

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 25th January, 2022

(INCOME-TAX)

S.O. 345(E).—In exercise of powers conferred by sub-clause (vi) of clause (b) of the *Explanation* to clause (23FE) of section 10 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) the Central Government hereby makes the following amendment in the notification of the Government of India, Ministry of Finance (Department of Revenue), Number 89 of 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), *vide* number S.O. 3952(E), dated the 2nd November, 2020, namely:-

In the said notification,-

(I) for clauses (vii), (viii), (ix), (x), (xi) and (xii), the following clauses shall be substituted, namely:-

“(vii) the earnings of the assessee shall be credited either to the account of the Government of Abu Dhabi or to any other account designated by that Government so that no portion of the earnings inures to any private person barring any payment made to creditors or depositors for loan or borrowing [as defined in sub-clause (a) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act] taken for the purposes other than for making investment in India;

(viii) the assessee shall not have any loans or borrowings [as defined in sub-clause(a) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act] , directly or indirectly, for the purposes of making investment in India;

(ix) the asset of the assessee shall vest in the Government of Abu Dhabi upon dissolution barring any payment made to creditors or depositors for loan or borrowing taken for the purposes other than for making investment in India;

(x) the assessee shall not participate in the day to day operations of investee (as defined in clause (i) of Explanation 2 clause (23FE) of section 10 of the Act) 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.”;

(II) for the Annexure, the following Annexure shall be substituted, namely:-

“ANNEXURE

Audit report to be filed by the Sovereign Wealth Fund claiming exemption under clause (23FE) of section 10 of the Income-tax Act, 1961

Part I

*I/we report that the statutory audit of M/s..... (Name and address of the assessee with Permanent Account Number or Aadhaar Number), the particulars of which are given in Part II was conducted by *me/us/M/s.....as per the requirement under the Notification No...../.....dated.....published in the Official Gazette on.....

2. In *my/our opinion and to the best of *my/our information and according to examination of books of account including other relevant documents and explanations given to *me/us, it is certified that the assessee *has/has not complied with the conditions as laid down under clause (23FE) of section 10 of the Income-tax Act, 1961 and those provided in the said notification specifying the assessee being the Sovereign Wealth Fund as specified person for the purposes of claiming exemption under the said clause(23FE).

2.1 *The conditions not complied with by the assessee are as under:-

(a).....

(b).....

3. In *my/our opinion and to the best of *my/our information and according to examination of books of account including other relevant documents and explanations given to *me/us, the particulars given in the Part II are true and correct subject to the following observations/qualifications, if any, namely:-

(a).....

(b).....

Part II

1. Name of the Assessee :
2. PAN/AADHAAR :
3. Previous Year :
4. Total Income of the Assessee during the previous year
5. Total amount of income eligible for exemption under clause (23FE) of section 10 of the Income-tax Act, 1961 (as per details in column 11 of table at item no. 6):
6. The opening balance (i.e. the closing balance as on the last date of the preceding financial year) of the investment made which is eligible for exemption under clause (23FE) of section 10 is _____(in rupees) and details of the investment by the Sovereign Wealth Fund (SWF) during the period are as under:

Sl. No.	Date of investment	Amount of investment	Nature of investment (Instruction 4)	Nature of income (instruction 5)	Amount of income on investment during the year	Details of the entity in which Investment made				Amount of income which is eligible for exemption under clause (23FE) of section 10 (Attach calculation sheet as per relevant rules)
						Nature (instruction 6)	Name	PAN	In case if nature of entity code is 3/4/5, whether the entity has made minimum investment of 50 or 75 or 90 percent as required in item (c) or (d) or (e) of sub-clause (iii) of clause (23FE) of section 10 (Attach calculation sheet as per relevant rules)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.										
2.										
Total										

7. *the SWF has not sold any of the investments made for the purposes of exemption under clause (23FE) of section 10 of the Income-tax Act, 1961 before the expiry of three years from the date on which the investment was made in respect of the said exemption/the SWF has sold certain investments made for the purposes of exemption under clause (23FE) of section 10 of the Income-tax Act, 1961 before the expiry of three years from the date on which the investment was made in respect of the said exemption, the details of which are as under:

