

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004

(Registered on the Records of the Island of Guernsey
on the 12th May, 2005.)



2005

**VIII
2005**

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 12th day of May, 2005 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:— David Charles Lowe, Laurence Lenfestey Guille, Stephen Edward Francis Le Poidevin, Keith Bichard, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Esquires, and Susan Mowbray, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 7th day of May, 2005, approving and ratifying the *Projet de Loi* entitled “The Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2005”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED:-

1. That the said Order in Council be registered on the records of this Island and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney for registration on the records of that Island.

At the Court at Buckingham Palace

The 7th day of May, 2005

PRESENT,

The Queen's Most Excellent Majesty in Council

THE FOLLOWING report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“IN ACCORDANCE WITH YOUR MAJESTY’S General Order of Reference of the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolution of 21st June, 2004, the States of Deliberation at a meeting on 29th September, 2004, approved a Projet de Loi entitled “The Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 17th November, 2004 considered the Projet de Loi when a Resolution was passed agreeing to its application to Alderney. That the Project de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction The Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004, and to order that it shall have force of law in the Islands of Guernsey and Alderney and Herm.

“THE COMMITTEE have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it.”

HER MAJESTY, having taken the Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

HER MAJESTY'S Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004

THE STATES, in pursuance of their Resolution of the 21st June, 2004^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.

Retention tax.

1. (1) In this Law "**retention tax**" means monies required, pursuant to the terms of any approved international agreement, to be -

- (a) retained by deduction from any interest,
- (b) paid to the competent authority in Guernsey, and
- (c) forwarded (subject to any agreed deductions) to the prescribed authority of another territory.

(2) The States may by Ordinance make such provision as they think fit in relation to retention tax and for the purpose of implementing any approved international agreement which relates to retention tax, including (without limitation) provision as to the following matters -

^a Billet d'État No. VIII of 2004.

- (a) the person who, or the body or authority which, is to be the competent authority in Guernsey for the purposes of this Law,
- (b) the circumstances in which, the classes or descriptions of the interest from which, and the classes or descriptions of persons in respect of which, retention tax is to be retained by deduction,
- (c) the rates of, and allowances and deductions in respect of, retention tax, and the intervals at which it is payable,
- (d) the persons who are to retain by deduction retention tax ("paying agents"),
- (e) the obligations of paying agents including, without limitation, obligations as to -
 - (i) the keeping of records, and
 - (ii) the obtaining, and furnishing to the competent authority in Guernsey, of information,
- (f) the payment and recovery of retention tax and the enforcement of liabilities to pay it,
- (g) the making of returns of interest, and assessments to retention tax, and the preparation of statements of

account,

- (h) appeals in relation to retention tax, including the forum and grounds of such appeals and the parties thereto,
- (i) the forwarding of retention tax to the prescribed authorities of other territories,
- (j) the withholding by the competent authority in Guernsey of a proportion of the amount of retention tax collected, and the payment thereof to the General Revenues of the States or elsewhere,
- (k) where any monies equivalent to retention tax are retained by deduction in another territory on behalf of Guernsey pursuant to the provisions of an approved international agreement which relates to retention tax -
 - (i) the withholding by the relevant authority of that territory of a proportion of the amount of such monies so retained, and
 - (ii) the payment of the balance of those monies to the Guernsey authorities for the benefit of the General Revenues of the States or otherwise,
- (l) the confidentiality of information, and

(m) the imposition of time limits and other restrictions subject to which -

(i) any claim for repayment of monies retained by deduction pursuant to an Ordinance under this Law, and

(ii) any other proceedings in respect of the administration and enforcement of retention tax,

must be made.

(3) The States may also by Ordinance under this Law -

(a) make provision generally for the purpose of implementing any approved international agreement which relates to retention tax,

(b) provide for the obtaining (from paying agents and other persons) and exchanging of information in relation to -

(i) retention tax, and

(ii) interest,

whether as an alternative to the retaining by deduction of retention tax or otherwise for the purposes of any approved international agreement which relates to

retention tax,

- (c) provide that any monies equivalent to retention tax retained by deduction in another territory on behalf of Guernsey and forwarded to the Guernsey authorities pursuant to any such international agreement may be allowed in or towards satisfaction of any liability to income tax,
- (d) provide that the retaining by deduction by a paying agent of retention tax does not constitute a breach of any contractual or other duty to which he is subject to pay the interest without any such deduction, and
- (e) apply any of the provisions of the Income Tax Law to retention tax, and to any such international agreement, with such exceptions, adaptations and modifications as may be specified in the Ordinance.

