Industry seeks simpler 'safe harbour' norms in Budget 2023

ASHLEY COUNTINHO
MUMBAI, DECEMBER 6

INDUSTRY PLAYERS are hopeful that some of the onerous conditions prescribed under section 9A of the income tax Act will be simplified in the upcoming Union Budget.

A 'safe harbour' regime for onshore management of offshore funds, by way of section 9A, was introduced in the I-T Act in 2015 to encourage the fund management activities of offshore funds from India.

According to these norms, the presence of a fund manager or an investment adviser in India would not constitute business connection, permanent establishment or a tax residence for the offshore funds in India, subject to fulfilment of 17 prescribed conditions. "While conditions have been designed to qualify only funds which have a broad investor base and prevent round-tripping and money laundering, they have become very straight-jacketed and at the same time open to varied legal interpretation," Vishwas Panjiar, partner, Nangia Andersen, said.

One of the conditions states that the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India should not exceed 5% of the corpus of the fund. It is difficult to monitor indirect participation of persons resident in India, especially on a continuous basis. FE

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RUN-UP TO THE BUDGET

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One of the conditions states that the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India should not exceed 5% of the corpus of the fund. It is difficult to monitor indirect participation of persons resident in India, especially on a continuous basis. Given that KYC requirements under the Sebi FPI regulations 2019 have a threshold for identification of beneficial owners, there is a relative disadvantage on marketability of FPIs availing the safe harbour regime vis-a-vis those not availing it.

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