

# ORDER IN COUNCIL

VII  
2003

ratifying a Projet de Loi

ENTITLED

## **The Direct Taxes (Sark) Law, 2002**

(Registered on the Records of the Island of Guernsey  
on the 14th April, 2003.)



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2003

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 14th day of April, 2003 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare and Michael John Tanguy, Esquires, Jurats.*

The Deputy Bailiff having this day placed before the Court a copy of an Order of Her Majesty in Council dated the 27th day of February, 2003, approving and ratifying a *Projet de Loi* of the Chief Pleas of Sark entitled "The Direct Taxes (Sark) Law, 2002", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ORDERED:—

1. That the said Order in Council be registered on the records of this Island.
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 Seneschal of Sark for registration on the records of that Islands.

# At the Court at Buckingham Palace

The 27th day of February, 2003

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 Chief Pleas of the Island of Sark:"

"That, in pursuance of their Resolution of 3rd April, 2002 and 13th August, 2002, the Chief Pleas of the Island of Sark at a meeting on 2nd October, 2002 approved a Projet de Loi entitled "The Direct Taxes (Sark) Law, 2002". That the Projet 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 Direct Taxes (Sark) Law, 2002" and to order that it shall have force of law in the Island of Sark."

"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 of and ratify the said 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 Island of Sark; 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 Direct Taxes (Sark) Law, 2002**

**THE CHIEF PLEAS OF SARK**, in pursuance of their Resolutions of 3<sup>rd</sup> April 2002 and 13<sup>th</sup> August 2002, 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 Sark.

### **DIRECT TAXES**

#### **Direct taxation**

1. (1) Chief Pleas may by Ordinance provide for the imposition for any financial year of direct taxes in accordance with this Law in order to raise revenue for or towards financing the budgeted cost during that financial year of such public purposes as Chief Pleas may by Resolution have determined should be provided or undertaken.

(2) The taxes which may be imposed for any financial year pursuant to this Law are either or both of the following -

(a) property tax;

(b) personal capital tax.

(3) An Ordinance imposing any direct tax for any financial year may

only be made during the preceding financial year.

(4) A Resolution determining public purposes for which revenue may be raised by direct taxes for any financial year may be made at any time prior to the commencement of that financial year.

(5) Without prejudice to the generality of subsection (1), an Ordinance under this section may provide for the imposition of direct taxes for any financial year for the purpose of establishing and maintaining a reserve fund in accordance with, and subject to the constraints of, Schedule 1.

(6) Nothing in this Law derogates from or applies to any right to levy or obligation to pay any taxes, dues, fees, charges or amounts payable pursuant to any other enactment or pursuant to any rule of customary law.

## **PROPERTY TAX**

### **Basis and amount of property tax**

2. (1) Property tax is a sum of money payable in accordance with, and subject to, any Ordinance under this Law, by the possessors of real property situated in Sark.

(2) The amount of property tax payable by a possessor of real property situated in Sark for any financial year is an amount calculated by reference to the number of quarters recorded in the Cadastre in respect of each such property in his possession, at such rate per quarter (but not exceeding a rate equivalent to £15 per quarter) as the Chief Pleas may by Ordinance prescribe.

### **Incidence of property tax**



3. (1) In any financial year the date by reference to which a person's possession of real property in Sark falls to be ascertained (the "reference date") is 1<sup>st</sup> April; and accordingly a person whose name is, or is deemed to be, recorded in the Cadastre as the possessor of any real property in Sark on 1<sup>st</sup> April in any year is liable to pay any property tax due in respect of that real property.

(2) Where the names of two or more persons are, or are deemed to be, recorded in the Cadastre as the possessors of any parcel of real property –

(a) the total amount of property tax recoverable from them in respect of that possession does not exceed the amount payable by reference to that property; but

(b) those persons are jointly and severally liable for the whole of that amount.

(3) Where no name is recorded in the Cadastre as the possessor of any real property the person whose name is recorded in the Cadastre as its owner is deemed to be also its possessor, and his name is deemed to be also so recorded as such, for all purposes of this Law.

#### **The Cadastre**

4. (1) The Douzaine shall maintain a Cadastre of all real property situated in Sark, divided into parcels so as clearly to identify separately each area of land appearing to the Douzaine to be separately possessed.

(2) In respect of each parcel of real property the Cadastre must record:

(a) the name(s) and address(es) of its owner(s);

- (b) the name(s) and address(es) of its possessor(s);
- (c) its location and approximate boundaries;
- (d) its approximate total land area;
- (e) the number and general description of buildings thereon;
- (f) such information as may be specified by any Ordinance under this Law concerning the buildings and open land comprised therein and their respective measurements, facilities and uses;
- (g) its designation and number of quarters respectively assigned and calculated by the Douzaine in accordance with any such Ordinance.

(3) The Cadastre shall be available for public inspection at the Greffe at all times when the Greffe is open to the public, and may be published in such other manner as the Douzaine consider appropriate.

(4) Subject to section 18, the Cadastre is conclusive evidence for the purposes of this Law (but only for those purposes) of the matters recorded therein.

#### **The principle of self-cadastration**

5. (1) In the matter of ascertaining all of the factors relevant to assigning a designation and calculating the number of quarters properly to be recorded in the Cadastre in respect of each parcel of real property situated in Sark, the good faith of its possessor and owner is to be presumed; but the corollary to this is that every



such possessor and owner is under a duty to make full and frank disclosure of all facts which may be material, and generally to demonstrate his utmost good faith in his dealings with the Douzaine and the Tribunal.

