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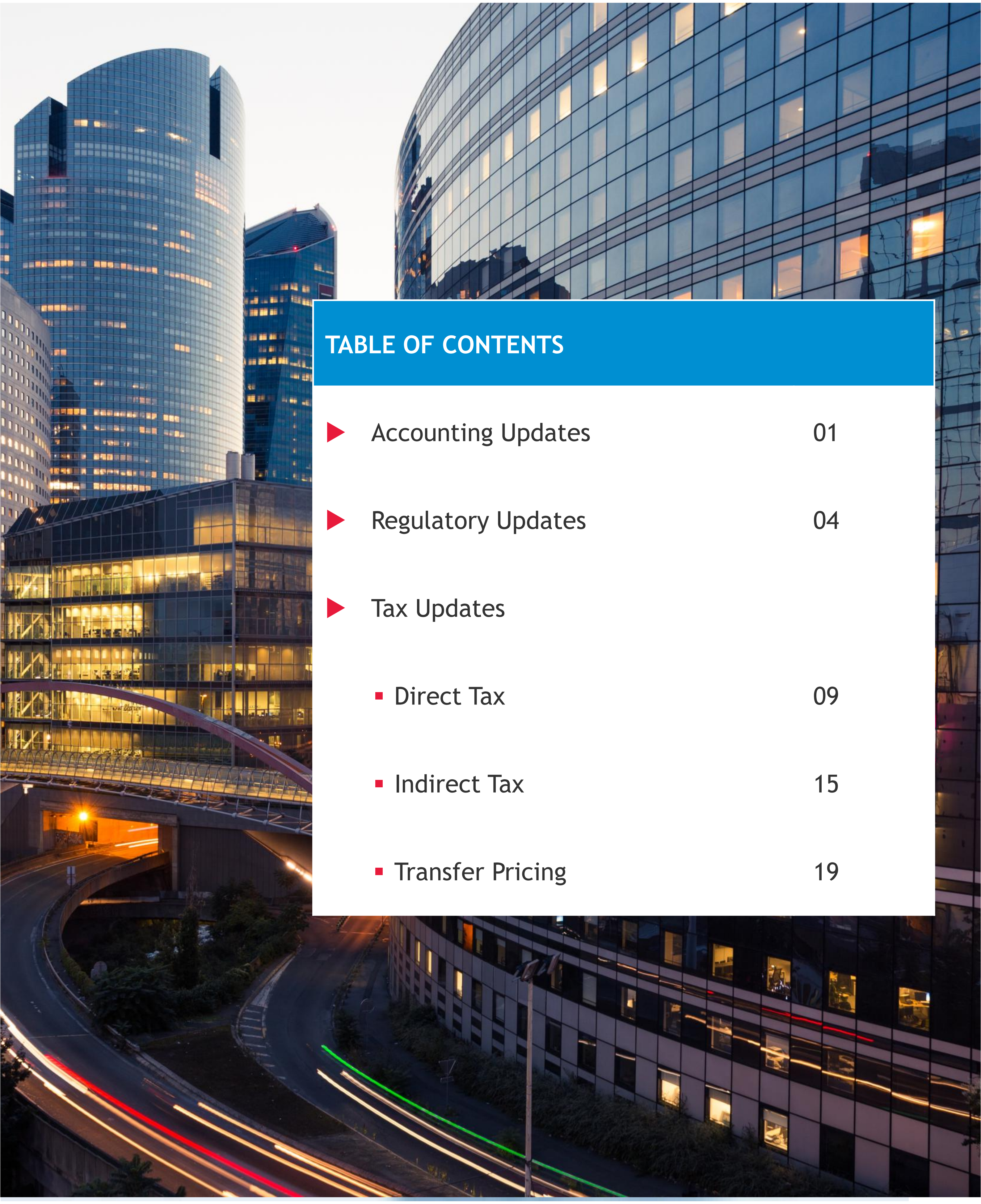

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ACCOUNTING UPDATES

The Institute of Chartered Accountants of India (ICAI):

Classification of Corporate Liquid Term Deposits (CLTDs) / Flexi Deposits in financial statements under Ind AS framework

The Company has centralised treasury operations and invests its surplus funds in Corporate Liquid Term Deposits (CLTDs)/ Flexi Deposits based on estimated fund requirements. Such deposits may be withdrawn prematurely to meet fund requirements; however, premature withdrawal may result in application of a lower rate of interest for the actual period of holding and consequently affect the amount realisable. The Company classified CLTDs/ Flexi Deposits having original maturity of less than three months as cash and cash equivalents, those having original maturity of more than three months but less than twelve months as bank balances other than cash and cash equivalents, and those having maturity of more than twelve months as other non-current financial assets. The Company also classified 91-day CLTDs/Flexi Deposits as cash and cash equivalents. However, the CAG auditors contended that these deposits were highly liquid and could be withdrawn at any time and, therefore, should be classified as cash and cash equivalents.

The Committee noted that under Ind AS 7, cash equivalents are short-term, highly liquid investments which are readily convertible to known amounts of cash, subject to an insignificant risk of changes in value and held for the purpose of meeting short-term cash commitments. The Committee observed that the classification of an investment as a cash equivalent depends on satisfaction of all the aforesaid criteria and not merely on its liquidity or facility for premature withdrawal. In the present case, CLTDs/Flexi Deposits having original maturity of more than three months are placed based on estimates of future fund requirements and generally with an intention to meet fund requirements beyond the short term and to earn better yields. Further, on premature withdrawal, the rate of interest applicable for the actual period of holding may be lower than the contracted rate, resulting in uncertainty in the amount realisable. Accordingly, such deposits do not satisfy the requirements of being readily convertible into known amounts of cash, being subject to an insignificant risk of changes in value and being held for meeting short-term cash commitments and, therefore, do not qualify as cash equivalents.

