Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North-Block, New Delhi, dated the 3rd of July, 2019

Subject: Clarification regarding taxability of income earned by a non-resident investor from off-shore investments routed through an Alternate Investment Fund-reg.

In the context of Alternate Investment Funds (AIFs), references have been made to the Central Board of Direct Taxes (the Board) seeking clarity regarding taxability of income from investments made by the non-resident investor through these AIFs, **outside India (off-shore investment)**.

2. The incidence of tax arising from off-shore investment made by a non-resident investor through the AIFs would depend on determination of status of income of non-resident investor as per provisions of section 5(2) of the Income-tax Act, 1961 (Act). As per section 5(2) of the Act, the income of a person who is non-resident, is liable to be taxed in India if it is **received or is deemed to be received in India** in such year by or on behalf of such person; or **accrues or arises or is deemed to accrue or arise to him in India**.

3. Chapter XII-FB contains special provisions relating to tax on income of investment funds and income received from such funds. Under Chapter XII-FB, section 115UB of the Act (*'Tax on income of investment fund and its unit holders'*) is the applicable provision to determine the income and tax-liability of investment funds & their investors. In this context, *"investment fund"* is defined in *Explanation 1* of Chapter XII-FB to mean any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992). Thus, provisions of section 115UB apply only to Category I or Category II AIFs, as defined in SEBIs regulations.

4. By an overriding effect over other provisions of the Act, sub-section (1) of section 115UB of the Act provides that any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund been made directly by him and not through the AIF.

5. The matter has been considered by the Board. As section 115UB(1) of the Act provides that the investments made by Category I or Category II AIFs are deemed to have been made by the

investor directly, it is hereby clarified that any income in the hands of the non-resident investor from off-shore investments routed through the Category I or Category II AIF, being a deemed direct investment outside India by the non-resident investor, is not taxable in India under section 5(2) of the Act.

6. It is further clarified that loss arising from the off-shore investment relating to non-resident investor, being an exempt loss, shall not be allowed to be set-off or carried-forward and set off against the income of the Category I or Category II AIF.

7. The contents of this Circular may be circulated widely for information of all stakeholders and departmental officers.

8. Hindi version to follow.

−sd −

(Rajarajeswari R.)
Under Secretary (ITA.II), CBDT

(F.No. 225/79/2019-ITA.II)

Copy to:-

i.   PS to FM/OSD to FM/PS to MoS(F)/OSD to MoS(F)
ii.   PS to Secretary (Revenue)
iii.   Chairman, CBDT & All Members, CBDT
iv.   All Pr.CCsIT/ Pr.DsGIT
v.   All Joint Secretaries/CsIT, CBDT
vi.   C&AG
vii.   CIT (M&TP), Official Spokesperson of CBDT
viii.   O/o Pr. DGIT(Systems) for uploading on official website
ix.   Addl.CIT (Database Cell) for uploading on the departmental website

(Rajarajeswari R.)
Under Secretary-ITA.II, CBDT