



## Tax Bytes

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Greetings from your Tax & Legal team at Deloitte Singapore.

We are pleased to update you on the following:

### **Fourth edition of e-Tax Guide: Tax deduction for borrowing costs other than interest expenses**

On 30 October 2023, the Inland Revenue Authority of Singapore (IRAS) has published the [fourth edition of e-Tax Guide: Tax deduction for borrowing costs other than interest expenses](#). It replaces the third edition which was published on 15 January 2019.

The fourth edition of the e-Tax Guide contains an important update on the deductibility of front-end fees charged by lenders and would be relevant for taxpayers where:

- Loans are taken up to finance the acquisition of a capital asset or to fund general working capital that are employed in acquiring taxable income; and
- Front-end fees are charged by the lender.

This update is effective from YA 2023. If you are currently in discussions with the IRAS concerning the deductibility of front-end fees for prior Years of Assessment (i.e., YA 2022 and earlier), it is advisable to engage with the IRAS regarding the applicability of the principles outlined in this e-Tax Guide. This is contingent upon your ability to provide necessary supporting documentation to substantiate your position.

Generally, front-end fees incurred by a borrower in relation to a loan on capital account are deductible to the extent that such fees are incurred as a substitute for interest expense or to reduce interest costs. In practice, borrowers may face difficulty in substantiating that the front-end fees are incurred for those purposes due to lack of information or documentation.

Following consultations with banks, the IRAS understands that lenders often charge borrowers for loans based on an “all-in” pricing concept, in which the borrowing costs consist of interest (benchmark/reference rate and interest margin) and a front-end fee. For loans where there is only a single lender (bilateral loan) or a small number of lenders (club loans), there should be no or minimal services provided by the lender in terms of co-ordination, arrangement or underwriting services. Hence, front-end fees charged on such loans should be equivalent to interest and should be allowed tax deduction.

On the other hand, syndicated loans are provided by a group of lenders and the arranger(s) of the loan may be required to source for lenders and/or underwrite the loan quantum. As such, it is likely that front-end fees charged on a syndicated loan would include an element for services rendered by the arranger(s) and this element would not be deductible to the borrower.

Pursuant to the above, the IRAS has categorised loans into bilateral, club, and syndicated loans. These loans and the front-end fees incurred on these loans, as well as their accorded tax treatment are summarised as follows:

No. Factors	Bilateral loans	Club loans	Syndicated loans
<b>1 Parties involved</b>	Provided by a single lender directly to the borrower.	Offered by a small group of lenders to a borrower.	Provided by a group of lenders (syndicate) to one or more of borrowers.
<b>2 Properties of loan</b>	The lender does not usually have the intention of selling down the loan to other parties.	There is minimal arrangement or co-ordination among the lenders required and lenders do not seek other participants to join the loan.	One or more of the lenders would usually act as “arranger(s)” and co-ordinate the provision of the loan in 2 ways: (i) Underwrite the loan—arranger(s) to make-up the difference of the loan principal not subscribed to by other lender(s); or (ii) Provide the loan on a “best-efforts” basis—borrower would only be allowed to borrow the amount subscribed.
<b>3 Computation and tax treatment of front-end fees (subject to point 4 below)</b>	Front-end fees generally viewed to be interest-equivalent and allowable in full.		Typically: (i) A participating lender which is not an arranger would only receive a “participation fee” akin to interest; (ii) A participating lender which also

acts as an arranger would receive both the participation fee, as well as the difference between the front-end fee and its share of participating fee (this being akin to service fees); and

(iii) Borrowers are not privy to the breakdown of front-end fees between interest (tax deductible) and service fees (non-tax deductible).

To reduce compliance effort, from YA 2023, IRAS would allow a deduction of 55%<sup>1</sup> on the front-end fees payable for syndicated loans (i.e., 45% of the front-end fees are not deductible).

This 55% quantum is not cast in stone. The IRAS is open to a claim of front-end fees beyond 55% by a taxpayer if it can be substantiated that the amount of front-end fees claimed is equivalent to interest that would otherwise have been payable. This computation is to be reflected in the submitted tax computation.

The IRAS has indicated that in cases whereby there is supporting documentation showing the split between the front-end fees and service fees, the following formula may be adopted:

$$[B + (B/C \times D)] / A$$

Where:

A = Total amount of front-end fees paid by the taxpayer

B = Amount of participation fee paid to Pure Lenders (no services rendered other than provision of loan)  
C = Amount of loan subscribed by Pure Lenders  
D = Amount of loan quantum subscribed by all arranger(s)

It is noted that the aggregate of C and D should be the total loan quantum provided to the taxpayer.