The Committee further observed that the three-month maturity criterion under Ind AS 7 is to be considered from the date of acquisition and not with reference to the remaining maturity at the reporting date. Accordingly, CLTDs/Flexi Deposits having original maturity of more than three months would not qualify as cash equivalents merely because their remaining maturity at the reporting date is three months or less. Such deposits having maturity of more than three months, but less than twelve months are appropriately classified as bank balances other than cash and cash equivalents, whereas deposits having maturity of more than twelve months are appropriately classified as other non-current financial assets. The Committee also noted that CLTDs/ Flexi Deposits having an original maturity of up to three months, including 91-day deposits, may qualify as cash equivalents where the relevant criteria under Ind AS 7 are satisfied. Further, CLTDs/ Flexi Deposits are essentially term deposits with greater operational flexibility for premature withdrawal and, therefore, separate presentation from other term deposits is not required unless there are certain features which make them different from each other, such as, any restrictions on withdrawal or use during the term of deposits, or considering the materiality considerations, which may require separate presentation or disclosure as per the requirements of Ind AS 1, Ind AS 7, Schedule III or the Guidance Note, etc.

Accordingly, the Committee concluded that the classification adopted by the Company in respect of CLTDs/Flexi Deposits is appropriate in the facts and circumstances of the case.

Consolidation of financial statements of an associate company which is a Section 8 company, under Ind AS framework

The Company, a Defense Public Sector Undertaking, holds 20% shareholding in A M Foundation (AMF), a company incorporated under Section 8 of the Companies Act, 2013 and established under the Defense Testing Infrastructure Scheme. The Company has treated AMF as an associate under Ind AS 28, Investments in Associates and Joint Ventures, and accounted for its investment using the equity method. However, the statutory auditors contended that since a Section 8 company is prohibited from distributing its profits among its members or shareholders, the Company should not recognise its share of profit of AMF. The querist has accordingly sought clarification regarding the application of the equity method and the requirement to prepare consolidated financial statements in respect of AMF.

The Committee noted that under Ind AS 28, an entity having significant influence over an investee is required to account for its investment in an associate using the equity method, except where the specified exemptions apply. The Committee observed that the prohibition applicable to a Section 8 company on distribution of its surplus does not, by itself, preclude the investor from having significant influence over the investee. Further, the fact that there are restrictions on transfer of funds from an associate to the investor does not, in itself, result in non-application of the equity method. Accordingly, the Company should assess the existence of significant influence considering, inter alia, the restrictions or prohibitions on transfer of funds by AMF. In the present case, since significant influence is presumed on the basis of the 20% shareholding and the same has not been disputed, AMF is considered an associate and the Company is required to apply the equity method and recognise its share of the profit or loss of AMF in accordance with Ind AS 28.

The Committee further observed that the Companies Act, 2013 requires a company having an associate to prepare consolidated financial statements in accordance with the applicable accounting standards, and no specific exemption from consolidation or application of the equity method is available merely because the associate is a section 8 or not-for-profit company. Accordingly, the Company cannot dispense with preparation of consolidated financial statements merely on the ground that the surplus of AMF is not distributable or that the consolidated financial statements would otherwise be substantially similar to the standalone financial statements. The Committee also noted that the investment accounted for using the equity method and the share of profit or loss of the associate are required to be presented appropriately in the financial statements in accordance with Ind AS 1 and Schedule III to the Companies Act, 2013.

Accordingly, the Committee concluded that, in the facts and circumstances of the case, the Company is required to account for its investment in AMF using the equity method and recognise its share of the surplus/ profit or loss of AMF, notwithstanding the restriction on distribution of surplus applicable to a Section 8 company. The Company is also required to prepare consolidated financial statements, including AMF as an associate. While presenting the share of surplus of AMF, the Company should appropriately label the same to indicate that such surplus is not distributable as dividend. Further, the Company should disclose the nature of its relationship with AMF, the not-for-profit nature of its activities and the nature and extent of significant restrictions on transfer of funds from AMF to the Company, along with other applicable disclosures under Ind AS 112, 'Disclosure of Interests in Other Entities', and other relevant requirements.

Accounting treatment of Grants under Accounting Standard (AS) 12, Accounting for Government Grants

The Company, a 100% Government-owned Section 8 company, receives various grants from the Department of Personnel and Training (DoPT), including GIA (World Bank funds) and GIA (General), for development, operation and maintenance of the iGOT-Karmayogi digital platform. The Company has been recognising the expenditure relating to development of the platform as capital work-in-progress and subsequently as intangible assets, while the grants have been recognised as income. The querist has accordingly sought clarification regarding the appropriate accounting treatment of such grants under AS 12, 'Accounting for Government Grants'.

The Committee noted that although the Government is the 100% owner of the Company, the funds in question are provided by DoPT as grants and not in its capacity as an owner or equity participant. Accordingly, the provisions of AS 12 are applicable. The Committee observed that the grants are not provided with the primary condition of acquisition or construction of specific fixed assets, nor are they linked to any specific revenue expenditure. Rather, the grants are intended to support the Company's overall initial capital and working-capital requirements, including the development, operation and maintenance of the iGOT-Karmayogi platform, until the proposed subscription-based revenue model becomes operational.

The Committee further observed that under AS 12, grants provided with reference to the total investment in an undertaking or towards its overall capital outlay, where repayment is not ordinarily expected, are in the nature of promoters' contribution and are required to be credited to capital reserve. Accordingly, the fact that a portion of the grants is utilised for development expenditure, which is subsequently capitalised as intangible assets does not, by itself, make the grants related to specific fixed assets. The nature of the grant is determined by the purpose and conditions attached to the assistance rather than merely by the manner in which the funds are ultimately utilised.

Accordingly, the Committee concluded that GIA (World Bank funds) and GIA (General) are in the nature of promoters' contribution under AS 12 and should be credited to Capital Reserve rather than recognised as income in the Statement of Profit and Loss. Further, since the Company had followed a different accounting treatment in F.Y. 2022-23 and F.Y. 2023-24, the Committee considered the same to be an error of prior periods under AS 5, 'Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies', requiring appropriate correction and disclosure as a prior period item.

