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10 July 2020

Investment by specified persons in infrastructure sub-sectors to qualify for income-tax benefits

The Central Board of Direct Taxes (CBDT) vide notification dated 6 July 2020 has specified the infrastructure sub-sectors from which investment income (i.e. dividend, interest and long-term capital gains) earned by specified persons would be exempt, subject to satisfaction of conditions

Background:

- The government, vide Finance Act, 2020, had introduced a new section 10(23FE) under the Income-tax Act, 1961 (ITA), to provide income-tax exemption to specified persons from dividend, interest and long-term capital gains income, which would be earned from certain investments (made in India during the period 1 April 2020 to 31 March 2024), subject to satisfaction of conditions.
 - The specified persons who have been provided exemption are:
 - A wholly owned subsidiary of the Abu Dhabi Investment Authority*;
 - A foreign sovereign wealth fund*; and
 - A foreign pension fund*.
- *Satisfying the conditions mentioned in section 10(23FE) of the ITA.
- The investments by such specified persons should be in India in the form of debt or share capital or unit of:
 - An entity carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining specified infrastructure facility (such as road, highway project, water supply project, water treatment system, solid waste management system, irrigation project, port, airport, inland waterway, etc.) or an entity carrying on a business as specified by the government;
 - Category-I or Category-II Alternative Investment Fund¹ (AIF) 100% investment in the above mentioned entity / entities; and
 - Infrastructure Investment Trust².

¹ A Category-I or Category-II Alternative Investment Fund 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 (15 of 1992)

² Infrastructure Investment Trust registered under the Securities and Exchange Board of India Infrastructure Investment Trusts) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).

Specified Business:

- The Central Board of Direct Taxes (CBDT) vide notification dated 6 July 2020³ has now expanded the coverage of the eligible investment sectors. The notification specifies infrastructure sub-sector (mentioned in the updated harmonised master list of notification dated 13 August 2018⁴) as the eligible investee entity business for the purposes of section 10(23FE) of the ITA.
- Accordingly, now investment by the specified persons in:
 - Indian entities engaged in the specified infrastructure sub-sector; and
 - Category-I or Category-II AIF (which has 100% investment in an entity / entities engaged in infrastructure business as above or in specified infrastructure sub-sector)should be eligible for the purposes of exemption under section 10(23FE) of the ITA, subject to satisfaction of conditions.
- The following infrastructure sub-sectors have been mentioned in the notification dated 13 August 2018⁵:

Sr. No.	Category	Infrastructure sub-sectors
1.	Transport and logistics	<ul style="list-style-type: none">• Capital dredging• Shipyards⁶• Railway track including electrical & signalling system, tunnels, viaducts, bridges• Railway rolling stock along with workshop and associated maintenance facilities• Railway terminal infrastructure including stations and adjoining commercial infrastructure• Urban public transport (except rolling stock in case of urban road transport)• Logistics infrastructure⁷• Bulk material transportation pipelines⁸
2.	Energy	<ul style="list-style-type: none">• Electricity generation

³ <http://egazette.nic.in/WriteReadData/2020/220389.pdf>

⁴ <http://egazette.nic.in/WriteReadData/2018/188713.pdf>

⁵ <http://egazette.nic.in/WriteReadData/2018/188713.pdf>

⁶ Shipyard is defined as a floating or land-based facility with the essential features of waterfront, turning basin, berthing and docking facility, slipways and / or ship lifts, and which is self-sufficient for carrying on shipbuilding / repair / breaking activities.

⁷ Logistics infrastructure means and includes multimodal logistics park comprising inland container depot (ICD) with minimum investment of INR 500 million and minimum area of 10 acre, cold chain facility with minimum investment of INR 150 million and minimum area of 20,000 square feet, and / or warehousing facility with investment of minimum INR 250 million and minimum area of 1 lakh square feet.

⁸ Includes oil, gas, slurry, water supply and iron ore pipelines.

Sr. No.	Category	Infrastructure sub-sectors
		<ul style="list-style-type: none"> • Electricity transmission • Electricity distribution • Oil / gas / liquefied natural gas (LNG) storage facility⁹
3.	Water and sanitation	<ul style="list-style-type: none"> • Sewage collection, treatment and disposal system • Storm water drainage system
4.	Communication	<ul style="list-style-type: none"> • Telecommunication (fixed network)¹⁰ • Telecommunication towers • Telecommunication and telecom services
5.	Social and commercial infrastructure	<ul style="list-style-type: none"> • Education institutions (capital stock) • Sports infrastructure¹¹ • Hospitals (capital stock)¹² • Tourism infrastructure viz: <ul style="list-style-type: none"> – Three-star or higher category classified hotels located outside cities with population of more than 1 million – Ropeways and cable cars • Common infrastructure for industrial parks and other parks with industrial activity such as food parks, textile parks, special economic zones, tourism facilities and agriculture markets • Post-harvest storage infrastructure for agriculture and horticultural produce including cold storage • Terminal markets • Soil-testing laboratories • Cold chain¹³ • Affordable housing¹⁴

⁹ Includes strategic storage of crude oil.

¹⁰ Includes optic fibre / wire / cable networks which provide broadband / internet.

¹¹ Includes the provision of sports stadia and infrastructure for academies for training / research in sports and sports-related activities.

¹² Includes medical colleges, para medical training institutes and diagnostics centres.

¹³ Includes cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat.

¹⁴ Affordable Housing is defined as a housing project using at least 50% of the floor area ratio (FAR) / floor space index (FSI) for dwelling units with carpet area of not more than 60 square meters. Carpet area for this purposes shall have the same meaning as assigned to it in section 2(k) of the Real Estate (Regulation and Development) Act, 2016.

- It has been clarified that the infrastructure sub-sectors will not include the infrastructure facilities already covered under section 10(23FE) of the ITA. Consequently, the sub-sectors listed above, other than those already covered under the existing provisions, will qualify as eligible business.
- The notification is effective from 1 April 2021 and will apply to Assessment Year 2021-22 corresponding to the Financial Year 2020-21 and subsequent years.

Comments:

- The expansion of income-tax benefit to investment in specified infrastructure sub-sectors will support the investment in India from specified persons.



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