

26 AUGUST 2020



Dato' Nitin Nadkarni  
Partner  
**Tax, SST & Customs**  
T: +603 6208 5866  
E: [nn@lh-ag.com](mailto:nn@lh-ag.com)

### **Special Tax Treatment for Financial Institutions (Updated)**

In furtherance to our LHAG Update "[Special Tax Treatment for Financial Institutions](#)" published today, the government has just gazetted the Income Tax (Special Treatment for Interest on Loan) Regulations 2020 (**Regulations**). The key takeaways from the Regulations are as follows:

#### **Special tax treatment**



Jason Tan Jia Xin  
Partner  
**Tax, SST & Customs**  
T: +603 6208 5873  
E: [tjx@lh-ag.com](mailto:tjx@lh-ag.com)

Regulation 4(1) of the Regulations codifies the special tax treatment for financial institutions by providing that where a moratorium is approved by a bank or financial institution in respect of any amount of interest due and payable from 1.4.2020 until 30.9.2020, such interest shall not constitute the gross income of that bank or financial institution in the basis period for that year of assessment (**YA**).

However, reg 4(2) further states that such interest shall be treated as the gross income bank or financial institution in the basis period for that YA if the interest:

- (a) is received within the moratorium period; or
- (b) becomes receivable on or after 1.10.2020.



Steward Lee Wai Foong  
Associate  
**Tax, SST & Customs**  
T: +603 6208 5882  
E: [slw@lh-ag.com](mailto:slw@lh-ag.com)

This position is different from what was announced in the Second Economic Stimulus Package, which indicated that the interest will only be taxable when it is received. Therefore, the timing in which the deferred interest under the moratorium would be taxable is arguably dependent on the repayment structure and any further extension packages entered between each bank and the borrower. If such deferred interest is structured to be receivable on or after 1.10.2020 but still within the YA 2020, it would still be taxable in the YA 2020.

Further, it is notable that the Regulations does not cover interest that would be deferred under the extended three-month moratorium for targeted groups. In that regard, the interest deferred during the three-month extension would still be taxable.

In addition, although the Regulations only mention the word “interest”, it shall be similarly applicable to gains or profits receivable from Islamic transactions by virtue of s 2(7) of the Income Tax Act 1967.

### **Conditions relating to the loan and moratorium**

Other than the requirements stipulated under the FAQ, reg 5 further requires a moratorium application to have been made to the relevant bank or financial institution for corporate borrowers other than SMEs.

In terms of tracking such deferred interests, banks or financial institutions are required to maintain a separate account for the amount of interest deferred and payments received in relation to that interest.

### **Conclusion**

While the publication of the Regulations is welcomed, some of the provisions could have differing interpretations. Therefore, clarity is needed to ensure legal certainty for all financial institutions.

**Steward Lee Wai Foong** ([slw@lh-ag.com](mailto:slw@lh-ag.com))

If you have any queries pertaining to the special tax treatment, please contact associate Steward Lee Wai Foong or Tax, SST & Customs partners, **Dato’ Nitin Nadkarni** and **Jason Tan Jia Xin**, at [tax@lh-ag.com](mailto:tax@lh-ag.com)

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia

T +603 6208 5888  
F +603 6201 0122/0136  
E [enquiry@lh-ag.com](mailto:enquiry@lh-ag.com)  
W [www.lh-ag.com](http://www.lh-ag.com)

Published by the Tax, SST & Customs Practice

© Lee Hishammuddin Allen & Gledhill. All rights reserved. The views and opinions attributable to the authors or editor of this publication are not to be imputed to the firm, Lee Hishammuddin Allen & Gledhill. The contents of this publication are intended for purposes of general information and academic discussion only. It should not be construed as legal advice or legal opinion on any fact or circumstance.

[Feedback](#)

[Unsubscribe](#)