

BILLET D'ÉTAT No. XXVII, 2009

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PROJET DE LOI

ENTITLED

The Income Tax (Guernsey) (Amendment) Law, 2009

THE STATES, in pursuance of their Resolutions of the 28th January, 2009^a and the 29th September, 2009^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the islands of Guernsey and Herm.

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975, as amended^c, is further amended as follows.

^a Article XII of Billet d'État No. II of 2009.

^b Article VII of Billet d'État No. XXIV (Vol. 1) of 2009.

^c Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; No. XXI of 2007; the Income Tax (Zero 10) (Guernsey) Law, 2007; the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007; the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008; the Income Tax (Guernsey) (Amendment) Law, 2008; the Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009; and the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII) and the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009.

2. In section 5 -

(a) for subsection (1)(b)^d substitute the following -

"(b) in the case of an individual resident in Guernsey but not solely or principally resident therein, in accordance with the provisions of Chapter IA,"

(b) in subsection (1A)^e after "paragraph (b) of subsection (1) of this section"^f insert "and Chapter IA",

(c) in subsection (1B)^g after "subsection (1) of this section" insert "and Chapter IA".

3. After section 5 insert the following Chapter -

"CHAPTER IA
INDIVIDUALS RESIDENT BUT NOT SOLELY
OR PRINCIPALLY RESIDENT

"Taxation of individuals resident but not solely or principally resident."

5A. This Chapter applies to individuals resident in Guernsey but not solely or principally resident therein ("**relevant individuals**") and

^d Subsection (1)(b) was amended by No. II of 2006.

^e Subsection (1A) was inserted by No. XXIII of 1989.

^f Those words were inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^g Subsection (1B) was inserted by No. V of 1996.

provides for their liability to tax.

Right to elect to pay standard charge.

5B. (1) Subject to the provisions of this Chapter, a relevant individual may, within a period of two years immediately after the end of any year of charge commencing after 2008, elect to pay, in respect of his income in that year of charge, a charge to tax called the "**standard charge**".

(2) The standard charge is £25,000 or such other sum as the Department may determine by regulation.

(3) The election to pay the standard charge shall be made in such form and manner, and shall be accompanied by such information and documents, as the Director of Income Tax may require.

Effect of election.

5C. Where in accordance with the provisions of this Chapter a relevant individual elects, in respect of any year of charge, to pay the standard charge -

- (a) he is liable to pay tax on his total income arising or accruing in Guernsey in that year of charge, other than any interest arising in Guernsey upon money deposited with a licensed institution or other person exempted from the requirement to be licensed under the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (b) he is not liable to pay tax on his income arising

or accruing elsewhere than in Guernsey in that year of charge,

- (c) the amount he has paid by way of the standard charge may be set off against the amount of tax which would otherwise be chargeable by virtue of paragraph (a) on his income arising or accruing in Guernsey in that year of charge, and
- (d) he is not entitled to the allowances, reliefs and deductions which may under this Law be set off against the income of an individual (other than deductions which may be made in computing the amount of the profits of a business which are to be charged to tax or which are eligible for relief for a loss under Part XI).

Individual making election must file declaration.

5D. (1) A relevant individual may only elect, in respect of any year of charge, to pay the standard charge if he makes a declaration, which must be submitted to the Director of Income Tax with his election, of his income arising or accruing in Guernsey in that year, other than any interest arising in Guernsey upon money deposited with a licensed institution or other person exempted from the requirement to be licensed under the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

(2) The declaration shall be made in such form and manner, and shall be accompanied by such information and documents, as

the Director of Income Tax may require.

(3) The individual making the declaration shall furnish to the Director of Income Tax, within such period as the Director of Income Tax may specify, such accounts and other information (including, without limitation, accounting records required to be kept by a company under section 238 of the Companies (Guernsey) Law, 2008) relating to the declaration or the contents thereof as the Director of Income Tax may require.

(4) The accounts and other information referred to in subsection (3) shall be certified, if the Director of Income Tax so requires, by an accountant -

(a) who is a member of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland or the Association of Chartered Certified Accountants, or

(b) who holds an equivalent qualification approved by the Director of Income Tax.

(5) An individual who makes a declaration under this section in respect of any year of charge is not obliged, unless the Director of Income Tax directs otherwise, to deliver a return as to his income in respect of that year in accordance with section 68.

False declarations, etc.

5E. This Law applies in relation to a declaration under section 5D(1) as it applies in relation to a return as to income required to be submitted under section 68.

Tax liability where no election and declaration made.

5F. A relevant individual who does not in accordance with the provisions of this Chapter elect, in respect of any year of charge, to pay the standard charge -

- (a) must deliver a return as to his income in accordance with section 68 on the basis of his total income, wherever such income may arise or accrue, in that year of charge,
- (b) is liable to pay tax on his total income, wherever such income may arise or accrue, in that year of charge, and
- (c) is entitled to the allowances, reliefs and deductions which may under this Law be set off against the income of a relevant individual.

Categorisation of standard charge.