Functions of competent authority to include collection, etc, of retention tax.

2. The functions of the competent authority in Guernsey include -

- (a) obtaining and exchanging information in relation to -
 - (i) retention tax, and
 - (ii) interest,
- (b) collecting and administering retention tax and forwarding it (subject to any agreed deductions) to the

prescribed authorities of other territories, and

- (c) any other functions conferred by Ordinance under this Law or by any enactment,

for the purposes of implementing and administering any approved international agreement which relates to retention tax.

Duty of confidentiality.

3. (1) No obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise is contravened by the disclosure by a person described in subsection (2) of any information to any person, body or authority -

- (a) for the purposes of an approved international agreement which relates to retention tax, or

- (b) in accordance with any requirement imposed or authorisation given by or under -

- (i) an Ordinance under this Law, or

- (ii) any other enactment.

(2) The persons referred to in subsection (1) are -

- (a) the competent authority in Guernsey,

- (b) any officer or servant of the States,

(c) any paying agent, and

(d) any other class or description of person specified in an Ordinance under this Law.

Interpretation.

4. (1) In this Law -

"approved", in relation to an international agreement, means that the agreement is approved for the purposes of this Law by Ordinance of the States,

"competent authority in Guernsey" means the person, body or authority specified as the competent authority in Guernsey for the purposes of this Law by Ordinance of the States,

"Department" means the States Treasury and Resources Department,

"implementing" and related expressions, in relation to an international agreement, includes the enforcement or enactment thereof, and the securing of the administration, execution, recognition, exercise or enjoyment thereof, in or under domestic law,

"income tax" means income tax under the Income Tax Law,

"Income Tax Law" means the Income Tax (Guernsey) Law, 1975^b,

"information" includes documents,

"interest" means interest, income and other amounts covered by the provisions of an approved international agreement which relates to retention tax,

"international agreement" means an agreement or arrangement made between the States and the government of another territory, and any other international obligation to which Guernsey is subject,

"prescribed authority" means -

- (a) the authority specified in an approved international agreement as the authority to which retention tax is to be forwarded, or
- (b) if no authority is so specified, then the authority specified by an Ordinance under this Law or by direction of the Department,

"retention tax" has the meaning given by section 1,

^b 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; the Income Tax (Guernsey) (Amendment) Law, 2004; the Income Tax (Guernsey Tax Tribunal) (Amendment) Law, 2004; and the Income Tax (Pension Amendments) (Guernsey) Law, 2004.

"States" means the States of Guernsey.

(2) References in this Law to an international agreement include references to any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under it.

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this enactment.

(4) 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.

General provisions as to subordinate legislation.

5. (1) The States may by Ordinance -

- (a) approve, for the purposes of this Law, any international agreement which relates to retention tax,
- (b) amend any provision of this Law, and
- (c) amend any provision of any other Law for the purpose of giving effect to the provisions of -
 - (i) this Law,
 - (ii) any Ordinance under it, and

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

- (iii) any approved international agreement which relates to retention tax.

(2) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance, and
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(3) 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,

(c) so as to make provision which has effect during any transitional period specified by any approved international agreement which relates to retention tax, or after any such period, or both during and after.

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

(a) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences and may (for the avoidance of doubt) specify penalties which may be imposed by the Magistrate's Court or the Court of Alderney which exceed the limits of jurisdiction for the time being imposed on those Courts by, respectively, section 10 of the Magistrate's Court (Guernsey) Law, 1954^d and section 13 of the Government of Alderney Law, 1987^e,

^d Ordres en Conseil Vol. XVI, p. 103; Vol. XXVII, p. 170; Vol. XXVIII, p. 5; and No. V of 1989.

^e Ordres en Conseil Vol. XXX, p. 37; and No. VI of 1989.

- (b) may direct that any provision of any approved international agreement which relates to retention tax shall have effect in Guernsey, Alderney and Herm with such exceptions, adaptations and modifications as may be specified in the Ordinance,
- (c) without prejudice to the provisions of paragraph (b), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision described in paragraph (b), which provision shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance under this Law,
- (d) may make provision for the purpose of dealing with matters arising out of or related to retention tax or any provision described in paragraph (b),
- (e) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (f) may authorise the Department to make regulations in respect of any matter in respect of which an Ordinance may make provision under this Law (other than provision approving an international agreement for the purposes of this Law), and

- (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 (including provision amending any enactment), but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

Citation.

6. This Law may be cited as the Foreign Tax (Retention Arrangements) (Guernsey & Alderney) Law, 2004.

Commencement.

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