

# TAX FLASH NEWS

18 August 2020

## CBDT amends rules providing PAN exemption to non-residents investing in category I and II AIF located in IFSC

### Background

On 26 November 2018, the Securities and Exchange Board of India (SEBI) had issued a Circular<sup>1</sup> specifying the operating guidelines for Alternative Investment funds (AIFs) in International Financial Services Centre (IFSC). Subsequently, the Finance (No. 2) Bill, 2019 proposed tax initiatives for promoting the development of world-class financial infrastructure in India and bring IFSC at par with similar IFSCs in other countries.

On 26 July 2019 the government issued a notification<sup>2</sup> under Section 139(1C) of the Income-tax Act, 1961 exempting a non-resident (not being a company) or a foreign company from furnishing a return of income in India who earns income from investment in an investment fund set-up in IFSC. An investment fund has been defined to mean a Category I and II AIF, which has been granted a certificate of registration and is regulated by the SEBI (AIF) Regulations, 2012.

The said relaxation has been provided to non-resident investors in respect of filing return of income. However, such investors were required to obtain a Permanent Account Number (PAN) in India. There was a long-pending demand from investment funds to do away with this requirement.

### CBDT notification

Recently, the Central Board of Direct Taxes (CBDT) has issued a Notification<sup>3</sup> to introduce a new Rule 114AAB in the Income-tax Rules, 1962. The newly inserted Rule 114AAB provides that a non-resident investor/ unit holder of a specified fund (i.e. a Category I and Category II AIF) which is set-up in IFSC, is not required to obtain a PAN. Further, CBDT has amended Rule 37BC to provide that Section 206AA (deduction of tax at a higher rate) shall not apply if the provisions of Section 139A do not apply to such person on account of newly inserted Rule 114AAB.

The non-resident need not obtain a PAN if the following conditions are fulfilled –

- The non-resident does not earn any income in India, other than the income from investment in the specified fund during the previous year.
- Any income-tax due on income of a non-resident has been deducted at source and remitted to the central government by the specified fund at the rates specified in Section 194LBB<sup>4</sup> (income in respect of units of investment fund).
- The non-resident furnishes the following details and documents to the specified fund, namely –
  - Name, e-mail id, contact number.
  - Address in the country or specified territory outside India of which he is a resident.
  - A declaration that he is a resident of a country or specified territory outside India.
  - Tax Identification Number in the country or specified territory of his residence and in case such number is not available, then a unique number on the basis of which the non-resident is identified by the government of that country or the specified territory of which he claims to be a resident.
- The specified fund shall furnish a quarterly statement for the quarter of the financial year, in which the specified details and documents are received by it, in Form No.49BA electronically and upload the declaration within 15 days from the end of the quarter of the financial year to which such statement relates.

<sup>1</sup> Circular No. SEBI/ HO/ IMD/ DF1/ CIR/ P/ 143/ 2018, 26 November 2020

<sup>2</sup> F. No. 225/ 79/ 2019-ITA.II/ Notification No. 55/ 2019

<sup>3</sup> Notification No. 58/2020, dated 10 August 2020

<sup>4</sup> i.e. at the rates under the Act or the applicable tax treaty, whichever is beneficial

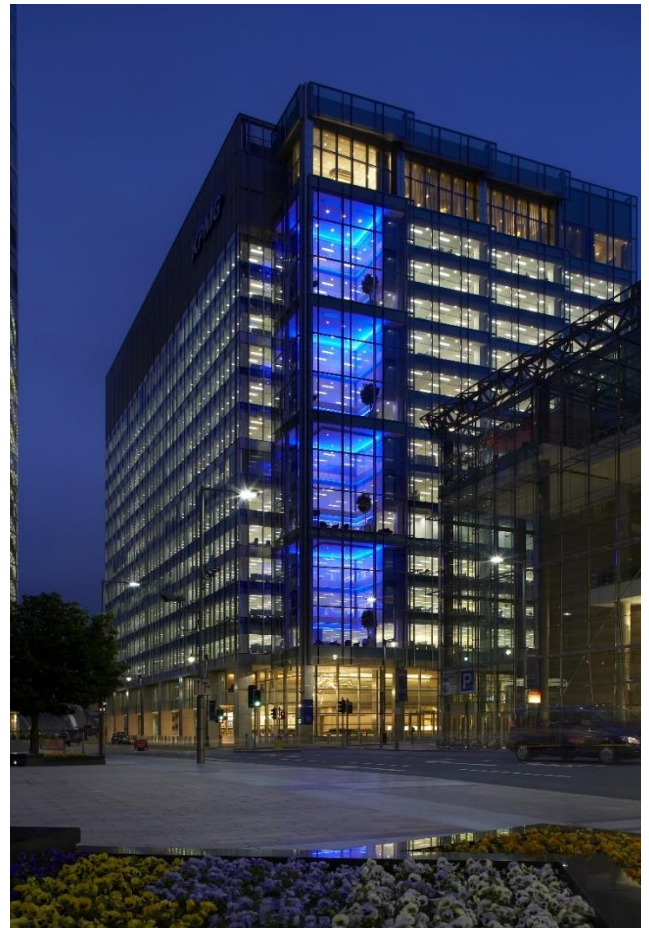
The 'Specified Fund' has been defined to mean any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II AIF, is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, and which is located in any IFSC.

### Our comments

The amendment introduced by the CBDT meets the long-standing demand of the foreign investors who have always been canvassing for exemption from the requirement of obtaining PAN when they invest in AIFs set up in IFSC.

In July 2019, CBDT had provided exemption to foreign investors earning income from Category I and II AIFs set-up in IFSC from the requirement to file tax returns in India. However, there was no specific exemption from the requirement to obtain a PAN. The recent amendment will make setting-up of AIFs in IFSC attractive for fund managers and it may provide further impetus to activities in the IFSC.

It is important to note that the notification provides exemption to non-resident unit holders / investors only in respect of investment made in Category I and II AIF set-up in IFSC. Accordingly, where such non-resident unit holders/ investors earn any other income from India (in addition to the above-mentioned income in IFSC), they will be required to obtain a PAN and also file income-tax return in India.



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