

Implementing OECD BEPS Action Plan 4 in Indonesia, a comparative study with Malaysia

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ABSTRACT

This study aims to provide ideal recommendations to implement BEPS Action Plan 4 in Indonesia. A comparative study was carried out on interest limitation rule in Indonesia and Malaysia using a black-letter approach. Furthermore, interviews and confirmation with relevant sources were also carried out. The study's findings demonstrate that it is appropriate to apply interest limitations that do not just apply to multinational corporations. However, Indonesia should use a limitation method based on a specified benchmark fixed ratio of net interest compared to EBITDA. Indonesia can also apply de minimis threshold to exclude the rule of limiting interest for taxpayers with low risk. Indonesia can use the highest benchmark fixed ratio according to OECD recommendations, namely 30% of EBITDA.

INTRODUCTION

Tax revenues have a large portion of the State Revenue and Expenditure Budget (APBN) where as much as $\pm 80\%$ of APBN revenues in 2022 are supported by tax revenues (Badan Pusat Statistik, 2023). This shows the importance to achieve tax revenue targets in Indonesia. Optimizing the achievement of tax revenue targets needs to be supported by a good *tax ratio*. Unfortunately, until 2020, Indonesia's *tax ratio* was only 8.32%. Indonesia's *tax ratio* is far below the OECD average of 33.50%. In the ASEAN region, Indonesia's *tax ratio* is also lower than neighboring Malaysia, which reaches 11.4% (OECD, 2023).

Low *tax ratio* is caused by the widespread practice of tax avoidance and evasion in Indonesia (Darma et al., 2022; Hajawiyah et al., 2021). Tax avoidance can occur with various schemes, but *thin capitalization* is one of the most widely used tax avoidance, especially if an entity avoids tax by interest deduction. (D. Sari, 2019; Taylor & Richardson, 2013). To address tax avoidance practices through interest deduction, the OECD initiated BEPS *Action Plan 4* with the theme of limiting base erosion involving interest deductions and other financial payments. In this action plan, the OECD recommends using a mandatory fixed ratio rule which limits interest based on EBITDA. Unfortunately, not all countries have implemented the OECD recommendations in BEPS Action Plan 4 considering that this action plan is not the minimum standard implemented by the OECD.

Together with 42 other jurisdictions, Indonesia is a country that still applies restrictions on interest in calculating taxable income using the thin capitalization rule method which limits interest based on certain ratio limits between debt and equity (World Bank, 2017). Several studies consider the method of limiting interest that apply in Indonesia to be quite effective in preventing tax avoidance practices (Afifah & Prastiwi, 2019; Mahardika & Irawan, 2022; Salwah & Herianti, 2019). However several other studies assume that the thin capitalization rule method currently in force in Indonesia is not effective in preventing tax avoidance practices through interest deduction (Faisal & Rosid, 2022; Sari et al., 2023). This could be because the use of a thin capitalization rule based on the DER ratio will simply encourage companies to maximize debt levels up to the specified DER limit, instead of preventing the erosion of the tax base (Kayis-Kumar, 2015). Several existing studies also show that limiting interest based on OECD recommendations in BEPS Action Plan 4 is a more effective approach in preventing tax avoidance (Jayasupana, 2017; Kayis-Kumar, 2015; Rulman, 2017; Zaina, 2017).

In the ASEAN region, Malaysia is one of the countries that has implemented OECD recommendations in BEPS Action Plan 4 since 2019. Limiting interest using EBITDA based on OECD recommendations is considered more effective in preventing tax avoidance through deducting interest (Jayasupana, 2017; Kayis-Kumar, 2015; Rulman, 2017; Zaina, 2017). In 2019, the effective rate of Corporate Income Tax in Malaysia was 24% (PWC Malaysia, 2023). The rate is relatively the same as the effective rate of Corporate Income Tax in Indonesia. In this case, the similarity in tax rates shows that there is a

tendency for similar tax avoidance risks faced by the two countries (Mawardi, 2017) .

On the one hand, existing research results show that limiting interest based on OECD recommendations in BEPS Action Plan 4 is a more effective approach in preventing tax avoidance (Jayasupana, 2017; Kayis-Kumar, 2015; Rulman, 2017; Zaina, 2017) . However, on the other hand, there are still several obstacles faced by Indonesia in implementing the method as recommended by the OECD (Puspitasari, 2022; Rosid & Dahli, 2019) . Most studies regarding existing methods of limiting interest in Indonesia suggest further research regarding the possibility and ideal design of implementing OECD recommendations in BEPS Action Plan 4 as regulations limiting interest in Indonesia (Jayasupana, 2017; Rulman, 2017; AL Sari et al., 2023) . However, until now there has been very limited study that has produced ideal recommendations for implementing BEPS Action Plan 4 in Indonesia. To answer this need, a role model is needed that can be an example of implementing the OECD recommendations in BEPS Action Plan 4 for Indonesia. The similarities in rates and risks of tax avoidance as well as the fact that Malaysia is the first ASEAN country to have adopted the OECD recommendations in BEPS Action Plan 4 are the underlying reasons for carrying out a comparative study of interest restrictions between Indonesia and Malaysia.

