

CIRCULAR NO. 13/2014 [F.NO.225/78/2014-ITA.II], DATED 28-7-2014

The SEBI (Alternative Investment Funds) Regulations, 2012 ('AIF Regulations') *vide* Regulation No. 4 issued in May 2012 aims at regulating all forms of private pool of funds in India. The said Regulations divide the Alternative Investment Funds ('AIFs') into three broad categories - Category-I, Category-II and Category-III Alternative Investment Funds, depending upon the operational strategies, objectives and fund structure. A large number of AIFs registered with SEBI have been set up in the form of non-charitable trusts.

2. While the AIFs, being Venture Capital Funds, making investment in the Venture Capital Undertakings have been accorded '*tax pass through*' status under section 10(23FB) read with section 115U of the Income-tax Act, 1961 ('Act') (whereby income arising in the hands of such Fund would be treated as tax exempt, while investors of such funds would become liable to tax liability on as if the investors have made the investments directly in the Venture Capital Undertaking), clarification has been sought about tax-treatment in cases of AIFs being non-charitable trusts where the investors name and beneficial interest are not explicitly known on the date of its creation - such information becoming available only when the funds starts accepting contributions from the investors.

3. Board has been requested to clarify whether the income of such funds would be taxable in the hands of the Trustees of the AIF in the capacity of a 'Representative Assessee' (as defined u/s 160(i)(iv) of the Act) or in the hands of investors (i.e. contributors of funds)

4. The matter has been examined. In the situation where the trust deed either does not name the investors or does not specify their beneficial interests, provisions of sub-section (1) of section 164 would come into play and the entire income of the Fund shall become liable to be taxed at the Maximum Marginal Rate of income-tax in the hands of the trustees of such AIFs in their capacity as 'Representative Assessee'. It is also clarified that in such cases, provisions of section 166 of the Act need not be invoked in the hands of the investor, as corresponding income has already been taxed in the hands of the 'Representative Assessee' in accordance with sub-section (1) of section 164 of the Act.

5. However, in cases of funds where names of the beneficiaries and their interests in the Fund are determined i.e. stated in the trust deed, the tax on whole of the income of the Fund - consisting of or including profits and gains of business, would be leviable upon the Trustees of such AIF, being 'Representative Assessee' at the Maximum Marginal Rate in accordance with sub-section (1A) of section 161 of the Act.

6. The clarification given above shall not be operative in the area falling in the jurisdiction of a High Court which has taken or takes a contrary decision on the issue.

7. The contents of this Circular may be brought to the notice of all concerned.