

**CLARIFICATIONS ON THE DRAFT AMENDMENTS TO THE TAX CODE OF
UKRAINE
CONCERNING THE LIMITATION OF BORROWING COSTS
(implementation of the requirements of Article 4 of Council Directive (EU) 2016/1164)**

ABOUT THIS DOCUMENT

1. This document is a **draft of clarifications** that explain the content of, and provide examples of the application of, the provisions of the Draft Law of Ukraine “On Amendments to the Tax Code of Ukraine Regarding the Implementation of Rules to Counter Tax Avoidance Practices That Have a Direct Impact on the Functioning of the Internal Market of the European Union and Ukraine, in Accordance with Council Directive (EU) 2016/1164 of 12 July 2016 (as regards the provisions of Article 4 of that Directive)”, registered with the Verkhovna Rada of Ukraine on 4 September 2026 under No. 16036.
2. The document is for information purposes only; it does not determine rights or create obligations for taxpayers or controlling authorities. It is intended to familiarise corporate income taxpayers in advance with the content of the proposed provisions and the procedure for their application.
3. **Proposals received during the preparation of the Draft Law for consideration and its adoption by the Verkhovna Rada of Ukraine may change the text of the final version of the Law.** In that case this document will need to be amended. Other clarifications and additions may also be made to this document, including changes to, additions to or deletion of the examples given in it.
4. After the adoption of the Law, the corresponding clarification of the Ministry of Finance of Ukraine on the application of the new rules will be prepared on the basis of this document.
5. **Proposals and comments** on this document may be sent to the following email address: tp@minfin.gov.ua. They will be considered in the further work on the clarifications.



Ministry of
Finance
of Ukraine



CONTENTS

I. GENERAL PROVISIONS	5
1.1. Abbreviations used in these Clarifications	5
1.2. Symbols of indicators	6
II. CONCEPTUAL CHANGES PROPOSED BY THE DRAFT LAW.....	7
2.1. Replacement of the current rule.....	7
2.2. Grounds for introducing the rule	8
2.3. Taxpayers to whom the rule applies	8
2.4. Start of application of the rule and borrowing costs under contracts concluded earlier.....	8
2.5. Carry-forward of amounts to subsequent periods.....	9
III. KEY ELEMENTS OF THE RULE.....	10
3.1. Elements of the rule and the order of their application.....	10
IV. BORROWING COSTS AND INCOME IN THE FORM OF INTEREST	11
4.1. Borrowing costs	11
4.2. Costs and income economically equivalent to interest.....	11
<i>Example 1. Fee for arranging financing</i>	<i>12</i>
<i>Example 2. Non-interest-bearing (discount) bond</i>	<i>12</i>
<i>Example 3. Financial leasing</i>	<i>12</i>
4.3. Exceeding borrowing costs	12
4.4. Exchange rate differences.....	13
4.4.1. Aggregate result of exchange rate differences	13
<i>Example 4. Determining the aggregate result of exchange rate differences.....</i>	<i>14</i>
4.4.2. Exchange rate differences on the principal amount of the debt	14
4.5. Capitalised borrowing costs.....	15
4.5.1. General procedure for taking capitalised borrowing costs into account	15
4.5.2. Capitalised borrowing costs for depreciable items	15
<i>Example 5. Capitalised costs in the value of a fixed asset</i>	<i>15</i>
4.5.3. Capitalised borrowing costs for items whose value is not depreciated.....	16
<i>Example 6. Construction project intended for sale</i>	<i>17</i>
<i>Example 7. Sale of a non-production fixed asset.....</i>	<i>17</i>
4.6. Financial leasing, lease and factoring	17
4.7. Derivative financial instruments and hedging arrangements.....	18
<i>Example 8. Instrument whose notional amount exceeds the amount of the debt.....</i>	<i>18</i>
V. MONETARY THRESHOLD AND QUALIFYING BORROWING COSTS.....	19

5.1. Monetary threshold and how it is calculated	19
<i>Example 9. Determining the monetary threshold</i>	<i>19</i>
5.2. Qualifying borrowing costs	19
<i>Example 10. Mixed debt</i>	<i>20</i>
5.3. Conversion of the monetary threshold into hryvnias and the period for which it is set	21
5.4. Effect of the composition of creditors on the monetary threshold	21
<i>Example 11. Two companies with the same borrowing costs</i>	<i>21</i>
5.5. Suretyship or guarantee by a group member	22
5.6. Limit where there are both qualifying and non-qualifying borrowing costs	22
<i>Example 12. Debt raised from a bank and from a related party</i>	<i>23</i>
VI. BORROWING COSTS LIMIT AND CARRY-FORWARD OF AMOUNTS	25
6.1. Composition of the borrowing costs limit	25
<i>Example 13. Exceeding the borrowing costs limit</i>	<i>25</i>
<i>Example 14. Borrowing costs limit over four tax (reporting) years</i>	<i>25</i>
6.2. EBITDA metric	27
<i>Example 15. Calculating the EBITDA metric</i>	<i>27</i>
6.3. Effect of exchange rate differences on the borrowing costs limit and the EBITDA metric	28
<i>Example 16. Determining the effect of exchange rate differences on the indicators used to calculate the limit</i>	<i>28</i>
6.4. Difference between the borrowing costs limit and the monetary threshold	29
6.5. Application of the rule over several years	30
<i>Example 17. Accumulated amount of borrowing costs: build-up and deduction over four years</i>	<i>30</i>
6.6. Accumulated amount of borrowing costs	31
6.7. Unused amount of the borrowing costs limit	31
<i>Example 18. Utilisation of the unused amount of the limit</i>	<i>32</i>
6.8. Accumulated amount of borrowing costs and unused amount of the limit on reorganisation	32
VII. EXCEPTIONS FROM THE APPLICATION OF THE RULE	34
7.1. Financial institutions to which the rule does not apply	34
7.2. Exclusion for long-term public infrastructure projects	34
7.3. Conditions that a long-term public infrastructure project must meet	35
7.4. Condition on the share of debt financing of long-term public infrastructure projects	37
<i>Example 19. Comparison of debt financing shares</i>	<i>37</i>
7.5. Loans from international financial organisations	38

7.6. Single tax payers and transition to the general system	39
VIII. DIIA CITY RESIDENTS—TAXPAYERS SUBJECT TO SPECIAL CONDITIONS ...	40
8.1. Grounds for extending the rule to Diia City residents—taxpayers subject to special conditions.....	40
8.2. Current procedure and changes provided for by the Draft Law	40
8.3. Indicators and calculation of the tax base	41
8.4. Tax rate and the period of its accrual.....	43
<i>Example 20. Accrual and reverse reduction at the same rate</i>	<i>43</i>
<i>Example 21. Taking into account the tax on non-resident income.....</i>	<i>44</i>
<i>Example 22. The year for which the tax base is determined</i>	<i>45</i>
8.5. Relationship between the taxation of interest payments and the taxation of the excess over the limit.....	45
<i>Example 23. Interest recognised in one period and paid in the next.....</i>	<i>46</i>
8.6. Reduction of the tax accrued on the excess over the limit.....	47
<i>Example 24. Accrual and refund over three years</i>	<i>47</i>
8.7. Indicators on entry into and exit from the regime	48
<i>Example 25. Indicators as at the date of the change of tax regime.....</i>	<i>48</i>
IX. RECORDS AND ADMINISTRATION	50
9.1. Tax reporting.....	50
9.2. Separate records.....	50
9.3. Document retention periods.....	51
9.4. Preparing to apply the rule.....	51

I. GENERAL PROVISIONS

1.1. Abbreviations used in these Clarifications

The following abbreviations are used in these Clarifications:

Abbreviation	Full name
Code	Tax Code of Ukraine https://zakon.rada.gov.ua/laws/show/2755-17#Text
Draft Law	Draft Law of Ukraine on Amendments to the Tax Code of Ukraine Regarding the Implementation of Article 4 of Council Directive (EU) 2016/1164, registration No. 16036 of 4 September 2026 https://itd.rada.gov.ua/billinfo/Bills/Card/70693
Directive	Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, as amended by Council Directive (EU) 2017/952 of 29 May 2017 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016L1164-20220101
Action 4 Report	OECD Report on Action 4 of the BEPS Action Plan “Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 – 2016 Update” OECD (2017), Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264268333-en
Period	Tax (reporting) period

References to provisions of the Code are to the Code as amended by the Draft Law. Provisions of the Code in the current wording are marked expressly—by the words “current clause”, “current sub-clause” or “in the current wording”; in the absence of such a marking, the reference is to the provision as amended by the Draft Law.

The examples given in these Clarifications are hypothetical.

1.2. Symbols of indicators

These Clarifications use the same symbols of indicators as are used for the purposes of clauses 140.1–140.3 of Article 140 and sub-clause 141.9¹.5 of Article 141 of the Code as amended by the Draft Law.

Symbol	Indicator	Provision of the Draft Law specifying the indicator	Clause of these Clarifications in which the indicator is mentioned
BC	borrowing costs—total amount for the period	sub-clauses 140.1.1.1, 140.1.2	4.1, 4.2, 4.3, 6.1
IR	income in the form of interest and other income economically equivalent to interest	sub-clause 140.1.6	4.2, 4.3, 6.1
EBC	exceeding borrowing costs—the excess of BC over IR	sub-clause 140.1.1.8	4.3, 6.2, 6.7
BCL	borrowing costs limit	sub-clause 140.2.1	6.1, 6.4, 6.6
BA	base amount of the limit—the greater of $0.3 \times \text{EBITDA}$ and MT	sub-clause 140.2.1	6.1, 6.4
MT	monetary threshold	sub-clause 140.2.1.1	5.1, 5.3, 6.4
QBC	qualifying borrowing costs	sub-clause 140.1.1.7	5.1, 5.2, 5.4, 5.5
EBITDA	indicator equal to $\text{OT} + \text{A} + \text{EBC}$	sub-clause 140.2.3	4.5.1, 6.2, 6.3
OT	object of taxation for the period, disregarding the negative value from prior years and the differences under clause 140.2	sub-clause 140.2.3; for the Diia City regime—sub-clause 141.9 ¹ .5.1	6.2, 8.3
A	amount of depreciation taken into account when determining the object of taxation	sub-clause 140.2.3	4.5.1, 4.6, 6.2
ABC	accumulated amount of borrowing costs	sub-clauses 140.2.2.1, 140.2.5	2.5, 6.6, 6.8, 7.6, 8.6
UIC	unused amount of the borrowing costs limit	sub-clause 140.2.6	2.5, 6.7, 6.8, 7.6
K	excess ratio—for Diia City residents	sub-clause 141.9 ¹ .5.3	8.3, 8.5
DT	deferred tax—for Diia City residents	sub-clauses 141.9 ¹ .5.1, 141.9 ¹ .5.6	8.3, 8.6, 8.7

II. CONCEPTUAL CHANGES PROPOSED BY THE DRAFT LAW

2.1. Replacement of the current rule

Current provisions of the Code: clauses 140.2 and 140.3 of Article 140. Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.1, 140.1.1.2, 140.1.1.8, 140.1.2, 140.1.4, 140.1.5 of clause 140.1; sub-clauses 140.2.1, 140.2.1.1, 140.2.2 of clause 140.2 of Article 140.

Current clause 140.2 of Article 140 of the Code limits the deduction of interest on debt obligations arising from transactions with non-residents where the amount of such obligations exceeds the taxpayer's equity by more than 3.5 times: the financial result before tax is increased by the amount of interest in excess of 30 per cent of the indicator calculated under that clause. Current clause 140.3 of Article 140 of the Code provides that the amount that increased the financial result reduces it in future periods, decreasing by 5 per cent annually. No adjustments are made in respect of interest recognised as not complying with the arm's length principle, interest in favour of international financial organisations enjoying privileges and immunity on credits (loans) under state or local guarantees, and interest in favour of foreign banks (clause 140.2 of Article 140 of the Code).

The Draft Law replaces this construction with the rule of Article 4 of the Directive: exceeding borrowing costs are deductible within the borrowing costs limit, which is equal to the sum of income in the form of interest and other income economically equivalent to interest and the greater of two amounts— $0.3 \times \text{EBITDA}$ or the monetary threshold (sub-clauses 140.2.1 and 140.2.1.1). The Draft Law also changes three elements of the construction:

the perimeter of debt obligations: the limitation no longer depends on whether the debt obligation arose from a transaction with a non-resident, and applies to all debt obligations—to non-residents and residents, to banks and non-bank creditors, to related and unrelated parties (sub-clause 140.1.1.2);

the composition of costs: not only interest is limited but also other borrowing costs—including payments economically equivalent to interest and expenses incurred in connection with raising finance (sub-clauses 140.1.1.1 and 140.1.2), a negative aggregate result of exchange rate differences (sub-clause 140.1.4) and a negative aggregate result of notional interest amounts on derivative financial instruments (sub-clause 140.1.5);

the method of limitation: instead of a debt-to-equity ratio, the amount of borrowing costs for the period is compared with the limit (sub-clause 140.2.2).

The Draft Law introduces a concept not provided for by the current rule—exceeding borrowing costs: the amount by which borrowing costs exceed income in the form of interest and other income economically equivalent to interest (sub-clause 140.1.1.8). Under the current rule, interest is limited in its full amount: income in the form of interest does not affect the result of the calculation. The comparison is made between the full amount of borrowing costs and the limit, which includes income in the form of interest and other income economically equivalent to interest (sub-clause 140.2.1); both methods of calculation give the same result. For details, see clause 4.3 of these Clarifications.

2.2. Grounds for introducing the rule

Provisions: Articles 3 and 4 of the Directive.

Article 4 of the Directive is mandatory: a Member State may establish stricter rules (Article 3 of the Directive) but may not refrain from establishing the rule altogether. For Ukraine, transposition of the Directive is part of the preparation for accession to the European Union.

2.3. Taxpayers to whom the rule applies

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.8, 140.2.2.1, 140.2.2.2, 140.3.1, 140.3.2 of Article 140; the eighth and ninth paragraphs of sub-clause 134.1.1 of clause 134.1 of Article 134; sub-clause 4 of clause 74 of Subsection 4 of Section XX; sub-clause 141.9¹.5 of clause 141.9¹ of Article 141.

The rule applies to all corporate income taxpayers, including non-residents carrying out business activities in Ukraine through a permanent establishment, and Diia City residents—taxpayers subject to special conditions; for the latter a separate mechanism is provided (sub-clause 141.9¹.5; Section VIII of these Clarifications).

The rule does not apply to a taxpayer that is a bank, a non-resident carrying out banking activities in Ukraine through a branch of a foreign bank, or an insurer (sub-clause 140.3.1). The exemption concerns such a taxpayer, not the interest paid in its favour: for the borrower, the costs of a bank credit are borrowing costs on general grounds. Separately excluded from the calculation are the borrowing costs of the project operator under a long-term public infrastructure project that meets the established conditions—to the extent of such project (sub-clause 140.3.2; Section VII of these Clarifications), and also, temporarily until Ukraine’s accession to the European Union as a full member, the costs of credits (loans) from international financial organisations enjoying privileges and immunity under state or local guarantees (sub-clause 4 of clause 74 of Subsection 4 of Section XX of the Code).

The rule also applies to taxpayers whose annual income for the last annual reporting period does not exceed UAH 40 million and who have decided not to adjust the financial result before tax for differences. The Draft Law includes the differences under clause 140.2 in the list of adjustments mandatory for such taxpayers (the eighth and ninth paragraphs of sub-clause 134.1.1 of clause 134.1 of Article 134 of the Code).

2.4. Start of application of the rule and borrowing costs under contracts concluded earlier

Provisions of the Draft Law: clause 1 of Section II “Final Provisions”. Provisions of the Code as amended by the Draft Law: the first and second paragraphs and sub-clauses 1–3 of clause 74 of Subsection 4 of Section XX of the Code; sub-clause 140.1.3 of clause 140.1 of Article 140.

The Draft Law provides that the Law enters into force on the day following the day of its publication and becomes effective from 1 January 2028 (clause 1 of Section II “Final Provisions”). Clauses 140.1–140.3 of Article 140 of the Code in the wording in effect before that date apply to periods before 1 January 2028, including the 2027 period (the first paragraph of clause 74 of Subsection 4 of Section XX of the Code).

The link is to periods, not to the date of conclusion of contracts or of performance of transactions: the new provisions apply to periods starting from 1 January 2028, regardless of the date of conclusion of contracts (legal transactions) and of performance of transactions, including debt obligations carried on the balance sheet as at 1 January 2028 (the second paragraph of clause 74). Indicators for past periods are not recalculated under the new rules.

