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PROVISION RELETED TO BORROWING BY COMPANIES

SHAH TEELANI & ASSOCIATES 

CHARTERED ACCOUNTANTS

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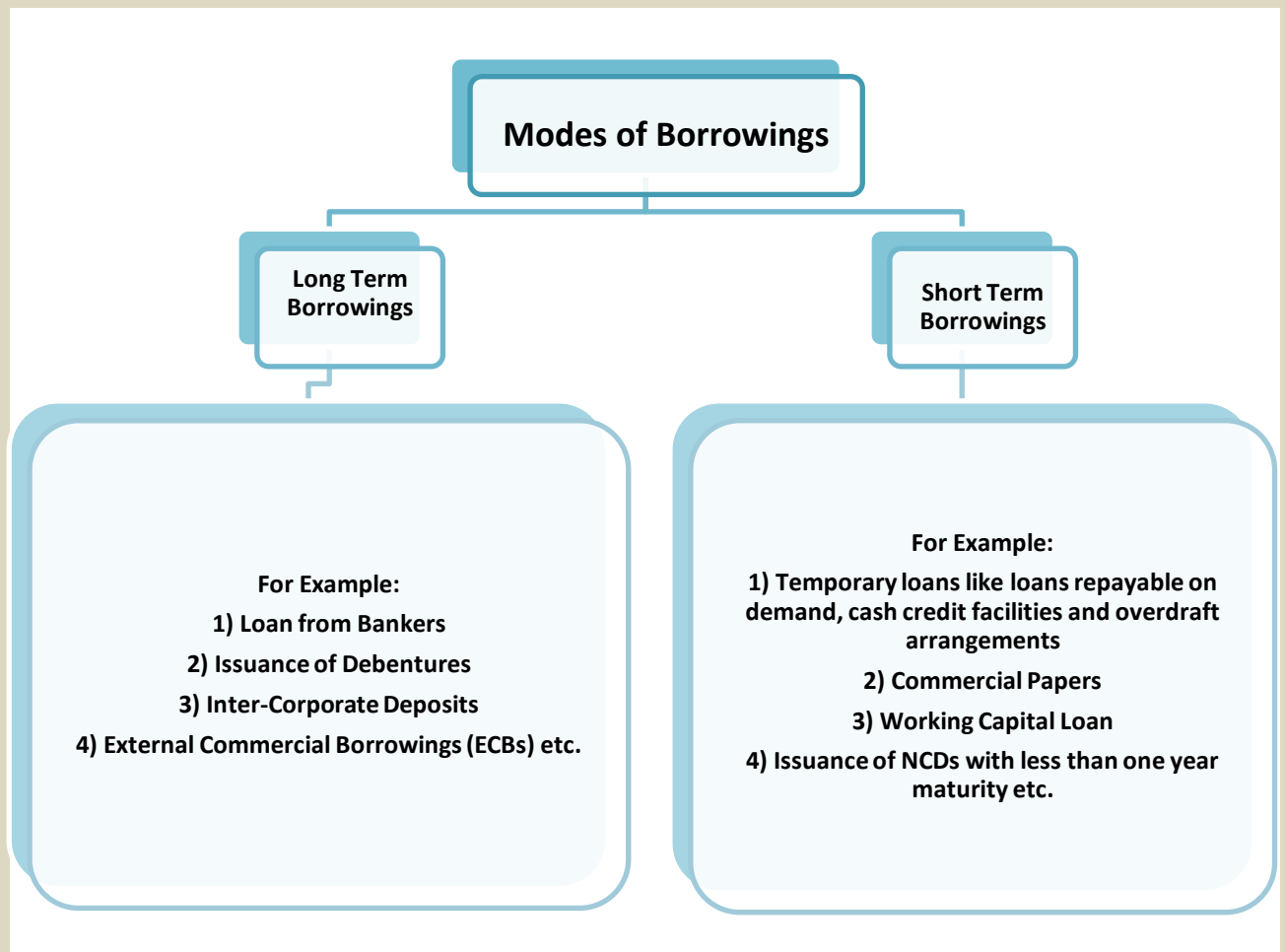
Information in this book is intended to help the common tax payers understand the subject. Authors have taken utmost care to ensure the correctness and completeness of this information. However, readers are advised to seek professional help before acting on any information, advice, or interpretation, whether explicit or implicit, given in this book.

