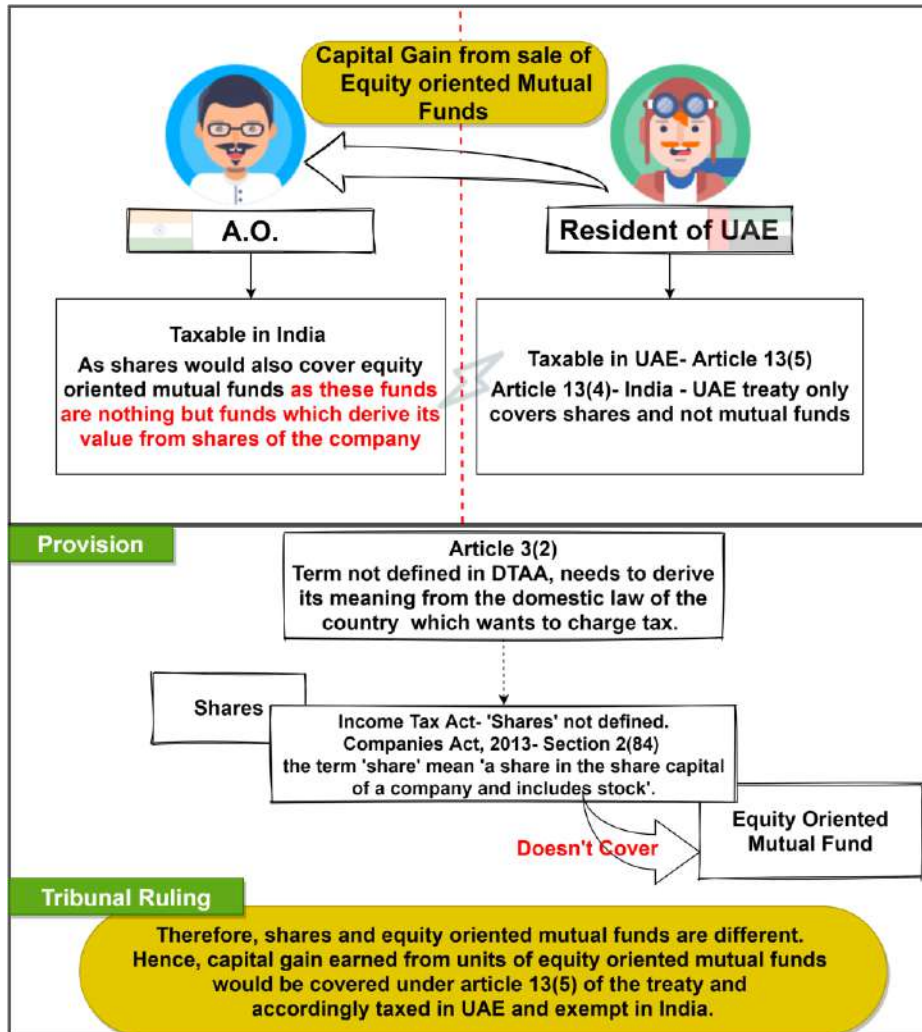


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**DCIT (International taxation), Kochi v. K. E. Faizal<sup>1</sup>**  
Equity oriented mutual fund cannot be deemed as shares under India -  
UAE DTAA



**Facts:**

- Assessee is a non resident Indian and a resident of UAE during the relevant year.
- He sold units of equity oriented mutual funds and earned capital gain on it
- While filing return of income assessee claimed the above capital gain as exempt by taking benefit of India UAE DTAA.

<sup>1</sup> [2019] 108 taxmann.com 545 (Cochin - Trib.)



### Assessee's contention:

- Article 13(4) of India - UAE treaty only covers shares and not mutual funds and hence by virtue of clause 5 of article 13 such gain shall be taxable in UAE and hence exempt in India.

### Revenue's contention:

- Assessing officer was of the opinion that shares would also cover equity oriented mutual funds as these funds are nothing but funds which derive its value from shares of the company and hence would be taxable in India by virtue of Article 13(4) of India - UAE DTAA.

### Ruling:

- Article 13(4) of the India UAE DTAA covers capital gain earned from transfer of shares of an Indian company by a resident of UAE wherein such gain shall be taxable in India.
- The above article only talks about shares which have not been defined anywhere in DTAA hence as per article 3(2) one needs to derive its meaning from local law of India. According to Section 2(84) of the Companies Act, 2013 the term 'share' to mean 'a share in the share capital of a company and includes stock'.
- Hence, the above section doesn't cover units of equity oriented mutual funds which makes it clear that 'shares' and 'units of a mutual fund' are two separate types of securities.
- Hence, capital gain earned from units of equity oriented mutual funds would be covered under article 13(5) of the treaty and accordingly taxed in UAE and exempt in India.

### Our comments:

- Explanation 4 of Section 90 of the Income tax Act also states that where the term not defined in the DTAA, but defined in the Act, it shall have the same meaning as assigned to it in the Act and explanation, if any, given to it by the Central Government.

<b>Section</b>	<b>13</b>
<b>DTAA/Country</b>	<b>UAE</b>
<b>Court</b>	<b>Cochin Tribunal</b>
<b>Date of decision</b>	<b>08.07.2019</b>

**Note:** Case law name in **Red**- in favour of the Revenue, **Green**- In favour of the Assessee, **Orange** = Partial.

Visit our website blog- <https://jainshrimal.com/topic/saturday-international-tax-gyan/> for previous case laws.

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**Thank you**

