

PROJET DE LOI

ENTITLED

The General Sales Tax (Enabling Provisions) (Guernsey and Alderney) Law, 2009 *

[CONSOLIDATED TEXT]

NOTE

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* No. XII of 2013; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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ARRANGEMENT OF SECTIONS

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THE STATES, in pursuance of their Resolution of the 30th June, 2006^a, 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, Alderney and Herm.

Power to make Ordinances as to general sales tax.

1. (1) The States may by Ordinance make such provision as they think fit in respect of the taxation of the supply of goods and services in the Islands.

(2) The tax levied in respect of the supply of goods and services under an Ordinance made under this Law is called "**a general sales tax**".

(3) Without prejudice to the generality of subsection (1), an Ordinance under this Law may make provision as to the following matters –

- (a) the classes, descriptions and categories of goods, services, supply of goods and services, businesses and undertakings which are subject to general sales tax,
- (b) the rates of general sales tax in respect of any class, description or category of goods, services, supply of goods and services, business or undertaking,
- (c) the times at which, the events and circumstances in which, the periods in respect of which and the manner in which general sales tax is payable,

^a Billet d'État No. XI of 2006.

- (d) the times at which and the events and circumstances in which a supply of goods or services occurs or is deemed to occur,
- (e) the businesses, undertakings, suppliers of goods and services and other persons –
 - (i) liable to pay and account for general sales tax, and
 - (ii) excepted or exempted from liability,
- (f) the basis on which and the manner in which –
 - (i) the supply of goods and services is to be valued and assessed for the purposes of general sales tax,
 - (ii) general sales tax is to be calculated, assessed and levied, and
 - (iii) the price or value of goods and services, or in respect of the supply of goods and services, is to be ascertained or substantiated,
- (g) the administration, payment, collection and recovery of general sales tax and the enforcement of liabilities to pay it,
- (h) for the purposes of paragraph (g) –
 - (i) the investigation of businesses, undertakings, suppliers of goods and services and other persons,

- (ii) the entry and search of premises,
- (iii) the obtaining of information and documents,
- (iv) the examination, removal and retention of goods, services and documents,
- (v) the taking of samples of goods and services,
- (i) allowances, discounts, deductions, reliefs and exemptions from or in respect of, and postponement of the incidence of, general sales tax, and claims therefor,
- (j) the making of refunds, repayments and credits in respect of general sales tax, and claims therefor,
- (k) the levying of interest, surcharges, penalties and enhanced rates in the event of the non-payment of general sales tax or other non-compliance or default,
- (l) powers of entry for the purpose of valuing, measuring, assessing and categorising goods, services, the supply of goods and services, businesses and undertakings,
- (m) the preparation and maintenance of invoices, accounts, returns, statements and other records and the information to be entered on them,
- (n) the registration of undertakings, suppliers of goods and services and other persons and the information to be entered on any register,
- (o) the public inspection and evidencing of such records and registers and the information in them,

- (p) the exchange between departments of information in respect of goods, services, the supply of goods and services, businesses and undertakings,
- (q) the making of declarations and notifications, and the obtaining and exchange of information, in respect of –
 - (i) goods, services, the supply of goods and services, businesses and undertakings, and the class, description or category into which they fall,
 - (ii) the persons who own or control, or have any other prescribed interest in, businesses or undertakings, including (without limitation), where those persons are bodies corporate, the ownership and control of the bodies corporate and the shareholdings in them,
- (r) the confidentiality of information,
- (s) the making of returns and assessments in respect of general sales tax and the preparation of statements of account,
- (t) the country, territory or place to which suppliers or recipients of goods or services are deemed for the purposes of any Ordinance under this Law to belong or in which supplies of goods or services occur,
- (u) appeals in relation to –
 - (i) the calculation, assessment and levying of general sales tax,
 - (ii) registration,

