



**d h r u v a**  
advisors llp

**Compilation of “Frequently asked Questions” (‘FAQ’s) on the income-tax treatment for distributions by the Embassy Office Parks Real Estate Investment Trust (‘EMBASSY REIT ’) in the hands of the Unitholders under the Indian Income-tax Act, 1961 (‘the Act’) read with the Income -tax Rules, 1962 (‘the Rules’) [collectively referred to as ‘Indian income-tax law ’]**

**Applicable for Financial Year 2020-2021 i.e. Assessment Year 2021-2022.**

\*\*\*\*\*

BY READING THIS FAQ THE RECIPIENT ACKNOWLEDGES THAT THE RECIPIENT WILL BE SOLELY RESPONSIBLE FOR ITS OWN ASSESSMENT OF THE TAX POSITION OF THE UNITS HELD IN THE EMBASSY REIT. THIS FAQ MAY NOT BE ALL INCLUSIVE AND MAY NOT CONTAIN ALL OF THE INFORMATION THAT THE RECIPIENT CONSIDERS MATERIAL. THIS DOCUMENT IS TO BE READ ALONG WITH ALL DISCLAIMERS FORMING PART OF THE ATTACHED DOCUMENT.

\*\*\*\*\*

**1. What will be the nature of distributions by the EMBASSY REIT?**

Distributions to the Unitholders of the EMBASSY REIT can be characterized as, (i) dividend, or (ii) interest, or (iii) amortization of debt received from the Special Purpose Vehicles (‘SPVs’), or (iv) a combination of the above. From a tax perspective the distribution to the Unitholder retains the same character and proportion as the underlying income stream received by the EMBASSY REIT and is taxable (as applicable) in the hands of the Unitholders basis their residential status.

**2. There is a new beneficial tax regime in place where SPV’s have an option to opt for a reduced tax rate [under section 115BAA of the Act]. Have the SPV’s opted for the lower tax regime under the Income-tax Act, 1961 (‘the Act’)?**

**The SPV’s have decided not to opt** for the lower tax regime under section 115BAA of the Act.

**3. What are the tax implications of the distributions in the hands of a non-resident Unitholder?**

- i. Interest income - Taxable in the hands of the Unitholders at the applicable rates.
- ii. Dividend income where the SPV has not opted for the lower tax regime [under section 115BAA of the Act] – Exempt in the hands of the Unitholders.

It will be relevant to note that all EMBASSY REIT SPV’s have not opted for the beneficial tax regime and hence all dividends received by the Unitholders from the EMBASSY REIT will be exempt from tax in the hands of the Unitholders.

- iii. Dividend income where the SPV has opted for the lower tax regime [under section 115BAA of the Act] - Taxable in the hands of the Unitholders at the applicable rates [not applicable for the EMBASSY REIT Unitholders].
- iv. Rental income – Taxable in the hands of the Unitholders at the applicable rates.
- v. Balance distributions would be exempt from tax.

Further, a non-resident shall be entitled to claim benefits, if any, under the applicable Double Tax Avoidance Agreement (‘DTAA’) that India may have entered into with its country of residence, subject to fulfilment of necessary conditions as applicable.

**4. What are the tax implications of the distributions in the hands of a resident Unitholder?**

- i. At tax rates applicable to the resident, to the extent that the distribution takes the character of either interest or rental income.
- ii. Dividend income where the SPV has not opted for the lower tax regime [under section 115BAA of the Act] – Exempt in the hands of the Unitholders.  
  
It will be relevant to note that all EMBASSY REIT SPV's have not opted for the beneficial tax regime and hence all dividends received by the Unitholders from the EMBASSY REIT will be exempt from tax in the hands of the Unitholders.
- iii. Dividend income where the SPV has opted for the lower tax regime [under section 115BAA of the Act] - Taxable in the hands of the Unitholders [not applicable for the EMBASSY REIT Unitholders].
- iv. Balance distributions would be exempt from tax.

**5. What will be the taxes deductible for different categories of investors in case the distribution is in the form of interest as envisaged under section 115UA of the Act?**

Tax will be deducted under the provisions of section 194LBA of Indian income-tax law by the EMBASSY REIT on distribution of interest income to its Unitholders. The category-wise applicable rate of tax deduction is summarised in **Annexure 1**.

**6. What will be the taxes deductible for different categories of investors in case the distribution is in the form of dividend as envisaged under section 115UA of the Act?**

No tax is deductible on dividends paid by the EMBASSY REIT to the Unitholders as per the provisions of section 194LBA of the Act [given the fact that the SPV's of the EMBASSY REIT have not opted for the beneficial tax regime].

