

CBDT relaxes eligibility conditions for certain offshore funds to avail the safe harbour from taxability in India

Section 9A of the Income Tax Act, 1961 (“the Act”) states that an offshore investment fund carrying out fund management activity through a fund manager based in India:

- would not be considered to be resident of India, and
- would not be considered to have a business connection in India (“business connection” is a term specified under the Act, having similar connotation to “permanent establishment”),

if such offshore investment fund and the fund manager satisfies certain conditions prescribed under section 9A of the Act and the rules made there under.

Some of the conditions, which an offshore investment fund was required to fulfil to avail the safe harbour under section 9A, were as under:

- i. the fund was required to have a minimum of twenty-five members who were, directly or indirectly, not connected persons;
- ii. any member of the fund along with connected persons could not have any participation interest, directly or indirectly, in the fund exceeding ten per cent;
- iii. the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, was required to be less than fifty per cent.

Vide Notification No. 41/2020 dated 30th June 2020, the Central Board of Direct Taxes (CBDT) has notified that the aforesaid three conditions shall not be applicable in case of an investment fund set up by a Category-I foreign portfolio investor (FPI) registered under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019. This notification has been given a retrospective effect and it shall be deemed to have come into force from 23rd September, 2019.

Accordingly, the offshore investment funds set up by Category-I FPIs shall be able to avail the safe harbour under section 9A without being required to fulfill the aforesaid conditions regarding membership and members’ participation interest.

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