

F. No.370142/48/2021-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated: 26th October, 2021

Sub.: Guidelines under clause (23FE) of section 10 of the Income-tax Act, 1961 - reg.

Finance Act, 2020, *inter-alia*, inserted clause (23FE) of section 10 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) to provide for exemption to sovereign wealth funds and pension funds (hereinafter referred to as “specified fund”) on their income in the nature of dividend, interest and long-term capital gains arising from investment in infrastructure in India made between 01.04.2020 and 31.03.2024 subject to fulfilment of certain conditions.

2. The Finance Act, 2021, *inter alia*, inserted seventh proviso to clause (23FE) of section 10 of the Act 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.

3. In this regard, concerns have been raised in regard to the term ‘indirectly’ used in the said proviso of the clause (23FE) of section 10 of the Act that it is not defined and no clarity has been provided thereon under the extant provisions. Further, concerns have been raised that if the specified fund or its holding entity or any other entity in the chain of holding or any associate thereof (hereinafter referred to as “group concern”) has any loans or borrowings, the specified fund may be ineligible to get the exemption under the said clause.

4. First proviso to clause (23FE) of section 10 of the Act provides that if any difficulty arises regarding interpretation or implementation of the provisions of this clause, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty. In exercise of the powers under this proviso, Board, with the approval of the Central Government, hereby issues the following guidelines:

Guidelines

5. In order to remove the above difficulties mentioned in para 3 of these guidelines, it is hereby clarified that eligibility of exemption under clause (23FE) of section 10 of the Act shall be as follows: -

- (a) if the loans and borrowings have been taken by the 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 clause (23FE) of section 10 of the Act; and
- (b) 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 clause 23(FE) of section 10 of the Act, 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.



(Neha Sahay)

Under Secretary
TPL Division

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5. C&AG of India (30 copies).
6. JS & Legal Adviser, Ministry of Law & Justice. New Delhi.
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