**7. What will be the taxes deductible for different categories of investors in case the distribution is in the form of amortization of debt received by the EMBASSY REIT from the Special Purpose Vehicles?**

No tax is deductible on amortisation of debt paid by the EMBASSY REIT to the Unitholders.

**8. What is amortization of debt received from the SPVs? In case the distribution is in the form of amortization of debt received from SPVs by the EMBASSY REIT, whether such amount received by the investor would need to be reduced from the cost of acquisition of the units in the hands of the investor?**

Proceeds from amortisation of debt received from SPV refers to repayment of loans by SPVs to EMBASSY REIT.

Section 48 of the Act reads as follows:

*"The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—*

- (i) expenditure incurred wholly and exclusively in connection with such transfer;*
- (ii) the cost of acquisition of the asset and the cost of any improvement thereto."*

Section 48 of the Act does not provide for any adjustment on account of amount received from the business trust as amortization of loan from SPV. Therefore, no deduction from the cost of acquisition of the units held by the investor is warranted.

**9. What is taxability on sale of units of the EMBASSY REIT?**

The units of the EMBASSY REIT shall be regarded as long-term capital assets if the same are held for a period of more than 3 years. If held for a period of less than 3 years, then such units will be regarded as short-term capital assets.

In case the EMBASSY REIT units are held as a capital asset by the Unitholder, gains arising on sale of the EMBASSY REIT units will be liable to tax as under:

- i. Long-term capital gains exceeding INR 1 lakh on sale of units held for more than 36 months – 10% (plus applicable surcharge and cess) as per section 112A of the Act; and
- ii. Short-term capital gains on sale of units held for up to 36 months – 15% (plus applicable surcharge and cess) as per section 111A of the Act.

The above rates of taxes are applicable on the basis that the transfer of EMBASSY REIT units have been subjected to Securities Transaction Tax ('STT'). Additionally, non-resident Unitholders may seek to claim a lower rate of tax on the above income, under an applicable DTAA that India may have entered in to with its country of residence subject to fulfilment of necessary conditions as applicable.

Where the Unitholder is a domestic company, the capital gains earned as above will be subject to Minimum Alternate Tax ('MAT'), under section 115JB of the Act (if applicable). However, MAT paid, if any, by such companies should be available as credit which can be set-off against future income-tax liability of such company for a period of up to 15 years as per section 115JAA of the Act.

In case the units are held as stock in trade by the investor, gains on sale of such units of the EMBASSY REIT by the Unitholder would be taxable as business income. The implications under MAT would be same as above.

**10. When will TDS certificates be issued to the Unitholders?**

The TDS certificates in Form 16A shall be issued to the Unitholders on quarterly basis in accordance with the timelines prescribed under Indian income-tax law. The EMBASSY REIT will issue the TDS certificates based on the following indicative timeline:

Quarter	Actual payment of distribution	Timeline for issue of TDS certificates
April to June	On or before August 31	On or before 15 November
July to September	On or before November 30	On or before 15 February
October to December	On or before February 28/ 29 (as applicable)	On or before 15 June
January to March	On or before May 31	On or before 15 August

**11. How can Unitholder claim the TDS certificate in case not received?**

The TDS certificates are sent to the email id of the Unitholders registered with CDSL/ NSDL. In case not received, email can be sent to the below e-mail address:

[distribution.reit@embassyofficeparks.com](mailto:distribution.reit@embassyofficeparks.com)

<<This space has been intentionally left blank>>

## 12. By when should we furnish the income declaration form for the withholding of taxes?

If a non-resident Unitholder opts to submit an income declaration, the following aspects will need to be kept in mind:

- Generally, only one income declaration needs to be filed for each financial year under consideration. However, if there is any change in the income estimates of the non-resident in the subsequent quarters, the non-resident may re-submit a revised income declaration within the timelines prescribed below;
- In case a revised income declaration is given by a Unitholder, the revised income declaration would replace the former declaration and taxes would be withheld accordingly;
- Any short deduction arising on account of change in income estimates (by virtue of the revised declaration) would be made good in the subsequent quarter. However, any excess deduction will not be refunded, and the Unitholder will have to file a return of income and claim a refund for the same; and
- Any such declaration in respect of income and withholding implications arising therefrom is at the sole responsibility and risk of the said Unitholder.

