

ORDER IN COUNCIL

IX
1989

ratifying a Projet de Loi

ENTITLED

The Dwellings Profits Tax (Alderney) Law, 1989

(Registered on the Records of the Island of Guernsey
on the 16th May, 1989.)



1989

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 16th day of May, 1989 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:— Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 15th day of March, 1989 approving and ratifying a *Projet de Loi* entitled “The Dwellings Profits Tax (Alderney) Law, 1989”, 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.
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, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 15th day of March 1989

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 23rd day of February 1989 in the words following, viz.:—

“Your Majesty having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee a humble Petition of Jon Kay-Mouat, President of the States of Alderney, setting forth:

‘That at a meeting of the States of Alderney held on the 7th day of September 1988, the States adopted a Resolution that a Projet de Loi entitled “The Dwellings Profits Tax (Alderney) Law, 1988” be approved: That at the meeting of the States aforesaid Your Humble Petitioner was authorised to present to Your Majesty in Council a Petition that the said Projet de Loi be sanctioned: That the said Projet de Loi is set forth in the Schedule hereunto annexed: And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Projet de Loi entitled “The Dwellings Profits Tax (Alderney) Law, 1988” and to order that the same shall have force of Law within the Island of Alderney.’

“The Lords of the Committee in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the Projet de Loi annexed thereto into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of law within the Island of Alderney. .

AND HER MAJESTY doth hereby further direct that this Order and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being, of the said Island of Guernsey, and also the Jurats of the said Island of Alderney, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Dwellings Profits Tax (Alderney) Law, 1989

ARRANGEMENT OF SECTIONS

Section

1. Profits tax.
2. Transactions to which Law applies.
3. Persons chargeable to profits tax.
4. Rate of profits tax.
5. Calculated profit from a sale.
6. Calculated profit from a lease, etc.
7. Calculated profit from certain other transactions.
8. Calculation of inflation element.
9. Apportionment of chargeable profit in case of mixed properties.
10. Transactions exempt from profits tax.
11. Transactions involving new dwellings.
12. Treatment of any loss sustained from any transaction to which Law applies.
13. Income tax allowed as a deduction.
14. Charge and payment of profits tax on past transactions.
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17. Appeals.
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19. General provisions against legal avoidance.
20. Service of notices.
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22. False statements, etc.
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24. Penalty for fraudulent practices.
25. Penalty for aiding and abetting.
26. Offences by bodies corporate.
27. Care and management of profits tax.
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29. Disposal of profits tax.
30. Interpretation.
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SCHEDULE—Table

PROJET DE LOI

ENTITLED

The Dwellings Profits Tax (Alderney) Law, 1989

THE STATES, in pursuance of their Resolution of the 8th day of June, 1988, 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.

1. Subject to the succeeding provisions of this Law, **Profits Tax.** a tax (hereinafter referred to as "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 (hereinafter referred to as "the chargeable profit").

2. (1) This Law applies to any transaction relating **Transactions to which Law applies.** to any dwelling in Alderney which consist of:—

- (a) the sale of a dwelling;
- (b) the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a dwelling in consideration of a premium;
- (c) the sale of a right of usufruct in a 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 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 dwelling if, in the opinion of the Administrator, 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 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 Administrator, 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 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 said dwelling if, in the opinion of the Administrator, 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 the last preceding subsection, this Law shall not apply to

any transaction which consists of the grant of a lease or a sub-lease of a dwelling or a lease or a sub-lease of a right of usufruct in a 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 one year.

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:—

Persons
chargeable to
profits tax.

- (a) where the chargeable profit accrues to a person and that person is an individual, by that individual;
- (b) where the chargeable profit accrues to a person and that person is 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 paragraph (c) of the last preceding subsection the total amount of profits tax may, where the chargeable profit accrues to two or more persons, at the discretion of the Administrator, 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 Administrator in accordance with the provisions of section nineteen of this Law shall be chargeable and shall be paid:—

- (a) in the case of a transaction to which this Law applies by virtue of paragraph (e) of subsection (1) of the last preceding section,

by the first mentioned person referred to in the said paragraph (e);

(b) in the case of a transaction to which this Law applies by virtue of paragraph (f) of subsection (1) of the last preceding section, by the first mentioned beneficiary referred to in the said paragraph (f);

(c) in the case of a transaction to which this Law applies by virtue of paragraph (g) of subsection (1) of the last preceding section, by the first mentioned person referred to in the said paragraph (g).