Sl. No.	Date of investment	Nature of investment (Instruction 4)	Nature of income (instruction 5)	Amount of income on investment during the year	Details of the entity in which Investment made			Date of sale
					Nature of entity (instruction 6)	Name	PAN	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.								
2.								
Total								

8. The SWF satisfies all the conditions required for the purposes of exemption under clause (23FE) of section 10 of the Income-tax Act, 1961, that is, -

a)	Whether the government of foreign country wholly owns and controls the SWF, directly or indirectly	Yes/No
b)	Mention the name of the government of foreign country which owns and controls the SWF, directly or indirectly	
c)	Whether the government of foreign country owns and controls the SWF, directly or indirectly	Directly/ Indirectly
d)	In case if government of foreign country owns and controls the SWF, indirectly give details of the chain of ownership	
e)	Name of the law under which the SWF is set up and regulated	

f)	Whether 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 barring any payment made to creditors or depositors for loan taken or borrowing for the purposes other than for making investment in India.	Yes/No
g)	Whether the asset of the said fund vests in the Government of such foreign country upon dissolution barring any payment made to creditors or depositors for loan taken or borrowing for the purposes other than for making investment in India.	Yes/No
h)	If answer to (f) or (g) is No, then provide the following details: (i) Name of such private person (ii) Amount of benefit provided during the year	
i)	Whether it participates in the day to day operations of any of the investee, as defined in Explanation 3 to clause (23FE) of section 10, barring any monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director	Yes/No
j)	If answer to (i) is yes, then provide the following details: (i) Name of such investee (ii) PAN of the investee (iii) Amount of investment in such investee at the end of the year	
k)	Whether it has complied with the requirement of intimation of the details of investment made by it in India in Form No. II issued vide circular No 15/2020 dated 22.07.2020	Yes/No
l)	Whether it has loans or borrowings, as defined in <i>Explanation 2</i> to clause (23FE) of section 10, directly or indirectly, for the purposes of making investment in India	Yes/No
m)	If answer to (l) is yes, then provide the following details: (i) Name of the person from whom such loan or borrowing has been taken (ii) Amount of loan or borrowing at the beginning of the year (iii) Amount of loan or borrowing received during the year (iv) Amount of loan or borrowing repaid during the year (v) Amount of loan or borrowing at the end of the year	
n)	Whether separate segmented account is maintained for income and investment in respect of investment which qualifies for exemption under clause (23FE) of section 10 of the Act	

Place:.....

Date:.....

(Signature and stamp/Seal of the signatory)

Name of the signatory

Full address

Membership No.....

UDIN.....

Instructions: 1. *Delete whichever is not applicable.

2. This certificate is to be given by an accountant as defined in the *Explanation* below sub-section (2) of section 288 of the Income-tax Act, 1961.

3. An “investee” shall have the same meaning as in clauses (i) of *Explanation 2* to clause (23FE) of section 10 of the Act and “Loan and borrowing” shall have the same meaning as in sub-clause(b) of clause (ii) of *Explanation 2* to clause (23FE) of section 10 of the Act.

4. One of the following codes is to be selected:

Nature of Investment	Code
Debt	1
Equity	2
Preference Shares	3
Others (Please specify)	4

5. One of the following codes is to be selected:

Nature of Income	Code
Interest	1
Dividend	2
Capital Gains	3
Others	4

6. One of the following codes is to be selected:

Nature of entity in which investment is made	Code
Business Trust referred to in item (a) of sub-clause (iii) of clause (23FE) of section 10	1
Company or enterprise or entity referred to in item (b) of sub-clause (iii) of clause (23FE) of section 10	2
Alternative Investment Fund referred to in item (c) of sub-clause (iii) of clause (23FE) of section 10	3
Domestic company referred to in item (d) of sub-clause (iii) of clause (23FE) of section 10	4
Infrastructure Finance Company/Infrastructure Debt Fund-NBFC referred to in item (e) of sub-clause (iii) of clause (23FE) of section 10	5

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[Notification No. 11/2022/F. No. 370133/16/2020-TPL]

NEHA SAHAY, Under Secy.

Note : The Principal notification was published in the Gazette of India, Extraordinary, Part II Section 3 sub-section (ii) dated the 2nd November, 2020 *vide* number S.O.3952 (E) dated 2nd November, 2020.