5G. Without prejudice to the provisions of this Chapter -

- (a) the standard charge shall be regarded for the purposes of this Law as tax, and

- (b) this Law applies in relation to the standard charge as it applies in relation to tax.

Interpretation of Chapter 1A.

5H. In this Chapter -

"**relevant individual**" means an individual resident in Guernsey but not solely or principally resident therein, and

"**standard charge**" means the charge to tax which a relevant individual may, subject to the provisions of this Chapter, elect to pay in respect of his income in a year of charge.

Transitional provisions in respect of year of charge 2009.

5I. (1) Section 5F only has effect in respect of any year of charge after 2009.

(2) Accordingly, in respect of the year of charge 2009, the liability to tax and the entitlements and obligations in respect thereof of a relevant individual who does not in accordance with the provisions of this Chapter elect, in respect of that year of charge, to pay the standard charge shall be governed by the provisions of this Law as they had effect immediately prior to the enactment of the Income Tax (Guernsey) (Amendment) Law, 2009 (and as if that Law had not been enacted)."

4. In section 8(2A)^h -

- (a) in paragraph (d) for "£10,000" substitute "£30,000", and

^h Section 8(2A) was inserted by No. III of 1995.

(b) after paragraph (d) insert the following paragraph -

"(e) any emoluments arising from any employment as a merchant seaman and constituting overseas earnings.

However -

- (i) where in relation to any year of computation a deduction from the emoluments of an individual's employment is claimed by virtue of this paragraph, then he is not entitled, in relation to that year of computation, to any other allowance, relief or deduction in respect of his income or that of his spouse, and
- (ii) a deduction from the emoluments of an individual's employment may only be claimed by virtue of this paragraph where the individual, within a period of two years immediately after the end of the year of computation to which the claim relates (being a year of computation commencing after 2008), submits an application to the Director of Income Tax, in such form and manner and accompanied by such information and documents as the Director of Income Tax may require, containing particulars of his claim."

5. In section 8(2B)ⁱ insert the following definitions at the appropriate places -

"**British ship**" has the meaning given by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^j, but does not include a fishing vessel within the meaning of that Law,

"**merchant seaman**" means an individual employed or engaged as an officer or member of the crew of a British ship,

"**overseas earnings**" means emoluments -

- (a) which are derived from employment as a merchant seaman, and
- (b) which arise or accrue in respect of duties performed -
 - (i) outside the Bailiwick of Guernsey, the Bailiwick of Jersey and the United Kingdom, and
 - (ii) during a continuous period of 365 days or more spent by the individual in question in any place or places outside Guernsey, and the requirements of this subparagraph are satisfied if the individual does not during that period of absence -

ⁱ Section 8(2B) was inserted by No. III of 1995.

^j No. VIII of 2004.

(A) spend more than 183 days continuously in Guernsey, or

(B) spend more than 50% in aggregate of the total number of days comprised in that period of absence in Guernsey,".

6. In section 27(1) -

(a) the words "and any sum on account of an allowance in pursuance of the provisions of the Family Allowances Law" and "or such sum" are repealed, and

(b) for "they were" substitute "it were".

7. In section 27(2) paragraphs (d), (k) and (l) are repealed.

8. (1) In section 39B^k -

(a) in subsection (1) after "qualifying income" insert "and on non-qualifying income",

(b) in subsection (2) -

(i) after "qualifying income" insert "and non-qualifying income", and

^k Section 39B was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

(ii) after "will apply" insert ": provided that those allowances, reliefs and deductions shall first be set off against the individual's qualifying income",

(c) in subsection (5)¹ for "**qualifying income**" means substitute "**qualifying income**" and "**non-qualifying income**" mean".

(2) After section 39B insert the following sections -

"Effect of tax cap on credits and repayments."

39C. (1) Where in any year of charge -

(a) the amount of income tax payable by an individual is, by virtue of section 39B, limited as set out in the Sixth Schedule, and

(b) the individual receives a distribution from a company consisting of income which -

(i) arose or accrued to the company in a year of charge before 2008, and

(ii) in the individual's hands carries a credit for tax paid or deemed to have been

¹ Subsection (5) was inserted by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

paid by the company,

then the following provisions have effect.

(2) Without prejudice to his entitlement to the credit, the individual is not entitled to any repayment of tax in respect of that credit.

(3) For the purpose of calculating -

(a) the amount of credit due to the individual in that year of charge, and

(b) the amount (if any) of any repayment of tax due to him in that year of charge,

there shall be taken into account, before taking into account the amount of the company's distribution, the amount of any other income of any different class, description or source arising or accruing to the individual in that year of charge from which tax has been deducted or in respect of which tax has already been paid.

Effect of tax cap on rolled-forward business profits.