**Rate of
Profits tax.**

4. Profits tax shall be charged at the rate of one hundred per centum upon the chargeable profit computed in accordance with the provisions of section five or section six of this Law or as so computed and adjusted at the discretion of the Administrator in accordance with the provisions of section nineteen of this Law, as the case may be.

**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 dwelling shall be the difference between the selling price of the dwelling and the purchase price of the dwelling both prices computed in accordance with the succeeding provisions of this section.

(2) The selling price of a dwelling referred to in the last preceding subsection 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 of a dwelling referred to in subsection (1) of this section 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 dwelling concerned by the vendor when he purchased the dwelling or, where the said vendor constructed the dwelling, the full amount of the expenditure incurred wholly and exclusively by him in connection with the construction of the dwelling;
- (b) any expenditure incurred by the vendor on any construction, reconstruction, renovation, alteration or extension of, or repairs to, the dwelling after the purchase or construction thereof;
- (c) where the dwelling was, at the time of purchase or construction, charged with a rente, any expenditure incurred on the redemption of any such rente by him;
- (d) such amount (hereinafter referred to as "the inflation element") as may, from time to time, be computed in accordance with the provisions of section eight of this Law: PROVIDED that the inflation element shall be applied to the amount of any expenditure referred to in the preceding paragraphs of this subsection 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 Administrator may consider necessary, in relation to a transaction to which this Law applies which consists of the sale of a right of usufruct in a dwelling as they apply in relation to a transaction to which this Law applies which consists of the sale of a dwelling.

Calculated
profit from
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 dwelling shall be the difference between the premium received in respect of such grant or assignment and the adjusted purchase price computed in accordance with the provisions of subsection (3) or subsection (4), as the case may be, of this section.

(2) The premium referred to in the last preceding subsection 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 referred to in subsection (1) of this section shall be the amount computed in accordance with subsection (3) of section five of this Law.

(4) Where the transaction consists of:—

(a) the grant of a sub-lease the adjusted purchase price referred to in subsection (1) of this section shall be the sum of the following amounts, that is to say:—

- (i) the full amount of the expenditure incurred on acquiring the head lease,
- (ii) any expenditure incurred by the lessee on any construction, reconstruction, renovation, alteration or extension of, or repairs to, the dwelling in respect of which the head lease was granted,
- (iii) the inflation element determined in accordance with the provisions of section eight of this Law;

(b) the assignment of a lease or a sub-lease the adjusted purchase price referred to in subsection (1) of this section shall be the sum of the following amounts, that is to say:—

- (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, reconstruction, renovation, alteration or extension of, or repairs to, the 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 eight of this Law.

(5) In the case of the grant of a lease or a sub-lease where any interest in the dwelling concerned is retained by the lessor or the sub-lessor, the adjusted purchase price referred to in subsection (3) or paragraph (a) of subsection (4) of this section shall be

reduced in accordance with the provisions of subsection (7) of this section 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 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 thereof a fraction of such adjusted purchase price in accordance with the provisions of subsection (8) of this section.

(7) Where the expenditure referred to in subsection (3) or subsection (4) of this section 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 said expenditure by the fraction $\frac{A}{A + B}$, where A is the consideration

referred to in subsection (2) of this section 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) of this section is $\frac{P1 - P2}{P1}$,

where—

- (a) 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 is P1;
- (b) 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, is P2.

- (b) 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, is P2.

(9) Where—

- (a) a 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 a 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 nine of this Law 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 Administrator 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 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 dwelling.

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 paragraph (e), (f) or (g) of subsection (1) of section two of this Law shall be such amount as shall be computed and adjusted at the discretion of the Administrator in accordance with the provisions of section nineteen of this Law.

Calculations
of inflation
element.

8. The amount to be applied by way of the inflation element to the purchase price of a dwelling in accordance with the provisions of subsection (3) of section five or subsection (4) of section six of this Law, in respect of expenditure incurred during any quarter (i.e. 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.

Apportion-
ment of
chargeable
profit in case
of mixed
properties.

9. Subject to the provisions of paragraph (o) of section ten of this Law, where a 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 (hereinafter referred to as "the business section") during the period of twelve 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 five or section six of this Law, 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 four, 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.

10. (1) Notwithstanding the provisions of section one of this Law but subject to section eleven, 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:—

Transactions
exempt from
profits tax.

