months, in place of the strict statutory basis.

Published: 2007
Revised: 2011

R10 **BUSINESSES CARRIED ON OUTSIDE GUERNSEY BY INDIVIDUALS WHO BECOME, OR CEASE TO BE, RESIDENT AND PRINCIPALLY RESIDENT IN GUERNSEY (sections 2, 3, 5 and 7)**

Where an individual who carries on a business outside of Guernsey becomes resident and principally resident in Guernsey, or ceases to be resident and principally resident, he will be assessed on the business profits on the proportion that relates to the period of his residence in Guernsey but calculated in accordance with the prevailing rules for assessing business income in Guernsey.

Published: 2007
Revised: 2011

R11 **INTERPRETATION OF THE WORD “PLACE” FOR THE PURPOSES OF THE RESIDENCE PROVISIONS OF THE INCOME TAX LAW (section 3)**

For the purposes of the residence provisions of the Law as amended by The Income Tax (Residence) (Guernsey) (Amendment) Law, 2005, the term “place” (as referred to in section 3(2) and (4)) would be taken as covering a whole country rather than each individual state or province within that country.

Published: 2007
Revised: 2011

R12 **LIABILITY OF AN INDIVIDUAL TAXPAYER WITH RESIDENT ONLY STATUS (section 39B / Sixth Schedule)**
THIS APPLIES ONLY UP TO AND INCLUDING 2008 (OR 2009 IF SECTION 51 APPLIES)

Introduction

An individual who is resident but not solely or principally resident in Guernsey is assessed on all income arising or accruing outside Guernsey which is remitted to Guernsey during the year of charge.

This Statement of Practice explains how the tax cap and the abolition of Category D exempt status will affect the tax liability of these individuals.

Further Explanation

Section 39B and the Sixth Schedule provide for a limit on the amount of tax payable by a resident individual (the tax cap).

In the case of an individual who is resident but not solely or principally resident in Guernsey, the qualifying income derived from non-Guernsey sources for the purposes of the Sixth Schedule will be the income which is remitted to Guernsey.

From 1 January 2008, an individual who is resident but not solely or principally resident, and who would formerly have been permitted to hold an interest in a Category D company, will continue to be assessed on the non-Guernsey income of a Guernsey resident company only when it is paid out to, or for his benefit and remitted to Guernsey.

For as long as that individual remains resident but not solely or principally resident in Guernsey, the fact that the company holds a Guernsey bank account will not prejudice this treatment (and the interest arising on that account will be treated, for the purposes of this Statement of Practice, as arising from a non-Guernsey source).

A distribution or deemed distribution derived from a Guernsey source of income would be charged to tax in the ordinary way and would not be subject to the tax cap, irrespective of where it is paid (e.g. a distribution derived from Guernsey trading income remitted to a Jersey bank account would be subject to tax in Guernsey. This would apply even if the resident only individual was not present in Guernsey at the date of the distribution/deemed distribution).

Published: 29 February 2008

R13 LIABILITY OF AN INDIVIDUAL TAXPAYER WITH RESIDENT ONLY STATUS – POSITION FROM 1 JANUARY 2009 (Chapter IA of Part I of the Law)

Statutory Position

With effect from 1 January 2009, an individual who is resident but not solely or principally resident (resident only) in Guernsey may elect to pay a standard charge of £25,000 which then removes any Guernsey income tax liability on non-Guernsey source income, irrespective of whether or not it is remitted to Guernsey. Guernsey source income continues to be taxed at the standard rate but with no deduction for personal allowances.

For 2009 only, if no election as above is made, the existing basis of calculating liability remains. The individual will pay tax on Guernsey source income plus any remittances.

From 2010 onwards, if no election is made, a liability will arise on the basis of the individual's worldwide income, whether remitted or not. Personal allowances, as available to a resident only individual, and credit for overseas tax paid on that income will be available.

If, however, an individual can satisfy the Director that he is in Guernsey solely for the purposes of employment and that his income has suffered deduction under the ETI Scheme then liability will only arise on Guernsey source income.

Concessionary Treatment

1. For as long as the individual remains resident only and is the beneficial member of a Guernsey resident company, any Guernsey bank accounts held by that company will not be regarded as Guernsey source income for the purposes of establishing liability.

2. Further, any loan interest paid by such a company to the individual will also be regarded, for the purposes of this Statement of Practice, as arising from a non-Guernsey source, for the purposes of the standard charge; in this situation, clearance that such treatment may apply should be sought on a case by case basis, as the Director will wish to be satisfied that the underlying income of the company is, in fact, non-Guernsey source.

   Where the company's income contains a mixture of Guernsey and non-Guernsey source income, it will be necessary to apportion the interest between the two elements, in the same ratio as Guernsey/non-Guernsey income.

3. Recognising that many pension schemes and retirement annuity contracts and trust schemes are funded by way of transfers from, often substantial, overseas pension schemes, the Director is prepared to treat that part of any pension or annuity that arises from such an inward transfer payment as constituting income from outside Guernsey, for the purposes of the standard charge. This means that it will be regarded as non-Guernsey source income and any liability arising will be covered by the payment of the standard charge, as provided for by the legislation.

   For the avoidance of doubt, any pension or annuity or part thereof, which arises from contributions made after the scheme has received approval in Guernsey, will be regarded as constituting Guernsey source income and will not qualify as non-Guernsey source.

Published: 8 June 2010

STATES OF GUERNSEY
INCOME TAX OFFICE
November 2011

NOTE: References in this booklet to old legislation, and the dates that changes to previous statements/concessions were made, are retained (normally) for only six years. For the Year of Charge 2004 and earlier, reference should be made to the relevant issue of this booklet.