39D. (1) Where in any year of charge -

(a) the amount of income tax payable by an individual is, by virtue of section 39B, limited as set out in the Sixth Schedule, and

(b) the individual receives a distribution from a company consisting of income which -

- (i) arose or accrued to the company from the carrying on of a business in Guernsey, and
- (ii) in the individual's hands is non-qualifying income and, in consequence of the individual having made an election in respect of that year of charge in accordance with the Sixth Schedule, is subject to the limit on the amount of income tax payable as set out in that Schedule,

then the following provisions have effect.

(2) There shall be calculated the amount of additional tax that would have been payable by the individual in the year of charge in which the income arose or accrued to the company had the income been distributed by the company in that year of charge.

(3) That amount of tax -

- (a) shall be payable by the individual in respect of the year of charge in which he received the distribution referred to in subsection (1)(b), notwithstanding that (apart from this section) the amount of income tax payable by him would, by virtue of section 39B, have been limited as set out in the Sixth Schedule, and

(b) shall be payable in addition to the amount of income tax that would have been payable (but for this section) by the individual pursuant to the provisions of section 39B and the Sixth Schedule.

(4) In this section a "**distribution**" from a company includes a deemed distribution within the meaning of Chapter VIIIA of Part IV, and related expressions shall be construed accordingly."

9. In section 40 -

(a) in paragraph (k)^m -

(i) before the words "if and so far" insert "or a charity not required to be registered in accordance with that Law," , and

(ii) at the end of the paragraph insert -

"and for the purposes of this paragraph "charity" -

(i) means any body of persons or trust established for charitable purposes only, and

(ii) where any property or fund the income

^m Paragraph (k) was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

whereof is applicable to charitable purposes only is entrusted to any person or body of persons, means, in relation to that property or fund and the income thereof, that person or body,"

(b) paragraphs (u), (v) and (aa)ⁿ are repealed,

(c) after paragraph (gg)^o add the following paragraphs -

"(hh) the income derived from the micro-generation of electricity,

(ii) any Premium Bond prize awarded by National Savings and Investments (a department of Her Majesty's Government)," and

(d) after paragraph (ii) [as inserted by paragraph (c) above] add the following paragraph -

"(jj) any sum on account of an allowance in pursuance of the provisions of the Family Allowances Law.".

10. In section 40A^p -

(a) for "the Department" wherever appearing substitute "the

ⁿ Paragraph (aa) was inserted by Vol. XXVII, p. 200.

^o Paragraph (gg) was inserted by No. VII of 2006.

^p Section 40A was inserted by Vol. XXVIII, p. 409.

Director of Income Tax",

- (b) in subsections (2) and (4) for "it" substitute "he",
- (c) subsection (5A)(b)^q is repealed.

11. In the proviso to section 43(2) the words after "section thirty-six of this Law" are repealed.

12. Section 51(2) and (3) is repealed.

13. After section 51(4) insert the following subsections -

"(5) Notwithstanding the provisions of subsection (1), any non-resident individual who is or has been in receipt of a pension arising or accruing or treated as arising or accruing in Guernsey in any year of charge shall, in respect of that year of charge, and provided that the pension is chargeable to tax and subject to the deduction of tax under this Law, be entitled to a proportion of the personal and other allowances prescribed under section 36(1) by way of relief from income tax at the appropriate rate and subject to the same conditions as if he were solely or principally resident in Guernsey, that proportion -

- (a) not to exceed one fifty-second part of those personal and other allowances in respect of every seven days for which he satisfies the Director of Income Tax that he is in receipt of that pension in that year of charge, and

^q Subsection (5A) was inserted by Vol. XXXI, p. 473.

(b) to be set off only against his income comprised in that pension (and not against any other income arising or accruing or treated as arising or accruing in Guernsey).

(6) In subsection (5) "pension" means a pension, superannuation or other allowance described in section 81A(2)(b) or an annuity described in section 81A(2)(bA)."

14. After section 51A(2)^r insert the following subsection -

"(3) Notwithstanding any provision of this section or section 51, an individual who is resident but not solely or principally resident in Guernsey in any year of charge, is not, in respect of that year of charge, entitled to a proportion of the personal and other allowances prescribed under section 36(1) by way of relief from income tax which exceeds in amount the personal and other allowances to which an individual who is solely or principally resident in Guernsey in that year of charge would be entitled."

15. In section 56(b)^s after "2008" insert "or a charity not required to be registered in accordance with that Law".

^r Section 51A was inserted by No. IV of 1993.

^s Section 56(b) was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

16. In section 62AC(1)^t for "the provisions of section 81B" substitute "the provisions of this Law".

17. In section 62A(2)^u after the words "in the case of a non-resident company" insert "(other than a company which has been granted an exemption from tax under an Ordinance made under section 40A)".

18. After Chapter X of Part IV insert the following Part -

*"Chapter XA
Donations to charity*

Application of Chapter.

64A. This Chapter provides for the treatment for income tax purposes of payments made in favour of charities ("**charitable donations**") on or after the 1st January, 2010.

Exempt donations.

