

**F.No. 142/17/2012-SO(TPL)  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Direct Taxes)**  
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**Dated: September 21, 2012**

**Subject: Approval of loan agreements/ long term infrastructure bonds and rate of interest for the purpose of Section 194LC of the Income-tax Act, 1961- regarding.**

The Finance Act, 2012 has introduced section 194LC in the Income Tax Act. This section provides for lower withholding tax at the rate of 5% on interest payments by Indian companies on borrowings made in foreign currency by such companies from a source outside India. There are principally two modes of borrowing (referred to as “monies borrowed” in the said section) which are covered, subject to approval of the Central Government:

- a. Monies borrowed under a loan agreement
  - b. Long term Infrastructure Bonds
2. It is further provided that the rate of interest on such borrowings, for the purpose of eligibility under the section 194LC, shall be as approved by the Central Government.
  3. The lower rate of withholding tax is for monies borrowed or bonds issued during the period from 1.7.2012 to 30.6.2015.
  4. Therefore, the approval of the Central Government is required in respect of both the loan agreement or bond issue and the rate of interest to be paid on such borrowings.
  5. Considering the fact that there would be a large number of cases of overseas borrowings or bond issues to be undertaken by Indian companies, providing a mechanism involving approval in each and every specific case would entail avoidable compliance burden on the borrower/issuer of bond. In order to mitigate the compliance burden and hardship, the Central Board of Direct Taxes [with the approval of Central Government] hereby conveys the approval of Central Government for the purposes of section 194LC in respect of the loan agreements and issue of long term infrastructure term bond by Indian companies which satisfy the conditions mentioned in paras A, B and C below: -

**A. In respect of agreements for loan**

- a. The borrowing of money should be under a loan agreement.
- b. The monies borrowed under the loan agreement by the Indian company should comply with clause (d) of sub section (3) of section 6 of the Foreign Exchange Management Act, 1999 read with Notification No. FEMA3/2000-RB viz. Foreign Exchange Management (Borrowing or Lending in Foreign exchange) Regulations 2000, dated May 3, 2000, as amended from time to time, (hereafter referred to as “ECB regulations”), either under the automatic route or under the approval route.
- c. The borrowing company should have obtained a Loan Registration Number (LRN) issued by the Reserve Bank of India (RBI) in respect of the Agreement.
- d. No part of the borrowing has taken place under the said agreement before 1<sup>st</sup> July, 2012.
- e. The agreement should not be restructuring of an existing agreement for borrowing in foreign currency solely for taking benefit of reduced withholding tax rates.
- f. The end use of the funds and other conditions as laid out by the RBI under ECB regulations should be followed during the entire term of the loan agreement under which the borrowing has been made.

**B. In respect of issue of Bonds**

- a. The bond issue by the Indian company should be authorized under ECB regulations either under the automatic route or under the approval route.
- b. The bond issue should have a loan Registration Number issued by the RBI.
- c. The term “long term” means that the bond to be issued should have original maturity term of three years or more.
- d. The bond issue proceeds should be utilized in the “infrastructure sector” only.
- e. The term “infrastructure sector” shall have same meaning as is assigned to it by RBI under the ECB regulations.

**C. Rate of interest**

Further, the Central Government has also approved the interest rate for the purpose of section 194LC as any rate of interest which is within the All-in-cost ceilings specified by the

RBI under ECB regulations as is applicable to the borrowing by loan agreement or through a bond issue, as the case may be, having regard to the tenure thereof.

6. In view of the above, any loan agreement or bond issue, which satisfies the above conditions, would be treated as approved by the Central Government for the purposes of section 194LC.

7. In the case of other long-term Infrastructure Bonds where the Indian company receives subscription of such Bonds in foreign currency and such bond issue is not covered under ECB regulations, the approval, for purpose of section 194LC shall be on case to case basis.

8. The Indian company, for the purpose of obtaining the necessary approval u/s 194LC in respect of such long-term bond issue, may, therefore, apply in writing to Member (IT), Central Board of Direct Taxes with the relevant details of the purpose, period and rate of interest.

**(Ashish Kumar)**  
**Director (Tax Policy & Legislation)**

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1. PS to FM/OSD to FM/OSD to MoS(R).
2. PS to Secretary (Revenue)/OSD to Advisor to FM.
3. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Chief Commissioners/Director General of Income-tax – with a request to circulate amongst all officers in their regions/charges.
5. DGIT (Systems)/ DGIT (Vigilance)/ DGIT (Admn.)/ DG (NADT)/ DGIT (L&R).
6. Media Co-ordinator and Official spokesperson of CBDT.
7. DIT(IT)/DIT(RSP&PR)/DIT(Audit)/DIT(Vig.)/DIT(Systems)/ DIT(O&MS)/ DIT(Spl. Inv.).
8. The Comptroller and Auditor General of India (30 copies).
9. Joint Secretary and Legal Advisor, Ministry of Law and Justice, New Delhi.
10. The Institute of Chartered Accountants of India, IP Estate, New Delhi.
11. All Chambers of Commerce as per usual mailing list.

**(Ashish Kumar)**  
**Director (Tax Policy & Legislation)**