

THE GOVERNMENT OF INDIA, IN THE EXERCISE OF POWERS ENDED IN THE GOVERNMENT OF INDIA ACT, 1976, AS ENDOWED UPON IT BY ARTICLE 123 OF THE CONSTITUTION OF INDIA, AND IN PURSUANCE OF THE PROVISIONS OF SECTION 2(1)(AA) OF THE INVESTMENT FUND ACT, 1998, HAS MADE THE FOLLOWING REGULATIONS, WHICH ARE HEREBY PUBLISHED FOR INFORMATION OF THE PUBLIC.

RELOCATION TO IFSC

Finance Act, 2021 has introduced provisions for tax neutrality if a Foreign Investors Fund relocates itself to International Financial Services Centre in India. Let us understand the new Law through a practical example:

Illustration

Singapore Investors Fund, is a fund registered in Singapore. India has Double Taxation Avoidance Agreement with Singapore. The fund is subject to Investor's Protection Regulations of Singapore. The units of the fund are held by following non-residents investors:

Non-Residents

Mr. A	10%
Mr. B	20%
Mr. C	30%
Mr. D	25%
Mr. E	15%

The fund has invested in the following shares:

Reliance GDR (Indian Co.)
Tata Steel GDR (Indian Co.)
Bajaj Auto GDR (Indian Co.)
Google Inc. (USA Co.)
Apple Inc. (USA Co.)
Alibaba Inc. (Chinese Co.)

India-Sing-Investors Fund is formed in India on 01.09.2021 and it has been granted Certificate of Registration as Category I Alternative Investment Fund by SEBI and is incorporated and located in **International Financial Services Centre**.

Singapore Investors Fund transfers all the shares held by it to **India-Sing-Investors Fund** on 30.09.2021. **India-Sing-Investors Fund** allots units to the following shareholders in following proportion:

Mr. A	10%
Mr. B	20%
Mr. C	30%
Mr. D	25%
Mr. E	15%

India-Sing-Investors Fund sells the share of Reliance, Tata Steel, Bajaj Auto, Google, Apple and Alibaba on stock exchange located in IFSC and earns capital gains of ₹ 300 crores, ₹ 300 crores is remitted to Mr. A, Mr. B, Mr. C, Mr. D and Mr. E as follows:

Mr. A	30 Cr.	(10%)
Mr. B	60 Cr.	(20%)
Mr. C	90 Cr.	(30%)
Mr. D	75 Cr.	(25%)
Mr. E	45 Cr.	(15%)
		300 Cr.

Now, amount of ₹ 300 crores received by non-resident shareholders is exempt under **section 10(23FF) introduced by Finance Act, 2021**, which states as under:

SECTION 10(23FF): INCOME EXEMPT FROM TAX

Any income of the nature of capital gains, arising or received by a non-resident or a specified fund, which is on account of transfer of share of a company resident in India, by the resultant fund or a specified fund to the extent attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) calculated in such manner as may be prescribed, and where such shares were transferred from the original fund, or from its wholly owned special purpose vehicle, to the resultant fund in relocation, and where capital gains on such shares were not chargeable to tax if that relocation had not taken place, shall be exempt from tax.

Explanation.—For the purposes of this clause,—

- the expressions "**original fund**", "**relocation**" and "**resultant fund**" shall have the meanings respectively assigned to them in the Explanation to clause (viiac) and clause (viiad) of section 47;
- the expression "specified fund" shall have the meaning assigned to it in clause (c) of the Explanation to clause (4D) of section 10;

All conditions of section 10(23FF) have been satisfied as under:

- Income in nature of capital gains is received by non-resident investors.
- Capital gains is on account of transfer of shares of company resident in India i.e., Reliance, Bajaj Auto and Tata Steel. Capital Gains on Apple, Google and Alibaba are anyways not taxable since these are located outside India.
- Shares are sold by resultant fund.
- Such shares were transferred by original fund to resultant fund in relocation.
- Capital gains were not taxable if these shares were sold in Singapore as transfer of GDR outside India and transfer of foreign shares outside India is not taxable.

AMENDMENT IN SECTION 47

There will be no capital gains in hands of

- (i) **Singapore Investors Fund** when it transfers the shares held by it to **India-Sing-Investors Fund** in view of section 47(viia) introduced by Finance Act, 2021.
- (ii) Non-resident unit holders when they receive units of **India-Sing-Investors Fund** in lieu of units of Singapore Investors Fund in view of section 47(viad) introduced by Finance Act, 2021.

SECTION 47: NO CAPITAL GAINS ON CERTAIN TRANSFER

(viiac) any transfer, in a relocation, of a capital asset by the original fund to the resulting fund;

(viiad) any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund.

Explanation.— For the purposes of clauses (viiac) and (viiad),—

- (a) "**original fund**" means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfills the following conditions, namely:—
 - (i) the fund is not a person resident in India;
 - (ii) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into; or is established or incorporated or registered in a country or a specified territory as may be notified by the Central Government in this behalf;
 - (iii) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident; and
 - (iv) fulfills such other conditions as may be prescribed;
- (b) "**relocation**" means transfer of assets of the original fund, or of its wholly owned special purpose vehicle, to a resultant fund on or before the 31st day of March, 2023, where consideration for such transfer is discharged in the form of share or unit or interest in the resulting fund to,—
 - (i) shareholder or unit holder or interest holder of the original fund, in the same proportion in which the share or unit or interest was held by such shareholder or unit holder or interest holder in such original fund, in lieu of their shares or units or interests in the original fund; or
 - (ii) the original fund, in the same proportion as referred to in sub-clause (i), in respect of which the share or unit or interest is not issued by resultant fund to its shareholder or unit holder or interest holder;
- (c) "**resultant fund**" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership, which—

- (i) has been granted a certificate of registration as a Category I or Category II or Category III Alternative Investment Fund, and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 or International Financial Services Centre Authority Act, 2019; and
- (ii) is located in any International Financial Services Centre as referred to in sub-section (1A) of section 80LA.

♦ OTHER CONSEQUENTIAL AMENDMENTS ♦

1. Section 49(1) which deals with cost of acquisition has been amended to provide as follows:
 - (a) The cost of acquisition of investment in shares in hands of resultant fund (India-Sing-Investors Fund) shall be the same as cost of acquisition in hands of original fund (Singapore Investors Fund)
 - (b) The cost of acquisition of units of resultant fund in hands of unitholders shall be same as the cost of acquisition of units of original fund.
2. Section 56(2)(x) which deals with Income from other sources has been amended to provide that section 56(2)(x) shall not apply:
 - (a) In hands of resultant fund, when it receives the investments in shares made by original fund from it.
 - (b) In hands of unitholder of resultant fund when they receive units of resultant fund in lieu of units of original fund.
3. Section 79 provides for restriction in carrying forward and setting off of loss in case of a company, not being a company in which the public are substantially interested unless on the last day of previous year, the shares of the company carrying not less than 51% of the voting power were beneficially held by person who beneficially held shares of the company carrying not less than 51% of voting power on the last day of the year or years in which the loss was incurred.

Finance Act, 2021 has to remove any doubt or unintended effect, amended section 79 so that its provisions do not apply to the extent the shareholding of a company gets changed an account of such relocation of original fund to IFSC.