

IRAS e-Tax Guide

Tax Treatment of Director's Fees and Bonuses from Employment

(Second Edition)



INLAND REVENUE
AUTHORITY
OF SINGAPORE

Published by
Inland Revenue Authority of Singapore

Published on 12 Sep 2014

First edition on 8 Mar 2013

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Table of Contents

	Page
1 Aim.....	1
2 At a Glance.....	1
3 Glossary	2
4 Background.....	3
5 Taxation of director’s fees and bonuses from employment	3
6 Deductibility of director’s fees and bonuses from employment	5
7 Administrative procedures	7
8 Contact information	7
9 Updates and amendments	8
Annex – Amount of tax deduction that will be given to a company for fees payable to its directors under various scenarios	9

Tax Treatment of Director's Fees and Bonuses from Employment

1 Aim

- 1.1 This e-Tax Guide explains the tax treatment of director's fees and bonuses from employment. It replaces the IRAS e-Tax Guide on "New Tax Treatment of Director's Fees and Bonus from Employment" published on 2 Nov 1993.
- 1.2 You should read this e-Tax Guide if you are:
 - (a) an individual deriving director's fees or bonuses from your employment; or
 - (b) a company¹ paying director's fees or bonuses to your employees.

2 At a Glance

- 2.1 An individual is assessable to tax on his director's fees or bonuses from employment when he becomes entitled to receive those fees or bonuses.
- 2.2 Similarly, a company may claim deduction for director's fees or employees' bonuses when the company becomes liable to pay those fees or bonuses. In practice, IRAS will typically allow a company deduction of director's fees or employees' bonuses for the year in which they are properly ascertained and accrued as expenses in the company's financial accounts in accordance with generally accepted accounting principles.

¹ In this e-Tax Guide, references to a "company" also include any entity that pays director's fees or bonuses to its employees.

3 Glossary

3.1 1993 e-Tax Guide

IRAS e-Tax Guide on “New Tax Treatment of Director’s Fees and Bonus From Employment” published on 2 Nov 1993.

3.2 Bonuses

(a) Contractual bonuses

Bonuses that are payable in accordance with the terms of a contract of service or a bonus plan adopted by an employer, which cannot be rescinded by the employer without legal consequences. An example of a contractual bonus is the 13th month payment, an annual wage supplement. Contractual bonus plans are commonly termed by employers as “deferred bonus plan” or “retention bonus plan”.

(b) Non-contractual bonuses

Bonuses which can be rescinded by the employer at any time prior to the actual payment of the bonuses without legal consequences².

3.3 Director’s fees

(a) Director’s fees approved in arrears

Director’s fees for the accounting year 201x that are voted and approved at an Annual General Meeting (AGM) held after the end of the accounting year 201x (i.e. approved after the directors have rendered the requisite services).

(b) Director’s fees approved in advance

Director’s fees for the accounting year 201x that are voted and approved at an AGM held before the end of the accounting year 201x (i.e. approved before the directors have rendered the requisite services).

² Bonuses termed as “discretionary” are non-contractual if they can be rescinded by the employer at any time prior to the actual payment of the bonuses without legal consequences.

4 Background

- 4.1 The 1993 e-Tax Guide explains the tax treatment of:
- (a) bonus payments for services rendered in a particular accounting year that are paid shortly after the end of that year; and
 - (b) director's fees approved in arrears.
- 4.2 There are other payment or approval arrangements for bonuses and director's fees which have not been specifically addressed in the 1993 e-Tax Guide. Some of these arrangements include:
- (a) payments for services rendered in an accounting year that are not paid shortly after the end of the accounting year but are paid in subsequent years in accordance with the terms and conditions of a bonus plan adopted by an employer;
 - (b) director's fees approved in advance³; and
 - (c) director's fees to be approved in arrears are recorded in the company's financial accounts for an accounting year, but are not put to vote at the company's AGM in which the financial accounts for the accounting year are voted and approved.
- 4.3 This e-Tax Guide replaces the 1993 e-Tax Guide and seeks to clarify in particular the following:
- (a) the tax treatment of contractual bonuses payable in accordance with the terms of a bonus plan adopted by an employer;
 - (b) the tax treatment of both director's fees approved in advance and director's fees approved in arrears; and
 - (c) the situations where IRAS will not allow deduction of director's fees or employees' bonuses for the year in which they are accrued as expenses in a company's financial accounts.