Three provisions are established for indicators formed under the rules in effect before 1 January 2028. Interest that increased the financial result before tax in accordance with clause 140.2 in the wording in effect before that date and remained unaccounted for as at the last day of the 2027 period is included in the accumulated amount of borrowing costs as at 1 January 2028; the annual 5 per cent reduction no longer applies to it (sub-clause 1 of clause 74). Borrowing costs capitalised in the value of an asset before 1 January 2028 are included in borrowing costs in the manner established by sub-clause 140.1.3—to the extent that the corresponding part of the value of the asset is taken into account in periods starting from 1 January 2028 (sub-clause 2 of clause 74). No unused amount of the borrowing costs limit arises for periods before 1 January 2028 (sub-clause 3 of clause 74).

2.5. Carry-forward of amounts to subsequent periods

Provisions of the Code as amended by the Draft Law: sub-clauses 140.2.2.1, 140.2.2.2, 140.2.5, 140.2.6 of clause 140.2 of Article 140.

The amount by which borrowing costs exceeded the limit is recorded as the accumulated amount of borrowing costs (sub-clause 140.2.2.1) and reduces the financial result before tax in subsequent periods in which borrowing costs do not exceed the limit (sub-clause 140.2.2.2). No time limit is set for such carry-forward (sub-clause 140.2.5).

The unused amount of the limit is carried forward separately: if the limit has not been fully used in a period, the difference may reduce the excess in subsequent periods for five years (sub-clause 140.2.6).

The carry-forward procedure and the calculation of the amounts are set out in clauses 6.6 and 6.7, and the cases in which carry-forward is restricted in clauses 6.8 and 7.6 of these Clarifications.

III. KEY ELEMENTS OF THE RULE

3.1. Elements of the rule and the order of their application

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.1, 140.1.1.7, 140.1.1.8, 140.1.6 of clause 140.1; sub-clauses 140.2.1, 140.2.1.1, 140.2.2, 140.2.2.1, 140.2.2.2, 140.2.3, 140.2.6 of clause 140.2 of Article 140.

The rule consists of the following elements, applied in the order given:

borrowing costs (BC) and income in the form of interest and other income economically equivalent to interest (IR), as well as exceeding borrowing costs (EBC)—the excess of the BC indicator over the IR indicator (sub-clauses 140.1.1.1, 140.1.1.8, 140.1.6); their composition is set out in Section IV of these Clarifications;

the monetary threshold (MT), the amount of which depends on the amount of qualifying borrowing costs (QBC) and is not less than the amount equivalent to EUR 500 000 and not more than the amount equivalent to EUR 3 million (sub-clauses 140.1.1.7, 140.2.1.1); the procedure for determining it is set out in Section V of these Clarifications;

the borrowing costs limit (BCL), which is equal to the sum of the IR indicator and the base amount—the greater of two amounts: 30 per cent of the EBITDA metric or the monetary threshold (sub-clauses 140.2.1, 140.2.3);

comparison of the BC indicator with the BCL indicator: the amount of the excess, reduced by the unused amount of the limit (UIC) carried forward from prior years, increases the financial result before tax and the accumulated amount of borrowing costs (ABC); in the absence of an excess, the financial result before tax is reduced by the accumulated amount within the limits specified in sub-clause 140.2.2.2 (sub-clauses 140.2.2.1, 140.2.2.2, 140.2.6).

The limit, its components and the carry-forward of the ABC and UIC amounts are set out in Section VI, the cases in which the rule does not apply in Section VII, and the specifics of the application of the rule by Diia City residents—taxpayers subject to special conditions in Section VIII of these Clarifications.

IV. BORROWING COSTS AND INCOME IN THE FORM OF INTEREST

4.1. Borrowing costs

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1, 140.1.1.1, 140.1.1.2, 140.1.2 of clause 140.1 of Article 140.

The Draft Law defines borrowing costs through three categories: interest on all types of debt obligations; other costs economically equivalent to interest; other expenses incurred in connection with raising finance (sub-clause 140.1.1.1). This is followed by a non-exhaustive list of components—“in particular but not exclusively” (sub-clause 140.1.2). The same amount is counted once: amounts included in borrowing costs under one of the provisions are not included again under other provisions (the seventh paragraph of sub-clause 140.1.1.1).

Debt obligations: credits, loans, deposits, repo transactions, financial leasing agreements, factoring, other instruments related to raising finance, and instalment (deferred) payment for goods, works and services—to the extent of the debt (financial) component (sub-clause 140.1.1.2). The existence and amount of such a debt component are determined regardless of whether it is separated in accounting: in controlled transactions—under the rules of Article 39 of the Code; in the amount of sums paid to a person other than the supplier in excess of the value of the goods (works, services); in the amount by which the price of the goods (works, services) or the payment is increased in connection with the extension or establishment of the payment term (sub-clause 140.1.1.2).

The following are not considered borrowing costs: discounts for payment for goods (works, services) earlier than the term established by the contract; discounts and bonuses (premiums) depending on the volume of purchases; penalties (fines and/or late payment interest); interest and inflation charges on an overdue amount; compensation for damages; compensation for lost income (lost profit), accrued in accordance with civil legislation and civil-law contracts (the eighth paragraph of sub-clause 140.1.1.1). This rule applies to the extent that the relevant amounts are not costs economically equivalent to interest.

The definition of borrowing costs applies for the purposes of clauses 140.1–140.3 of Article 140 of the Code (sub-clause 140.1.1). Classifying a payment as borrowing costs does not change its classification for other provisions of the Code, in particular for the rules on taxation of non-resident income. Conversely, whether or not expenses are classified as related to the accrual or payment of interest under other provisions of the Code is not a ground for including a payment in borrowing costs or for excluding it; a payment may not meet the definition of “interest” within the meaning of sub-clause 14.1.206 of clause 14.1 of Article 14 of the Code, and yet belong to borrowing costs for the purposes of applying clauses 140.1–140.3 of Article 140 of the Code (sub-clause 140.1.1.1).

4.2. Costs and income economically equivalent to interest

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.3, 140.1.2, 140.1.6 of clause 140.1 of Article 140.

Income or expenses are considered economically equivalent to interest if, in their economic substance, they are equivalent to payments on debt obligations. The classification depends neither on the legal form of the transaction nor on its accounting treatment (sub-clause 140.1.1.3).

Pursuant to the requirements of the Code as amended by the Draft Law, interest and amounts economically equivalent to it may be expressed: as a percentage of the principal amount of the debt or the value of the property; as a fixed amount provided or paid in connection with the creation of a debt obligation or in connection with a change in the terms of its repayment; as a portion of income or profit that the borrower pays to the creditor; as the difference between the issue price and the redemption price (par value) of a security; as the difference between the purchase (sale) price of

securities and the price of their resale (repurchase) in repo transactions. The list is not exhaustive (sub-clause 140.1.1.3).

Borrowing costs separately include: amounts paid (accrued) by the borrower in favour of the creditor, the amount of which is determined in whole or in part depending on the borrower's profit, income, turnover, value of assets or other results of its economic activity; notional interest on debt instruments recognised using the effective interest rate method, in particular on convertible and non-interest-bearing (discount) bonds; amounts under alternative financing mechanisms, including Islamic financing mechanisms; the debt (financial) component of lease payments; commissions for guarantees related to financing arrangements; fees for arranging the raising of financing, in particular fees for arranging, providing and servicing borrowings; amounts that, pursuant to Article 39 of the Code, are recognised as payment for financing provided to the taxpayer (sub-clause 140.1.2).

The above list is supplemented by capitalised borrowing costs (sub-clause 140.1.3), a negative aggregate result of exchange rate differences (sub-clause 140.1.4) and a negative aggregate result of notional interest amounts on derivative financial instruments and hedging arrangements (sub-clause 140.1.5), the procedure for determining which is set out in clauses 4.4, 4.5 and 4.7 of these Clarifications.

The same approach applies to the income side. Income in the form of interest and other income economically equivalent to interest includes interest on credits, loans, deposits and other instruments related to the provision of financing granted by the taxpayer, a positive aggregate result of exchange rate differences, a positive aggregate result of notional interest amounts on derivative financial instruments and hedging arrangements, and other income from the transactions listed for the cost side in which the taxpayer acts as a creditor (sub-clause 140.1.6).

Example 1. Fee for arranging financing A bank grants an enterprise a credit of UAH 10 million and, when granting it, withholds a fee for arranging the financing in a fixed amount of UAH 100 000. No interest rate is applied to this amount. However, the enterprise pays this fee to the bank in connection with the creation of a debt obligation, and it is therefore included in borrowing costs: interest and amounts economically equivalent to it may also be expressed as a fixed amount. Fees for arranging, providing and servicing borrowings are expressly included in borrowing costs.

Example 2. Non-interest-bearing (discount) bond An enterprise placed a two-year bond with a par value of UAH 1 million at a price of UAH 900 000. No interest is accrued or paid on the bond; on redemption, the par value of UAH 1 million is paid. The discount of UAH 100 000 is payment for the financing raised and therefore belongs to costs economically equivalent to interest. The discount is included in borrowing costs not in a lump sum on placement but in the periods in which it is recognised in accounting using the effective interest rate method.

Example 3. Financial leasing An enterprise received equipment under financial leasing. Lease payments for the year amount to UAH 1.2 million, of which compensation (reimbursement) of the value of the leased asset is UAH 1 million and the fee for the use of the financing provided is UAH 200 000. UAH 200 000 is included in borrowing costs. The amount of UAH 1 million is not included in borrowing costs.

A payment not named in the above lists is classified according to its economic substance in each specific case (sub-clause 140.1.1.3).

4.3. Exceeding borrowing costs

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.8, 140.1.6 of clause 140.1 of Article 140; sub-clauses 140.2.1, 140.2.2, 140.2.3, 140.2.4, 140.2.6 of clause 140.2 of Article 140.

Exceeding borrowing costs (EBC) are the amount by which borrowing costs for the period exceed income in the form of interest and other income economically equivalent to interest for the same

period (sub-clause 140.1.1.8). This is a net amount: the indicator is determined as the excess of costs over the corresponding income, not as the total amount of costs.

Both indicators are taken to the extent to which they are both recognised in accounting and taken into account in determining the object of taxation, having regard to the differences specified in the Code. For borrowing costs, the differences specified in clause 140.2 of Article 140 of the Code are excluded from this calculation (sub-clause 140.1.1.8).

An amount that, having regard to the differences specified in the Code (other than the differences under clause 140.2 of Article 140 of the Code), was not taken into account in determining the object of taxation is not included in borrowing costs for this calculation. Borrowing costs on debt obligations in respect of which compliance with the arm's length principle is mandatory are taken into account in the BC indicator in an amount not exceeding the amount that corresponds to that principle (sub-clause 140.2.4).

If income in the form of interest and other income economically equivalent to interest is equal to or exceeds borrowing costs, there are no exceeding borrowing costs and the EBC indicator is zero. For such a period the financial result before tax is not increased and no unused amount of the borrowing costs limit arises (the fourth paragraph of sub-clause 140.2.6).

4.4. Exchange rate differences

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.2, 140.1.2, 140.1.3, 140.1.4, 140.1.5, 140.1.6 of clause 140.1 of Article 140.

4.4.1. Aggregate result of exchange rate differences

Exchange rate differences are taken into account not separately for each transaction but as a single indicator—the aggregate result of exchange rate differences for the period (sub-clause 140.1.4).

The aggregate result of exchange rate differences is determined in respect of the taxpayer's debt obligations, claims arising from financing provided by it—credits, loans, deposits and other instruments related to the provision of financing—and derivative financial instruments and foreign exchange risk hedging arrangements relating to such obligations and claims. Both realised and unrealised exchange rate differences according to accounting data are taken into account (sub-clause 140.1.4).

The amounts on which exchange rate differences are calculated differ for interest and for the principal amount of the debt (sub-clause 140.1.4):

- on the amount of accrued interest and other amounts economically equivalent to interest—for all debt obligations and claims (sub-clause “a” of the second paragraph of sub-clause 140.1.4);

- on the principal amount of the debt—for debt obligations to the extent corresponding to the funds (property) provided to the taxpayer out of the funds (property) of a person related to it (sub-clause “b” of the second paragraph of sub-clause 140.1.4);

- on the principal amount of the debt under claims—where the debtor is a person related to the taxpayer (sub-clause “c” of the second paragraph of sub-clause 140.1.4).

The aggregate result of exchange rate differences is equal to the difference between the sum of positive and the sum of negative exchange rate differences. If the result is negative, the amount of the excess is included in borrowing costs (sub-clause 140.1.2); if it is positive, the amount of the excess is included in income economically equivalent to interest and thereby increases the borrowing costs limit (sub-clause 140.1.6).

For derivative financial instruments and foreign exchange risk hedging arrangements, the aggregate result of exchange rate differences includes the gains and losses recognised in accounting that are caused by changes in the exchange rate. If the deemed (nominal) amount of the instrument exceeds the amount on which the exchange rate differences on the relevant obligation or claim are calculated, a proportional part of such gains and losses is included (sub-clause 140.1.4).

Example 4. Determining the aggregate result of exchange rate differences

UAH million

Indicator	Amount
Related-party credit: exchange rate difference on the principal amount of the debt	–120
Related-party credit: exchange rate difference on interest	–12
Bank credit: exchange rate difference on interest	+30
Bank credit: exchange rate difference on the principal amount of the debt	not included in the calculation
Aggregate result of exchange rate differences	–102

The aggregate result of exchange rate differences is negative, so 102 is included in borrowing costs. Had the aggregate result been positive, this amount would have been included in income economically equivalent to interest. The grounds for not including the exchange rate difference on the principal amount of the bank credit are set out in sub-clause 4.4.2 of these Clarifications.

4.4.2. Exchange rate differences on the principal amount of the debt

Exchange rate differences on the principal amount of the debt are not taken into account if the creditor is not a person related to the taxpayer and the funds (property) have not been provided out of the funds (property) of such a person (sub-clause “b” of the second paragraph of sub-clause 140.1.4). Exchange rate differences on accrued interest and amounts economically equivalent to interest under such an obligation are taken into account on general grounds (sub-clause “a” of the second paragraph of sub-clause 140.1.4).

Funds (property) are deemed to have been provided out of the funds (property) of a related party in two cases: the creditor is such a person; or such a person, directly or through other persons, transferred funds (property) to the creditor on repayable terms or acquired the creditor’s debt securities for the purpose of providing the taxpayer with funds (property) under such debt obligation (sub-clause 140.1.4). Security for a debt obligation provided by a related party does not affect the calculation of exchange rate differences.

An exception to this rule is established: funds (property) are not deemed to have been provided out of the funds of a related party to the extent corresponding to funds raised by the creditor from persons that are not related to the taxpayer, provided that the currency of the taxpayer’s debt obligation coincides with the currency of such raised funds (sub-clause 140.1.4).

Nor are exchange rate differences on monetary items that are not debt obligations, claims or the specified instruments included in the aggregate result—in particular, on indebtedness for goods, works and services to the extent not recognised as a debt (financial) component (sub-clauses 140.1.1.2 and 140.1.4).

Exchange rate differences capitalised in the value of an asset are not included in the aggregate result of the current period, but they do not drop out of the calculation: they are taken into account as part of capitalised borrowing costs and are included in borrowing costs in the manner and in the periods specified in sub-clause 140.1.3 of the Code (sub-clause 140.1.4). Exchange rate components already

taken into account in the aggregate result of notional interest amounts on derivative financial instruments and hedging arrangements are not included again: one amount is counted once (sub-clauses 140.1.4 and 140.1.5).

4.5. Capitalised borrowing costs

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.4, 140.1.3, 140.1.4 of clause 140.1 of Article 140; sub-clauses 140.2.3, 140.2.8 of clause 140.2 of Article 140. Current provisions of the Code: clauses 138.2 and 138.3 of Article 138.

4.5.1. General procedure for taking capitalised borrowing costs into account

Capitalised borrowing costs are borrowing costs that, in accordance with national accounting regulations (standards) or International Financial Reporting Standards, have increased the value of any asset in connection with which they are capitalised—up to the point from which capitalisation ceases (sub-clause 140.1.1.4). Exchange rate differences that, pursuant to the same standards, have increased the value of an asset are also considered capitalised borrowing costs (sub-clauses 140.1.1.4 and 140.1.4).

In the period of capitalisation, such costs are not included in borrowing costs. They are included when, and in the amount in which, the corresponding part of the value of the asset is taken into account in determining the object of taxation—through depreciation, through the cost of goods, works and services sold, or in connection with the disposal of the asset (sub-clause 140.1.3).

The procedure for such inclusion differs depending on whether or not the value of the asset is depreciated; both cases are set out in sub-clauses 4.5.2 and 4.5.3 of these Clarifications.

