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Country Survey: India

0. Introduction

In an attempt to contextualize this country survey, the basic principles of Indian taxation are summarized below. This introduction will discuss the standard for tax residency under the Income Tax Act, 1961 (ITA), the scope of taxation under the ITA for non-residents and the relevant operating mechanism under which income generated by non-residents is subject to tax in India under the ITA. Additionally, the general scheme through which income tax treaties are given effect under Indian domestic law (and specifically under the ITA) will also be considered.

Introduction to the ITA

Taxation of income in India is governed by the ITA as amended by Finance Acts (typically passed as the annual budget for every financial year). The ITA contains elaborate provisions in respect of chargeability to tax, determination of residency and computation of income. The ITA provides for assessment of a taxpayer's income under five mutually exclusive heads: (i) income from salary (generally applicable to employed individuals), (ii) income from house property (to be distinguished from income arising on account of the purchase or /sale of immovable house property), (iii) income from capital gains (on the sale of capital assets for gain), (iv) income from business and profession (typically referred to as "business income") and (v) income from other sources (which includes residual sources not covered under the other four heads, but sought to be taxed under the ITA).

The ITA taxes "persons" on the basis of their residency. For the purpose of determining any person's tax liability (including for a trust), section 2(31) of the ITA must be examined along with sections 4, 5 and 9 of the ITA.

Definition of "person" assessable to tax under the ITA

The definition of "person" under section 2(31) of the ITA is an inclusive list, as follows:

> "person" includes:
> (i) an individual,
> (ii) a Hindu undivided family,
> (iii) a company,
> (iv) a firm,
> (v) an association of persons or a body of individuals, whether incorporated or not,
> (vi) a local authority, and
> (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.
>
> Explanation. For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains.

Additionally, "company" is defined in section 2(17) of the ITA to include a body corporate incorporated by or under the laws of a country outside India.

Section 2(31) of the ITA defines those considered to be "persons" for purposes of the ITA. Subclause (L) of section 2(31) states that every artificial juridical person (*not* being an individual, Hindu undivided family, company, firm, association of persons or body of individuals, or local authority) is treated as a "person" for purposes of taxation under the ITA.

From a tax perspective, a trustee has the same status as that of the beneficiaries (holders of beneficial interest of the trust assets) and is taxed in the capacity of such beneficiaries in a representative capacity. However, a different view has been taken by the Indian tax authorities in certain cases (*In re Fidelity Northstar Fund*[1] (*Fidelity*), *In re General Electric Pension Trust*[2] (*GE Pension Trust*)). In addition, foreign funds established as trusts and investing into India through the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995 (FII Regulations) have been recognized as separately taxable entities recognized under section 2(31) of the ITA as artificial juridical persons.

Taxability under the ITA

Section 4 of the ITA stipulates the basis of charge to income tax and provides that the "total income" of a person is subject to income tax. This total income of the taxable person is discussed in section 5 of the ITA, under which persons who are non-resident are taxed only on Indian-source income, i.e. income received or deemed to be received in India, as well as income that accrues or arises to them in India or is deemed to accrue or arise in India.

Section 6(3) of the ITA states that for a company to be a resident of India for tax purposes, its control and management must reside wholly in India. Thus, if it can be shown that even part of the control and management of a company (including Pension Fund *A* – if it were to qualify under the definition of "company") were to rest outside India, it could reasonably be assumed to be a non-resident for Indian tax purposes.

As opposed to the test for the companies, section 6(4) states that in order for an artificial juridical person to be regarded as a non-resident for purposes of the ITA, in every assessment year the control and management of the affairs such

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1. IN: AAR, 8 Jan. 2007, 288 ITR 641.
2. IN: AAR, 14 Dec. 2005, 280 ITR 425.

person must be situated *wholly* outside India. This would therefore imply that even if partial control is said to rest in India, such person would be a resident for ITA purposes and consequently taxed as a person resident in India on its worldwide income.

Additional notice must also be paid to section 9 of the ITA, which acts as a deeming provision and specifies when income is deemed to have been received, accrued or arisen in India. Section 9 essentially expands on the taxability of income arising in India, stating that (i) any income accruing or arising, directly or indirectly, through or from any business connection in India, (ii) through or from any property in India, (iii) through or from any asset or source of income in India or (iv) through the transfer of a capital asset situated in India, will be taxable in India.

Under recent amendments to the ITA, it was clarified that section 9 also includes the transfer of a capital asset which "substantially derives" its value from assets situated in India. Tax is levied on such income as Indian-source income, even though neither the transferor, nor the transferee nor the capital asset being transferred itself may be in India.

Income tax treaties

Section 90(2) states that an assessee under the ITA has the option of being taxed according to the provisions of an applicable income tax treaty or the ITA, whichever is more beneficial to such taxpayer.

Indian general anti avoidance rules

A general anti-avoidance provision is sought to be introduced in the ITA with effect from financial year 2015-16. This rule would be applicable where the main purpose of an arrangement is to obtain a tax benefit. The rule would empower the tax authorities to investigate and declare any such arrangement as an "impermissible avoidance arrangement" and, consequently, to disregard entities in a structure, reallocate income and expenditure between parties to the arrangement, alter the tax residence of such entities and the legal situs of assets involved, treat debt as equity and vice versa, and the like. By doing so, the tax authorities will be able to deny tax benefits even if conferred under a tax treaty.

In furtherance of a Press Release released by the Ministry of Finance, the Finance Act, 2013 has proposed that factors like the period that the arrangement existed, the fact of payment of taxes by the assessee, and the fact that an exit route was provided by the arrangement, would be relevant but not sufficient to determine whether that arrangement is an impermissible avoidance arrangement. The Finance Act, 2013 further clarified that an arrangement will also be deemed to be lacking commercial substance if it does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained.

A pension fund's investment in India may be exposed to the possibility that the general anti-avoidance rule could be invoked if the pension fund were to make such investment through a special purpose vehicle. If the pension fund makes a direct investment, it would likely not attract general anti-avoidance rule exposure. In addition, if Indian tax authorities were to apply the general anti-avoidance rule to any income earned by the pension funds, they could declare any arrangement to be an impermissible avoidance arrangement if the arrangement were entered into with the purpose of obtaining a tax benefit and involves any of the following elements: non-arm's length dealings, misuse or abuse of ITA provisions, lack of commercial substance or non-bona fide purposes. If the Indian tax authorities find any of the pension funds to have entered into an impermissible avoidance arrangement, the pension funds would not be permitted to receive the benefits under a given income tax treaty.

