IRAS e-Tax Guide

BENEFITS TO COMPANY DIRECTORS FROM INTEREST-FREE / SUBSIDISED LOANS

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1 Aim

1.1 This e-Tax Guide provides details on the tax treatment of benefits arising from interest-free or interest subsidised loans ("interest-free/subsidised loans") provided by companies to their directors/shareholders[1].

1.2 It would be relevant to :-
(a) companies that provide interest-free/subsidised loans to its directors/shareholders;
(b) directors/shareholders who are granted with such loans.

2 At a glance

2.1 Where interest-free/subsidised loans are made to the directors of a company, the directors derive a benefit from such loans. The income tax law regards company directors as employees, and the benefits so derived from interest-free/subsidised loans are taxable as employment benefits.

2.2 If company directors are also shareholders of the company, and interest-free/subsidised loans are made in their capacity as shareholders, the benefits derived from such loans would not constitute benefits from employment and hence, not taxable in their hands.

2.3 Whether loans to directors/shareholders are provided to them in their capacity as shareholders or as directors is a question of fact.

2.4 The value of interest benefits for interest-free/subsidised loans is computed based on prime lending rate. Companies that provide such loans to their directors are required to report these benefits as the employment income of the directors for the year in which the loans were granted.

[1] This e-Tax guide replaces the IRAS's e-Tax guide on "Benefits to company directors from interest-free/subsidised loans" published on 1 Nov 2002.

3 Background

3.1 The benefits arising from interest-free/subsidised loans taken up in the capacity as directors/shareholders are regarded as perquisites of employment and is taxable under Section 10(1)(b) of the Singapore Income Tax Act ("ITA").

3.2 For the purpose of ITA, the directors of a company are regarded as employees. The definition of employee under Section 2 of ITA was specifically amended in 1993 to include a director of a company.

3.3 The abovementioned tax treatment was reaffirmed in the case of NYK & Anor v. CIT (2001) MSTC 5297. In that case, the court had also affirmed the use of prime lending rate of banks as a reasonable basis to compute the benefit derived by the directors from the interest-free loans provided.

4 Current tax treatment

4.1 Benefits arising from interest-free/subsidised loans provided to directors/shareholders of a company in their capacity as directors constitute perquisites of an employment and are taxable in their hands. On the other hand, benefits derived from similar loans made to shareholders would not constitute perquisite of an employment and hence, not taxable in their hands. This is provided that the loans are bona-fide loans made to the individuals solely in their capacity as shareholders.

5 Guidelines on determining shareholder's loan

5.1 Whether loans to directors/shareholders are provided to them in their capacity as shareholders or as directors is a question of fact.

5.2 IRAS has provided guidance on the following list of elements that must be present to establish that loans given to directors/shareholders were given to them solely in their capacity as shareholders, rather than directors' loans or disguised remuneration:-

(a) There are bona-fide reasons (other than tax) for the company to extend loans to directors/shareholders in their capacity as shareholders, instead of paying them dividends or returning excess capital to them.

(b) The loans are neither remuneration nor benefits to directors disguised in the form of loans to shareholders. They are not intended to be a means for a company to pay dividends or return excess contributed capital to its shareholders, including directors/shareholders. In other words, where a loan is made, there must be evidence:

(i) of a genuine intent for a creditor/debtor relationship to exist between the company and shareholders;

(ii) to support that it has reasonable expectation of the loans being repaid. The terms of the loans to shareholders should also generally be those found in a typical loan arrangement e.g. there are a repayment schedule or repayment terms provided etc.

(c) The loans are extended to all shareholders (including shareholders who are directors), under similar loan terms and the loan quantum determined on similar basis. The loan quantum extended to each of the shareholders, including the directors/shareholders should be determined on the basis of their respective shareholding in a company or other equivalent basis and not due to influence or position held by the director/shareholder in the company. Similar loan terms (e.g. repayment schedules, interest rate charged, if any etc) should also be applicable to loans extended to all shareholders (including directors/shareholders). Shareholders who are provided with loans should not arrange to divert the loan proceeds to other shareholders of the company for use by the latter.

(d) The availability of contemporaneous documentary evidence to support that loans are made to the loan recipients in their capacity as shareholders (and not directors) of the company. Examples of such evidence are directors' or board's resolutions, approval at shareholders' meetings, minutes of meetings or other records etc.