5 Taxation of director's fees and bonuses from employment

- 5.1 Director's fees and bonuses from employment constitute income of an individual in the year he is entitled to such fees or bonuses.

Bonuses from employment

- 5.2 For non-contractual bonuses, an employee becomes entitled to such bonuses on the date the bonuses are paid⁴.

³ This is to facilitate a more timely payment of such fees after the directors have rendered their services.

- 5.3 For contractual bonuses, an employee becomes entitled to such bonuses in the year specified by the contract or bonus plan. This is usually the year in which the employee renders his services. However, where the employer's liability to pay bonuses is contingent upon conditions to be met in the future, an employee becomes entitled to such bonuses when the conditions are met⁵.
- 5.4 In certain contracts, an employee is contractually entitled to receive a bonus e.g. inducement bonus, on signing of a contract with an employer even before stipulated conditions are met. If the conditions are subsequently not met, the employee is contractually obliged to return the bonus in full or in part. For such conditional bonus paid in advance, the bonus paid is considered to be income of the employee on the date of payment. If the employee subsequently returns the bonus in full or in part, the amount returned is considered as an adjustment of income in the year the amount is returned.⁶

Director's fees approved in arrears

- 5.5 For director's fees approved in arrears, the director has already rendered the requisite services for the accounting year concerned. However, the director's fees must be disclosed to and approved by members of the company⁷ before they can be paid to him. Hence, the earliest date on which the director is entitled to the director's fees, is the date the fees are voted and approved at the company's AGM.
- 5.6 There may be claims in some cases that the directors were not entitled to director's fees approved in arrears on the date the fees were voted and approved at the company's AGM. Such claims must be supported by documentation showing that the directors could only enforce the payment of director's fees (and the company was only liable to pay

⁴ For example, an employer informs his employees on 1 Dec 2011 of his decision to pay non-contractual bonuses for the year ending 31 Dec 2011 on 1 Feb 2012. The employees become entitled to such non-contractual bonuses on 1 Feb 2012 when the bonuses are paid.

⁵ For example, it is specified under a bonus plan that contractual bonuses declared for the year ended 31 Dec 2011 will be paid within 90 days from the year-end. It will however not be paid to an employee if he tenders his resignation before that date of payment. The employee becomes entitled to the bonuses only when the bonuses are paid. No contractual obligation to pay bonuses is created until the condition (that the employee does not give notice of resignation before the date of payment) is met.

⁶ For example, an employer contractually binds himself to pay an employee an inducement bonus on 1 Jan 2011, with the condition that the employee returns the sum to the employer on a pro-rata basis if he leaves employment before 31 Dec 2013. In this case, the bonus is considered to be the employee's income for year 2011. If the employee returns 50% of the inducement bonus in year 2012, the amount he returns would be deducted against his employment income derived in year 2012.

⁷ This is provided under section 169 of the Companies Act.

such fees) on a date falling after the date the fees were approved at the company's AGM.⁸

Director's fees approved in advance

- 5.7 For director's fees approved in advance, the director may not have rendered the requisite services for the accounting year concerned when the fees are approved at the company's AGM.⁹ Hence, the earliest date on which the director can be entitled to the director's fees, is as and when he renders his services.
- 5.8 The director would be entitled to the director's fees on a monthly basis if, based on the terms in the director's letter of appointment, he can enforce the payment of director's fees on a monthly basis.¹⁰
- 5.9 The basis for determining when an individual becomes entitled to director's fees or bonuses as explained in paragraphs 5.2 to 5.8 also applies to:
- (a) the determination of when tax has to be withheld on director's fees payable to a non-resident director; and
 - (b) the preparation of the return of employee's remuneration (Form IR8A) by an employer for his employees.¹¹

6 Deductibility of director's fees and bonuses from employment

- 6.1 Under normal tax principles, expenses are only deductible when such expenses are incurred (i.e. when the liability to pay such expenses arises).¹² As such, a company may claim deduction for director's fees

⁸ Please refer to paragraph 6.4(c) which explains the circumstances under which tax deduction of such director's fees will not be allowed for the year in which they are accrued in the financial accounts.