It is in the above context that responses will be provided with regard to investment activities by pension funds of varying characteristics in respect of their tax obligations (and other ancillary issues that may be of concern). Accordingly, the pension funds in this case study will be referred to in the following manner:
- the pension fund from Country *A* being a separate legal entity (and tax exempt in its home jurisdiction) will be referred to as "Pension Fund *A*";
- the pension fund from Country *B* being a trust (and possibly not a legally distinct entity) and tax exempt in its home jurisdiction will be referred to as "Pension Fund *B*"; and
- the pension fund from Country *C* being a trust (and possibly not a legally distinct entity) and liable to tax in its home jurisdiction will be referred to as "Pension Fund *C*".

Some responses may be common amongst all three (or two) pension funds, in which case a common response will be provided. It will be will expressly specified if a distinct response is provided in the context of any of the three pension funds.

1. Tax Status

1.1. Tax status of the three pension funds for domestic corporate income tax purposes

As stated, the tax status of any non-resident for domestic corporate income tax purposes depends on the provisions of the ITA and any relevant income tax treaty.

Pension Fund A

Under the ITA. As a legally separate entity, if Pension Fund *A* were to be classified as a person as defined by section 2(31) of the ITA, it would be liable to tax in India as a non-resident taxpayer. As discussed above, being a legally distinct entity, should Pension Fund *A* be classified as body corporate/company it would be taxed as a non-resident company.

Under an income tax treaty. India largely follows the OECD Model Tax Convention on Income and Capital (OECD Model) and the UN Model Double Tax Convention (UN

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Model) wherein "residency" (and thus tax status) of a non-resident person is defined.

Typically, under income tax treaties, the essential test to determine the tax residency of a person for purposes of that treaty is based on the person's domicile, residence, place of management or other similar criterion. In addition, the treaty would distinctly *not* determine the tax status of a person solely on account of income from sources in that state or capital situated in that state. If on account of the application of test, a person was deemed to be resident in both of the contracting states, residency would be established on the basis of the place of effective management.[3]

Accordingly, it would appear that in so far as Pension Fund *A* was "liable to tax" i.e. eligible to be taxed but expressly exempted from taxation (as opposed to "subject to tax", which would refer to actual action of taxation – Indian courts have made a distinction between the two similar sounding statements[4]), Pension Fund *A* should be classified as a non-resident for purposes of Indian taxation and resident of Country *A*. However, this could vary based on the wording of the applicable treaty between India and the jurisdiction in which Pension Fund *A* is based.

Pension Fund B *and Pension Fund* C

Trust taxation in India. The ITA (and conversely the tax status of Pension Fund *B* and Pension Fund *C* under Indian corporate tax law) is influenced by how trusts are taxed or treated in India. Under the Indian Trusts Act, 1882 (Trust Act), a "trust"[5] is an "obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him for the benefit of another, or of another and the owner". The person who declares the confidence is called the "author"[6] (or sometimes the "settlor") of the trust; the person who accepts the confidence is called the "trustee"; the person for whose benefit the confidence is accepted is called the "beneficiary"; the subject matter of the trust is called "trust property"; the "beneficial interest" or "interest" of the beneficiary is the right against the trustee as owner of the trust property; and the instrument, if any, by which the trust is declared is called the "instrument of trust".

The ITA does not define "trust", and any reference thereto includes references to offshore trusts, as well. Accordingly, the ITA adopts its understanding of trusts (irrespective of where the trust is established) from the above definition and regime (the Indian Trusts Act, 1882).

Pension Fund *B* and Pension Fund *C* are likely to have a similar status as to their respective assessment under the ITA in so far as their status under Indian law is concerned, although the tax-exempt nature of Pension Fund *B* would set it apart from Pension Fund *C*. This will be discussed separately below. Prior to exploring the differences between Pension Fund *B* and Pension Fund *C*, the general tax status of trusts (including offshore trusts) under Indian law will be considered.

The ITA treats trusts differentially based on certain characteristics. The various trusts recognized under the Indian tax regime are as follows:

(1) *revocable trust:* a trust that can be revoked (cancelled) by its settlor (or author) at any time;
(2) *irrevocable trust:* a trust that will not come to an end until the terms of the trust have been fulfilled;
(3) *discretionary (indeterminate) trust*: an arrangement where the trustee may choose, from time to time, who (if anyone) among the beneficiaries is to benefit from the trust, and to what extent;
(4) *determinate (specific) trust*: the entitlement of the beneficiaries is fixed by the settlor, and the trustees have little or no discretion;
(5) *combination trust*: a combination of (1-(3)/(4), (2)-(3)/(4); and
(6) *business trust*: a trust falling under any of the above categories (or combinations thereof) which carries on business activities resulting in income being characterized as a "business income".

As discussed above, a trust is generally treated as a fiscally transparent entity under Indian law for tax purposes (and generally governed by sections 161 through 164 of the ITA). Based on the characteristics and nature of the particular trust, the status and tax treatment varies. The various permutations are subject to the following treatment:

– *business trust*. If a trust (irrespective of its other characteristics) is deemed to be carrying out business activities (i.e. engaging in the activity of carrying out a business), the income of such a trust is taxed at the "maximum marginal rate".[7] Tax is levied on the trustee in this instance, although the ITA states that further distribution by the (business) trust to its beneficiaries may not be further taxable;
– *irrevocably discretionary trust*. Similar to how a business trust is treated, as the beneficiaries of the trust are unknown at all points in time, the trustee is taxed at the maximum marginal rate on income earned by the trust in a given financial year. As with a business trust, further distribution by the trust to its beneficiaries should not be liable to further taxation;
– *revocable (determinate or indeterminate) trust*. A revocable trust is a trust where the author or settlor of the trust has the power to revoke the trust and thus reverse any transfer of property in the hands of the trustee back to the author or settlor. This is treated as a "revocable transfer of assets" under the ITA and accordingly covered under section 61 of the ITA. Under this section, all income arising to any person,

