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Section 94B of the Income-tax Act, 1961– An overview

Introduction

Multinational enterprises often structure their arrangements, whereby the lender (recipient of interest income) is placed in a low tax jurisdiction and the borrower is in a country where interest cost can be deducted for income-tax purposes. Thus, such arrangement leads to base erosion and profit shifting from high tax jurisdiction to low tax jurisdiction.

To cover such situations, the Finance Bill, 2017 proposed to introduce a new section 94B which seeks to limit interest deduction in certain cases.

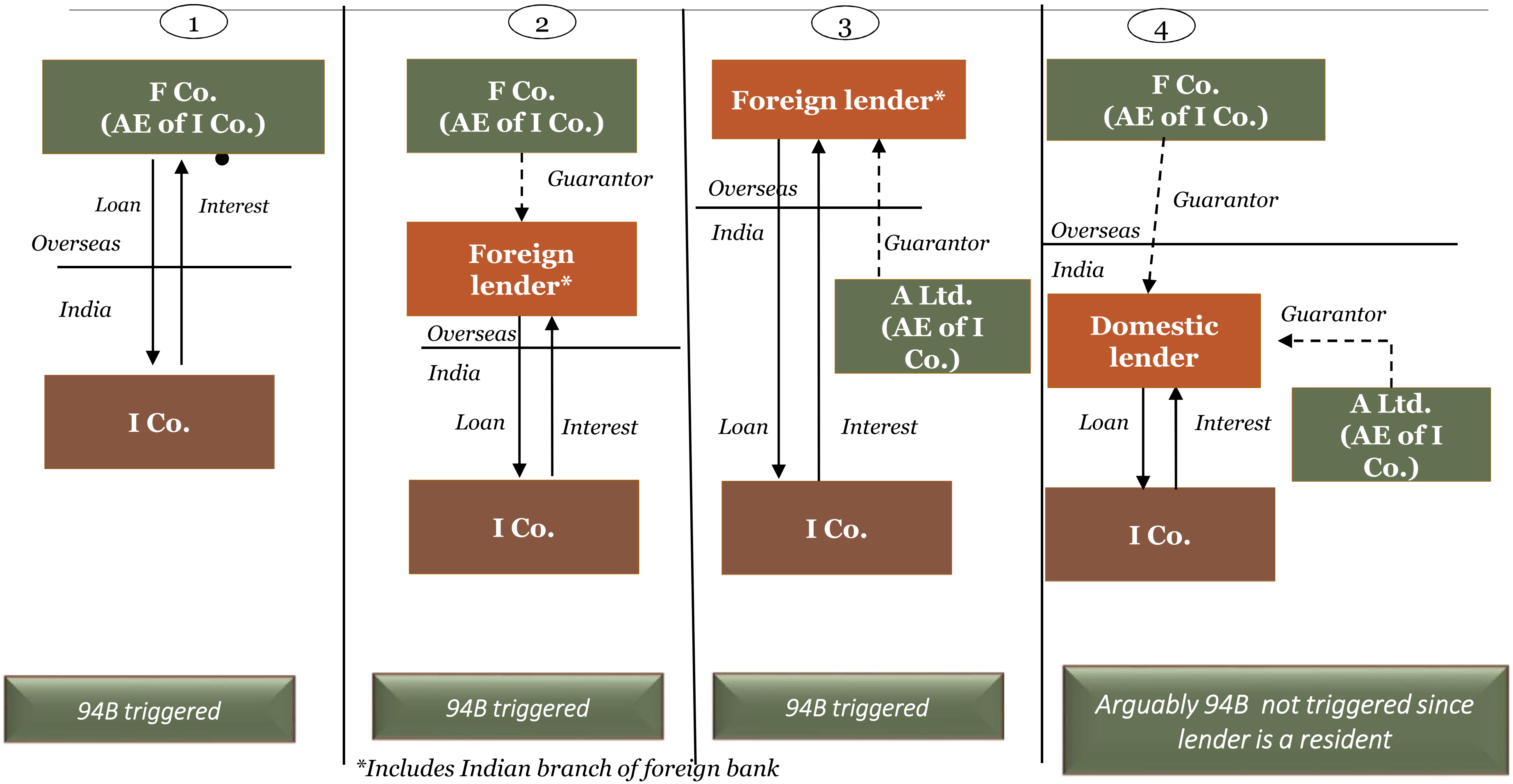
Section 94B – Overview

Applicability	• Introduced vide Finance Act 2017; Applicable from 1 April 2017 • 'Anti-abuse' provisions in line with BEPS Action Plan 4
Conditions for triggering Section 94B	***Condition 1*** • Borrower is an *Indian Company or PE of foreign company* ***Condition 2*** • Pays *interest or similar consideration* exceeding INR 1 crore which is *deductible* in computing income chargeable under the head "Profits and gains of business or profession" ***Condition 3*** • In respect of any debt issued by: - *non-resident AE*; or - third party lender (non AE) but where the *AE provides implicit or explicit guarantee* to such lender or deposits a corresponding and matching amount of funds with the lender • Not applicable to borrowers engaged in banking or insurance businesses

Section 94B – Overview

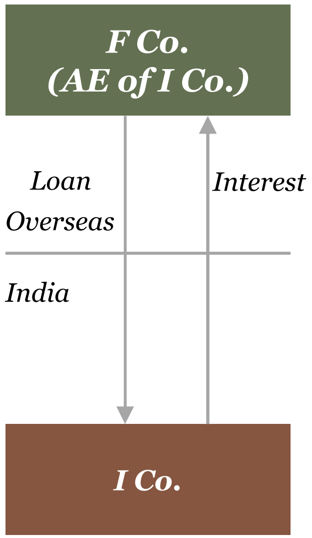
Amount of disallowance ('excess interest')	Lower of • Total interest paid or payable in excess of 30% of EBITDA; and • Interest paid or payable to associated enterprises
Carry forward/set off	• Interest disallowed can be carried forward and set-off for up to eight years
Definitions	• "associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of section 92A; • "debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession"; • "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Trigger Point – Some examples



**Includes Indian branch of foreign bank*

Section 94B – Illustration



No	Particulars	Reference	Rs. (in crores)
(a)	Interest expenditure on Loan taken from Non-resident AEs	a	100
(b)	Interest expenditure on Loan taken from third party	b	50
(c)	***Total Interest***	***a + b***	***150***
(d)	EBITDA (Earnings before Interest, Taxes, Depreciation and Amortisation)	d	300
(e)	30% of EBITDA	d X 30%	90
	Interest to be disallowed		
(f)	Excess interest paid (150-90) or	c – e	60
	Interest paid to Non-resident AEs	a	100
	whichever is lower (amount to be disallowed and carried forward)		***60***