

# PROJET DE LOI

ENTITLED

## **The New Dwellings Profits Tax (Alderney) Law, 2001 \***

[CONSOLIDATED TEXT]

### NOTE

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XXXI of 2001; as amended by the States Treasurer (Transfer of Functions) (Guernsey) Ordinance, 2008 (No. VII of 2008, Recueil d'Ordonnances Tome XXXIII, p. 38); the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 472); the Chief Accountant (Transfer of Functions) (Guernsey) Ordinance, 2013 (No. XLIII of 2013); the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVII of 2018); the Guernsey Revenue Service Tribunal Ordinance, 2021 (No. \*\* of 2021). The operation of the provisions of this Law has been suspended by the New Dwellings Profits Tax (Alderney) (Suspension) Ordinance 2007 (Alderney Ordinance No. XII of 2007).

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## **The New Dwellings Profits Tax (Alderney) Law, 2001**

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# PROJET DE LOI

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## **The New Dwellings Profits Tax (Alderney) Law, 2001**

**THE STATES**, in pursuance of their Resolutions of the 10<sup>th</sup> February 1999 and 18<sup>th</sup> July 2001, 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 Alderney.

### **Profits tax.**

1. Subject to the succeeding provisions of this Law, a tax ("**profits tax**") shall be charged in accordance with the provisions of this Law in respect of the profit accruing to a person from any transaction to which this Law applies and computed in accordance with the provisions of this Law ("**the chargeable profit**").

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### **NOTE**

*In accordance with the provisions of the New Dwellings Profits Tax (Alderney) (Suspension) Ordinance 2007, section 1, the operation of the provisions of this Law is suspended, with effect from 19th December, 2007.*

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### **Transactions to which Law applies.**

2. (1) Subject to subsection (2) and section 10 the transactions to which this Law applies are –

- (a) the sale of a new dwelling,
- (b) the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a new dwelling in consideration

of a premium,

- (c) the sale of a right of usufruct in a new dwelling,
- (d) the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a right of usufruct in a new dwelling in consideration of a premium,
- (e) the disposal or transfer of shares, or the disposal or transfer of the beneficial ownership of shares, in a body corporate the effect of which is to transfer an interest in that body corporate from one person to another person at a time when that body corporate is the owner or lessee of a new dwelling if, in the opinion of the [Director], one of the benefits which accrues to the first mentioned person from the transaction is the avoidance or reduction of liability to profits tax,
- (f) the transfer of the beneficial interest in a new dwelling which is held in trust from one beneficiary to another beneficiary at a time when the trustees are the owners or the lessees of the dwelling if, in the opinion of the [Director], one of the benefits which accrues to the first mentioned beneficiary from the transaction is the avoidance or reduction of liability to profits tax,
- (g) the transfer of the beneficial interest in a new dwelling which is held in trust by the disposal or transfer of shares, or the disposal or transfer of the beneficial ownership of shares in a body corporate, being for the time, a beneficiary under the said trust, the effect of

which is to transfer an interest in the said body corporate from one person to another person at a time when the trustees of the trust are the owners or the lessees of the dwelling, if, in the opinion of the [Director], one of the benefits which accrues to the first mentioned person from the transaction is the avoidance or reduction of liability to profits tax.

(2) Notwithstanding the provisions of subsection (1), this Law shall not apply to any transaction which consists of the grant of a lease or a sub-lease of a new dwelling or a lease or a sub-lease of a right of usufruct in a new dwelling for which the only consideration is the payment of an annual rental fixed by way of a bargain made at arm's length notwithstanding that the said rental is payable at intervals of less than 1 year.

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**NOTE**

*In section 2, the words in square brackets were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>1</sup>*

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**Persons chargeable to profits tax.**

3. (1) Profits tax shall be chargeable upon the person or persons to whom the chargeable profit from any transaction to which this Law applies accrues and shall be paid –

- (a) where the chargeable profit accrues to an individual, by that individual,
- (b) where the chargeable profit accrues to a body corporate, by that body corporate,

- (c) where the chargeable profit accrues to two or more persons, by those persons jointly and severally.

(2) Notwithstanding the provisions of subsection (1)(c), the total amount of profits tax may, where the chargeable profit accrues to two or more persons, at the discretion of the [Director], be apportioned equally among those persons and shall be charged upon and paid by those persons equally.

(3) Profits tax adjusted at the discretion of the [Director] in accordance with the provisions of section 16 shall be chargeable and shall be paid –

- (a) in the case of a transaction to which this Law applies by virtue of section 2(1)(e), by the first mentioned person referred to in that section,
- (b) in the case of a transaction to which this Law applies by virtue of section 2(1)(f), by the first mentioned beneficiary referred to in that section,
- (c) in the case of a transaction to which this Law applies by virtue of section 2(1)(g), by the first mentioned person referred to in that section.

