

Malaysia releases rules and guidelines on interest expense limitation

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

Executive summary

On 28 June 2019, Malaysia issued rules (the Rules) on the interest deductibility limitation.¹ On 5 July 2019, the Malaysian Inland Revenue Board (the IRB) released guidelines (the Guidelines) to supplement the Rules. These rules and guidelines follow the proposal of the limitation in the 2019 budget,² released on 2 November 2018, and enacted on 27 December 2018.³

This Alert summarizes the key aspects of the Rules and Guidelines.

Detailed discussion

Under Section 140C, no deduction will be allowed for any interest expense in a controlled transaction in excess of the maximum amount of interest as determined under the Rules.

The Rules will apply to a person who receives any financial assistance in a controlled transaction, where the total amount of any interest expense for all the financial assistance exceeds RM500,000 (US\$125,000) in the basis period for a year of assessment (YA).⁴

Key terms defined by the Rules include:

- ▶ **Controlled transaction** will be treated as financial assistance between persons:
 - One of whom has control over the other; or
 - Both of whom are controlled by some other person (referred to as a third person)
- ▶ **Financial assistance** includes loan, interest-bearing trade credit, advances, debt or the provision of any security or guarantee
- ▶ **Interest expense** means:
 - Interest on all forms of debt; or
 - Payments economically equivalent to interest (excluding expenses incurred in connection with the raising of finance)

The Rules and Guidelines also outline the categories of taxpayers that are not subject to the Rules, including:⁵

- ▶ Individuals
- ▶ Licensed financial institutions such as banks, insurers and re-insurers (including Labuan financial institutions)
- ▶ A construction contractor as defined under the Income Tax (Construction Contracts) Regulations 2007
- ▶ A property developer as defined under the Income Tax (Property Developer) Regulations 2007
- ▶ A person who is a tax-exempt entity⁶

The Guidelines clarify that the Rules and Guidelines will apply to cross-border financial assistance from an associated party, as well as cross-border financial assistance from third parties if such assistance is guaranteed by related parties in or outside of Malaysia. However, the interest deductibility limitation will not apply to a special purpose vehicle established solely for the issuance of *sukuk* (Islamic Financing).

Calculating the maximum amount of deductible interest

The Rules and Guidelines provide that the maximum amount of deductible interest is 20% of the amount of Tax-EBITDA.⁷

Carryforward of interest expense

Where a company has interest expense in excess of 20% of Tax-EBITDA, the excess can be carried forward and deducted against the adjusted income of the company for subsequent YAs. In any given YA, the total interest which can be claimed is limited to 20% of tax-EBITDA. A company can utilize the carried-over interest expense even if the company has no interest expense in the subsequent YA, until the entire excess amount has been fully utilized.

The carryforward of interest from the preceding year is subject to the condition that the IRB is satisfied that the shareholders of the company are substantially the same in the following YA. The Rules also provide clarification as to how shareholders would be ascertained to be “substantially the same.”

Endnotes

1. Income Tax (Restriction on Deductibility of Interest) Rules 2019 [P.U.(A). 175/2019].
2. Section 140C of the *Income Tax Act 1967* (ITA).
3. See EY Global Tax Alert, [Malaysia releases 2019 Budget](#), dated 4 December 2018 and EY Global Tax Alert, [Malaysia enacts 2019 Budget proposals](#), dated 3 January 2019.
4. This generally corresponds to an accounting period.
5. The Guidelines clarified that where a person has other business income which is not specified under the respective Regulations (i.e., Construction Contractors or Property Developers), that business income will be subjected to Section 140C and the Rules.
6. Under Paragraph 127(3)(b) or Subsection 127(3A) of the ITA.
7. The term's definition is rather complex and as such, for purposes of this Alert, it is intentionally left out.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Tax Consultants Sdn Bhd, Kuala Lumpur

- | | |
|-------------------------|---------------------------------|
| ▶ Amarjeet Singh | amarjeet.singh@my.ey.com |
| ▶ Sockalingam Murugesan | sockalingam.murugesan@my.ey.com |
| ▶ Anil Kumar Puri | anil-kumar.puri@my.ey.com |
| ▶ Asaithamby Perumal | asaithamby.perumal@my.ey.com |
| ▶ Hisham Halim | hisham.halim@asmy.ey.com |
| ▶ Vinay Nichani | vinay.nichani@my.ey.com |
| ▶ Sharon Yong | sharon.yong@my.ey.com |

Ernst & Young LLP (United States), Malaysia Tax Desk, New York

- | | |
|-----------------|-----------------------|
| ▶ Andrew Loh | andrew.loh1@ey.com |
| ▶ Meng Hui Chua | meng.hui.chua1@ey.com |

Ernst & Young LLP, Asia Pacific Business Group, New York

- | | |
|------------------|------------------------|
| ▶ Chris Finnerty | chris.finnerty1@ey.com |
| ▶ Kaz Parsch | kazuyo.parsch@ey.com |
| ▶ Bee Khun Yap | bee-khun.yap@ey.com |

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2019 EYGM Limited.
All Rights Reserved.

EYG no. 003436-19Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com