REGULATORY UPDATES

Securities and Exchange Board of India (SEBI)

Alignment of SEBI's Cyber Incident Reporting Portal with FIRE Format

SEBI has streamlined the reporting of cyber incidents by aligning its Cyber Incident Reporting Portal with the Financial Stability Board's "Format for Incident Reporting Exchange (FIRE)" framework. Regulated Entities are required to report cyber incidents through the Cyber Incident Reporting Portal and are required to take necessary steps to put in place systems for implementation of the circular, including necessary amendments to relevant by-laws, rules and regulations, if any.

Ministry of Labour and Employment

Wage Ceiling for Bonus Calculation under the Code on Wages, 2019

The Ministry of Labour and Employment has notified the wage ceiling for calculation of bonus under Section 26 of the Code on Wages, 2019. Accordingly, where the wage of an employee being eligible for bonus under sub-section (1) of section 26, exceeds seven thousand rupees per month, the bonus payable to such employee shall be calculated, as if his wage was seven thousand rupees per month or the minimum wage fixed by the Central Government, whichever is higher.

Ministry of Corporate Affairs (MCA)

Companies (Indian Accounting Standards) Amendment Rules, 2026

MCA, through notification, has notified the Companies (Indian Accounting Standards) Amendment Rules, 2026, incorporating Annual Improvements to Ind AS (2024) and amendments to Ind AS 101, 107, 109, 110 and 7. Key highlights include:

- New guidance and disclosures for contracts referencing nature-dependent electricity, including renewable energy arrangements and related hedging.
- Clarifications on financial instrument classification and measurement, contingent cash flows and non-recourse arrangements.
- Permits derecognising a financial liability before the settlement date if the entity has initiated an irrevocable electronic payment instruction with negligible settlement risk, subject to certain conditions.
- Enhanced disclosures for financial instruments linked to carbon-emission targets and clarifications on hedge accounting, de facto agents
- Amendment relating to cash flows from investments in associates, joint ventures and subsidiaries accounted for at cost.

FAQs - Registration of Foreign Companies / Subsidiary of Foreign Body Corporate

MCA has issued FAQs relating to the registration and compliance requirements applicable to foreign companies and subsidiaries of foreign body corporates. The publication covers key areas including form-related compliances, annual filings, permissible activities and validity periods for Liaison, Branch and Project Offices, name reservation, documentation and certification requirements, notarization/apostille, RBI/IFSCA approvals, FEMA requirements, CSR reporting, and other regulatory requirements under the Companies Act, 2013 and applicable rules.

Lok Sabha

Report of the Joint Committee on Corporate Laws (Amendments) Bill, 2026

The Joint Committee on the Corporate Laws (Amendment) Bill, 2026, has submitted its report. The Report is available under the "Report" section of the website.

Link: The Corporate Laws (Amendment) Bill, 2026

National Stock Exchange (NSE)

NSE Circular - Structural Digital Database (SDD) - SEBI (Prohibition of Insider Trading) Regulations, 2015

NSE, through a Circular, has highlighted key best practices for maintaining a Structured Digital Database (SDD) and ensuring compliance with the SEBI (Prohibition of Insider Trading) Regulations, 2015. Key highlights include:

- Maintain a structured digital database (SDD) containing the nature of UPSI and the names and PANs/other legally authorised identifiers of persons sharing and receiving UPSI, including individuals handling UPSI at listed companies, intermediaries, or fiduciaries.
- Implement and periodically review internal policies to prevent leakage of UPSI, in line with the PIT Regulations.
- Conduct periodic training and awareness programmes for employees and fiduciaries on proper handling of UPSI.
- Ensure effective compliance and operationalisation of the Code of Conduct formulated under the PIT Regulations.
- Implement such other measures as necessary to achieve the objectives of the PIT Regulations.

Reserve Bank of India (RBI)

Draft Reserve Bank of India (Interest Rates on Loans and Advances) Directions, 2026

RBI has released the Draft Reserve Bank of India (Interest Rates on Loans and Advances) Directions, 2026 for public comments. It is proposed to issue harmonised Directions for all regulated entities (REs), prescribing a broad, principles-based framework for the determination of interest rates on both fixed-rate and floating-rate loans, commensurate with the nature, complexity, and scale of the operations of the REs.

The comments/ feedback to be submitted by the regulated entities and other stakeholders/ members of the public on or before 11 September 2026.

Securities and Exchange Board of India (SEBI)

Consultation Paper on Issuance of Depository Receipts against units of REITs and Publicly Listed InvITs

The Securities and Exchange Board of India (SEBI), via the Department of Debt and Hybrid Securities – POD II, released a consultation paper on 04 August 2026, proposing a regulatory framework to enable the issuance of Depository Receipts (DRs) against units of Real Estate Investment Trusts (REITs) and publicly listed Infrastructure Investment Trusts (InvITs). The proposals are based on recommendations from SEBI's Hybrid Securities Advisory Committee (HYSAC), and seek public comments on creating a framework that would enable eligible REIT and InvIT units to serve as underlying securities for Depository Receipts, potentially facilitating greater access to international investors. Comments on the Consultation Paper may be submitted to SEBI by 25 August 2026.

Background & Proposals

1. **Existing Regulatory Position**

   Depository Receipts are foreign currency-denominated instruments issued by a foreign depository against underlying Indian securities held with a domestic custodian.

   Units of REITs and InvITs are already recognised as *permissible securities* under the DR Scheme and are eligible instruments under the FEMA Non-Debt Instruments (NDI) Rules.

2. **Need for Enabling Framework**

   While the DR Scheme and NDI Rules permit issuance of DRs against REIT and InvIT units, the SEBI REIT and InvIT Regulations currently do not contain a specific enabling provision or operational framework for such issuances.

3. **Scope of Eligibility**

   SEBI proposes to permit DR issuance only for **REITs and Publicly Listed InvITs**.