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**NOTE**

*In section 3, the words in square brackets were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>2</sup>*

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**Rate of profits tax.**

4. Profits tax shall be charged at the rate of 100% upon the chargeable profit computed in accordance with the provisions of section 5 or 6 or as so computed and adjusted at the discretion of the [Director] in accordance with the provisions of section 16, as the case may be.

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**NOTE**

*In section 4, the word in square brackets was substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>3</sup>*

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**Calculated profit from a sale.**

5. (1) Subject to the succeeding provisions of this section, the chargeable profit accruing to a person from a transaction to which this Law applies which consists of the sale of a new dwelling shall be the difference between the selling price of the dwelling and the purchase price or development cost of the dwelling, both the selling price and the purchase price or development cost computed in accordance with the succeeding provisions of this section.

(2) The selling price of a new dwelling referred to in subsection (1) shall be the full amount of the consideration receivable by the vendor for the sale of the dwelling after deduction therefrom of any agent's or other fees and charges incurred by the vendor wholly and exclusively in connection with the sale of the dwelling.

(3) The purchase price or development cost of a new dwelling referred to in subsection (1) shall be the sum of the following amounts, that is to say

—

- (a) the full amount of the expenditure incurred wholly and exclusively in connection with the purchase of the new

dwelling, or of the site upon which it is located, by the vendor when he purchased the dwelling or the site,

- (b) any expenditure incurred by the vendor on any construction, reconstruction, renovation, alteration or extension of, or repairs to, the new dwelling after the purchase thereof or of the site upon which it is located,
- (c) where the dwelling was, at the time of purchase or creation charged with a rente, any expenditure incurred on the redemption of any such rente by him,
- (d) such amount (the "**inflation element**") as may, from time to time, be computed in accordance with the provisions of section 8:

PROVIDED that the inflation element shall be applied to the amount of any expenditure referred to in paragraphs (a), (b), (c) and (d) on a monthly basis as if the said expenditure had been incurred on the first day of the month in which it was incurred rather than on any other day of that month.

(4) Any reference in this section to the date on which expenditure is incurred shall be construed as a reference to the date when the sums in question were paid.

(5) The foregoing provisions of this section shall apply, subject to such adaptations and modifications as the [Director] may consider necessary or appropriate, in relation to a transaction to which this Law applies, which consists of the sale of a right of usufruct in a new dwelling as they apply in relation to a



transaction to which this Law applies which consists of the sale of a new dwelling.

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**NOTE**

*In section 5, the word in square brackets was substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>4</sup>*

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**Calculated profit from a lease, etc.**

6. (1) Subject to the succeeding provisions of this section, the chargeable profit accruing to a person from a transaction to which this Law applies, which consists of the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a new dwelling, shall be the difference between the premium received in respect of such grant or assignment and the adjusted purchase price or development cost computed in accordance with the provisions of subsection (3) or (4), as the case may be.

(2) The premium referred to in subsection (1) shall be the full consideration receivable for the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease, as the case may be, after deduction therefrom of any agent's or other fees and charges incurred wholly and exclusively in connection with the said grant or assignment.

(3) Where the transaction is the grant of a lease, the adjusted purchase price or development cost referred to in subsection (1) shall be the amount computed in accordance with section 5(3).

(4) Where the transaction consists of –

- (a) the grant of a sub-lease, the adjusted purchase price or development cost referred to in subsection (1) shall be

the sum of the following amounts –

- (i) the full amount of the expenditure incurred on acquiring the head lease,
  - (ii) any expenditure incurred by the lessee on any construction, conversion, reconstruction, renovation, alteration or extension of, or repairs to, the new dwelling in respect of which the head lease was granted, and
  - (iii) the inflation element determined in accordance with the provisions of section 8,
- (b) the assignment of a lease or a sub-lease, the adjusted purchase price or development cost referred to in subsection (1) shall be the sum of the following amounts –
- (i) the full amount of the expenditure incurred on acquiring the lease or the sub-lease, as the case may be,
  - (ii) any expenditure incurred by the lessee or the sub-lessee on any construction, conversion, reconstruction, renovation, alteration or extension of, or repairs to, the new dwelling in respect of which the lease or the sub-lease, as the case may be, was granted,
  - (iii) the inflation element determined in accordance

with section 8.

