

# Tax Alert

Welcome to Tax Alert, Grant Thornton Malaysia's newsletter on the latest tax updates and information.

**10 July 2019**



# GUIDELINES ON EARNING STRIPPING RULES (“ESR”)

Further to the Income Tax (Restriction on Deductibility of Interest) Rules 2019 covered in our Tax Alert dated 3 July 2019 to restrict the deduction of interest expense in connection with or on any financial assistance in a controlled transaction, also known as “ESR”, the Inland Revenue Board of Malaysia (“IRBM”) has recently issued Guidelines on Restriction on Deductibility of Interest to provide further guidance and clarification on the application of the abovementioned Rules and Section 140C of the Act.

In determining the interest to be restricted under Section 140C, the Guidelines provide additional definition for the following:-

“Interest”	is the return or compensation for the use or retention by a person of a sum of money belonging to or owed to another person.
“Interest expenses”	includes:- a) interest in all forms of debt; or b) payments economically equivalent to interest.  which is deducted in ascertaining the adjusted income under the Act before any restriction of interest under section 140C of the Act of a person from the business source including any interest which is not a part of expenses in determining the business profit or loss of that person.
“Interest expenses”	excludes:- (a) any interest expenses incurred in connection with the raising of finance (e.g. guarantee fee); or (b) any interest expenses incurred which is not allowable in ascertaining the adjusted income under the Act before any restriction of interest under section 140C of the Act of a person from the business source.
“Multinational enterprises (“MNE”) Group”	means a collection of enterprises related through ownership or control such that it is required to prepare consolidated financial statements for financial reporting purposes under the applicable accounting principles or would be so required if equity interest in any of its enterprises were traded on a public securities exchange
“Payment economically equivalent to interest”	includes:- a) profit or loss sharing concept used in Islamic financing; and b) any discount or premium (capital gain/loss) on issuing or subscribing debt instruments that will be amortised through the interest expenses in deciding whether a payment is economically equivalent to interest, the focus should be on its economic substance rather than its legal form.
“Specific third party interest”	means interest expenses from financial assistance which is deducted in ascertaining the adjusted income before any restriction on interest under section 140C of the Act of a person from the business source.  Such interest is paid or payable to the third party outside Malaysia where the financial assistance is guaranteed by its holding company or any other enterprises under the same MNE Group (regardless of the tax residence country of the guarantor).
Negative Tax-EBITDA	TAX -EBITDA will be considered as NIL for the calculation under the Guidelines.

---

# Earning Stripping Rules (“ESR”)

---

## Scope of application

- a) Person who is charge to tax under the Act (excludes specific categories of person listed in our previous Tax Alert); and
- b) a person having interest expenses from financial assistance which is deducted in ascertaining the adjusted income before any restriction on the interest under section 140C of the Act of the person from each of the business source which is paid or payable to:-
  - (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 MNE Group (regardless of the tax residence country of the guarantor).



### Our comments

- The Guidelines confirms that ESR shall only be applicable to cross border financial assistance.
- Where the tax-EBITDA is negative, the deductible interest expense of that person from his business source shall be nil.

For further information on the Income Tax (Restriction on Deductibility of Interest) Rules 2019, kindly refer to our Tax Alert – 3 July 2019 issue.

Please click on the link below to refer the full content of the guideline.

[IRB's guideline on ESR dated 5 July 2019](#)

---

# Contact us

---

Should you have questions about this Tax Alert, please do not hesitate to contact our Tax Team in our respective offices.

## **KUALA LUMPUR**

Mr Chow Chee Yen  
Level 11, Sheraton Imperial Court  
Jalan Sultan Ismail  
50250 Kuala Lumpur  
T +603 2692 4022  
F +603 2721 5229  
E [cheeyen.chow@my.gt.com](mailto:cheeyen.chow@my.gt.com)

## **Other offices:**

### **PENANG**

Ms Gwendolyn Lau  
51-8-A  
Menara BHL Bank  
Jalan Sultan Ahmad Shah  
10050 Penang  
T +604 228 7828  
F +604 227 9828  
E [gwendolyn.lau@my.gt.com](mailto:gwendolyn.lau@my.gt.com)

### **JOHOR BAHRU**

Ms Yau Chew Yin  
Suite 28.01, 28<sup>th</sup> Floor  
Menara Zurich  
No. 15, Jalan Dato' Abdullah Tahir  
80000 Johor Bahru, Johor  
T +607 332 8335  
F +607 332 2268  
E [chewyin.yau@my.gt.com](mailto:chewyin.yau@my.gt.com)

### **KUANTAN**

Ms Han Siew Bueh  
A-105A, 1st Floor  
Sri Dagangan, Jalan Tun Ismail  
25000 Kuantan  
Pahang  
T +609 515 6124  
F +609 515 6126  
E [siewbueh.han@my.gt.com](mailto:siewbueh.han@my.gt.com)



This publication is published as a service to our clients, associates and other interested parties. Please be advised that the information contained herein is for general guidance only. Any reader intending to base a decision on information contained in this publication is advised to consult us before proceeding.



**Grant Thornton**

**An instinct for growth™**

[grantthornton.com.my](http://grantthornton.com.my)

© 2019 Grant Thornton Malaysia. All rights reserved.

Grant Thornton Malaysia is a Malaysian Partnership and is a member firm of Grant Thornton International (GTIL), a private company limited by guarantee, incorporated in England and Wales. Please visit [www.grantthornton.com.my](http://www.grantthornton.com.my) for more details.