   Privately Listed InvITs are proposed to be excluded due to existing restrictions on investor eligibility and the mandatory trading lot size of INR 25 lakh, which cannot be effectively enforced in overseas DR markets.

4. **Proposed Regulatory Amendments**

   Introduction of enabling provisions under: Regulation 14(12A) of REIT Regulations, and Regulation 14(4)(ma) of InvIT Regulations.

   These provisions would permit issuance of DRs against units of REITs and Publicly Offered InvITs, subject to SEBI-prescribed requirements.

5. **Operational Framework**

   A detailed framework for issuance of DRs on REIT and Publicly Listed InvIT units is proposed through a separate SEBI Circular.

   The framework is largely based on the existing Equity DR Framework applicable to listed Indian companies, with modifications tailored for REITs and InvITs.

Consultation Points

SEBI has sought public comments on:

1. Permitting issuance of Depository Receipts for REITs and Publicly Listed InvITs.
2. The proposed framework for issuance of DRs on units of REITs and Publicly Listed InvITs.

Consultation Paper On Measures Towards Ease Of Doing Business For REIT And InvITs

The Securities and Exchange Board of India (SEBI) has released a consultation paper to seek public comments on various ease of doing business (EoDB) measures for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) on 06 August 2026, based on the inputs received from industry associations (i.e. the Indian REITs Association [“IRA”] and Bharat InvITs Association [“BIA”]) and recommendations of the Hybrid Securities Advisory Committee (“HYSAC”).

The matters consulted in the paper are:

1. Investment in Third-Party Projects Without Controlling Interest

Objective:

To enable REITs and InvITs to build a pipeline of stable, revenue-generating assets by participating in the development phase of third-party projects via structured capital, minimising exposure to construction-related risks.

Proposed Measures:

i. Amend regulations to allow REITs and InvITs to invest in minority stakes of under-construction projects within the existing 10% limit.

ii. Investments are restricted to investee entities holding at least 80% (REITs) or 90% (InvITs) of their assets in real estate/infrastructure.

iii. A clear commitment and glide path must be established to achieve HoldCo/SPV status in the future.

iv. A binding agreement must be executed with investee shareholders to ensure alignment with the glide path, supported by an investee board resolution.

v. No shareholding or interest/rights of sponsor or sponsor group entities in the investee entity is permitted.

2. Computation of Threshold for Unitholder Approvals

Objective:

To resolve challenges in securing unitholder approvals due to a diverse unitholder base and the absence of voting by certain members.

Proposed Measures:

1. Shift the threshold computation from "seventy-five per cent by value" of all unitholders to a system where "votes cast in favour of the resolution shall be at least 75% of the total votes cast for the resolution."

2. This aligns with the provisions of the Companies Act, 2013, for electronic voting.

3. Exit Offer Framework for Change in Sponsor

Objective:

To provide clarity on dissenting unitholder definitions, clarify responsibilities for multiple sponsors, and remove limitations preventing complete exits during offer phases.

Proposed Measures:

i. Dissenting Unitholders: Amend the definition to include only unitholders who explicitly voted against the proposed resolution.

ii. Multiple Sponsors: Clarify that in cases of exit by one sponsor among multiple, either the outgoing sponsor/sponsor group or the continuing sponsor/sponsor group can provide the exit offer.

iii. Exit Acceptance: Mandate that all tendered units must be accepted to facilitate a complete exit.

iv. Minimum Public Unitholding (MPU): Allow one year from the date of a breach to restore MPU compliance if the threshold is violated due to exit offer acceptances.

4. Recognition of Remote Common Infrastructure as Real Estate

Objective:

To resolve the "Catch-22" regulatory contradiction hindering REIT-led green energy initiatives, where remote captive renewable energy plants could not qualify as SPVs.

Proposed Measures:

i. Amend Regulation 2(zi) to remove the phrase "composite real estate projects," thereby classifying all common infrastructure (co-located or remote) directly as "real estate."

ii. Omit Regulation 18(5)(k) to remove redundancy.

5. Reduce Cooling-Off Period for Private Listed InvITs

Objective:

To acknowledge the inherent structural liquidity constraints of privately listed InvITs (trading lot size of INR 25 lakh).

Proposed Measures:

i. Reduce the Offer for Sale (OFS) cooling-off period for illiquid, privately placed InvITs from 12 weeks to 8 weeks.

Amendment to SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 ("ILMDS Regulations")

SEBI constituted a Working Group in August 2024 to review the ILMDS framework. Based on Working Group recommendations and public comments, amendments were notified via Gazette Notification dated 08 July 2026. Provisions are effective immediately. The Circular is issued under Section 11(1) of SEBI Act, 1992 read with Regulation 29 of ILMDS Regulations to protect investor interests, promote development, and regulate the securities market.

Key Highlights:

1. Face Value of Municipal Debt Securities

Regulation 22 requires disclosure of face value in offer document/placement memorandum. For private placements:

a) Face value shall be INR 1,00,000 or INR 10,000.

b) Securities at INR 10,000 must have fixed maturity and be without structured obligations.

c) Trading lot must equal the face value.

These requirements apply only to privately placed securities, not public issues.

2. Two-Step Escrow Account Mechanism (Pooled Finance Vehicles/SPVs)

Applies to pooled finance vehicles/SPVs under the Pooled Finance Development Fund Scheme. Constituent municipalities must create escrow accounts and comply with requirements.

SPV must maintain:

Interest Payment Account and Sinking Fund Account.

Amount equivalent to one year's interest obligation in the Interest Payment Account throughout the tenure.

Permitted credit enhancement structures:

a) Additional cash collateral.

b) Program equity by state government.

c) Access to state finance commission devolutions to ULBs.

d) Full/partial credit guarantee from high-rated DFI/multilateral institution.

e) Any other appropriate credit enhancement.