(2) Accordingly,

- (a) every owner of real property in Sark must within 28 days following the commencement of this section furnish to the Douzaine a declaration in writing in respect of that property containing all of the information required to be recorded in the Cadastre by section 4 (2) (a) to (f) inclusive; and
- (b) every possessor of real property in Sark (including, in the case of real property which at the material time has no other possessor, its owner) must within 28 days of any of the events described in subsection (3) furnish to the Douzaine a declaration in writing in respect of that property containing the information specified in that subsection.

(3) The events and information referred to in subsection (2) are -

- (a) following a change in the name or address of the owner(s) and/or possessor(s) of the real property concerned, the revised information required to be recorded in the Cadastre by section 4 (2) (a) and/or (b);
- (b) following any alteration of its boundaries, the revised information required to be recorded in the Cadastre by section 4 (2) (c) and/or (d);

- (c) following the completion, or the expiration of 18 months after the commencement (whichever is sooner), of any erection, extension or alteration of a building thereon, the revised information required to be recorded in the Cadastre by section 4 (2) (e);
- (d) following any change in the use thereof, or in any feature for the time being identified by an Ordinance making such provision as is contemplated by section 4 (2) (f), the revised information required to be recorded in the Cadastre by section 4 (2) (f).

(4) Unless the Douzaine have reason to question the truth or accuracy of any information furnished in accordance with this section, the Douzaine must, respecting the good faith of the person furnishing it, accept those matters; and must where appropriate (re)assign a designation and (re)calculate a number of quarters in respect of the real property concerned on the basis of that information.

(5) When the Douzaine make or revise any Cadastre record in consequence of a declaration furnished in accordance with this section they must as soon as possible notify the declarant, and any other person recorded in the Cadastre as an owner or possessor of the property concerned, of the record or revision.

#### **Cadastration of property by the Douzaine**

6. (1) If in the opinion of the Douzaine any person who appears to be a possessor of real property on Sark (including, in the case of real property which at the material time appears to have no other possessor, its owner)

- (a) has failed to comply with section 5, or
- (b) in purported compliance with section 5 has made a false, misleading or incomplete representation concerning any relevant matter,

then the Douzaine may, after notifying that person and any other person appearing to the Douzaine to be a possessor or owner of the property concerned, exercise their powers under this section.

(2) In a case to which this section applies –

- (a) the Douzaine may by notice in writing served on the person concerned require him to furnish, within such time as may be specified in the notice, such information and documents, verified in such manner if any as may be so specified, as may be required for the purposes of assigning a designation and calculating a number of quarters in respect of the real property concerned;
- (b) a person authorised in writing in that behalf by the Douzaine, and who has taken an oath pursuant to section 12 (3), may:
  - (i) at any reasonable time, and on production if so required of that authorisation, enter and remain on any part of the property concerned other than a building used as a dwelling;
  - (ii) having obtained a warrant so to do upon information

laid on oath before the Seneschal, in accordance with that warrant and on production of it if so required, enter and remain on any dwelling which is or is part of the property concerned;

and may in either case take such measurements, carry out such inspection and make such photographic or other record as he reasonably considers appropriate for the purposes of assigning a designation and calculating a number of quarters in respect of that property;

- (c) the Douzaine shall where appropriate (re)assign a designation and (re)calculate a number of quarters in respect of the real property concerned on the basis of all of the information available to them, whether pursuant to this section or otherwise, and their best assessment thereof.

(3) When the Douzaine make or revise a Cadastre record pursuant to this section they must as soon as possible notify any person recorded in the Cadastre as an owner or possessor of the property concerned of the record or revision, and of that person's rights under section 18.

### **Property tax Ordinances**

7. Chief Pleas may by Ordinance:

- (a) impose property tax for any financial year and prescribe the rate per quarter of that tax for that financial year;
- (b) provide for the identification of real property in Sark as

falling within one or another of such designations as may thereby be specified, according to the nature, description and use thereof;

- (c) provide for the identification of any such property as falling within two or more such designations and the consequences thereof for assignment purposes, and/or for circumstances in which one only of those designations is to be assigned thereto;
- (d) make provision for measuring the dimensions of land, and the dimensions and volumes of buildings (whether externally or internally), including provision concerning areas and/or spaces which are to be disregarded or specially treated;
- (e) prescribe the factors to be taken into account (which, without limitation, may include any facilities in or associated with any real property, in addition to its dimensions, volume, use and designation) in calculating the number of quarters to be recorded in respect of any real property;
- (f) make any provision not inconsistent with this Law regarding the compilation, revision, maintenance and administration of the Cadastre;
- (g) amend the reference to “£15” in section 2 (2) to an amount not exceeding £30;
- (h) alter the reference date specified in section 3 (1), but not so

that there is more than one reference date in any financial year nor so that the reference dates in any two financial years are less than 6 months apart;

- (i) provide generally for the imposition, determination, revision collection, enforcement and administration of property tax consistently with this Law.

## **PERSONAL CAPITAL TAX**

### **Basis and amount of personal capital tax**

**8.** (1) Personal capital tax is a sum of money payable in accordance with, and subject to, any Ordinance made under this Law, by natural persons having a taxable connection with Sark.

