

Island of



Guernsey

Ordinance of the States

I
2008

Made3rd December, 2007
Coming into Operation1st January, 2008
Laid before the States30th January, 2008

The Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007

The Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007

THE LEGISLATION SELECT COMMITTEE, in pursuance of the Resolution of the States of the 25th July, 2007^a, and in exercise of the powers conferred on the States by section 39A of the Income Tax (Guernsey) Law, 1975^b and all other powers enabling them in that behalf and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948, as amended^c, hereby orders:-

Tax relief on interest payments for principal private residence.

1. (1) For the purposes of sections 14 and 38 of the Income Tax (Guernsey) Law, 1975, as amended ("**the Law of 1975**"), and subject to subsection (2), deductions in respect of the amount of interest paid on borrowed money in the year of charge 2008 and any subsequent year of charge may be made from income or profits which, but for those sections, would be assessable to tax where -

- (a) the borrower is an individual who is solely or principally resident in Guernsey,
- (b) the borrowed money has been or will be used in the year of charge in which it was borrowed or the next year of charge (or in any other year of charge where the Administrator is satisfied that, for reasons beyond

^a Article VIII of Billet d'État No. XIX of 2007.

^b Ordres en Conseil Vol. XXV, p. 124; section 39A was inserted by No. XVII of 2001.

^c Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

the borrower's control, it has not been possible for the borrower to use the money in those years) solely for the acquisition of land or the acquisition, construction, reconstruction or repair of a building,

- (c) the land or building is owned by the borrower,
- (d) in the case of land, there is being or is to be constructed on it a building which will, on completion of the works, be the borrower's principal private residence,
- (e) in the case of a building, it is or will, on completion of the works, be the borrower's principal private residence, and
- (f) the land or building (as the case may be) is situated in Guernsey.

(2) No deduction in respect of the amount of interest paid on borrowed money shall be allowed -

- (a) in respect of money borrowed on or after the 1st January, 2008 unless the money was borrowed from -
 - (i) a person resident in Guernsey, or
 - (ii) a company subject to tax in respect of income of Class 2(2)(a) (income from banking business) at the company intermediate rate,

- (b) to the extent that the amount of money borrowed in respect of the land or building exceeds £400,000.

(3) For the purposes of calculating the amount of relief due and determining the individual to whom relief is due -

- (a) all loans used by any person for the acquisition of the land or the acquisition, construction, reconstruction or repair of the building in question shall be aggregated, and

- (b) loans shall be aggregated by reference to -

- (i) in the case of a loan secured by an entry in the Livre des Hypothèques, Obligations et Actes de Cour, the order in which they were registered, or

- (ii) in any other case, the order in which the monies were advanced.

However, where the loans are registered on the same day, or are contemporaneous, the relief may be apportioned between the borrowers in accordance with their respective interests in the land or building in question or in such other manner as the Administrator may direct.

(4) Notwithstanding subsection (1)(c), where the borrowed money is used for -

- (a) the acquisition of land on which there is being or is to be constructed a building which will, on completion of the works, be the principal private residence of a person mentioned in subsection (5)(a) or (b) below, or
- (b) the acquisition, construction, reconstruction or repair of a building which is or will, on completion of the works, be the principal private residence of that person,

the borrower may claim relief under this section as if the land or principal private residence (as the case may be) of that person were owned by him and were part of his own land or principal private residence.

(5) The persons are either of the following -

- (a) the borrower's spouse (where a decree of judicial separation or Magistrate's separation order is in force), or
- (b) the borrower's former spouse (where a final order on a decree of divorce has been made).

A "decree of judicial separation or Magistrate's separation order" and a "final order on a decree of divorce" include a corresponding decree or order made in a jurisdiction outside Guernsey.

(6) Notwithstanding subsection (1)(c), where the borrowed money has been used for the acquisition of shares of a company which is -

- (a) the owner of land on which there is being or is to be constructed a building which will, on completion of the works, be the borrower's principal private residence, or
- (b) the owner of a building which is or will, on completion of any works, be the borrower's principal private residence,

the borrower may, provided that he is a beneficial member of the company within the meaning of section 62D of the Law of 1975^d, claim relief under and in accordance with this section as if the building were owned by him.

- (7) Where the borrowed money has been or will be used -
 - (a) for the acquisition of land which is owned by a company but on which there is being or is to be constructed a building which will, on completion of the works, be the borrower's principal private residence, or
 - (b) for the acquisition, construction, reconstruction or repair of a building which is owned by a company but which is or will, on completion of the works, be the borrower's principal private residence,

^d Ordres en Conseil Vol. XXV, p. 124; section 62D was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

the borrower may, notwithstanding subsection (1)(c), and provided that he is a beneficial member of the company within the meaning of section 62D of the Law of 1975, claim relief under and in accordance with this section as if the land or building were owned by him.