(a) the sale of a dwelling by a person who acquired the ownership of that dwelling prior to the commencement of the period of twelve months immediately preceding the date of such sale if—

(i) the said dwelling had been occupied throughout any continuous period of twelve months by that person as his only or main residence, or

(ii) the said dwelling had been occupied throughout any continuous period of

twelve months by the spouse of that person as the only or main residence of that spouse,

or

- (iii) the said dwelling had been occupied for part of any continuous period of twelve months by that person and for the remainder of any such period of twelve months by the spouse of that person as the only or main residence of that person or that spouse, as the case may be; or
- (b) the sale of a dwelling by a person if he can prove to the satisfaction of the Administrator that on or before the 27th May, 1988 he had committed himself to the sale of the said dwelling; or
- (c) the sale of a dwelling by a person who acquired the ownership of that dwelling by gift inter vivos during the period of five years immediately preceding the date of such sale, by will or by operation of law otherwise than as a result of saisie proceedings; or
- (d) the sale of a dwelling by a body corporate which acquired the ownership of that dwelling prior to the commencement of the period of twelve months immediately preceding the date of such sale if, throughout the said period of twelve months, the said dwelling was occupied by a person having the controlling interest in that body corporate as his only or main residence and if the said person was occupying that dwelling on the 27th May, 1988;

- (e) the grant of a lease of a dwelling by a person who acquired the ownership of that dwelling prior to the commencement of the period of twelve months immediately preceding the date of such grant if, throughout the said period of twelve months, the said dwelling was occupied by that person as his only or main residence; or
- (f) the grant of a lease of a dwelling by a person who was occupying that dwelling on the 27th May, 1988, as his only or main residence if he can prove to the satisfaction of the Administrator that on or before the said 27th May, 1988, he had committed himself to the grant of the lease of the said dwelling; or
- (g) the grant of a lease of a dwelling by a person who acquired the ownership of that dwelling by gift inter vivos during the period of five years immediately preceding the date of such grant, by will or by operation of law otherwise than as a result of saisie proceedings; or
- (h) the grant of a sub-lease or the assignment of a lease or a sub-lease of a dwelling by a person who acquired the lease or the sub-lease of that dwelling prior to the commencement of the period of twelve months immediately preceding the date of such grant or such assignment if, throughout said period of twelve months, the said dwelling was occupied by that person as his only or main residence; or

(i) the grant of a sub-lease or the assignment of a lease or a sub-lease of a dwelling by a person who was occupying that dwelling on the 27th May, 1988, as his only or main residence if he can prove to the satisfaction of the Administrator that on or before the said 27th May, 1988 he had committed himself to such grant or such assignment;
or

(j) the grant of a sub-lease or the assignment of a lease or a sub-lease of a dwelling by a person who acquired the lease or the sub-lease of that dwelling by gift inter vivos during the period of five years immediately preceding the date of such grant, by will or by operation of law; or

(k) the sale of a dwelling or the grant of a lease of a dwelling by a person who acquired the dwelling as a result of saisie proceedings unless—

(i) the person so acquiring the dwelling (hereinafter referred to as "the new owner") was a body corporate in which the person from whom the property was so acquired (hereinafter referred to as "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 Administrator that the sole or main purpose of the said saisie proceedings was the avoidance or reduction of liability to profits tax; or
- (l) the sale of a dwelling or the grant of a lease or a sub-lease, or the assignment of a lease or a sub-lease of a dwelling if the said dwelling consists of—
 - (i) premises (other than a self-catering unit) in respect of which there is for the time being in force an accommodation permit granted under the Tourist (Alderney) Law, 1956(a) authorising the provision of sleeping accommodation for reward for at least eight persons, and if the Administrator is satisfied that throughout the twelve months immediately preceding the date of such sale, grant or assignment, the whole, or substantially the whole, of the said dwelling was used, or was genuinely available for use, for the purposes for which such accommodation permit was granted; or
 - (ii) a building which is designated as “self-catering tourist accommodation” pursuant to section 13A(1) of the Building and Development Control (Alderney) Law, 1975(b); or

(a) Ordres en Conseil Vol. XVII, p. 29; Vol. XXII, p. 6; Vol. XXVI, p. 251; Order in Council No. XXII of 1987.
 (b) Ordres en Conseil Vol. XXV, p. 8; Vol. XXVI, p. 560; Order in Council Nos. II and III of 1986; Nos. III and XXII of 1987; Section 13A was inserted by the Building and Development Control (Amendment) (Alderney) Law, 1987 (No. III of 1987).