(2) The amount of personal capital tax payable by a natural person for any financial year is:

- (a) unless, being eligible so to do, he makes an election in accordance with paragraph (b) or paragraph (c), an amount calculated by reference to his net capital assets at such rate (not exceeding 1.0%) per pound thereof as Chief Pleas may by Ordinance prescribe, subject to:
  - (i) a minimum personal capital tax of such amount (not exceeding £500) as Chief Pleas shall by Ordinance prescribe (“the minimum personal capital tax”);
  - (ii) a maximum personal capital tax of such amount (not



exceeding £5,000) as Chief Pleas shall by Ordinance prescribe (“the maximum personal capital tax”); but

- (b) if he is recorded in the Cadastre as a possessor of a dwelling which he uses, when in Sark, as his sole or principal place of residence in the Island, and if he elects to pay personal capital tax in accordance with this paragraph, an amount equal to the property tax attributable to that dwelling for that financial year multiplied by such factor (not exceeding a factor of 5) as Chief Pleas may by Ordinance prescribe; or
- (c) if he is a member of the household of a person who has made an election in accordance with paragraph (b), and if he elects to pay personal capital tax in accordance with this paragraph, the minimum personal capital tax.

#### **Incidence of personal capital tax**

9. (1) In any financial year the date by reference to which the amount of a natural person’s liability to personal capital tax, including his eligibility to make an election in accordance with section 8 (2) (b) or (c), falls to be ascertained (“the reference date”) is the first date in that financial year on which he has a taxable connection with Sark.

(2) For the purposes of liability to personal capital tax a natural person has a taxable connection with Sark in any financial year if:

- (a) he is at least 18 years old; and
- (b) he is not in full-time education; and

- (c) he has at any time during the preceding 12 calendar months (whether during that or the preceding financial year) either:–
  - (i) spent an aggregate of 90 nights or more in Sark, or
  - (ii) had an ownership, leasehold or other interest in, or contractual right in relation to, any dwelling situated in Sark and available for his use for an aggregate of 90 nights or more.

#### **Personal capital tax Ordinances**

**10.** The Chief Pleas may by Ordinance:

- (a) impose personal capital tax for any financial year, and prescribe the rate of that tax per pound of net capital assets for that financial year;
- (b) prescribe, subject to section 8 (2) (a) and any Ordinance under this Law, the amounts of the minimum personal capital tax and the maximum personal capital tax;
- (c) exclude from the ambit of a person's net capital assets for the purposes of this Law such assets in such circumstances as may be specified, and make provision generally for the valuation of a person's net capital assets for the purposes of this Law;
- (d) prescribe, subject to section 8 (2) (b), the factor of property

tax to be used in calculating the personal capital tax liability of a person electing in accordance with section 8 (2) (b);

- (e) amend the references in section 8 (2) (a) to “£500” and “£5,000” to amounts not exceeding £1,000 and £10,000 respectively;
- (f) amend the references in section 9 (2) (c) to “90 nights” to a period of not less than 60 nights;
- (g) establish, within the overall maximum personal capital tax, reduced amounts of personal capital tax payable by specified descriptions of persons, or by any persons in specified circumstances;
- (h) identify descriptions of persons by whom, and/or circumstances in which:
  - (i) only the minimum personal capital tax, or
  - (ii) an amount less than the minimum personal capital tax, or
  - (iii) no personal capital tax

shall, notwithstanding any other provision of this Law, be payable;

- (i) provide generally for the imposition, determination, review,

collection (including deduction from wages, salaries and other recurring payments), enforcement and administration of personal capital tax consistently with this Law.

## **ADMINISTRATION OF DIRECT TAXES**

### **The Sark Tax Authorities**

**11.** (1) The Cadastre shall be under the care and management, in accordance with this Law, of the Douzaine.

(2) Apart from the Cadastre, all matters connected with the assessment and administration of direct taxes shall be under the care and management, in accordance with this Law, of the Sark Tax Assessor, whose office is established by Schedule 2 (“the Assessor”).

(3) The determination of differences and disputes as between

- (a) any person and the Douzaine concerning the particulars recorded or to be recorded in the Cadastre in respect of a parcel of real property of which that person is, is recorded as, or is intended to be recorded as, a possessor or an owner, or
- (b) any person and the Assessor concerning that person’s liability to pay any direct tax

shall be the responsibility, to be discharged in accordance with this Law, of the Sark Tax Tribunal established by Schedule 3.

(4) Chief Pleas shall provide for the Douzaine, the Assessor and the Tribunal, and shall finance the cost of, such staff, accommodation, facilities, and administrative/secretarial/ clerical services, as the Douzaine, the Assessor and the Tribunal (as the case may be) may reasonably require for the effective, efficient and just performance of their respective functions under this Law.

(5) The cost of meeting the requirements of subsection (4), as also the agreed emoluments and expenses of the Assessor and the Clerk to the Tribunal, and any expense allowances of Tribunal members, shall be paid by the Treasurer from the general revenues of Chief Pleas.

(6) The collection of direct taxes (whether self assessed under section 13 or assessed by the Assessor under section 14), and of any penalty imposed by the Assessor under section 16 is the responsibility of the Treasurer; and the Treasurer may recover the same as a civil debt due to Chief Pleas.

