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Notification No. 16/2012,

Dated : 30th April, 2012

In exercise of the powers conferred by clause (47) of section 10 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the **Income-tax (5th Amendment) Rules, 2012.**

(2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962, after rule 2E, the following rule shall be inserted, namely:-

“Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption under clause (47) of section 10.

2F. (1) The Infrastructure Debt Fund shall be set up as a Non-Banking Financial Company conforming to and satisfying the conditions provided by the Reserve Bank of India in the Infrastructure Development Fund - Non Banking Financial Companies (Reserve Bank) Directions, 2011, vide notification No. DNBS.233/CGM (US)-2011, dated the 21st November, 2011.

(2) The funds of Infrastructure Debt Fund shall be invested only in the Public Private Partnership Infrastructure Projects and Post Commencement Operation Date Infrastructure Projects which have completed at least one year of satisfactory commercial operation and such Infrastructure Debt Fund is a party to tripartite agreement with the concessionaire and the project authority for ensuring compulsory buy out and termination payment.

(3) The Infrastructure Debt Fund shall issue rupee denominated bonds or foreign currency bonds in accordance with the directions of Reserve Bank of India (RBI) and the relevant regulations under the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000, as amended from time to time.

(4) The terms and conditions of any bond issued by the Infrastructure Debt Fund shall be in accordance with the said directions of the Reserve Bank of India and the regulations referred to in sub-rule (3).

(5) In case of an investor in the aforesaid bond being a non-resident, the original or initial maturity of bond, at time of first investment by such non-resident investor, shall not be less than a period of five years.

Provided that the investment made by a non-resident investor in such bonds shall be subject to a lock in period of not less than three years, but the non-resident investor may transfer the bond to another non-resident investor within such lock in period.

(6) The investment made by the Infrastructure Debt Fund in an individual project or project belonging to a group at any time, shall not exceed twenty percent, of the corpus of the fund.

(7) No investment shall be made by the Infrastructure Debt Fund in any project where its sponsor or the associate enterprise or the group of such sponsor has a substantial interest.

(8) The Infrastructure Debt Fund shall file its return of income as required by sub-section (4C) of section 139 on or before the due date.

(9) In case the Infrastructure Debt Fund does not fulfill any of the conditions provided in this rule or directions of the Reserve Bank of India, all provisions of the Act shall apply as if it is not an Infrastructure Debt Fund referred to in clause (47) of section 10 of the Act.

Explanation.- For the purpose of this rule,-

(i) “associate enterprise” shall have the same meaning as assigned to it in section 92A of the Act;

(ii) “concern” shall have the same meaning as in clause (a) of Explanation 3 of sub-section (22) of section 2 of the Act;

(iii) “concessionaire”, “tripartite agreement” and “project authority” respectively shall have the same meaning as assigned to them in the Infrastructure Debt Fund-Non-Banking Financial Company (Reserve Bank) Directions, 2011;

(iv) “corpus” means the total funds of the Infrastructure Debt Fund raised for the purpose of investment;

(v) “group” means a group as defined in clause (mm) of section 2 of Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

(vi) a person shall be deemed to have substantial interest in-

(a) a company if he is the beneficial owner (including beneficial ownership held by one or more of his relatives, in case the person is an individual) of shares (not being the shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10 percent of the voting power; or

(b) a concern other than a company if he is, at any time during the previous year, beneficially entitled to not less than 20 percent of the income of such concern.

(vii) “relative”, in relation to an individual, means—

- (a) spouse of the individual;
- (b) brother or sister of the individual;
- (c) brother or sister of the spouse of the individual;
- (d) brother or sister of either of the parents of the individual;
- (e) any lineal ascendant or descendant of the individual;
- (f) any lineal ascendant or descendant of the spouse of the individual;
- (g) spouse of the persons referred to in sub-clauses (b) to (f); or
- (h) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual;

(viii) “sponsor” means a non-banking financial company, or a bank which is allowed to act as sponsor of Infrastructure Debt Fund in accordance with the directions of Reserve Bank of India.”

(Vivek Anand Ojha)
Under Secretary to the Government of India

Note:- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number S.O.969, dated the 26th March, 1962 and was last amended by Income-tax (4th Amendment) Rules, 2012 vide Notification S.O.No.694(E) dated 30.3.2012.