64B. (1) A charitable donation is "**exempt**" for the purposes of this Chapter if and only if -

- (a) the donation is made to a Guernsey Registered Charity,
- (b) the donation is made by an individual from his

^t Section 62AC was inserted by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

^u Section 62A(2) was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007 and amended by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

income in respect of which he has been charged to tax and has paid tax at the individual standard rate in the year of charge in which the donation is made,

- (c) the amount of the donation, when aggregated with the amount of any other payment made by the same individual to the same Guernsey Registered Charity in the same year of charge, is at least £500,
- (d) the amount of the donation, when aggregated with the amount of any other payment made by the same individual to the same or any other Guernsey Registered Charity in the same year of charge, does not exceed £5,000,
- (e) the donation, and any other payment referred to in paragraph (c) or (d), is not made under a deed of covenant entered into before the 1st January, 2010, and
- (f) the individual making the donation makes a written declaration to the Guernsey Registered Charity that the conditions set out in paragraphs (a) to (e) are satisfied.

(2) For the purposes of subsection (1), a husband and wife-

- (a) may in any year of charge aggregate the donations and payments made by them to the same Guernsey Registered Charity for the purpose of calculating the minimum amount specified in paragraph (c) of that subsection, and
- (b) may in any year of charge each make donations and payments to Guernsey Registered Charities not exceeding in the aggregate the maximum amount specified in paragraph (d) of that subsection.

(3) The States may by Ordinance amend the amounts specified in subsection (1).

Form of declaration.

64C. (1) The declaration referred to in section 64B(1)(f) shall be made in such form and manner, and shall be accompanied by such information and documents, as the Director of Income Tax may require.

(2) Without prejudice to any other provision of this Law, where a declaration, or any document or information produced or furnished in connection with it or otherwise for the purposes of this Chapter, is incorrect or incomplete, or is false, deceptive or misleading, in a material particular, then the declaration is void, and -

- (a) the Guernsey Registered Charity concerned shall not, in respect of any payment to it to which the declaration related, be entitled to

claim a repayment of tax in accordance with section 64D, and

- (b) the amount of any tax repaid by the Director of Income Tax to the charity under section 64D in consequence of the declaration is repayable to him on a joint and several basis by -
 - (i) the individual by whom the declaration was made, and
 - (ii) the charity,

and may be recovered by him in the same manner as income tax due under this Law.

Consequences of exemption.

64D. (1) Where under section 64B a charitable donation to a Guernsey Registered Charity is "exempt" for the purposes of this Law -

- (a) the donation is considered to be a payment net of tax in the charity's hands,
- (b) the charity may claim a repayment of the tax paid in respect of the donation by the individual making the payment,
- (c) the Director of Income Tax shall pay the amount of the tax so paid to the charity, and

- (d) for the avoidance of doubt, the individual making the donation cannot set off the amount of the donation against his income for the purposes of calculating his liability to tax.

(2) However, any claim by a Guernsey Registered Charity for a repayment of tax under subsection (1) -

- (a) may only be made after the expiration of the year of charge in which the donation in question was made, and
- (b) shall be made in such form and manner, and shall be accompanied by such information and documents (including, without limitation, the declaration referred to in section 64B(1)(f)), as the Director of Income Tax may require.

Transitional provisions.

64E. (1) Where an individual entered into a deed of covenant prior to the 1st January, 2010, and the deed remains valid and enforceable on that date, the provisions of this Law as they had effect immediately prior to that date shall continue to apply in relation to that deed and the liability to tax of that individual in respect of covenanted donations made under it until the expiration of the deed.

(2) Without limitation, a deed of covenant is deemed to expire for the purposes of subsection (1) if, at any time after the 31st December, 2009 -

- (a) the covenantor ceases to be under any obligation to make any donations under it,
- (b) the deed is amended in any material respect, or
- (c) the obligations under the deed are extended or renewed.

(3) Covenanted donations to a charity under a deed of covenant entered into prior to the 1st January, 2010 cannot be an exempt charitable donation for the purposes of this Chapter; and accordingly the charity may not claim a repayment of the tax paid in respect of the donation by the individual making the payment.

Interpretation of Chapter XA.

64F. For the purposes of this Chapter -

"**charitable donation**" means a payment made in favour of a charity,

"**charity**" : see section 40(k),

"**deed of covenant**" means a settlement -

- (a) which contains a covenant by the settlor to make periodic payments to a charity, and
- (b) which complies with the requirements for settlements of that description for the time being prescribed by regulations of the

Department under section 65(1)^v,

"**exempt**", in relation to a charitable donation : see section 64B(1),

"**Guernsey Registered Charity**" means a charity registered in accordance with the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008. "

19. In section 65(1), the proviso^w is repealed.
20. Section 65(2)^x is repealed.
21. In section 65(4)^y the definitions of "approved sum" and "covenanted donation" are repealed.
22. After section 66B(4)^z add the following subsection -

"(5) For the avoidance of doubt, the provisions of

^v The current relevant regulations are the Income Tax (Guernsey) (Settlement) Regulations, 1979 (No. 20), as amended by the Income Tax (Guernsey) (Settlement) Regulations, 1993 (No. 35).

