

Statutory Document No. 2020/0357



*Income Tax Act 1970*

## **TAXES (GUERNSEY) ORDER 2020**

*Approved by Tynwald: 22<sup>nd</sup> July 2020*  
*Coming into Operation in accordance with article 2*

The Council of Ministers makes the following Order under sections 104B and 104C of the Income Tax Act 1970.

### **1 Title**

This Order is the Taxes (Guernsey) Order 2020.

### **2 Commencement**

If approved by Tynwald<sup>1</sup>, this Order comes into operation on the day after it is approved.

### **3 Interpretation**

In this Order-

“the 2013 Double Taxation Agreement” means the agreement concluded on 4 January 2013 between the Government of the Isle of Man and the States of Guernsey for the avoidance of double taxation and the prevention of fiscal evasion with respect to income tax;

“applicable arrangement” means the Protocol concluded on 18 October 2019 and 12 November 2019 between the Government of the Isle of Man and the States of Guernsey (as set out in the Schedule) and amending the 2013 Double Taxation Agreement.

### **4 Implementation of the applicable arrangement**

The Council of Ministers declares that the applicable arrangement –

- (a) has been made with the States of Guernsey to amend the 2013 Double Taxation Agreement; and
- (b) should have effect as part of the law of the Island.

<sup>1</sup> Tynwald approval is required by section 104B(6) of the Income Tax Act 1970.

**MADE 30<sup>TH</sup> JUNE 2020**

**W GREENHOW**  
*Chief Secretary*

*EXPLANATORY NOTE*

*(This note is not part of the Order)*

This Order is made under sections 104B and 104C of the Income Tax Act 1970.

This Order declares that an arrangement has been negotiated between the Government of the Isle of Man and the States of Guernsey which amends an agreement made in 2013 between the two Governments for the avoidance of double taxation and the prevention of fiscal evasion with respect taxes on income, and also declares that that arrangement should have effect as part of the law of the Island.

**PROTOCOL  
AMENDING THE  
AGREEMENT BETWEEN  
THE GOVERNMENT OF THE ISLE OF MAN  
AND  
THE STATES OF GUERNSEY  
FOR THE AVOIDANCE OF DOUBLE TAXATION  
AND THE PREVENTION OF FISCAL EVASION WITH  
RESPECT TO TAXES ON INCOME**

The Government of the Isle of Man and the States of Guernsey ("the Parties"), desiring to amend the Agreement between the Parties for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed on 24<sup>th</sup> January 2013 ("the Agreement"), have agreed as follows:

## **ARTICLE 1**

The Preamble to the Agreement shall be modified to include the following text immediately before the existing Preamble text:

“Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

The Parties acknowledge that the United Kingdom continues to be responsible for the international relations of the Isle of Man and Guernsey in international law. This Agreement cannot therefore create obligations which are binding under international law and is not intended to alter or affect the respective constitutional relationships between the Isle of Man and Guernsey and the United Kingdom”.

## **ARTICLE 2**

In Article 3 (General Definitions), sub-paragraph e) of paragraph 1 shall be deleted and replaced with the following;

"e) the term "competent authority" means:

- i) in the case of the Isle of Man, the Assessor of Income Tax or his or her delegate, and;
- ii) in the case of Guernsey, the Director of the Revenue Service or his or her delegate;".

### **ARTICLE 3**

In Article 20 (Other Income):

- (i) the present paragraph 2 shall be renumbered as paragraph 3; and,
- (ii) the following shall be inserted as paragraph 2:

"2. Notwithstanding the provisions of paragraph 1, where an amount of income is paid to a resident of a Party out of income received by trustees, or by personal representatives administering the estates of deceased persons, and those trustees or personal representatives are residents of the other Party, that amount shall be treated as arising from the same sources, and in the same proportions, as the income received by the trustees or personal representatives out of which that amount is paid.

Any tax paid by the trustees or personal representatives in respect of the income paid to the beneficiary shall be treated as if it had been paid by the beneficiary."

#### **ARTICLE 4**

The first sentence of the first paragraph of Article 23 (Mutual Agreement Procedure) shall be deleted and replaced with the following:

“Where a person considers that the actions of one or both of the Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of either Party.”.



## **ARTICLE 5**

Immediately after Article 25 (Members of Diplomatic Missions and Consular Posts) the following Article shall be added:

### **"ARTICLE 25A**

#### **Entitlement to Benefits**

1. Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.
2. Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Party that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to

that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Party to which a request has been made under this paragraph will consult with the competent authority of the other Party before rejecting the request.”.

**ARTICLE 6**

1. Each Party shall notify the other Party in writing of the completion of the procedures required by its laws for the bringing into force of this Protocol.


2. This Protocol shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and shall have effect from that date.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

**DONE** in duplicate at Douglas, Isle of Man, this <sup>18</sup>..... day of ~~.....~~ <sup>OCTOBER</sup>, 2019 and at St. Peter Port, Guernsey this <sup>12</sup>..... day of ~~.....~~ <sup>NOVEMBER</sup>, 2019 in the English language.



**For the Government of  
the Isle of Man**



**For the States of Guernsey**