Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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External Commercial Borrowings (ECB)[1] – Revised Policy Framework

In consultation with the Government of India, the Reserve Bank of India on 30 November 2015 has prescribed a revised ECB policy framework.

Key highlights of the major parameters governing ECB policy are:

- Broad guidelines for revised ECB policy framework specifying parameters and other terms and conditions are given in brief below. These parameters will apply in totality and not on a standalone basis:

Parameter	Track I	Track II	Track III
Nature of ECB and Minimum Average Maturity (MAM)	Foreign currency denominated ECB up to USD 50 million or its equivalent with MAM of 3 years or more and For ECB beyond USD 50 million or its equivalent, MAM of 5 years or more.	Long term foreign currency denominated ECB with MAM of 10 years or more, irrespective of the amount involved.	Indian Rupee (INR) denominated ECB up to USD 50 million or its equivalent with MAM of 3 years or more and for ECB beyond USD 50 million or its equivalent, MAM of 5 years or more.
Eligible Borrowers – Who can borrow under each of the tracks?	Companies engaged in manufacturing, software development, shipping and airlines, Units in Special Economic Zones (SEZs),	All entities listed under Track I plus companies in infrastructure sector, holding companies, CICs[2], REITs[3] and INVITs[4] governed by SEBI[5].	All entities listed under Track II plus NBFCs[6], NBFCs-MFIs[7], societies, trusts and cooperatives, companies engaged in miscellaneous services like research and

1 Foreign currency loans taken by entities in India are regarded as ECB
2 Core Investment Companies
3 Real Estate Investment Trusts
4 Infrastructure Investment Trusts
5 Securities and Exchange Board of India
6 Non-Banking Finance Companies

			development, training (other than educational institutes), supporting infrastructure, providing logistics services, developers of SEZs/ National Manufacturing and Investment Zones
Recognized Lenders / Investors - Who can lend under each of the tracks?	International banks, International capital markets, Multilateral financial institutions / regional financial institutions and Government owned financial institutions, Export credit agencies, Suppliers of equipment, Foreign equity holders, Overseas long term investors such as prudentially regulated financial entities; Pension funds; Insurance companies; Sovereign Wealth Funds; Financial institutions located in International Financial Services Centers in India, Overseas branches / subsidiaries of Indian banks (subject to conditions).	All entities listed under Track I except overseas branches / subsidiaries of Indian banks.	All entities listed under Track I except overseas branches / subsidiaries of Indian banks. In case of NBFC-MFIs, other eligible MFIs, not for profit companies and NGOs[8], can avail ECB from overseas organizations and individuals (subject to conditions).
All-in-cost ceiling (Penal interest for default or breach of covenants < 2% over and above the contracted rate of interest.)	ECB with MAM of 3 to 5 years - 6 month LIBOR or applicable bench mark for the respective currency + 300 basis points ECB with average maturity period of more than 5 years - 6 month LIBOR or applicable bench mark for the respective currency + 450 basis points	The maximum spread over the 6 month LIBOR or applicable bench mark for the respective currency will be 500 basis points per annum.	The all-in-cost should be in line with the market conditions.

7 Non-Banking Finance Companies – Micro Finance Institutions

8 Non-Government organizations

Permitted End-uses	ECB proceeds can be utilized for capital expenditure in the form of: ➢ Import of capital goods including payment towards import of services. technical know- how and license fees provided they are part of these capital goods; ➢ Local sourcing of capital goods; ➢ New project; ➢ Modernization /expansion of existing units; ➢ Overseas direct investment in Joint ventures/ Wholly owned subsidiaries; ➢ Acquisition of shares of PSU's under the disinvestment program of GOI[9]; ➢ Refinancing of existing trade credit raised for import of capital goods; ➢ Payment of capital goods imported but unpaid; ➢ Refinancing of existing ECB without reducing the residual maturity. ➢ Units in SEZs – only for their own requirements ➢ Shipping and airlines companies - only for	The ECB proceeds can be used for all purposes excluding the following: ➢ Real estate activities ➢ Investing in capital market; ➢ Using the proceeds for domestic equity investment; ➢ On-lending to other entities with any of the above objectives; ➢ Purchase of land. Holding companies can also use ECB proceeds for providing loans to their infrastructure SPVs.	NBFCs can use ECB proceeds for: ➢ On-lending to the infrastructure sector; ➢ Providing hypothecated loans to domestic entities for acquisition of capital goods/equipment; and ➢ Providing capital goods/equipment to domestic entities by way of lease and hire-purchases Developers of SEZs[10]/ NMIZs[11] can raise ECB only for providing infrastructure facilities within SEZ/ NMIZ. NBFC-MFIs[12], other eligible MFIs[13], NGOs and not for profit companies registered under the Companies Act can raise ECB only for on-lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building. Other eligible entities, can use the ECB proceeds for all purposes excluding the following: ➢ Real estate activities ➢ Investing in capital market ➢ Using the proceeds for equity investment

9 Government of India

10 Special Economic Zones

11 National Manufacturing and Investment Zones

12 Non-Banking Finance Companies – Micro Finance Institutions

13 Micro Finance Institutions

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<td>import of vessels and aircrafts respectively.
➢ ECB proceeds can be used for general corporate purpose (including working capital) provided the ECB is raised from the direct / indirect equity holder / Group Company for a minimum average maturity of 5 years.
➢ ECBs for the following purposes - considered under the approval route - Import of second hand goods as per the Director General of Foreign Trade guidelines and On-lending by Exim Bank.</td>
<td></td>
<td>domestically;
➢ On-lending to other entities with any of the above objectives;
➢ Purchase of land.</td>
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<td>Individual Limits</td>
<td colspan="3">The individual limits of ECB that can be raised by eligible entities under the automatic route, per financial year, for all the three tracks are set out as under:
a. Up to USD 750 million or equivalent for the companies in infrastructure and manufacturing sectors;
b. Up to USD 200 million or equivalent for companies in software sectors;
c. Up to USD 100 million or equivalent for entities engaged in micro finance activities; and
d. Up to USD 500 million or equivalent for remaining entities.
ECB beyond the aforesaid limits will fall under approval route and would require prior RBI approval. These limits are separate from than the limits allowed under the framework for issuance of Rupee denominated bonds overseas, where the limits under the automatic route is USD 750 million per annum or its equivalent. Cases beyond this limit will require prior approval of RBI.</td>
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Contacts

Deloitte Tohmatsu Tax Co.
India Practice

Hiroyuki Hayashi, Partner	hiroyuki.hayashi@tohmatsu.co.jp
Pawankumar Kulkarni, Manager	pawankumar.kulkarni@tohmatsu.co.jp

Issued by

Deloitte Tohmatsu Tax Co.
Tokyo Office

Shin-Tokyo Building 5F, 3-3-1 Marunouchi, Chiyoda-ku, Tokyo 100-8305, Japan

T e l : +81 3 6213 3800

email : tax.cs@tohmatsu.co.jp

Corporate Info. : www.deloitte.com/jp/en/tax

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