(5) In the case of the grant of a lease or a sub-lease where any interest in the new dwelling concerned is retained by the lessor or the sub-lessor, the adjusted purchase price or development cost referred to in subsection (3) or subsection (4)(a) shall be reduced in accordance with the provisions of subsection (7) in respect of the value of such interest as at the date of the lease or sub-lease, as the case may be.

(6) Where on the grant of a sub-lease or the assignment of a lease or a sub-lease of a new dwelling, the unexpired portion of the lease or the sub-lease does not exceed fifty years there shall be excluded from the adjusted purchase price or development cost thereof a fraction of such adjusted purchase price or development cost in accordance with the provisions of subsection (8).

(7) Where the expenditure referred to in subsection (3) or (4) has to be reduced in respect of the value of any interest retained in a lease or a sub-lease, the reduction shall be made by multiplying the expenditure by the fraction  $A$  divided by  $(A + B)$ , where  $A$  is the consideration referred to in subsection (2) and  $B$  is the open market value of the interest in the lease or the sub-lease, as the case may be, which has been retained.

(8) The fraction referred to in subsection (6) is  $(P1 - P2)$  divided by  $P1$ , where –

- (a)  $P1$  is the percentage derived from the Table set out in the Schedule to this Law for the term of the lease or the sub-lease at the commencement thereof, and
- (b)  $P2$  is the percentage derived from the Table set out in the said Schedule for the unexpired portion of the lease

at the time of the grant of the sub-lease or the assignment of the lease or the sub-lease, as the case may be.

(9) Where –

- (a) a new dwelling is the subject of a transaction to which the provisions of this section apply which consists of the lease or the sub-lease of the dwelling, and
- (b) if the said dwelling had been owned by the lessee or the sub-lessee, as the case may be, then by virtue of the provisions of section 9 a proportion of the chargeable profit would have been excluded from the charge to profits tax in respect of such dwelling,

the provisions of that section shall apply to the computation of the chargeable profit under this section as if the said dwelling had at all material times been owned by the said lessee.

(10) The foregoing provisions of this section shall apply, subject to such adaptations and modifications as the [Director] may consider necessary, in relation to a transaction to which this Law applies which consists of the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a right of usufruct in a new dwelling as they apply in relation to a transaction to which this Law applies which consists of the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a new dwelling.

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**NOTE**

*In section 6, the word in square brackets was substituted by the Director of*

*Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>5</sup>*

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**Calculated profit from certain other transactions.**

7. The chargeable profit accruing to a person from a transaction to which this Law applies by virtue of section 2(1)(e), (f) or (g) shall be such amount as shall be computed and adjusted at the discretion of the [Director] in accordance with the provisions of section 16.

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**NOTE**

*In section 7, the word in square brackets was substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>6</sup>*

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**Calculation of inflation element.**

8. The amount to be applied by way of the inflation element to the purchase price or development cost of a new dwelling in accordance with the provisions of section 5(3) or 6(4) in respect of expenditure incurred during any quarter (that is, November to January inclusive, February to April inclusive, May to July inclusive and August to October inclusive) is a percentage equal to 100 less than the cube root of  $10,000(100 + F)$  where F is the percentage increase in the Index of Retail Prices compiled by or on behalf of the States of Guernsey for the immediately preceding quarter:

PROVIDED that the States of Alderney may by Ordinance prescribe the amount of the inflation element which is to be applied in respect of any period for which no such Index of Retail Prices is compiled.

**Apportionment of chargeable profit in case of mixed properties.**

9. Subject to the provisions of section 10(1)(i), where a new dwelling is specifically divided into sections or parts at least one of which has been used or has been available for use solely for the purpose of a business ("**the business section**") during the period of 12 months immediately preceding the date of the completion of any transaction to which this Law applies there shall be excluded from the chargeable profit computed in accordance with the provisions of section 5 or 6, as the case may be, such proportion of the said chargeable profit as the adjusted floor area of the business section bears to the adjusted floor area of the dwelling, where –

**"the adjusted floor area of the business section"** means the total internal floor area of the business section multiplied by a factor of 4, and

**"the adjusted floor area of the dwelling"** means the amount arrived at after deducting from the actual total internal floor area of the dwelling the actual floor area of the business section thereof and adding to the amount so obtained the adjusted floor area of the business section:

PROVIDED that for the purposes of any of the aforesaid calculations no account shall be taken of the areas of any garden, shed or other domestic outbuilding, as the case may be, within the curtilage of the dwelling.

