

The Singapore–UAE Shield: Mutual Fund Gains Beyond India's Tax Reach and Who Else Gets One

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Singapore and the UAE hold two of the largest pools of NRI and institutional money in India; this article examines how capital gains on the sale of units of an Indian mutual fund are taxed for a Singapore or UAE resident. An individual may owe India no capital gains tax at all. Both treaties let India tax gains on *shares* of Indian companies but leave gains on "any other property" to the investor's country of residence. This article also explains how each treaty reaches that result - how mutual funds are not shares, the leading decisions as per various tribunals, how India's other treaties compare and what an investor must do.

Position in Indian Law

Without a treaty, India taxes a non-resident's mutual fund gains in full, and the tax is withheld on redemption. From 1 April 2026, the law is the Income-tax Act, 2025, as amended by the Finance Act, 2026. The rates as per the Income Tax Department (surcharge and 4% cess extra) are as follows:

Category of fund	Short-term gain	Long-term gain
Equity-orientated fund (long-term if held over 12 months)	20% - section 196 (old s.111A)	12.5% above ₹1.25 lakh - section 198 (old s.112A)
Specified mutual fund (65% or more in debt-oriented mutual fund and money-market instruments, on an annual average of daily closing figures)	Deemed short-term for units purchased on or after 1 April 2023, slab rates - section 76(1) (old s.50AA)	Not available
Other funds	Slab rates	12.5%, no indexation- section 197 (old s.112)
Income from units (IDCW)	20% on units bought in foreign currency-section 207; withholding at 20% or the lower treaty rate - section 393(2), Table Sl. No. 10 and Note 2, read with sections 2 and 402 (old s.196A)	—

Points to remember:

1. The deemed short-term capital gain on debt funds is still "capital gains", so the DTAA's article on Capital Gain governs it.

And

2. Treaty relief is as per section 159 in the Income Tax Act 2025, which replaced sections 90 and 90A (Income Tax Act 1961); a non-resident may still apply the treaty where it is more beneficial.

The Core: "shares" versus "any other property"

Article 13 (Capital Gains) of both DTAAs allocates taxing rights as follows:

1. **Immovable property and permanent-establishment assets**: taxable where the property or PE is. Not relevant to a portfolio investor.
2. **Shares of an Indian company**: India may tax the same.
3. **Any other property** (Article 13(5) in both treaties): taxable *only* in the seller's country of residence.

Indian mutual funds are trusts under the SEBI (Mutual Funds) Regulations and not companies. The investor holds a unit of a trust, not a share, so the unit falls through to Article 13(5).

Legal Interpretation:

1. Article 3(2) Neither treaty defines "shares", so the term takes its Indian law meaning unless the context requires otherwise.

2. Section 2(84) of the Companies Act, 2013, defines a share as a share in the share capital of a company; a mutual fund has no share capital.
3. Section 2(h) of the Securities Contracts (Regulation) Act, 1956, lists shares and units in separate sub-clauses.
4. There are no notifications under old section 90(3) as per the Income Tax Act 1961 that have equated the two viz. shares and mutual funds.
5. The Income Tax Department cannot include units in the share paragraph.

India-Singapore DTAA

Gains on Indian fund units by a Singapore resident are taxable only in Singapore under Article 13(5), whenever the units were bought.

Residence (Article 4). A Singapore resident is a person liable to tax there by reason of domicile, residence or similar criterion. For dual residents, the tiebreaker looks in turn at permanent home, centre of vital interests, habitual abode and nationality, so an NRI who keeps a family home in India must show his centre of vital interests has moved from India to Singapore.

Structure of Article 13.

- **13(1)** immovable properties: where situated;
- **13(2)** PE or fixed-base assets: where the PE is;
- **13(3)** ships and aircraft: operator's residence state only;
- **13(4A) - (4C)** shares, added by the 2016 Protocol;
- **13(5)** everything else: residence state only.

