

TR 235

Facts

L holds a Global Business licence and Collective Investment Scheme licence with the Financial Services Commission. L pools funds from various investors across the globe (excluding Indian residents) and invests in India through Alternative Investment Funds (hereinafter referred to as “AIF”) Category II and Category III. The Investment Manager of L is N which is a company incorporated under the Companies Act (Cap 50) in Singapore and regulated by the Monetary Authority of Singapore.

AIFs are funds incorporated in India for the purpose of pooling capital from Indian and foreign investors, which in turn, invest as per the pre-determined strategy. They are similar to Mutual Funds. AIFs are registered in the form of trusts under the Indian Trusts Act, where the investments of AIFs are held by Trustees for the benefit of its investors (residents and non-residents). They are regulated by the Securities and Exchange Board of India. Investors hold units in AIFs and are beneficiaries in AIFs.

The AIFs trusts are already set up in India and they pool fund from several investors and will invest in different product depending on its strategy. The AIFs trusts will accrue different types of income from its investment mainly dividend, interest and capital gains from disposal of its investment and same will be distributed to the unit holders depending on their percentage holding. The AIFs trusts will then pass those income to the unit holders, i.e. dividend income will flow to L in the form of dividend, interest income will flow to L in the form of interest and capital gains realised by the AIF trust will flow to L in the form of capital gains.

Point at issue

Whether income earned by L through the AIF Category II and III will retain their characteristics, that is:

- (a) whether dividend income accrued by the AIF Trust and distributed to L will be considered as dividend income for income tax purposes;
- (b) whether interest income accrued by the AIF Trust and distributed to L will be considered as interest income for income tax purposes; and

(c) whether capital gains accrued by the AIF Trust and distributed to L will be considered as capital gains for income tax purposes ?

Ruling

On the basis of the facts mentioned above, as a unit holder in the AIF, L will receive dividend income and capital gains from the subsequent disposal of these units. It is ruled that all income distribution made by the AIF Category II and III to L will be treated as dividend income and therefore not retain their initial characteristics.