**Transactions exempt from profits tax.**

10. (1) Notwithstanding the provisions of section 1, profits tax shall not be chargeable in respect of any chargeable profit accruing to a person from any transaction to which this Law applies which consists of –

- (a) the sale of a new dwelling by a person after the expiration of a period of 5 years from the date upon which that dwelling is certified by the Building and Development Committee as having been completed in accordance with the terms and conditions of a new

dwelling development permission,

- (b) the sale of a new dwelling by a person who proves to the satisfaction of the [Director] that on or before the 6<sup>th</sup> July 2001 he had committed himself to the sale of the dwelling,
- (c) the grant of a lease of a new dwelling by a person after the expiration of a period of 5 years from the date upon which that dwelling is certified by the Building and Development Committee as having been completed in accordance with the terms and conditions of a new dwelling development permission,
- (d) the grant of a lease of a new dwelling by a person who proves to the satisfaction of the [Director] that on or before the 6<sup>th</sup> July 2001, he had committed himself to the grant of the lease of the dwelling,
- (e) the grant of a sub-lease or the assignment of a lease or a sub-lease of a new dwelling by a person after the expiration of a period of 5 years from the date upon which that dwelling is certified by the Building and Development Committee as having been completed in accordance with the terms and conditions of a new dwelling development permission,
- (f) the grant of a sub-lease or the assignment of a lease or a sub-lease of a new dwelling by a person who proves to the satisfaction of the [Director] that on or before the 6<sup>th</sup> July 2001 he had committed himself to such grant or

such assignment,

- (g) the sale of a new dwelling or the grant of a lease of a new dwelling by a person who acquired the dwelling as a result of saisie proceedings unless –
  - (i) the person so acquiring the dwelling ("**the new owner**") was a body corporate in which the person from whom the property was so acquired ("**the former owner**") had the controlling interest at the time when the saisie proceedings were instituted or the former owner was a body corporate in which the new owner had the controlling interest at the said time or both the former owner and the new owner are bodies corporate and some other person had the controlling interest over both of them at the said time, or
  - (ii) it appears to the [Director] that the sole or main purpose of the saisie proceedings was the avoidance or reduction of liability to profits tax,
- (h) the sale of a new dwelling or the grant of a lease of a new dwelling by a person in the ordinary course of his business, the sole or main activity of which is the construction, reconstruction, repair or renovation of buildings where –
  - (i) that dwelling was constructed by that person in the ordinary course of such business, or



- (ii) that dwelling was acquired in the course of such business and an amount of not less than 20% of the selling price of such dwelling has been expended wholly and exclusively upon the conversion, reconstruction, repair or renovation of the dwelling,
- (i) the sale of a new dwelling or the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a new dwelling, by a person, where the floor area of the business section of the dwelling amounts to at least 70% of the total floor area of the dwelling, or
- (j) the sale of a new dwelling or the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a new dwelling by or on behalf of the States of Alderney.

(2) Notwithstanding the provisions of section 1, profits tax shall not be chargeable in respect of any chargeable profit accruing to a charity from any transaction to which this Law applies if, and so far as, the chargeable profit is applied to charitable purposes only.

(3) Any reference in any of the provisions of subsection (1) –

- (a) to the sale of a new dwelling or the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a new dwelling shall be deemed to include a reference to the sale of a right of usufruct in a new dwelling or the grant of a lease or a sub-lease or the assignment of a

lease or a sub-lease of a right of usufruct in a new dwelling, as the case may be,

- (b) to the acquisition of the ownership of a new dwelling or a lease or a sub-lease of a new dwelling shall be deemed to include a reference to the acquisition of a right of usufruct in a new dwelling or a lease or a sub-lease of a right of usufruct in a new dwelling, as the case may be.

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**NOTE**

*In section 10, the words in square brackets were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>7</sup>*

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**Certificate of completion.**

**11.** (1) An application for such certification as is mentioned in sections 10(1)(a), (c) and (e) may be made by such person, and shall be in such form and accompanied by such information, as the Building and Development Control Committee may determine.

(2) If the Building and Development Control Committee refuses to issue such certification as is mentioned in subsection (1) the applicant may appeal to the Court under section 21 of the Building and Development Law as if –

- (a) such refusal were a decision to refuse any development permission, and
- (b) the references to "Committee" and "Chairman" therein appearing were references to the Building and

Development Control Committee and the Chairman of the Building and Development Control Committee respectively.

