INCOME TAX (RESTRICTION ON DEDUCTIBILITY OF INTEREST) RULES 2019

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IN exercise of the powers conferred by paragraph 154(1)(ed) of the Income Tax Act 1967 [Act 53], the Minister makes the following rules:

CITATION AND COMMENCEMENT

1(1) These rules may be cited as the **Income Tax (Restriction on Deductibility of Interest) Rules 2019**.

1(2) These Rules come into operation on 1 July 2019.

APPLICATION AND NON-APPLICATION

2(1) These Rules shall apply—

(a) to a person who has been granted any financial assistance in a controlled transaction and the total amount of any interest expense for all such financial assistance exceeds five hundred thousand ringgit (RM500,000.00) in the basis period for a year of assessment; and

(b) in respect of the basis period beginning on or after 1 July 2019 and subsequent basis periods.

2(2) Where the Director General directs that the basis period for a year of assessment shall consist of a period or periods as specified in the direction, the total amount of interest expense for such financial assistance for the period or periods shall be deemed to accrue evenly over that period or periods.

2(3) Notwithstanding subrule (1), these Rules shall not apply to—

(a) an individual;

(b) a licensed bank, licensed investment bank, licensed insurer and professional reinsurer as defined under the Financial Services Act 2013 [Act 758];

(c) a licensed Islamic bank, licensed takaful operator and professional retakaful operator as defined under the Islamic Financial Services Act 2013 [Act 759];

(d) a Labuan bank and Labuan investment bank licensed under Part VI of the Labuan Financial Services and Securities Act 2010 [Act 704];

(e) a Labuan Islamic bank and Labuan Islamic investment bank licensed under Part VI of the Labuan Islamic Financial Services and Securities Act 2010 [Act 705];

(f) a Labuan insurer and reinsurer including a Labuan captive insurance business licensed under Part VII of the Labuan Financial Services and Securities Act 2010;

(g) a Labuan takaful operator and retakaful operator including a Labuan captive takaful business licensed under Part VII of the Labuan Islamic Financial Services and Securities Act 2010;

(h) a development financial institution which is prescribed under the Development Financial Institutions Act 2002 [Act 618];

(i) a construction contractor as defined under the Income Tax (Construction Contracts) Regulations 2007 [P.U. (A) 276/2007];

(j) a property developer as defined under the Income Tax (Property Developer) Regulations 2007 [P.U. (A) 277/2007];

(k) a person who has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act in respect of the adjusted income of the person.

INTERPRETATION

3 In these Rules, unless the context otherwise requires—

"**financial assistance**", "**interest expense**" and "**controlled transaction**" have the meanings assigned to them under section 140C of the Act;

"**tax-EBITDA**" means an amount ascertained under rule 5;

"**EBITDA**" means earnings before interest, taxes, depreciation and amortisation.

MAXIMUM AMOUNT OF INTEREST

4 The maximum amount of interest referred to in section 140C of the Act shall be an amount equal to twenty per cent of the amount of tax-EBITDA of that person from each of his sources consisting of a business for the basis period for a year of assessment.

ASCERTAINMENT OF TAX-EBITDA

5(1) The amount of tax-EBITDA shall be ascertained in accordance with the following formula:

$$A + B + C$$

where A is the amount of the adjusted income of the person from his sources consisting of a business for the basis period for a year of assessment before any restriction on deductibility of interest under section 140C of the Act is made;

B is the total amount of qualifying deductions allowed in ascertaining the amount of the adjusted income in A;

C is the total amount of interest expense incurred in relation to the gross income of the person for any financial assistance in a controlled transaction from his sources consisting of a business for the basis period for a year of assessment.

5(2) In this rule, "qualifying deduction" means—

(a) an amount equal to the amount of expenditure incurred by the person computed in any deduction falling to be made under the Act where the amount of deduction is twice the amount of the expenditure incurred by a person;

(b) any claim for deduction under any rules made under paragraph 154(1)(b) of the Act where the deduction is allowed for purposes of ascertaining the adjusted income of the person.

CARRY FORWARD OF INTEREST EXPENSE

6(1) Subject to subrule (2), in the case of a company, where the company has interest expense which is in excess of the maximum amount of interest as ascertained under rule 4 for a basis period for a year of assessment, the amount of that excess shall be allowed to be carried forward and deducted against the adjusted income of the company for the subsequent years of assessment subject to the maximum amount of interest ascertained under rule 4 for the relevant year notwithstanding that the company has no interest expense for any subsequent year of assessment, until the whole amount of that excess has been fully utilised.

6(2) The excess of the maximum amount of interest for a basis period for a year of assessment and any excess of the maximum amount of interest carried forward from any particular year of assessment preceding that year shall be allowed to be carried forward if the Director General is satisfied that the shareholders of that company on the first day and the last day of the basis period for the year of assessment following the year in which such amount was ascertained were substantially the same.

6(3) For the purpose of subrule (2)—

(a) the shareholders of the company at any date shall be substantially the same as the shareholders at any other date if on both those dates—

i. more than fifty per cent of the paid-up capital in respect of the ordinary share of the company is held by or on behalf of the same persons; and

ii. more than fifty per cent of the value of the allotted shares in respect of ordinary share in the company is held by or on behalf of the same persons; and

(b) shares in the company held by or on behalf of another company shall be deemed to be held by the shareholders of the last mentioned company.

6(4) In subrule (3), "ordinary share" means any share other than a share which carries only a right to any dividend which is of—

(a) a fixed amount or at a fixed rate per cent of the value of the shares; or

(b) a fixed rate per cent of the profits of the company.