3. *See* e.g. art. 4 India-Canada Income and Capital Tax Treaty (1996); art. 4 India-United Kingdom Income Tax Treaty (1993); art. 4 India-United States of America Income Tax Treaty (1989).
4. The Authority for Advance Rulings in *GE Pension Trust*, *supra* n. 2, stated as follows: "It is worth pointing out that the phrase 'liable to tax' in para. (1) and the phrase 'subject to tax' in proviso (b) are not synonymous".
5. Sec. 3 Trust Act.
6. Commonly referred to as "settlor".
7. Section 2 (29C) of the ITA defines the "maximum marginal rate" as "the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, association of persons or, as the case may be, body of individuals as specified in the Finance Act of the relevant year". The current maximum marginal rate for non-residents could range between 30% and 40%.

by virtue of a revocable transfer of assets, is chargeable to income tax as the income of the transferor and is included in the total income of the transferor;[8] and

- *irrevocable determinate trust*. An irrevocable determinate trust is a trust where the beneficiaries of the trust and their beneficial interest in the trust are known at all given points in time. Tax is paid by the trustee in the capacity of the beneficiaries pro rata to their beneficial interest in the trust property.

In all cases, even where a trustee must make the relevant filing and be taxed on income earned by the trust, under Indian law, the tax is imposed only on the trustee in his capacity as the trustee to the trust and not in the trustee's personal capacity.

In light of the above discussion of the taxation of trusts, responses are provided below with regard to Pension Fund *B* and Pension Fund *C*.

Under the ITA. Under the ITA, the trustees of Pension Fund *B* and Pension Fund *C* must pay taxes on income earned by the fund on behalf of the beneficiaries of Pension Fund *B* or Pension Fund *C*, respectively. If the share and identity of Pension Fund *B* or Pension Fund *C* is known, the charge levied would be borne pro rata by the beneficiaries and would also be influenced by the tax status of the relevant beneficiaries. As such, the residency of the beneficiary would also be taken into account, which could result in a look-through taxation on the beneficiary (but borne or discharged by the trustee) as if the beneficiary were directly gaining such income from its investments or activities in India.

Additionally, income earned by Pension Fund *B* or Pension Fund *C* would be taxed in India at the maximum marginal rate if either (i) the trust is deemed to be indeterminate or (ii) Pension Fund *B* or Pension Fund *C* is deemed to earn business income from India.[9]

Under an income tax treaty. The availability of treaty benefits would play a major role in determining where income would be taxed.

Pension Fund B

As discussed in section 0., it is likely that on account of the tax-exempt nature of Pension Fund *B*, treaty benefits may be denied and tax would have to be paid by the trustee in the capacity of the beneficiaries as non-residents based on the nature of Pension Fund *B*.

However, this is subject to the relevant income tax treaty and the ITA. Typically, under international tax law, business income earned by a resident of one country in another country is subject to tax in the resident's home country (rather than in the other country). However, this may be suspended if either the relevant treaty provision is not available or the resident is deemed to have a permanent establishment, in which case tax would be levied in the other state (i.e. where the resident is earning the business income).

Alternatively, if Pension Fund *B* is deemed to receive business income from its activities in India, it will be taxed as a business trust at the maximum marginal rate. In this regard, the trust would be a tax-opaque vehicle. This would mean that while the trust would still be taxed in the capacity of its beneficiaries, the levy would be imposed directly on the trust, irrespective of the beneficiaries of the trust (i.e. of Pension Fund *B*). The positive aspect of being classified as a business trust would likely be that most tax treaties would allocate taxation rights in respect of business income to the country where the trust is resident (assuming that treaty benefits are, in fact, available) and therefore, tax would not be levied in India.

Pension Fund C

The taxable nature of Pension Fund *C* in its local jurisdiction (of origin) would likely result in treaty benefits being made available to it (as against that of Pension Fund *B*). However, this must be confirmed against the actual text of the relevant treaty.

See responses in light of Pension Fund *B*, as the risk of Pension Fund *C*'s being classified as a business trust if it earns business income also exists in this situation. Additionally, *see* the discussion of the same in section 0., as well as for Pension Fund *B*, above. The positive aspect of being classified as a business trust would likely be that taxation rights in respect of business income earned in India would likely be granted to the residence country of Pension Fund *C* (assuming treaty benefits are available) and therefore, tax would not be levied in India.

1.1.1. Domestic exemption

No specific exemption is available under the ITA to offshore pension funds seeking to invest in India or for income accruing from investments made in India.

1.1.2. Requirements to benefit from domestic exemption

See section 1.1.1.

1.2. Sovereign immunity

Under the ITA. No specific exemptions from local taxation in recognition of the principle of sovereign immunity are available under the ITA. Although specific exemptions have been provided with regard to situation specific

8. Section 63 of the ITA defines "revocable transfer" as follows: "For the purposes of Sections 60, 61 and 62 and of this Section,
   (a) a transfer shall be deemed to be revocable if
   (i) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor; or
   (ii) it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets,
   (b) "transfer" includes any settlement, trust, covenant, agreement or arrangement".
9. The test to determine whether a trust is earning business income can be derived from Circular 4/2007 of 15 June 2007, issued by the Central Board of Direct Taxes.

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items of income under section 10 of the ITA,[10] no general exemptions have been extended to foreign governments or foreign government-sponsored pension funds under the ITA. However, the exemption of Indian-source income earned by foreign governments is generally negotiated by India bilaterally in its income tax treaties.

Under an income tax treaty. Specific exemptions have been agreed to by India in certain treaties, which sometimes include pension funds from other nations. This must be considered on a case-by-case basis and obviously depends on the relevant treaty.

Indian treaties typically[11] include exemptions with regard to specific types of income which would be exempt from taxation in India when the income is derived by the government of the other state, a political subdivision or local authority thereof and – in some instances – specific bodies identified in this regard.

A prominent example of a specific exemption being granted to certain funds is article 24 of the India-United Arab Emirates Income and Capital Tax Treaty (2011) which specifically concerns "Income of Government and institutions". In article 24 of this treaty, all taxes relating to the government of the United Arab Emirates, its political subdivisions, the local authorities or administrations, local governments, the Central Bank of the United Arab Emirates, Abu Dhabi Investment Authority and Abu Dhabi Fund for Economic Development are exempt from taxation in India.