The income declaration can be furnished basis the following time-lines:

For distribution of quarter	Timeline for submitting income-declarations
April to June	On or before 31 July
July to September	On or before 31 October
October to December	On or before 31 January
January to March	On or before 30 April

The duly filled in income declaration form must be sent to the below e-mail address: [distribution.reit@embassyofficeparks.com](mailto:distribution.reit@embassyofficeparks.com)

## 13. How does the Union Budget 2021-22 impact the Unitholders?

Please note that the direct tax proposals announced in the Union Budget 2021-22 do not have any impact on the tax implications of the distributions in the hands of the Unitholders as discussed above.

Date of Publication: February 15, 2021

For Investor Relations: [distribution.reit@embassyofficeparks.com](mailto:distribution.reit@embassyofficeparks.com)

<<This space has been intentionally left blank>>

**Annexure 1**

**Tax withholding rates on distributions made by the EMBASSY REIT to various Unitholders on income-streams characterized as interest income in terms of section 115UA of Indian income-tax law.**

The withholding tax provisions in case of income distributions by the EMBASSY REIT under section 194LBA are summarised below. These rates will apply for financial year 2020-21 relevant to assessment year 2021-22.

Reliance will be made on the BENPOS data with respect to details of the residential status of the unitholder (i.e. resident or non-resident) and the status of the unitholder (i.e. individual, corporate, Trust etc.).

*Please note that non-resident investors may provide a declaration of income for a particular financial year as per **Annexure 2** attached herewith so that taxes may be withheld appropriately. As you will note from the below table, the rate of surcharge varies depending upon the aggregate income of a non-resident taxpayer. In case no declaration is made, taxes would be deducted at the highest applicable rate.*

Category of Unitholder (Residents)	Withholding tax rate in case of 'Tax Resident'*	
	April 1, 2020 to May 13, 2020	May 14, 2020 to March 31, 2021
Individuals	10%	7.5%
Trust / Association of Persons / Body of individuals	10%	7.5%
Hindu Undivided Family/ Firm / Limited liability partnership	10%	7.5%
Alternate Investment Fund ('AIF') – Category I and II Central Government <i>vide</i> CBDT notification No.51/2015 dated 25th June 2015 has granted TDS exemption on all incomes other than business profits received by Category I and II AIFs.	0%	0%
Alternate Investment Fund – Category III	10%	7.5%
Mutual Fund Under section 10(23D) of the Act, any income earned by a Mutual Fund registered under the SEBI Act, 1992, or a Mutual Fund set up by a public sector bank or a public financial institution, or a Mutual Fund authorized by the Reserve Bank of India would be exempt from income-tax, subject to such conditions as the Central Government may by notification in the Official Gazette specify in this behalf. Further, section 196 provides that tax is not required to be deducted for any sum payable, being in the nature of interest or dividend in respect of any securities owned by mutual funds specified under section 10(23D) of the Act]	0%	0%
Company	10%	7.5%

\*Note: The Honorable Finance Minister of India ('FM') announced a reduction in rates of withholding tax applicable by 25% as a part of the Government's fiscal package to deal with the economic situation arising out of COVID-19 pandemic. The Central Board of Direct Taxes ('CBDT') has issued a Press Release dated May 13, 2020 providing the revised rates of withholding tax (in line with the reduction of rates announced by the FM). These rates apply for the period May 14, 2020 to March 31, 2021. The related legislative amendments were made by introduction of Section 197B *vide* the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

Category of Unitholder (Non-residents)	Where the income or the aggregate of such incomes paid or likely to be paid and subject to tax deduction	Effective tax rate (inclusive of surcharge & education cess) in case of 'Non-Residents'
Individuals, trusts, body of individuals, association of persons etc.	- is below fifty lakh rupees	5.20%
	- exceeds fifty lakh rupees does not exceed one crore rupees	5.72%
	- exceeds one crore rupees but does not exceed two crore rupees	5.98%
	- exceeds two crore rupees but does not exceed five crore rupees	6.50%
	- exceeds five crore rupees	7.124%
Foreign Portfolio Investor ('FPI')/ Foreign Institutional Investor ('FI') set up as a Trust or an Association of Persons	- is below fifty lakh rupees	5.20%
	- exceeds fifty lakh rupees does not exceed one crore rupees	5.72%
	- exceeds one crore rupees but does not exceed two crore rupees	5.98%
	- exceeds two crore rupees but does not exceed five crore rupees	6.50%
	- exceeds five crore rupees	7.124%
Foreign firm/ Foreign limited liability partnership	- is below one crore rupees	5.20%
	- exceeds one crores rupees	5.824%
Foreign company	- is below one crore rupees	5.20%
	- exceeds one crore rupees but does not exceed 10 crores	5.304%
	- exceeds 10 crores	5.46%