It is hoped that the comparative study will provide an overview of the strengths and weaknesses of regulations, as well as produce recommendations for the ideal implementation of interest restrictions in Indonesia. The comparative study will be carried out using a black letter approach, which is the most commonly used approach in comparing legal rules in more than one country (McConville & Chui, 2017) .Analyzing the laws and regulations that support the regulations in Indonesia and Malaysia is the first step in applying the "black letter" technique to comparative studies pertaining to the application of interest restrictions. To sharpen the analysis based on the results of the comparative study, interviews, and confirmation were also carried out with relevant competent sources. By the discussion structure in the OECD publication in BEPS *Action Plan 4*, a comparative study will be carried out in 3 major sections covering the entities that are the subject of regulatory implementation; the method of limiting interest applied; and ratios used in limiting interest.

LITERATURE REVIEW

Black Letter Approach

The black-letter approach is the first approach that is generally known in research in the field of law. In the black-letter approach, which is also known as the doctrinal approach, research focuses on written rules as a series of principles and is considered sufficient as a data source without the need for additional references outside of legal regulations (McConville & Chui, 2017) . Research with this approach aimed at systematizing, improving, and clarifying certain laws or regulatory topics employing a characteristic analysis of authoritative texts as primary and secondary sources. One of the assumptions used in the black-letter approach is that the nature of legal science comes from the law itself (Putman, 2004) .

One of the benefits of using a black-letter approach in research is to provide recommendations regarding the application of relevant legal provisions to a fact (Stott, 1999) . In line with these benefits, this research will provide recommendations regarding the ideal implementation of BEPS Action Plan 4 regarding limiting interest in tax regulations in Indonesia according to the results of a comparative study of regulations in Indonesia and Malaysia using a black-letter approach. Black-letter approach in comparative studies regarding tax regulations is common. Beebeejaun (2023) conducted a comparative study of the implementation of CFC rules in Mauritius with the United States and the United Kingdom. Pinder (2005) uses the same approach to understand and explain the interrelated principles in tax policies to develop a draft tax regulation according to the expected outcomes. Forst (1999) uses this approach to describe issues that may arise in the application of new rules related to e-commerce in the field of taxation.

The Subject of Application of Interest Limitations

To handle BEPS risks, jurisdictional countries are advised to at least apply ILR rules to entities that are members of multinational groups. However, jurisdictional countries can also apply rules broadly to entities that are members of domestic groups and/or single entities that are not part of a group (OECD, 2016) . The OECD recommendations are in accordance with several research results regarding the phenomenon of tax avoidance through the imposition of interest on multinational and non-multinational companies. Multinational companies generally practice thin capitalization at a higher rate than non-multinational companies (Afifah & Prastiwi, 2019) . However, several recent studies show that tax avoidance through thin capitalization can also occur in domestic companies and single companies (Sismi & Martani, 2022; Syahidah & Rahayu, 2018) .

Method of Implementing Interest Limitations

Limiting interest using a fixed ratio benchmark based on EBITDA according to OECD recommendations is considered more effective in preventing tax avoidance through deducting interest (Jayasupana, 2017; Kayis-Kumar, 2015; Rulman, 2017; Zaina, 2017) . However, currently, Indonesia still applies restrictions on interest based on thin capitalization. The thin capitalization rule is a method that limits interest based on a certain debt-to-equity ratio. This approach is considered less effective in preventing tax avoidance practices through interest deduction (Faisal & Rosid, 2022; AL Sari et al., 2023) . This could be because the use of a thin capitalization rule based on the DER ratio will simply encourage companies to maximize debt levels up to the specified DER limit, instead of preventing the erosion of the tax base (Kayis-Kumar, 2015) . Furthermore, the method of limiting interest based on thin capitalization in Indonesia is also seen as unable to prevent the practice of thin capitalization (AL Sari et al., 2023; D. Sari, 2019) .

