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# General Interest Deduction Limitation Rule for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses

Ministerial Decision No. 126 of 2023

Issued 23 May 2023 – (Effective the day after publishing in the Official Gazette)

## The Minister of State for Financial Affairs has decided:

- Having reviewed the Constitution,
- Federal Law No. 1 of 1972 on the Competencies of Ministries and Powers of the Ministers, and its amendments,
- Federal Decree-Law No. 13 of 2016 on the Establishment of the Federal Tax Authority, and its amendments,
- Federal Decree-Law No. 28 of 2022 on Tax Procedures,
- Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses,

## Article 1 – Definitions

Words and expressions in this Decision shall have the same meanings specified in the Federal Decree-Law No. 47 of 2022 referred to above (“Corporate Tax Law”), and the following words and expressions shall have the meanings assigned against each, unless the context otherwise requires:

Accounting Standards	: The accounting standards specified in a decision issued by the Minister for the purposes of the Corporate Tax Law.
Islamic Financial Instrument	: A financial instrument which is in compliance with Sharia principles and is economically equivalent to any instrument provided for under Clause (2) of Article (2) of this Decision, or a combination thereof.



Qualifying Infrastructure Project	: A project that meets the conditions of Article (14) of this Decision.
Qualifying Infrastructure Project Person	: A Resident Person that meets the conditions of Clause (2) of Article (14) of this Decision.
General Interest Deduction Limitation Rule	: The limitation provided under Article (30) of the Corporate Tax Law.

## Article 2 – Interest Component on Financial Assets and Liabilities

1. Where the financial returns on a financial asset or liability comprise Interest or other payments economically equivalent to Interest, then the interest component on those returns shall be considered Interest expenditure or income for the purposes of the General Interest Deduction Limitation Rule, regardless of the classification and treatment of the interest component under the applicable Accounting Standards unless stated otherwise in this Decision.
2. For purposes of Clause (1) of this Article, Interest shall include, but not be limited to, the interest component on any of the following:
  - a. Performing and non-performing debt instruments.
  - b. Interests held in collective investment schemes that primarily invest in cash and cash equivalents.
  - c. Collateralised asset backed debt securities and similar instruments.
  - d. Agreements for the sale and subsequent repurchase of the same security at a future date at an agreed upon price.
  - e. Stock lending and similar agreements for the disposal of a security subject to an obligation or right to reacquire the same or a similar designated security.
  - f. Securitisations and similar transactions involving the transfer of assets in exchange for the issuance of securities that entitle the holder to proceeds generated from these assets.
  - g. Lease or hire purchase arrangements where all the risks and rewards incidental



to the ownership of the underlying asset have been substantially transferred to the lessee.

- h. Factoring and similar accounts receivable purchase transactions.

### **Article 3 – Amounts Incurred in Connection with Raising Finance**

1. Amounts incurred in connection with raising finance shall be considered Interest for the purposes of the General Interest Deduction Limitation Rule.
2. For purposes of Clause (1) of this Article, Interest shall include, but not be limited to, the following fees:
  - a. Guarantee fees.
  - b. Arrangement fees.
  - c. Commitment fees.
  - d. Any other fees similar in nature to those provided under paragraphs (a), (b) and (c) of this Clause.
3. For the purposes of Clause (1) of this Article, Interest shall include the interest component on forward contracts, futures contracts, options, interest rate and foreign exchange swap agreements or any other financial derivative instruments used to hedge risks directly connected with the raising of finance.

### **Article 4 – Islamic Financial Instruments**

The interest equivalent component on Islamic Financial Instruments shall be treated as Interest for the purposes of the General Interest Deduction Limitation Rule.

### **Article 5 – Finance and Non-Finance Lease**

1. The finance element of finance lease payments as documented in the accounts of a Taxable Person prepared in accordance with the Accounting Standards shall be considered Interest for the purposes of the General Interest Deduction Limitation Rule, and this includes both expenditure in relation to the finance cost element and income received therefrom.
2. The finance element of non-finance lease payments shall be considered as Interest



for the purposes of the General Interest Deduction Limitation Rule, and this includes both expenditure in relation to the finance cost element and income received therefrom.