The amount of depreciation attributable to capitalised borrowing costs and taken into account as part of borrowing costs is not included in Indicator A of the EBITDA formula (sub-clause 140.2.3).

To apply this procedure, the taxpayer maintains separate records of borrowing costs that were capitalised (were subject to inclusion in the value of an asset) and of the amounts of such costs that are included in borrowing costs pursuant to sub-clause 140.1.3 (sub-clause “b” of sub-clause 140.2.8).

4.5.2. Capitalised borrowing costs for depreciable items

For fixed assets and intangible assets, the share in the amount of depreciation calculated under clause 138.3 of the Code is taken into account, provided that the financial result before tax was reduced by that amount under the rules of clause 138.2 of the Code (sub-clause 140.1.3). For other depreciable assets, the share in the depreciation included in the expenses of the period is taken into account (sub-clause 140.1.3).

Upon the sale or other disposal of a depreciable item, borrowing costs include the share of capitalised costs attributable to the residual value of such item taken into account in determining the object of taxation in the period of disposal, other than the share previously taken into account as part of depreciation (sub-clause 140.1.3).

Example 5. Capitalised costs in the value of a fixed asset

UAH million

Indicator	Amount
Initial cost of the production line	1 000
of which capitalised borrowing costs	150
Annual depreciation (straight-line method, 10 years)	100

Indicator	Amount
within annual depreciation—capitalised borrowing costs	15
Indicator A for the year	85

Each year 15 is included in borrowing costs, and Indicator A is 85. Together, $15 + 85 = 100$, that is, all the depreciation taken into account in determining the object of taxation is counted once.

4.5.3. Capitalised borrowing costs for items whose value is not depreciated

Such items include current assets whose value is taken into account in expenses by inclusion in the cost of goods, works and services sold—in particular, inventories and construction projects intended for sale—as well as non-current assets that are not depreciated. Pursuant to current sub-clause 138.3.2 of clause 138.3 of Article 138 of the Code, the latter include the value of goodwill, the costs of acquiring or self-constructing non-production fixed assets and non-production intangible assets, and the costs of their repair, reconstruction, modernisation and other improvements; fixed assets and intangible assets not intended for use in the taxpayer's business activities are considered non-production assets. The same group includes other assets that are not subject to depreciation under accounting standards.

Capitalisation of borrowing costs in this category arises in respect of assets whose creation or preparation for sale or use takes a substantial period of time.

The following rules apply to such costs (sub-clause 140.1.3).

Timing. Capitalised costs are included in borrowing costs in the period in which the value of the asset or a part of it is included in expenses—in particular, in the cost of goods, works and services sold, or in connection with the disposal of the item.

Amount. The share of capitalised costs included in borrowing costs is determined in proportion to the share of such costs in the value of the relevant asset.

Limitation by the amount taken into account in determining the object of taxation. If the value of the asset or a part of it is included in expenses according to accounting data but is taken into account in determining the object of taxation not in full but within the limits established by the Code—in particular, upon the sale of non-production fixed assets or intangible assets, whose value is taken into account in an amount not exceeding the income from such sale—the share of capitalised costs is determined using the formula:

$$CBI = TCB \times AD / FV$$
, where:

CBI—the amount of capitalised borrowing costs included in the borrowing costs of the relevant period;

TCB—the total amount of capitalised borrowing costs in the value of the asset or of the part of it being disposed of;

AD—the amount by which the value of the asset has actually reduced the object of taxation;

FV—the full value of the asset that would be taken into account in reducing the object of taxation without the limitations established by the Code.

If the value of the asset or a part of it is not taken into account in determining the object of taxation in any part—in particular, upon the liquidation of non-production fixed assets—the capitalised borrowing costs attributable to it are not included in borrowing costs (sub-clause 140.1.3).

Example 6. Construction project intended for sale

UAH million

Indicator	Amount
Cost of the construction project	1 000
of which capitalised borrowing costs	150
Cost of sales in the year of sale	600
Capitalised costs included in borrowing costs	$600 / 1\,000 \times 150 = 90$

In the years of construction, capitalised costs are not included in borrowing costs. In the year of sale, 15 per cent of the cost of sales, that is 90, is included in them.

Example 7. Sale of a non-production fixed asset

UAH million

Indicator	Amount
Value of the item	1 000
of which capitalised borrowing costs	150
Income from the sale	700
Value taken into account in determining the object of taxation (AD)	700
Full value without limitations (FV)	1 000
Capitalised costs included in borrowing costs (CBI)	$700 / 1\,000 \times 150 = 105$

The value of the item is taken into account in determining the object of taxation in an amount not exceeding the income from the sale, that is 700 out of 1 000. Accordingly, $150 \times 700 / 1\,000 = 105$ is included in borrowing costs. The remaining 45 is not included in borrowing costs.

4.6. Financial leasing, lease and factoring

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.2, 140.1.2 of clause 140.1 of Article 140; sub-clause 140.2.3 of clause 140.2 of Article 140. Current provisions of the Code: sub-clause 14.1.97 of clause 14.1 of Article 14.

Obligations under financial leasing agreements and under factoring are expressly named among debt obligations (sub-clause 140.1.1.2).

Under a financial leasing agreement, borrowing costs include the debt (financial) component of lease payments—the part of the payments that constitutes a fee for the use of the financing provided (sub-clause 140.1.2). The part of the lease payment provided as compensation for the value of the leased asset is not included in borrowing costs; a numerical example is given in clause 4.2 of these Clarifications.

Factoring also covers the case where a factor or another person provides financing to the taxpayer by paying or settling its obligations to suppliers of goods, works and services (sub-clause 140.1.1.2).

An obligation under a lease agreement that is not financial leasing is not a debt obligation: the interest component of lease payments is not included in borrowing costs. Symmetrically, when calculating the EBITDA metric, Indicator A does not include depreciation of right-of-use assets recognised in accordance with International Financial Reporting Standards, other than assets under financial leasing agreements (sub-clause 140.2.3). The agreement is classified according to the criteria of current sub-

clause 14.1.97 of clause 14.1 of Article 14 of the Code, pursuant to which the terms “financial leasing” and “financial rental” are identical for the purposes of the Code.

4.7. Derivative financial instruments and hedging arrangements

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.5, 140.1.1.6, 140.1.4, 140.1.5, 140.1.6 of clause 140.1 of Article 140.

The term “derivative financial instruments” is used within the meaning of the Law of Ukraine “On Capital Markets and Organised Commodity Markets” (sub-clause 140.1.1.5). A hedging arrangement is a transaction or a set of transactions entered into for the purpose of fully or partially offsetting the impact of a change in the exchange rate, the interest rate or other terms of a debt obligation, irrespective of whether such a transaction is a derivative financial instrument and whether the taxpayer applies hedge accounting in accordance with national accounting regulations (standards) or International Financial Reporting Standards (sub-clause 140.1.1.6).

Two separate indicators are determined for such instruments. The currency component is included in the aggregate result of exchange rate differences (sub-clause 140.1.4; clause 4.4 of these Clarifications). The interest component forms a separate indicator—the aggregate result of notional interest amounts (sub-clause 140.1.5).

The aggregate result of notional interest amounts is determined for each period as the difference between the amounts payable by, and the amounts receivable by, the taxpayer under such instruments. Notional interest amounts are amounts accrued on the deemed (nominal) amount of the instrument that, in their economic substance, are equivalent to payments on debt obligations (sub-clause 140.1.5).

An instrument is considered to be related to a debt obligation or to financing provided by the taxpayer if it is entered into for the purpose of fully or partially offsetting or modifying the impact of the interest rate or other terms of such obligation (sub-clause 140.1.5).

If the deemed (nominal) amount of the instrument exceeds the amount of the relevant debt obligation, only the part of the notional interest amounts determined in proportion to the ratio of the amount of the obligation to the deemed amount of the instrument is included in the aggregate result (sub-clause 140.1.5).

If the aggregate result of notional interest amounts is negative, the amount of the excess is included in borrowing costs (sub-clause 140.1.2); if it is positive, it is included in income economically equivalent to interest (sub-clause 140.1.6).

Example 8. Instrument whose notional amount exceeds the amount of the debt

UAH million

Indicator	Amount
Deemed (nominal) amount of the interest rate swap	1 000
Amount of the debt obligation to which the instrument is related	600
Aggregate result of notional interest amounts	–50
Included in borrowing costs	$600 / 1\,000 \times (-50) = -30$

30 is included in borrowing costs. The remaining 20 relates to the part of the deemed amount that does not correspond to the debt obligation and is not included in the calculation.

V. MONETARY THRESHOLD AND QUALIFYING BORROWING COSTS

5.1. Monetary threshold and how it is calculated

Provisions of the Code as amended by the Draft Law: sub-clause 140.1.1.7 of clause 140.1 of Article 140; sub-clauses 140.2.1, 140.2.1.1 of clause 140.2 of Article 140.

The monetary threshold is one of the two amounts from which the base amount of the limit is determined (sub-clause 140.2.1). It is equal to the greater of the following: an amount equivalent to EUR 500 000, or the lesser of an amount equivalent to EUR 3 million and the amount of qualifying borrowing costs (sub-clause 140.2.1.1).

The lower limit of the threshold is an amount equivalent to EUR 500 000 (sub-clause “a” of sub-clause 140.2.1.1). It applies to every taxpayer regardless of the structure of its debt, including where there are no qualifying borrowing costs. Above the lower limit, the threshold is determined by the amount of qualifying borrowing costs, but may not exceed an amount equivalent to EUR 3 million (sub-clause “b” of sub-clause 140.2.1.1). Borrowing costs that are not qualifying do not affect the amount of the threshold, although they are included in the BC indicator, which is compared with the limit (sub-clause 140.2.2).

Example 9. Determining the monetary threshold

EUR million

Qualifying borrowing costs (QBC)	Lesser of the upper limit (EUR 3 million) and QBC	Monetary threshold	Which amount determines the monetary threshold
2.4	2.4	2.4	amount of QBC (between 0.5 and 3)
0.3	0.3	0.5	lower limit (QBC less than 0.5)
0	0	0.5	lower limit (no QBC)
4	3	3	upper limit (QBC greater than 3)

The last column of the table shows which amount determines the monetary threshold: the amount of qualifying borrowing costs, if it lies between the lower and upper limits, or the corresponding limit, if that amount is below the lower limit or exceeds the upper limit.

5.2. Qualifying borrowing costs

Provisions of the Code as amended by the Draft Law: sub-clause 140.1.1.7 of clause 140.1 of Article 140; sub-clauses 140.2.1.1, 140.2.8, 140.2.9 of clause 140.2 of Article 140.

Qualifying borrowing costs are an indicator used exclusively to determine the amount of the monetary threshold (sub-clause 140.2.1.1). It does not affect whether the relevant costs are deductible: all borrowing costs are included in the BC indicator and are deducted within the borrowing costs limit under the same rules, regardless of whether such costs are qualifying.

Qualifying borrowing costs are borrowing costs on debt obligations that simultaneously meet three conditions (sub-clause 140.1.1.7):

the creditor is not a person related to the taxpayer;

performance of the debt obligation is not directly or indirectly secured by a person related to the taxpayer, including by way of a suretyship, guarantee, pledge of such person’s property or the grant of a right of recourse against such person;

a person related to the taxpayer has not transferred funds or property to the creditor and has not acquired the creditor's debt securities, where such transfer or acquisition was a condition for providing the funds or property under this debt obligation.

Security for a debt obligation matters only where it is provided by a person related to the taxpayer. A pledge of the taxpayer's own property, as well as a suretyship or guarantee by a person not related to the taxpayer, does not affect the classification of the costs (sub-clause 140.1.1.7).

Qualifying borrowing costs are not determined for a period in which the taxpayer itself provided financing to related parties in the form of a credit, loan, repayable financial assistance, deposit or acquisition of their debt securities, or for a period at the end of which outstanding indebtedness of related parties under such financing is recorded (sub-clause 140.1.1.7). For such a period, the monetary threshold is equal to the lower limit—an amount equivalent to EUR 500 000 (sub-clause “a” of sub-clause 140.2.1.1).

Qualifying costs affect only the amount of the monetary threshold, not the segment of debt to which the threshold applies. The total amount of borrowing costs for the period is compared with the limit (sub-clauses 140.2.1 and 140.2.2).

To apply these rules, the taxpayer maintains separate records of debt obligations the costs on which are qualifying, and of the amounts of such costs (sub-clause 140.2.8), and reports these amounts in the annex to the tax return (sub-clause 140.2.9).

Example 10. Mixed debt

In the tables of this example and of Example 12, the borrowing costs limit (BCL) is equal to the sum of income in the form of interest (IR) and the base amount of the limit (BA)—the greater of two amounts: 30 per cent of the EBITDA metric or the monetary threshold. These indicators are named in clauses 3.1 and 5.1 and explained in detail in clause 6.1 of these Clarifications.

Option 1. The total amount of borrowing costs is EUR 3 million, of which qualifying costs are EUR 1.2 million.

EUR million

Indicator	Amount
Qualifying borrowing costs (QBC)	1.2
Costs on debt owed to a related party	1.8
Total amount of borrowing costs (BC)	3.0
Income in the form of interest (IR)	0
30 per cent of the EBITDA metric	less than 1.2
Monetary threshold (MT)	1.2
Base amount of the limit (BA)	1.2
Borrowing costs limit (BCL)	1.2
Increase in the financial result	1.8

In Option 1, qualifying borrowing costs (EUR 1.2 million) exceed the lower limit and do not reach the upper limit, so the monetary threshold is equal to their amount (sub-clause “b” of sub-clause 140.2.1.1). The costs on debt owed to a related party (EUR 1.8 million) do not increase the threshold but are included in the BC indicator. The financial result before tax is increased by the amount by which the total amount of borrowing costs exceeds the borrowing costs limit—EUR 1.8 million.

Option 2. The total amount of borrowing costs is EUR 2 million, of which qualifying costs are EUR 0.4 million.

EUR million

Indicator	Amount
Qualifying borrowing costs (QBC)	0.4
Costs on debt owed to a related party	1.6
Total amount of borrowing costs (BC)	2.0
Income in the form of interest (IR)	0
30 per cent of the EBITDA metric	less than 0.5
Monetary threshold (MT)	0.5
Base amount of the limit (BA)	0.5
Borrowing costs limit (BCL)	0.5
Increase in the financial result	1.5

In Option 2, qualifying borrowing costs (EUR 0.4 million) are below the lower limit, so the monetary threshold is equal to an amount equivalent to EUR 500 000 (sub-clause “a” of sub-clause 140.2.1.1). The costs on debt owed to a related party do not increase the threshold but are included in the BC indicator. The financial result before tax is increased by the amount by which the total amount of borrowing costs exceeds the borrowing costs limit—EUR 1.5 million.

5.3. Conversion of the monetary threshold into hryvnias and the period for which it is set

Provisions of the Code as amended by the Draft Law: sub-clause 140.2.1.1 of clause 140.2 of Article 140. Current provisions of the Code: clause 137.4 of Article 137.

The amounts in euro are converted into hryvnias at the official hryvnia-to-euro exchange rate set by the National Bank of Ukraine as at 1 January of the tax (reporting) year (the fourth paragraph of sub-clause 140.2.1.1).

The monetary threshold is an annual amount and is not allocated between periods within a year. A taxpayer for which, pursuant to current clause 137.4 of Article 137 of the Code, the periods are a quarter, a half-year, three quarters and a year applies the same threshold in each of them: the tax return is calculated on a cumulative basis, the indicators of borrowing costs, income in the form of interest and EBITDA for each period cover the time from the beginning of the year, and the final result is determined on the basis of the year.

The amount equivalent to EUR 500 000 applies in full for any period, including an incomplete one (sub-clause “a” of sub-clause 140.2.1.1). The second amount from which the monetary threshold is determined is equal to the lesser of an amount equivalent to EUR 3 million and the actual amount of qualifying borrowing costs for the relevant period (sub-clause “b” of sub-clause 140.2.1.1).

5.4. Effect of the composition of creditors on the monetary threshold

Provisions of the Code as amended by the Draft Law: sub-clause 140.1.1.7 of clause 140.1 of Article 140; sub-clauses 140.2.1, 140.2.1.1 of clause 140.2 of Article 140.

The monetary threshold depends on the amount of qualifying borrowing costs (sub-clause 140.2.1.1), so two taxpayers with the same amount of borrowing costs and the same EBITDA metric may have different results if their debt has been raised from different creditors. The difference appears only where borrowing costs exceed the lower limit of the threshold.

