

A tabulated analysis of the provisions and the explanations in IRB's Public Ruling 8 of 2015

Provisions/subject	Explanations	Comments
The company makes a loan or advances of money		The term 'loans and advances' is not defined for the purposes of this section. Therefore, the ordinary meaning should be adopted when applying section 140B
From the company's internal funds	<p>'Internal funds' are surplus funds that may arise from the injection of capital, retained earnings and company reserves</p> <p>'External funds' refer to financial resources acquired by a company through loans from third parties such as banks or related companies specifically used to finance loans or advances to directors. The decision to acquire loans from external funds can be referred from the board of directors resolution or board of directors meeting minutes</p> <p>If loans or advances to director are from 'mixed funds', ie partly from internal funds and partly from external funds, the interest income is computed only on the portion related to amount of internal funds. It is incumbent on the company to prove that some / all of the loans or advances are from external funds and not subject to section 140B of the ITA. If the loan from external funds are used partly for business and partly for investment purposes, then interest restriction under subsection 33(2) of the Act is applicable</p>	<p>Where there are loans and advances made to the shareholder-director/s of the company, the presumption is that they are internally-funded and section 140B applies if the equity threshold is satisfied</p> <p>If it is claimed that such loans or advances are externally funded, the onus is on the company to prove that they are externally-funded. The minutes of board meetings constitute a good source of evidentiary support</p>
To a person who is a director, as defined, of the company	'Director' means the director of a company as defined under subsection 75A(2) of the Act, ie a person who holds the position of 'director' (by whatever name called) and holds not less than 20% of the ordinary share capital of the company, either directly on his own or with one or more associates	If a person, either on his own or with his associates, holds less than 20% of the shares of the company, section 140B is not applicable in respect of any loan or advances given to him by the company
The company is deemed to have gross interest income from such loan or advance	<p>Public Ruling states that the provisions relating to loans made between related persons [s29 (30)] are superceded by s.140B</p> <p>The interest income thus deemed taxable is interest <i>per se</i> and is classified as income under s.4(c) to the company</p>	The interest is neither received, due to be paid, nor is it obtainable on demand. Yet, the interest is deemed under s.140B to be income to be brought to tax on the company

<p>The deemed interest income is calculated on a monthly basis by reference to the formula - $\frac{1}{12} \times A \times B$</p>	<p>A = the total amount of loans or advances to directors outstanding at the end of the calendar month, and</p> <p>B = Annual Lending Rate of commercial banks published by Bank Negara Malaysia on interest free loans or advances at the end of the calendar month</p>	<p>Refer to Example 11 of Public Ruling 8 of 2015 for detailed calculations -</p> <p>http://www.hasil.gov.my/pdf/pdfam/LOAN_OR_ADVANCES_TO_DIRECTOR.pdf</p>
<p>If the interest charged by the company on such loan or advances exceeds the deemed interest income, s.140B shall cease to apply</p>	<p>Section 140B will not be applicable because the loan is given at prevailing market rate</p> <p>The interest actually charged by the company will constitute interest income to the company</p> <p>In other words, the higher of the interest charged or the market-rate interest will constitute income to the company</p>	
<p>If the interest charged by the company is less than the deemed interest, section 140B shall apply and any interest charged and payable to the company shall be disregarded.</p>		
<p>Treatment in the hands of the directors who receive the loans or advances</p>	<p>If the loans or advances are funded internally and there is no or low interest charged, and section 140B is invoked, there is no implication on the director, as the company is deemed to have received interest on such loan</p> <p>If the director pays market rate interest on the loans or advances received (whether the loans or advances are funded internally or externally), section 140B is not applicable and there is no implication on the director as he has not received a benefit from his employer</p> <p>If the company borrows externally to finance the loan given to the director, section 140B is not applicable and the interest costs incurred represent a taxable employment (perquisite) income in the hands of the director as he is, by definition, an employee of the company</p>	
<p>Loans advanced to partnerships</p>	<p>A partnership is not a taxable person and does not have a separate legal identity. A loan given to a partnership is considered given to the individual partners of the partnership. Where such partners are also</p>	

	<p>directors of the company, the provision of s.140B will apply to the company (see Paragraph 4.4, examples 8, 9 and 10 of Public Ruling 8 of 2015 –</p> <p>http://www.hasil.gov.my/pdf/pdfam/LOAN_OR_ADVANCES_TO_DIRECTOR.pdf</p>	
Dormant companies	<p>Loans or advances made by a dormant company to its directors will trigger the commencement of operations as per the definition of 'operations' [s21A(8)]</p>	