- (iii) a nursing home, or a residential home, within the meaning of Part I of the Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1987(c); or
- (m) the sale of a dwelling or the grant of a lease of a sub-lease of a dwelling by a person who acquired the ownership of that dwelling or the lease or the sub-lease, as the case may be, of that dwelling, prior to the commencement of the period of five years immediately preceding the date of such sale, grant or assignment; or
- (n) the sale of a dwelling or the grant of a lease of a 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 if—
 - (i) the said dwelling was constructed in the ordinary course of such business, or
 - (ii) the said dwelling was acquired in the course of such business and an amount of not less than twenty per centum of the selling price of such dwelling has been expended wholly and exclusively upon the reconstruction, repair or renovation of the said dwelling; or
- (o) the sale of a dwelling or the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a dwelling by a per-

son if the floor area of the business section of the said dwelling amounts to at least seventy per centum of the total floor area of the said dwelling; or

- (p) the sale of a dwelling or the grant of a lease or a sub-lease or the assignment of a lease or a sub-lease of a dwelling by or on behalf of the States of Alderney.

(2) Notwithstanding the provisions of section one of this Law, 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) of this section:—

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

11. (1) Paragraphs (a), (e) and (h) of section 10(1) do not apply in the case of a new dwelling until the expiration of five years after the date on which it is certified by the Building and Development Con-

Transactions
involving new
dwellings.

trol Committee as having been completed in accordance with the terms and conditions of the permission for its construction granted under section 6 of the Building and Development Control (Alderney) Law, 1975.

(2) An application for such certification as is mentioned in subsection (1) of this section 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 from time to time determine.

(3) If the Building and Development Control Committee refuses such certification as is mentioned in subsection (1) of this section the applicant may appeal to the Court under section 21 of the Building and Development Control (Alderney) Law 1975 as if such refusal were a decision to refuse any permission applied for under that Law.

(4) For the purposes of this section "a new dwelling" means a dwelling for the construction of which, whether by building, conversion or alteration, the Building and Development Control Committee has granted permission under Section 6 of the Building and Development Control (Alderney) Law, 1975 on or after the 27th May, 1988.

Treatment
of any loss
sustained
from any
transaction
to which
Law applies.

12. (1) Where a loss is sustained by a person from any transaction to which this Law applies that loss shall, for the purposes of this section, be computed in like manner as a chargeable profit is computed in accordance with the provisions of sections five, six or seven of this Law, as the case may be.

(2) Where a loss computed in accordance with the provisions of the last preceding subsection is sustained by a person from any transaction to which

this Law applies it shall be set off against the whole or part of any chargeable profit accruing to the same person from any other transaction to which this Law applies during the same calendar year and any profits tax which has been paid on the whole or part of such chargeable profit against which the said loss has been set off shall be repaid to such person.

PROVIDED that if any part of such loss sustained cannot be set off in whole or in part, the amount not so set off shall be carried forward and set off against any chargeable profit accruing to the same person from any other transaction to which this Law applies in a subsequent calendar year.

(3) Any loss sustained by a person from any transaction to which this Law applies which if it were a chargeable profit would be exempt from profits tax in accordance with the provisions of section ten of this Law shall not be taken into account for any purpose under any of the provisions of this Law.

13. Where tax has been charged under the provisions of the Income Tax (Guernsey) Law, 1975(d), on profit accruing to a person from any transaction to which this Law applies, the whole amount of such tax shall be allowed as a deduction from any profits tax charged in respect of that transaction.

Income Tax
allowed as a
deduction.

14. (1) In the case of a transaction to which this Law applies completed during the period which commenced on the 27th May, 1988, and ended one month after the date of the registration of this Law on the records of the Island of Guernsey:

Charge and
payment of
profits tax
on past
transactions.

(d) Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XLVII, pp. 84, 118, 200, 333, 565; No. XV of 1983; No. IX of 1984.

- (a) which consists of the sale of a dwelling, the vendor; or
- (b) which consists of such a transaction other than the sale of a dwelling, each party to the transaction; shall, prior to the expiration of the period of one month next following the date of the registration of this Law, inform the Administrator of the fact and furnish him with the date of the completion of the transaction and shall, upon being requested by notice in writing served on him or them, as the case may be, by the Administrator, furnish the Administrator, in writing, with such information as the Administrator may require in order to determine:
 - (i) whether the transaction is exempt from profits tax; or
 - (ii) 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.