Evolution: Until 2017, gains on Indian shares were taxable only in Singapore, making Singapore, along with Mauritius, a favoured source for investment in India. A 2005 protocol made that exemption conditional on the Mauritius treaty continuing to exempt share gains and added a limitation of benefits test.

> "The Capital Gain on the sale of units must be taxed for Singapore residents in Singapore only, and since no capital gains are taxed in Singapore, and Singapore's resident individuals are generally exempt from foreign-sourced income, the individual pays no tax anywhere."

When India amended the Mauritius treaty in May 2016, it amended the Singapore treaty that December, effective 1 April 2017.

The synthesised text now reads:

- **13(4A):** "Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident."
- **13(4B):** "Gains from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxed in that State."
- **13(4C):** gains under 13(4B) between 1 April 2017 and 31 March 2019 were taxable at no more than 50% of the domestic rate.

The Limitation of Benefits clause in Article 24A covers only the following:

- An arrangement made mainly to obtain the share-gain benefit loses it;
- A shell or conduit company loses it.
- a company is presumed to be a shell or conduit if its annual operating spend is below S$200,000 in Singapore or ₹50 lakh in India, measured over the 24 months before the gain under 13(4A) or the 12 months under 13(4C);
- A listed company, or one that meets the spending test, is presumed not to be one.

Hence, from above, we can infer that Limitation of Benefits Clause in India-Singapore DTAA cover only article 13(4A) and 13(4C) and doesn't cover Article 13(5) in which units, bonds and debentures are covered.

Hence, reference or interpretation must be strictly done as per Article 13(5): "Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident." The Mumbai Tribunal confirmed this in *Anushka Sanjay Shah v. ITO* (26 March 2025, AY 2022-23) for equity and debt units bought from 1st April 2017.

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Different rules may apply to a business that trades in units. Singapore companies should also consider section 10L of Singapore's Income



> "The 2007 Protocol defines an individual as UAE resident if one is "present in the UAE for a period or periods totalling in the aggregate at least 183 days in the calendar year concerned". "

Tax Act, which, since 1 January 2024, taxes foreign-asset gains received in Singapore by group entities that lack sufficient economic substance there.

India-UAE DTAA

Capital gains on Indian fund units by a UAE resident are taxable in the UAE under Article 13(5), but the UAE levies no personal income tax. Hence, making it exempt in both countries.

Structure of Article 13. The pattern matches Singapore's, without a date-wise split for shares:

- **13(1)** immovable property: where situated;
- **13(2)** PE or fixed-base assets: where the PE is;
- **13(3)** shares of a company whose property consists principally of immovable property may be taxed where the property is situated;
- **13(4)** shares of a company resident in a Contracting State: may be taxed in that State;
- **13(5)** any other property: residence state only.

The treaty (signed on 29th April 1992, in force from 22nd September 1993, amended in 2007 and 2013) never exempted capital gains on shares, so there was no grandfathering. But under the published treaty text, Article 13(4) speaks only of *shares*, and Article 13(5) makes other gains "taxable only in the Contracting State of which the alienator is a resident".

In *DCIT v. K.E. Faizal* (ITA 423/Coch/2018, AY 2012-13, 8 July 2019), the Assessing Officer argued that equity mutual fund units are shares in nature because domestic law taxes them the same. The Cochin Tribunal disagreed and held that the Companies Act defines shares and mutual funds as not included in them. It also held that SEBI requires mutual funds to be trusts, and securities law treats shares and mutual funds as two different instruments.

Residence (Article 4): With no personal income tax, UAE individuals long risked failing the "liable to tax" test. The 2007 Protocol defines an individual as UAE resident if one is "present in the UAE for a period or periods totalling in the aggregate at least 183 days in the calendar year concerned". Without a TRC, the claim fails. It can also be noted that UAE corporate tax (9% since June 2023) matters only for units held through a UAE company and not the individual.