⁹ For example, an AGM held by the company on 9 Jan 2011 resolved that the amount of director's fees voted and approved for the accounting year ending 31 Dec 2011 was up to \$100,000. The amount of director's fees voted and approved on 9 Jan 2011 was therefore approved in advance, and the directors were not entitled to the director's fees on 9 Jan 2011. This is because they have yet to perform requisite services for the accounting year ending 31 Dec 2011.

¹⁰ If the director can only enforce the payment of certain component of the director's fees (e.g. meeting attendance fee of \$x per meeting) after he has attended a meeting, he is not considered to be entitled to such director's fees on a monthly basis, but is considered to be entitled to such director's fees after he attends each meeting.

¹¹ Employers who have joined the Auto-Inclusion Scheme (AIS) for employment income do not need to issue Form IR8A to their employees. Under this scheme, employers submit their employees' income information to IRAS electronically. The employment income information will be shown on the employees' electronic tax return and automatically included in their income tax assessments.

¹² This is provided under section 14(1) of the ITA.

and employees' bonuses only when the company's liability to pay such fees or bonuses actually arises.

- 6.2 In practice, IRAS will typically allow deduction of director's fees approved in arrears and non-contractual bonuses for the year in which they are properly ascertained and accrued as expenses in the company's financial accounts in accordance with generally accepted accounting principles.¹³
- 6.3 Director's fees to be approved in arrears and non-contractual bonuses are deductible expenses for the year in which they are accrued only if their payments are expected to occur shortly after they are accrued in the financial accounts. In the case of non-contractual bonuses, the amount accrued should typically be paid within a year of the accounting year in which the expense was accrued. In the case of director's fees approved in arrears, the fees should be tabled and put to vote at the AGM in which the financial accounts for the accounting year concerned are voted and approved ("the relevant AGM"). In other words, there should be certainty in terms of the amount and the timing of payment of the expense accrued.

Situations where tax deduction of director's fees or bonuses accrued will not be allowed

- 6.4 Provisions for director's fees or employees' bonuses made for a year where the amount and/or the timing of its payment are not properly ascertained will not be allowed deduction for the year. Examples of such situations include:
- (a) where an amount of director's fees to be approved in arrears was not put to vote at the relevant AGM¹⁴;
 - (b) where the amount of director's fees in (a) above was put to vote at the relevant AGM, but was not approved and was not written back in the financial accounts within the accounting year in which the relevant AGM was held;
 - (c) where an amount of director's fees was approved in arrears at the relevant AGM, but the directors were not entitled to the fees either

¹³ For example, director's fees and non-contractual bonuses properly ascertained and accrued as an expense in the financial accounts for the year ended 31 Dec 2011 but declared and paid shortly after the year end will typically be allowed as a deductible expense for the year ended 31 Dec 2011 (i.e. YA 2012).

¹⁴ For example, an amount of director's fees accrued in the year ended 31 December 2011 and to be approved in arrears was not put to vote at the relevant AGM. Consequently, such an amount remains a mere provision in the financial accounts for that particular accounting year. According to paragraph 11 of Financial Reporting Standard 37 *Provisions, Contingent Liabilities and Contingent Assets*, provisions can be distinguished from other liabilities such as trade payables and accruals because there is uncertainty about the timing or amount of the future expenditure required in settlement.

on the date of such approval or within the accounting year in which the fees were approved; or

(d) where the amount of non-contractual bonuses accrued for an accounting year was not paid within a year of the accounting year.

6.5 The **Annex** illustrates the amount of tax deduction that will be given to a company for fees payable to its directors under various scenarios in relation to paragraph 6.4(a) and (b).

