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THE INDIAN PRIVATE EQUITY & VENTURE CAPITAL ASSOCIATION

To,

Mr. Rajesh Kumar Kedia
Director TPL,
Central Board of Direct Taxes (CBDT),
Ministry of Finance, North Block,
New Delhi, India

29th November, 2016



Subject: - IVCA - Alternative Investment Funds taxation

Dear Mr. Kedia,

We refer to our time to time discussions on tax issues faced by SEBI registered Alternative Investment Funds (AIF).

One of the issues on which certain representations have been made in the past relates to exemption from withholding tax obligations any accrual/distribution of income by an Alternative Investment Fund to investors who qualify for an exemption under section 10 of the Income-tax Act, 1961 (the Act).

We have summarised below the issue along with the recommendation:

Issue - Tax withholding under section 194LBB:

- o Section 194LBB requires every AIF to deduct 10% tax on credit / payment of income (other than business income) to its unit holders, being residents of India.
- o Section 197A(1A) provides that no deduction of tax shall be made for paying any income of the nature referred to in section 192A, section 193, section 194A, section 194DA, section 194-I and section 194K on the basis of a declaration in writing in duplicate in the prescribed form, provided the tax on the estimated total income for the recipient will be nil.
- o Circular no 4/2002 dated 16 July 2002 has listed certain bodies/ associations who can file prescribed self-declaration under section 197A(1A). These are bodies/associations whose income is unconditionally exempt under section 10 and who are statutorily not required to file return of income as per section 139, since their income is anyway exempt under the Act.
- o It is pertinent to note that the payment/ credit of income under section 194LBB of the Act is not covered within the purview of section 197A(1A) of the Act and hence, technically, bodies/associations whose income is unconditionally exempt under section 10, who are

investors in AIFs, may not be eligible to make a self-declaration for receiving income from AIFs without attracting the 10% deduction of tax.

- o We therefore seek a suitable amendment/ clarification to provide for an exemption from tax withholding under section 194LBB payments/ credits of income by an AIF to such institutions.


Recommendation:

The aforesaid amendment/ clarifications may be provided in one of the following ways:

- o Include section 194LBB of the Act in section 197A(1A) of the Act so that bodies/associations whose income is unconditionally exempt under section 10 can make a self-declaration for receiving income from AIFs without deduction of tax.
- o Notify bodies/associations whose income is unconditionally exempt under section 10 under section 197A(1F) of the Act so that such bodies/associations can receive specified payments without any tax withholding under Chapter XVII.
- o Issue a general circular that clarifies that Chapter XVII should not apply on payments to bodies/associations whose income is unconditionally exempt under section 10.

Thank you very much.

Respectfully,



Rajat Tandon

President, IVCA