(8) Where a company is the borrower, and the borrowed money has been or will be used -

- (a) for the acquisition of land which is owned by the company but on which there is being or is to be constructed a building which will, on completion of the works, be the principal private residence of a beneficial member of the company within the meaning of section 62D of the Law of 1975, or
- (b) for the acquisition, construction, reconstruction or repair of a building which is owned by the company but which is or will, on completion of the works, be the principal private residence of such a beneficial member,

then the company may claim relief under and in accordance with this section in respect of any interest paid by it to the same extent that the beneficial member would have been entitled to claim relief under subsection (1) had he been the owner of the land or building.

However, if the company's income is insufficient to enable it to claim relief in respect of all the interest paid by it, then the beneficial member may, notwithstanding subsection (1)(c), claim the excess relief under and in accordance with this section in respect of interest paid by him as if the land or building were

owned by him.

Tax relief on interest payments for let property.

2. (1) For the purposes of sections 14 and 38 of the Law of 1975, and subject to subsection (2), deductions in respect of the amount of interest paid in the year of charge 2008 and any subsequent year of charge on money borrowed solely for the acquisition of land, or the acquisition, construction, reconstruction or repair of a building, situate in Guernsey or elsewhere and owned by the borrower may be made from income which, but for those sections, would be assessable to tax in respect of any such land or building in accordance with the provisions of Part I of the Law of 1975.

(2) No deduction in respect of the amount of interest paid on borrowed money shall be allowed -

- (a) subject to subsection (3), against income which arises in a different year of charge from that in which the interest is payable (and accordingly where the interest payable in any year of charge exceeds the income arising in that year the excess may not be carried forward),
- (b) to the extent that the interest paid exceeds the income from the land or building, save that the excess may (subject to the other provisions of this section) be deducted from any other income of the same Class in respect of any other land or building situate in Guernsey or elsewhere, or
- (c) in respect of any amount of interest payable on the

borrowed money at a time when the land or building is not let and is not being actively marketed as available to let.

(3) Where the borrowed money will be used for the acquisition of land or the acquisition, construction, reconstruction or repair of a building which, in the year of charge in which any interest on that money is payable, is incapable of occupation, the amount of interest paid may be carried forward from that year of charge to, and allowed as a deduction in, the year of charge in which income in respect of the letting of that land or building first arises.

Tax relief on interest payments for miscellaneous purposes.

3. For the purposes of sections 14 and 38 of the Law of 1975, deductions in respect of the amount of interest paid on borrowed money in the year of charge 2008 and any subsequent year of charge may be made from income or profits which, but for those sections, would be assessable to tax where -

- (a) the borrower is an employee who is resident in Guernsey and who has borrowed the money and used it to purchase an asset used wholly, exclusively and necessarily in the performance of the duties of his employment,
- (b) the money was borrowed for the purposes of the acquisition of a business or part of a business (including, without limitation, the acquisition of goodwill in the assets of a business and the acquisition of shares in a company carrying on the business) in which the borrower is actively engaged,

- (c) the money was borrowed for the purpose of being lent to a company in which the borrower holds not less than 10% of the issued share capital and in the business of which the borrower is actively engaged, provided that the company uses the monies borrowed wholly and exclusively for the purposes of its business.

For the avoidance of doubt paragraph (c) does not apply to investment companies within the meaning of section 169 of the Law of 1975.

No tax relief in other cases.

4. Notwithstanding sections 14 and 38 of the Law of 1975, no deduction in respect of the amount of interest paid on borrowed money in the year of charge 2008 and any subsequent year of charge may be made from income or profits pursuant to those sections except under and in accordance with section 1, 2 or 3.

Interpretation.

5. (1) In this Ordinance -

"**construction, reconstruction or repair**" includes extension and renovation, and

"**works**" means works of construction, reconstruction or repair.

(2) For the purposes of this Ordinance a building does not cease to be a borrower's principal private residence by reason only of absence from the building if the Administrator is satisfied that the absence is temporary and arises, for example -

- (a) for the purposes of a holiday or during periods of illness,
- (b) for the purposes of a business or secondment,
- (c) during periods of renovation or repair, or
- (d) in some other temporary circumstance, for example, due to military service.

The circumstances set out in paragraphs (a) to (d) are for the purposes of illustration and not of limitation.

Citation.

6. This Ordinance may be cited as the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007.

Commencement.

7. This Ordinance shall come into force on the 1st January, 2008.