

TAX FLASH NEWS

30 October 2021

CBDT guidelines on borrowed funds invested in India by sovereign wealth funds and pension funds

The Finance Act, 2020, *inter-alia*, introduced clause (23FE) in Section 10 of the Income-tax Act, 1961 (the Act) to provide for exemption to sovereign wealth funds and pension funds on their income in the nature of dividend, interest and long-term capital gains arising from investment in infrastructure in India made between 1 April 2020 and 31 March 2024 subject to fulfilment of certain conditions.

The Finance Act, 2021, *inter alia*, introduced seventh proviso to Section 10(23FE) to provide that in case the specified fund has loans or borrowings, directly or indirectly, for the purposes of making investment in India, such fund shall be deemed to be not eligible for exemption under this clause.

In this regard, there were concerns that the term 'indirectly' used in the seventh proviso has not been defined and no clarity has been provided. Further if the specified fund or its holding entity or any other entity in the chain of holding or any associate thereof (group concern) has any loans or borrowings, the specified fund may be ineligible to get the exemption under the said clause.

On 26 October 2021, the Central Board of Direct Taxes (CBDT) has issued Guidelines¹ clarifying the term 'indirectly' for the purpose of claim of exemption to sovereign wealth funds and pension funds (specified fund).

CBDT Guidelines

CBDT clarified that eligibility of exemption under Section 10(23FE) shall be as follows:

- If the loans and borrowings have been taken by a specified fund or any of its group concern, specifically for the purposes of making investment by the specified fund in India, such fund shall not be eligible for exemption under Section 10(23FE); and
- If the loans and borrowings have been taken by the specified fund or any of its group concern, not specifically for the purposes of making investment in India, it shall not be presumed that the investment in India has been made out of such loans and borrowings and such specified fund shall be eligible for exemption under Section 10(23FE), subject to the fulfilment of all other conditions under the said clause, provided that the source of the investment in India is not from such loans and borrowings.

Our comments

Government has been making efforts to simplify the tax regime in India for sovereign wealth funds and pension funds to attract more foreign investment in the infrastructure sector.

The CBDT guidelines will provide clarity to foreign investors and it will help to smoothen the flow of investment in the infrastructure sector.

¹ CBDT Circular No. 19 of 2021, dated 26 October 2021

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