Interest Limitation Implementation Ratio

To prevent tax avoidance through interest deduction, tax authorities in a country should implement a more direct impact approach. In addition, the approach used must also ensure that the charge for net interest expenses made by an entity is directly related to the taxable income generated through the entity's economic activities in a jurisdiction (OECD, 2016) . The applied ratio should also allow the majority of entities to charge a value equivalent to the net value of third-party interest, as well as restrict the group from using intragroup interest over the net value of third-party interest.

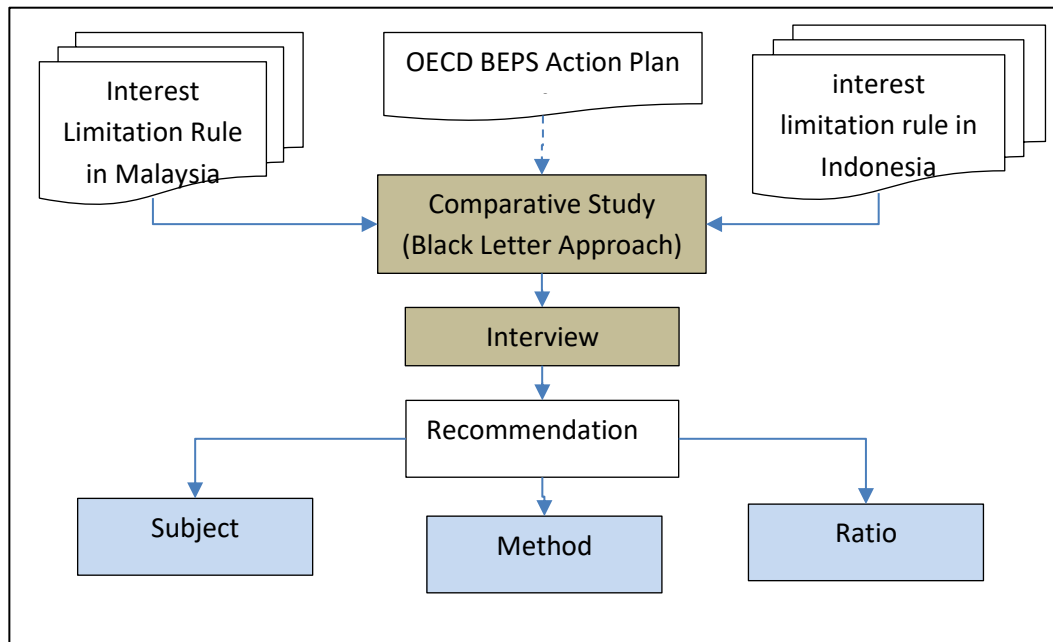


Figure 1. Research Mind Map

METHODOLOGY

The research was conducted qualitatively with a comparative study using a black-letter approach as referred to in Beebeejaun (2023) . The comparative study will be carried out using a black letter approach, which is the most commonly used approach in comparing legal rules in more than one country (McConville & Chui, 2017) . The black letter approach in comparative studies regarding the application of interest restrictions is carried out by analyzing the rules and regulations that underlie the regulations in Indonesia and Malaysia.

Minister of Finance Regulation number 169 of 2015 and income tax laws were examined in order to analyze how interest limitations are applied in Indonesia. Meanwhile, Section 140C of the Income Tax Act 1967, which was made public by the Malaysian Inland Revenue Board, was examined in order to analyze how interest constraints apply in that country. Next, a comparative study was carried out to conclude the strengths, weaknesses, and recommendations for the ideal implementation of interest limitation rules in Indonesia according to the results of the comparative study. To sharpen the analysis based on the results of the comparative study, interviews, and confirmation were also carried out with competent sources. Interview sources included policy drafting staff at the head

office of the Directorate General of Taxes; an Account Representative at the Foreign Investment Tax Service Office; a tax auditor; a tax consultant and an academic at the University of Indonesia. Following the discussion structure in the OECD publication in BEPS *Action Plan 4*, a comparative study will be carried out in 3 major sections covering the entities that are the subject of regulatory implementation; the method of limiting interest applied; and ratios used in limiting interest.

