

# Frequently asked questions for investors of Brookfield India Real Estate Trust from income-tax perspective

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***DISCLAIMER:** THESE FREQUENTLY ASKED QUESTIONS ('FAQs') ARE PREPARED WITH A VIEW TO GUIDE THE INVESTORS ON THE IMPLICATIONS UNDER THE INDIAN INCOME-TAX ACT, 1961 ('ACT') READ WITH THE INCOME -TAX RULES, 1962 ('RULES') IN RELATION TO THE DISTRIBUTIONS TO BE MADE BY THE BROOKFIELD INDIA REAL ESTATE TRUST ('BROOKFIELD REIT') DURING FINANCIAL YEAR ('FY') 2022-2023 {ASSESSMENT YEAR ('AY') 2023-2024}. THE INFORMATION PROVIDED DOES NOT COMPREHEND A COMPLETE ANALYSIS OF TAX IMPLICATIONS ARISING IN THE HANDS OF THE UNITHOLDERS. THESE FAQs PROVIDE GENERAL INFORMATION TO THE INVESTORS AND HENCE IS NEITHER DESIGNED NOR INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL TAX ADVICE. THESE FAQs ARE NOT EXHAUSTIVE OR COMPREHENSIVE AND DOES NOT AND SHOULD NOT BE DEEMED TO CONSTITUTE LEGAL, FINANCIAL OR TAX ADVICE. IN VIEW OF THE INDIVIDUAL NATURE OF THE TAX CONSEQUENCES AND THE CHANGING TAX LAWS, EACH INVESTOR IS ADVISED TO CONSULT HIS OR HER OWN TAX CONSULTANT WITH RESPECT TO THE SPECIFIC TAX IMPLICATIONS ARISING DUE TO THE INVESTMENT IN UNITS OF BROOKFIELD REIT. 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 BROOKFIELD REIT. THE RECIPIENT ALSO ACKNOWLEDGES THAT THE FAQs PROVIDED HEREIN ARE NOT BINDING ON INDIAN TAX AUTHORITIES AND THERE CAN BE NO ASSURANCE THAT THESE AUTHORITIES WILL NOT TAKE A POSITION CONTRARY TO ANY OF THE COMMENTS HEREIN. NEITHER BROOKFIELD REIT NOR ITS DIRECTORS NOR ANY OTHER PERSONS INVOLVED SHALL ACCEPT RESPONSIBILITY FOR ANY LEGAL OR TAX EFFECTS OR LIABILITIES RESULTING DUE TO THE INVESTMENT IN UNITS OF BROOKFIELD REIT.*

## 1. What are the general taxation principles of the income earned by Brookfield REIT?

- Brookfield REIT, being a business trust under the Act, is exempt from tax on interest and dividend income received or receivable from its investments in Special Purpose Vehicles ('SPVs') under section 10(23FC) of the Act. For the purposes of this section, SPV means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration.
- Further, as per section 10(23FCA) of the Act, any income of Brookfield REIT by way of renting or leasing or letting out of real estate assets {(as defined under the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014, as amended ('**SEBI Regulations**'))} owned directly by Brookfield REIT shall be exempt in the hands of the trust.
- In terms of section 115UA(2) of the Act, the total income of Brookfield REIT shall be chargeable to tax at the maximum marginal rates in force except for the income chargeable to tax on transfer of Short Term Capital assets under section 111A and Long Terms Capital assets under section 112 of the Act.

## **2. What is the nature of income earned or to be earned by Brookfield REIT during FY 2022-23?**

- Brookfield REIT has earned / may earn the following incomes during FY 2022-23:
  - Dividend income from SPVs not opting for special tax regime introduced under section 115BAA of the Act
  - Interest income on shareholder loans and debt securities
  - Interest income on bank deposits (from temporary parking of funds).

## **3. What are the general taxation principles of income distributed by Brookfield REIT to its unitholders?**

- Briefly stating the matters discussed in chapter of "Taxation" forming part of Brookfield REIT's final offer document dated 9 February 2021, any income distributed by Brookfield REIT to its unitholders should be deemed to be of the same nature and in the same proportion in the hands of the unitholders as it had been received by, or accrued to, the trust i.e., Brookfield REIT.
- Further, as per section 10(23FD) of the Act, any income distributed by Brookfield REIT, other than in the nature of interest income or dividend income (in a case where the SPVs have opted for special tax regime introduced under section 115BAA of the Act) or any income by way of leasing or renting, is exempt in the hands of unitholder.

