

¹Certain activities not to constitute business connection in India.

9A. (1) Notwithstanding anything contained in sub-section (1) of section 9 and subject to the provisions of this section, in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund.

(2) Notwithstanding anything contained in section 6, an eligible investment fund shall not be said to be resident in India for the purpose of that section merely because the eligible fund manager, undertaking fund management activities on its behalf, is situated in India.

(3) The eligible investment fund referred to in sub-section (1), means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils the following conditions, namely:—

- (a) the fund is not a person resident in India;
- (b) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into;
- (c) the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent. of the corpus of the fund;
- (d) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;
- (e) the fund has a minimum of twenty-five members who are, directly or indirectly, not connected persons;
- (f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent.;
- (g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent.;
- (h) the fund shall not invest more than twenty per cent. of its corpus in any entity;
- (i) the fund shall not make any investment in its associate entity;
- (j) the monthly average of the corpus of the fund shall not be less than one hundred crore rupees:
Provided that if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than one hundred crore rupees at the end of such previous year;
- (k) the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;
- (l) the fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;
- (m) the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity:

¹ Inserted by Finance Act, 2015 with effect from April 1, 2016

Provided that the conditions specified in clauses (e), (f) and (g) shall not apply in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other fund as the Central Government may subject to conditions, if any, by notification in the Official Gazette, specify in this behalf.

(4) The eligible fund manager, in respect of an eligible investment fund, means any person who is engaged in the activity of fund management and fulfils the following conditions, namely:—

- (a) the person is not an employee of the eligible investment fund or a connected person of the fund;
- (b) the person is registered as a fund manager or an investment advisor in accordance with the specified regulations;
- (c) the person is acting in the ordinary course of his business as a fund manager;
- (d) the person along with his connected persons shall not be entitled, directly or indirectly, to more than twenty per cent. of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through the fund manager.

(5) Every eligible investment fund shall, in respect of its activities in a financial year, furnish within ninety days from the end of the financial year, a statement in the prescribed form, to the prescribed income-tax authority containing information relating to the fulfilment of the conditions specified in this section and also provide such other relevant information or documents as may be prescribed.

(6) Nothing contained in this section shall apply to exclude any income from the total income of the eligible investment fund, which would have been so included irrespective of whether the activity of the eligible fund manager constituted the business connection in India of such fund or not.

(7) Nothing contained in this section shall have any effect on the scope of total income or determination of total income in the case of the eligible fund manager.

(8) The provisions of this section shall be applied in accordance with such guidelines and in such manner as the Board may prescribe in this behalf.

(9) For the purposes of this section,—

- (a) “associate” means an entity in which a director or a trustee or a partner or a member or a fund manager of the investment fund or a director or a trustee or a partner or a member of the fund manager of such fund, holds, either individually or collectively, share or interest, being more than fifteen per cent. of its share capital or interest, as the case may be;
- (b) “connected person” shall have the meaning assigned to it in clause (4) of section 102;
- (c) “corpus” means the total amount of funds raised for the purpose of investment by the eligible investment fund as on a particular date;
- (d) “entity” means any entity in which an eligible investment fund makes an investment;

(e) “specified regulations” means the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 or the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, or such other regulations made under the Securities and Exchange Board of India Act, 1992, which may be notified by the Central Government under this clause.’