

# Transfer Pricing

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## New definition of Control

Meaning of control  
(Wef 1.1.2019)

>20%



1. Proprietary rights
2. Business activities/price influence
3. Appointment of board of directors

March/June 2021 Q1(d)

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## June 2021 Q(1)(d)

(d) Interest deduction on the loans from EMH

Explain the general rule of tax deductibility for the interest expense which will be incurred by EM Manufacturing Sdn Bhd (EMM) and EMT.

In view of EMH's interest rate policy, explain why it is not acceptable and recommend the best practice.

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## Malaysian TP Guidelines

Released on 20 July  
2012(updated July  
2017)

New tax penalty  
regime

Preference of local  
comparable  
companies

Detailed  
contemporaneous  
documentations  
taxpayers should  
maintained,  
especially in  
relation to intra-  
group services

TP documentation  
should be made  
available to the IRB  
within 14 days of a  
request being made  
( NOTE)

Taxpayers outside  
the thresholds  
specified can opt to  
prepare a "short-  
form" TP  
documentation

**Threshold for preparing a full scope TP documentation:**

- ✓ Gross income > RM 25 million & the total amount of RPTs > RM 15 million;
- ✓ Provides financial assistance > RM 50 million.

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### **Failure to Furnish Contemporaneous TP Documentation(NOTE)**

- On conviction, liable to a fine of  
 $\geq$ RM20,000 and not  $\leq$ RM100,000;or  
 Imprisonment for a term not  $>$ 6 months  
 or to both
- No prosecution, liable to a fine of  
 $\geq$ RM20,000 and not  $\leq$ RM100,000

**Effective date: 1.1.2021**

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### **Surcharge on TP Adjustment**

- Penalty rate under Section 113(2)

NO	Condition	Penalty rate Audit case	( TP issues) Voluntary Disclosure
1	TP( who is required to prepare TP documentation in accordance with the TP Guidelines 2012) did not prepare TP documentation	50%	N/A
2	TP prepared TP documentation and submitted documentation ( together with voluntary disclosure) but did not fully comply with the requirements under the TP Guidelines 2012; or TP prepared a comprehensive and quality TP documentation but failed to submit it within 14 days from the date of the written request issued by the IRB	30%	20%

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## Surcharge on TP Adjustment

- Penalty rate under Section 113(2)

NO	Condition	Penalty rate Audit case	( TP issues) Voluntary Disclosure
3	TP prepared a comprehensive and quality TP documentation in accordance with TP Guidelines 2012 and submitted it within 30 days from the date of the written request issued by the IRB ( for voluntary disclosure cases, it is submitted when the voluntary disclosure is made)	0%	0%
	Effective 1 January 2021, a surcharge of <b>up to 5%</b> could also be imposed on <b>transfer pricing adjustment</b> made even if it does not result in any additional tax payable.		

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### Interest on financial assistance granted in a controlled transaction (Earning Stripping Rules)

- ☐ For interest expenses exceeding RM500,000
- ☐ Applicable to transactions with:
  - (i) an associated person outside Malaysia
  - (ii) an associated person outside Malaysia which operates through a permanent establishment in Malaysia
  - (iii) a 3rd party outside Malaysia where the financial assistance is guaranteed by holding company or group of companies
- ☐ Not applicable to licensed banks, investment banks, etc.

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**Interest on financial assistance granted in a controlled transaction (Earning Stripping Rules)**

$$\text{Tax EBITDA} = [A] + [B] + [C]$$

	<b>Include</b>	<b>Exclude</b>
Interest expenses	<ul style="list-style-type: none"> <li>• interest in all forms of debt</li> <li>• payments economically equivalent to interest.</li> </ul>	(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 on the deductibility of interest is made under section 140C of the Act of a person from the business source.

**Max interest expense allowable = 20% x Tax EBITDA**

**Excess c/f to be utilized in the subsequent year and st max amount rule**

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**Interest on financial assistance granted in a controlled transaction (Earning Stripping Rules)**

**Max interest expense = 20% x Tax EBITDA allowable**

**Excess c/f to be utilized in the subsequent year and subject to:**

- **Max amount of interest ascertained in the above**
- **Shareholders of the first day and last day of the basis period for the YA following the year in which such amount was ascertained is substantially the same**

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