^w The proviso was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

^x Section 65(2) [apart from the proviso] was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

^y Section 65(4) was inserted by Vol. XXVII, p. 84 and amended by Recueil d'Ordonnances Tome XXVIII, p. 368.

^z Section 66B was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

subsections (3) and (4) -

- (a) do not create a second charge to tax, and
- (b) do not create any obligation on the company under section 81B to deduct and account for tax,

on the amount of a loan in respect of which tax has already been paid pursuant to section 66C."

23. In section 80A^{aa} -

- (a) in paragraph (a) for "the Department" substitute "the Guernsey Tax Tribunal established by the Third Schedule (and for the purposes of an appeal described in this paragraph a quorum of the Guernsey Tax Tribunal shall be a single member appointed by the President or, in his absence, the Vice President thereof)",
- (b) in paragraph (b) the words "established by the Third Schedule to this Law" are repealed.

24. After section 81B(18)^{bb} insert the following subsections -

^{aa} Section 80A was inserted by Vol. XXXII, p. 307.

^{bb} Section 81B(18) was inserted by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

"(19) For the avoidance of doubt, and subject to the provisions of regulations under subsection (20), the provisions of this section do not apply in relation to a company which has been granted an exemption from tax under an Ordinance made under section 40A.

(20) The Department may, notwithstanding any other provision of this Law, by regulations -

- (a) extend the application of this section to any specified class or description of company,
- (b) exempt any specified class or description of company from the application of this section,
- (c) prescribe conditions subject to which any such extension or exemption is to have effect, and
- (d) make consequential modifications to this section or any other provision of this Law in its application to any specified class or description of company.

"Specified" means specified in the regulations.

(21) The provisions of section 203 (requirement to lay regulations before a meeting of the States) apply to regulations made under subsection (20).".

25. In section 174(4) the definition of "distribution"^{cc} is repealed.

26. After section 176(1) insert the following subsection -

"(1A) Where the person entitled to the income is a company, and the income is liable to be taxed in the company's hands at the company intermediate rate or the company standard rate, then, if the company distributes that income or any part thereof -

- (a) to an individual resident in Guernsey, or
- (b) to a company resident in Guernsey in a case where the income is liable to be taxed in that company's hands at the company intermediate rate or the company higher rate,

that individual or company shall be deemed to be the person entitled to the income and shall for the purposes of this section be entitled to relief from taxation accordingly."

27. After section 178A^{dd} insert the following section -

"Meaning of "distribution" in Part XV.

178B. In this Part "**distribution**" means a distribution from which the deduction of tax is required by section 81B, and related expressions shall

^{cc} The word "distribution" in the definition was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^{dd} Section 178A was inserted by the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

be construed accordingly."

28. In section 209(2) after "including this Law" insert "; and in this subsection "enactment" includes any regulation, order or rule".

29. In the Third Schedule^{ee} -

(a) after paragraph 3(1) insert the following subparagraphs -

"(1A) The Policy Council may also appoint a person who appears to the Council, after consultation with the Tribunal's President, to have appropriate qualifications and experience to be the deputy clerk to the Tribunal with authority to exercise the clerk's functions during any period in which the clerk is unavailable or unable to act or during any vacancy in that office.

(1B) A function exercised by a deputy clerk pursuant to an appointment under this paragraph is for all purposes exercised by the clerk; and every decision taken or other thing done by a deputy clerk pursuant to such an appointment has the same effect as if taken or done by the clerk.

(1C) An appointment under this paragraph of a deputy clerk -

(a) is subject to variation and termination in the

^{ee} The Third Schedule was inserted by Vol. XXXII, p. 307.

same manner as the appointment of the clerk, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,

- (b) does not prevent the exercise of the function by the clerk while the appointment subsists.",

- (b) in paragraph 3(6) after "this paragraph shall" insert ", subject to the provisions of any regulations of the Policy Council as to costs and fees and the recovery thereof under paragraph 5(5),",

- (c) for paragraph 5(1) substitute the following -

"(1) The Director of Income Tax shall -

- (a) at any time after receiving notice of an appeal in relation to any matter which may be referred to the Tribunal under any enactment, and

- (b) either of his own motion or at the request of the appellant,

forward the notice to the Tribunal, whose President or Vice-President shall convene sufficient members to constitute a quorum.",

- (d) in paragraph 5(2)(a) after "or is considering an application for

an adjournment," insert "or is hearing an appeal described in section 80A(a)",

- (e) in paragraph 5(2)(g) after "subject to this Schedule" insert "and any regulations made under it",
- (f) after paragraph 5(4) insert the following subparagraphs -

"(5) The Policy Council may by regulation make rules of procedure in relation to the hearing of cases by the Tribunal, including provision as to the form, manner, practice, conduct and administration of appeals and hearings and provision as to costs and fees and the recovery thereof.

(6) Rules under subparagraph (5) may (without limitation) make provision in connection with matters preparatory to and subsequent to hearings as well as in connection with the conduct of hearings."