### **Confidentiality**

**12.** (1) All information concerning an individual which is received by or otherwise comes to the knowledge of any person in the course of or in connection with the exercise of any functions under this Law shall be regarded by that person as strictly confidential.

(2) A person must not disclose any such information except

(a) so far as is required for the proper performance of the functions under this Law of that person or of another person who has taken an oath pursuant to subsection (3);

(b) in connection with the prevention, detection, investigation or

prosecution of crime;

(c) in any other case required by law.

(3) The President and Members of the Douzaine, the Assessor, the President and Members of the Tribunal, the Clerk of the Tribunal, the Treasurer, and any person engaged by Chief Pleas in connection with their respective functions under this Law must, before he undertakes any of those functions or is permitted access to any information concerning an individual for the purposes of this Law, take an oath before the Seneschal's Court to comply with subsections (1) and (2).

### **The principle of self-assessment**

**13.** (1) In the matter of assessing the question of a person's liability to pay any description of direct tax for any financial year, that person's good faith is to be presumed; but the corollary to this is that every person who is or may be liable to pay direct tax is under a duty to make full and frank disclosure of all facts which may be material and generally to demonstrate his utmost good faith in his dealings with the Assessor and the Tribunal.

(2) Accordingly every person who –

(a) in respect of a year for which property tax is imposed, possesses real property situated in Sark, or

(b) in respect of a year for which personal capital tax is imposed, has a taxable connection with Sark,

must before the expiration of the 28 days next following the reference date



applicable in his case deliver to the Assessor his own declaration and calculation of the direct tax(es) which he is liable to pay, and his payment thereof.

(3) Unless the Assessor has reason to question the truth of that declaration, or the accuracy of that calculation, he must, respecting the good faith of the declarant, accept those matters, advise the Treasurer accordingly, and forward to the Treasurer the whole of any payment so made.

**Assessment of tax by the Assessor**

**14.** (1) If in the opinion of the Assessor any person who appears to be liable to pay direct tax for any financial year

- (a) has failed to comply with section 13 (2);
- (b) in purported compliance with section 13 (2) has made a false, misleading or incomplete representation of his liability,

then the Assessor may exercise his powers under this section to make a formal assessment of that person's liability to direct tax, and in connection therewith may also exercise his powers under any of sections section 15, 16 and 17.

(2) A formal assessment under this section shall:

- (a) be made in writing;
- (b) identify separately the tax assessed as property tax and personal capital tax;
- (c) identify separately the amount and basis of any penalty

imposed in accordance with section 16, and any direction given in accordance with section 17;

- (d) set out the information and assumptions on the basis of which each tax and any penalty has been assessed or imposed;
- (e) be served on the person thereby assessed and copied to the Treasurer;
- (f) contain a notice of the rights of the person thereby assessed under section 18;
- (g) be conclusive, unless challenged under section 18, of that person's liability to each of the taxes thereby assessed and any penalty thereby imposed.

### **Production of documents and information**

**15.** (1) Where the Assessor has reason to believe that a case may fall within section 14 (1) (a) or (b) he may, by notice in writing served on the person concerned, require him to furnish, within such time as may be specified in the notice, such information or documents, verified in such manner if any as may be so specified, as may reasonably be required for the purpose of determining whether or not that person is liable to pay any direct tax, and, if so, the amount of direct tax payable by him.

(2) The Assessor must give his reasons for such belief when exercising his powers under this section.

### **Penalties**

**16.** When making an assessment under section 14 the Assessor may include within it by way of penalty:

- (a) a fixed sum of an amount not exceeding 100% of the total amount of the tax(es) thereby assessed; and
- (b) a monthly penalty at a rate not exceeding 5% on the total amount of the assessment, including any fixed sum penalty, for each complete calendar month following the date of the assessment at the end of which it has not been paid in full.

**Legal avoidance**

**17.** (1) Where the Assessor is of the opinion that there has been a transaction or arrangement the main purpose or one of the main purposes of which is the avoidance or reduction of the liability of any person to any direct tax, he may, in his direction, include in an assessment made under section 14 a direction that:

- (a) such liability to that tax shall be imposed upon that person; or
- (b) such adjustments shall be made in respect of the liability of that person to that tax,

as may in his opinion be appropriate to counteract the avoidance or reduction of liability which would otherwise be effected by or in consequence of the transaction or arrangement; and that person shall (unless he can show that the transaction or arrangement is question was not such a transaction or arrangement as is described in this subsection, and subject to section 18) be liable accordingly.

(2) Without prejudice to the generality of subsection (1), the Assessor may in any particular case direct that –

- (a) any direct tax shall be charged on any person who, but for the direction, would not be liable to that tax or would not be so liable to the same extent;
- (b) any direct tax shall be charged on any person in a greater amount than would be chargeable but for the direction;

and that person shall, subject to section 18, be liable accordingly.

#### **Disputes as to liability**

**18.** (1) A person who wishes to:

- (a) contest the making of any record or revision in the Cadastre notified to him by the Douzaine under section 5 (5) or section 6 (3), or
- (b) dispute any aspect of an assessment made on him under section 14 (including any penalty imposed under section 16 and any direction given under with section 17)

may refer the matter to the Tribunal within the 40 days next following the date of service on him of the notification or assessment as the case may be.

(2) The grounds for such a reference shall be that the record, revision or assessment is wrong.

