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Mutual Fund Gains under the India-UAE DTAA

A technical analysis on the sale of Indian mutual funds by UAE-resident NRIs under the Income Tax Act, 2025 framework, covering:

- *The domestic charge on redemption, and the treaty provision that displaces it;*
- *Why units of an Indian mutual fund are not shares for Article 13 purposes;*
- *The statutory documentation required to claim treaty relief; and*
- *The redemption-to-refund roadmap where the registrar has already withheld tax*

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Domestic Law and the Treaty Override

A UAE-resident NRI redeeming units of an Indian mutual fund is taxed under the domestic charge, and the Registrar and Transfer Agent (RTA) — the agency appointed by the fund house to process redemptions and withhold tax on its behalf — deducts tax accordingly. The India-UAE DTAA displaces that charge. The four principles below set out the position; the pages that follow deal with why units qualify, what must be filed, and how withheld tax is recovered.

Income Tax Act, 2025

► **Scope of charge (Sec. 5(2)).** Non-residents are taxed on income accruing, arising or received in India.

► **Equity schemes (Sec. 196 / 198).** STCG at 20%; LTCG at 12.5% above the ₹1.25 lakh threshold.

► **Debt and specified schemes.** Taxed at applicable slab rates, or 12.5% LTCG without indexation.

► **Withholding (Sec. 393(2), Table Sl. No. 17).** Mutual fund houses deduct peak non-resident withholding tax automatically upon redemption.

India-UAE DTAA protection

► **Sec. 159(4) relief.** DTAA provisions override the Income Tax Act, 2025 wherever the treaty terms are more favourable.

► **Article 13(1) to (4).** These cover immovable property, permanent-establishment assets and corporate shares, excluding mutual fund units.

► **Article 13(5), the residual clause.** Capital gains on any other property are taxable only in the state of residence, that is the UAE.

The four structural principles

► **DTAA primacy (Sec. 159(4)).** An NRI may choose the treaty rules under the Income Tax Act, 2025 where they are more beneficial than domestic tax law.

► **Residual exemption (Article 13(5)).** Mutual fund units fall under residual property, granting sole taxing rights to the country of residence.

► **Nil effective rate.** Since the UAE levies no personal tax on capital gains, the effective liability is zero.

► **Refund path (Sec. 393(2), Table Sl. No. 17).** Peak tax deducted at source by the registrar can be claimed back in full through the Indian return.

The position in one line. Gains on the redemption of Indian mutual fund units by a UAE-resident NRI are taxable only in the UAE under Article 13(5), which taxes them at nil, so that Indian tax withheld on redemption is recoverable in full.

Units Are Not Shares, and What Must Be Filed

Why Article 13(4) does not apply

Mutual funds in India are constituted as trusts under the Indian Trusts Act, 1882 and the SEBI Mutual Fund Regulations. A unit represents a beneficial interest in trust assets, not corporate equity in a company. Gains on units therefore fall outside Article 13(4), which deals with shares, and are governed strictly by Article 13(5) as residual property. The distinction has been accepted in **DCIT v. K.E. Faizal** (ITAT, Cochin) and **Anushka Sanjay Shah v. ITO** (ITAT, Mumbai, 2025).

Statutory requirements for claiming treaty relief

Requirement	Provision	What is required
Tax Residency Certificate	Sec. 159(8)(a)	A TRC issued by the UAE Federal Tax Authority for the relevant tax year, proving residency status
Form 41 (erstwhile Form 10F)	Sec. 159(8)(b)	Electronic filing on the Income Tax Portal disclosing the requisite taxpayer credentials
No-PE and anti-abuse	GAAR and the MLI	Self-declaration of no permanent establishment in India, with compliance with GAAR and the Principal Purpose Test

The redemption-to-refund roadmap

► **Redemption.** Units are redeemed, and the registrars — RTA's— deduct peak non-resident TDS by default.

► **Documentation.** Obtain the UAE TRC from the Federal Tax Authority and generate e-Form 41 on the Income Tax portal.

► **Return filing.** File the Indian income-tax return claiming treaty exemption under Article 13(5) read with Sec. 159(4).

► **Refund.** The Department processes the return and issues the TDS refund in full, with interest.

Note: Registrars routinely withhold tax on redemption under domestic law, but a UAE-resident NRI remains entitled to a nil rate under Article 13(5) read with Sec. 159(4). Documentation obtained before filing, rather than after a notice, is what makes the refund straightforward.

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