30. In the Sixth Schedule^{ff} -

- (a) for "£250,000" substitute "£100,000", and
- (b) for the words "Income tax on income from any other sources shall not be subject to this limit." substitute -

"Income tax on income from any other sources (referred to in

^{ff} The Sixth Schedule was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

this Law as "**non-qualifying income**") shall not be subject to this limit.

However, notwithstanding the preceding provisions of this Schedule, an individual resident in Guernsey in receipt of non-qualifying income may, within a period of two years immediately after the end of any year of charge commencing after 2008, elect to pay in respect of both qualifying and non-qualifying income in that year a maximum of £200,000 in tax, and in that case -

- (i) the maximum figure specified above of £100,000 in tax in the year of charge in respect of qualifying income does not apply, and
- (ii) the individual shall pay in respect of both qualifying and non-qualifying income in that year a maximum of £200,000 in tax."

Repeal of Income Tax (Settlements) Ordinance.

31. The Income Tax (Settlements) Ordinance, 2000^{gg} is repealed.

Citation.

32. This Law may be cited as the Income Tax (Guernsey) (Amendment) Law, 2009.

Commencement.

33. (1) This Law shall have effect, by virtue of the States' resolution

^{gg} Recueil d'Ordonnances Tome XXVIII, p. 368.

of the 27th October, 2009^{hh}, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992ⁱⁱ, in accordance with the provisions of subsections (2) to (10), as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

(2) Sections 2 and 3 shall have effect in respect of any year of charge after 2008 (but subject to the transitional provisions set out in section 5I of the Income Tax (Guernsey) Law, 1975 as inserted by section 3 above).

(3) Sections 4, 5, 8(1), 9(c) and 30 shall have effect in respect of any year of charge after 2008.

(4) Sections 11, 12, 13 and 14 shall have effect in respect of any year of charge after 2009.

(5) Sections 6, 7, 8(2), 9(b), 9(d), 16, 17, 22 and 24 shall have effect on and from the 28th October, 2009 (the date of approval of this Law by the States).

(6) Sections 10, 23, 28 and 29 shall have effect on and from the date of registration of this Law on the records of the Island of Guernsey.

(7) Sections 9(a) and 15 shall be deemed to have had have effect on and from the 28th October, 2008.

(8) Sections 18, 19, 20, 21 and 31 shall have effect on and from the 1st January, 2010.

^{hh} Article ** of Billet d'État No. ** of 2009.

ⁱⁱ Order in Council No. XI of 1992.

(9) Sections 25, 26 and 27 shall be deemed to have had effect on and from the 1st January, 2008.

(10) The States Treasury and Resources Department may by regulation, for the purposes of the commencement and implementation of this Law, make such savings and transitional provisions as it thinks fit and/or modify any date specified in subsections (2) to (9); and sections 203 and 203A of the Income Tax (Guernsey) Law, 1975 apply to such regulations as they apply to regulations under that Law.

PROJET DE LOI

ENTITLED

The Air Transport Licensing (Guernsey) (Amendment) Law, 2009

THE STATES, in pursuance of their Resolutions of the 26th July, 2006^a and the 17th July, 2009^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

Amendment of 1995 Law.

1. The Air Transport Licensing (Guernsey) Law, 1995^c is amended as follows.
2. In section 1(a) for "the States Commerce and Employment Department ("the Board")"^d substitute "the licensing authority".
3. (1) In the provisions specified in subsection (2) for "the Board" substitute "the licensing authority"

^a Article XI of Billet d'État No. XIII of 2006.

^b Article XI of Billet d'État No. XVI of 2009.

^c Orders en Conseil Vol. XXXVI, p. 370.

^d The words "States Commerce and Employment Department" were substituted for "States Transport Board" by Ordinance XXXIII of 2003.

(2) The provisions are sections 2(1)(c), 5(1), 5(2)(a), 5(2)(b), 5(3), 5(4), 6(1), 6(3), 7(1), 7(1)(d), 7(1)(h), 7(2), 8(1), 8(2), 8(3), 9(1)(a)(ii), 9(1)(b), 9(2), 9(2)(a), 9(3), 10(1), 10(3)(a), 10(3)(b), 10(4), 10(5), 12(2), 13(1), 14(1), 14(6)(a), 16(1), 16(2), 16(3), 18 and 23(f).

4. In section 2(2)(a) for the words following "shall be signed" substitute "by or on behalf of the licensing authority".

5. In sections 7(1)(g), 9(2)(h) and 26 after "the Civil Aviation Act 1982," insert "the Aviation (Bailiwick of Guernsey) Law, 2008,".

6. In section 10(2)(a) for the words following "shall be signed" substitute "by or on behalf of the licensing authority".

7. In section 13(2)(a) for the words following "shall be signed" substitute "by or on behalf of the licensing authority".