## **4. Have any of the SPVs of Brookfield REIT opted for the special tax regime introduced under section 115BAA the Act?**

- No, Brookfield REIT has currently invested only in those SPVs that have decided not to opt for the special tax regime under section 115BAA of the Act.

## **5. What is the nature of proceeds distributed by Brookfield REIT?**

- The distributions made by Brookfield REIT comprise of the following streams:
  - Dividend income from SPVs not opting for special tax regime introduced under section 115BAA of the Act
  - Interest income from SPVs on shareholder loans and debt securities
  - Interest income on bank deposits (from temporary parking of funds)
  - Proceeds of repayment of shareholder loan

## 6. How can the unitholder know the nature of distribution proceeds received from Brookfield REIT?

- Brookfield REIT shall provide an annual statement of income distributed during FY 2022-23 to its unitholders in Form no. 64B within the timelines prescribed under the Act. The said statement would have the requisite details of the nature of distribution proceeds received by the unitholder from Brookfield REIT.
- Form no. 64B shall be mailed to unitholders on their email ids registered with the depositories. Unitholders are advised to check and update their registered email ids for getting the said form.
- The format of Form no. 64B notified under Rule 12CA of the Rules is available on the Income-tax department's website. The link for which is provided below:

<https://www.incometaxindia.gov.in/forms/income-tax%20rules/itr62form64b.pdf>

## 7. Are the aforesaid distributions taxable in the hands of the unitholders of Brookfield REIT?

- Referring to FAQ no. 5 above, the taxability of the aforesaid distributions in the hands of unitholders would be as under:
  - Dividend income from SPVs not opting for special tax regime introduced under section 115BAA of the Act – Exempt in the hands of the unitholders
  - Interest income from SPVs on shareholder loans and debt securities – Taxable in the hands of unitholders at tax rates applicable to such unitholders
  - Interest income on bank deposits – Exempt in the hands of the unitholders
  - Proceeds of repayment of shareholder loan – Exempt in the hands of the unitholders, however, kindly note that such proceeds of loan repayment distributed could potentially reduce the cost of acquisition of the units for the unitholders.
- On a separate note, the non-resident unitholders may be governed by the provisions of the Double Tax Avoidance Agreement ('DTAA') between India and the country of tax residence of such non-resident unitholder and the provisions of the Act apply to the extent they are more beneficial to such non-resident unitholder as per the provisions of section 90(2) of the Act. The benefits under the DTAA would be subject to fulfillment of necessary conditions as applicable to such non-resident unitholder.

## 8. Would Brookfield REIT issue tax withholding certificates to the unitholders?

- The tax withholding certificates in Form no. 16A shall be issued to the unitholders on quarterly basis in accordance with the timelines prescribed under the Act.
- Please note that the said certificates shall be mailed to unitholders on their email ids registered with the depositories. Unitholders are advised to check and update their registered email ids for getting the said certificates.

## 9. What are the timelines for furnishing declarations for transfer of withholding tax?

- Brookfield REIT acknowledges that there may be practical situations due to which the beneficial owner of distributions may be different than the actual recipient of such distributions.
- In this regard, the unitholders may submit the requisite details along with a declaration under Rule 37BA of the Income-tax Rules, 1962 for transfer of withholding tax to the beneficial owner. The format of declaration is annexed herewith as *Annexure 1*.
- Please note that Brookfield REIT would accept transfer requests only within 30 days from the end of financial year.

## 10. What would be the consequences if a unitholder is considered as “specified person” under section 206AB of the Act?

- In case a unitholder is identified as a “specified person” under section 206AB of the Act, as per the results available from compliance check facility of the Income-tax portal, then Brookfield REIT shall withhold taxes at higher rates as prescribed under the provisions of section 206AB of the Act.
- Please note that Brookfield REIT checks the results of the compliance check facility as per section 206AB of the Act before every round of distribution. Accordingly, if any unitholder was a "specified person" in one round of distribution and in the subsequent round such unitholder does not remain a "specified person" (as per the results of the compliance check facility), then such unitholder shall not be deemed to be a "specified person" in the subsequent round of distribution.
- However, the unitholders may please note that Brookfield REIT shall not be liable to refund any higher withholding tax that may be applicable in case of the unitholder on account of applicability of the provisions of section 206AB of the Act.