3. Timelines for Submission of Financial Results

Relaxation granted considering practical challenges in data collection, inter-departmental coordination, and disclosure compliance.

a) Half-yearly unaudited results: within 45 days have been revised to 60 days. (effective immediately)

b) Annual audited results: within 60 days have been revised to 90 days. (effective immediately)

Consultation Paper on FPI Participation in Exchange Traded Commodity Derivatives (ETCDs)

SEBI released a consultation paper noting that, over time, it has received multiple representations from exchanges and market participants seeking to widen the scope of FPI participation in the Indian commodity derivatives market. The paper proposes expanding FPI access beyond cash-settled non-agricultural contracts to include non-agricultural index derivatives and physically settled non-agricultural ETCDs, subject to safeguards.

1. Proposal 1 – FPI in Non-Agricultural Index Derivatives Contracts

Currently, FPIs are allowed only in cash-settled indices with cash-settled underlying.

SEBI's Proposal Rationale: SEBI currently permits FPIs to trade only in cash-settled index contracts where the underlying is also cash-settled. However, by nature, index derivatives are always cash-settled regardless of the underlying. Therefore, permitting FPIs in all non-agricultural index derivatives would not create delivery-related risks, as settlement is inherently cash-based.

CDAC Recommendation: Permit FPIs in non-agricultural index derivatives contracts. Comments have been sought on allowing such participation.

2. Proposal 2 – FPI in Non-Cash Settled Non-Agri Contracts

Currently, FPI participation boosted liquidity in crude oil and natural gas options.

SEBI's Proposal Rationale: Commodities like crude, gas, gold, silver, base metals are globally benchmarked; FPI participation would deepen liquidity, improve price discovery, and integrate Indian markets internationally. International Practice: Japan, China, USA, Europe allow foreign investors in physically settled contracts with safeguards.

India Context: FPIs lack PE/GST registration; hence delivery not feasible. Proposal to allow trading with compulsory square-off/rollover before the tender period.

Certain Safeguard Mechanism:

a) Safeguard Mechanism shall stand triggered where FPI has not voluntarily squared off its open position by end of market hours on T-3.

b) If not, automatic transfer of positions to TM/TCM.

c) Tripartite/Bipartite agreements required.

d) Proprietary Risk Absorption Charge payable to TM/TCM if transfer occurs.

e) TM given up to 2 trading days to reduce excess positions.

CDAC Recommendation: Permit FPIs subject to safeguards. Comments have been sought on framework and participation.

3. Based on the above proposals, a draft circular has been prepared modifying Para 4.2 of Chapter 4 of Master Circular for Commodity Derivatives Segment dated 04 August 2023. Key Provisions:

a) FPIs allowed in cash-settled non-agricultural contracts and indices (excluding deliverable options in goods).

b) FPIs allowed in deliverable contracts only up to tender/staggered delivery period; must unwind before commencement.

c) No fresh positions on T-1.

d) Transfer of positions to TM/TCM not treated as OTC/off-market; considered normal trades with statutory levies.

e) TM/TCM permitted 2 trading days to reduce excess positions post transfer.

f) Operational framework: onboarding agreements, voluntary square-off, safeguard mechanism, post-transfer position-limit reduction, proprietary risk absorption charge.

g) Circular effective from the notified date

Public Comments have been invited on Paras 3.4, 4.18, 4.19 and Annexure-A by 01 September 2026 via SEBI online form or email.

Securities and Exchange Board of India (SEBI) Revises Regulatory Framework for Online Bond Platform Providers (OBPPs)

SEBI, through its circular dated 14 August 2026, has amended the regulatory framework applicable to OBPPs, with a view to promoting ease of doing business. This circular addresses modification of provisions of SEBI NCS Master circular dated 15 October 2025 on the following areas:-

Key Highlights

- **Expanded Product Offerings:** OBPPs have been permitted to offer products, securities and services regulated by the International Financial Services Centres Authority (IFSCA). These IFSCA-regulated products are required to be offered in compliance with applicable FEMA regulations and must be clearly identified as international or overseas instruments to avoid confusion with domestic debt securities.
- **Inclusion of Tax-Saving Bonds:** OBPPs are now permitted to offer Bonds issued u/s 54EC of the Income-tax Act, 1961 (or u/s 85 of Income Tax Act, 2025). OBPPs facilitating investments in 54EC bonds are required to provide appropriate disclosures regarding the nature of these tax-specific instruments, including key features, investment conditions and grievance redressal mechanisms.
- **Revised Compliance Officer Requirement:** SEBI has replaced the earlier requirement of appointing a Company Secretary as Compliance Officer. OBPPs are now required to appoint a Compliance Officer in accordance with the SEBI (Stock Brokers) Regulations, 2026, including compliance with the prescribed certification requirements.

The amendments are expected to broaden the range of investment products available through OBPPs, improve access to tax-saving and international investment opportunities, and simplify compliance requirements for platform providers. The revised framework reflects SEBI's continued focus on enhancing investor choice while promoting efficiency and ease of doing business in the debt market ecosystem.

Securities and Exchange Board of India (SEBI) Permits Digitally Signed Power of Attorney for Foreign Portfolio Investors (FPIs)

The Securities and Exchange Board of India (SEBI), vide its circular dated 20 August 2026, has permitted the acceptance of Powers of Attorney (PoA) executed using digital signatures by Foreign Portfolio Investors (FPIs) in accordance with the provisions of the Information Technology Act, 2000. The amendment forms part of SEBI's ongoing efforts to streamline and digitise the FPI onboarding process.

Key Highlights

- FPIs can now submit digitally signed Powers of Attorney to custodians as part of the onboarding and registration process.
- The requirement for notarisation, apostillisation or consularisation of such Powers of Attorney has been dispensed with where the document is executed using a valid digital signature under the Information Technology Act, 2000.
- The amendment has been incorporated into the SEBI Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors dated 30 May 2024.

