

TAX FLASH NEWS

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CBDT extends PAN exemption to certain category of investors in IFSC

Background

The Government has always been focused on making the International Financial Services Centre (IFSC) at Gujarat (the GIFT City) a global financial hub. Towards this the Government announced various incentives for entities operating out of the GIFT City. In 2018, the Government permitted setting-up of Alternative Investment Funds (AIFs) in the GIFT City and has since then provided various regulatory concessions to such funds. From a tax perspective as well, following incentives have been provided to non-resident investors investing in such funds:

- (a) There is no requirement for non-resident investors of a Category I and Category II AIF to acquire a Permanent Account Number (PAN) in India and correspondingly file tax returns in India. The tax liability in India of such investors is required to be discharged by the AIF by way of withholding of appropriate taxes.
- (b) The entire income earned by non-resident investors of a Category III AIF Fund is exempt from tax. Further, most of the income even for the Fund is also exempt (such as income from transfer of certain specified securities on GIFT City stock exchanges, income from transfer of securities (other than shares of an Indian company), income from offshore securities and income from securitization trust under certain situations).

Ever since the Government made the announcement for incentives mentioned at (b) above, there were representations to the Government to exempt the non-resident investors in a Category III AIF from acquiring PAN.

The Notification

Recently, the Central Board of Direct Taxes (CBDT) amended¹ the Rule 114AAB of the Income-tax Rules, 1962 to provide as follows:

- A. An investor in a Category III AIF set-up in the GIFT City shall not be required to apply for a PAN if the following conditions are satisfied:
 - a. The non-resident does not earn any income in India, other than the income from investments in the Category III AIF during the previous year;
 - b. Any income-tax due on income of the non-resident investor has been deducted at source and remitted to the Central Government by the Category III fund;
 - c. The non-resident furnishes the following details and documents to the Category III AIF, namely:
 - Name, email-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

¹ Notification No. 42/2021, dated 4 May 2021

d. The Category III AIF is required to furnish a quarterly statement in respect of the aforesaid information received by it within 15 days from the end of each quarter.

B. In addition to above, the CBDT has also exempted an eligible foreign investor from the requirement of obtaining a PAN who has transacted only in following securities on a recognized stock exchange in the GIFT City and the consideration on transfer of the securities is paid or payable in foreign exchange:

- (a) Bonds or Global Depository Receipts referred to Section 115AC of the Income-tax Act, 1961
- (b) Rupee denominated bonds of an Indian company;
- (c) Derivative; or
- (d) Such other securities as may be notified.

The aforesaid exemption from PAN requirements is subject to following conditions:

- (i) The eligible foreign investor does not earn any other income in India (other than income from transfer of securities referred above); and
- (ii) Conditions mentioned at c. and d. of point A. above shall mutatis mutandis apply here as well.

An eligible foreign investor means any foreign investor as per SEBI Circular IMD/HO/FPIC/CIR/P/2017/003 dated 4 January 2017.



Our comments

The amendment brings in the much-needed parity between the investors of Category I and Category II AIF on one hand and investors of Category III AIF on the other hand. Alongside, the exemption to eligible foreign investors reduces their compliance obligations in India. All these measures should provide fillip to fund activities / investment activities in the GIFT City.

KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate
Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru –
560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

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