Another example is article 11(3) of the India-Norway Income and Capital Tax Treaty (2011), which exempts taxation of interest income earned by specifically named entities from sources in the other country. A specific reference to "Government pension fund" is made in article 11(3)(ii) of the India-Norway Income and Capital Tax Treaty (2011).

1.3. Availability of treaty benefits

As discussed in sections 1.1. and 0., a pension fund would be able to rely upon a tax treaty if it is covered within the definition of "government bodies", is specifically named under the applicable treaty or otherwise qualifies as a resident under the relevant treaty.

2. Securities

2.1. Treatment of the three pension funds in case of direct investment in bonds and shares

Regimes for foreign investment in India

Foreign investment in India can be made through the following routes:

- foreign direct investment: primarily, this is an omnibus route that does not require any registration of the investing entity in order to make the investment;
- foreign institutional investment: this allows investors who seek merely to make portfolio type investments, to make both equity and debt investments in India;
- qualified foreign investors: this allows retail investors to make portfolio-like investments in India;
- foreign venture capital investment: investment under this route is restricted to specific identified investments for which benefits are granted; and
- a separate portfolio investment route is available to individuals who are non-resident Indians and/or persons of Indian origin. However this is unlikely to be available to pension funds.

Additionally, the equity route in the form of foreign direct investment is complemented by the external commercial borrowing route which regulates debt investments in India. However, this route is heavily regulated such that debt undertaken through this route requires strict adherence to restrictions, e.g. with regard to eligible borrowers, recognized lenders, all-in cost ceilings and end-use restrictions.

Foreign funds, whether institutional in nature (e.g. pension funds, sovereign wealth funds) or pooling vehicles, have entered India through one or a combination of the various routes, depending on the investment strategy of the pension fund. As pension funds typically tend to (and are specifically eligible to) invest through the foreign institutional investment route (on account of benefits from both a regulatory and tax perspective), that route will be explored in some detail prior to provide responses as regards taxation.

Eligibility criteria. For purposes of making investment in India as a foreign institutional investment, one must hold a certificate of registration granted by the SEBI under the FII Regulations. There are several eligibility criteria, such as the applicant's track record (of at least one year); professional competence; financial soundness; experience; general reputation for fairness and integrity; and whether the applicant is regulated by an appropriate foreign regulatory authority. The SEBI has clarified that where the foreign institutional investment applicant is a newly established fund, the track record of its fund manager may be considered for the purpose of ascertaining the track record, provided that such fund manager provides details regarding its disciplinary track record.

Among the various categories of foreign investors eligible for foreign institutional investment registration, "an institution established or incorporated outside India as

10. A prime example of this is section 10 (23BBB) of the ITA, which exempts any income earned by the European Economic Community by way of interest, dividends or capital gains from investments made out of its funds under such scheme as the Indian government may by notification specify in the Official Gazette of India. The Indian government has since announced the European Community International Institutional Partners (ECIIP) Scheme, 1993 for purposes of the above section. It appears, therefore, that this is not a blanket extension, but one that extends only to specific instances as notified by the government of India from time to time.
11. *Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains* art. 12(3)(b) (25 Jan. 1993); *Convention between the Kingdom of the Netherlands and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital* art. 11(3) (30 July 1988); *Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* art. 11(3) (12 Sept. 1989).

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Pension Fund or Mutual Fund or Investment Trust or insurance/reinsurance company" is eligible to register itself as a foreign institutional investment.

In addition to having the option to register as a foreign institutional investment, certain categories of foreign institutional investment applicants may register funds (corporate or individual) as subaccounts. "Sub-account" is defined as "any person resident outside India, on whose behalf investments are proposed to be made in India by a foreign institutional investor and who is registered as a subaccount under these regulations". The four specifically named categories of subaccounts are "broad-based sub-accounts", "proprietary subaccounts", "foreign corporation subaccounts" and "foreign individual subaccounts".

Under the foreign institutional investment route, an entity seeking to be registered as a subaccount is expected to be "broad based". A broad-based entity is one that satisfies the 20/49 test, i.e. there must be at least 20 investors and no investor may hold more than 49% of the shares of the subaccount. However, if there are institutional investors as recognized by the SEBI, it is not necessary to have a minimum of 20 investors, and if any institutional investor holds more than 49%, such institutional investor must it be broad based. An "institutional investor" includes a pension fund, and thus pension funds should qualify as a broad based subaccount and accordingly may invest through the foreign institutional investment route.

Investments and investment limits. Under the FII Regulations, foreign institutional investments registered with the SEBI are permitted, subject to certain restrictions, to invest in all securities in the primary and the secondary markets in India, including securities of companies unlisted, to-be-listed or listed on a recognized stock exchange in India.

A foreign institutional investment may make investments up to 10% of the total issued share capital of an Indian company on behalf of each of its subaccounts (including broad based subaccounts). The aggregate holdings of all foreign institutional investments/subaccounts may not exceed 24% of the paid-up share capital of the Indian company. However, this limit may be increased, up to the applicable sectoral caps for foreign investment, by the Indian company by passing directors' and shareholders' special resolutions.

Under the FII Regulations, foreign institutional investments and the subaccounts are permitted to invest only in the following:

- securities on the primary and secondary markets, including shares, debentures[12] and warrants of companies, unlisted, listed or to be listed on a recognized stock exchange in India;
- Indian Depository Receipts;[13]
- units of schemes floated by domestic mutual funds (including the Unit Trust of India), whether listed on a recognized stock exchange in India or not;
- units of schemes floated by a collective investment scheme;
- dated government securities;
- derivatives traded on a recognized stock exchange in India;
- commercial paper; and
- security receipts (subaccounts may not invest in security receipts).

In this context, the taxation of foreign institutional investment is considered in relation to investment in securities.

Foreign institutional investment taxation in India

Assuming that a pension funds make direct investments from an offshore jurisdiction without having a permanent establishment in India, taxation would be as follows for financial year 2013-2014.

Dividend taxation. Dividends received from an Indian company on which dividend distribution tax has been paid are exempt from tax in the hands of the shareholders. However, the Indian company distributing dividends is subject to a distribution tax at the rate of 16.995%;

Interest taxation. Interest income from loans made or debt securities held in India are taxed at the rate of 21.012% where income exceeds INR 10 million but is less than INR 100 million (21.63% where income exceeds INR 100 million).