RESEARCH RESULT

The International Standards

In 2015, the OECD initiated 15 (fifteen) Action Plan packages to tackle BEPS. The aim of preparing this action plan is the hope that business profits will be reported in the jurisdiction where the economic activity that produces the profit is carried out and where there is value creation. The BEPS Action Plan is designed to be implemented through changes to domestic rules and policies and double tax avoidance agreements (P3B) through the finalization of the *Multilateral Instrument* (MLI) in 2016 to facilitate the implementation of the BEPS action plan through P3B. One of the BEPS Action Plans initiated by the OECD is Action Plan 4 which aims to limit the erosion of the tax base through reducing interest charges and payment of other funding costs. The goal of BEPS Action 4 is to combat the practice of entities using intra-group, related-party, and third-party debt to obtain loans with exorbitant interest rates or to finance the generation of waived or delayed income. Broadly speaking, the approach recommended in the OECD BEPS Action Plan 4 can be described as follows:

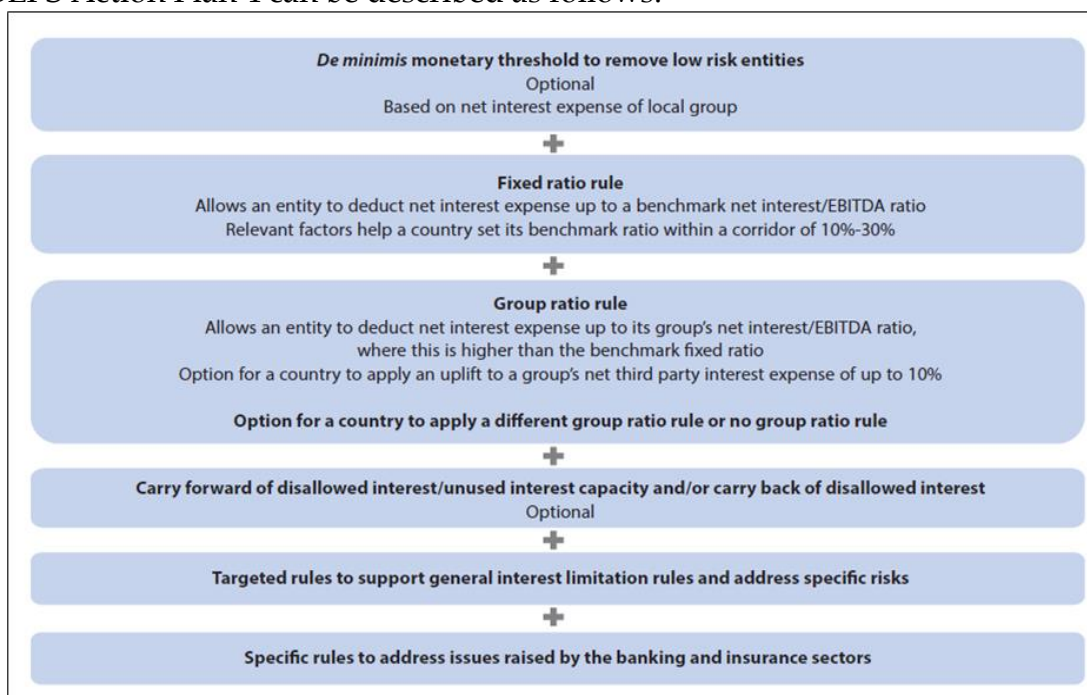


Figure 2. Best Practice Approach for Interest Limitation Rule - adopted from (OECD, 2016)

The approach recommended by the OECD in BEPS Action Plan 4 is a fixed ratio rule that limits interest charges and payments that are economically equivalent to the entity's net interest based on its percentage of the resulting earnings before interest, tax, depreciation, and amortization (EBITDA). by the entity concerned. To overcome BEPS risks, as a minimum prerequisite, the OECD recommends applying the fixed ratio rule to entities in multinational groups. Using this method is considered a more direct method for imposing excessive interest, rather than limiting the amount of debt. The OECD recommendation is also by research by Kayis-Kumar (2015) which states that the fixed ratio rule recommended by the OECD is more effective than the thin capitalization rule regime in preventing tax avoidance.

The mandatory fixed ratio rule approach can also be complemented by the application of group ratio rules which allow entities to charge interest expenses over the specified benchmark fixed ratio. The application of the group ratio rule allows an entity to charge interest expenses up to the percentage of net interest on EBITDA owned by the business group concerned. A jurisdiction can choose not to apply group ratio rules, but this means that the jurisdiction in question should apply fixed ratio rules to entities both within multinational and domestic business groups without inadequate discrimination. The idea of applying the group ratio rule takes into account the fact that several business groups have a high dependence on debt to third parties for reasons unrelated to taxes. The best practice approach recommended by the OECD also allows jurisdictions to complement the fixed ratio and group ratio rule with other arrangements to reduce the impact of the fixed ratio and group ratio rule on entities or activities with low BEPS risk, such as the application of a *de minimis* threshold (in the amount certain currency units) applied to entities with low levels of net interest expense.