8. In section 14(3) for "the President of the Board" substitute "the licensing authority".

9. In section 20(a) after "the uniform scale" insert "or such other amount as the States may determine by Ordinance".

10. In section 22(1) -

(a) in the definition of "appropriate authority" after "committee of the States" insert ", authority, person or body",

(b) in the definition of "Board" after "committee of the States" insert ", authority, person or body",

- (c) in the definition of "CAA licence" after "the Civil Aviation Act 1982" insert "(and the States may by Ordinance amend this definition); and for the purposes of this Law a person shall be deemed to hold a CAA licence in respect of a flight to which this Law applies if the flight is one which is, or which may be, lawfully made in accordance with section 64 of that Act whether as extended to the Bailiwick of Guernsey or as it has effect in the United Kingdom",
- (d) insert the following definition after the definition of "Guernsey air transport licence" -
- "**licensing authority**" means the Director General of Utility Regulation or such other authority, person or body (including any committee of the States) as the States may by Ordinance appoint for the purposes of this Law,"
- (e) in the definition of "permission granted by the Secretary of State" -
- (i) for "article 88" substitute "article 80", and
- (ii) after "the Air Navigation Order 1980" insert "or by the Secretary of State (or the Director of Aviation acting as his delegate) under section 1 of the Aviation (Foreign Aircraft Operations) (Bailiwick of Guernsey) Ordinance, 2009 (and the States may by Ordinance amend this definition)",

(f) in the definition of "policy statement" after "the Board" insert "or by such other committee of the States, authority, person or body as the States may by Ordinance appoint for the purposes of this Law".

11. In section 25(1)(e) after "on the Board" insert ", on the licensing authority".

12. In section 25(4) after "on the Board" insert ", licensing authority".

13. In section 27 after "the Board" insert ", the licensing authority".

14. After section 27 insert the following section -

"Power to suspend operation of certain provisions."

27A. (1) The States may by Ordinance suspend, indefinitely or for a specified period, the operation of any provision set out in subsection (2).

(2) The provisions are sections 15 and 16 and any other provision of this Law relating to those sections. "

Citation.

15. This Law may be cited as the Air Transport Licensing (Guernsey) (Amendment) Law, 2009.

Commencement.

16. This Law shall come into force on the day appointed by Ordinance of the States.

The Prison Administration (Alcohol and Drug Testing) (Amendment) Ordinance, 2009

THE STATES, in pursuance of their Resolution of the 30th July, 2009^a, and in exercise of the powers conferred on them by section 3A of the Prison Administration (Guernsey) Law, 1949^b, hereby order:-

Amendment of the 1999 Ordinance.

1. For section 1 of the 1999 Ordinance substitute -

"Governor's authorisation for the taking of samples.

1. The Governor of the Prison may, for the purpose of ascertaining whether a prisoner has any alcohol or drug in his body, authorise an officer at the Prison to require any prisoner to provide –

- (a) a sample of urine, and/or

- (b) a non-intimate sample."

2. In section 2(a) of the 1999 Ordinance, immediately after the word "Ordinance", insert ", as amended".

3. In the heading of section 6 of the 1999 Ordinance, immediately after the word "sample", insert "of urine".

4. In section 6 of the 1999 Ordinance, immediately after the word

^a Article VII of Billet d'État No. XXI of 2009.

^b Ordres en Conseil Vol. XIV, p.159; Vol. XVII, p.234; No.I of 1999.

"sample", insert "of urine".

5. In section 7 of the 1999 Ordinance, immediately after the word "sample", insert "of urine".

6. After section 7 of the 1999 Ordinance, insert the following section -

Interpretation.

7A. (1) In this Ordinance –

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**non-intimate sample**" has the meaning given in section 91(3) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003,

"**officer**" means an officer of the Prison or prison officers from the Prison Service in England and Wales seconded to the service of the Prison, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied."

Interpretation.

7. (1) In this Ordinance –

"the 1999 Ordinance" means the Prison Administration (Alcohol and Drug Testing) Ordinance, 1999^c,

"enactment" means any Law, Ordinance or subordinate legislation, and

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

8. This Ordinance may be cited as the Prison Administration (Alcohol and Drug Testing) (Amendment) Ordinance, 2009.

Commencement.

9. This Ordinance shall come into force on the 1st November 2009.

^c Recueil d'Ordonnances Tome XXVIII, p. 223

The Employers' Liability (Compulsory Insurance) (Exemptions) Ordinance, 2009

THE STATES, in pursuance of their Resolution of the 24th September, 2008^a, and in exercise of the powers conferred on them by sections 4 and 10 of the Employers' Liability (Compulsory Insurance) (Guernsey) Law, 1993^b, hereby order:-

Exemption from requirement to insure against employers' liability.

1. (1) An employer which satisfies the conditions in subsection (2) is, for the purposes of section 4 of the Employers' Liability (Compulsory Insurance) (Guernsey) Law, 1993, exempted from the requirement of that Law to insure and maintain insurance.

(2) The conditions are -

- (a) the employer is a company,
- (b) the company has only one employee, and
- (c) the employee owns more than half in value of the company's equity share capital.