(3) The reference shall be made by a notice served on the Tribunal, and copied either to the President of the Douzaine or to the Assessor as the case requires; whereupon the effect of the record, revision or assessment shall, to the extent that it is thereby contested or disputed but not otherwise, be suspended pending the Tribunal's determination; and in the case of a disputed assessment the Assessor shall forthwith notify the Treasurer accordingly.

(4) The notice shall set out the material facts and general contentions upon which the appellant relies.

(5) On a reference under this section the appellant and the respondent shall each have the right to make oral representations, call witnesses, and ask questions of each other and of any witnesses.

(6) On a reference under this section the Tribunal shall consider the matter referred to it de novo, and may at the conclusion thereof -

- (a) in the case of a contested record or revision in the Cadastre
  - (i) set aside the record or revision and substitute such record or revision as appears correct to the Tribunal;  
or
  - (ii) confirm the record or revision, with or without modification; or
  - (iii) remit the matter to the Douzaine for reconsideration with such directions as the Tribunal consider appropriate;

- (b) in the case of a disputed assessment:
  - (i) set the assessment aside and substitute such assessment as appears correct to the Tribunal; or
  - (ii) confirm the assessment, with or without modification; or
  - (iii) remit the matter to the Assessor for reconsideration with such directions as the Tribunal consider appropriate.

(7) A record, revision or assessment which is confirmed or substituted by the Tribunal in accordance with subsection (6) is immediately effective as such for all purposes of this Law (but has no effect, in the case of a record or revision, for any other purpose) and any tax (including any penalty) due in consequence thereof must, subject to any direction given on an appeal in accordance with subsection (8), be paid to the Treasurer forthwith.

(8) An appeal to the Seneschal's Court shall lie from a decision of the Tribunal under this section on a question of law; and such an appeal shall be made and conducted within such period and in such manner as may be prescribed by Rules made and published by the Seneschal's Court.

## **MISCELLANEOUS AND SUPPLEMENTARY**

### **Offences**

**19.** (1) Any person who -



- (a) wilfully obstructs or fails to co-operate with the Douzaine, the Assessor or the Tribunal in the exercise of their functions under this Law;
- (b) without prejudice to the generality of paragraph (a), fails without reasonable cause to comply with a notice served on him under section 6 (2) (a) or section 15;
- (c) knowingly makes a false, misleading or incomplete statement, or recklessly makes a statement which is false, misleading or incomplete in any material respect, for any purpose of or connected with this Law;
- (d) knowingly furnishes any false, misleading or incomplete document or information, or recklessly furnishes any document or information which is false, misleading or incomplete in any material respect, for any purpose of or connected with this Law,

is guilty of an offence and liable on conviction to a fine not exceeding level 4 on the Sark Uniform Scale.

(2) A person who contravenes section 12 (2) is guilty of an offence and liable on conviction to a fine not exceeding twice level 5 on the Sark Uniform Scale, or to imprisonment for a term not exceeding 6 months, or to both.

#### **General provisions in relation to Ordinances**

**20.** (1) An Ordinance under this Law –

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

(2) Any power conferred upon Chief Pleas 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.

### Service of documents

21. (1) Any document to be given, served or furnished under or for the purposes of this Law may be given, served or furnished –

- (a) on or to any person, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode or business in Sark;
- (b) on or to the Douzaine, the Assessor or the Tribunal, by being left at, or sent by post or transmitted to, the Greffe;

and in this section the expression “**by post**” means by registered post or recorded delivery service, and the expression “**transmitted**” means transmitted by telex, facsimile transmission or any similar means producing a document containing the text of the communication.

(2) If a person notifies the Douzaine, the Assessor or the Tribunal of an address for service within Sark for the purposes of this Law, any document to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

(4) Notwithstanding the provisions of subsections (1) to (3) and of any other rule of law in relation to the service of documents, no document to be given to or served on the Douzaine, the Assessor or the Tribunal under this Law shall be deemed to have been given or served until it is received.

(5) If a person upon whom a document is to be served under this Law is an infant or person under legal disability, the document shall be served on his guardian; and if there is no guardian, the Douzaine, Assessor or Tribunal President may apply to the Court of the Seneschal for the appointment of a person to act as guardian for the purposes of this Law.

(6) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received –

(a) in the case of a document sent to an address in the Channel Islands, the United Kingdom, or the Isle of Man, on the third day after the day of posting;

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting;

excluding in each case any Saturday or Sunday and any day which is a public holiday either in Sark or in the place to which the document is sent.

### **Interpretation**

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

**“appellant”** means a person who has referred a matter to the Tribunal under section 18;

**“budgeted”** in relation to an overall cost or particular item, means that the cost or item, as the case requires, has been approved by a meeting of Chief Pleas on the basis of proposals submitted to them concerning the public

finances of Sark for a particular financial year, and has received such other approvals as are for the time being required by law, whether under Part IV of the Reform Law or otherwise;

**“Cadastre”** means the record of all real property situated in Sark maintained by the Douzaine in accordance with section 4 and any Ordinance made under section 7;

**“Chief Pleas”** means the Chief Pleas of Sark;

**“direct tax”** means property tax and/or personal capital tax;

**“dwelling”** means premises wholly or principally used for the purposes of human habitation, including a flat (which means separate and self-contained premises constructed as a dwelling and forming part of a building from some other part of which it is divided horizontally and/or vertically); but does not include any hotel, guest house, hostel or similar accommodation; nor any accommodation provided by an employer for a bona fide employee as part of the terms of his employment (unless those terms provide for its termination by notice in excess of 90 days);