Borrowings by the Company

INTRODUCTION:

Loans are the major source of funding for most of the Companies apart from their Share Capital. Companies borrow from various sources like directors, relatives of directors, other corporate, banks and various other financial institutions etc. It may be secured or unsecured. It may be for long term or short term. Let's here we understand from whom the company may borrow money without violations of the provisions of the Companies Act, 2013.

There are mainly two modes of borrowing as stated below:



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PROVISIONS UNDER COMPANIES ACT, 2013 :

The Board has power to borrow money by passing resolution in the Board Meeting. However, borrowing of money does not exceed the aggregate amount of its paid-up share capital and free reserves, apart from the temporary loans obtained by the company's bankers in the ordinary course of business without prior approval of the shareholders of the company, through a special resolution in general meeting.

Private companies are exempted from the provisions of the Companies Act, 2013 vide MCA Notification[2] dated June 5, 2015. Hence, it can borrow money without prior approval of the shareholders of the company.

- **The below table shows the persons or entities from whom a company may borrow funds:**

Sr. No.	Person/Entity	Allow ability of the Loan
1.	*Director	Allowed. However, a declaration is furnished by the director that the amount has been given out of owned funds.
2.	Relative of Director	Private Company can accept money from relative of Director. However, a declaration is furnished by the relative of director that the amount has been given out of owned funds. "Relative" means anyone who is related to another, if - - They are members of HUF - Spouse - Father including step-father - Mother including step-mother - Son including step-son - Son's wife - Daughter - Daughter's Husband - Brother including step-brother

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		- Sister including step-sister Note: In case of public company, amount received from relative of Director is not allowed.
3.	*Shareholders	Allowed. However, Money accepted does not exceed 100% of paid up share capital and free reserves.
4.	Employee	Allowed. The Amount borrowed must not exceed the employees' annual salary.
5.	Any other Company	Allowed.
6.	Banks	Allowed.
7.	Trust	Allowed, but loan received should be non-interest bearing
8.	Outside India	Allowed subject to compliances of FEMA Act
9.	Govt. organization (For e.g. SIDBI)	Allowed.

* If a person who is Director & Shareholder Both then it is allowed. However, a declaration is furnished by the director that the amount has been given out of owned funds.

➤ The below table shows the persons or entities from whom a company may not borrow funds:

