

GUERNSEY

Sections 75C and 75CC of the Income Tax (Guernsey) Law, 1975

- 75C. Notices under section 75A and 75B: requests for information.**
- 75CC. Implementation of approved international agreements by regulation.**

Sections 75C and 75CC of the Income Tax (Guernsey) Law, 1975

[Notices under section 75A and 75B: requests for information.]

75C. (1) Subject to [subsection (2)], the [Director of Income Tax] may exercise his powers under sections 75A and 75B if, pursuant to the provisions of an approved international agreement, a request for information is made to him by the competent authority of a requesting state.

(2) The Director of Income Tax must be satisfied that the request for information is made in accordance with the provisions of, and for the purposes of, the approved international agreement pursuant to which it is made.]

(3) The [Director of Income Tax] may ask the competent authority for further information, documents and particulars in support of a request for information.

(4) In this Part of this Law –

"approved international agreement" means an agreement or arrangement providing for the [obtaining, delivery, making available, furnishing and/or exchanging of documents and information] in relation to tax[, which is made between the States of Guernsey and the government of another territory, or which is otherwise binding upon Guernsey and

governed by international law (including, without limitation, an agreement which has been acceded to or ratified by the United Kingdom on behalf of Guernsey),] and which is specified for the purposes of this Law by Ordinance of the States,

"competent authority" means the person or authority designated by the requesting state as the competent authority for the purposes of the approved international agreement pursuant to which the request for information is made [or specified as the competent authority for the purposes of this Law by regulations of the Department], and

"requesting state" means the party to the approved international agreement on behalf of which the request for information is made.

(5) This section is without prejudice to the generality of sections 75A and 75B.]

NOTES

Section 75C was inserted by the Income Tax (Guernsey) (Amendment) Law, 2005, section 5, with effect from 25th January, 2006.

In section 75C,

the word, parentheses and figure in the first pair of square brackets in subsection (1) were substituted by the Income Tax (Guernsey) (Amendment) Ordinance, 2012, section 8, with effect from 31st May, 2012;²⁰

the words "Director of Income Tax" in square brackets, wherever occurring, were substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance;

subsection (2) (which was previously repealed by the Income Tax (Guernsey) (Amendment) Law, 2008, section 1, with effect from 31st May, 2012) was substituted by the Income Tax (Guernsey) (Amendment) Ordinance, 2012, section 9, with effect from 31st May, 2012;²¹

the words in, first, the first pair of square brackets in the definition of the expression "approved international agreement" and, second, the square brackets in the definition of the expression "competent authority" in subsection (4) were, respectively, substituted and inserted by the Income Tax (Approved International Agreements) (Implementation) (Guernsey) Ordinance, 2013, section 4(a) and section 4(b), with effect from 1st

January, 2014;

the words in the second pair of square brackets in the definition of the expression "approved international agreement" were substituted by the Income Tax (Guernsey) (Approved International Agreements) (Amendment) Ordinance, 2014, section 2, with effect from 25th September, 2014.

The following Ordinances have been made under section 75C:

Income Tax (Guernsey) (Amendment) Law, 2005 (Commencement of Law and Approval of Agreement) Ordinance, 2006;

Income Tax (Guernsey) (Approval of Agreements) Ordinance, 2009;

Income Tax (Guernsey) (Approval of Agreement with United Kingdom) Ordinance, 2009;

Income Tax (Guernsey) (Approval of Agreements with France, Germany and Ireland) Ordinance, 2009;

Income Tax (Guernsey) (Approval of Agreement with New Zealand) Ordinance, 2009;

Income Tax (Guernsey) (Approval of Agreement with Australia) Ordinance, 2010;

Income Tax (Guernsey) (Approval of Agreement with Portugal) Ordinance, 2010;

Income Tax (Guernsey) (Approval of Agreements with San Marino, Greece and China) Ordinance, 2011;

Income Tax (Guernsey) (Approval of Agreements with Romania, Canada and South Africa) Ordinance, 2011;

Income Tax (Guernsey) (Approval of Agreements with Indonesia and Mexico) Ordinance, 2011;

Income Tax (Guernsey) (Approval of Agreements with Argentina, the Bahamas and Cayman Islands) Ordinance, 2011;

Income Tax (Guernsey) (Approval of Agreements with the Czech Republic and Slovenia) Ordinance, 2012;

Income Tax (Guernsey) (Approval of Agreements with India, Japan, Poland, Seychelles and St Kitts and Nevis) Ordinance, 2012;

Income Tax (Guernsey) (Approval of Agreement with Turkey) Ordinance, 2012;

Income Tax (Guernsey) (Approval of Agreements with Italy and Latvia) Ordinance, 2012;

Income Tax (Guernsey) (Approval of Agreement with Malta) Ordinance, 2013;