## 11. Out of the proceeds distributed in the nature specified in FAQ no. 5 above, is any component subject to withholding tax under the Act?

- The distribution proceeds pertaining to the stream of interest income referred in point (ii) of FAQ no. 5 above is subject to tax withholding under section 194LBA of the Act at the time of credit or payment (whichever is earlier) to the unitholders by Brookfield REIT. Other components of the distributions are not subject to tax withholding at the time of credit or payment (whichever is earlier) to the unitholders.
- A brief summary of the withholding tax rates applicable on the aforesaid distribution in the nature of interest income is provided below:

SR. NO.	CATEGORY OF UNITHOLDERS	RESIDENTIAL STATUS OF UNITHOLDER	WITHHOLDING TAX RATE	REMARKS
1	Unitholders other than those identified as 'specified persons' as per the functionality under section 206AB of the Act	Resident	10%	-
		Non-resident	5% (plus applicable surcharge and cess)	-
2	Unitholders identified as 'specified persons' as per the functionality under section 206AB of the Act	Resident	20%	-
		Non-resident	10% (plus applicable surcharge and cess)	Non-resident unitholders not having a permanent establishment in India and providing requisite declarations* to Brookfield REIT shall <u>not</u> be treated as "specified person" under section 206AB of the Act
3	Unitholders being Category I or Category II Alternative Investment Funds as referred to in section 115UB of the Act	Resident	NIL	Subject to declaration* being received by Brookfield REIT that the distribution proceeds are <u>not</u> being offered to tax by such unitholder under the head "Profits and gains of business or profession"
4	Unitholders being Mutual Funds as referred to in section 196 of the Act	Resident	NIL	Subject to receipt of copy of registration certificate / other relevant documents issued by relevant regulatory authority
5	Unitholders being entities specifically exempted from withholding tax by the Central Board of Direct Taxes / Central Government	Residents	NIL	Subject to receipt of requisite declarations* and clarifications by Brookfield REIT for applicability of exemptions provided under the Act

*\*Declarations to be provided in format to be shared by Brookfield REIT, closer to the date of distributions*

*as and when declared. In case declarations are not received (in the appropriate format and particulars requested) then tax withholding would be undertaken at the applicable rates on a best effort basis.*

- Please note that Brookfield REIT shall round-up the withholding tax on the distributions that may be applicable in case of the unitholders.
- Also, for unitholders being non-residents, it should be noted that the provisions of section 194LBA of the Act do not permit Brookfield REIT to consider the benefits of DTAA that may be applicable to the non-resident unitholder. Accordingly, Brookfield REIT would be withholding taxes from distributions to the non-resident unitholders at the rates applicable under the Act.
- A table summarizing the applicable surcharge rates for non-resident unitholders for the FY 2022-23 is provided in Note 1 below.

## **12. What is the taxability of gains / losses in the hands of unitholders arising on sale of units of Brookfield REIT during FY 2022-23?**

- Request you to refer the paragraphs on “General tax benefit available to all the unit holders of Brookfield REIT” in chapter of "Taxation" forming part of the final offer document dated 9 February 2021 available on the website of the Securities and Exchange Board of India.
- The link of the final offer document is attached below for your ready reference: [https://www.sebi.gov.in/filings/reit-issues/feb-2021/brookfield-india-real-estate-trust\\_49082.html](https://www.sebi.gov.in/filings/reit-issues/feb-2021/brookfield-india-real-estate-trust_49082.html)

- **Note 1- Summary of applicable surcharge rates for non-resident unitholders for the FY 2022-23:**

SURCHARGE THRESHOLDS / CATEGORY OF <u>NON-RESIDENT</u> UNITHOLDERS	SURCHARGE RATES (%)		
	<u>OTHER THAN</u> BODIES CORPORATE, FIRMS AND CO- OPERATIVE SOCIETY*	BODIES CORPORATE / FOREIGN COMPANIES	FIRM / CO- OPERATIVE SOCIETY
Amount of distribution $\leq$ INR 50,00,000	0%	0%	0%
> INR 50,00,000 but $\leq$ INR 1,00,00,000	10%		
> INR 1,00,00,000 but $\leq$ INR 2,00,00,000	15%	2%	12%
> INR 2,00,00,000 but $\leq$ INR 5,00,00,000	25%		
> INR 5,00,00,000 but $\leq$ INR 10,00,00,000	37%		
Amount of distribution > INR 10,00,00,000		5%	