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**NOTE**

*The Building and Development Control (Alderney) Law, 1975 ("the Building and Development Law") has since been repealed by the Building and Development Control (Alderney) Law, 2002, section 77(1), Schedule, paragraph 1, with effect from 1st August, 2003, subject to the savings in section 77(2) of the 2002 Law.*

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**Charge and payment of profits tax on sales.**

**12.** (1) In the case of a transaction to which this Law applies which consists of the sale of a new dwelling, the vendor shall, prior to the commencement of the period of 28 days next preceding the date of the said transfer, furnish the [Director], in writing, with the following information –

- (a) his name and address,
- (b) the address of the dwelling which is to be transferred,
- (c) the date of the relevant new dwelling development permit,
- (d) the date on which it is intended to transfer the dwelling to the intending purchaser thereof,
- (e) the name and address of the intending purchaser of the dwelling,
- (f) the date on which the dwelling was certified by the

Building and Development Control Committee as having been completed in accordance with the terms and conditions of the new dwelling development permission.

(2) On the same date as the vendor furnishes the [Director] with the information required by the provisions of subsection (1), he shall send to the [Director] a statement, in writing, signed by him and the intending purchaser stating

—

- (a) the consideration which is to be included in the transfer of the dwelling, and
- (b) that the consideration is the full consideration for the sale of the dwelling and that no other consideration has been or will be paid, either directly or indirectly, by the intending purchaser, to, or on behalf of, the vendor for the sale of the dwelling.

(3) Upon receipt of the information and the statement required to be furnished to him under subsections (1) and (2), the [Director] may require the vendor or the intending purchaser, or both, to furnish him with such further information as the [Director] may consider necessary or desirable.

(4) From the information and the statement furnished to him in accordance with the preceding provisions of this section, the [Director] shall determine —

- (a) whether the transaction is exempt from profits tax, or
- (b) if the transaction is not so exempt, the amount of

chargeable profit which accrued from the transaction and the amount of the profits tax chargeable thereon.

(5) A notice in writing stating the amount of the chargeable profit accruing to a person from a transaction to which subsection (1) relates and the amount of profits tax chargeable thereon shall be served by the [Director] on the person chargeable with the profits tax under the provisions of section 3 and the amount of such profits tax shall be paid to the [Director] by the said person prior to the date on which the new dwelling to which the transaction relates is transferred to the purchaser thereof or prior to such later date as the [Director] may, in his discretion, allow.

(6) Notwithstanding section 16(2) of the Alderney Land and Property, etc. Law, 1949<sup>a</sup> the Registrar shall not alter the Register so as to show a change of ownership unless he is satisfied –

- (a) that the transaction is not a transaction to which this Law applies, or
- (b) that, although this Law applies to the transaction it is exempt from profits tax, or
- (c) if this Law applies to the transaction and it is not exempt from profits tax –
  - (i) that the profits tax chargeable thereon has been paid in accordance with the provisions of subsection (5), or

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<sup>a</sup> Ordres en Conseil Vol. XIV, p. 67; Vol. XV, p. 268; Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156 and No. VII of 1994.

- (ii) that the profits tax chargeable thereon is not payable until such later date as the [Director] has, in the exercise of his discretion under the provisions of subsection (5), allowed.

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**NOTE**

*In section 12, the words in square brackets were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>8</sup>*

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**Charge and payment of profits tax on transactions other than sales.**

**13.** (1) In the case of a transaction to which this Law applies other than the sale of a new dwelling, each party to the transaction shall prior to the commencement of the period of 28 days next preceding the date of such completion, inform the [Director] of the fact and furnish him with the date on which the transaction is to be completed and shall, upon being requested by notice in writing served on him or them, as the case may be, furnish the [Director], in writing, with such further information as the [Director] may require in order to determine –

- (a) whether the transaction is exempt from profits tax, or
- (b) if the transaction is not so exempt, the amount of the chargeable profit which accrued from the transaction and the amount of profits tax chargeable thereon.

(2) A notice in writing stating the amount of chargeable profit accruing from a transaction to which subsection (1) relates and the amount of profits tax chargeable thereon shall be served by the [Director] on the person chargeable with the profits tax under the provisions of section 3 and the amount of such profits tax shall be paid to the [Director] prior to the expiration of the period of 28 days next

following the date of such notice or prior to the expiration of such longer period as the [Director] may, in his discretion, allow.

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**NOTE**

*In section 13, the words in square brackets were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>9</sup>*

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**Appeals.**

**14.** (1) Any person aggrieved by a notice served on him by the [Director] under the provisions of section 12(5) or 13(2), as the case may be, shall be entitled to appeal to [the Guernsey Revenue Service Tribunal] on giving to the [Director] notice in writing (stating the grounds of appeal) within 21 days of the date of the said notice:

PROVIDED that [the Guernsey Revenue Service Tribunal] may admit an appeal if it is satisfied that owing to absence, sickness or other reasonable cause a person has been prevented from giving the aforesaid notice within the time limited.

