

Taxation of REIT & INVITS



Meaning of Business Trust

Section 2(13A) "business trust" means a trust registered as

✓ **an Infrastructure Investment Trust or**

✓ **a Real Estate Investment Trust,**

the units of which are required to be listed on a RSE.

Concept simply explained:-

- the trust would raise capital by way of issue of units (to be listed on a recognized stock exchange) and can also raise debts directly both from resident as well as non-resident investors;
- the income bearing assets would be held by the trust by acquiring controlling or other specific interest [Not less than 50%] in an Indian company (SPV) from the sponsor (promoters of company).

Meaning of REIT

REITs are collective investment devices that **invest in income producing real estate**, mostly rental properties such as offices, shopping malls, health care units, warehouses and so on.

Meaning of SPV

SPV means an **Indian company** in **which the business trust holds controlling interest [More than 50%]** and **any specific percentage of shareholding or interest as may be required by the regulations** under Which such a trust is granted registration

Taxability of Business Trust

Interest received from SPV	Any interest income received / receivable from a special purpose vehicle would not be tax in the hands of the trust. [U/s 10(23FC)]. Hence on TDS is required from SPV.
Rental Income of REIT	Any income in the nature of Rent/ lease/letting out owned by REIT shall be exempt u/s 10[23FCA]

Other Income	LTCG on sale of shares of SPV [FA,2018]: Where STT is paid.	Taxable u/s 112A @10%
	Other LTCG	Taxable @ 20%
	STCG u/s 111A on sale of shares of SPV	Taxable @ 15%
	Other Income	Taxable @ MMR

Taxability in the Hands of Unit Holder					
Income	Treatment				
Interest received / receivable from SPV	Interest Taxable	Taxable in the hands of the unit holders as per Section 115UA(3). Hence TDS is deducted as under: ↓			
	TDS deductible by BT	TDS will be done by BT			
		5%	Interest is paid to NR/FC unit holders or on ECB		
		10%	payment is made to resident unit holders.		
	Rate of Tax in the Hands of Unitholder	Unit Holder is NR/FC		5% [for which TDS already Deducted]	
Other Resident		Normal Tax rate.			
Capital gain on transfer of units of a business trust	ON sale		POHA =36Months		
			LTCG PAID	STT	Exempt u/s 10[38]
			STCG 111A	u/s	Taxable @ 15%
	On transfer of shares of SPV to BT in exchange of Unit		Not regarded as transfer no CG		
Dividend SPV → BT ↓ UH	Exempt in the hands of the business trust as well as in the hands of the unit holders. Any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by, or accrued to, the business trust.Sec.115UA				
Rental income received by UH from BT	It is taxable in the Hands of UH. NR/FC/Resident → Normal Rate of Tax TDS on rent paid by BT to Unit Holder				
	NR/FC		Rate in force as per Sec.195		
	Other		10%		

Question From Past Examination

Q.1 A business trust, registered under SEBI (Real Estate Investment Trusts) Regulations, 2014, gives particulars of its income for the P.Y.:

- (1) Interest income from Beta Ltd. – Rs. 4 crore;
- (2) Dividend income from Beta Ltd. – Rs. 2 crore;
- (3) Short-term capital gains on sale of listed shares of Beta Ltd. – Rs. 1.5 crore;
- (4) Short-term capital gains on sale of developmental properties – Rs. 1 crore
- (5) Interest received from investments in unlisted debentures of real estate companies – Rs. 10 lakh;
- (6) Rental income from directly owned real estate assets – Rs. 2.50 crore

Beta Ltd. is an Indian company in which the business trust holds controlling interest. The business trust holds 100% of the shareholding of Beta Ltd.

Discuss the tax consequences of the above income earned by the business trust in the hands of the business trust and the unit holders, assuming that the business trust has distributed Rs. 10 crore to the unit holders in the P.Y.[Nov16].

Q.2 REIT received Income of 120L from SPV, breakup of the income so received

Interest-90L

Dividend-30L

REIT distribute 90L to its unitholder, 40% of the unitholder are NR. Examine the Tax Implication of the above transaction in the Hands of REIT and Unit Holder Including the requirement of TDS.[Nov-15]