CHAPTER 53
TAXATION OF BUSINESS TRUST & IT'S UNIT HOLDERS

TAXATION OF BUSINESS TRUST (REIT / INVIT)

Taxability between Business Trust and special purpose vehicle:

1. The business Trust will **acquire the shares** of the SPV by allotting them units in business trust. Such exchange is **exempt** under capital gains u/s 47(xvii). The business Trust will acquire controlling interest from promoters of SPV.

2. Now the promoters of SPV hold units of Business Trust, then **COA of such units = COA of shares in SPV [Sec 49(2AC)]**

3. The **period of holding** during which the shares were held by sponsors will also be clubbed to determine whether units are long term or short term [Sec 2(42A)]

4. A **unit** of a business trust becomes **long term** if it is held for more than 36 months.

5. When the sponsor i.e. promoters sells these units and if it is a **long term** capital asset, then it is **taxable u/s 112A**.

6. When these units are **short term** capital asset it will be chargeable to tax u/s 111A @ 15%.

**Taxability of other Incomes.**

1. The business trust will give loans to its SPV and in return **SPV will pay interest** to Business Trust. Such interest earned by a Business Trust is **exempt in the hands of business trust u/s 10(23FC)**. Further, the SPV shall not deduct TDS on such interest.
2. When SPV pays dividend to Business Trust then no DDT shall be paid u/s 115-O if the following conditions are fulfilled:

(i) If Business Trust holds 100% of share capital of SPV or

(ii) If it holds all the share capital other than which is required to be held by any specified entity mentioned by the government

AND

(iii) The exemption from levy of DDT would only be in respect of dividend paid out of current income after the date business trust acquires the shareholding as mentioned in point (i) above i.e. 100% or eg. 70% + 30% by government. Dividend paid out of accumulated and current profits upto this date (i.e. 100% holding) shall be liable for DDT.

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### Investor

<table>
<thead>
<tr>
<th>Investor</th>
<th>REIT / BT</th>
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<tbody>
<tr>
<td>Taxable in the hands of unit holders</td>
<td>1. Interest from SPV - Exempt in the hands of BT</td>
</tr>
<tr>
<td></td>
<td>2. Rent from direct investment - Exempt</td>
</tr>
<tr>
<td>Exempt</td>
<td>3. Dividend from SPV - Exempt</td>
</tr>
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<td>4. LTCG u/s 112A - Taxable @ 10% in excess of Rs 1 lac.</td>
</tr>
<tr>
<td>Exempt</td>
<td>5. Other LTCG - Taxable as per sec 112.</td>
</tr>
<tr>
<td>Exempt</td>
<td>6. STCG u/s 111A - Taxable at 15%</td>
</tr>
<tr>
<td>Exempt</td>
<td>7. Other Incomes - Taxable at MMR @ 42.744%</td>
</tr>
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</table>
TDS implication on payment of Rent:
When a REIT makes payment to a resident investor, it shall deduct TDS @ 10%
When a REIT makes payment to a non resident investor, it shall deduct TDS u/s 195.

TDS implication on payment of INTEREST:
When a REIT distributes interest to a resident investor then it shall deduct TDS @ 10% (194LBA). However, when a REIT distributes interest to non resident investors, it shall deduct TDS @ 5% u/s 194LC. Such interest is taxable for non-resident u/s 115A.

Illustration:
Q. A REIT earns Rs. 10 crore income as follows:
(i) Rs. 4 crores from rentals from real estate.
(ii) Rs. 2 crores as interest from SPV.
(iii) Rs. 3 crores as dividend from SPV.
(iv) Rs. 1 crore as LTCG

Rental income of Rs. 4 crores are exempt in the hands of REIT. Interest income of Rs. 2 crores are exempt in the hands of REIT. Dividend income of Rs. 3 crores are exempt in the hands of REIT. On LTCG, REIT will pay tax as per sec 112 if it is not covered by Sec 112A.

Suppose REIT distribute Rs. 6 crores to its unit holders. A unitholder Mr. X receives Rs. 50,000 the treatment of Rs. 50,000 in the hands of Mr. X is as follows:

Amount Attributable to REIT's Rental Income

\[
\frac{4\text{Cr}}{10\text{Cr}} \times 50,000 = 20,000
\]

This amount is taxable in the hands of Mr. X u/s 115UA. REIT will deduct TDS @ 10% if unitholder is a resident and it will deduct TDS u/s 195 if the unitholder is a non resident or a foreign company.