**“financial year”** means any period of 12 calendar months ending on 31<sup>st</sup> December, or on such other date as Chief Pleas may specify by an Ordinance made under this section, so, however, that no financial year may be a period of less than 12 calendar months;

**“freehold tenure”** means ownership in perpetuity of inheritance;

**“Her Majesty’s Procureur”** includes Her Majesty’s Comptroller;

**“this Law”** includes any Ordinance made under this Law;

**“a member of the household”** of a possessor of a dwelling means somebody who, when in Sark, normally occupies that dwelling together with its possessor (whether or not he is also a possessor of the dwelling) and who is related to that possessor (by blood, marriage or adoption) or is treated by that possessor as a member of his family or household;

the **“net capital assets”** of a person means the market value, net of bona fide loans and other liabilities attaching thereto, of all those assets beneficially owned by that person other than –

- (a) his principal dwelling in Sark and the fixtures, fittings and furnishings thereof,
- (b) purely personal effects, and
- (c) assets of a description excluded by any Ordinance made under this Law;

the whole as ascertained in accordance with any Ordinance made under this Law;

**“owner”** in relation to real property means a person in whom there is for the time being vested the nu-propriété of the land comprised in a tenement or of land held in freehold tenure;

**“possessor”** in relation to any real property means a natural person who is for the time being immediately entitled to occupy the property concerned,



whether:

- (a) as owner thereof without encumbrance;
- (b) as holder of a usufruct, leasehold or other interest therein;
- (c) as a beneficial owner of shares in a body corporate or as a beneficiary under a trust; or
- (d) pursuant to a contractual right in relation thereto,

whether or not he is in actual occupation, but does not include a person so entitled only as a bona fide employee, lodger or guest, whether for reward or not;

the “**principal dwelling**” of a person in Sark is the dwelling (which for the avoidance of doubt may be only an identifiable and self-contained part of larger premises used as a dwelling) which that person uses, when in Sark, as his sole or principal place of residence in the Island;

“**public purposes**” include the provision of services, benefits and facilities, and the implementation and maintenance of any projects of a revenue or capital nature, which are in each case considered by Chief Pleas to be necessary or expedient in order to

- (a) preserve or enhance the quality of life enjoyed by the whole community, any section of the community, or persons in particular need, or

- (b) secure or improve the social, economic or environmental quality and reputation of Sark, or
- (c) ensure the effective and fair administration of government and justice in Sark;

a **“quarter”** is a notional unit with reference to which real property is liable to be assessed for the purposes of property tax under this Law, the number of such quarters applicable to any particular parcel of real property being related to its size and nature, its use and designation, any facilities in or associated with it, and such other factors as may be prescribed by an Ordinance made under section 7;

**“real property”** includes all open land and buildings, irrespective of tenure, and, for the avoidance of doubt, includes a flat and any other real property which is, wholly or otherwise, above or below any other real property which is separately possessed;

**“the Reform Law”** means the Reform (Sark) Law, 1951 as amended<sup>1</sup>;

**“respondent”** means the President of the Douzaine, or the Assessor as the case requires;

**“Sark”**, for the avoidance of all doubt, includes its dependencies;

**“specified”** means set out in an Ordinance made under this Law;

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<sup>1</sup> Ordres en Conseil Vol. XV, p.215; Vol. XXIII, p. 200; Vol. XXXI, p. 320; No. XII of 1991.

**“taxable connection”** has the meaning given in section 9 (2);

**“the Treasurer”** means the holder for the time being of the office so styled in the Reform Law, and includes any person appointed by him to act as his deputy pursuant to Article 22 (7) of that Law.

**“the Tribunal”** means the Sark Tax Tribunal established by Schedule 3.

(2) Where a word or expression is defined in this Law, related words, expressions and parts of speech have corresponding meanings.

(3) Unless the context otherwise requires –

- (a) a reference in this Law to a provision by number and/or letter is to the provision of that number and/or letter in this Law;
- (b) a reference in a provision of this Law to a subdivision by number and/or letter is to the subdivision of that number and/or letter in that provision;
- (c) a reference in this Law to an enactment is to that enactment as from time to time varied, repealed and replaced, extended or applied by or under any other enactment.

(4) The Interpretation (Guernsey) Law, 1948<sup>2</sup> applies to the interpretation of this Law as it applies to the interpretation of an enactment in force in the Island of Guernsey.

### **Repeals and amendments**

**23.** (1) The Ordonnance Relative à la Taxe made by Chief Pleas on 4<sup>th</sup> April 1899, and the amendment to that Ordonnance made by Chief Pleas on 3<sup>rd</sup> October 1923 are repealed, but without prejudice to the institution or continuation of any proceedings for the recovery of any tax imposed thereunder before the commencement of this section.

(2) The Reform Law is amended as follows:

- (a) in section 16, for “shall, at the meeting after Christmas, present an estimate of such expenditure for the ensuing year,” there is substituted “shall, at a meeting in each financial year present an estimate setting out the budgeted cost during the next ensuing financial year of such public purposes as Chief Pleas may by Resolution have determined should be provided or undertaken;”;
- (b) in section 17, for “The consent” there is substituted “Subject to the provisions of the Direct Taxes (Sark) Law, 2002, the consent”;
- (c) section 20 is repealed;

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<sup>2</sup> Ordres en Conseil Vol. XIII, p.355

- (d) in section 26, for “regulated by the Lieutenant Governor” there is substituted “under the general oversight, subject to the provisions of the Direct Taxes (Sark) Law, 2002, of the Lieutenant Governor”.