Under amendments to the ITA through the Finance Act, 2013, interest income earned by foreign institutional investments and qualified foreign investments from rupee-denominated bonds (where the interest rate does not exceed the rate announced by the government of India) of an Indian company or a government security[14] on or after 1 June 2013 and before 1 June 2015 is taxed at the rate of 5.253% where income exceeds INR 10 million but is less than INR 100 million (5.4075% where income exceeds INR 100 million).

However if such interest arises from foreign currency convertible bonds held by the fund, such interest is taxed at the rate of 10.506% where income exceeds INR 10 million but is less than INR 100 million (10.815% where income exceeds INR 100 million). However, interest arising out of borrowings in foreign currencies made under loan agreements or on long-term infrastructure bonds issued by Indian companies between 1 July 2012 and 30 June 2015 is taxable at a rate of 5.253% where income exceeds INR 10 million but is less than INR 100 million (5.4075% where income exceeds INR 100 million).

Additionally, income distribution by an infrastructure debt fund will be taxed at the rate of 5.665% of the income so distributed.

12. With effect from 5 Apr. 2006, the government of India and the Reserve Bank of India, by means of Circular IMD/ FII/20/2006, have clarified that foreign institutional investments are restricted to only listed debt securities of the company.
13. SEBI (Facilitation of Issuance of Indian Depository Receipts) (Amendment) Regulations, 2009 notified 19 June 2009.
14. As defined in section 2(b) of Securities Contracts (Regulation) Act, 1956.

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Capital gains. Capital gains resulting from the sale of Indian securities (including foreign currency convertible bonds or global depositary receipts or American depositary receipts issued by Indian companies) are not subject to tax in India.

Capital gains from the sale of zero-coupon bonds held for 12 months or less are taxed as short-term capital gains at the rate of 31.518% where income exceeds INR 10 million but is less than INR 100 million (32.445% where income exceeds INR 100 million). Zero-coupon bonds held for more than 12 months are taxed at the rate of 10.506% where income exceeds INR 10 million but is less than INR 100 million (10.815% where income exceeds INR 100 million).

Capital gains from the sale of unlisted securities (or listed securities for which securities transaction tax has not been paid) held for 12 months or less are taxed at the rate of 31.518% where income exceeds INR 10 million but is less than INR 100 million (32.445% where income exceeds INR 100 million) and those held for more than 12 months are taxed at the rate of 10.506% where income exceeds INR 10 million but is less than INR 100 million (10.815% where income exceeds INR 100 million).

Capital gains from the sale of listed Indian securities (for which securities transaction tax has been paid) held for 12 months or less are taxed at the rate of 15.759% where income exceeds INR 10 million but is less than INR 100 million (16.223% where income exceeds INR 100 million). Capital gains from the sale of Indian securities held for more than 12 months are exempt from taxation.

If, however, a pension fund is denied treaty benefits and additionally, Pension Fund *B* and Pension Fund *C* (established as trusts) are deemed to be "business trusts" (detailed above), they would be taxed on all income at the maximum marginal rate and would not be eligible to benefit from the above-mentioned rates.

2.1.1. *Current income vs. capital gains*

Other than the difference in rates (specified above), no specific differences exist in the treatment of current income and capital gains. However, there may be a difference in the treatment of how gains and losses may be carried forward.

2.1.2. *Impact of holding period and frequency of trades*

Frequency of securities trades. The ITA makes no distinction in treatment of income as a result of frequency of trades other than in specific cases to quantify if the activity of buying and selling of securities should be categorized as a business activity (such that the income generated should be taxed as income from business) or as investment activity (such that the income generated should be taxed as capital gains). The essential principle in this regard has been whether the purchase and sale of securities has been carried out so frequently and in such a manner that the activity was in fact not investment in a capital asset but rather movement of stock-in-trade. In this regard, the Central Board of Direct Taxes (CBDT) has published a circular[15] which makes reference to the *Fidelity* case, stating that:

> The third principle suggests that ordinarily purchases and sales of shares with the motive of realizing profit would lead to inference of trade/adventure in the nature of trade; where the object of the investment in shares of companies is to derive income by way of dividends etc., the transactions of purchases and sales of shares would yield capital gains and not business profits [...]

This is now a well-accepted principle in Indian tax law. In addition, although there is no concrete rule in this regard, the frequency of trades may influence the manner in which the purchase and sale of securities on the market are treated by the Indian tax authorities.

Holding period. From an ITA perspective, as discussed above, the holding period of capital assets determines the tax rate imposed on the resultant gain from the sale of such assets. In general, gains earned on the sale of assets (other than shares), if held for 36 months or less, are classified as short-term capital gains, whereas gains earned on the sale such assets, if held for more than 36 months, are classified as long-term capital gains. However, this period is reduced to 12 months in the case of securities (and specifically stock).

However, if tax is levied in accordance with an applicable treaty, the holding period may not be relevant in determining the tax on such income.

2.2. Taxation through withholding or otherwise

Section 4 of the ITA is the overarching charging provision relating to Indian income. The levy of tax under the scheme discussed above is contemplated in section 4(1) of the ITA. In addition, section 4(2) states that with regard to income chargeable under section 4(1), income tax must be deducted at source or paid in advance, where it is so deductible or payable under any provision of the Act.

Tax must be withheld when making payments to any non-resident investor in compliance with Chapter XVII of the ITA. However, payments made in respect of capital gains and dividends to foreign institutional investments are not subject to withholding in the hands of the payee. Interest payments to foreign institutional investments are still subject to a blanket withholding (unless expressly stated otherwise – such as in the context of section 194LD of the ITA) at the rate of 20%.

The provision pertaining to withholding on payments to non-residents is contained in section 195 of the ITA, which states that tax must be withheld on the payment of any sum to a non-resident, of any sum chargeable to tax.

In specific cases, annual returns also must be filed. A recent development in this regard is a notification issued by the CBDT[16] stating that any person claiming relief under section 90 of the ITA must file a tax return in India. Section 90 enables a taxpayer to claim treaty benefits in cases where the treaty provision is more beneficial.

15. Circular 4/2007 of 15 June 2007.
16. Amendment to Rule 12 of the Income Tax Rules, 1962 by means of S.O. 1111 (E), of 1 May 2013 (Circular of 1 May 2013).