3. For the purposes of Clause (2) of this Article, the finance element is the share of any lease payment that is in proportion to the share of the total cost of the lease as attributable to the total finance element.
4. For the purposes of Clause (3) of this Article, the total finance element is the total cost of the lease agreement less the value of the leased asset recognised on the date the lease was entered into less the expected depreciated value of the leased asset at the end of the lease. This shall be determined in accordance with the Accounting Standards and in accordance with the accounting policy of the Taxable Person in the year in which the lease was entered into.
5. For the purposes of Clause (4) of this Article, the finance element shall be calculated based on the values specified on the date the lease was entered into unless the terms of the lease are amended, in such case, the values shall be recalculated as if a new lease was entered into at the date of that amendment.

## Article 6 – Foreign Exchange Movements

For the purposes of the General Interest Deduction Limitation Rule, all foreign exchange gains and losses accruing from Interest shall be considered Interest.

## Article 7 – Capitalised Interest

Where an amount that is deemed to be Interest under this Decision is capitalised in the accounts of the Taxable Person in accordance with the Accounting Standards, income and expenditure attributable to the capitalised Interest amount shall be subject to the General Interest Deduction Limitation Rule.

## Article 8 – De Minimis Net Interest Expenditure

1. The limitation on the deductible Net Interest Expenditure provided under Clause (1) of Article (30) of the Corporate Tax Law shall not apply where the Net Interest Expenditure for the relevant Tax Period does not exceed AED 12,000,000 (twelve million dirhams).



2. Where the Net Interest Expenditure exceeds the amount referred to in Clause (1) of this Article, a Taxable Person may deduct the higher of AED 12,000,000 (twelve million dirhams) or the percentage provided for under Clause (1) of Article 30 of the Corporate Tax Law.
3. For purposes of this Article, where the relevant Tax Period is more than or less than (12) twelve months, the amount stated in Clause (1) of this Article shall be adjusted in proportion to the length of the Tax Period.

## **Article 9 – Accounting Earnings Before Interest, Taxes, Depreciation, and Amortisation (EBITDA)**

1. For the purposes of the General Interest Deduction Limitation Rule, accounting earnings before the deduction of interest, tax, depreciation and amortisation (EBITDA) for a Tax Period shall be the greater of AED 0 (zero dirham) or the amount calculated as the Taxable Income in accordance with Article (20) of the Corporate Tax Law and any implementing decision issued thereunder, with the addition of all of the following:
  - a. Net Interest Expenditure for the relevant Tax Period.
  - b. Depreciation and amortisation expenditure taken into account in determining the Taxable Income for the relevant Tax Period.
  - c. Any Interest income or expenditure relating to historical financial assets or liabilities held prior to 9 December 2022.
2. Interest income and Interest expenditure in relation to Qualifying Infrastructure Projects exempted under Article (14) of this Decision should be excluded when calculating the Taxable Person's EBITDA for the purposes of the General Interest Deduction Limitation Rule.
3. In calculating EBITDA for the purposes of the General Interest Deduction Limitation Rule, any amount of income and expenditures attributable to the Interest capitalised by the Taxable Person in accordance with the Accounting Standards shall be included when the capitalised Interest is amortised over the useful life of the related asset, and not when the Interest is incurred.



## Article 10 – Adjusting Accounting Income

Where a deduction from Taxable Income is claimed under Article (29) of the Corporate Tax Law, this deduction shall be applied after the Accounting Income for that period has been adjusted in accordance with Clause (2) of Article (20) of the Corporate Tax Law.

## Article 11 – Historical Financial Liabilities

1. Persons who entered into debt instruments or other liabilities for which the terms were agreed prior to 9 December 2022, and any contract such Persons entered into before or after that date with the sole purpose of reducing the Interest rate risk on such debt instruments or other liabilities shall not be subject to the terms of the General Interest Deduction Limitation Rule.
2. For purposes of Clause (1) of this Article, the exemption from General Interest Deduction Limitation Rule shall only apply in relation to the Net Interest Expenditure attributable to the relevant debt instruments or other liabilities.
3. Where the terms of a debt instrument and other liabilities entered into prior to 9 December 2022 include provision for an amount of principal not yet drawn down at that date by the borrower, such amount shall only be considered a part of that debt instrument or liability to the extent the lender was legally obliged to make available such amounts upon the completion of pre-determined deliverables or project phases set out in the terms agreed prior to 9 December 2022 and not including a call by the borrower for a drawdown of the principal.
4. The Net Interest Expenditure attributable to debt instruments or other liabilities agreed prior to 9 December 2022 for a Tax Period is the lower of the following two values:
  - a. The Net Interest Expenditure that arises on the debt instrument or other liability in the Tax Period.
  - b. The Net Interest Expenditure that would have arisen on the debt instrument or other liability in the Tax Period in accordance with the terms of the debt instrument or other liability as they stood on 9 December 2022.