<<This space has been intentionally left blank>>

**Annexure 2**
**Income declaration by non-residents for withholding of taxes**

Sl. No	Particulars	Comments
1.	Name of the Assessee	
2.	Permanent Account Number of the Assessee, if available	
3.	Tax Identification Number	
4.	Status (Corporate, Trust, individual etc.)	
5.	Country of residence for FY 2020-21	
6.	Financial Year ('FY') for which the declaration is being made	2020-21
7.	Whether this is the first declaration being made for the financial year in question (please provide Yes/No answer only)	
8.	Residential Status for FY 2020-21	
9.	Address in respect of country of residence	
10.	E-Mail Address	
11.	Phone Number	
12.	Estimated total income for the FY 2020-21 in Indian Rupees	
13.	Copy of the Tax Residency Certificate	

---

 Signature of the Declarant

---

 Designation (if applicable)

**Declaration/ Verification**

I/We.....do hereby declare that to the best of my/our knowledge and belief what is stated above is correct, complete and is truly stated.

I/ We authorize you to withhold taxes at the applicable rates based on the income declaration provided.

I/ We acknowledge that in case taxes are short deduction on account of this declaration, I/ We would need to pay differential taxes along with appropriate interest to the credit of the Central Government and the EMBASSY REIT would not be responsible for any such additional tax, interest or consequential penalties (as applicable).

I/ We acknowledge that in case any excess taxes are deducted based on this declaration, taxes withheld and paid to the credit of the Central Government will not be refunded or adjusted by the EMBASSY REIT.

I/ We acknowledge that any change to above declaration within a particular financial year shall be intimated immediately to EMBASSY REIT.

Place: .....

\_\_\_\_\_  
Signature of the Declarant

Date: .....

\_\_\_\_\_  
Designation (if applicable)

*<<This space has been intentionally left blank>>*

## Disclaimers

- This document has been prepared by Dhruva Advisors LLP (the 'Firm') in its capacity as the tax advisors of the EMBASSY REIT for general information purposes only, without regard to the specific objectives, financial situation or requirements of any particular person. These FAQ's may not be copied, published, distributed or transmitted, in whole or in part, for any purpose, and should not be construed as legal, tax, investment or other advice.
- The information provided in the FAQ sets out the tax aspects for the Unitholders in a summary manner only and is not a complete analysis or listing of all potential tax consequences of the purchase, ownership and disposal of units under the Indian income-tax law currently prevalent in India. It is not exhaustive or comprehensive and does not and should not be deemed to constitute legal, financial or tax advice and we request investors to consult their own legal, financial or tax advisors. For any further tax related questions, an e-mail can be sent to the following e-mail address [embassyreitax@dhruvaadvisors.com](mailto:embassyreitax@dhruvaadvisors.com).
- In view of the individual nature of tax consequences each investor is advised to consult his/her own tax advisor with respect to specific tax consequences. The above addresses aspects only from an Indian income-tax law perspective and we have relied upon the provisions of the Income-tax Act, 1961 and the Income tax Rules, 1962 and applicable notifications / circulars and administrative interpretations thereof, which are subject to change or modification by subsequent legislation or regulatory changes or administrative pronouncements or judicial decisions. This document will not be updated for any changes in tax law.
- The views mentioned above are not binding on any authority or Court, and hence, no assurance is given that a position contrary to the opinions expressed herein, will not be asserted by any authority, and / or sustained by an appellate authority or a Court of law.
- This document does not constitute a recommendation or solicitation or inducement to buy or sell any securities including any securities of: (i) the EMBASSY REIT, its HoldCo, SPVs and/or investment entities; or (ii) its Sponsors or any of the subsidiaries of the Sponsors, nor shall part, or all, of this FAQ form the basis of, or be relied on, in connection with, any contract or investment decision in relation to any securities.
- THESE FAQ'S DO NOT CONSTITUTE OR FORM ANY PART OF ANY OFFER, INVITATION OR RECOMMENDATION TO PURCHASE OR SUBSCRIBE FOR ANY SECURITIES. THESE FAQ'S SHOULD NOT FORM THE BASIS OF, OR BE RELIED UPON, IN CONNECTION WITH, ANY CONTRACT OR INVESTMENT DECISION IN RELATION TO ANY SECURITIES.

*<<This space has been intentionally left blank>>*