6 Administrative procedure

6.1 Where interest-free/subsidised loans are provided to the individuals in their capacity as directors, the employers are required to report the taxable value of interest benefits as employment income of the directors for the year in which the loans were granted.

6.2 The employers have to compute the value of interest benefits based on prime lending rate. To simplify the computation, IRAS generally accepts computation of interest benefit based on the amount of loan outstanding as at 31 Dec of each year multiplied by the average prime lending rate for that year. If the loan was repaid partially or fully during the calendar year, the interest benefits should be computed according to the number of months in that year for which the loan remained outstanding. The examples in Annex A illustrate the computation of taxable benefits.

6.3 For interest subsidised loans, any interest payable by the directors should be deducted from the value of interest benefits computed to arrive at the taxable interest benefits.

6.4 Information on prime lending rates is available on the MAS website, http://www.mas.gov.sg. For your convenience, IRAS has computed the average prime lending rates based on the information found on the MAS website and the information is available on IRAS website www.iras.gov.sg.

7 Contact information

7.1 If you have any enquiries or need clarification on this Guide, please call 1800-3568 300.

8 Updates and amendments

	Date of amendment	Amendments made
1	12 Sep 2014	Additional illustrative examples are provided in Annex A.

Annex A

Examples illustrating the scenarios whereby the interest-free loans are granted to the directors/shareholders in their capacity as directors

Example 1

Mr Lim was granted an interest-free loan of $200,000 for the period from 1 Mar 2011 to 31 Dec 2012 by Sunshine Holdings Pte Ltd. Mr Lim is a director of the family-owned company and managed its operation. Apart from Mr Lim who holds 55% of the shareholding, his wife and two siblings each holds 15% of the shareholdings of the company. While Mr Lim and his wife are the directors of the company, his two siblings are not. He did not draw any remuneration from the company which derived dividend income from investment in shares and rental income from renting out two properties. Mr Lim made use of the loan to purchase a motor car for his personal use. He did not repay the loan until 2 Jan 2013.

Based on the guidelines set out in paragraph 5.2, Mr Lim was provided with the loan in his capacity as a director, the benefits arising from the interest-free loan constitute his employment perquisite.

The taxable interest benefits for YA 2012 and 2013 are as follows:

Year of Assessment	Outstanding Loan as at 31 Dec	Average Prime Lending Rate (%)	Amount of Interest Benefit
2012	$200,000	5.38	$8,967#
2013	$200,000	5.38	$10,760

#$200,000x5.38%x10/12

Example 2

Mrs Ong is a director of Ocean Pte Ltd. In Dec 2009, apart from receiving director’s fee of $5,000, she was provided with an interest-free loan of $300,000 by the company. Mrs Ong and her husband are the only two directors/shareholders of the company of which Mrs Ong and Mr Ong each holds 30% and 70% of shareholding. While the loan was granted to her only, Mrs Ong used the loan to purchase a property registered in her name. She commenced the repayment of loan by 6 equal instalments since Jan 2012 and the loan was fully paid up by end of Jun 2012.

Based on the facts, the loan was granted to her in her capacity as a director and the benefits arising from the interest-free loan constitute her employment perquisite.

The taxable interest benefits for YA 2010 to 2013 are as follows:

Year of Assessment	Outstanding Loan as at 31 Dec	Average Prime Lending Rate (%)	Amount of Interest Benefit
2010	$300,000	5.38	$1,345[#]
2011	$300,000	5.38	$16,140
2012	$300,000	5.38	$16,140
2013	$0	5.38	$3,362.48*

[#]$300,000X5.38%x1/12

*The amount is arrived at as follows:

2012	Outstanding loan	Amount of Interest Benefit
Jan	$300,000 - $50,000 = $250,000	$250,000x5.38%x1/12 = $1,120.83
Feb	$250,000 - $50,000 = $200,000	$200,000x5.38%x1/12 = $896.66
Mar	$200,000 - $50,000 = $150,000	$150,000x5.38%x1/12 = $672.50
Apr	$150,000 - $50,000 = $100,000	$100,000x5.38%x1/12 = $448.33
May	$100,000 - $50,000 = $50,000	$50,000x5.38%x1/12 = $224.16
Jun	$50,000 - $50,000 = $0	0
		Total $3,362.48