

TAX FLASH NEWS

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CBDT amends conditions and form for an eligible pension fund seeking exemption of its income from investments made in specified Indian infrastructure entities

Background

The Finance Act, 2020 introduced a new Section 10(23FE) to the Income-tax Act, 1961 (the Act) to provide a tax exemption for income from dividends, interest, and long-term capital gains arising from investments made in specified Indian infrastructure entities by certain foreign investors, including a Sovereign Wealth Fund (SWF) and Pension Funds (PF).

On 17 August 2020, the Central Board of Direct Taxes (CBDT) issued notification introducing Rule 2DB of the Income-tax Rules, 1962 (the Rules) prescribing 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 PF.

Recently, the CBDT has issued a Notification¹ amending the aforesaid rule, forms and compliances for PF.

CBDT Notification (Amendment)

- Under the existing rule, the pension fund shall be required to satisfy certain specified conditions. One of the condition provides that the earnings and assets of the pension fund are to be used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans specified and no portion of the earnings or assets of the pension fund inures any benefit to any other private person.

As per the amended rule the above condition shall not apply to any payment made to creditors or depositors for loan taken or borrowing for the purposes other than for making investment in India.

- Under the existing rule, the pension fund should not undertake any commercial activity whether within or outside India to claim exemption under Section 10(23FE).

The amended rule omitted the above condition

- The amended rule provides the meaning of 'loan and borrowing' same as assigned to it in the provisions of sub-clause (b) of clause (ii) of Explanation 2 to Section 10 (23FE) of the Act².
- In line with the above amendments, Form 10BBA is substituted.

Our comments

The Indian Government had, vide Finance Act 2021, relaxed some of the conditions applicable for availing exemption under Section 10(23FE). Principally, the condition relating to SWF applicant not to carry on commercial activity has been removed. The SWF applicant is allowed to make payment to creditors or depositors for loan or borrowing taken other than for the purpose of making investment in India. Also, SWF and PF applicants are allowed to monitor its investment with investee company to protect it, including appointing directors or executive directors, but cannot otherwise participate in day to day operations of the investee company.

² Any loan taken or borrowing by a pension fund from or any deposit or investment made in a pension fund by, any person but shall not include the deposit or investment which represents 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, as the case may be.

¹ Notification No. 32/2021, dated 15 April 2021

With this notification, these conditions have also been relaxed for PFs by amending Rule 2DB and application Form 10BBA. Thus, PFs have been brought on par with SWFs on the above aspects and this might facilitate in increasing PFs interest towards making investment in the Indian infrastructure space. However, it seems that CBDT has missed making similar changes in Form 10BBC, which is the annual compliance certificate issued by a chartered accountant certifying on whether compliance has been done by a pension fund with all the conditions of section 10(23FE) for the purpose of exemption. This form would soon be rectified in line with this notification. Similarly, the application Form I applicable to SWF would be updated in line with changes in SWF conditions inserted vide Finance Act 2021.



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