To deal with the impact of income volatility, tax authorities can combine the application of carry forward / carry back on previously disallowed interest and/or previously unused interest capacity. This is to reduce the impact of earnings volatility on the entity's ability to charge interest expenses. Implementing carry forward on interest expenses that previously could not be charged can also help entities that have interest expenses caused by long-term investments that are expected to generate taxable income in the coming year. Apart from that, this policy also allows entities that experience losses to charge interest expenses when they are already in a profitable condition.

Action Plan 4 was then updated in 2016 with the addition of Part II and Part III in addition to Part I which discussed the 2015 OECD BEPS Action Plan. Part II of the update to the OECD BEPS Action Plan 4 discussed the elements that need to be considered in designing and implementing the group ratio rule. Meanwhile, Part III of the Action Plan discusses approaches that can be used to overcome BEPS involving interest in the banking and insurance sectors.

ILR in Malaysia

Malaysia has adopted provisions regarding restrictions on interest based on best practice recommendations in the OECD's 4 BEPS action plan since 2019. Based on the Restriction on Deductibility of Interest Guidelines document released by the Inland Revenue Board of Malaysia (IRBM), it is stated that Malaysia has implemented a fixed ratio rule as a method used in determining the amount of interest that can be charged in calculating taxable income. With these regulations, the maximum loan fee that can be charged by a Malaysian entity is 20% of tax EBITDA. In this instance, tax EBITDA is computed by totalling taxable income for the current tax year plus the amount of net interest, depreciation, and amortization. Interest expense limitations under Section 140C apply to individuals whose financial assistance interest expenses are subtracted from their taxable income before the regulations are implemented. This includes cases where interest expenses are recognized, paid, or payable and must be paid to:

- a. Associated parties outside Malaysia,
- b. Associated parties outside Malaysia operating through BUT in Malaysia, or
- c. Third parties outside Malaysia whose financial assistance is guaranteed by the holding company or other companies in the same business group as the borrowing entity.

The definition of an associated party in this case can occur due to control, either directly or indirectly. Control can also not only occur due to share ownership but is more substantive, for example: the ability to direct significant activities (directing the appointment of suppliers, selecting members of the Board of Directors, dependence due to ownership of intellectual property). A controlled transaction is defined as financial assistance between:

- a. Parties where one has control over the other; or
- b. A party where both parties are controlled by another party
- c. Meanwhile, the term financial assistance in this case can refer to forms of monetary assistance such as:
 - d. Loan;
 - e. Accounts payable with interest;
 - f. Payment upfront
 - g. Debt
 - h. Provisions on shares, or
 - i. Provision for warranty

Under Malaysia's interest-charging regulations, taxpayers have the option to carry forward interest that they were unable to charge in the prior tax year due to exceeding a benchmark set ratio. In contrast to the provisions in Australia, the carry forward provisions in Malaysia do not have a time limit and can be used forever. However, there is a condition that this carry forward provision can only be implemented as long as the company's shareholders on the first day and the last day of the period on which the interest are calculated after the year in which the interest are calculated are substantially the same. In other words, carry forward convenience can only be done if there is no change in company ownership.

Limitations on interest in Malaysia do not apply to taxpayers with the total value of interest expenses for all financial assistance from all business sources equal to or less than RM500,000 in the current year. Thus, if the taxpayer has many business lines, the RM500,000 limit must first be accumulated from all business sources/lines while the interest limitation calculation must be made separately for all business lines/sources.

ILR in Indonesia

The basis for regulating interest limitations in Indonesia is as stated in Article 18 paragraph (1) of the Income Tax Law (UU PPh). In general, this provision gives the Minister of Finance the authority to determine limits on the amount of loan fees that can be charged for tax calculation purposes. Apart from that, other provisions in Article 18 paragraph (3) of the Income Tax Law also give the Director General of Taxes the authority to re-determine the amount of income and deductions and determine debt as equity to calculate the amount of Taxable Income for Taxpayers who have special relationships with other Taxpayers. following the arm's length principle which is not influenced by special relationships by using the price comparison method between independent parties, the resale price method, the cost-plus method, or other methods.

After the enactment of tax law harmonization rule (UU HPP), there is the possibility of implementing Action Plan 4 of the OECD BEPS as a tax avoidance instrument with a scheme of eroding the tax base through charging interest costs as regulated in the amendment to Article 18 paragraph (1) of the Income Tax Law. The changes to these provisions open up regulatory restrictions where previously the alternative that could be used by the Minister of Finance to limit interest was limited to the comparison method between debt and equity (DER). Meanwhile, after the enactment of the UU HPP, the Minister of Finance's authority is not limited to certain methods as long as they can be implemented effectively to prevent tax avoidance, especially through loan fee charging schemes. Furthermore, Article 32 paragraph (2) letter g and Article 42 PP 55 give the Minister of Finance the authority to regulate limits on the amount of loan fees that can be charged for tax calculation purposes. In this provision, the Minister is also given the authority to regulate limitations on the number of interests that can be charged for tax calculation purposes using a method of determining a certain level of comparison between debt and equity; a method of determining a certain percentage of interest compared to business income before deducting interest, income taxes, depreciation and amortization; or other methods.