(2) The provisions of sections 77 to 80 of the Income Tax Law shall apply in the case of an appeal under the provisions of subsection (1) as if the notice served by the [Director] under the provisions of section 12(5) or 13(2), as the case may be, were an assessment made under the provisions of the Income Tax Law.

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**NOTES**

*In section 14,*

*the word "Director" in square brackets, wherever occurring, was substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance;<sup>10</sup>*

*the words "the Guernsey Revenue Service Tribunal" in square brackets, wherever occurring, were substituted by the Guernsey Revenue Service Tribunal Ordinance, 2021, section 2, with effect from 1st January, 2022.*

*The jurisdiction, privileges, functions, rights and liabilities of the Guernsey Tax Tribunal and of its members and officers arising under or by virtue of this Law were transferred to and vested in, respectively, the Guernsey Revenue Service Tribunal and its members and officers by the Guernsey Revenue Service Tribunal Ordinance, 2021, section 1, subject to, first, the savings and transitional provisions in section 3 and, second, the provisions of section 5 and section 6 of the 2021 Ordinance.*

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**Recovery of profits tax.**

15. Any profits tax which becomes payable in pursuance of the provisions of this Law may be recovered as a civil debt due to the Authority.

**General provisions against legal avoidance.**

16. (1) Where the [Director] is of opinion that the main purpose, or one of the main purposes, of a transaction or series of transactions is the avoidance or reduction of the liability of any person to profits tax, he may, in his discretion, direct that such adjustments be made as respects the liability of that person to the profits tax as may in his opinion be appropriate to counteract the avoidance or reduction of liability which would otherwise be effected by such transaction.

(2) Without prejudice to the generality of the provisions of subsection (1), the [Director] may, in particular, direct –

- (a) that profits tax be charged on any person who, but for such adjustments directed to be made under the provisions of subsection (1), would not be chargeable with any profits tax or would not be so chargeable to the same extent,



- (b) that profits tax shall be charged on any person in a greater amount than would be chargeable but for any adjustments directed to be made under the provisions of subsection (1).

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**NOTE**

*In section 16, the words in square brackets were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>11</sup>*

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**Service of notices.**

**17.** Any notice which may be served for the purposes of this Law shall be validly served –

- (a) on any person, if delivered to him, left, or sent by registered post or by recorded delivery service to him, at his usual or last known place of abode,
- (b) on any firm if delivered to any partner of the firm or left at, or sent by registered post or by recorded delivery service to, the principal or last known principal place of business of the firm,
- (c) on any body corporate, if left at, or sent by registered post or by recorded delivery service to its registered office if situate in Alderney or, if its registered office is not so situate, its principal or last known principal place of business in Alderney.

**General penalty.**

**18.** Any person who fails to comply with the provisions of section 12 or 13 shall be guilty of an offence and liable, on conviction, to a fine not exceeding £10,000.

**False statements, etc.**

**19.** Any person who makes any statement or furnishes any information which he is required to make or furnish under or by virtue of any of the provisions of this Law which he knows to be false, or recklessly makes any such statement or furnishes any such information which is false, in a material particular shall be guilty of an offence and liable, on conviction, to a fine not exceeding £10,000.

**Failure to supply information.**

**20.** Any person who without reasonable excuse fails to make any statement or furnish any information which he is required to make or furnish under or by virtue of any of the provisions of this Law shall be guilty of an offence and liable, on conviction, to a fine not exceeding £5,000.

**Penalty for fraudulent practices.**

**21.** Any person who in order not to be charged with profits tax or to be charged with a lesser amount of profits tax than that with which he ought to be charged, is guilty of any fraud whatsoever, shall be guilty of an offence and liable, on conviction, to a fine not exceeding £10,000 or three times the profits tax chargeable under this Law, whichever is the greater.

**Penalty for aiding and abetting.**

**22.** Any person who wilfully aids or abets another person in committing any offence under the provisions of this Law shall, if the said offence involves fraud, be guilty of an offence and liable, on conviction, to a fine not exceeding £5,000.

**Offences by bodies corporate.**

23. Where an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he as well as the body corporate shall be guilty of the offence and liable to be proceeded against and punished accordingly.

**Care and management of profits tax.**

24. Subject to the general direction and control of the Authority profits tax shall be under the care and management of the [Director].

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**NOTE**

*In section 24, the word in square brackets was substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>12</sup>*

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**Oath of secrecy.**

25. The oath taken by any person under the provisions of section 206 of the Income Tax Law shall apply to any official function discharged in the execution of this Law as if such function were a function discharged under the provisions of the Income Tax Law.

**Disposal of profits tax.**

26. The proceeds of the profits tax shall be paid by the [Director] to the [States Treasurer] for the account of the General Revenue of the States of Guernsey.

