

Tax Alert | Delivering Clarity

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Procedure, conditions for notification of foreign pension funds for income-tax exemption

The Central Board of Direct Taxes has issued a notification dated 17 August 2020 to specify the additional eligibility conditions and the procedure to notify a foreign pension fund for income-tax exemption

Background:

- The government, vide the Finance Act, 2020, introduced a new section 10(23FE) under the Income-tax Act, 1961 (ITA), to provide, inter alia, notified pension funds, an exemption from dividend, interest and long term capital gains income earned from investments made in specified infrastructure business during the period 1 April 2020 to 31 March 2024, subject to satisfaction of conditions.
- The provision covers a pension fund which:
 - 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);
 - is not liable to tax in such foreign country;
 - satisfies prescribed conditions; and
 - is notified by the government in an official gazette.
- The Central Board of Direct Taxes (CBDT) in order to specify the additional conditions and the process for notification of the pension fund for exemption under section 10(23FE) of the ITA, has issued notification 67¹ dated 17 August 2020 (Notification).

Highlights of the notification:

- The desirous pension fund will have to satisfy the following additional conditions introduced under Rule 2DB of the Income Tax Rules, 1962 (Rules). To claim exemption under section 10(23FE) of the ITA, the PF should :
 - Be regulated 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);
 - Be responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement benefits (i.e. social security, employment, or any similar compensation) to the participants or beneficiaries of such funds or plans;

¹ https://www.incometaxindia.gov.in/communications/notification/notification_67_2020.pdf

- Use the earnings and assets only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred above. No portion of the earnings or assets of the pension fund should inure any benefit to any other private person;
 - Not undertake any commercial activity within or outside India;
 - File a quarterly a statement (to be submitted electronically in Form 10 BBB) within one month from the end of the respective quarter in respect of each investment made during the quarter;
 - File Indian income-tax return by the specified due date along with a certificate (in Form 10BBC) of compliance with the provisions of section 10(23FE) of the ITA during the financial year, from an 'accountant'².
- The pension fund, to get notified under section 10(23FE) of the ITA, shall make an application in Form 10BBA with the CBDT.
 - In addition to the basic details such as name, address, country of residence, tax identification number, Permanent Account Number, confirmations are required to be provided by the pension fund in Form 10BBA to the effect that each of the required conditions is complied with.

The constitution documents of the pension fund and other documents in support of the information / confirmations need to be submitted along with the Form 10BBA.

Comments:

- This circular provides additional eligibility conditions and the procedure for a pension fund to get itself notified in order to be eligible for investment exemption under section 10(23EF) of ITA.
- Similar to the pension fund, the CBDT had specified the procedure to notify a sovereign wealth fund under section 10(23FE) of the ITA vide circular 15 of 2020 dated 22 July 2020³.

² 'Accountant' means a chartered accountant as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, barring few exceptions as specified under Explanation to section 288(2) of the ITA.

³ Refer our previous alert

<https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/Global%20Business%20Tax%20Alert/in-tax-gbt-alert-procedure-for-notification-of-sovereign-wealth-funds-for-income-tax-exemption-noexp.pdf>



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