## Article 12 – Tax Groups

1. For the purposes of Article (42) of the Corporate Tax Law, where a Subsidiary joins an existing Tax Group, any carried forward Net Interest Expenditure of the Subsidiary at the date the Subsidiary becomes a member of the Tax Group may only be utilised against the Taxable Income of the Tax Group that is attributable to that Subsidiary that joined an existing Tax Group.
2. Without prejudice to Clause (1) of this Article, where a Subsidiary leaves a Tax Group, any carried forward Net Interest Expenditure of the Tax Group shall remain with the Tax Group, with the exception of any unutilised carried forward Net Interest Expenditure of the relevant Subsidiary as referred to under Clause (1) of this Article.
3. On cessation of a Tax Group, any carried forward Net Interest Expenditure of the Tax Group shall be allocated as follows:
  - a. Where the Parent Company continues to be a Taxable Person, any carried forward Net Interest Expenditure of the Tax Group shall remain with the Parent Company.
  - b. Where the Parent Company ceases to be a Taxable Person, any carried forward Net Interest Expenditure of the Tax Group shall not be available for offset against future Taxable Income of individual Subsidiaries, with the exception of any unutilised pre-Grouping carried forward Net Interest Expenditure of such Subsidiaries.
4. Paragraph (b) of Clause (3) of this Article shall not apply where there is a continuation of the Tax Group under Clause (12) of Article (40) of the Corporate Tax Law.
5. Where a member of a Tax Group is a Bank or Insurance Provider, and is not subject to the General Interest Deduction Limitation Rule, then any income or expenditures of that member shall be disregarded for the calculation of total Net Interest Expenditure and EBITDA of the Tax Group for the purposes of the General Interest Deduction Limitation Rule.





## Article 13 – Independent Business of an Exempt Person

An Exempt Person under paragraphs (a), (b), (c) and (d) of Clause (1) of Article (4) of the Corporate Tax Law that is a Taxable Person insofar as it relates to the Business or Business Activity under Articles (5), (6), (7) or (8) of the Corporate Tax Law, shall be subject to the General Interest Deduction Limitation Rule and the provisions of this Decision in respect of that Business or Business Activity.

## Article 14 – Qualifying Infrastructure Projects

1. Net Interest Expenditure incurred by a Qualifying Infrastructure Project Person in relation to a Qualifying Infrastructure Project shall not be subject to the General Interest Deduction Limitation Rule.
2. A Qualifying Infrastructure Project Person is a Resident Person that satisfies one of the following conditions in the relevant Tax Period:
  - a. Is responsible for the provision, maintenance or operation of a Qualifying Infrastructure Project.
  - b. Carries on any other activity that is ancillary to, or facilitates the provision, maintenance or operation of a Qualifying Infrastructure Project.
3. A Qualifying Infrastructure Project is a project that satisfies all of the following conditions:
  - a. It is exclusively for the public benefit of the State.
  - b. It is exclusively for the purposes of providing transport, utilities, education, healthcare or any other service within the State as may be specified by the Minister.
  - c. Its assets may not be disposed of at the discretion of the relevant Qualifying Infrastructure Project Person.
  - d. The assets provided, operated or maintained by the project should last, or be expected to last, not less than (10) ten years, or another period as may be specified by the Minister.
  - e. All its assets must be situated in the State's Territory.
  - f. All its Interest income and Interest expenditure must arise in the State.





- g. It satisfies any other conditions that may be prescribed by the Minister.

## **Article 15 – Publication and Application of this Decision**

This Decision shall be published and shall come into effect the day following the date of its publication.