Investment in Indian infrastructure assets

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Investment in India Infrastructure Assets

Foreign investors can directly invest in infrastructure companies through the Foreign Direct Investment, Foreign Institutional Investor or Foreign Venture Capital Investor (‘FVCI’) route or participate through domestic mutual funds and venture capital funds (‘DVCF’).

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A pooling structure worth considering is a Mauritius FVCI, which in turn invests in a DVCF, both of which are registered with the Securities and Exchange Board of India. The DVCF will invest in a venture capital undertaking ('VCU'), i.e. a domestic company whose shares are not listed on a recognised stock exchange in India and which is carrying on business as specified in the Income Tax Act 1961.

The Mauritius route is most advantageous due to the favourable India/Mauritius Tax Treaty, which results in a capital gains tax exemption so long as the Mauritius company does not have a "permanent establishment" in India. Dividends paid by an Indian company are tax exempt for the shareholder though the company is subject to dividend distribution tax of approximately 17%.

Depending on the nature of investments and whether the DVCF is a determinate trust, the DVCF will either receive pass-through benefits, i.e. any income from investments in a VCU would be exempt from Indian tax and taxable in the hands of the ultimate investors as if they had invested directly in the VCU, or the trustee of the DVCF will be taxed as a representative of the ultimate investors, or the trust will be a taxable person in itself.

In addition, eligible VCUs engaged in the business of infrastructure development would be exempt from Indian tax on income for any ten consecutive years out of fifteen, beginning from the year in which it develops/operates any infrastructure facility. However, the income of the VCU would be subject to Minimum Alternate Tax at 11.33%.

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