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**NOTES**

*In section 26,*

*the word in the first pair of square brackets was substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance;<sup>13</sup>*

*the words in the second pair of square brackets were substituted by the Chief Accountant (Transfer of Functions) (Guernsey) Ordinance, 2013, section 1, with effect from 1st December, 2013, subject to the savings and transitional provisions in section 2 of the 2013 Ordinance.<sup>14</sup>*

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**Interpretation.**

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

"[**Director**]" means the [Director of the Revenue Service] referred to in section 205 of the Income Tax Law,

"**Building and Development Law**" means the Building and Development Control (Alderney) Law, 1975<sup>b</sup>,

"**Building and Development Control Committee**" means the committee styled the Building and Development Control Committee as established by or pursuant to Part I of the Building and Development Law,

"**business**" includes any trade or commerce or any adventure or concern in the nature of trade or commerce but does not include any adventure or concern in the nature of trade or commerce where such adventure or concern relates to one dwelling only,

"**business section**" has the meaning given by section 9,

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<sup>b</sup> Ordres en Conseil Vol. XXV, p. 8; Vol. XXVI, p. 505; Vol. XXVI, p. 560; Vol. XXIX, p. 15; Vol. XXIX, p. 18; Vol. XXX, p. 21; Vol. XXXI, p. 396; No. XXI of 1994 and No. XXVI of 1997.

**"calendar year"** means the period commencing on the 1<sup>st</sup> January in any year and ending on the 31<sup>st</sup> December in that year,

**"charity"** means –

- (a) any body of persons or trust established for charitable purposes, and
- (b) where any property or fund the income whereof is applicable to charitable purposes only is entrusted to any person or body of persons, in relation to that property and the income thereof, that person or body,

**"chargeable profit"** has the meaning given by section 1,

**"controlling interest"** means in relation to a body corporate –

- (a) the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the Articles of Association or other document regulating that or any other body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person,
- (b) the power of a person who is a loan creditor of a body corporate and who is, in the opinion of the [Director], able to exercise that power to secure that the affairs thereof are conducted in accordance with the wishes of that person,

**"Court"** means the Court of Alderney,

**"dwelling"** means any premises, or any part of any premises, wholly or principally used or usable for the purposes of human habitation and includes –

- (a) a flat,
- (b) any land which the occupier of a dwelling has for his own occupation or enjoyment with that dwelling as its garden or grounds,
- (c) any garage, shed or other domestic outbuilding within the curtilage of a dwelling which the occupier of a dwelling has for his own occupation or enjoyment with that dwelling, and
- (d) a dwelling in the course of construction,

**"flat"** means a separate and self-contained set of premises constructed for the purposes of a dwelling and forming part of a building from some other part of which it is divided horizontally,

**"the Guernsey Tax Tribunal"** means the tribunal established by the Third Schedule to the Income Tax Law, 1975,

**"Income Tax Law"** means the Income Tax (Guernsey) Law, 1975<sup>c</sup>,

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<sup>c</sup> 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.

**"individual"** means a natural person and does not include a body corporate,

**"inflation element"** means such amount as may, from time to time, be computed in accordance with the provisions of section 8,

**"new dwelling"** means a dwelling constructed pursuant to a new dwelling development permission,

**"new dwelling development permission"** means a permission granted by the Building and Development Control Committee pursuant to the Building Control Law on or after 6<sup>th</sup> July 2001, which permits the construction of a dwelling by building, conversion or alteration,

**"premium"** includes any like sum whether payable to the immediate or superior lessor,

**"profits tax"** has the meaning given by section 1,

**"purchaser"** and **"vendor"** include joint purchasers and joint vendors respectively,

**"Register"** and **"Registrar"** have the same meanings as in the Alderney Land and Property, etc. Law, 1949,

**"transaction to which this Law applies"** shall be construed in accordance with section 2, and

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XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; Nos. IV and VIII of 1993; No. XXV of 1994; Nos. III and VII of 1995; No. V of 1996; Nos. IV and XXII of 1997; No. II of 1999 and No. IV of 2000.

**"transfer"**, except in section 2(1), means a transfer of ownership on sale.

(2) For the purposes of this Law any sum (other than rent) paid on or in connection with the granting of a lease, a sublease or the assignment of a lease or a sublease shall be presumed to have been paid by way of premium except in so far as other consideration for the payment is shown to have been given.