<sup>1</sup> This percentage is determined by the IRAS from data on front-end fees and participation fees collated from banks following its consultation with the Association of Banks in Singapore.

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- 4 Conditions for tax deduction** (i) **Draw-down condition (enhanced):** As per Section 14(1)(a) of the Singapore Income Tax Act 1947 (ITA), an amount is only accorded tax deduction if: subject to subsections (i) and (ii), it is payable upon “any money borrowed”. This would mean that a taxpayer needs to draw-down the loan facility by the end of the basis period in which the front-end fee was incurred before it can qualify for deduction under Section 14(1)(a)(ii) of the ITA. This condition is now relaxed to include the scenario of allowing a tax deduction when the loan is not drawn down in the same financial year when the loan agreement was signed. If the loan agreement is signed within 3 months before the financial year-end, the taxpayer has until the end of the next financial year to make a draw-down on the loan. This condition is illustrated by way of examples in Annex 2. It is cautioned that a draw-down event date can trigger the need to submit a revised tax computation to the IRAS so that the correct amount of front-end fees may be claimed;
- (ii) **Incurred basis (no change):** The front-end fee must have been incurred in the basis period for the YA in which the tax deduction was claimed (i.e., deduction is granted on an incurred and not amortised basis);
- (iii) **Intention of lender (not applicable for syndicated loans):** The loan agreement and other loan documentation must not indicate any intention by the lender to sell down the loan or include provision of underwriting services; and
- (iv) **Service fee component (no change):** The amount of front-end fees deductible should exclude fees for services (e.g., facility agent fee, security agent fee, coordination fee, etc.). Such service fees, where chargeable, are not tax-deductible.
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**5 Compliance requirements (tax computation)** Taxpayer is to:

- (i) declare the type of loan to which the front-end fees claimed relate;
- (ii) show workings as to how the amount of front-end fees claimed are arrived at; and
- (iii) confirm that where applicable, the conditions (see point 4 above) for claim of front-end fees have been fulfilled.

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**6 Compliance requirements (record-keeping)** Loan agreement (no change) (i) Mandate letter; and (ii) Term sheet.

The IRAS is distinguishing a club loan and a syndicated loan by the terms of the mandate letter. The IRAS notes that syndication mandate letters typically include underwriting commitments, roles beyond mandated arranger, syndication facilitation clauses, and other related matters.

Additionally, if the loan documentation contains terms indicating syndication intentions or underwriting, they would also be regarded by the IRAS to be indicative of a syndicated loan. A non-exhaustive list of terms that hints at this include "bookrunner", "underwriting", and "skim fees<sup>2</sup>".

<sup>2</sup> Skim fees denote fees paid for underwriting, structuring and arrangement to Mandated Lead Arrangers (MLA), minus the participation fees given to syndication lenders, not including the MLA.

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For claiming of front-end fees beyond 55%, the taxpayer must retain the following documents for submission to the IRAS when called upon to do so:

- (i) Facility agreement, fee letters, correspondences, mandate letter, term sheet etc. which express the intention for the front-end fee payment to show that the amount claimed is akin to interest; or
- (ii) Participation fee schedule issued by the arranger(s) reflecting the amount of loan extended by each participant and the corresponding fees

- received by them;  
and  
(iii) Written confirmation from the lead arranger that no services (other than the provision of the loan) were extended by the participating lender(s) to the taxpayer.
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### Closing remarks

The fourth edition of the e-Tax Guide: Tax deduction for borrowing costs other than interest expenses brings clarity to the deductibility of front-end fees for loans taken up to finance capital assets or general working capital related to taxable income. This update is effective from YA 2023 but taxpayers may wish to discuss with the IRAS on a case-by-case basis whether this treatment applies to assessment years which remain open.

Whilst it helps resolve long-standing tax disputes by categorising loans into bilateral, club and syndicated loans and outlining tax treatment, it also introduces additional documentary requirements for taxpayers. These requirements include declaring the type of loan, providing detailed workings for front-end fees that are claimed and confirming compliance with specific conditions. Taxpayers should keep records and documentation indicating their intention for the front-end fee payment, participation fee schedules and written confirmation from lead arrangers to support their claim.

In cases of partially drawn-down loans, it is unclear if further apportionment of the deductible amount may be necessary. This will likely depend on the facts and circumstances and basis upon which the front-end fees are charged.

 Read more

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### Contacts

Should you have any comments or questions arising from this newsletter, please contact either the listed contacts below, or any member of the [Singapore Tax & Legal team](#).



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