Table 1. Interest Limitation Rule in Indonesia before and after the UU HPP

Articles	Before the UU HPP	After the UU HPP
Article 18 (1) Income Tax Law (Income Tax Law)	"The Minister of Finance has the authority to issue a decision regarding the ratio <u>between a company's debt and equity</u> to calculate taxes based on this Law."	"The Minister of Finance has the authority to regulate <u>limits on the amount of loan fees</u> that can be charged to calculate taxes under this Law."

To implement interest limitation rule as intended in the Income Tax Law, there are further provisions issued by the Minister of Finance. Further provisions regarding restrictions on interest that currently apply in Indonesia are as regulated in Minister of Finance Regulation number 169/PMK.010/2015 concerning Determining the Amount of Comparison between Entity's Debt and Equity to calculate Income Tax. In the Minister of Finance Regulation, it is stated that the method of limiting interest used is based on the ratio of debt to equity. The debt value used in calculating the ratio is the average debt balance in a tax year or part of a tax year. Meanwhile, the value of equity or equity that is taken into account is the average balance of equity at the end of each month in the tax year or part of the tax year concerned. The scope of the regulation on interest limitations in Indonesia specifically applies to corporate taxpayers established or domiciled in Indonesia whose equity is divided into shares.

To provide clear boundaries, the Minister of Finance Regulation also provides definitions of debt and equity referred to in calculating restrictions on interest. The scope of debt calculated according to these rules includes all long-term and short-term debt, including trade debt balances that are charged with interest. Meanwhile, interest-free debt from parties with special relationships is calculated as equity. Meanwhile, equity is defined using the same definition as that which applies to Financial Accounting Standards. If the value of the Taxpayer's equity in the current year is less than zero, then all of the Taxpayer's interest for that year cannot be taken into account.

To charge interest, the maximum permitted company debt to equity ratio (DER) is 4:1. Especially for Taxpayers who have special relationships, apart from having to fulfil the 4:1 provision, they must also fulfil the Principles of Business Fairness and Normality as regulated in Article 18 paragraph (3) of the Income Tax Law. As a consequence, interest on loans from related parties that do not meet these provisions will be considered dividends for the income recipient and subject to tax when the interest is paid or the payment is due. The rules for limiting the imposition of interest in Indonesia also provide limits on impositions where interest for debts that cannot be proven or are used to obtain non-tax objects/are final cannot be charged. If a Taxpayer chooses to capitalize interest that should not be charged, then depreciation on the part of the assets that constitutes the capitalization of the interest in question cannot be taken into account in calculating taxable income.

In addition, per Article 5 of Minister of Finance Regulation Number 169/PMK.010/2015 and Regulation of the Director General of Taxes number PER-25/PJ/2017, Taxpayers who have foreign private debt are required to submit a report on the amount of foreign private debt to the Director General of Taxes, if you do not convey the interest owed from foreign private debt, they cannot be deducted (non-deductible). Reporting on foreign private debt is submitted as an attachment to the tax return (SPT). If the Taxpayer does not submit the report in question, the interest for foreign private debt cannot be charged and the SPT submitted is considered incomplete.

DISCUSSION

Comparative Study and Recommendations

Regarding the subject of implementation, the results of the analysis using a black-letter approach regarding the regulations for limiting interest in Indonesia and Malaysia show that there are several differences.

Table 2. Comparison of the Subjects of Application of Interest Limitation Provisions in Indonesia and Malaysia

Subject of Application	Indonesia	Malaysia
Applied to taxpayers without special relationships	Yes	No
Type of Taxpayer within the scope of regulation	Entities whose equity is divided into shares, with some types of taxpayers excluded	Entities that have interest charges from <i>financial assistance</i> originating from <i>cross-border related parties</i> , with several types of taxpayers are excluded
Applied to debt with a special relationship	Yes	Yes (only <i>cross-border</i>)

Limitations on interest to prevent tax evasion in Malaysia only apply to taxpayers who carry out debt and receivable transactions with affiliated parties. Furthermore, this arrangement also only applies in the case of debts made with affiliated parties located abroad (*cross-border*). Limitations on interest in Malaysia are applied to corporate taxpayers who have interest burdens from financial assistance originating from cross-border related parties, except for several types of taxpayers. The application of interest restrictions in Malaysia is more in line with OECD recommendations which state that jurisdictional countries are advised to at least apply ILR rules to entities that are members of multinational groups. This may also be based on the fact that tax avoidance is through deducting interest to multinational and non-multinational companies as the results of research conducted by Afifah & Prastiwi (2019) .