The move reflects SEBI's continued focus on digitalisation and process efficiency in the securities market ecosystem. By recognising digitally signed Powers of Attorney, SEBI has eliminated a significant procedural hurdle, enabling a faster and more seamless onboarding experience for Foreign Portfolio Investors.

Exemption from the requirement of mandatory merchant banker appointment for Small-value debt through private placement by certain listed issuers

SEBI has, through its consultation paper dated 27 August 2026, proposed exempting certain eligible listed issuers from the mandatory requirement of appointing a merchant banker for private placement of debt securities having a face value of INR 10,000 per security

Key Eligible Conditions:

The exemption would be available only to listed issuers that:

a) Are regulated by a financial regulator

b) Have been listed for at least a year

c) Do not have any pending penalties imposed by SEBI or stock exchanges, and

d) Have not committed specified defaults during the preceding three financial years and the current financial year

Conditions for Debt Securities:

The proposed exemption would apply only where the debt securities:

a) Are senior debt instruments

b) Are secured by a first charge or pari passu charge on identifiable assets, and

c) Carry a credit rating of AA- or above

The proposed relaxation aims to reduce issuance costs, improve execution efficiency and facilitate timely fundraising while retaining adequate investor protection through stringent eligibility and credit quality requirements.

SEBI has invited public comments on the proposal until 17 September 2026.

Reserve Bank of India (RBI)

RBI invites comments on the draft "Reserve Bank of India (Non-Banking Financial Companies - Credit Facilities) Amendment Directions, 2026"

The Reserve Bank of India (RBI) has issued the Draft Reserve Bank of India (Non-Banking Financial Companies - Credit Facilities) Amendment Directions, 2026, modifying the existing Directions dated 28 November 2025. Issued under the powers conferred by Chapter III B of the Reserve Bank of India Act, 1934

Key Definitions Introduced:

The draft directions insert specific definitions under paragraph 4 (1) to clarify the scope of credit facilities:

1. **Term Loan:** refers to a fund-based credit facility of a fixed principal amount, made available by an NBFC to a borrower with all of the following features:
    - The sanctioned limit is disbursed in one or more instalments and repayable per a predetermined amortisation schedule (either as periodic instalments or as a bullet payment on stated due dates).
    - Once disbursed, the sanctioned limit cannot be restored or replenished upon the repayment of any part or the whole of the principal amount.
2. **Revolving Credit:** Any fund-based credit facility that does not meet the definition of a term loan.

Major Regulatory Changes & Restrictions:

1. **Mandatory Term Loans Only:** Under newly inserted Section 108A (Restrictions on revolving credit facilities in Chapter VIII), NBFCs are mandated to offer only credit products in the nature of term loans and are prohibited from offering revolving credit products.
2. **Credit Card Exemption:** The restriction on revolving credit facilities does not apply to NBFCs authorised by the Reserve Bank to issue credit cards.

Deletions:

Paragraph 5 (5) in Chapter II is deleted.

Part D (Demand/ Call Loans) of Chapter VIII (Other Regulatory Restrictions) is deleted.

The amendment directions are slated to come into force immediately upon notification.

Review of Guidelines on Concentration Risk Management - Rural Co-operative Banks

In pursuance of the announcement made in the *Statement on Developmental and Regulatory Policies* dated 5 August 2026, the Reserve Bank of India has issued draft Directions for public comments.

Key Highlights:

1. **Addition of Draft Directions**
    a) Draft Reserve Bank of India (Rural Co-operative Banks – Concentration Risk Management) Directions, 2026 to replace the 2025 Directions.
    b) Draft Reserve Bank of India (Rural Co-operative Banks – Credit
    c) Facilities) Amendment Directions, 2026 to amend certain provisions of the 2025 Directions.
2. **Prudential Exposure Norms**

The draft Directions prescribe prudential exposure limits for single and group counterparties, provide for enhanced housing loan limits, and impose prudential caps on unsecured advances.

3. **Flexibility for Larger RCBs**

Flexibility is proposed for larger Rural Co-operative Banks with deposits above INR 1,000 crore to determine the tenor and moratorium requirements for housing loans, while ceilings for these parameters are increased for other RCBs.

4. **Sectoral Exposure**

Prudential sectoral exposure limits proposed to be withdrawn, except for the real estate sector.

5. **Comments Invited**

The Reserve Bank of India has invited public comments on the draft Directions, with feedback to be submitted by 28 August 2026.

Insurance Regulatory and Development Authority of India (IRDAI)

Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers (Amendment) Regulations, 2026

IRDAI has via circular dated 30 July 2026, notified the Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers (Amendment) Regulations, 2026. The revised framework is expected to provide greater operational flexibility to insurers while preserving policyholder protection and financial stability

Key Highlights:

a) Approval requirements for transfer of shares and ownership changes have been streamlined to facilitate ease of doing business

b) Certain lock-in requirements applicable to shareholders have been relaxed, providing increased flexibility in capital management.

c) The regulatory framework governing promoter entities and Special Purpose Vehicles (SPVs) has been updated to align with evolving market practices.

d) The amendments seek to facilitate mergers, amalgamations and other restructuring transactions through a more streamlined regulatory process.

However, the revised framework continues to emphasise protection of policy holder interests, compliance with solvency requirements, effective corporate governance and oversight of significant ownership and control changes

The amendments reflect IRDAI's continued efforts to enhance the ease of doing business in the insurance sector by simplifying ownership-related approvals, easing certain shareholding restrictions and facilitating corporate restructurings.