2.2.1. *Withholding agent*

Typically, withholding must be effected by the person responsible for making the payment to the non-resident. In the specific context of foreign institutional investment, typically, where withholding is required (such as with regard to interest payments) the custodian for the foreign institutional investment must withhold tax at the time of remitting payment to the foreign institutional investment. For qualified foreign investments, this responsibility has been entrusted to qualified depository participants (and in some cases, the purchaser of securities from the qualified foreign investment) at the time of remitting the money back to the qualified foreign investment.

2.2.2. *Tax return filing requirements*

As discussed above, the pension fund will be required to file a tax return in India. Specifically, the Circular of 1 May 2013 also appears to state that any person seeking to claim treaty benefits must also file an annual tax return in India.

2.3. Stamp duty, transfer tax, registration tax

Stamp duty. Stamp duty is imposed on specific instruments that document a transaction. Stamp duty is imposed by individual states in accordance with their respective laws (although some states share a common piece of legislation for purposes of imposition of tax). Tax is imposed on the instrument and on both an ad valorem basis and a fixed-amount basis.

Securities transaction tax (a form of transfer tax). All transactions entered into on a recognized stock exchange in India are subject to securities transaction tax. Securities transaction tax was introduced under section 98 of the Finance (No. 2) Act, 2004 on transactions relating to the sale, purchase or redemption of investments made by purchasers or sellers of Indian securities and equity-oriented mutual fund units. Securities transaction tax is imposed on both buyers and sellers in most transactions, irrespective of the gain or loss on the transaction.

Registration tax. India currently imposes no registration tax relating to securities.

2.4. Impact of listing of securities on a stock exchange

It does make a difference for purposes of section 2.1. whether the securities are listed on a stock exchange. *See* the discussion above regarding the different rates of taxation (typically lower rates are imposed) on listed securities vis-à-vis unlisted securities. However, this is available only if the relevant securities transaction tax is paid.

2.5. Possibility of reduced taxation

There is a possibility for reduced taxation; *see* section 0. The ITA also recognizes income tax treaties through section 90 of the ITA. Section 90(1) speaks of the ability of the central government (of India) to enter into an agreement with a foreign government to prevent double taxation or to promote mutual economic relations, trade and investment. Section 90(2) states that an assessee under the ITA has the option to be taxed under the applicable treaty or the ITA, whichever is more beneficial to the taxpayer.

2.5.1. *Requirements to obtain reduced taxation or refund*

Under section 90(4) of the ITA, a tax residency certificate containing details as required under Rule 21AB of the Income Tax Rules, 1962 must be presented. Although no specific format has been prescribed by the Indian tax authorities, Rule 21AB states that a tax residency certificate containing the following details must be obtained from the government of the country in which the assessee claims to be a resident:

- name of the assessee;
- status of the assessee (e.g. individual, company, firm);
- country or specified territory of incorporation or registration (in the case of others);
- assessee's tax identification number in the country or specified territory of residence or, if there is no such number, a unique number on the basis of which the person is identified by the government of the country or the specified territory;
- residence status for tax purposes;
- period for which the certificate is applicable; and
- address of the applicant for the period during which the certificate is applicable.

Additionally, the person in question may also need to produce "such documents and information as may be prescribed". The Indian government has subsequently clarified that such information and documents would be in line with the information outlined above as regards the tax residency certificate.

2.5.2. *Issues related to obtaining a refund*

Periodically, the tax authorities have sought to deny providing these benefits.

Previously, the Supreme Court of India held in the case of *Azadi Bachao Andolan v. Union of India*[17] that a Mauritius resident (holding) company should be entitled to tax treaty benefits if it has a valid tax residency certificate. Supreme Court rulings are considered the law of the land, and this case has been relied upon to provide certainty to investors about the availability of tax treaties to investors situated in other jurisdictions where local authorities have confirmed the residence status of the particular investing entity.

Aggressive tax authorities in recent years have sometimes departed from the approach and threshold adopted in *Azadi Bachao Andolan*, so as to disallow tax treaty benefits. In *E*Trade Mauritius*, the Indian tax authorities attempted to disregard the presence of the Mauritius entity and tax the US parent on a disposition of Indian shares, on the grounds that the Mauritius entity was a shell company with no substance. Subsequently, the case was heard by the AAR, which held in favour of E*Trade and upheld the availability of tax treaty benefits to E*Trade (notwithstanding the activities carried on by the Mauritius entity), on the basis of *Azadi Bachao Andolan*. The tax authorities have

17. (2004) 10 SCC 1.

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filed a special leave petition against this ruling before the Supreme Court, which petition is currently pending.

More recently, tax proceedings were initiated against Vodafone International Holdings with regard to the disposition of a non-Indian asset (a Cayman Islands-based entity), on the basis that the selling shareholder was selling an indirect controlling interest in an underlying Indian entity. While the issues involved in the *Vodafone* case did not primarily concern the establishment of substance at the Mauritius level, the Bombay High Court and Supreme Court rulings in the *Vodafone* case did lay down a few important principles which are relevant to the present case, including reiteration of the principle of form-over-substance.

As discussed, India currently follows the principle of form-over-substance with regard to the application of tax laws. Indeed, there are several rulings to this effect. There are limited circumstances when the tax authorities may disregard an otherwise valid legal transaction merely on account of the fact that it would result in tax benefits. The highest courts have time and again reiterated and reconfirmed that only in limited circumstances may treaty benefits be denied.

In conclusion, there continues to be some ambiguity as to the threshold that may be adopted by the Indian tax authorities for denial of treaty benefits. This could further change significantly with the introduction of the general anti-avoidance rule (*see* section 0.).

2.6. Tax treatment of investment in securities through a local agent or a domestic fund vehicle

2.6.1. *Local agent*

In the past, pension funds have typically sought to utilize a portfolio manager who manages the portfolio of the pension fund and its investment in Indian securities (typically, these are listed, although portfolio managers are also allowed to provide advisory services in relation to unlisted products). Additionally, investment advisors are also engaged who provide non-binding recommendations. In both instances, save for possible implications arising on account of permanent establishment issues, no different tax treatment is provided.