In contrast to the application in Malaysia, the limitation on interest in Indonesia is applied more broadly to all corporate taxpayers whose equity is divided into shares, except for several types of companies such as banks, infrastructure companies, oil and gas contractors, and insurance companies. The application of interest restrictions in Indonesia is also not limited to multinational companies. This is not contrary to OECD recommendations. While advising tax jurisdictions to focus on multinational companies, the OECD also allows jurisdictions to apply the rules broadly to entities that are members of domestic groups and/or single entities that are not part of a group.

Based on the results of interviews with resource persons, the regulation of limiting interest which is not limited to multinational companies can be understood considering the phenomenon that shows that tax avoidance through *thin capitalization* can also occur in domestic companies and single companies (Sismi & Martani, 2022). In Indonesia, there is also the fact that *thin capitalization* can occur through *parallel loans* and *back-to-back loan schemes* (AL Sari et al., 2023; D. Sari, 2019). In both schemes, the existence of tax avoidance through excessive interest tends to be more difficult for the tax authorities to detect because the loans are made as if they were to parties with no affiliation. The application of restrictions on interest limited to multinational companies will limit the ability of tax authorities to identify tax avoidance through interest with *parallel loans* and *back-to-back loan schemes*. Concerning the implementation method used, the results of the analysis using the *black-letter approach* regarding the regulations for limiting interest in Indonesia and Malaysia also show that there are several differences.

Table 3. Comparison of Methods for Implementing Interest Limitation Provisions in Indonesia and Malaysia

Application	Indonesia	Malaysia
Setting Type	Thin capitalization rule	<i>Interest Restriction</i> with <i>fixed ratio rule</i>
Applied to debt with a special relationship	Yes	Yes (only <i>cross-border</i>)
<i>De minimis threshold</i>	No	RM 500,000 (accumulated across business lines)
<i>Forward/back carry</i> mechanism	Not allowed	Allowed; without year limit provided there is no change in ownership
<i>Group Ratio</i>	No	No

Malaysia implements a *mandatory fixed ratio rule* that limits companies from deducting interest based on a certain ratio to EBITDA. In addition, Malaysia also implements a carry forward / carry back scheme to overcome the impact of economic volatility so that Taxpayers can charge loan fees and/or use loan fee charge quotas which in the previous tax year could not be charged and/or were not used, as long as they meet the requirements- certain conditions. The availability of carry-forward and carry-back options is conditional and not time-limited, provided that there is no transfer of ownership. The OECD recommends an alternate method, the group ratio rule, which Malaysia does not implement. Instead, it has a de minimis threshold mechanism that prevents interest limits from being applied to taxpayers whose debt value is less than RM500,000.

The interest limitation applied in Malaysia using a certain fixed ratio of the value of interest compared to EBITDA is considered to be more effective in preventing tax avoidance through interest compared to using the *thin capitalization rule method*. (Jayasupana, 2017; Kayis-Kumar, 2015; Rulman, 2017; Zaina, 2017) . This is because this method can directly limit the interest charged by taxpayers. In addition, the use of EBITDA is also considered to better describe the taxpayer's economic activities and is therefore more suitable as an anti-income tax avoidance model. The introduction of the de minimis threshold in Malaysia is thought to be able to lower compliance costs that taxpayers, particularly those with a low risk of tax avoidance, must bear. This is in accordance with OECD recommendations in BEPS Action Plan 4. Apart from that, implementing the de minimis threshold can also ease the administrative burden on the tax authorities. With the de minimis threshold, tax authorities can focus more on administering data and supervising only taxpayers with a risk of tax avoidance through high interest.

