

GUERNSEY STATUTORY INSTRUMENT

2008 No. 78

GREFFE
ROYAL COURT

11 DEC 2008

GUERNSEY

**The Income Tax (Loans to Participators)
(Exemptions) (No. 3) Regulations, 2008**

Made

2nd December, 2008

Coming into operation

8th July, 2008

Laid before the States

28th January, 2009

THE TREASURY AND RESOURCES DEPARTMENT, in exercise of the powers conferred upon it by section 66A(4)(d) of the Income Tax (Guernsey) Law, 1975, as amended^a ("**the Law**"), and all other powers enabling it in that behalf, hereby makes the following regulations:-

Loans at commercial rates.

1. (1) A loan made by a company which is not authorised as mentioned in section 66A(4)(a) of the Law is not a qualifying loan for the purposes of section 66A of the Law if it was advanced at a commercial rate of interest.

(2) For the purposes of this regulation a "**commercial rate**" of interest means -

^a Ordres en Conseil Vol. XXV, p.124; Vol. XXVI, pp. 146,200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p.214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's IV and VIII of 1993; No. XXV of 1994; No's III and VII of 1995; No. V of 1996; No's IV and XXII of 1997; No. II of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; No. XXI of 2007; the Income Tax (Zero 10) (Guernsey) Law, 2007; and the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007. Also amended by the Machinery of Government

- (a) a rate of or equivalent to Bank of England base rate plus 2%, or a higher rate, or
- (b) a rate which in the opinion of the Administrator is of or equivalent to the rate charged to the company's customers in the ordinary course of the company's business, or a higher rate.

Loans of small amounts.

2. (1) A loan made by a company is not a qualifying loan for the purposes of section 66A of the Law if the amount of the loan, when aggregated with the amount for the time being outstanding on any other loans made -

- (a) by the company or by any person connected to the company,
- (b) to the person to whom the loan was made or to any person connected to him,

does not exceed £2,500.

(2) The expressions "**person to whom the loan was made**" and "**connected**" shall be construed in accordance with section 66A of the Law.

Status of tax paid by company under section 66C of Law.

3. The amount of any tax paid by a company on a qualifying loan in accordance with section 66C of the Law is not itself a qualifying loan for the purposes of section 66A of the Law and therefore tax is not payable by the company on that amount in accordance with section 66C.

Status of tax deducted by company under section 81B of Law.

4. (1) The amount of any tax actually deducted by a company in accordance with section 81B of the Law from a distribution of any of its undistributed income is not a qualifying loan for the purposes of section 66A of the Law and therefore tax is not deductible and payable by the company on that amount in accordance with section 81B.

(2) Paragraph (1) does not apply to amounts which, under section 81B(9) of the Law, are deemed to be tax deducted in accordance with section 81B(2).

Interpretation.

5. (1) In these Regulations "the Law" means the Income Tax (Guernsey) Law, 1975, as amended.

(2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these Regulations as it applies to the interpretation of an enactment.

Repeal.

6. The Income Tax (Loans to Participators) (Exemptions) Regulations, 2008^b and the Income Tax (Loans to Participators) (Exemptions) (No. 2) Regulations, 2008^c are repealed.

Citation.

^b G.S.I. No. 32 of 2008.

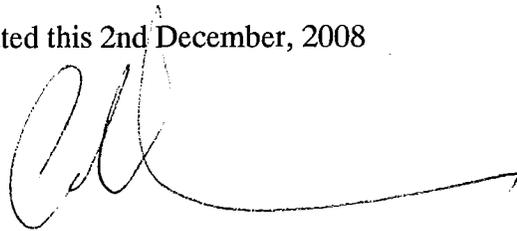
^c G.S.I. No. 52 of 2008.

7. These Regulations may be cited as the Income Tax (Loans to Participators) (Exemptions) (No. 3) Regulations, 2008.

Commencement.

8. These Regulations shall be deemed to have come into force on the 8th July, 2008.

Dated this 2nd December, 2008



DEPUTY C.N.K. PARKINSON

Minister of the Treasury and Resources Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations -

- (a) exempt certain classes of company loan from the "loans to participators" regime of the Income Tax (Guernsey) Law, 1975, as amended by the Income Tax (Zero 10) (Guernsey) Law, 2007 and the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007. The regime provides that loans made by companies to participators in the company (a term which includes, for example, members of the company) are (subject to various prescribed conditions) taxable as income. The exempted classes of loan are loans advanced at a commercial rate of interest and loans which (when aggregated with other loans to the participator) do not exceed £2,500, and
- (b) provide that tax deducted by a company in accordance with section 81B of the Income Tax (Guernsey) Law, 1975, as so amended, from a distribution of its undistributed income is not a qualifying loan. Accordingly, tax is not deductible and payable on the amount of the tax deducted under that section.