7 Administrative procedures

7.1 Companies claiming a tax deduction on director's fees, need not submit any supporting documents/information with their Income Tax Return. However, companies need to prepare and retain¹⁵ the following documents/information:

(a) the date on which the director's fees were approved;

(b) the amount approved;

(c) the year in which any unapproved amount is written back (if applicable); and

(d) the amount (if any) of director's fees approved in arrears at the relevant AGM but the directors were entitled to the fees only after the accounting year in which such fees were approved.

8 Contact information

8.1 If you have any enquiries or need clarification on this e-Tax Guide, please call:

(a) 1800-3568622 (Corporate)

(b) 1800-3568300 (Individual)

¹⁵ The relevant documents/information must be retained for a period of at least five years from the relevant Year of Assessment. These documents should be submitted to the Comptroller of Income Tax upon request. For more information on record keeping, please refer to [Record keeping essentials for businesses](#).

9 Updates and amendments

	Date of amendment	Amendments made
1	8 Mar 2013	<p>To Clarify:</p> <ul style="list-style-type: none">(a) the tax treatment of contractual bonuses payable in accordance with the terms of a bonus plan adopted by an employer;(b) the tax treatment of both director's fees approved in advance and director's fees approved in arrears; and <p>the situations where IRAS will not allow deduction of director's fees or employees' bonuses for the year in which they are accrued as expenses in a company's financial accounts.</p>
2	12 Sep 2014	<ul style="list-style-type: none">(a) Paragraph 6.1 amended to clarify that a company may claim deduction for director's fees and employees' bonuses only when its liability to pay such fees and bonuses actually arises.(b) Paragraph 7.1 amended such that companies need not submit the documents/information to IRAS but to prepare and retain them.

Annex – Amount of tax deduction that will be given to a company for fees payable to its directors under various scenarios¹⁶

Scenario	Director's fees (to be approved in arrears) recorded in the accounts for the year ending 31 Dec 2012 (A)	Director's fees put to vote at the AGM (held in 2013) where the accounts for the year ending 31 Dec 2012 were voted and approved ("the relevant AGM")	Director's fees approved at that AGM (B)	Director's fees not approved at that AGM (A) – (B) = (C)	Unapproved director's fees (C) written-back in accounts for the year ending	Amount of (A) that is deductible in YA 2013	Tax treatment of (C)
1	\$500,000	\$0	\$0	\$500,000	31 Dec 2013	\$0	The \$500,000* is not deductible in YA 2013 as it is not put to vote at the relevant AGM.
1a	\$500,000	\$300,000	\$300,000	\$200,000	31 Dec 2013	\$300,000	The \$200,000* is not deductible in YA 2013 as it is not put to vote at the relevant AGM. * - Such amounts when written-back in the accounts, are not taxable.
2	\$500,000	\$500,000	\$500,000	Nil	NA	\$500,000	NA
3	\$500,000	\$500,000	\$400,000	\$100,000	31 Dec 2013	\$500,000	The \$100,000 is deductible in YA 2013 as it is put to vote at the relevant AGM and written back in the accounts within the accounting year in which the relevant AGM was held. The \$100,000 written-back will be brought to tax in YA 2014.

¹⁶ In all the scenarios, the directors are entitled to the directors' fees once the fees are approved at an AGM.

Scenario	Director's fees (to be approved in arrears) recorded in the accounts for the year ending 31 Dec 2012 (A)	Director's fees put to vote at the AGM (held in 2013) where the accounts for the year ending 31 Dec 2012 were voted and approved ("the relevant AGM")	Director's fees approved at that AGM (B)	Director's fees not approved at that AGM (A) – (B) = (C)	Unapproved director's fees (C) written-back in accounts for the year ending	Amount of (A) that is deductible in YA 2013	Tax treatment of (C)
3a	\$500,000	\$500,000	\$400,000	\$100,000	31 Dec 2014	\$400,000	<p>The \$100,000 is not deductible in YA 2013 as it is <u>not</u> written back in the accounts within the accounting year in which the relevant AGM was held.</p> <p>The \$100,000 written-back will <u>not</u> be brought to tax in YA 2015.</p>