
TECHNICAL

Direct Taxation

RESTRICTION ON DEDUCTIBILITY OF INTEREST GUIDELINES (SECTION 140C, INCOME TAX ACT 1967)

The above [Guidelines](#) dated 5 July 2019 (refer to our [e-CTIM TECH-DT 56/2019](#) dated 10 July 2019) on the restriction of interest deduction under S140C of the ITA follows the publication in the Gazette of the [Income Tax \(Restriction on the Deductibility of Interest\) Rules 2019 \[P.U.\(A\) 175/2019\]](#) dated 28 June 2019 ("the Rules") (refer to our [e-CTIM TECH-DT 54/2019](#) dated 3 July 2019).

The contents of the Guidelines are summarized below. (*Note: The sections quoted below refer to sections of the Income Tax Act 1967 (ITA), unless otherwise stated.*)

Para. #	Summary
1	<p>Introduction</p> <p>The Rules were introduced to restrict deductions for interest expenses or any other payments which are economically equivalent to interest, to ensure that expenses (interest and other financing costs) are commensurate with business income. This legislation is based on the Base Erosion and Profit Shifting (BEPS) Action 4 of the Organisation for Economic Cooperation and Development (OECD) where the aim is to prevent base erosion, through the use of excessive interest expense or any payments which are economically equivalent to interest claimed by businesses.</p>
2	<p>Objective</p> <p>The objective is to explain the determination of the amount deductible and restricted in relation to:-</p> <ul style="list-style-type: none"> i. <u>business interest expenses</u>; and ii. <u>other payments which are economically equivalent to interests</u> for the basis period (BP) beginning on or after 1 July 2019 and subsequent BPs.
3	<p>Interpretation</p> <p>Certain terms used in these Guidelines have their meanings specified under this paragraph. (The meanings of words underlined in the e-CTIM are found in this paragraph.)</p>
4	<p>Scope of Application</p> <p>Explains that S140C of the Act and the provisions of the Rules are applicable to a person:-</p> <ul style="list-style-type: none"> (a) who is within the charge to tax under the ITA (except for those listed under para. 9 of the Guidelines); (b) having <u>interest expenses</u> from <u>financial assistance</u> which is deducted in ascertaining the adjusted income before any restriction on the deductibility of interest is made under S140C of the ITA from each business source which is

	<p>paid or payable to:-</p> <ul style="list-style-type: none"> i. its associated person outside Malaysia; ii. its associated person outside Malaysia which operates through a permanent establishment in Malaysia; iii. a third party outside Malaysia where the financial assistance is guaranteed by its holding company or any other enterprises under the same <u>MNE Group</u> (regardless of the tax residence country of the guarantor).
5	<p>De Minimis Threshold</p> <p>S140C does not apply where the total amount of any interest expense for all financial assistance from all business sources is equal or less than RM500,000 in the BP for a YA.</p> <p>Where there are multiple business sources, the above threshold should be accumulated from all business sources while the calculation of interest restriction should be made separately on each business source (refer Example 1).</p>
6	<p>Calculation of Tax-EBITDA</p> <p>Calculation of <u>Tax-EBITDA</u> using the formula found in the Rules, viz. –</p> $\text{Tax EBITDA} = [A] + [B] + [C]$ <p>The calculation is in accordance with Rule 5 of the Rules.</p> <p>Example 2 shows the calculation of the amount of interest to be restricted under S140C. (The amount of Tax-EBITDA is based on the example found in Annex A of the Guidelines.)</p> <p>Where the Tax-EBITDA is nil, all the interest expenses subjected to S140C and the Rules and further defined under paras. 3.6 and 4(b) of the Guidelines will be restricted in ascertaining the adjusted business income (Example 3).</p>
7	<p>Maximum Amount of Interest Expense Allowable.</p> <p>In accordance with S140C and Rule 4 of the Rules, this is an amount equal to 20% of the total amount of the Tax-EBITDA of that person consisting of a business source for the BP for a YA. (Example 4)</p>
8	<p>Carry Forward of Excess Interest Expense</p> <p>Provides an example of the computation of excess interest to be carried forward. (Example 5)</p>
9	<p>Non-Application</p> <p>The entities on which S140C is not applicable is listed here. The list is the same as found in rule 2(3) of the Rules, except for the following:</p> <ul style="list-style-type: none"> i. the Guidelines omit the person stated under rule 2(3)(k) of the Rules; ii. the Guidelines have added the following, not found in the Rules: Para 9(i) - A special purpose vehicle (SPV) as defined under section 60I(1) of the ITA.

10	Effective Date S140C is only applicable on a business where the BP starts on or after 1 July 2019. In a scenario where the BP of a person begins prior to 1 July 2019, S140 and the Rules will not be applicable. (Example 6)
11	Disclaimer The examples in the Guidelines are for illustration purposes only and are not exhaustive.
12	Enquiries Address and contact nos. to which enquiries are to be directed.
Annex A	Example Of Calculation Of Adjusted Business Income Before The Application Of Restriction On Deductibility Of Interest (S140C ITA 1967)
Annex B	Tax Computation After The Restriction On Deductibility Of Interest (S140C ITA 1967)

Members may read the Guidelines in full on the websites of the [Institute](#) and the [LHDNM](#).

You may write to the Institute at technical@ctim.org.my or secretariat@ctim.org.my in respect of any suggestions, concern or comments you may have on the [Guidelines](#) so that we may raise them to the LHDNM.

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