DIRECT TAX

Circulars / Notifications / Release

CBDT rolls out a one-time disclosure scheme for undisclosed foreign assets and income of small taxpayers

The Central Board of Direct Taxes ('CBDT') has notified The Foreign Assets of Small Taxpayers – Disclosure Scheme, 2026 ('FAST-DS'), providing a one-time mechanism for eligible taxpayers to regularise specified undisclosed or incorrectly reported foreign assets and foreign income. The declaration may be made starting from 16 August 2026 up to 31 December 2026. The key considerations of the scheme are as under:

- A taxpayer is eligible to make declaration if he was resident in India in the relevant year. A taxpayer would be eligible even if he is non-resident or RNOR if he was a resident in India in the year the undisclosed foreign income arose or the undisclosed foreign asset was acquired.
- A declaration can be made on three grounds: i) No return was furnished under section 139 of the Income-tax Act, 1961 ('the Act') or; ii) a return was furnished before the scheme commenced and the asset or income was not disclosed in it or; iii) the asset or income has escaped assessment within the meaning of section 147 of the Act.
- The declaration can be made for undisclosed asset located outside India and undisclosed foreign income which was not offered to tax. The threshold for such declaration is that the aggregate value under both these categories should not exceed INR 10mn. In cases where declaration is made for foreign assets bought from already taxed income or assets acquired from already taxed income or asset was acquired when assessee was a non-resident but not declared, the aggregate value of assets located outside India should not exceed INR 50mn.
- The total amount payable on declaration shall be aggregate of (i) tax of 30% of value of undisclosed asset located in India or undisclosed foreign income and (ii) 100% of the amount determined in (i). For other assets, a flat fee of INR 0.1mn shall be payable.
- The valuation of assets shall be determined as on 31 March 2026 as per the Rules specified in this behalf.
- The taxpayer has to file the declaration of such undisclosed asset/income in Form 1 electronically and the tax authority would communicate the amount payable in Form 2 within one month from the end of the month in which declaration is made. Such amount shall be paid within 2 months from the end of the month of such communication by the tax authority. Failure to pay such amount shall attract simple interest @1% per month or part thereof.
- In respect of the asset/income declared, immunity is provided from levy of any further tax or penalty and prosecution under Black Money Act, 2015.

[CBDT Notification No. 114/2026 G.S.R. 732(E)]

Key Amendments proposed in the Taxation and Other Laws (Amendment) Bill, 2026

The Income-tax Act, 2025 came into force on 1 April 2026, consolidating and replacing the Income-tax Act, 1961. Thereafter, President laid the Income-tax (Amendment) Ordinance, 2026 on 5 June 2026. To replace this Ordinance with an Act of Parliament as required under Article 123(2) of the Constitution, the Government has introduced the Taxation and Other Laws (Amendment) Bill, 2026 in the Lok Sabha. Key highlights include rationalisation of conditions for eligible offshore investment funds and eligible fund managers, an extended tax exemption for electronic goods manufacturing, relaxed conditions for the data centre exemption, dividend exemption for business trusts regardless of the SPV's tax regime, exemptions covering Government securities, and new exemption for foreign companies dealing in rough diamonds and component storage for contract manufacturers by foreign companies. To read our detailed analysis, please go to: Taxation and Other Laws (Amendment) Bill, 2026 - BDO.

Tribunals Reforms Act, 2026 receives Presidential assent, National Tribunals Commission to oversee appointments across 16 tribunals including the Income-tax Appellate Tribunal

The President of India gave assent to The Tribunals Reforms Bill, 2026 on 13 August 2026, and it now stands enacted as the Tribunals Reforms Act, 2026. This Act repeals the Tribunals Reforms Act, 2021 and establishes the National Tribunals Commission ('NTC') to oversee the appointment, service conditions and administration of 16 tribunals, including the Income Tax Appellate Tribunal ('Tax Tribunal'), the Customs, Excise and Service Tax Appellate Tribunal, the National Company Law Appellate Tribunal, the Securities Appellate Tribunal and the National Green Tribunal.

[Tribunals Reforms Act, 2026, received Presidential assent on 13 August 2026]

JUDICIAL UPDATES

Delhi Tax Tribunal holds that there is no artificial splitting of a composite contract and receipts from offshore supply of parts and offshore repairs are not taxable in India in the absence of permanent establishment

The taxpayer, a company tax resident of the United States of America ('USA'), was engaged in the business of supply of spare parts and repair and refurbishment of gas turbines. During fiscal year ('FY') 2021-22, the taxpayer supplied spare parts to power sector customers in India on an offshore basis, with title in the goods passing to the customer immediately after the goods departed the territorial land, seas and airspace of the USA. The taxpayer also carried out repairs on equipment shipped by the customers to a workshop located outside India, which was shipped back to India after completion of the work. The consideration so received was claimed as not taxable in India. A group company of the taxpayer had a project office in India, set up exclusively for its own onshore services contract, and none of the employees of the taxpayer travelled to India during the year. Further, there is no reference to project office for offshore supply contract.

The tax officer held that the project office of the group company constitutes a fixed place permanent establishment ('PE') as well as a dependent agent PE ('DAPE') of the taxpayer under Article 5 of the India-USA Double Taxation Avoidance Agreement ('DTAA'). The tax officer relied on a comprehensive service agreement between an Indian customer and the group company, signed by a project director of the group company and held that since the project director represented the taxpayer as well, the taxpayer was using the office of the group company. The tax officer also held that the contract awarded by an Indian public sector undertaking was a composite contract, artificially split into onshore and offshore components at the behest of the taxpayer to reduce the tax liability and attributed 10% of the gross receipts to the alleged PE in India. Aggrieved by the actions of the tax authorities, the taxpayer preferred an appeal before the Delhi Bench of the Tax Tribunal.

The Tax Tribunal, while ruling in favour of the taxpayer, made the following key observations:

Re. Existence of a PE in India

- The comprehensive service agreement relied upon by the tax authorities is between the Indian customer and the group company. The project director of the group company, who signed this agreement, carries no reference to the taxpayer, and no document was placed on record by the tax authorities to show that the taxpayer had authorised him to represent.
- No documentary evidence was brought on record to show that the project office of the group company was used by the taxpayer for any of the activities listed in Article 5, or that it habitually exercised an authority to conclude contracts on behalf of the taxpayer. The project office cannot constitute PE of the taxpayer in India.