(3) In the Reform (Amendment) (Sark) Law, 1981<sup>3</sup> paragraph 1 (g) (ii) is repealed.

### **Commencement**

**24.** This Law shall come into force as follows:

- (a) apart from sections 23 and 25 on the first day of the calendar month after its registration on the records of Sark;
- (b) section 23, on the first day of the first financial year for which the Chief Pleas impose personal capital tax by an Ordinance under this Law;
- (c) section 25, shall be deemed to have come into force on the date of passing of this Law by Chief Pleas.

### **Transitional Provisions**

**25.** Any power conferred by this Law to make any Ordinance or do any other act may be exercised at any time after the passing of this Law by Chief Pleas, but no such Ordinance shall come into force and no such act shall have legal effect until the remainder of this Law (except section 23) comes into force.

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<sup>3</sup> Ordres en Conseil Vol. XXVII, p. 385

### **Citation**

**26.** This Law may be cited as the Direct Taxes (Sark) Law, 2002.

**SCHEDULE 1**  
**THE RESERVE FUND**

**Establishment and limits of a reserve fund**

1. (1) The purposes for which direct taxes may be imposed under this Law include the establishment and maintenance by the Treasurer of a reserve fund.

(2) Only one reserve fund derived from direct taxes imposed under this Law may be maintained by the Treasurer at any time.

(3) The maximum sum which may be raised by direct taxes under this Law in any financial year towards the establishment and maintenance of the reserve fund is, subject to sub-paragraph (4), a sum equivalent to 20% of the mean average of the total sums raised during each of the three previous financial years by direct taxes imposed under this Law.

(4) The maximum sum which may at any time be held in the reserve fund is an amount equal to the budgeted cost of financing the public purposes which the Chief Pleas have by Resolution determined should be provided or undertaken in the then current financial year: **PROVIDED THAT** any interest or other income arising out of the investment of the reserve fund may be retained in the reserve fund notwithstanding that its total value is thereby increased to an amount in excess of that sum.

**Permitted uses of the reserve fund**

2. (1) The reserve fund may only be employed in or towards:

(a) the purchase, construction, structural adaptation or

extraordinary repair of any land or building used or intended for the purpose of, or

(b) other projects of a capital nature in connection with

providing services or facilities for the community of a medical, educational, recreational, social, cultural, governmental or judicial nature.

(2) In particular, the reserve fund may not be employed in or towards the ordinary maintenance of land, buildings or equipment, or any other expenses of a revenue nature.

**Approval for expenditure from the reserve fund**

3. The reserve fund may not be drawn upon for any of the purposes set out in sub-paragraph 2 (1) unless a specific proposition, stating the proposed amount and purpose, has been approved by a meeting of the Chief Pleas as a budgeted item.



**SCHEDULE 2**  
**THE SARK TAX ASSESSOR**

**Establishment and appointment of the Assessor**

1. (1) There is established by, and in accordance with the provisions of, this Schedule an office to be known as the office of the Sark Tax Assessor; and the holder of that office is referred to in this Law as “the Assessor”.

(2) The Assessor shall be appointed by Chief Pleas on the nomination of the Committee.

(3) The terms and conditions of the Assessor’s appointment shall be such as may from time to time be agreed between the Committee and the Assessor, provided that none of those terms or conditions shall be –

- (a) inconsistent with any other provision of this Schedule, or
- (b) construed so as to create a contract of employment or agency between the Chief Pleas or the Committee and the Assessor.

**The Assessor’s Status**

2. The Assessor is not a servant or agent of Chief Pleas or the Committee, but is a holder of public office and is under a duty to discharge the functions of that office with complete fairness, impartiality and independence.

**Tenure of office**

3. (1) Subject to the provisions of this paragraph, the Assessor shall hold

office for such term not exceeding five years as may be agreed between the Committee and the Assessor at the time of his appointment.

(2) The Assessor may only be relieved of his office before the expiration of its full term, by the Committee –

- (a) on receipt of a written request made by the Assessor, or
- (b) pursuant to a Resolution of Chief Pleas and with the written concurrence of the Lieutenant Governor.

(3) When the Assessor ceases to hold office by reason of the expiration of his term he shall be eligible for re-appointment.

#### **Performance of functions**

4. (1) For the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>4</sup>, but only for those purposes, a person whose services are made available to the Assessor by Chief Pleas pursuant to section 11 (4) is deemed to be

- (a) an employee of Chief Pleas, and
- (b) an officer responsible to the Assessor.

(2) Accordingly, the Assessor may arrange for any of the functions of his office to be performed in his name by such a person to the extent permitted by section 4 of that Law.

<sup>4</sup> Order in Council No. XXI of 1991

### **Accounting and reporting**

5. (1) The Assessor must:

- (a) maintain proper accounts, and proper records in relation to those accounts, concerning the operation of his office (but not in relation to the collection of direct tax from natural persons, which is the responsibility of the Treasurer);
- (b) furnish to the Committee, as often as the Committee may reasonably direct but at least once in each financial year, a full and accurate statement of those accounts.