In contrast to the implementation in Malaysia, Indonesia currently still applies the *thin capitalization rule method*. This method limits taxpayers to deducting interest based on a certain ratio of debt to equity (debt to equity ratio). This method does not directly limit the interest charged by taxpayers but only limits the debt value which is a proxy for the taxpayer's interest. Therefore, this method is considered less effective in preventing tax avoidance through interest deduction (OECD, 2016) . This is proven by the phenomenon which shows that the current regulations limiting interest in Indonesia have not been able to prevent the practice of *thin capitalization* (AL Sari et al., 2023; D. Sari, 2019) . In addition, the use of a thin capitalization rule based on the DER ratio will simply encourage companies to maximize debt levels up to the specified DER limit, instead of preventing the erosion of the tax base (Kayis-Kumar, 2015). Based on the results of interviews with resource persons, it can be understood that currently, Indonesia needs to explore the possibility of implementing interest restrictions based on a certain fixed ratio benchmark for interest compared to EBITDA as recommended by the OECD. This understanding is reflected in changes to Article 18 paragraph (1) of the Income Tax Law version of the HPP Law.

To facilitate the transition process and minimize compliance costs that must be borne by taxpayers with a low risk of tax avoidance, Indonesia can also implement a de minimis threshold like Malaysia. In line with the implementation of the de minimis threshold in Malaysia based on a certain debt value, the limit used can refer to the maximum credit ceiling value that can be given to MSME entrepreneurs under Bank Indonesia regulations. Regarding the application of *the group ratio rule*, as with Malaysia, the application of this method is also not recommended in Indonesia because it is an alternative method that is non-mandatory. Apart from that, implementing the group ratio rule will be a challenge for the tax authorities in Indonesia considering that the current tax administration system in Indonesia still adheres to the entity-based principle where taxpayers report annual tax returns on an entity-by-entity basis, not in a consolidated group manner.

Regarding the implementation ratio used, the results of the analysis using the *black-letter approach* regarding the interest limitation regulations in Indonesia and Malaysia also show that there are several differences.

Table 4. Ratio of Application of Interest Limitation Provisions in Indonesia and Malaysia

Application	Indonesia	Malaysia
Setting Type	<i>Thin capitalization rule</i>	<i>Interest Restriction with fixed ratio rule</i>
Ratio used	<i>Debt to Equity Ratio</i>	<i>Net interest to tax EBITDA</i>
Maximum ratio value	4:1	20%

In line with OECD recommendations, Malaysia uses an interest to EBITDA ratio of 20%. Meanwhile, Indonesia, which still uses the thin capitalization rule regime, limits interest based on a maximum loan amount of 4 times greater than equity. Following previous research, the thin capitalization rule method adopted by Indonesia is considered not to prevent tax avoidance through interest deduction. Interview sources even stated that limiting interest based on a maximum DER ratio of 4:1 opens up opportunities for taxpayers to incur interest by not complying with the arm's length principle. The interview results are in line with previous research which states that the use of a *thin capitalization rule* based on the DER ratio will simply encourage companies to maximize debt levels up to the specified DER limit, instead of preventing the erosion of the tax base (Kayis-Kumar, 2015) . With impact analysis and discussions involving relevant taxpayers, Indonesia can follow the ratio used by Malaysia as a rule for limiting interest. To facilitate the transition process, Indonesia can choose the highest ratio based on the range recommended by the OECD, namely 30% of interest from EBITDA.

CONCLUSIONS AND RECOMMENDATIONS

This study aims to develop ideal recommendations for implementing BEPS Action Plan 4 following OECD recommendations in Indonesia. To develop these recommendations, a comparative study was carried out between the interest limitation arrangements in Indonesia and Malaysia. Next, interviews were conducted with competent sources to sharpen the analysis of the results of the comparative study. Based on the results of comparative studies and interviews, it can be concluded that Malaysia can become a role model for implementing BEPS Action Plan 4 in Indonesia. Furthermore, the subject of implementing interest restrictions in Indonesia which does not limit application only to multinational companies is appropriate. However, the method of limiting interest should be to use a benchmark fixed ratio based on the value of interest compared to EBITDA. This method is considered more direct in limiting interest than the thin capitalization rule which tends to only limit the amount of taxpayer loans.

To facilitate the transition process, Indonesia can use the highest benchmark fixed ratio according to the range recommended by the OECD of 30% of EBITDA. In addition, to minimize compliance costs and the administrative burden on tax authorities, Indonesia can implement a de minimis threshold which excludes interest limitation rule for taxpayers with low risk. Determining the threshold used can refer to the maximum credit ceiling value that can be given to MSME entrepreneurs under Bank Indonesia regulations.

ADVANCED RESEARCH

This research uses Malaysia as a role model for comparing the implementation of BEPS Action Plan 4 in Indonesia based on the close geographical location in ASEAN and the similarity of the risk of tax avoidance based on the similarity of corporate income tax rates. Future research can compare the implementation of BEPS Action Plan 4 in Indonesia with other countries, especially developed countries, to gain insight into how ideally developed countries view the OECD recommendations in BEPS Action Plan 4.

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