Check the UAE TRC. Since 1 March 2023, UAE law (Cabinet Decision No. 85 of 2022) treats an individual as a resident on any of three tests:

1. Primary residence and centre of interests in the UAE;
2. 183 days in a period of 12 months; or
3. 90 days in a period of 12 months for UAE or GCC nationals or permit holders with a permanent home, job or business there.

The treaty test is narrower: 183 days in the calendar year.

A TRC issued based on the 90-day condition or a 12-month period other than a calendar year may not satisfy the DTAA's residency test, so check accordingly and keep a record of entry and exit in the passport.

What do Tribunals Say?

The leading rulings in this matter hold that units are not shares under a DTAA's capital gains article, as mentioned in the table below.

The common citation is of *Apollo Tyres v. CIT* (SC, 2002), read with *CIT v. Mother India Refrigeration Industries* (1985) 155 ITR 711 (SC): a deeming fiction reaches only as far as it says.

From above it can be inferred that "Taxing equity-fund units like listed shares does not make them "shares" in a treaty".

In my view, the same reasoning should be extended to ETFs and index funds, which are mutual fund schemes even though their units are traded on an exchange; no ruling has addressed them yet.

These are only Tribunal rulings, and at the moment, neither the High Court

Ruling	Forum and year	DTAA	Holding
Anushka Sanjay Shah v. ITO	ITAT Mumbai, dt. 26 March 2025 (AY 2022-23)	India-Singapore	Equity and debt units bought after 1 April 2017 fall under Art. 13(5) and not 13(4B)
Emerging India Focus Funds v. ACIT	ITAT Delhi, 2025	India-Mauritius	Equity-oriented units are not "shares" under Art. 13(3A); the residuary clause applies
DCIT v. K.E. Faizal	ITAT Cochin, dt. 8 July 2019 (AY 2012-13), 178 ITD 383	India-UAE	Equity-oriented units fall under Art. 13(5)
ITO v. Satish Beharilal Raheja	ITAT Mumbai, 2013 (AY 2004-05), 37 taxmann.com 296	India-Switzerland	Units are not shares; a residuary clause applies

nor the Supreme Court has yet settled the matter, so there is a possibility that the Income Tax Department will still litigate and go on an appeal for the same.

Income Distribution cum Capital Withdrawal (IDCW) payouts are a different story

The residence-only result covers gains on redemption, not distributions.

Under section 393(2) (Table Sl. No. 10), read with sections 2 and 402, the fund deducts 20% on income from units paid to a non-resident;

Note 2 lowers this to a lower DTAA rate where the payee furnishes a Tax Residency Certificate. Section 207 fixes 20% on units bought in foreign currency. These replace old sections 196A and 115A.

Article 10(4) of the Singapore DTAA defines dividends by reference to distributions by a "*company*", and the UAE definition is similar. A mutual fund is a trust, so its payouts are unlikely to be "dividends" and can be considered as follows:

- **Singapore:** Article 23 (Income Not Expressly Mentioned) says such items "may be taxed in accordance with the taxation laws of the respective Contracting States", so the rate is 20% in India.
- **UAE:** Article 22 (Other Income) gives income not dealt with elsewhere to the residence country, which supports a claim that IDCW is not taxable in India.

Investors seeking DTAA protection therefore usually prefer growth options.

Practical Checklist

The benefits can be claimed on the basis of the investor's residence and paperwork.