(2) The Assessor must report in writing to the Committee (but without disclosing any confidential information) at least once in every financial year as to the discharge of his functions.

### **Presumption of authenticity**

6. Any document purporting to be issued by the Assessor and to be signed by or on behalf of the Assessor shall be deemed to be such a document unless the contrary is shown.

### **Interpretation**

7. In this Schedule “the Committee” means the General Purposes and Finance Committee of Chief Pleas.

**SCHEDULE 3**  
**THE SARK TAX TRIBUNAL**

**Establishment and functions of the Tribunal**

1. (1) There is established by, and in accordance with the provisions of, this Schedule a body to be known as the Sark Tax Tribunal.

(2) The Tribunal's functions consist of hearing and determining challenges and disputes, in relation to any matter referred to it under and in accordance with this Law and any other enactment.

**Membership of the Tribunal**

2. (1) The Tribunal is to comprise –

- (a) a President, and
- (b) a Vice-President, and
- (c) not more than three other members,

appointed from time to time by the Lieutenant Governor.

(2) No member of Chief Pleas, or of the Douzaine, and none of the Officers of the Island of Sark, is eligible for appointment as a Tribunal member.

(3) A member of the Tribunal shall hold office until whichever is the earlier of –

- (a) the date specified in that behalf in the instrument appointing

him or

- (b) his 72<sup>nd</sup> birthday, or, if the Lieutenant Governor so determines by reason of special circumstances in any particular case, his 75<sup>th</sup> birthday, or
- (c) his death, or
- (d) his resignation in accordance with sub-paragraph (3) of this paragraph, or
- (e) his removal in accordance with paragraph 3 of this Schedule.

(3) A member of the Tribunal may resign his office by giving not less than one month's written notice –

- (a) in the case of the President, to the Lieutenant Governor, or
- (b) in the case of any other member, to the Tribunal's President.

### **Removal from office**

3. (1) The Lieutenant Governor may, in accordance with this paragraph, remove a Tribunal member from office if it appears to the Lieutenant Governor that he –

- (a) has misbehaved in his office as such, or
- (b) is incapable of continuing as a member by reason of physical or mental illness, or

- (c) has been declared insolvent, or
- (d) has been unavailable without reasonable cause to sit as a member of the Tribunal for a period in excess of six consecutive months.

(2) The Lieutenant Governor shall not exercise his power under this paragraph without first inviting the Tribunal member concerned and Her Majesty's Procureur to make representations (including, if the Tribunal member so wishes, oral representations) to him, and taking into account any representations so made.

#### **Vacancies and replacements**

4. When a person ceases to be a member of the Tribunal –

- (a) a member to replace him shall be appointed by the Lieutenant Governor, but
- (b) the vacancy does not affect the validity of anything done by the Tribunal, and
- (c) any reference which has been commenced but not completed may be continued, even if the former member was sitting on the hearing of the reference, notwithstanding paragraph 6 (2) (a) of this Schedule.

#### **Clerk and expenses**

5. (1) Chief Pleas shall appoint a person who appears to Chief Pleas, after consultation with the Tribunal's President, to have appropriate qualifications and

experience to be the Clerk to the Tribunal.

(2) The Clerk shall –

(a) be responsible for the Tribunal's administration, and

(b) advise the Tribunal when so requested on questions of law.

(3) The appointment of the Clerk shall be on such terms (as to his remuneration and otherwise) as the Chief Pleas may from time to time determine, but he shall not be removed from office without the consent of the Tribunal's President.

(4) A member of the Tribunal shall be entitled to be paid an allowance in respect of his expenses in attending for the hearing of a reference or for any meeting of the Tribunal, of such amount as the Chief Pleas may from time to time resolve, but shall not be paid any remuneration for his services as such a member.

### **Hearings**

**6.** (1) On receiving notice of a reference in relation to any matter the President or Vice-President shall convene sufficient members to constitute a quorum.

(2) At the hearing of a reference–

(a) any three members constitute a quorum;

(b) the President or the Vice-President shall preside;

- (c) a member shall not sit if he has any direct or indirect pecuniary interest in the appeal;
- (d) every member, party, representative and witness has the same protections, immunities and duties as he would have if sitting or appearing in proceedings before the Court of the Seneschal;
- (e) the proceedings shall be conducted:
  - (i) in accordance with natural justice;
  - (ii) with as little formality, and with as much expedition, as a proper consideration of the matters before the Tribunal will permit;
- (f) the proceedings shall be in private unless the appellant requires that they be in public and the confidentiality of third parties so permits;
- (g) every question shall be determined by the opinion of the majority of the members sitting, but if they are equally divided the opinion of the person presiding shall prevail;
- (h) subject to this Schedule and the provisions of any other enactment, the Tribunal's procedure is within its discretion.

(3) The validity of proceedings before the Tribunal is not affected by mere formal deficiency or informality.



(4) The President or Vice-President may, by means of a certificate signed by him, correct any error arising from an accidental slip or omission in a decision of the Tribunal.

**Interpretation.**

7. In this Schedule -

“**the Clerk**” means the Clerk to the Tribunal appointed in accordance with paragraph 5 (1) of this Schedule;

“**member**” means a member, including the President and the Vice-President, of the Tribunal;

“**the Tribunal**” means the Sark Tax Tribunal established by this Schedule.