Example 11. Two companies with the same borrowing costs

The EBITDA metric of both companies is UAH 30 million. 30 per cent of this metric is UAH 9 million. There is no income in the form of interest. For illustration, a hypothetical exchange rate of

UAH 50 per euro is used: the lower limit of the threshold is UAH 25 million, the upper limit is UAH 150 million. In practice, amounts in euro are converted at the official exchange rate set as at 1 January of the reporting year.

UAH million

Indicator	Company A: bank credit	Company B: shareholder loan	Company A: bank credit	Company B: shareholder loan
Borrowing costs (BC)	20	20	60	60
Qualifying costs (QBC)	20	0	60	0
Monetary threshold (MT)	25	25	60	25
30 per cent of the EBITDA metric	9	9	9	9
Base amount of the limit (BA)	25	25	60	25
Borrowing costs limit (BCL)	25	25	60	25
Increase in the financial result	–	–	–	35

With borrowing costs of UAH 20 million, the result for both companies is the same: both amounts are below the lower limit of the threshold. With costs of UAH 60 million, Company A's monetary threshold is equal to the amount of its qualifying costs (UAH 60 million), while Company B's remains at the lower limit (UAH 25 million), and Company B increases its financial result before tax by UAH 35 million.

5.5. Suretyship or guarantee by a group member

Provisions of the Code as amended by the Draft Law: sub-clause 140.1.1.7 of clause 140.1 of Article 140; sub-clauses 140.2.1, 140.2.1.1 of clause 140.2 of Article 140.

One of the conditions for borrowing costs to be qualifying is that “performance of the debt obligation is not directly or indirectly secured by a person related to the taxpayer, including by way of a suretyship, guarantee, pledge of such person's property, or the grant of a right of recourse against such person” (sub-clause 140.1.1.7).

The condition depends on the person providing the security. Security provided by the taxpayer itself and security provided by a person not related to the taxpayer do not affect the classification of the costs. If the security is provided by a related party, the costs on such an obligation are not considered qualifying (sub-clause “b” of sub-clause 140.1.1.7).

5.6. Limit where there are both qualifying and non-qualifying borrowing costs

Provisions of the Code as amended by the Draft Law: sub-clause 140.1.1.7 of clause 140.1 of Article 140; sub-clauses 140.2.1, 140.2.1.1, 140.2.2, 140.2.2.1, 140.2.5 of clause 140.2 of Article 140.

Above the lower limit (an amount equivalent to EUR 500 000), the monetary threshold depends on the amount of qualifying costs (sub-clause 140.2.1.1), while the limit applies to the entire amount of borrowing costs for the period. The BC indicator is compared with the limit (sub-clause 140.2.2); the formula does not provide for a division of debt by creditor, and the Draft Law does not establish rules on the order in which individual types of costs are deducted. The amount equivalent to EUR 500 000 is the lower limit of the monetary threshold itself: it does not depend on the composition of borrowing

costs and applies regardless of whether the taxpayer has qualifying costs. The entire amount of borrowing costs is compared with the limit that includes the monetary threshold (sub-clause 140.2.2). Whether costs are non-qualifying affects the result only in periods in which the monetary threshold exceeds 30 per cent of the EBITDA metric (sub-clause 140.2.1).

Example 12. Debt raised from a bank and from a related party

Unlike Example 10, in which the base amount of the limit in both options is determined by the monetary threshold, this example shows two other features: the excess over the limit is carried forward as a single amount, without division into qualifying and non-qualifying parts; with a small amount of qualifying costs, the base amount of the limit is determined not by the monetary threshold but by 30 per cent of the EBITDA metric (Option 3).

There is no income in the form of interest; 30 per cent of the EBITDA metric is EUR 600 000.

Option 1. Qualifying costs on the bank credit are EUR 1.5 million, and costs on the related-party loan are EUR 1.2 million.

EUR million

Indicator	Amount
Qualifying costs on the bank credit	1.5
Costs on the related-party loan	1.2
Total amount of borrowing costs (BC)	2.7
Monetary threshold (MT)	1.5
30 per cent of the EBITDA metric	0.6
Base amount of the limit (BA)	1.5
Borrowing costs limit (BCL)	1.5
Increase in the financial result	1.2

The amount of EUR 1.2 million is recorded as the accumulated amount of borrowing costs and will reduce the financial result in periods in which borrowing costs do not exceed the limit (sub-clauses 140.2.2.1 and 140.2.5).

The question of which part of the excess is attributable to qualifying costs and which to non-qualifying costs does not arise in the calculation: the excess is a single amount and is carried forward in full.

Options 2 and 3. The total amount of borrowing costs (EUR 2.7 million) and the EBITDA metric are the same as in Option 1, but qualifying costs on the bank credit are EUR 1.0 million and EUR 0.3 million respectively.

EUR million

Indicator	Option 2	Option 3
Qualifying costs on the bank credit	1.0	0.3
Costs on the related-party loan	1.7	2.4
Total amount of borrowing costs (BC)	2.7	2.7
Monetary threshold (MT)	1.0	0.5
30 per cent of the EBITDA metric	0.6	0.6
Base amount of the limit (BA)	1.0	0.6
Borrowing costs limit (BCL)	1.0	0.6
Increase in the financial result	1.7	2.1

The lower limit of the threshold matters only where there are no qualifying costs or their amount is below that limit. In Options 1 and 2, qualifying costs exceed the lower limit, so the threshold is equal to their amount (1.5 and 1.0). In Option 3, qualifying costs (0.3) are below the lower limit, so the threshold is 0.5; the base amount of the limit in this option is determined by 30 per cent of the EBITDA metric (0.6), since that amount is greater.

VI. BORROWING COSTS LIMIT AND CARRY-FORWARD OF AMOUNTS

6.1. Composition of the borrowing costs limit

Provisions of the Code as amended by the Draft Law: sub-clauses 140.2.1, 140.2.1.1, 140.2.2, 140.2.2.1, 140.2.2.2 of clause 140.2 of Article 140.

The borrowing costs limit (BCL) is equal to the sum of income in the form of interest and other income economically equivalent to interest (IR) and the base amount of the limit (BA) (sub-clause 140.2.1):

$$\text{BCL} = \text{IR} + \text{BA}.$$

The base amount of the limit is equal to the greater of two amounts: 30 per cent of the EBITDA metric or the monetary threshold (sub-clause 140.2.1). Income in the form of interest is added to the base amount regardless of which of the two amounts formed it.

The procedure for determining the EBITDA metric is set out in clause 6.2 of these Clarifications, and the procedure for determining the monetary threshold in Section V of these Clarifications.

The total amount of borrowing costs for the period is compared with the limit (sub-clause 140.2.2). The comparison leads to one of the following consequences:

borrowing costs exceed the limit—the amount of the excess is reduced by the unused amount of the limit carried forward from prior years; the financial result before tax is increased by the remaining amount, and the accumulated amount of borrowing costs is increased by the same amount (sub-clause 140.2.2.1);

borrowing costs do not exceed the limit and the taxpayer carries an accumulated amount of borrowing costs—the financial result before tax is reduced by the lesser of two amounts: the accumulated amount or the amount by which the limit exceeds borrowing costs (sub-clause 140.2.2.2). For this calculation the limit is determined without taking the monetary threshold into account, that is, as the sum of income in the form of interest and 30 per cent of the EBITDA metric (the fifth paragraph of sub-clause 140.2.1.1);

borrowing costs do not exceed the limit and the taxpayer carries no accumulated amount of borrowing costs—the financial result before tax is not adjusted. An unused amount of the borrowing costs limit may arise in such a period; the procedure for determining and utilising it is set out in clause 6.7 of these Clarifications.

Relationship between exceeding borrowing costs and the limit. Exceeding borrowing costs are not the amount compared with the borrowing costs limit: income in the form of interest and other income economically equivalent to interest (IR) is taken into account within the limit itself (sub-clause 140.2.1). The indicator of exceeding borrowing costs is used to calculate EBITDA (sub-clause 140.2.3) and the unused amount of the borrowing costs limit (sub-clause 140.2.6).

Example 13. Exceeding the borrowing costs limit Borrowing costs for the period are UAH 100 million, income in the form of interest is UAH 30 million, and 30 per cent of EBITDA is UAH 50 million (the monetary threshold is below this amount). The borrowing costs limit is $30 + 50 = \text{UAH } 80$ million. Borrowing costs exceed the limit by UAH 20 million, and the financial result before tax is increased by this amount.

Example 14. Borrowing costs limit over four tax (reporting) years

In tax reporting, the calculation is made in hryvnias at the official hryvnia-to-euro exchange rate set as at 1 January of the reporting year.

EUR million

Indicator	Year 1	Year 2	Year 3	Year 4
Creditor	bank, unrelated party	the same bank	related party	bank and related party
EBITDA metric	12	8	8	5
Borrowing costs (BC), including:	4	2.8	2.8	2.8
on debt owed to the bank	4	2.8	—	1.8
on debt owed to the related party	—	—	2.8	1
Qualifying borrowing costs (QBC)	4	2.8	0	1.8
Income in the form of interest (IR)	0	0	0	0
$0.3 \times \text{EBITDA}$	3.6	2.4	2.4	1.5
Monetary threshold (MT)	3	2.8	0.5	1.8
Base amount of the limit (BA)	3.6	2.8	2.4	1.8
Borrowing costs limit (BCL)	3.6	2.8	2.4	1.8
Increase in the financial result	0.4	—	0.4	1
Accumulated amount of borrowing costs at the end of the year (ABC)	0.4	0.4	0.8	1.8
Unused amount of the limit (UIC)	0	0	0	0

Year 1. The monetary threshold does not affect the result: it is EUR 3 million and is less than $0.3 \times \text{EBITDA}$ (EUR 3.6 million).

Year 2. The result is determined by the monetary threshold: borrowing costs are equal to the limit (EUR 2.8 million), and the financial result before tax is not increased. The accumulated amount of borrowing costs that arose in Year 1 (EUR 0.4 million) is not used, since for the relevant calculation the limit is determined without taking the monetary threshold into account and amounts to EUR 2.4 million.

Year 3. The EBITDA metric and the amount of borrowing costs are the same as in Year 2, but the creditor is a related party: qualifying borrowing costs are zero, and the monetary threshold falls to the lower limit of EUR 500 000.

Year 4. The debt is raised simultaneously from the bank and from the related party, and the total amount of borrowing costs is below EUR 3 million (EUR 2.8 million). The monetary threshold is equal to the amount of qualifying borrowing costs—EUR 1.8 million. It is determined neither by the total amount of borrowing costs nor by the upper limit of EUR 3 million. Costs on debt owed to the related party are not taken into account in calculating the monetary threshold, although they are included in the BC indicator, which is compared with the limit.

The composition of creditors determines the amount of the monetary threshold and does not affect the amount of $0.3 \times \text{EBITDA}$.

6.2. EBITDA metric

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.8, 140.1.3 of clause 140.1 of Article 140; sub-clauses 140.2.2.1, 140.2.3 of clause 140.2 of Article 140.

For the purposes of the rule, the EBITDA metric is not a financial reporting indicator. The Draft Law provides that it is determined on the basis of tax data using the formula (sub-clause 140.2.3):

$EBITDA = OT + A + EBC$, where:

OT—the object of taxation with corporate income tax for the current period, determined by adjusting the financial result before tax for all differences provided for by the Code, other than the negative value of the object of taxation from prior tax (reporting) years and all differences under clause 140.2—both those by which the financial result is increased and those by which it is reduced;

A—the amount of depreciation taken into account in determining the object of taxation for the current period and calculated under the rules of sub-clause 140.2.3;

EBC—exceeding borrowing costs for the current period; in their absence the indicator is zero (sub-clause 140.1.1.8).

Indicator A does not include the part of depreciation attributable to capitalised borrowing costs and taken into account as part of borrowing costs pursuant to sub-clause 140.1.3, or the depreciation of right-of-use assets recognised in accordance with International Financial Reporting Standards, other than assets under financial leasing agreements (sub-clause 140.2.3).

Income exempt from taxation is not included in the OT indicator and therefore does not increase the EBITDA metric.

If the EBITDA metric is negative, it is considered to be zero for the purposes of the calculations under clause 140.2 of Article 140 of the Code (sub-clause 140.2.3). In such a period, $0.3 \times EBITDA$ is zero and the base amount of the limit is equal to the monetary threshold (sub-clause 140.2.1): the limit is the sum of income in the form of interest and other income economically equivalent to interest and the monetary threshold. For reducing the financial result before tax by the accumulated amount of borrowing costs and for calculating the unused amount of the borrowing costs limit, that limit is determined without taking the monetary threshold into account (the fifth paragraph of sub-clause 140.2.1.1); no unused amount of the limit arises for such a period (sub-clause 140.2.6). The amount of borrowing costs not taken into account in such a period is recorded as the accumulated amount of borrowing costs (sub-clause 140.2.2.1).

Example 15. Calculating the EBITDA metric

The taxpayer has no income in the form of interest.

UAH million

Indicator	Amount
Operating income excluding interest	1 000
Operating expenses excluding interest and depreciation	400
Depreciation	100
Borrowing costs (BC)	50
Object of taxation (OT)	450 [= 1 000 – 400 – 100 – 50]
Amount of depreciation (A)	100
Exceeding borrowing costs (EBC)	50
EBITDA metric	600 [= 450 + 100 + 50]
$0.3 \times EBITDA$	180

Borrowing costs (UAH 50 million) are less than $0.3 \times \text{EBITDA}$ (UAH 180 million), so the financial result before tax is not adjusted.

6.3. Effect of exchange rate differences on the borrowing costs limit and the EBITDA metric

Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.8, 140.1.4, 140.1.6 of clause 140.1 of Article 140; sub-clause 140.2.3 of clause 140.2 of Article 140.

A negative aggregate result of exchange rate differences included in borrowing costs does not affect the amount of the limit: it increases exceeding borrowing costs (sub-clause 140.1.1.8), and exceeding borrowing costs are taken into account in calculating the EBITDA metric, which is equal to the sum of the object of taxation, depreciation and exceeding borrowing costs (sub-clause 140.2.3).

At the same time, an exchange rate difference on the principal amount of the debt that, pursuant to sub-clause “b” of the second paragraph of sub-clause 140.1.4, is not included in the aggregate result of exchange rate differences is taken into account in the financial result before tax in full and is not subject to the limitation of borrowing costs: it is not included in the BC indicator. However, such an exchange rate difference affects the amount of the borrowing costs limit indirectly, through the OT indicator (object of taxation) and the EBITDA metric. Thus, in Option C of Example 16, a negative exchange rate difference of UAH 10 million on the principal amount of the bank credit reduces the EBITDA metric from UAH 170 million to UAH 160 million, and the limit from UAH 51 million to UAH 48 million.

Exchange rate differences that are not included in the aggregate result of exchange rate differences (in particular, those on the principal amount of the debt, except in the cases set out in sub-clauses “b” and “c” of the second paragraph of sub-clause 140.1.4, and those on indebtedness for goods, works and services) are not added separately when calculating the EBITDA metric (sub-clause 140.2.3). They are taken into account in the financial result before tax under accounting rules. Since the Code does not establish differences for them, they are included in the OT indicator in the same amount as in the financial result before tax and, through it, affect the EBITDA metric and 30 per cent of that metric: negative exchange rate differences reduce them, and positive ones increase them. This does not apply to exchange rate differences capitalised in the value of an asset or to exchange rate differences taken into account in the aggregate result of notional interest amounts: they are taken into account, respectively, as part of capitalised borrowing costs (sub-clause 140.1.3) and in the aggregate result of notional interest amounts (sub-clause 140.1.5).

A positive aggregate result of exchange rate differences increases income economically equivalent to interest (sub-clauses 140.1.4 and 140.1.6) and thereby, on the one hand, reduces exceeding borrowing costs (sub-clause 140.1.1.8) and, on the other, increases the borrowing costs limit (sub-clause 140.2.1).

Example 16. Determining the effect of exchange rate differences on the indicators used to calculate the limit

The financial result before tax, excluding borrowing costs and exchange rate differences, is UAH 150 million. Depreciation (UAH 20 million) has already been deducted in this amount as part of expenses; it is added separately to the EBITDA metric as Indicator A. Borrowing costs excluding exchange rate differences are UAH 50 million, of which UAH 10 million relate to a credit from a bank not related to the taxpayer. There are no other differences specified in the Code, so the object of taxation is equal to the financial result before tax after deduction of borrowing costs and exchange rate differences. There is no income in the form of interest and no unused amount of the limit; in all options the monetary threshold is below 30 per cent of the EBITDA metric and does not affect the result.

Option A. A negative exchange rate difference of UAH 10 million on accrued interest; it is included in the aggregate result of exchange rate differences (sub-clause “a” of the second paragraph of sub-clause 140.1.4).