Income Tax (Guernsey) (Approval of Agreement with Chile) Ordinance, 2013;

Income Tax (Guernsey) (Approval of Agreements with Brazil, Isle of Man, Jersey, Mauritius and Singapore) Ordinance, 2013;

Income Tax (Guernsey) (Approval of Agreement with Qatar) Ordinance, 2013;

Income Tax (Approved International Agreements) (Implementation) (Guernsey) Ordinance, 2013;

Income Tax (Guernsey) (Approval of Agreements with Bermuda, Gibraltar, Hungary, Slovakia, Swaziland and Switzerland) Ordinance, 2014;

Income Tax (Guernsey) (Approval of Agreements with Costa Rica, Mauritius, the Seychelles, the United States of America and the United Kingdom) Ordinance, 2014;

Income Tax (Guernsey) (Approval of Agreement with Monaco) Ordinance, 2014;

Income Tax (Guernsey) (Approved International Agreements) (Amendment) Ordinance, 2014;

Income Tax (Guernsey) (Approval of Agreements with Cyprus, Turks and Caicos and Uruguay) Ordinance, 2014;

Income Tax (Guernsey) (Approval of Agreement with Macao) Ordinance, 2015;

Income Tax (Guernsey) (Approval of Agreement with the British Virgin Islands) Ordinance, 2015;

Income Tax (Guernsey) (Approval of Agreement with Gibraltar) Ordinance, 2015;

Income Tax (Guernsey) (Approval of Agreement with Bulgaria) Ordinance, 2016;

Income Tax (Guernsey) (Approval of Agreements with British Virgin Islands, Cayman Islands, South Korea and Spain) Ordinance, 2016.

In accordance with the provisions of the Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014, regulation 13, with effect from 30th June, 2014, this section applies in respect of the 2014 Regulations and the Agreements as if references in subsections (1), (2), (3) and (4) of this section to a request for information included references to a notification by a competent authority pursuant to article 4 of the U.K. Agreement or article 5 of the U.S. Agreement ("Collaboration on Compliance and Enforcement"); and references to "requests" and related expressions shall be construed accordingly.

Implementation of approved international agreements by regulation.

75CC. (1) The Department may by regulation make such provision as it may consider necessary or expedient for the purpose of the implementation of any approved international agreement or any provision thereof.

(2) For the purposes of this Law the expression "**implementation**" of an approved international agreement or any provision thereof includes the enforcement or enactment of the agreement or provision, and the securing of the administration, execution, recognition, exercise or enjoyment of the agreement or provision, in or under domestic law.

(3) For the purposes of this section the expression "**any provision**" of an approved international agreement includes –

- (a) any provision contained in or arising under the agreement, and
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the agreement.

(4) Regulations under subsection (1) –

- (a) may make provision for the purpose of dealing with matters arising out of or related to any approved international agreement or any provision thereof,
- (b) may direct that any approved international agreement or any provision thereof shall extend to Guernsey with such exceptions, adaptations and modifications as may be specified in the regulations,

- (c) without prejudice to the provisions of paragraph (b), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any approved international agreement or any provision thereof, or any provision of any Act of Parliament or of any order, rule, regulation, resolution, scheme, byelaw or other instrument made under any Act of Parliament, which agreement or provision shall (subject to such exceptions, adaptations and modifications as may be specified in the regulations) thereupon have the same force and effect as regulations under this Law,
- (d) may make provision for the application of this Law or any provision thereof to or for the purposes of any approved international agreement or any provision thereof subject to such exceptions, adaptations and modifications as may be specified in the regulations,
- (e) may (without limitation) impose obligations as to –
 - (i) the keeping of records, and
 - (ii) the obtaining, delivery, making available, furnishing and/or exchanging of documents and information,

from, by, to or between the Director, the competent authority, persons or bodies described in section 75B(3A) and any other person, body or authority or class or description of person, body or authority specified in the regulations,

- (f) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (g) may repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law, and
- (h) may make any such provision of any such extent as might be made by an Ordinance under this Law.]

NOTES

Section 75CC was inserted by the Income Tax (Approved International Agreements) (Implementation) (Guernsey) Ordinance, 2013, section 5, with effect from 1st January, 2014.

The following Regulations have been made under section 75CC:

Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014;

Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) (Amendment) Regulations, 2015;

Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015.

In accordance with the provisions of the Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014, regulation 2, with effect from 30th June, 2014, the provisions of the Agreements referred to in column 3 of the Schedule to the 2014 Regulations (being, first, the Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the States of Guernsey to Improve International Tax Compliance and, second, the Agreement Between the Government of the States of Guernsey and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA) shall, subject to such exceptions, adaptations and modifications as may be specified in that column in respect of those provisions, have the same force and effect as regulations under this Law.