(2) A notice in writing stating the amount of chargeable profit accruing to a person from a transaction to which the last preceding subsection relates and the amount of profits tax chargeable thereon shall be served by the Administrator on the person chargeable with the profits tax under the provisions of section three of this Law and the amount of such profits tax shall be paid to the Administrator by the said person prior to the expiration of the period of twenty-eight days next following the date of such notice or prior to the expiration of such longer period as the Administrator in his discretion, may allow.

15. (1) In the case of a transaction to which this Law applies which consists of the sale of a dwelling the transfer of which is to be completed more than one month after the date of the registration of this Law on the records of the Island of Guernsey, the vendor shall, prior to the commencement of the period of twenty-eight days next preceding the date of the said transfer, furnish the Administrator, in writing, with the following information:

Charge and
payment of
profits tax on
future sales.

- (a) the name and address of the said vendor;
- (b) the address of the dwelling which is to be transferred;
- (c) the date on which the said vendor purchased the said dwelling or, if he acquired the dwelling otherwise than by purchase, the date on which it was so acquired;
- (d) the date on which it is intended to transfer the said dwelling to the intending purchaser thereof;
- (e) the name and address of the intending purchaser of the said dwelling;
- (f) whether the said dwelling has been or will have been occupied by the vendor as his only or main residence throughout the period of twelve months immediately preceding the date on which the information is supplied or the date on which the dwelling is to be transferred, as the case may be;
- (g) in the case of a new dwelling as defined in section 11, the date on which it was certified by the Building and Development Control Committee as having been completed in accordance with the terms and conditions of the permission for its construction.

(2) On the same date as the said vendor furnishes the Administrator with the information required by the provisions of the last preceding subsection the said vendor shall send to the Administrator a statement, in writing, signed by the said vendor and the said intending purchaser stating:

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

(3) Upon receipt of the information and the statement required to be furnished to him under the last two preceding subsections the Administrator may require the said vendor or the intending purchaser, or both, to furnish him with such further information as the Administrator 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 Administrator 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) of this section relates and the amount of profits tax chargeable thereon shall be served by the Administrator on the person chargeable with the profits tax under the provisions of section three of this Law and the amount of such profits tax shall be paid to the Administrator by the said person prior to the date on which the dwelling to which the transaction relates is transferred to the purchaser thereof or prior to such later date as the Administrator may, in his discretion, allow.

(6) Notwithstanding section 16(2) of the Alderney Land and Property, &c., Law, 1949(e) 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 the last preceding subsection, or
 - (ii) that the profits tax chargeable thereon is not payable until such later date as the Administrator has in the exercise of his discretion under the provisions of the last preceding subsection allowed.

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

16. (1) In the case of a transaction to which this Law applies other than the sale of a dwelling and which is to be completed more than one month after the date of the registration of this Law on the records of the Island of Guernsey, each party to the transaction shall prior to the commencement of the period of twenty-eight days next preceding the date of such completion, inform the Administrator 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 Administrator, in writing, with such further information as the Administrator 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 to a person from a transaction to which the last preceding subsection relates and the amount of profits tax chargeable thereon shall be served by the Administrator on the person chargeable with the profits tax under the provisions of section three of this Law and the amount of such profits tax shall be paid to the Administrator prior to the expiration of the period of twenty-eight days next following the date of such notice or prior to the expiration of such longer period as the Administrator may, in his discretion, allow.

Appeals.

17. (1) Any person aggrieved by a notice served on him by the Administrator under the provisions of

subsection (2) of section fourteen, subsection (5) of section fifteen or subsection (2) of section sixteen of this Law, as the case may be, shall be entitled to appeal to the Authority on giving to the Administrator notice in writing (stating the grounds of appeal) within twenty-one days of the date of the said notice:

PROVIDED that where the transaction to which the appeal relates was completed during the period which commenced on the 27th May, 1988, and ended one month after the date of the registration of this Law on the records of the Island of Guernsey, such notice of appeal shall be served on the Administrator prior to the expiration of the twenty-one days next following the date of a notice served by the Administrator under the provisions of subsection (2) of section fourteen of this Law:

PROVIDED further that the Authority 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 seventy seven to eighty of the Law of 1975 shall apply in the case of an appeal under the provisions of subsection (1) of this section as if the notice served by the Administrator under the provisions of subsection (2) of section fourteen, subsection (5) of section fifteen or subsection (2) of section sixteen of this Law, as the case may be, were an assessment made under the provisions of the Law of 1975.

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

Recovery of
profits tax.

General
provisions
against legal
avoidance.