Option B. A positive exchange rate difference of UAH 10 million on accrued interest.

Option C. A negative exchange rate difference of UAH 10 million on the principal amount of the bank credit; it is not included in the aggregate result of exchange rate differences (sub-clause “b” of the second paragraph of sub-clause 140.1.4).

UAH million

Indicator	Without exchange rate differences	Option A	Option B	Option C
Borrowing costs (BC)	50	60	50	50
Income in the form of interest and other income economically equivalent to interest (IR)	0	0	10	0
Exceeding borrowing costs (EBC)	50	60	40	50
Object of taxation (OT)	100 [= 150 – 50]	90 [= 150 – 50 – 10]	110 [= 150 – 50 + 10]	90 [= 150 – 50 – 10]
Amount of depreciation (A)	20	20	20	20
EBITDA metric	170 [= 100 + 20 + 50]	170 [= 90 + 20 + 60]	170 [= 110 + 20 + 40]	160 [= 90 + 20 + 50]
0.3 × EBITDA	51	51	51	48
Borrowing costs limit (BCL)	51 [= 0 + 51]	51 [= 0 + 51]	61 [= 10 + 51]	48 [= 0 + 48]
Increase in the financial result	–	9	–	2

In Options A and B, the exchange rate difference changes the object of taxation and exceeding borrowing costs by the same amount in opposite directions, so the EBITDA metric does not change (both amounts are components of the EBITDA metric, and their changes offset each other: in Option A the object of taxation decreases by UAH 10 million and exceeding borrowing costs increase by the same amount; in Option B the reverse). In Option A, the negative exchange rate difference increases borrowing costs to UAH 60 million, and they exceed the limit by UAH 9 million. In Option B, the positive exchange rate difference is included in income economically equivalent to interest and increases the limit to UAH 61 million. In Option C, the exchange rate difference is not included in the aggregate result: borrowing costs do not change, but the object of taxation, the EBITDA metric and the limit decrease, and borrowing costs exceed the limit by UAH 2 million.

6.4. Difference between the borrowing costs limit and the monetary threshold

Provisions of the Code as amended by the Draft Law: sub-clauses 140.2.1, 140.2.1.1, 140.2.2, 140.2.2.1, 140.2.2.2, 140.2.6 of clause 140.2 of Article 140.

The borrowing costs limit and the monetary threshold are different indicators with different functions.

The borrowing costs limit is the amount with which the total amount of borrowing costs for the period is compared (sub-clause 140.2.2). It is the limit that determines whether an adjustment of the financial result before tax arises and in what amount (sub-clauses 140.2.2.1 and 140.2.2.2).

The monetary threshold is one of the two amounts from which the base amount of the limit is determined (sub-clause 140.2.1). No separate comparison is made with it: exceeding the monetary threshold has no consequences, whereas exceeding the limit increases the financial result before tax and the accumulated amount of borrowing costs (sub-clause 140.2.2.1).

The monetary threshold is not added to 30 per cent of the EBITDA metric but replaces that amount in those periods in which it is greater (sub-clause 140.2.1).

The amount of 30 per cent of the EBITDA metric is determined by the taxpayer's results for the period (sub-clause 140.2.3). The amount of the monetary threshold depends on the amount of qualifying borrowing costs; the procedure for determining it is set out in clause 5.1 of these Clarifications (sub-clause 140.2.1.1). The amount of the limit depends on both these amounts and on income in the form of interest.

The monetary threshold operates only in respect of borrowing costs for the current period. It creates no capacity for deducting borrowing costs of past periods and builds no capacity for the future: in calculating the amount by which the financial result before tax is reduced by the accumulated amount of borrowing costs (sub-clause 140.2.2.2), and in calculating the unused amount of the limit (sub-clause 140.2.6), only 30 per cent of the EBITDA metric is used (the fifth paragraph of sub-clause 140.2.1.1).

6.5. Application of the rule over several years

Provisions of the Code as amended by the Draft Law: sub-clauses 140.2.1, 140.2.2.1, 140.2.2.2, 140.2.5, 140.2.6 of clause 140.2 of Article 140.

Example 17. Accumulated amount of borrowing costs: build-up and deduction over four years

The taxpayer has no income in the form of interest, so the borrowing costs limit is equal to 30 per cent of the EBITDA metric. In all years the monetary threshold is below this amount and does not affect the result.

UAH million

Indicator	Year 1	Year 2	Year 3	Year 4
EBITDA metric	1 000	1 000	1 200	2 000
Borrowing costs limit (BCL)	300	300	360	600
Borrowing costs (BC)	500	400	300	100
Increase in the financial result	200	100	—	—
Reduction of the financial result	—	—	60	240
Accumulated amount at the end of the year (ABC)	200	300	240	0
Unused amount of the limit for the year (UIC)	0	0	0	260

In Years 1 and 2, borrowing costs exceed the limit: the financial result before tax is increased by the amount of the excess, and the accumulated amount of borrowing costs is increased by the same amount (sub-clause 140.2.2.1).

In Years 3 and 4, borrowing costs do not exceed the limit: the accumulated amount of borrowing costs is deducted from the financial result before tax—by the lesser of two amounts, the accumulated amount or the amount by which the limit exceeds borrowing costs (sub-clause 140.2.2.2). In Year 3 the second amount is the lesser ($360 - 300 = 60$), in Year 4 the first (240).

In Year 4, after the accumulated amount has been used, the limit remains not fully used: the unused amount of the limit is $600 - 100 - 240 = 260$ and is carried forward for the next five years (sub-clause 140.2.6).

In total, over the four years the taxpayer deducted all 1 300 of borrowing costs: the sum of the increases in the financial result is equal to the sum of the reductions. In this example, the rule changed not the amount of the deduction but the periods in which it was taken into account.

6.6. Accumulated amount of borrowing costs

Provisions of the Code as amended by the Draft Law: sub-clauses 140.2.1.1, 140.2.2.1, 140.2.2.2, 140.2.5, 140.2.7 of clause 140.2 of Article 140; clause 4¹ of Subsection 4 of Section XX. Current provisions of the Code: clauses 140.2 and 140.3 of Article 140.

The amount by which borrowing costs exceeded the limit increases the financial result before tax, and the accumulated amount of borrowing costs (ABC) is increased by the same amount (sub-clause 140.2.2.1). The accumulated amount is carried forward to subsequent periods without any time limit—until it is fully deducted from the financial result before tax (sub-clause 140.2.5).

The accumulated amount is taken into account only in those periods in which borrowing costs do not exceed the limit. The amount of the reduction is equal to the lesser of two amounts: the balance of the accumulated amount or the amount by which the limit exceeds borrowing costs (sub-clause 140.2.2.2). For this calculation, the limit is determined without taking the monetary threshold into account, that is, as the sum of income in the form of interest and 30 per cent of the EBITDA metric (the fifth paragraph of sub-clause 140.2.1.1).

The carry-forward of the accumulated amount is restricted where the taxpayer transfers to the simplified taxation system (clause 4¹ of Subsection 4 of Section XX of the Code) and on reorganisation (sub-clause 140.2.7). These cases are set out in clauses 6.8 and 7.6 of these Clarifications.

Current clause 140.3 of Article 140 of the Code provides for a different carry-forward procedure: interest that exceeded the limitation reduces the financial result of future periods in an amount reduced annually by 5 per cent of the amount remaining unaccounted for, and subject to the same limitation. The Draft Law does not establish an annual reduction of the accumulated amount.

6.7. Unused amount of the borrowing costs limit

Provisions of the Code as amended by the Draft Law: sub-clauses 140.2.1.1, 140.2.2.1, 140.2.6 of clause 140.2 of Article 140; sub-clause 3 of clause 74 of Subsection 4 of Section XX.

The unused amount of the limit (UIC) is the second carry-forward mechanism: if the limit has not been fully used in a period, the difference is recorded and may reduce the excess in subsequent periods (sub-clause 140.2.6).

The unused amount of the limit for a tax (reporting) year is equal to the amount by which 30 per cent of the EBITDA metric for that year exceeds exceeding borrowing costs for that year, less the part of the accumulated amount of borrowing costs that was deducted from the financial result before tax in that same year. In the absence of such an excess, or if the result of the calculation is negative, the indicator is zero (sub-clause 140.2.6).

The basis of the calculation is 30 per cent of the EBITDA metric, not the difference between the full limit and borrowing costs: neither income in the form of interest nor the monetary threshold enters the calculation of the unused amount of the limit (sub-clause 140.2.6; the fifth paragraph of sub-clause 140.2.1.1).

The unused amount of the limit is utilised during the five tax (reporting) years following the year in which it arose. Records are kept separately for each year in which it arose, and utilisation is sequential, starting with the amount that arose earlier. After the expiry of that period, the amount is not subject to further carry-forward (the second and third paragraphs of sub-clause 140.2.6).

The unused amount of the limit is applied in periods in which borrowing costs exceed the limit (sub-clause 140.2.2.1), and the accumulated amount in periods in which they do not exceed the limit (sub-clause 140.2.2.2).

No unused amount of the limit arises for periods in which the taxpayer has no exceeding borrowing costs, for periods in which the requirements of clauses 140.1 and 140.2 of Article 140 of the Code did not apply to the taxpayer, or for periods during which the taxpayer was under the simplified taxation system (the fourth paragraph of sub-clause 140.2.6). Nor does it arise for periods before 1 January 2028 (sub-clause 3 of clause 74 of Subsection 4 of Section XX of the Code).

Example 18. Utilisation of the unused amount of the limit

UAH million

Indicator	Year 1	Year 2
EBITDA metric	1 000	1 000
Borrowing costs limit (BCL)	300	300
Borrowing costs (BC)	100	600
Exceeding borrowing costs (EBC)	100	600
Excess over the limit	–	300
Unused amount of the limit utilised	–	200
Increase in the financial result	–	100
Unused amount of the limit for the year (UIC)	200	0
Accumulated amount at the end of the year (ABC)	0	100

In Year 1, borrowing costs do not exceed the limit, so the unused amount of the limit is $300 - 100 = 200$. In Year 2, borrowing costs exceed the limit by 300; this excess is reduced by the unused amount of the limit from Year 1, so the financial result before tax is increased by 100, and the accumulated amount of borrowing costs is increased by the same amount.

6.8. Accumulated amount of borrowing costs and unused amount of the limit on reorganisation

Provisions of the Code as amended by the Draft Law: sub-clauses 140.2.7.1–140.2.7.5 of clause 140.2 of Article 140; a new paragraph of clause 4¹ of Subsection 4 of Section XX of the Code. Current provisions of the Code: sub-clause 140.4.5 of clause 140.4 of Article 140.

The Draft Law provides for different rules for two indicators—the accumulated amount of borrowing costs (ABC) and the unused amount of the borrowing costs limit (UIC).

Accumulated amount of borrowing costs. On reorganisation by way of merger, consolidation or conversion, the accumulated amount recorded by the taxpayer being dissolved as at the date of approval of the transfer deed will be deducted from the financial result before tax of the successor in the manner established by sub-clause 140.2.2.2. On reorganisation by way of division—as at the date of approval of the distribution balance sheet—that amount will be allocated among the successors in

proportion to the share of assets received pursuant to the distribution balance sheet (sub-clause 140.2.7.1). On reorganisation by way of spin-off, the accumulated amount will be carried over to the taxpayer created as a result of the spin-off in proportion to the share of assets received by it; the accumulated amount of the taxpayer from which the spin-off is effected will be reduced by the amount carried over (sub-clause 140.2.7.3).

Limitation by equity. The accumulated amount of borrowing costs of the successor will include an amount not exceeding the equity of the taxpayer being dissolved as at the end of the previous tax (reporting) year, less the negative value of the object of taxation recorded by such taxpayer as at the date of approval of the transfer deed (on division—the distribution balance sheet). If the result of such a calculation is negative or zero, the accumulated amount will not be carried over to the successor. On division, this limitation will apply to each successor in proportion to the share of assets received by it. On merger (consolidation), the accumulated amount will also be carried over provided that the taxpayer being dissolved and the successor taxpayer have been related parties for more than eighteen consecutive months before the date of completion of the merger (consolidation) (sub-clause 140.2.7.2).

Consistency with the current procedure. Current sub-clause 140.4.5 of clause 140.4 of Article 140 of the Code provides that the negative value of the object of taxation of the taxpayer being dissolved reduces the financial result before tax of the successor in an amount not exceeding the equity of such taxpayer as at the end of the previous tax (reporting) year, and provided that the taxpayer being dissolved and the successor taxpayer have been related parties for more than eighteen consecutive months before the date of completion of the merger (consolidation); on division and spin-off, the amount is carried over in proportion to the share of assets received pursuant to the distribution balance sheet.

The Draft Law applies the same limitations to the accumulated amount of borrowing costs—by the amount of equity, by the condition of eighteen consecutive months of relationship, and by proportional allocation on division and spin-off—and aligns them with the carry-over of the negative value: the amount of equity that limits the carry-over is reduced by the negative value of the object of taxation recorded by the taxpayer being dissolved. The Draft Law does not change the approach of the Code to the carry-over of tax indicators on reorganisation.

Cases in which the accumulated amount is not carried over. The accumulated amount will not be carried over to the successor if, as at the date of completion of the reorganisation, such successor is a Diia City resident—a taxpayer subject to special conditions (sub-clause 140.2.7.4) or was under the simplified taxation system (the eighth paragraph of clause 4¹ of Subsection 4 of Section XX of the Code).

Unused amount of the borrowing costs limit. On reorganisation by way of merger, consolidation or division, the unused amount of the limit will not be carried over to the successor. On spin-off, it will continue to be accounted for by the taxpayer from which the spin-off is effected and will not be carried over to the newly created taxpayer. On conversion, it will be accounted for by the successor in the manner established by sub-clause 140.2.6 (sub-clause 140.2.7.5).

VII. EXCEPTIONS FROM THE APPLICATION OF THE RULE

7.1. Financial institutions to which the rule does not apply

Provisions of the Code as amended by the Draft Law: sub-clause 140.3.1 of clause 140.3 of Article 140.

The Draft Law provides that the requirements of clauses 140.1 and 140.2 of Article 140 of the Code do not apply to a taxpayer that is (sub-clause 140.3.1):

- a bank—in accordance with the Law of Ukraine “On Banks and Banking Activities”;
- a non-resident carrying out banking activities in the territory of Ukraine through a branch of a foreign bank—in accordance with the same Law;
- an insurer—in accordance with the Law of Ukraine “On Insurance”.

The list is exhaustive and is based on the sectoral legislation of Ukraine.

The Directive uses the term “financial undertaking” in its own meaning. Article 2(5) of the Directive defines it by an exhaustive list of categories of entities, each of which is described by reference to specific acts of European Union law: credit institutions and investment firms, alternative investment fund managers, insurance and reinsurance undertakings, institutions for occupational retirement provision, pension institutions operating social security schemes, alternative investment funds, undertakings for collective investment, central counterparties and central securities depositories. The list is given in summary form; the exact content of each category is determined by the acts referred to.

The term “financial institution” under the legislation of Ukraine has a broader meaning and does not coincide with the list set out in the Directive. The Draft Law therefore specifies particular categories of taxpayers rather than using the general national definition.

As national legislation is brought into line with the acts of European Union law to which Article 2(5) of the Directive refers, the list of categories may be refined.

7.2. Exclusion for long-term public infrastructure projects

Provisions of the Code as amended by the Draft Law: sub-clauses 140.3.2, 140.3.3, 140.3.4 of clause 140.3 of Article 140; clause 3 of Section II “Final Provisions”.

Article 4(4) of the Directive gives a Member State the right to exclude from the limitation exceeding borrowing costs on loans used to fund a long-term public infrastructure project, provided that the project operator, borrowing costs, assets and income are all in the European Union. The Directive considers a long-term public infrastructure project to be a project to provide, upgrade, operate and/or maintain a large-scale asset that is considered in the general public interest by a Member State. The Directive also requires income from such a project to be excluded from the taxpayer’s EBITDA.

The Directive does not define the concept of “general public interest”; establishing it is a matter for the Member State. The Draft Law provides that the criteria for classifying assets as large-scale assets of general public interest are established by the Cabinet of Ministers of Ukraine upon the submission of the central executive authority that ensures the formation and implements the state policy on economic and social development (the last paragraph of sub-clause 140.3.3).

The Draft Law provides that borrowing costs incurred in connection with the implementation of a long-term public infrastructure project are not included in the total amount of borrowing costs, and the differences under clause 140.2 of Article 140 of the Code do not apply to them (the first paragraph of sub-clause 140.3.2). This also applies to capitalised borrowing costs for such a project—in the

periods in which they would be subject to inclusion in borrowing costs (the first paragraph of sub-clause 140.3.2).