- *\*This is the residuary category of unitholders which would include individuals, Hindu undivided family (HUF), association of persons (AOP), body of individuals (BOI), trusts, artificial juridical persons (AJP), etc.*
- Please feel free to send your queries at [reit.compliance@brookfield.com](mailto:reit.compliance@brookfield.com)

## Annexure 1

<<On the letter head of deductee>>

Date: [●]

To,  
**Brookfield India Real Estate Trust**

Candor TechSpace IT/ITES SEZ, Building 5A/10,  
Sector 48, Tikri, Near Subhash Chowk,  
Gurgaon, Haryana, 122018

**Sub.:** Declaration under Section 199 of the Income-tax Act, 1961 ('Act') read with Rule 37BA of the Income-tax Rules, 1962

Dear Sir/ Madam,

We, [<<name of the actual recipient of the distribution>>], refer to the tax withheld in our case under [section 194LBA] of the Act by Brookfield India Real Estate Trust ('Trust').

In this regard, we request the Trust to transfer the credit of withholding tax to our client, [<<<<Beneficial owner of the units>>>>], in accordance with Section 199 of the Act read with Rule 37BA (2) of the Income-tax Rules, 1962. The details in this regard are provided below:

### **A. Reasons for transfer of the credit of taxes withheld by the Trust:**

- Our client (i.e., [[<<<<beneficial owner of the units>>>>]), was the actual beneficial owner of the [<<no of units>>] units of the Trust as on the record date (i.e., [<<<specify the record date>>>]) of the declaration of distribution made by the Trust.
- <<<Specify brief reason for placing transfer request>>>.
- However, given that our client was the beneficial owner of such units and distribution proceeds thereon as on the record date, we have transferred the net proceeds received by us to our client.
- In this regard, we request the Trust to transfer the credit of withholding tax on such distribution to the credit of our client, being the beneficial owner of the units and distribution proceeds thereon.
- The details required for transfer of the withholding tax credit is provided below.

### **B. Details for transfer of credit of taxes withheld by the Trust:**

1. Name of the beneficiary - [ <<details to be provided>> ]



2. PAN of the beneficiary – [ <<details to be provided>> ]
3. Address of the beneficiary - [ <<details to be provided>> ]
4. Residential status of the beneficiary during financial year [2022-23] – [Resident/ Non-resident]
5. Units of the Trust held by the beneficiary – [ <<details to be provided>> ] units
6. Gross amount of distribution proceeds in relation to which credit of withholding taxes has to be provided – INR [ <<details to be provided>> ]
7. Net amount of distribution proceeds received by us – INR [ <<details to be provided>> ] We, also hereby declare that the aforesaid net amount of distribution proceeds received by us has been already reimbursed / transferred to the credit of the beneficiary i.e., [ <<<<beneficial owner of the units>>>> ]
8. Amount of distribution proceeds subject to tax withholding under the Act out of point 6 above – INR [ <<details to be provided>> ]
9. Amount of tax credit to be transferred to the beneficiary – INR [ <<details to be provided>> ]

We hereby declare that to the best of my / our knowledge and belief, the information furnished in the declaration is correct and complete and other particulars shown therein are truly stated.

We agree to indemnify the Trust and its personnel (including the personnel of its investment manager acting on behalf of the Trust) and hold each of them harmless against any liabilities, losses, expenses and other costs that the Trust or its personnel may incur in connection with any third party claim (including claims raised by income-tax or any other statutory authorities), whether in contract, tort (including negligence) or otherwise, arising out of or in connection with this declaration and the transfer of the withholding tax credit. We shall also indemnify the Trust for any liability arising on account of misrepresentation of facts by us in the above declaration.

This letter will be governed by, and interpreted in accordance with, the laws of India. The competent courts of India will have exclusive jurisdiction over matters in connection with this letter.

We undertake to provide any further documentation or information as the Trust may request.

Thanking you.

**For** [<<name of the actual recipient of the distribution>>]

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Authorised signatory

**Name of the signatory:**

**Designation of the signatory:**