19. (1) Where the Administrator 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 the last preceding subsection, the Administrator 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 the last preceding subsection, 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 the last preceding subsection.

Service of
Notices.

20. 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.

21. Any person who fails to comply with the provisions of section fourteen, section fifteen or section sixteen of this Law shall be guilty of an offence and liable, on conviction, to a fine not exceeding ten thousand pounds. **General penalty.**

22. 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 such information which is false, in a material particular shall be guilty of an offence and liable, on conviction, to a fine not exceeding ten thousand pounds. **False statements, etc.**

23. 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 five thousand pounds. **Failure to supply information.**

24. 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 ten thousand pounds or three times the profits tax chargeable under this Law, whichever is the greater. **Penalty for fraudulent practices.**

Penalty for
aiding and
abetting.

25. 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 five thousand pounds.

Offences by
bodies
corporate.

26. 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 that body or any person who was purporting to act in any such capacity he, as well as that body, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Care and
management
of profits tax.

27. Subject to the general direction and control of the Authority profits tax shall be under the care and management of the Administrator.

Oath of
secrecy.

28. The oath taken by any person under the provisions of section 206 of the Law of 1975, 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 Law of 1975.

Disposal of
profits tax.

29. The proceeds of the profits tax shall be paid by the Administrator to the States Treasurer for the account of the General Revenue of the States of Guernsey.

Interpreta-
tion.

30. (1) In this Law, unless the context otherwise requires—

“the Administrator” means the Administrator referred to in section 205 of the Law of 1975;

"the Authority" means the Authority constituted under the provisions of section 204 of the Law of 1975;

"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;

"calendar year" means the period commencing on the first day of January in any year and ending on the thirty-first day of December next following;

"charity"—

(a) means 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, means, in relation to that property and the income thereof, that person or body;

"the 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 Administrator, able to exercise that power to secure that the affairs thereof are conducted in accordance with the wishes of that person;

“dwelling” means—

- (a) any premises, or any part of any premises (including a flat) which:
 - (i) are wholly or principally used or usable for human habitation; or
 - (ii) are in the course of construction and will be so used or usable upon their completion;
- (b) any land in respect of which there is for the time being valid a permission granted under section six of the Building and Development Control (Alderney) Law, 1975 to construct a dwelling (as defined in paragraph (a) of this definition);
- (c) any land which the occupier of a dwelling (as defined in paragraph (a) of this definition) has for his own occupation or enjoyment with that dwelling as its garden or grounds, up to an area (inclusive of the site of the dwelling) of two and one half verges;
- (d) any garage, shed or other domestic outbuilding within the curtilage of a dwelling (as defined in paragraph (a) of this definition) which the occupier of a dwelling has for his own occupation or enjoyment with that dwelling;

"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;

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

"the Law of 1975" means the Income Tax (Guernsey) Law, 1975;

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

"purchaser" and "vendor" include joint purchasers and joint vendors respectively;

"the Register" and "the Registrar" have the same meanings as in the Alderney Land and Property, &c., Law, 1949;

"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 sub-lease or the assignment of a lease or a sub-lease 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 dwelling" includes a reference to the sale of that dwelling together with any other property and, where any 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 the 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 dwelling" shall be construed accordingly.

(4) For the purposes of the last preceding subsection, 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 any other enactment shall be construed as including a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Law.

(6) The wording of this Law closely follows that of the Dwellings Profits Tax (Guernsey) Law, 1975(f) because their purposes correspond closely in most respects and both will be administered by the Administrator.

(7) The Interpretation (Guernsey) Law, 1948(g) applies to the interpretation of this Law as it applies to the interpretation of an enactment in force in the Island of Guernsey.

**Suspension
of Law.**

31. (1) The States may, from time to time, 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.

(f) Ordres en Conseil Vol. XXV, p. 91; No XVI of 1983.

(g) Ordres en Conseil Vol. XIII, p. 355.

(2) Any power conferred by the last preceding subsection to make any Ordinance suspending the operation of all or any of the provisions of this Law shall be construed as including a power exercisable in the like manner to vary or repeal the Ordinance.

32. This Law may be cited as The Dwellings Citation. Profits Tax (Alderney) Law, 1989.

33. This Law shall be deemed to have come into force on 27th May, 1988. Commence-
ment.

SCHEDULE

Section six

TABLE

Years	Percentage	Years	Percentage
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
		0	0

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.

D. R. DOREY,
Her Majesty's Deputy Greffier.