1. **Tax Residency Certificate:** Section 159(8) allows relief "only when the non-resident obtains a certificate of residence from the Government of that country" and provides prescribed information. UAE residents should be careful that it is as per the DTAA.
2. **Form 41 and fund records:** File Form 41 (formerly Form 10F) every financial year. Before redeeming, please ensure that the overseas address and status are with the registrar and issue the TRC and Form 41 to the registrar.
3. **Withholding and refunds:** Registrars often withhold at domestic rates. For a large redemption, a nil or lower deduction certificate under section 395(1)(a) (old s.197) may be applied as per Form No. 128, which can avoid a months-long refund cycle. Otherwise, a relief can be claimed in the Income Tax Return, citing Article 13(5) in the DTAA schedule.
4. **Residence and timing:** Under section 6(7), an Indian citizen with Indian income above ₹15 lakh who is not liable to tax elsewhere is deemed to be a resident in India, a real risk for UAE residents. Track the number of days stayed in India for the tax year and abroad for the treaty test. Before redemption, determine Indian residential status for the entire tax year and treaty residence for the relevant period. Redemption before physical return does not, by itself, ensure treaty relief.
5. **Anti-abuse rules and substance:** Article 7 of the Multilateral Instrument (MLI), as applied to the Singapore or UAE treaty, denies a benefit if obtaining it was one of the principal purposes of an arrangement or transaction; India's GAAR may do the same. Singapore's Limitation of Benefits clause does not apply to Article 13(5). In *AAR v. Tiger Global International II Holdings* (SC, 15 January 2026), the Supreme Court held that a TRC is necessary but not conclusive evidence of treaty entitlement. Accordingly, CBDT Circular No. 789 dated 13-4-2000, which treated a Mauritian TRC as sufficient evidence of residence,

The two treaties side by side

Point	India-Singapore	India-UAE
Treaty and key amendment(s)	1994; Protocol of 2016 (effective 1 April 2017)	1992 (in force 1993); Protocols of 2007 and 2013
Gains on shares of Indian companies	Taxable in India if acquired on or after 1 April 2017 (13(4B)); earlier residence only (13(4A))	Taxable in India (13(4))
Gains on mutual fund units	Residence only (13(5))	Residence only (13(5))
Leading ruling	Anushka Sanjay Shah (2025)	K.E. Faizal (2019)
Income from units (IDCW)	India may tax (Art. 23)	Arguably residence only (Art. 22)
Tax at home for individuals	No capital gains tax	No personal income tax
Individual residence test	Singapore tax residence, shown by TRC	183 days in the calendar year (Art. 4), shown by TRC
Anti-abuse clause	Limitation of Benefits (Art. 24A), limited to 13(4A) and 13(4C); Multilateral Instrument Principal Purpose Test (MLI PPT) applies	Article 29 (entities only); MLI PPT

must now be read subject to the provisions of GAAR. This may have little effect on an NRI living abroad genuinely, but companies or family offices/vehicles must demonstrate genuine management in their country of residence.

6. **Litigation risk:** Expect scrutiny of large claims until a High Court or Supreme Court passes the Judgement in this matter. Until then, please keep the TRC, Form 41, fund statements and the Tribunal rulings on file.

Beyond Singapore and the UAE: How India's other treaties compare

India's treaties fall into two camps on fund gains, depending on how the capital gains article is drafted.

Camp one: a residuary clause sends "other property" gains to be taxed in the residence country only: OECD and UN-model treaties list what India may tax, and units are in the residuary catch-all clause. The Mumbai Tribunal had applied this to the Swiss DTAA in *Raheja* (2013), six years before the Kochi Tribunal to the UAE DTAA in *Faizal* (2019), the Delhi Tribunal to the Mauritius DTAA in Emerging *India Focus Funds (2025)* and again the Mumbai Tribunal to the Singapore Treaty post the 2016 change in *Anushka Sanjay Shah* (2025). India's treaties with Mauritius, the Netherlands, Germany, France, Ireland, Switzerland, Saudi Arabia, Kuwait, Qatar and Oman also belong to this camp.

> "Indian funds are usually PFICs for US persons, taxed punitively in the US over and above the Indian tax, the opposite of the Singapore and UAE positions."