Amount attributed to REIT's Interest Income From SPV

\[
50,000 \times \frac{2\text{Cr}}{10\text{Cr}} = 10,000
\]
This amount is taxable in the hands of Mr. X u/s 115UA. REIT shall deduct TDS @ 10% if the unitholder is a resident and @ 5% if the unitholder is a non-resident.

### Amount attributed to REIT’s Dividend income

\[
50,000 \times \frac{3\text{Cr}}{10\text{Cr}} = 15,000
\]

This amount is exempt in the hands of investor, whether the investor is a resident or a non-resident.

### Amount attributed to REIT’s CG income

\[
50000 \times \frac{1\text{Cr}}{10\text{Cr}} = 5000
\]

This amount is exempt in the hands of unitholder whether the unitholder is a resident or non-resident.

- **Note:** In Business Trust Chapter Income is taxable in the hands of the investor only in the year in which it is received by the investors. However, in the chapter of Taxation of Investment Fund & Taxation of Securitisation Trust Income is taxable in the hands of the investor in the year in which Income is earned by the Fund whether or not it is received by the Investors.

- **Conclusion:** In Business Trust Income is taxable to Investors on receipt basis whereas in Investment Fund & Securitisation Trust it is taxable the moment it is accrued.

### Analysis of provision relating to MAT in reference to Business Trust:

1. Cost of shares of SPV in (Oberoi Reality Ltd) the hands of shareholders Co. (Oberoi Ltd.) (01.01.2014) 1,000L
2. Shares of SPV transferred to B/T and B/T allots 120L units of FV Rs. 10 each (MV of units is Rs. 11 / unit) 1,200L
3. Units are sold by shareholders (Oberoi Ltd.) on 31.03.19 for Rs. 20/unit 2,400L
Oberoi Ltd: Shareholder Company

(1) Units of BT A/c  Dr 1,320
   To shares in SPV A/c  1,000
   To P & L A/c (on Exchange)  200
   To P & L A/c (on Bringing at MV)  120

The profit of Rs. 200 will be reduced from NP to arrive at BP by virtue by clause (ii(e) (A). The profit of Rs. 120 will be reduced from NP to arrive at BP by virtue of clause (ii(e) (B).

P & L A/c

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<tbody>
<tr>
<td>By Manufacturing profit</td>
<td>3,000</td>
</tr>
<tr>
<td>By profit on Exchange</td>
<td>200</td>
</tr>
<tr>
<td>By profit on change in carrying Account</td>
<td>120</td>
</tr>
<tr>
<td>To Net profit</td>
<td>4,400</td>
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Normal provisions (IT Act)

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<tbody>
<tr>
<td>N.P</td>
<td>4,400</td>
</tr>
<tr>
<td>(-) Profit on Exchange by Sec 47 (xvii)</td>
<td>(200)</td>
</tr>
<tr>
<td>(-) Profit on change in valuation (Since it is national)</td>
<td>(120)</td>
</tr>
<tr>
<td>(-) Capital Gains</td>
<td>(1,080)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>PGBP</td>
<td>3,000</td>
</tr>
<tr>
<td>(+) S.P. (-) cost of shares (2400-1,000)</td>
<td>1,400</td>
</tr>
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<td></td>
<td></td>
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<tr>
<td>Clause (k)/Book profit</td>
<td>4,400</td>
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</table>
(1) When units of business trust are sold by the Co. in Recognised stock Exchange, then the gain which has arisen amounts to actual gains.

(2) Earlier when shares of SPV were exchanged with the units of business trust, such gain is notional gain which is not taxable under normal provisions of IT Act by virtue of Sec 47(xvii). Such notional gain is also reduced to arrive at Book profits by clause (iie)(A).

(3) When there is change in the carrying amount of units, then such notional gain is also not taxable under normal provisions of IT Act as what is chargeable generally under IT Act are actual profits. Such notional gains is also reduced from Net profit to arrive at Book profit by virtue of clause (iie)(B).

(4) Now since the units are actually sold and they have realized profits under normal IT provisions, it will be chargeable under the heads CG (ST/LT) depending upon the period of holding (depends upon 36 months).

For the purpose of sec 115JB, profit of Rs. 1,080 will also be removed from NP by virtue of clause (iie)(c). But this can’t be understood as benefit to the assessee as clause (k) will add back Rs.1,400 to NP i.e. by taking the cost of shares in SPV (2400-1000).