- (iii) the valuation, assessment and categorisation of goods, services, the supply of goods and services, businesses and undertakings, and
- (iv) other matters arising in the administration of any Ordinance under this Law,

including the forum and grounds of such appeals and the parties thereto,

- (v) the establishment of a tribunal to deal with such appeals and a panel of persons from whom the members of the tribunal are to be drawn,
- (w) the jurisdiction, powers, constitution and procedure of the courts of the Islands, and any tribunal established under paragraph (v), in relation to such appeals and otherwise in relation to the administration of any Ordinance under this Law or matters arising thereunder,
- (x) the imposition of time limits and other restrictions subject to which –
 - (i) any claim for the payment or repayment of general sales tax, and
 - (ii) any other proceedings in respect of the administration, collection and recovery of general sales tax,

must be made or instituted,

- (y) the cancellation of liability to any description of tax or charge due under an enactment repealed, amended,

modified or disapplied by any Ordinance under this Law,

- (z) the person, body, authority or department responsible for the administration of general sales tax and any Ordinance under this Law,
- (aa) the appointment by undertakings and the suppliers of goods and services of representatives and agents for the purposes of the administration of general sales tax, and their functions,
- (bb) anti-avoidance measures,
- (cc) the service of notices,
- (dd) the levying of fees (whether in respect of registration or otherwise),
- (ee) the meaning of the expressions "business", "undertaking", "supply", "goods", "services" and "price" in this Law (and an Ordinance made in exercise of the powers conferred by this paragraph may amend or modify section 3 of this Law).

General provisions as to Ordinances.

2. (1) An Ordinance under this Law –

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(2) Any power conferred by this Law to make an Ordinance may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions,

(iv) different provision for different classes, descriptions and categories of goods, services, supply of goods or services, business or undertaking, and for different Islands.

(3) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law –

(a) may, subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,

- (b) may make provision for the purpose of dealing with matters arising out of or related to the taxation of the supply of goods and services,
 - (c) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
 - (d) may empower [the Committee], and any other person, body, authority or department (including, without limitation, the Royal Court and any other court of the Islands), to make subordinate legislation, codes or guidance as to matters in relation to which an Ordinance may be made under this Law,
 - (e) may empower the States to pass resolutions specifying or prescribing matters described in paragraph (d),
 - (f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law,
 - (g) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by *Projet de Loi*, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.
- (4) An Ordinance under this Law may not –
- (a) provide for offences to be triable only on indictment,
 - (b) authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or

- (c) authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

NOTE

In section 2, the word in square brackets in subsection (3) was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 1, with effect from 1st May, 2016.

Interpretation.

3. (1) In this Law, unless the context requires otherwise –

"business" includes any economic activity, trade, profession or vocation, whether or not carried on for profit,

"a department" means any department, council or committee of the States of Guernsey or the States of Alderney, however styled,

"[the Committee]" means the [Policy & Resources Committee],

"document" includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form –

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

"electronic form", in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

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

"general sales tax": see section 1(2),

"information" includes data, however recorded,

"the Islands" means the Islands of Guernsey, Alderney and Herm,

"person" includes an individual and also –

(a) a body corporate, and

(b) a partnership or other unincorporated body of persons,

incorporated or established with or without limited liability in any part of the world,

"prescribed" means prescribed by or under an Ordinance under this Law,

"price" includes any charge, fee or valuable consideration of any description, and any discount, margin or other element of a price,

"service" includes any benefit, advice, privilege or facility which is, or which is to be, provided, granted or conferred in the course of business,

"States" means the States of Guernsey.

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

"supply" includes –

(a) in relation to goods, supply (including re-supply) by

way of sale, exchange, lease, hire or hire-purchase,

- (b) in relation to services, provide, sell, lease, grant or confer, and
- (c) importation and exportation,

"undertaking" means a person carrying on a business and includes an association, whether or not incorporated, which consists of or includes such persons.

(2) The Interpretation (Guernsey) Law, 1948^b applies to the interpretation of this Law throughout the Islands.

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

NOTES

In section 3, the words in the first and second pairs of square brackets in the definition of the expression "the Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 1 and section 2, Schedule 1, paragraph 15(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Citation.

4. This Law may be cited as the General Sales Tax (Enabling Provisions) (Guernsey and Alderney) Law, 2009.

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

NOTE

The Law received Royal Sanction on 10th July, 2013 and was registered on the Records of the Island of Guernsey and came into force on 16th September, 2013.
