

EXEMPTION OF CERTAIN INCOME OF SPECIFIED PERSONS FROM INVESTMENT IN INDIA (FINANCE ACT, 2020)

Finance Act, 2020 has provided incentives to sovereign wealth funds of foreign governments and pension funds of foreign countries to invest in infrastructure in India.

SECTION 10(23FE): INCOME OF SPECIFIED PERSON FROM INVESTMENT IN INDIA (Finance Act, 2020)

The following incomes shall be exempt from tax and shall not form part of total income:

Any income of **a specified person** in the nature of **dividend, interest or long-term capital gains arising from an investment made by it in India**, whether in the form of debt or **share capital or unit**, if the investment—

- (i) is made on or after the 1st day of April, 2020 but on or before the 31st day of March, 2024;
- (ii) is held for at least three years; and
- (iii) is in—
 - (a) a business trust being an **Infrastructure Investment Trust (InVIT)**; or
 - (b) a company or an entity **carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility** as defined in section 80-IA or such other business as the Central Government may notify; or
 - (c) a Category-I or Category-II Alternative Investment Fund regulated by SEBI Regulation, **having 100% NOT LESS THAN 50% investment in one or more of the company or enterprise or entity referred to in item (b) or item (d) or item (e) or in an Infrastructure Investment Trust:**

(Finance Act, 2021)

- (d) a domestic company, set up and registered on or after the 01.04.2021, having minimum 75% investments in one or more of the companies or enterprises or entities referred to in item (b); or
- (e) a non-banking financial company registered as an Infrastructure Finance Company as referred to in notification number RBI/2009-10/316 issued by the Reserve Bank of India or in an Infrastructure Debt Fund, a non-banking finance company, as referred to in the Infrastructure Debt Fund - Non-Banking Financial Companies (Reserve Bank) Directions, 2011, issued by the Reserve Bank of India, having minimum 90% lending to one or more of the companies or enterprises or entities referred to in item (b)

(Clause (d) and (e) Added by Finance Act, 2021)

Provided also that where any income has not been included in the total income of the specified person due to the provisions of this clause, and subsequently during any previous year the specified person **fails to satisfy any of the conditions of this clause** so that the said income would not have been eligible for such non-inclusion, **such income shall be chargeable to income-tax as the income of the specified person of that previous year.**

Provided also that in case a Category-I or Category-II Alternative Investment Fund referred to in item (c) of sub-clause (iii)

- has investment of less than 100% in one or more of the companies or enterprises or entities referred to in
- item (b) or
- item (d) or
- item (e) of the said sub-clause or
- in an Infrastructure Investment Trust referred to in item (c) of the said sub-clause,
- income accrued or arisen or received or attributable to such investment, directly or indirectly, which is exempt under this clause shall be calculated proportionately to that investment made in one or more of the companies or enterprises or entities referred to in
- item (b) or
- item (d) or
- item (e) of the said sub-clause or
- in the Infrastructure Investment Trust referred to in item (c) of the said sub-clause, in such manner as may be prescribed:

(Proviso added by Finance Act, 2021)

Provided also that in case a domestic company referred to in item (d) of sub-clause (iii)

- has investment of less than 100% in one or more of the companies or enterprises or entities referred to in
- item (b) of the said sub-clause,
- income accrued or arisen or received or attributable to such investments, directly or indirectly, which is exempt under this clause shall be calculated proportionately to the investment made in one or more of the companies or enterprises or entities referred to in
- item (b) of the said sub-clause,
- in such manner as may be prescribed:

(Proviso added by Finance Act, 2021)

Provided also that in case a non-banking finance company registered as an Infrastructure Finance Company or Infrastructure Debt Fund, referred to in item (e) of sub-clause (iii), has lending of less than 100% in one or more of the companies or enterprises or entities referred to in

- item (b) of the said sub-clause,
- income accrued or arisen or received or attributable to such lending, directly or indirectly, which is exempt under this clause shall be calculated proportionately to the lending made in one or more of the companies or enterprises or entities referred to in
- item (b) of the said sub-clause,
- in such manner as may be prescribed:

(Proviso added by Finance Act, 2021)

Provided also that in case a sovereign wealth fund or pension 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.

(Proviso added by Finance Act, 2021)

Explanation 1.—For the purposes of this clause, "specified person" means—

- (a) **a wholly owned subsidiary of the Abu Dhabi Investment Authority which—**
- (i) is a resident of the United Arab Emirates; and
 - (ii) makes investment, directly or indirectly, out of the fund owned by the Government of the Abu Dhabi ;
- (b) **a sovereign wealth fund which satisfies the following conditions, namely:—**
- (i) it is wholly owned and controlled, directly or indirectly, **by the Government of a foreign country;**
 - (ii) it is set up and regulated under the **law of such foreign country;**
 - (iii) **the earnings of the said fund** are credited either to the account of the Government of that foreign country or to any other account designated by that Government so that no portion of the earnings inures any benefit to any private person;
 - (iv) **the asset of the said fund vests in the Government of such foreign country** upon dissolution;

Provided that the provisions of sub-clauses (iii) and (iv) 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;

(Proviso added by Finance Act, 2021)

- (v) **it does not participate in the day to day operations of investee but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee; and**

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(vi) it is specified by the Central Government, by notification in the Official Gazette, for this purpose and fulfills conditions specified in such notification;

(c) **a pension fund, which—**

(i) **is created or established under the law of a foreign country** including the laws made by any of its political constituents being a province, State or local body, by whatever name called;

(ii) **is not liable to tax in such foreign country OR IF LIABLE TO TAX, EXEMPTION FROM TAXATION FOR ALL ITS INCOME HAS BEEN PROVIDED BY SUCH FOREIGN COUNTRY;**

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(iii) satisfies such other conditions as may be prescribed;

(iiiia) *it does not participate in the day to day operations of investee but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in day to day operations of the investee; and*

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(iv) is specified by the Central Government, by notification in the Official Gazette, for this purpose and fulfills conditions specified in such notifications;

Explanation 2.— For the purposes of this clause,—

(i) "investee" means a business trust, or a company, or an enterprise, or an entity, or a Category I or Category II Alternative Investment Fund, or an Infrastructure Investment Trust or a domestic company, or an Infrastructure Finance Company or an Infrastructure Debt Fund referred to in item (e) of sub-clause (iii), in which the sovereign wealth fund or the pension fund, as the case may be, has made the investment, directly or indirectly, under the provisions of this clause;

(ii) "loan and borrowing" means—

(a) any loan taken or borrowing by a sovereign wealth fund from, or any deposit or investment made in a sovereign wealth fund by, any person other than the Government of the country in which the sovereign wealth fund is set up;

(b) 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.

Explanation 3.—For the purposes of this clause, the Central Government may prescribe that the method of calculation of "50%" referred to in item (c) or "75%" referred to in item (d) or "90%" referred to in item (e), of sub-clause (iii) shall be such as may be prescribed;

(Explanation 2 and 3 added by Finance Act, 2021)