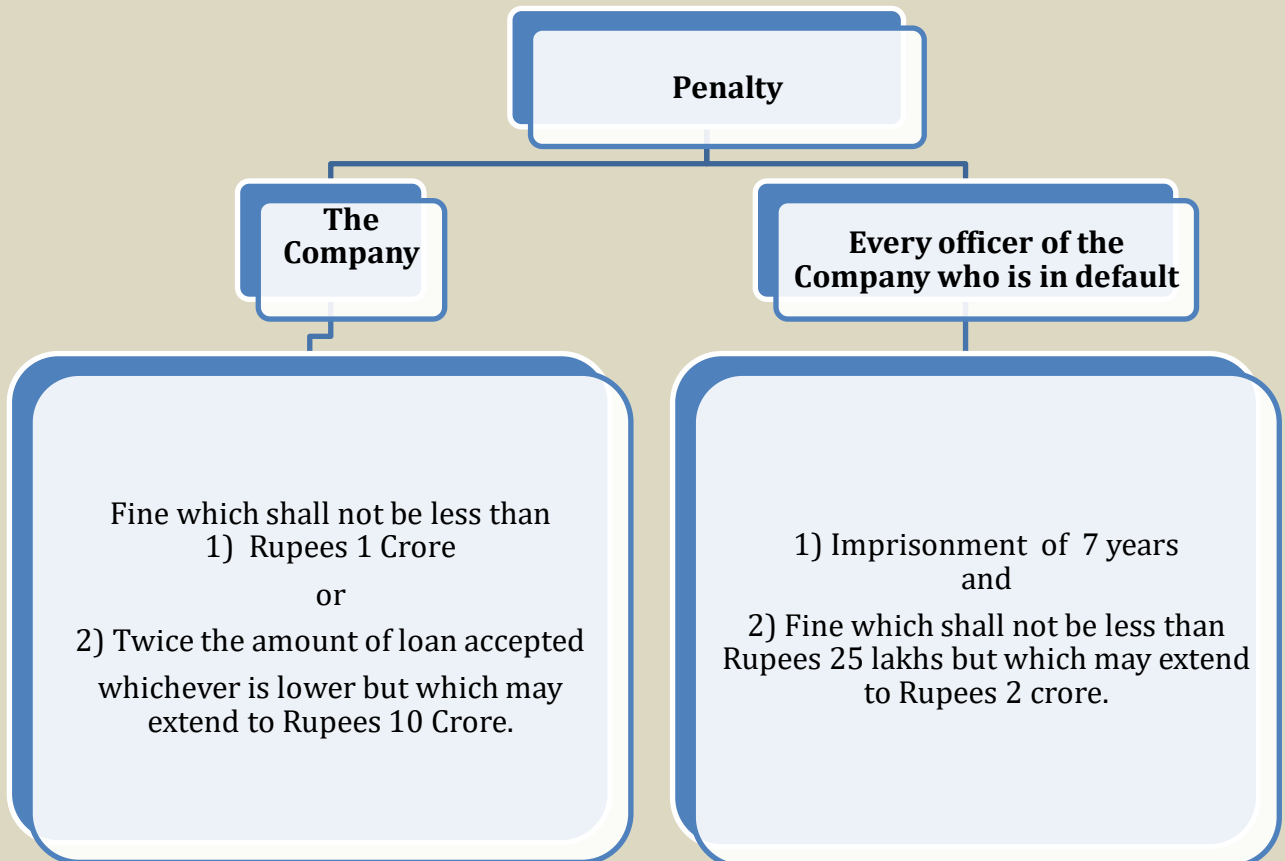
Sr. No.	Person/Entity	Non Allowability of the Loan
1.	Relative of shareholder	Not Allowed.
2.	Any other Individual	Not Allowed.

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3.	Proprietorship Firm	<p>Private Company cannot accept money from Proprietorship Firm.</p> <p>For e.g. If Mr. X who is proprietor of ABC & Co. and Director of ABC Private Limited then ABC Private Limited cannot borrow from ABC & Co.</p> <p>Note: Public Company can accept money after follow the compliances of Section 73 read with relevant rules.</p>
4.	Partnership Firm	<p>Private Company cannot accept money from Proprietorship Firm</p> <p>For e.g.</p> <p>Case 1: If Mr. X who is Partner of ABC & Co. and Director of ABC Private Limited then ABC Private Limited cannot borrow from ABC & Co.</p> <p>Case 2: If Mr. Y who is relative of Mr. X and partner of PQR & Co. Mr. X is Director of ABC Private Limited. Then ABC Private Limited cannot borrow from PQR & Co. because relative of Director (Mr. Y) is partner in partnership firm (PQR & Co.)</p> <p>Note: Public Company can accept money after follow the compliances of Section 73 read with relevant rules.</p>
5.	HUF	<p>Private Company cannot accept money from HUF.</p> <p>Note: Public Company can accept money after follow the compliances of Section 73 read with relevant rules.</p>

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PENALTY :



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