

PROJET DE LOI

ENTITLED

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

[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. VIII of 2005; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). This Law is prospectively amended by the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2013 (No. XXI of 2013).

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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 provisions 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) 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

^a Billet d'État No. VIII of 2004.

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.

NOTE

The following Ordinances have been made under section 1:

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2006;

*Foreign Tax (Retention Arrangements) (Guernsey and Alderney)
(Amendment) Ordinance, 2010;
Foreign Tax (Retention Arrangements) (Guernsey and Alderney)
(Amendment) Ordinance, 2013.*

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.

NOTE

The following Ordinances have been made under section 2:

*Foreign Tax (Retention Arrangements) (Guernsey and Alderney)
Ordinance, 2005;
Foreign Tax (Retention Arrangements) (Guernsey and Alderney)
(Amendment) Ordinance, 2006;
Foreign Tax (Retention Arrangements) (Guernsey and Alderney)
(Amendment) Ordinance, 2010;
Foreign Tax (Retention Arrangements) (Guernsey and Alderney)
(Amendment) Ordinance, 2013.*

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.

NOTE

The following Ordinances have been made under section 3:

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2006;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2010;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2013.

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,

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

"implementing" and related expressions, in relation to an international agreement, includes the enforcement or enactment thereof, and the serving 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

^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; 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; Nos. II and VI of 1999; No. IV of 2000; Nos. VI and XVII of 2001; No. VII of 2002; Nos. 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 Amendment) (Guernsey) Law, 2004.

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 [Committee],

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

"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.

NOTES

In section 4, the words in, first, the first and, second, the second pairs of square brackets in the definition of the expression "Committee" in subsection (1) and, third, the word "Committee" in square brackets wherever else occurring were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 1, section 2, Schedule 1, paragraph 15(a) and section 5(1), Schedule 3, paragraph 1, with effect from 1st May, 2016.

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

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.

The following Ordinances have been made under section 4:

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2006;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2010;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2013.

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
 - (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,
- (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, adaptation 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,

^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.

- (f) may authorise the [Committee] 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.

NOTES

In section 5, the words in square brackets were 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.

The following Ordinances have been made under section 5:

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2006;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2010;

Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2013.

The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

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.

NOTE

The Law was brought into force on 1st July, 2005 by the Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005, section 1.