The exclusion also extends to the income side: income from the project is not included in income in the form of interest and other income economically equivalent to interest, and the OT indicator is reduced by the amount of such income taken into account in determining the object of taxation for the relevant period (sub-clause 140.3.2).

This exclusion will be applied only by the project operator—a taxpayer that, on the basis of a law, an administrative act, a concession agreement, a public-private partnership agreement or another agreement with a state authority or a local self-government body, carries out the project or ensures its implementation, is the owner or lawful possessor of the project asset, and bears the costs of activities under the project and the borrowing costs of financing it (sub-clause 140.3.4).

The project operator will maintain separate records of income and borrowing costs for each project. Income derived from the use of the project asset together with other assets of the operator, and borrowing costs that cannot be attributed to the project directly, will be allocated in proportion to the carrying amount of the project assets within the total carrying amount of the operator's assets (sub-clause 140.3.2).

The project operator will disclose the application of the exclusion and information on the project in the tax return (sub-clause 140.3.2).

Compliance of the project with conditions “a” and “b” is determined as at the date from which the taxpayer first applied the exclusion in respect of that project. Compliance with conditions “c”–“l” is determined on the basis of each tax (reporting) year (sub-clause 140.3.3).

If the project fails to meet at least one of conditions “c”–“l”, the exclusion does not apply for the tax (reporting) year on the basis of which the non-compliance was established, or for each subsequent year on the basis of which the project fails to meet at least one of those conditions. The application of the exclusion for periods preceding that year is not reviewed (sub-clause 140.3.3).

If, after the date on which the taxpayer first applied the exclusion, the term of the project is reduced to less than 10 years, the exclusion does not apply starting from the tax (reporting) year in which the relevant amendments took effect (sub-clause 140.3.3).

The conditions that the project must meet are set out in clause 7.3 of these Clarifications.

7.3. Conditions that a long-term public infrastructure project must meet

Provisions of the Code as amended by the Draft Law: sub-clauses 140.3.3, 140.3.5 of clause 140.3 of Article 140.

The conditions that the project must meet are built on the features set out in the Final Report of the Organisation for Economic Co-operation and Development on Action 4.

The Draft Law provides that a long-term public infrastructure project is considered to be a project that meets all of the following conditions (sub-clause 140.3.3).

“a”—the project is aimed at the creation, construction, modernisation, operation and/or maintenance of a large-scale asset that is in the general public interest. The criteria for classifying assets as such are established by the Cabinet of Ministers of Ukraine.

“b”—the term of the project is at least 10 years. The term of the project is the period during which the project operator bears the obligation referred to in condition “d”; it is calculated from the date on which such obligation arises. If the obligation is established without a specified term, the term of the project is deemed to be at least 10 years.

“c”—the project asset is located in Ukraine. The location outside Ukraine of individual constituent parts of the asset does not preclude the application of the exclusion if such parts are ancillary to the project asset and their location outside Ukraine is due to the technological necessity of connecting the project asset to the corresponding infrastructure of another state.

“d”—the project operator is required, on the basis of a law, an administrative act, a concession agreement, a public-private partnership agreement or another agreement with a state authority or a local self-government body, to carry out one or more of the following actions in respect of the project asset: to create (construct), modernise, operate or maintain the asset, to ensure its availability, or to supply, using such asset, goods, works or services of general public interest.

“e”—during the term of the project, the operator is not permitted to dispose of the project asset, except in cases established by law or provided for in the terms of a concession agreement, a public-private partnership agreement or another agreement with a state authority or a local self-government body, as well as disposal with the consent of the relevant body. The disposal of constituent parts of the asset in connection with their replacement with parts used in the same project, or their write-off due to wear and tear or destruction, is not considered a violation.

“f”—the borrowing to finance the project is a debt obligation of the operator to a person not related to it, under which the creditor has a right of claim and/or a right of recourse exclusively against the project asset and the income from such project and has no such right against any other assets, in particular the assets of the operator or of persons related to it.

It is not considered a breach of this condition for the creditor to have a right of claim and/or a right of recourse against: the corporate rights of the project operator; the property rights of the operator under contracts concluded in connection with the implementation of the project; receivables arising in connection with the implementation of the project; funds in accounts intended for settlements under the project, including reserve accounts and escrow accounts; insurance indemnities payable in connection with damage to or loss of the project asset; compensation payable in connection with the termination of the agreement referred to in condition “d”.

Security—a suretyship, guarantee or other obligation to provide financial support—provided by a person related to the operator exclusively for the period of creation (construction) of the project asset and terminated no later than the date on which such asset is put into operation is not taken into account for the purposes of this condition.

“g”—the amount of borrowings to finance the project does not exceed the amount of investment in the project. The amount of investment is the cost of acquiring or creating the project asset and/or the cost of its modernisation or other expenses aimed at maintaining or increasing the value of such asset, and, until the creation or modernisation of the asset is completed, the expected amount of such investment.

“h”—the funds received under borrowings to finance the project are not lent (as a loan or credit) or otherwise provided to other persons, including group members. It is not considered a breach to place such funds, pending their use for the purposes of the project, in bank accounts, including deposit accounts, reserve accounts and escrow accounts, or to acquire government securities with such funds. Nor is other minor and incidental placement of funds with third parties considered a breach.

“i”—the share of project financing through borrowings from persons not related to the project operator in the total amount of investment in the project does not exceed by more than 20 percentage points the corresponding share of other similar projects of the project operator or of other members of its group that are implemented in Ukraine. Projects are considered similar if they meet conditions “a”–“h” and are comparable in terms of the project term and the stage of its implementation. The condition is deemed to be met if the project operator and the members of its group do not implement other similar projects. The procedure for applying this condition is set out in clause 7.4 of these Clarifications.

“j”—the project operator is a corporate income taxpayer on general terms.

“k”—income from the project is taken into account in determining the project operator’s object of taxation, is taxed at the basic (main) rate and is not exempt from taxation.

“l”—borrowings to finance the project are directed towards activities related to the creation, construction, modernisation, operation and/or maintenance of the project asset in Ukraine. The project operator bears the costs of such activities and the borrowing costs in Ukraine; costs are deemed to be borne in Ukraine if they are taken into account in determining its corporate income object of taxation. The location (residence) of the creditor outside Ukraine does not preclude the application of the exclusion, provided that the other conditions are met.

For the purposes of conditions “h” and “i”, a group consists of two or more persons related to one another by ownership or control in such a way that, pursuant to International Financial Reporting Standards or the national financial reporting system of the state of residence of any of them, the preparation of consolidated financial statements is mandatory, or would be mandatory if the corporate rights of one of the members were traded on an organised securities market. Group members are persons that are fully included, or would be subject to inclusion, in such statements; persons whose ownership interest is accounted for using the equity method are not considered group members (sub-clause 140.3.5).

7.4. Condition on the share of debt financing of long-term public infrastructure projects

Provisions of the Code as amended by the Draft Law: sub-clauses 140.3.3, 140.3.5 of clause 140.3 of Article 140.

The condition is based on the feature set out in the Action 4 Report (paragraph 66): similar projects of the operator or of other persons in its group should not be significantly less burdened with third-party debt, taking into account the terms of the projects.

The quantitative expression of this feature is established by the Draft Law: sub-clause “i” of sub-clause 140.3.3 sets the tolerance at 20 percentage points.

The share for a long-term public infrastructure project is determined as the ratio of the amount of borrowings to finance such project received from persons not related to the project operator to the total amount of investment in such project. This share is compared with the corresponding share for other similar projects of the operator or of other members of its group that are implemented in Ukraine. The condition is met if the share for the project exceeds that share by no more than 20 percentage points.

Projects are considered similar if they meet conditions “a”–“h” and are comparable in terms of the project term and the stage of its implementation (sub-clause “i” of sub-clause 140.3.3). Comparability by stage is of independent significance: a project in the construction phase has a different share of drawn debt in the total amount of investment than a project after a long period of debt amortisation.

The condition is deemed to be met if the project operator and the members of its group do not implement other similar projects (sub-clause “i” of sub-clause 140.3.3). The circle of group members is determined by sub-clause 140.3.5.

Example 19. Comparison of debt financing shares

EUR million

Indicator	Project being assessed	Other similar project of the group
Total amount of investment in the long-term public infrastructure project	100	200

Indicator	Project being assessed	Other similar project of the group
Borrowings from persons not related to the project operator	70	100
Share of debt financing	70 per cent	50 per cent

The difference between the shares is 20 percentage points and does not exceed the tolerance, so the condition is met. With a share of 75 per cent, the difference would be 25 percentage points, and the condition would not be met.

7.5. Loans from international financial organisations

Provisions of the Draft Law: sub-clause 4 of clause 74 of Subsection 4 of Section XX of the Code. Current provisions of the Code: clause 140.2 of Article 140.

What applies today. Current clause 140.2 of Article 140 of the Code provides that the adjustments under that clause are not made in respect of the amount of interest accrued in favour of international financial organisations that, in accordance with international treaties of Ukraine, enjoy privileges and immunity, on credits (loans) received by business entities the performance of which is secured by state or local guarantees. For the borrower, this means that such interest is not subject to the limitation.

Whom this rule concerns. The provisions of clauses 140.1–140.3 of Article 140 of the Code determine how borrowing costs are taken into account by the taxpayer that received the credit (loan), that is, by the recipient of the financing. These provisions do not govern the taxation of the international financial organisations themselves and do not change the scope of the privileges and immunities granted to them in accordance with international treaties of Ukraine.

What is proposed. The Draft Law provides for this procedure to be retained temporarily: borrowing costs on credits and loans received from such international financial organisations and secured by state or local guarantees are not included in the total amount of borrowing costs, and the differences under clause 140.2 of Article 140 of the Code do not apply to them (sub-clause 4 of clause 74 of Subsection 4 of Section XX of the Code).

Limits within which the exception applies. There are three, and they apply simultaneously (sub-clause 4 of clause 74 of Subsection 4 of Section XX of the Code):

- performance of the credit (loan) is secured by a state or local guarantee;
- the contract for such credit (loan) was concluded before 1 January 2028;
- the exception applies until Ukraine's accession to the European Union as a full member.

Amendment of the terms of the contract. If the contract is amended to increase the amount of the credit (loan) or the amount of interest, the exception does not apply to the amounts accrued starting from the period in which such amendments took effect—to the extent corresponding to such increase (the second paragraph of sub-clause 4 of clause 74). The remaining amount, corresponding to the original terms of the contract, continues to be covered by the exception.

Scope of the exception. The current provision of clause 140.2 of Article 140 of the Code extends to the amount of interest. Sub-clause 4 of clause 74 of Subsection 4 of Section XX of the Code extends the exception to borrowing costs, the composition of which is specified in sub-clauses 140.1.1.1 and 140.1.2 of clause 140.1 of Article 140 of the Code.

After accession to the European Union. Article 4 of the Directive contains no exception for borrowings from international financial organisations. Once that event occurs, borrowing costs on such credits (loans) will be taken into account under the general rules of clauses 140.1–140.3 of Article 140 of the Code.

7.6. Single tax payers and transition to the general system

Provisions of the Code as amended by the Draft Law: sub-clause 140.1.3 of clause 140.1 of Article 140; sub-clause 140.2.6 of clause 140.2 of Article 140; clause 4¹ of Subsection 4 of Section XX of the Code.

A legal entity under the simplified taxation system does not apply the rule. After transferring to the general system, it applies the rule on general grounds: the Draft Law expressly includes the differences under clause 140.2 of Article 140 of the Code in the list of adjustments applied on such transfer (the fourth paragraph of clause 4¹ of Subsection 4 of Section XX of the Code).

No accumulated amount of borrowing costs arises for the periods under the simplified system, since the rule did not apply in those periods. Nor does an unused amount of the borrowing costs limit arise for such periods (the fourth paragraph of sub-clause 140.2.6).

Capitalised borrowing costs included in the value of an asset during the period under the simplified system are included in borrowing costs in the general manner—in the periods in which the corresponding part of the value of the asset reduces the object of taxation (clause 4¹ of Subsection 4 of Section XX of the Code; sub-clause 140.1.3).

Where a taxpayer transfers to the simplified taxation system, the accumulated amount of borrowing costs (ABC) and the unused amount of the borrowing costs limit (UIC) recorded as at the date of such transfer are not subject to further carry-forward (the seventh paragraph of clause 4¹ of Subsection 4 of Section XX of the Code).

VIII. DIIA CITY RESIDENTS—TAXPAYERS SUBJECT TO SPECIAL CONDITIONS

8.1. Grounds for extending the rule to Diia City residents—taxpayers subject to special conditions

Current provisions of the Code: sub-clauses 135.2.1.4, 135.2.1.5 of sub-clause 135.2.1 of clause 135.2 of Article 135; clause 136.8 of Article 136; clause 141.9¹ of Article 141; the third paragraph of sub-clause 137.10.1 of clause 137.10 of Article 137. Provisions of the Code as amended by the Draft Law: clauses 140.1–140.3 of Article 140; sub-clauses 141.9¹.2.18, 141.9¹.5 of clause 141.9¹ of Article 141; clause 136.8 of Article 136; sub-clause 137.10.4.9 of clause 137.10 of Article 137; clause 141.11 of Article 141.

A Diia City resident—a taxpayer subject to special conditions is a corporate income taxpayer. The special conditions concern the procedure for determining the object of taxation and the rate, not the type of tax: the object is a list of transactions (current clause 141.9¹ of Article 141 of the Code), and such a taxpayer does not determine the object of taxation under sub-clause 134.1.1 of clause 134.1 of Article 134 of the Code (current third paragraph of sub-clause 137.10.1 of clause 137.10 of Article 137 of the Code).

Article 4 of the Directive applies to corporate income taxpayers and contains no exception based on the model for determining the object of taxation.

The provisions of the regime define debt obligations by reference to clause 140.1 of Article 140 of the Code (current sub-clauses 135.2.1.4 and 135.2.1.5). The Draft Law sets out clauses 140.1–140.3 of Article 140 in a new wording. Consequently, the perimeter of the object of taxation of a Diia City resident—a taxpayer subject to special conditions would change as a result of the change in the provision referred to, irrespective of whether separate rules were established for the regime.

Member States that apply the distributed profit taxation model have introduced mechanisms for applying this rule within their models. When transposing Article 4 of the Directive, Estonia extended the object of the tax to exceeding borrowing costs and established a separate tax period for them—the financial year instead of the calendar month—since the taxable amount depends on the annual EBITDA figure. Latvia treats excess interest as deemed distributed profit.

The Draft Law therefore establishes separate provisions for Diia City residents—taxpayers subject to special conditions that apply the same rule within the model of the regime: the taxable transaction—the excess of borrowing costs over the limit (sub-clause 141.9¹.2.18); the procedure for determining the indicators, calculating the tax base and reducing the amount of tax (sub-clause 141.9¹.5); cross-reference provisions (clause 136.8 of Article 136, sub-clause 137.10.4.9 of clause 137.10 of Article 137, clause 141.11 of Article 141 of the Code).

The procedure for determining the indicators and calculating the base is set out in clause 8.3, the rate in clause 8.4, the offset of tax in clause 8.5, the reduction of the amount of tax in clause 8.6, and the carry-over of indicators and the consequences of leaving the regime in clause 8.7 of these Clarifications.

8.2. Current procedure and changes provided for by the Draft Law

Current provisions of the Code: sub-clauses 135.2.1.4, 135.2.1.5 of sub-clause 135.2.1 of clause 135.2 of Article 135; clauses 136.1, 136.8 of Article 136. Provisions of the Code as amended by the Draft Law: sub-clauses 135.2.1.4, 135.2.1.5 of sub-clause 135.2.1 of clause 135.2 of Article 135; sub-clause 140.1.1.2 of clause 140.1 of Article 140; clause 136.8 of Article 136; sub-clauses 141.9¹.2.4, 141.9¹.2.18, 141.9¹.5.2, 141.9¹.5.6 of clause 141.9¹ of Article 141.

In determining the tax base for transactions of a Diia City resident—a taxpayer subject to special conditions, current sub-clause 135.2.1.4 of the Code includes in the tax base the amount of funds paid

during the period in performance of debt obligations in the form of interest, including interest that was included in the principal amount of the debt, as well as commissions, other remuneration, reimbursements, fines and penalties related to the raising or use of funds—in favour of persons that are not Diia City residents—taxpayers subject to special conditions. This sub-clause does not apply to such payments in favour of non-residents, except where the relevant transactions are carried out by the non-resident through its permanent establishment in Ukraine, or to such payments in favour of resident banks.