2.6.2. *Domestic fund vehicle*

Under Indian law, pooling vehicles may be established under one of two regimes, namely (i) Securities and Exchange Board of India[18] (Mutual Funds) Regulations, 1996 and (ii) SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations).

2.6.2.1. *Investment through mutual funds*

Investment is allowed in mutual funds established under the Mutual Fund Regulations only to foreign investors qualifying either as a foreign institutional investment, qualified foreign investment or a non-resident Indian (a specific category of persons which includes emigrated Indians and persons of Indian origin). The Mutual Fund Regulations allow investment in a retail pooling vehicle which is generally publicly offered (only recently were a specific class of mutual funds – infrastructure debt funds – allowed to privately place their products).

Capital gains. Capital gains resulting from the sale or redemption of units held in a mutual fund are generally subject to the same taxes as applicable to listed securities (outlined above). Briefly, long-term capital gains are exempt from taxation, whereas short-term capital gains are likely to be taxed at the rate of 15% (provided that securities transaction tax has been paid).

Distribution tax. Any income distributed by a mutual fund to a pension fund is likely to be taxed at the rate of 30% on income distributed by a mutual fund (irrespective of whether it is a money market mutual fund, liquid fund or otherwise). However, distributions made by a mutual fund categorized as an infrastructure debt fund to a non-resident (specifically, foreign institutional investments and qualified foreign investments) are liable to be taxed at a rate of 5% (as against 30%).

2.6.2.2. *Investment through alternative investment funds*

Recently, the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (AIF Regulations) were introduced to replace the erstwhile SEBI (Venture Capital Fund) Regulations, 1996 (Venture Capital Fund Regulations). The AIF Regulations are intended to act as an umbrella set of regulations that will seek to regulate all pooling of monies aimed at investment in securities in India. An alternative investment fund may be established as a company, limited liability partnership or trust under the AIF Regulations. However, due to tax and regulatory implications, most alternative investment funds in India are established as trusts.

In this regard, existing exchange control regulations (the FDI Policy, 2013) state that foreign investment in trusts other than venture capital funds (registered under the erstwhile Venture Capital Fund Regulations, 1996) is permitted with permission of the Foreign Investment Promotion Board. However, there is some ambiguity as to whether this permission to allow investment would also be extended to alternative investment funds under the AIF Regulations. Industry interpretation seems to be in favour of allowing investments in alternative investment funds.

Tax treatment on investments in Category I venture capital funds. Under section 10 (23FB) of the ITA, income of a venture capital fund established as a Category I alternative investment fund under the AIF Regulations or a venture capital fund established under the Venture Capital Fund Regulations[19] from investments held by it, is exempt from taxation under the ITA. Effectively, this results in a pass-through treatment being afforded to the pooling vehicle,

18. Referred to as "SEBI".

19. Defined in section 10(23FB) Explanation (a) as a company registered as such under the Venture Capital Fund Regulations or a company registered as a Category I alternative investment fund – venture capital fund under the AIF Regulations.

essentially resulting in only one level of taxation being levied on investors in such a venture capital fund.

2.7. Pooling vehicles

2.7.1. *Use of pooling vehicles in India*

Pooling vehicles are used in India. As stated above, the AIF Regulations allow of the establishment of investment vehicles for pooling onshore funds. However, foreign investors (including pension funds) looking to participate on the alternative investment fund platform would require regulatory approvals which are discretionary in nature. Therefore, currently, alternative investment funds are established only to pool domestic/onshore capital. Accordingly, offshore investors tend to invest through offshore pooling vehicles.

Structuring considerations. Although an alternative investment fund may be established as a company, trust or limited liability partnership, the corporate structure poses certain disadvantages as compared to a trust structure.

Advantages of utilizing a trust structure. The trust structure retains several advantages over the above-discussed structures in the following regards:

- *flexibility of operation.* The trust regime in India allows a trust to be operated in any manner convenient to persons participating in a fund. The charter document may provide for any variation in how the trust operates, the rights of contributors to the trust and the compliance burden that must be undertaken by the trustee to the trust;
- *fiscally transparent entity.* A trust is not seen a taxable entity under Indian tax law. In specific instances, a trust is treated as a pass-through entity with no tax imposed on the trust as regards income generated by it other than on behalf of the contributors to the trust; and
- *winding up.* A trust may be wound up on expiry of a specified time period or on the decision of all parties concerned. No extended processes or procedures must be complied with in order to wind up a trust.

Several mandatory requirements are imposed on alternative investment funds, including:

- there may not be more than 1,000 investors;
- the corpus of each fund/scheme must be at least INR 200 million;
- the investment from each investor must be at least INR 10 million; and
- close-ended schemes/funds may be listed subject to a minimum tradable lot of INR 10 million.

2.7.2. *Look-through for tax purposes*

As discussed above, with regard to venture capital funds established under the Venture Capital Fund Regulations and Category I alternative investment funds established as venture capital funds under the AIF Regulations, look-through treatment is afforded as regards tax on account of section 10(23FB) of the ITA. Therefore, tax is levied directly on the beneficiaries (i.e. the pension funds).

Additionally, as discussed in section 0., for alternative investment funds (not qualifying for the section 10(23FB) treatment), effective pass-through treatment could also be availed if the alternative investment fund is established as a "trust". In the case of a determinate trust, the trustee must pay tax on behalf of the beneficiaries as a representative assessee under the ITA. In addition, any distribution from the trust/alternative investment fund to its beneficiaries/pension funds would be a non-taxable event, thus effectively resulting in look-through treatment.

However, if the pooling vehicle, the venture capital fund or the alternative investment fund is deemed to be earning business income, no look-through treatment would be afforded and the alternative investment fund, venture capital fund or trust would be treated as a tax-opaque entity for tax purposes.

2.7.3. *Reduced rates under treaties*

As discussed above, tax treaties may contain specific references to pension funds which may allow a pension fund to benefit from reduced tax rates or may render it efficient to make a direct investment in India. However, should the above not be applicable, an offshore holding structure may be considered prior to making investments in Indian assets.

Use of offshore holding structures. Purely from a structuring perspective, pension funds may consider routing their investment into India through the utilization of offshore holding companies to reduce or mitigate tax leakage on income earned from India. This should also be utilized in specific cases where a pension fund seeks to utilize an offshore holding company to make multiple investments in varied jurisdictions, in cases where there is no bilateral investment treaty to protect investment in India, or where there is no applicable income tax treaty (resulting in double taxation) or the applicable treaty is not helpful in preventing double taxation.