(3) Any reference in this Law to **"the sale of a new dwelling"** includes a reference to the sale of that dwelling together with any other property and, where any new dwelling is sold together with other property, so much of the net proceeds of the sale of the whole property as, on a just apportionment, is properly attributable to that dwelling shall, for the purposes of this Law, be deemed to be the net proceeds of the sale of the dwelling, and references to **"expenditure incurred on the acquisition or the purchase of a new dwelling"** shall be construed accordingly.

(4) For the purposes of subsection (3), all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are, or purport to be, agreed for certain items of that property or that there are, or purport to be, separate sales of separate items of that property.

(5) Any reference in this Law to another enactment shall include a reference thereto as from time to time amended, repealed, replaced, extended or applied.

(6) The wording of this Law closely follows that of the Dwellings Profits Tax (Guernsey) Law, 1975<sup>d</sup>, because their purposes correspond closely in

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<sup>d</sup> Ordres en Conseil Vol. XXV, p. 91; Vol. XXVIII, p. 294; Vol. XXXI, p. 464 and Vol. XXXII, p. 307.



certain respects and both will be administered by the [Director].

(7) The Interpretation (Guernsey) Law, 1948<sup>e</sup> applies to the interpretation of this Law as it applies to the interpretation of a Guernsey enactment.

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## NOTES

*In section 27, the words in, first, the square brackets in the definition of the expression "Director" in subsection (1), second the square brackets in the definition of the expression "controlling interest" in subsection (1) and, third, the square brackets in subsection (6) were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.<sup>15</sup>*

*In accordance with the provisions of the Dwellings Profits Tax (Suspension of Law) (Guernsey) Ordinance, 2009, section 1, the operation of the Dwellings Profits Tax (Guernsey) Law, 1975, as amended, is suspended during the period of operation of the 2009 Ordinance, with effect from 25th March, 2009, subject to the savings in section 2 of the 2009 Ordinance.*

*The Building and Development Control (Alderney) Law, 1975 has since been repealed by the Building and Development Control (Alderney) Law, 2002, section 77(1), Schedule, paragraph 1, with effect from 1st August, 2003, subject to the savings in section 77(2) of the 2002 Law.*

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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## **Suspension of Law.**

**28.** (1) The States may by Ordinance suspend the operation of all or any of the provisions of this Law during the period of operation of such Ordinance or during such period as may be specified therein.

(2) An Ordinance under subsection (1) may be amended or repealed by a subsequent Ordinance thereunder.

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<sup>e</sup> Ordres en Conseil Vol. XIII, p. 355.

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**NOTE**

*The following Ordinance has been made under section 28:*

*New Dwellings Profits Tax (Alderney) (Suspension) Ordinance 2007.*

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**Citation.**

**29.** This Law may be cited as the New Dwellings Profits Tax (Alderney) Law, 2001.

**Commencement.**

**30.** This Law shall be deemed to have come into force on 6<sup>th</sup> July, 2001.

SCHEDULE  
TABLE

## Section 6

<u>Years</u>	<u>Percentage</u>	<u>Years</u>	<u>Percentage</u>
50 (or more)	100	25	81.100
49	99.657	24	79.622
48	99.289	23	78.055
47	98.902	22	76.399
46	98.490	21	74.635
45	98.059	20	72.770
44	97.595	19	70.791
43	97.107	18	68.697
42	96.593	17	66.470
41	96.041	16	64.116
40	95.457	15	61.617
39	94.842	14	58.971
38	94.189	13	56.167
37	93.497	12	53.191
36	92.761	11	50.038
35	91.981	10	46.695
34	91.156	9	43.154
33	90.280	8	39.399
32	89.354	7	35.414
31	88.371	6	31.195
30	87.330	5	26.722
29	86.226	4	21.983
28	85.053	3	16.959

27	83.816	2	11.629
26	82.496	1	5.983

If the term of the lease at the commencement thereof or the unexpired portion of the lease at the time of the grant of the sub-lease or the assignment of the lease or the sub-lease, as the case may be, is not an exact number of years the percentage to be derived from the Table above shall be the percentage for the whole number of years plus one-twelfth of the difference between that and the percentage for the next higher number of years for each whole month, ignoring fractions of a month.

<sup>1</sup> These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

<sup>2</sup> These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

<sup>3</sup> This word was previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

<sup>4</sup> This word was previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

<sup>5</sup> This word was previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

<sup>6</sup> This word was previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the

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2009 Ordinance.

**7** These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

**8** These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

**9** These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

**10** These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

**11** These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

**12** This word was previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

**13** This word was previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

**14** These words were previously substituted by the States Treasurer (Transfer of Functions) (Guernsey) Ordinance, 2008, section 1, with effect from 1st February, 2008, subject to the savings and transitional provisions in section 2 of the 2008 Ordinance.

**15** These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.