Amounts of funds paid in favour of non-residents are included in the tax base under current sub-clause 135.2.1.5 in two cases: if they are made in favour of a related non-resident (sub-clause “a”); or if they are made in favour of a non-resident, provided that the total amount of debt obligations of the Diia City resident—a taxpayer subject to special conditions to all non-residents exceeds its equity by more than 3.5 times (sub-clause “b”). Such an excess is determined on the basis of the tax (reporting) year, based on the arithmetic mean of the ratio of such debt obligations to equity at the beginning and at the end of the year.

The Draft Law provides for the removal of the second of these cases: sub-clause “b” of sub-clause 135.2.1.5 is deleted, so the 3.5 : 1 ratio will no longer apply. The first case—payments in favour of a related non-resident—remains unchanged. The concept of debt obligations in both sub-clauses will be determined through sub-clause 140.1.1.2 of clause 140.1 of Article 140 of the Code (new wording of the first paragraphs of sub-clauses 135.2.1.4 and 135.2.1.5).

The Draft Law supplements the object of taxation of a Diia City resident—a taxpayer subject to special conditions with transactions on debt obligations under which exceeding borrowing costs arise that exceed the borrowing costs limit (sub-clause 141.9¹.2.18; new wording of sub-clause 141.9¹.2.4). The 9 per cent rate established by clause 136.8 of Article 136 of the Code does not apply to this base: the Draft Law adds sub-clause 141.9¹.5 to the list of exceptions in that clause, so the basic (main) rate of 18 per cent applies (clause 136.1 of Article 136 of the Code).

At the same time, a mechanism for reducing the tax is established: in periods in which borrowing costs do not exceed the limit, the amount of tax payable is reduced by an amount equal to the product of the same basic (main) rate and the lesser of two amounts—the accumulated amount of borrowing costs or the amount by which the limit exceeds borrowing costs. The unused balance of such a reduction is carried forward to subsequent periods without any time limit (sub-clause 141.9¹.5.6).

8.3. Indicators and calculation of the tax base

Provisions of the Code as amended by the Draft Law: sub-clauses 141.9¹.5.1, 141.9¹.5.2, 141.9¹.5.3, 141.9¹.5.6 of clause 141.9¹ of Article 141; sub-clauses 140.1.1.7, 140.1.1.8, 140.1.6 of clause 140.1 and sub-clauses 140.2.1, 140.2.1.1, 140.2.3, 140.2.6 of clause 140.2 of Article 140.

The Draft Law provides that a Diia City resident—a taxpayer subject to special conditions will apply clauses 140.1–140.3 of Article 140 of the Code subject to the specifics established by sub-clause 141.9¹.5. The Draft Law does not establish a separate formula for the regime: the same indicators and the same symbols apply as under the general rule, with two indicators provided additionally for this regime.

Indicators and symbols applied:

borrowing costs (BC)—will be determined pursuant to sub-clauses 140.1.1.1–140.1.5 and 140.1.1.7 of clause 140.1 of Article 140 of the Code on the basis of accounting data in accordance with national accounting regulations (standards) or International Financial Reporting Standards;

qualifying borrowing costs (QBC)—will be determined in the same manner, according to the criteria established by sub-clause 140.1.1.7 of clause 140.1 of Article 140 of the Code;

income in the form of interest and other income economically equivalent to interest (IR)—will be equal to the amount of income specified in sub-clause 140.1.6 of clause 140.1 of Article 140 of the Code, recognised in accounting for the relevant period;

exceeding borrowing costs (EBC)—will be equal to the amount by which the BC indicator exceeds the IR indicator;

object of taxation (OT)—will be equal to the financial result before tax determined in the financial statements for the relevant period;

amount of depreciation (A)—will be determined on the basis of accounting data;

EBITDA metric—will be equal to the sum of the OT, A and EBC indicators pursuant to sub-clause 140.2.3 of clause 140.2 of Article 140 of the Code;

monetary threshold (MT)—will be determined pursuant to sub-clause 140.2.1.1 of sub-clause 140.2.1 of clause 140.2 of Article 140 of the Code;

borrowing costs limit (BCL)—will be equal to the sum of the IR indicator and the base amount of the limit, which will be the greater of two amounts: $0.3 \times \text{EBITDA}$ or MT;

accumulated amount of borrowing costs (ABC)—the amount not deducted from the financial result before tax;

unused amount of the borrowing costs limit (UIC)—will be determined pursuant to sub-clause 140.2.6 of clause 140.2 of Article 140 of the Code.

The specifics of applying the indicators within the regime concern the source of the data on which they are determined. A Diia City resident—a taxpayer subject to special conditions does not determine the object of taxation under the rules of sub-clause 134.1.1 of clause 134.1 of Article 134 of the Code. For the purposes of sub-clause 141.9¹.5, the BC and QBC indicators will be determined on the basis of accounting data pursuant to sub-clauses 140.1.1.1–140.1.5 and 140.1.1.7 of clause 140.1 of Article 140 of the Code, and the OT indicator will be equal to the financial result before tax determined in the financial statements for the relevant period.

Indicators provided additionally for this regime:

excess ratio (K)—the ratio of the amount of the tax base determined pursuant to sub-clause 141.9¹.5.2 to the total amount of borrowing costs (BC) for the relevant period (sub-clause 141.9¹.5.3);

deferred tax (DT)—the amount of tax on the transactions specified in sub-clause 141.9¹.2.18, determined in the manner established by sub-clause 141.9¹.5.6.

In addition, the Draft Law establishes that an amount equal to the increase in the financial result before tax pursuant to clause 140.2 of Article 140 of the Code is the tax base, and an amount equal to the reduction in the financial result before tax pursuant to the same clause is taken into account in reducing the amount of tax. Accordingly, the amount of the accumulated amount of borrowing costs (ABC) deducted from the financial result before tax will be deemed to be the amount by which the ABC indicator is reduced pursuant to sub-clause 141.9¹.5.6.

How the tax base is calculated. If the amount of BC exceeds the amount of BCL, the amount of such excess will be reduced by the unused amount of the borrowing costs limit (UIC) carried forward from prior tax (reporting) years. The amount remaining after such reduction will constitute the tax base for the transactions specified in sub-clause 141.9¹.2.18. The accumulated amount of borrowing costs (ABC) will be increased by the same amount.

How the reverse mechanism works. If the amount of BC does not exceed the amount of BCL and an accumulated amount of borrowing costs (ABC) is recorded at the beginning of the period, the

amount of tax payable for such period will be reduced by an amount equal to the product of the basic (main) rate and the lesser of two amounts—the amount of ABC or the amount by which the amount of BCL exceeds the amount of BC. The ABC indicator will be reduced by the same lesser of the two amounts. For the purposes of this reduction, the amount of the borrowing costs limit (BCL) will be determined without taking the monetary threshold (MT) into account—in the same way as under the general rule for sub-clauses 140.2.2.2 and 140.2.6 of clause 140.2 of Article 140 of the Code.

The excess ratio (K) will be applied to determine the part of the borrowing costs for the period that is deemed to have been taken into account in the tax base, and the part of the tax accrued at the rate specified in clause 136.8 of Article 136 of the Code that is offset against the tax on the transactions specified in sub-clause 141.9¹.2.18. The DT indicator will reflect the balance of deferred tax: it will be zero at the beginning of the first period for which the tax base is determined, will be increased by the amount of tax accrued on such transactions less the amounts offset, and will be reduced by the amounts used to reduce the tax and the tax base in subsequent periods.

The BC, IR, OT, A, EBC, EBITDA, BCL, ABC, UIC and DT indicators, the excess ratio (K) and the tax base will be reported in the tax return for the relevant period (sub-clause 141.9¹.5.9).

8.4. Tax rate and the period of its accrual

Provisions of the Code as amended by the Draft Law: the second paragraph of sub-clause 141.9¹.5, sub-clauses 141.9¹.5.4, 141.9¹.5.6, 141.9¹.5.7, 141.9¹.5.10 of clause 141.9¹ of Article 141; clause 136.8 of Article 136; sub-clause 137.10.4.9 of clause 137.10 of Article 137. Current provisions of the Code: clause 136.1 of Article 136, the second paragraph of sub-clause 137.10.1 and the first paragraph of sub-clause 137.10.4 of clause 137.10 of Article 137.

Rate. The Draft Law provides that the tax base for the transactions specified in sub-clause 141.9¹.2.18 is taxed at the basic (main) rate specified in clause 136.1 of Article 136 of the Code. Current clause 136.1 of Article 136 of the Code sets the basic (main) rate at 18 per cent.

The Draft Law supplements clause 136.8 of Article 136 of the Code with a reference to sub-clause 141.9¹.5. The 9 per cent rate established by that clause will not apply to the tax base determined pursuant to sub-clause 141.9¹.5.2.

Reverse reduction—at the same rate. Pursuant to sub-clause 141.9¹.5.6, the amount of tax payable will be reduced by an amount equal to the product of the basic (main) rate and the lesser of two amounts—the amount of ABC or the amount by which the amount of BCL exceeds the amount of BC. The DT indicator as at the date of transition to taxation as a Diia City resident—a taxpayer subject to special conditions will also be determined at the basic (main) rate (sub-clause 141.9¹.5.7), and the amount of DT will be divided by the same rate to determine the accumulated amount of borrowing costs (ABC) as at the date of the reverse transition. Accrual and reverse reduction are made at the same rate.

Example 20. Accrual and reverse reduction at the same rate

Amounts are given in UAH million.

UAH million

Indicator	Year 1	Year 2
Borrowing costs (BC)	50	10
Borrowing costs limit (BCL)	30	25
including $0.3 \times \text{EBITDA}$	30	25
Tax base	20	—
Tax at the basic (main) rate	3.6	—

Reduction of the amount of tax	–	2.7
Accumulated amount of borrowing costs (ABC) at the end of the year	20	5

In Year 1, borrowing costs exceed the limit by 20. This amount is the tax base; the tax is calculated at the basic (main) rate. The accumulated amount of borrowing costs (ABC) is increased by the same amount.

In Year 2, borrowing costs are below the limit by 15. The amount of tax is reduced by the product of the basic (main) rate and the lesser of two amounts—the amount of ABC (20) or the difference between the limit and the costs (15), that is, by 2.7. The accumulated amount of borrowing costs is reduced from 20 to 5 and carried forward.

For the purposes of the reduction provided for in sub-clause 141.9¹.5.6, the BCL indicator is determined without taking the monetary threshold into account.

Tax on non-resident income. Pursuant to sub-clause 141.9¹.5.10, the reduction provided for in the second paragraph of sub-clause 137.10.1 of clause 137.10 of Article 137 of the Code (reduction of the amount of tax by the amount of tax on non-resident income accrued (paid) on the relevant transaction pursuant to clause 141.4 of Article 141 of the Code) will not apply to the amount of tax payable on the transactions specified in sub-clause 141.9¹.2.18. This reduction will be taken into account at a different stage: the amount of tax at the rate specified in clause 136.8 of Article 136 of the Code, which is offset against the tax on these transactions pursuant to sub-clause 141.9¹.5.4, is taken already reduced pursuant to the second paragraph of sub-clause 137.10.1 of clause 137.10 of Article 137 of the Code. The tax on non-resident income is taken into account once.

Example 21. Taking into account the tax on non-resident income

Amounts are given in UAH million. The indicators of borrowing costs and of the tax base are the same as in Example 20 (Year 1).

UAH million

Indicator	Amount
Interest accrued and paid to a related non-resident	50
Tax on non-resident income withheld pursuant to clause 141.4 of Article 141 of the Code (hypothetical, depends on the rate)	2.5
Tax at the rate specified in clause 136.8 of Article 136 of the Code	4.5
Reduction of this tax pursuant to the second paragraph of sub-clause 137.10.1 of clause 137.10 of Article 137 of the Code	2.5
Amount of tax after such reduction	2.0
Excess ratio (K)	0.4
Amount offset against the tax on the transactions specified in sub-clause 141.9 ¹ .2.18	0.8
Tax on the tax base before offset	3.6
Tax on the tax base after offset	2.8

The payment of interest in favour of a related non-resident is included in the tax base determined pursuant to sub-clause 135.2.1.5 of clause 135.2 of Article 135 of the Code and is taxed at the rate specified in clause 136.8 of Article 136 of the Code. It is this amount of tax that is reduced by the tax on non-resident income. The already reduced amount is offset against the tax on the tax base determined pursuant to sub-clause 141.9¹.5.2 to the extent corresponding to the excess ratio. No

separate reduction for the tax on non-resident income is applied to the tax on that base. The procedure for calculating the excess ratio and the offset is set out in clause 8.5 of these Clarifications.

The period and the event for which the tax is accrued. The current first paragraph of sub-clause 137.10.4 of clause 137.10 of Article 137 of the Code establishes that tax liabilities are determined in the tax return filed on the basis of the tax (reporting) year during which one of the events specified in that sub-clause occurred. The Draft Law supplements this list with sub-clause 137.10.4.9: for the transactions specified in sub-clause 141.9¹.2.18, the event is the recognition in accounting of the borrowing costs that form the tax base determined pursuant to sub-clause 141.9¹.5.2 for such tax (reporting) year.

Thus, a Diia City resident—a taxpayer subject to special conditions will determine the tax base for these transactions on the basis of the tax (reporting) year according to accounting data, and not on the basis of the actual payment of funds.

Example 22. The year for which the tax base is determined

Event	Year
Interest recognised in accounting	Year 1
Interest actually paid	Year 2
Year for which the tax base is determined	Year 1

Interest of UAH 50 million was recognised in accounting in Year 1 and paid in Year 2. The event on the basis of which tax liabilities for the transactions specified in sub-clause 141.9¹.2.18 are determined is the recognition of such costs in accounting. The tax base is determined on the basis of Year 1 and is reported in the tax return for that year. The procedure for taking the actual payment into account is set out in clause 8.5 of these Clarifications.

8.5. Relationship between the taxation of interest payments and the taxation of the excess over the limit

Provisions of the Code as amended by the Draft Law: sub-clauses 141.9¹.2.4, 141.9¹.2.18, 141.9¹.5.3, 141.9¹.5.4, 141.9¹.5.5, 141.9¹.5.8 of clause 141.9¹ of Article 141. Current provisions of the Code: sub-clauses 135.2.1.4, 135.2.1.5 of clause 135.2 of Article 135; clause 136.8 of Article 136; the second paragraph of sub-clause 137.10.1 of clause 137.10 of Article 137.

Two provisions may apply to the borrowing costs of a Diia City resident—a taxpayer subject to special conditions. The payment of funds in performance of debt obligations in favour of persons that are not Diia City residents—taxpayers subject to special conditions is a taxable transaction pursuant to current sub-clauses 135.2.1.4 and 135.2.1.5 of clause 135.2 of Article 135 of the Code (in the Draft Law—taking into account the new wording of sub-clause 141.9¹.2.4). The amount of the excess over the borrowing costs limit is a taxable transaction pursuant to sub-clause 141.9¹.2.18. The Draft Law regulates the interaction of these provisions through the excess ratio (K) and rules that apply depending on the period in which the borrowing costs were actually paid.

Excess ratio and borrowing costs taken into account. The excess ratio (K) is equal to the ratio of the amount of the tax base to the total amount of borrowing costs for the relevant period (sub-clause 141.9¹.5.3). Borrowing costs recognised in accounting for the period for which the tax base is determined will be deemed to have been taken into account in such base to the extent corresponding to the excess ratio for that period. It is this part that the Draft Law treats as borrowing costs taken into account (the first paragraph of sub-clause 141.9¹.5.5).

Costs paid in the same period. The amount of tax accrued at the rate specified in clause 136.8 of Article 136 of the Code on the amounts included in the tax base pursuant to sub-clause 135.2.1, and reduced by the tax on non-resident income, will be offset against the tax on the transactions specified

in sub-clause 141.9¹.2.18 to the extent corresponding to the excess ratio. The amount of such reduction may not exceed the amount of tax payable on such transactions (sub-clause 141.9¹.5.4). A numerical example is given in clause 8.4 of these Clarifications (Example 21).

Costs paid in a subsequent period. In periods following the period for which the tax base is determined, and in which the borrowing costs are actually paid, the tax base under sub-clause 135.2.1 will be reduced by the amount of the costs paid to the extent corresponding to the excess ratio of the period in which such costs were recognised in accounting. The total amount of such reduction may not exceed the amount of borrowing costs taken into account for the relevant period (the second paragraph of sub-clause 141.9¹.5.5).

Example 23. Interest recognised in one period and paid in the next

Amounts are given in UAH million.

