

# TAX FLASH NEWS

18 August 2020



## CBDT prescribes conditions and forms for an eligible Pension Fund seeking infrastructure exemption

As per Section 10(23FE) of the Income-tax Act, 1961 (the Act), Sovereign Wealth Funds and Pension Funds are eligible for infrastructure exemption subject to certain conditions laid down in the explanation to the said section. As per the explanation, exemption for Pension Funds are subject to satisfaction of such other condition as may be prescribed.

On 17 August 2020, Central Board of Direct Taxes (CBDT) has notified the conditions to be satisfied by the Pension Funds seeking exemption of income from Infrastructure investment in India. CBDT has prescribed Application Form for notifying an eligible Pension Fund, the format for filing quarterly statement disclosing the investments made during each quarter, and format of certificate to be obtained from an accountant by notified Pension Funds.

### Background

The Finance Bill, 2020 had introduced Section 10(23FE) granting exemption to Sovereign Wealth Funds (SWFs) towards infrastructure investment whereby their income in the nature of interest, dividend and long-term capital gains from investments made in specified infrastructure business shall be exempt from tax in India, subject to satisfaction of certain conditions. While enacting the Finance Act, 2020, this exemption was also extended to Pension Funds (PFs) as well subject to following conditions:

- Is created or established under the law of a foreign country including the laws made by any political constituents being a province, state or local body, by whatever name called;
- Is not liable to tax in such foreign country;

- Satisfies such other conditions as may be prescribed; and
- Is specified by the Central Government, by notification in the Official Gazette, for this purpose.

The exemption is granted for investments made on or after 1 April 2020 but on or before 31 March 2024 subject to satisfaction of other conditions. In this regard, various representations were made before CBDT seeking clarifications on specific questions, and seeking clarity on conditions for PF to qualify, the applicable reporting requirements, the timelines for rolling out forms, conditions, etc.

On 6 July 2020, CBDT issued a notification extending the exemption, under Section 10(23FE) to cover investments made in business engaged in the infrastructure sub-sectors as mentioned in Updated Harmonised Master List of Infrastructure Sub-sectors in the notification of the Government of India thereby significantly widening the meaning of infrastructure facility.

On 22 July 2020, CBDT prescribed the application form (Form I) for notifying a SWF and format for filing of quarterly statement (Form II) disclosing the investments made during each quarter.

On 17 August 2020, CBDT issued Income-tax (20<sup>th</sup> Amendment) Rules, 2020 and notified Rules, Forms and compliances<sup>1</sup> for Pension Funds.

<sup>1</sup> Rule 2DB – Other Conditions to be satisfied by the Pension Funds  
Rule 2DC - Guidelines for notification under section 10(23FE)  
Form No. 10BBA - Application Form for notifying the Pension Fund  
Form No. 10BBB - Format for filing quarterly statement disclosing the investments made during the quarter  
Form No. 10BBC - Format of certificate to be obtained from an accountant by the notified Pension Funds to be furnished along with a return of income to be filed by due date.

## CBDT Notification

### Rule 2DB - Other conditions to be satisfied by the pension fund for claiming exemption under Section 10(23FE)

- It is regulated under the law of a foreign country including the laws made by any of its political constituents being a province, state or local body, under which it is created or established;
- It is responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans;
- The earnings and assets of the pension fund are used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (ii) and no portion of the earnings or assets of the pension fund inures any benefit to any other private person;
- It does not undertake any commercial activity whether within or outside India;
- It shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB;
- It shall file return of income on or before the due date specified under sub-section (1) of section 139 and furnish along with such return a certificate in Form No.10BBC in respect of compliance to the provisions of clause (23FE) of Section 10, during the financial year, from an accountant as defined in Explanation below sub-section (2) of Section 288.

### Rule 2DC - Guidelines for notification under Section 10(23FE)

- The Rule provides that the Pension Fund should make an application in Form No. 10BBA along with relevant documents and evidence in support of the confirmations made in the said Form, including documents constituting it.
- The application shall be filed with Member (Legislation), CBDT during Financial Year 2020-21 and with Member, CBDT, having supervision and control over the work of Foreign Tax and Tax Research Division during the other financial years.
- The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down the data structure, standards and procedure of furnishing and verification of Form No 10BBB and Form No 10BBC, and shall be responsible for

formulating and implementing appropriate security, archival and retrieval policies in relation to the said forms.

### Key aspects to be noted

- Pension Fund does not undertake commercial activity within or outside India to be eligible.
- Permanent Account Number (PAN) of PF is required to be mentioned in the Application Form. Hence, the PF will need to apply for and obtain PAN prior to applying for PF exemption;
- PAN of the signatory (should be competent to verify the return of income) will be required;
- Documents constituting the PF to be submitted along with Application Form;
- The notified PF will have to file return of income within the due date;
- The notified PF will have to file quarterly statement within one month from the end of the quarter disclosing the investments made during the quarter;
- The notified PF will be required to obtain a certificate from an accountant and furnish the same along with the return of income.
- The accountant will certify the details of investments made during the Financial Year and whether the Pension Fund has sold any investments made for the purpose of exemption under Section 10(23FE) and provide details in case any investments are sold before expiry of 3 years from the date of the investment. The Accountant shall also certify that the Pension Fund satisfies all the conditions required for claiming exemption under Section 10(23FE) of the Act.

### Our comments

Notification of the prescribed rules, conditions etc. in relation to Pension Funds was long awaited and is a welcome move by CBDT. Post introduction of section 10(23FE), various representations were made before CBDT seeking clarifications on the said provisions from Pension Fund perspective. The key representations included compliance requirements, application format, whether investment in the secondary market will qualify for exemption, whether exemption will be available if investment is made through a holding company, whether exemption is extended to wholly owned Special Purpose Vehicles (SPV) set-up by a SWF/PF etc.

However, in this notification, CBDT has provided clarity only from compliance perspective and other queries remain unanswered.

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