Choosing the right offshore holding company jurisdiction will help a pension fund not only to allocate and manage its investment appropriately, but also to ensure that tax and regulatory optimum returns from investments made in India. In the past, countries that were utilized to make investments into India included Cyprus, the Netherlands, Mauritius and Singapore. However, in recent times, the instability in Cyprus has definitely contributed to reducing its attractiveness as a location for offshore holding companies.

Tax residency certificate. The primary evidence required to claim treaty benefits and reduced rates under a treaty, is a tax residency certificate which proves that the pension fund is resident in the country in relation to which the treaty benefits are being claimed.

Foreign institutional investment investors. For pension funds that opt for lower tax rates as specified for foreign institutional investors, the relevant certificate proving registration with SEBI as a foreign institutional investment or a subaccount must be provided to the relevant persons.

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Other documents may need to be provided on a case-specific basis.

3. Real Estate

3.1. Treatment of three pension funds based on direct investment in Indian-situs real estate

Prior to providing responses regarding the treatment of a pension fund's investment in Indian-situs real estate, it is important to consider the exchange control framework relating to foreign investments in the real estate sector in India.

In India, under current exchange control regulations, foreign direct investment in real estate business or investment in companies engaged in real estate is not allowed. However, a major exception to this was introduced in 2001 when foreign investments were restrictively allowed in townships, housing, built-up infrastructure and construction development projects (which would include housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities and city and regional-level infrastructure), subject to fulfilment of certain entity-level and project-level requirements.

Tax treatment of investments in real estate. Proceeds from the transfer of capital assets, including securities of entities engaged in investment in real estate, as well as the transfer of real estate assets are taxed as capital gains in the same manner as outlined above.

3.1.1. Real estate transfer tax

No real estate transfer tax is applicable, save for the stamp duty payable on the instrument utilized to effect the conveyance.

3.1.2. Treatment of indirect investment in real estate by pension fund

The same analysis as above would apply in the case of indirect investment in real estate.

3.1.3. Preferable investment vehicle

There is currently no REIT-like regime in India. However, investment may be made through an alternative investment fund which would help pool assets in a regulated manner. However, no beneficial treatment would be afforded to such an alternative investment fund.

3.2. Taxation of rental payments

As stated above, under the FDI Policy, foreign investment is not allowed in real estate in India. In very specific situations, real estate may be held ancillary to the main business. One concrete exception to the prohibition on foreign investment in real estate business is as provided in PN2 (described above), which states that foreign investments may be allowed in townships, housing, built-up infrastructure and construction development projects.

Accordingly, Indian tax laws are also structured without considering foreign residents earning income from house rental, etc.

Tax treatment. As stated above, non-residents are not allowed to engage in real estate business in India.

3.3. Capital gains tax and real estate transfer tax

Capital gains taxation would apply (at the same rates as outlined above). Reduced taxation may also be available under the relevant income tax treaty in the manner described above.

4. Private Equity

4.1. Treatment of the three pension funds in case of direct investment in active corporate through shares

No different treatment other than as described above (on account of the entity classification of Pension Fund *A*, Pension Fund *B* and Pension Fund C) would be afforded on account of investing in an active corporate through shares.

4.2. Treatment of the three pension funds in case of direct investment in active corporate through profit sharing loan

Under the FDI Policy (or the companion debt-oriented external commercial borrowing regulations (ECB Regulations)), profit sharing loans are not allowed on account of specific restrictions on the all-in-cost ceiling imposed on debts incurred by a resident under the ECB Regulations. However, a foreign institutional investment may make investments in non-convertible debentures which may include provisions that may be carried out through a profit sharing model.

Tax treatment for investment in non-convertible debentures. Foreign institutional investments earning interest income from investment in non-convertible debentures are taxed at the rate of 20% (exclusive of surcharge and cess). However, recently, the Finance Act, 2013 introduced section 194LD of the ITA, through which foreign institutional investments and qualified foreign investments may benefit from a reduced tax rate of 5% on income earned from rupee-denominated bonds of an Indian company. However, there is some ambiguity as to whether "rupee-denominated bonds" covers non-convertible debentures.

The redemption of non-convertible debentures will result in capital gain tax being imposed, and any premium generated on such sale will be treated as a gain arising from the sale of a capital asset.

4.3. Impact of investment through a domestic vehicle

There are three kinds of entities through which investment may be made, namely a company, a limited liability partnership and a trust.

Company. Investments made through a company may be tax inefficient, as (i) tax is imposed on the company on its

total income earned and at the time of distributions (dividend distribution tax as provided in section 115O of the ITA) and (ii) tax is imposed on the redemption of shares as provided in section 115QA. Additionally, compliance costs (both functionally and monetarily) related to maintenance of a company are quite high in India.

Limited liability partnership. The FDI Policy states that foreign investment in limited liability partnerships is permitted only under the government route, i.e. with the approval of the Foreign Investment Promotion Board. Additionally, it also states that investments in limited liability partnerships is entirely prohibited when the limited liability partnership seeks to act in a conditional sector (a sector in which specific conditions are imposed relating to lock-in, minimum capitalization, sectoral caps, etc.). This makes limited liability partnerships impractical for making general investments.

Trust. As discussed above, investment in a trust established as a venture capital fund (and possibly an alternative investment fund) should be available with the permission of the Foreign Investment Promotion Board. Additionally, trusts are extremely malleable entities under Indian law, allowing for investment and divestment to be carried out without requiring much compliance-related action.

An alternative investment fund established as a trust would ideally be the preferred vehicle for making indirect investments in Indian securities.

4.4. Taxation of dividends and interest; available exemptions

Dividends and interests are taxed in the same manner as described in sections 2.1. and 2.2.

4.5. Permanent establishment issues

To the extent that the pension funds do not carry out activities resulting in the creation of a permanent establishment under the relevant article of the applicable income tax treaty, no permanent establishment issues would arise on account of involvement of the pension fund in the business of the investee company.

4.6. Capital gains upon disposition of investment

Capital gains tax is applicable, although it may be reduced under an applicable treaty in the same manner as described above.

5. Other Issues

See section 0.

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