UAH million

Indicator	Year 1	Year 2
Borrowing costs recognised in accounting (BC)	50	—
Tax base under sub-clause 141.9 ¹ .5.2	20	—
Excess ratio (K)	0.4	—
Borrowing costs taken into account	20	—
Interest actually paid to a related non-resident	—	50
Tax base under sub-clause 135.2.1.5 before reduction	—	50
Reduction of the tax base	—	20
Tax base under sub-clause 135.2.1.5 after reduction	—	30
Tax at the rate specified in clause 136.8 of Article 136 of the Code	—	2.7

In Year 1, the borrowing costs are recognised in accounting, the tax base is determined at 20, and the excess ratio is 0.4. The borrowing costs taken into account are 20 (50×0.4). In Year 2, when the interest is actually paid, the tax base under sub-clause 135.2.1.5 is reduced by 20—that is, by the part of the payment that has already been included in the tax base of Year 1. Tax at the rate specified in clause 136.8 of Article 136 of the Code is accrued on 30.

Costs paid in prior periods. If the borrowing costs were paid earlier and have already been included in the tax base under sub-clause 135.2.1, the amount of tax accrued on them at the rate specified in clause 136.8 of Article 136 of the Code, and reduced by the tax on non-resident income, will be offset against the tax on the transactions specified in sub-clause 141.9¹.2.18 to the extent corresponding to the excess ratio of the relevant period. The same limitation by the amount of tax on such transactions applies to such offset. The same amount may not be offset twice (the third paragraph of sub-clause 141.9¹.5.5).

Records. Pursuant to sub-clause 141.9¹.5.8, the taxpayer will maintain separate records of the borrowing costs taken into account, the amounts of the tax reduction, the unused balance of such reduction, the DT indicator and the amounts offset pursuant to sub-clause 141.9¹.5.4 and the third paragraph of sub-clause 141.9¹.5.5.

8.6. Reduction of the tax accrued on the excess over the limit

Provisions of the Code as amended by the Draft Law: sub-clauses 141.9¹.5.1, 141.9¹.5.2, 141.9¹.5.6, 141.9¹.5.9 of clause 141.9¹ of Article 141; sub-clauses 140.2.1.1, 140.2.5 of clause 140.2 of Article 140. Current provisions of the Code: clause 136.1 of Article 136.

The Draft Law provides that the amount accrued for exceeding the borrowing costs limit is not a final payment: it is returned by way of a reduction of the tax in those periods in which borrowing costs do not exceed the limit. The mechanism is built on two indicators—the accumulated amount of borrowing costs (ABC) and deferred tax (DT).

Reduction rule. If the amount of BC does not exceed the amount of BCL and an accumulated amount of borrowing costs (ABC) is recorded at the beginning of the period, the amount of tax payable for such period will be reduced by an amount equal to the product of the basic (main) rate and the lesser of two amounts—the amount of ABC or the amount by which the amount of BCL exceeds the amount of BC (the first paragraph of sub-clause 141.9¹.5.6). The accumulated amount of borrowing costs will be reduced by the same lesser of the two amounts (the second paragraph).

For the purposes of this reduction, the amount of the borrowing costs limit will be determined without taking the monetary threshold into account (the sixth paragraph of sub-clause 141.9¹.5.6)—in the same way as under the general rule for sub-clauses 140.2.2.2 and 140.2.6 of clause 140.2 of Article 140 of the Code.

Deferred tax. The DT indicator will be zero at the beginning of the first period for which the tax base is determined. It will be increased by the amount of tax accrued on the transactions specified in sub-clause 141.9¹.2.18, less the amounts offset pursuant to sub-clause 141.9¹.5.4 and the third paragraph of sub-clause 141.9¹.5.5. It will be reduced by an amount equal to the product of the rate specified in clause 136.8 of Article 136 of the Code and the amount by which the tax base was reduced pursuant to the second paragraph of sub-clause 141.9¹.5.5, and also by the amount of the tax reduction applied (the third and fourth paragraphs of sub-clause 141.9¹.5.6).

Thus, the DT indicator reflects the part of the accrued tax that has not yet been returned to the taxpayer by any of the methods set out in clause 8.5 of these Clarifications.

Limitation of the amount of the reduction. The amount of the reduction may not exceed the lesser of two amounts—the amount of DT determined as at the end of such period before the application of this sub-clause, or the amount of tax payable for such period. The unused balance of such reduction is carried forward to subsequent periods without any time limit (the fifth paragraph of sub-clause 141.9¹.5.6). The accumulated amount of borrowing costs is carried forward to subsequent periods without any time limit until it is fully deducted (sub-clause 140.2.5 of clause 140.2 of Article 140 of the Code).

Example 24. Accrual and refund over three years

Amounts are given in UAH million.

UAH million

Indicator	Year 1	Year 2	Year 3
Borrowing costs (BC)	50	20	5
Borrowing costs limit (BCL)	30	30	25
Tax base	20	—	—
Tax at the basic (main) rate	3.6	—	—
Amount by which the limit exceeds borrowing costs	—	10	20

Reduction of the amount of tax	–	1.8	1.8
Accumulated amount of borrowing costs (ABC) at the end of the year	20	10	0
Deferred tax (DT) at the end of the year	3.6	1.8	0

In Year 1, borrowing costs exceed the limit by 20; this amount is the tax base, and the tax is 3.6. The accumulated amount of borrowing costs is 20, and deferred tax is 3.6.

In Year 2, the limit exceeds borrowing costs by 10. The lesser of the two amounts is 10, so the amount of tax is reduced by 1.8, and the accumulated amount of borrowing costs is reduced to 10.

In Year 3, the limit exceeds borrowing costs by 20, and the accumulated amount of borrowing costs is 10. The lesser of the two amounts is 10, so the amount of tax is reduced by 1.8. The accumulated amount of borrowing costs and deferred tax are zero.

In total over the three years, 3.6 was accrued and 3.6 was returned.

In Years 2 and 3, the amount of tax payable for the relevant period exceeds the calculated amount of the reduction, so the limitation established by the fifth paragraph of sub-clause 141.9¹.5.6 does not apply. In the example, no interest was paid; the procedure for taking the actual payment into account is set out in clause 8.5 of these Clarifications.

8.7. Indicators on entry into and exit from the regime

Provisions of the Code as amended by the Draft Law: sub-clause 141.9¹.5.7 of clause 141.9¹ of Article 141; sub-clauses 140.2.5, 140.2.6, 140.2.7.4 of clause 140.2 of Article 140. Current provisions of the Code: clause 136.1 of Article 136.

The Draft Law provides that the accumulated amount of borrowing costs (ABC) and the unused amount of the borrowing costs limit (UIC) recorded as at the date of transition continue to be taken into account by the taxpayer after the change of tax regime—both on transition to taxation as a Diia City resident—a taxpayer subject to special conditions and on transition from such taxation to corporate income tax on general terms (the first paragraph of sub-clause 141.9¹.5.7).

Entry into the regime. The DT indicator as at the date of transition will be determined as the product of the accumulated amount of borrowing costs recorded as at that date and the basic (main) rate.

Exit from the regime. The accumulated amount of borrowing costs will be determined as the quotient of the amount of DT recorded as at the date of transition divided by the basic (main) rate. The unused balance of the tax reduction provided for in sub-clause 141.9¹.5.6 as at that date is not carried over.

Example 25. Indicators as at the date of the change of tax regime

Amounts are given in UAH million.

UAH million

Indicator	Entry into the regime	Exit from the regime
Accumulated amount of borrowing costs (ABC) as at the date of transition	20	10
Deferred tax (DT) as at the date of transition	3.6	1.8
Unused amount of the borrowing costs limit (UIC)	continues to be taken into account	continues to be taken into account
Unused balance of the tax reduction	–	not carried over

On entry into the regime, the DT indicator is calculated from the accumulated amount of borrowing costs: $20 \times 0.18 = 3.6$. On exit from the regime, the accumulated amount of borrowing costs is calculated from the DT indicator: $1.8 \div 0.18 = 10$.

Reorganisation involving a Diia City resident. Pursuant to sub-clause 140.2.7.4 of clause 140.2 of Article 140 of the Code, the accumulated amount of borrowing costs is not carried over to the successor taxpayer if, as at the date of completion of the reorganisation, such successor is a Diia City resident—a taxpayer subject to special conditions. Other consequences of reorganisation for the accumulated amount and the unused amount of the limit are set out in clause 6.8 of these Clarifications.

Unused balance of the tax reduction. If, as at the date of exit from the regime, the taxpayer has an unused balance of the tax reduction provided for in sub-clause 141.9¹.5.6, such balance is not carried over as at the date of exit. The accumulated amount of borrowing costs is in that case determined from the DT indicator and continues to be taken into account under the rules of clause 140.2 of Article 140 of the Code.

IX. RECORDS AND ADMINISTRATION

9.1. Tax reporting

Provisions of the Code as amended by the Draft Law: sub-clause 140.2.9 of clause 140.2 of Article 140; sub-clause 141.9¹.5.9 of clause 141.9¹ of Article 141.

The Draft Law provides that the taxpayer will submit, as part of the tax return for the tax (reporting) year, an annex containing the calculation of the indicators specified in clause 140.2 of Article 140 of the Code.

Such an annex will specify, in particular: the amount of borrowing costs (BC) and the amount of income in the form of interest and other income economically equivalent to interest (IR)—broken down by component; the amount of exceeding borrowing costs (EBC); the EBITDA metric and its components; the amount of the borrowing costs limit (BCL); the amount of qualifying borrowing costs (QBC) and the amount of the monetary threshold (MT); the amount by which the financial result before tax has been increased or reduced pursuant to sub-clause 140.2.2; the accumulated amount of borrowing costs (ABC) at the beginning and at the end of the tax (reporting) year; the unused amount of the borrowing costs limit (UIC) for each tax (reporting) year in which it arose, and the amounts of its utilisation.

For Diia City residents—taxpayers subject to special conditions, the list is broader. The following will additionally be reported: the tax base determined pursuant to sub-clause 141.9¹.5.2; the excess ratio (K); the DT indicator at the beginning and at the end of the period; the amounts offset pursuant to sub-clause 141.9¹.5.4 and the third paragraph of sub-clause 141.9¹.5.5; the amount by which the tax base was reduced pursuant to the second paragraph of sub-clause 141.9¹.5.5; the amount of the tax reduction pursuant to sub-clause 141.9¹.5.6 and the unused balance of such reduction (sub-clause 141.9¹.5.9).

The accumulated amount of borrowing costs (ABC) and the unused amount of the borrowing costs limit (UIC) are carried forward between periods, so the annex will report their balances at the beginning and at the end of the period, and the unused amount of the limit separately for each year in which it arose.

9.2. Separate records

Provisions of the Code as amended by the Draft Law: sub-clause 140.2.8 of clause 140.2 and sub-clause 140.3.2 of clause 140.3 of Article 140; sub-clause 141.9¹.5.8 of clause 141.9¹ of Article 141.

The Draft Law provides that, for the purposes of applying clauses 140.1–140.3 of Article 140 of the Code, the taxpayer will maintain separate records of:

- borrowing costs (BC) and income in the form of interest and other income economically equivalent to interest (IR)—broken down by the components specified in sub-clauses 140.1.2 and 140.1.6, as well as exceeding borrowing costs (EBC);

- borrowing costs that were capitalised (were subject to inclusion in the value of an asset), and the amounts of such costs that are included in borrowing costs pursuant to sub-clause 140.1.3;

- the amounts of depreciation that are not included in Indicator A pursuant to sub-clause 140.2.3;

- the accumulated amount of borrowing costs (ABC);

- the unused amount of the borrowing costs limit (UIC)—for each tax (reporting) year in which it arose;

- debt obligations the borrowing costs on which are qualifying borrowing costs (QBC), and the amounts of such costs.

Long-term public infrastructure projects. The project operator will maintain separate records of income and borrowing costs for each long-term public infrastructure project. Income derived from the use of the project asset together with other assets of the project operator, and borrowing costs on project financing borrowings that cannot be attributed to the project directly, will be allocated in proportion to the carrying amount of the project assets within the total carrying amount of the project operator's assets (sub-clause 140.3.2).

Diia City residents—taxpayers subject to special conditions. The composition of separate records for this regime is set out in clause 8.5 of these Clarifications (sub-clause 141.9¹.5.8).

9.3. Document retention periods

Current provisions of the Code: sub-clauses 44.3.1–44.3.4 and the sixth paragraph of clause 44.3 of Article 44. Provisions of the Code as amended by the Draft Law: the new seventh paragraph of clause 44.3 of Article 44, sub-clause 140.2.5 of clause 140.2 of Article 140.

Current clause 44.3 of Article 44 of the Code establishes retention periods for documents and information and provides that these periods are calculated from the date of filing of the tax return for the preparation of which such documents and information are used.

The Draft Law supplements this clause with a new paragraph. For documents and information on the basis of which the accumulated amount of borrowing costs (ABC) and the unused amount of the borrowing costs limit (UIC) were formed, the periods will be calculated from the date of filing of the tax return for the period in which the relevant amount was used pursuant to sub-clause 140.2.2 of clause 140.2 of Article 140 or sub-clause 141.9¹.5 of clause 141.9¹ of Article 141 of the Code. Such documents and information will be retained throughout the period in which the relevant amount is recorded by the taxpayer—until it is fully used or the right to carry it forward is lost—and thereafter for the periods established by clause 44.3 of Article 44 of the Code.

Thus, the retention period will be counted not from the period in which the amount arose, but from the period in which it was used. The accumulated amount of borrowing costs is carried forward to subsequent periods without any time limit (sub-clause 140.2.5), so the duration of retention of the relevant documents depends on when that amount is used. The unused amount of the borrowing costs limit may be utilised during the five tax (reporting) years following the year in which it arose (sub-clause 140.2.6); after the expiry of that period, the right to carry it forward is lost.

9.4. Preparing to apply the rule

Provisions of the Draft Law: clauses 1 and 3 of Section II “Final Provisions”. Provisions of the Code as amended by the Draft Law: sub-clauses 140.1.1.7, 140.1.3, 140.1.4, 140.1.5, 140.2.1.1, 140.2.3, 140.2.6, 140.2.8 of Article 140, clause 74 of Subsection 4 of Section XX.

The Draft Law provides that the Law enters into force on the day following the day of its publication and becomes effective from 1 January 2028. The provisions of clauses 140.1–140.3 of Article 140 of the Code as amended by the Draft Law apply to periods starting from 1 January 2028, regardless of the date of conclusion of the contracts (legal transactions) and of performance of the transactions giving rise to borrowing costs, including debt obligations carried on the taxpayer's balance sheet as at 1 January 2028.

Before the Law becomes effective, the Cabinet of Ministers of Ukraine is to adopt the regulations necessary for its implementation and bring its regulations into line with it—no later than six months before the date on which it becomes effective.

The indicators on which the rule is built are determined on the basis of the accounting records and financial statements that the taxpayer already keeps. The separate records provided for in sub-clause 140.2.8 are an analytical breakdown of the same data: they do not require new primary documents or

a separate source of information. Preparation therefore consists mainly of grouping existing data in the required breakdowns.

In particular, the following steps are possible in advance.

Preliminary calculation on existing data. The BC, IR, EBC, EBITDA and BCL indicators, calculated under the rules introduced by the Draft Law on the data of recent periods, show whether borrowing costs would have exceeded the limit and by how much.

Reconciliation of the composition of borrowing costs. The BC indicator includes not only interest but also payments economically equivalent to interest, expenses related to raising finance, the aggregate result of exchange rate differences within the limits specified in sub-clause 140.1.4, and amounts on derivative financial instruments within the limits specified in sub-clause 140.1.5. All these amounts are already reflected in the accounts; under the Draft Law they are grouped together. The composition of the indicator is set out in Section IV of these Clarifications.

Analytical breakdowns. The breakdowns provided for in sub-clause 140.2.8 are formed from existing data: capitalised borrowing costs; amounts of depreciation not included in Indicator A; debt obligations the costs on which are qualifying borrowing costs (QBC), and the amounts of such costs; the unused amount of the limit—for each year in which it arose. The list of debt obligations the costs on which are qualifying determines the amount of the monetary threshold (sub-clauses 140.1.1.7 and 140.2.1.1).

Balance of interest under the current rule. The amount of interest that increased the financial result before tax in accordance with clause 140.2 of Article 140 of the Code in the wording in effect before 1 January 2028 and remained unaccounted for as at the last day of the 2027 period is not lost: it is included in the accumulated amount of borrowing costs as at 1 January 2028 (sub-clause 1 of clause 74 of Subsection 4 of Section XX of the Code). Its amount is determined on the basis of the tax reporting for 2027; the procedure is set out in clause 2.4 of these Clarifications.



Ministry of
Finance
of Ukraine