(3) In this section -

"company" includes any body corporate, and

a Article X of Billet d'État No. XII of 2008.

b Ordres en Conseil Vol. XXXIV, p. 551.

"equity share capital" means a company's issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries a right to participate beyond a specified amount in a distribution.

(4) In determining whether an employee owns more than half in nominal value of a company's equity share capital any shares held by him as nominee or in a fiduciary capacity shall be treated as not owned by him.

Citation.

2. This Ordinance may be cited as the Employers' Liability (Compulsory Insurance) (Exemptions) Ordinance, 2009.

Commencement.

3. This Ordinance shall come into force on the 1st November, 2009.

The Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006 (Commencement) Ordinance, 2009

THE STATES, in pursuance of their Resolution of the 27th April, 2006^a, and in exercise of the powers conferred on them by section 13 of the Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006^b, and all other powers enabling them in that behalf, hereby order:-

Commencement of Law.

1. The Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006 shall come into force on the 1st November, 2009.

Citation.

2. This Ordinance may be cited as the Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006 (Commencement) Ordinance, 2009.

^a Article XI of Billet d'État No. VIII of 2006.

^b Order in Council No. XXIX of 2008.

The Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009

THE STATES, on the representations of the States Policy Council, and in exercise of the powers conferred upon them by section 1 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^a and all other powers enabling them in that behalf, hereby order:-

Transfer of functions.

1. The functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of any relevant enactment are transferred to and vested in, respectively, the Sark General Purposes and Advisory Committee and its Chairman in relation to the functions listed in Schedule 1, and the Sark Finance and Commerce Committee and its Chairman in relation to the functions listed in Schedule 2.

Savings and transitional provisions.

2. (1) Anything done before the date of the commencement of this Ordinance or in the process of being done on that date by or in relation to the Sark General Purposes and Finance Committee or its Chairman under or by virtue of any relevant enactment in relation to a function listed in Schedule 1 shall have effect as if done or (as the case may be) may be continued by or in relation to the Sark General Purposes and Advisory Committee or (as the case may be) its Chairman.

(2) Anything done before the date of the commencement of this Ordinance or in the process of being done on that date by or in relation to the Sark General Purposes and Finance Committee or its Chairman under or by virtue of any relevant enactment in relation to a function listed in Schedule 2 shall have effect as if

^a Ordres en Conseil Vol. XXXIII, p. 478.

done or (as the case may be) may be continued by or in relation to the Sark Finance and Commerce Committee or (as the case may be) its Chairman.

Amendment of statutory references.

3. For any reference in any relevant enactment to the Sark General Purposes and Finance Committee or to its Chairman, however expressed –

- (a) in relation to a function specified in Schedule 1 there shall be substituted a reference to the Sark General Purposes and Advisory Committee or (as the case may be) its Chairman, and
- (b) in relation to a function specified in Schedule 2 there shall be substituted a reference to the Sark Finance and Commerce Committee or (as the case may be) its Chairman.

Interpretation.

4. (1) In this Ordinance the expression "**relevant enactment**" means-
- (a) any Law, and any Act of Parliament extended to the Bailiwick, other than one applicable only in Sark or Alderney,
 - (b) any Ordinance of the States of Deliberation of Guernsey, and
 - (c) any subordinate legislation made by any department, council or committee (however called) of the States of Guernsey.

(2) The Interpretation (Guernsey) Law, 1948^b shall apply to the interpretation of this Ordinance.

Citation.

5. This Ordinance may be cited as the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009.

Commencement.

6. This Ordinance shall come into force on 1st November, 2009.

^b Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE 1

FUNCTIONS OF THE SARK GENERAL PURPOSES AND FINANCE
COMMITTEE TRANSFERRED TO THE SARK GENERAL PURPOSES AND
ADVISORY COMMITTEE

To advise Chief Pleas on matters relating to the allocation of duties to Committees

To advise Chief Pleas on matters relating to the Island's constitutional position, international relations and matters relating to the other Islands of the Bailiwick

To develop, present to Chief Pleas for approval and implement policies on the above matters

To appoint the Committee Secretary, the Assistant Constable and any other salaried employee as directed by Chief Pleas and to recommend their salaries and terms of employment

To examine any matter which falls outside the mandate of any existing Committee and report to Chief Pleas thereon

With the approval of Chief Pleas, to appoint any ad-hoc or sub-committee to study and report to it on any relevant matter that falls within these functions or is outside the mandate of any existing Committee

SCHEDULE 2

FUNCTIONS OF THE SARK GENERAL PURPOSES AND FINANCE
COMMITTEE TRANSFERRED TO THE SARK FINANCE AND COMMERCE
COMMITTEE

To collect data on the expenditure of independent Committees, so as to monitor the overall expenditure of Chief Pleas

To regulate and control the financial affairs of Chief Pleas

To raise Chief Pleas revenue and utilise its financial resources

To monitor costs of the Seneschal's Court and make recommendations to Chief Pleas on the funding of the Court

To advise Chief Pleas on commercial matters