Camp two: each country taxes under its own law. India's treaties with the United States (Article 13), United Kingdom (Article 14) and Canada (Article 13) do not divide taxing rights on capital gains. India–Australia reaches the same result by a different route: Article 13(6) says, "*Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3), (4) and (5) apply.*"- Indian Mutual Fund units fall within this. Each country keeps its domestic right, with only a foreign tax credit that can be claimed in the country of residence, so India's 12.5% or 20% applies in full.

We can infer:

1. **Shifting the taxing right is not a tax-saving method:** A German resident escapes Indian tax but pays about 26.4% in Germany; a French resident pays French tax on capital gains. Zero tax needs both a residuary clause and a home country that does not tax the gain, like Singapore, the UAE, other Gulf states and Mauritius.
2. The 2016 Protocols were narrow. India's renegotiations with Mauritius, Cyprus and Singapore targeted only round-tripped investment in shares and added nothing on units, bonds or derivatives.
3. **US residents have an additional check:** Indian funds are usually PFICs for US persons, taxed punitively in the US over and above the Indian tax, the opposite of the Singapore and UAE positions.

Residence country	Treaty route for unit gains	Taxable in India?	Tax at home
Singapore	Residuary Article 13(5)	No	Generally – none for individuals
UAE	Residuary Article 13(5)	No	None for individuals
Saudi Arabia, Kuwait, Qatar, Oman	Residuary clause	No	Generally – none for individuals
Mauritius	Residuary clause (Emerging India Focus Funds, 2025); 2016 Protocol taxes only shares	No	No capital gains tax
Switzerland	Residuary clause (*Raheja*)	No	Private gains generally exempt
Germany, France, Ireland, Netherlands	Residuary clause	No	Yes, under the domestic laws.
United States, United Kingdom, Canada, Australia	Domestic law clause	Yes	Yes, with credit for Indian tax



Investor	Withheld at redemption	Final Indian tax	Tax at home
UAE resident (UAE TRC)	₹2.08 lakhs (20% under s.196 + 4% cess)	Nil; refunded on filing with TRC and Form 41	Nil
Singapore resident (Singapore TRC)	₹2.08 lakhs	Nil; refunded on filing	Generally nil
US resident	₹2.08 lakhs	₹2.08 lakhs	US tax less foreign tax credit (PFIC rules apply)

For other countries, investors should read their own treaty: understand the carve-out on securities or substantial holdings and check whether there have been amendments by Protocol or the OECD-MLI.

An Example

Three NRIs each redeem equity-orientated fund units held for ten months as a short-term capital gain of ₹10 lakh, with no other Indian income:

The UAE and Singapore investors end up paying no tax, but sometimes the Department may raise queries on the same before refund. The US investor gets no treaty relief.

Note: Figures ignore surcharge (above ₹50 lakhs income) and assume no deemed Indian residence.



Conclusion

Under both treaties, gains on Indian fund units belong to the country of residence, and neither Singapore nor the UAE taxes the capital gains in the individual's hands.

US, UK, Australian and Canadian residents pay full Indian tax, whereas German or French or Dutch or Irish residents pay at home.

The position is as per the DTAA and leading Tribunal rulings. Until there are any changes, investors who are genuine residents abroad, with a valid TRC and filed Indian Income Tax Returns, can claim the exemption with reasonable confidence.

What to watch: any department appeal against *Anushka Sanjay Shah* in the Bombay High Court; any renegotiation of Article 13 to add units or other such similar items; and the department's approach to DTAA claims post *Tiger Global*.

Kindly verify the legal position before every large redemption.

Note: This article is general information, not legal or tax advice. Figures and treaty positions are as of 30 September 2026.

References

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- *Section 196 (short-term capital gains)*
- *Section 197 (long-term capital gains; old s.112)*
- *Section 198 (long-term capital gains in certain cases; old s.112A)*
- *Section 207 (20% on income from units bought in foreign currency, Table Sl. No. 7)*
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- *Section 395 (lower or nil deduction certificate; old s.197)*
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