Re. Allegation of an artificially split composite contract

- The agreements for offshore supplies and onshore services were two separate events right from the bid stage. There was, therefore, no artificial splitting of the agreement by the taxpayer or at its behest.

Re. Taxability of offshore receipts and attribution of profits

- The preamble of the offshore agreement states that the parts and repair services are to be provided outside the country. Furthermore, title of the goods passes to the customer as soon as the goods leave the territorial land, waters and airspace of the USA. Accordingly, where equipment is supplied outside India and repairs are undertaken outside India, there is no taxable event in India under the India-USA DTAA. Therefore, the receipts are not taxable in India[1]. Since the taxpayer does not have a PE in India, the question of attributing profits to India does not arise.

The Tax Tribunal ruled that the taxpayer has neither a fixed place PE nor a DAPE in India. Also, there is no artificial splitting of a composite contract. The receipts from offshore supply of equipment, repairs and refurbishment are not taxable in India, and that no profits can be attributed in India.

[GE Energy Parts Inc. vs. ACIT (Int. Tax.) – ITA No. 1947/Del/2025, order dated 3 August 2026 (Delhi ITAT)]

Mumbai Tax Tribunal held that an Indian subsidiary distributing its foreign parent's products on a principal-to-principal basis does not constitute a service permanent establishment or a dependent agent permanent establishment

H Co, a company incorporated in the USA, providing financial information through a web portal and web network based products, had an Indian subsidiary ('S Co') acting as its distributor. Under the distribution agreement, S Co independently contracted with Indian customers, raised invoices, handled billing and collections, appointed employees at its own cost and indemnified H Co against claims arising from its distribution activities. H Co received licence fees from S Co for its sale and distribution and offered them to tax as royalty.

For the FYs 2007-08 and 2008-09, the tax officer alleged that S Co constituted a DAPE as it exclusively distributed H Co's products and was controlled by H Co. They also alleged that the taxpayer provided services in India by utilising employees of the Indian subsidiary. The First Appellate Authority upheld the additions after observing that the activities of H Co's employees visiting India extended beyond stewardship or auxiliary function.

Aggrieved, the taxpayer appealed before the Mumbai Bench of Tax Tribunal.

The Tax Tribunal, while ruling in favour of the taxpayer, made the following key observations:

Re. Service PE

- Article 5(2)(l) of the India-USA DTAA covers the furnishing of services within a contracting State through employees or other personnel, but it specifically excludes services in the nature of fees for included services ('FIS') as defined under Article 12. Article 5(3)(e) further carves out activities of a preparatory or auxiliary character.
- Overseeing the Indian subsidiary was an auxiliary/stewardship activity and could not create a service PE.
- For other activities such as training, administrative support and assistance with news gathering and sales, the tax authorities failed to establish their exact nature or show that they were beyond auxiliary activities or outside the scope of FIS under Article 12(4) of the India-USA DTAA. Hence, no service PE could be established.

Re. DAPE

- Under Article 5(4) of the India-USA DTAA, an entity can be treated as a dependent agent only where it habitually exercises an authority to conclude contracts or maintains a stock of goods from which it regularly delivers on behalf of the enterprise or habitually secures orders wholly or almost wholly for the enterprise.
- S Co independently entered into contracts with Indian customers. There was no privity of contract between H Co and the customers. Also, S Co indemnified H Co against claims arising from its distribution activities.
- H Co's control over its products/services was merely normal parental control and, that by itself, did not create a DAPE. Separate invoices were raised by H Co on S Co and by S Co on Indian customers. Accordingly, the transactions were on a principal-to-principal basis.

Re. Attribution of profit

- Even assuming that S Co could be treated as a DAPE, no further profit could be attributed to it, as the transaction between H Co and S Co had already been found to be at arm's length by the transfer pricing officer.

The Tax Tribunal held that H Co does not have any permanent establishment in India in the form of S Co, whether as a service PE or as a DAPE, and attribution of profit cannot be made even if a permanent establishment exists since the transactions between H Co and S Co are at arm's length.

[Bloomberg LP v. Addl. DIT (IT) Range 3 - ITA Nos. 5529 and 5530/Mum/2014, order dated 14 August 2026 (Mumbai ITAT)]

[1] Ishikawajma-Harima Heavy Industries Ltd. vs. DIT [2007] 288 ITR 408 (SC)

Delhi Tax Tribunal holds that a MAP resolution cannot be applied to fiscal years not covered by it where the scope of activities of the permanent establishment has widened

The taxpayer, a company incorporated in the United Kingdom, is engaged in the business of running and operating an international news and information television channel and the associated website. The taxpayer earns advertisement revenue from India. The taxpayer's Indian group company constitutes its DAPE in India. Under the Mutual Agreement Procedures ('MAP') resolution for the FY 2003-04 to 2013-14, profit attributable to the PE was agreed at 8.75% of advertisement revenue. The taxpayer applied the same rate for subsequent years not covered by the MAP, i.e., FY 2014-15 and 2015-16. Later, a survey was conducted in the case of the taxpayer, where the tax authorities found that the DAPE performed certain additional functions beyond those recorded in the transfer pricing study report ('TPSR'). Accordingly, the tax officer increased profit attribution to 15% for FY 2016-17 to 2021-22. Aggrieved, the taxpayer appealed before the Delhi Bench of Tax Tribunal.

The Tax Tribunal, while ruling partly in favour of the taxpayer, made the following key observations:

- A MAP resolution is binding only for the years covered by it. The rate of attribution agreed in MAP can be extended to other years only when there is no change in facts or scope of the activities of the taxpayer or its PE.
- Since the DAPE was found to perform functions beyond those documented in the TPSR, the rate of attribution determined under the MAP cannot be applied.
- However, the tax officer's 15% attribution was excessive and unsupported by empirical data. Therefore, the attribution would be restricted to 12% of advertisement revenue.
- In the case of Morgan Stanley & Co.[2], the Supreme Court held that where PE is remunerated on arm's length basis, taking into account all risk-taking functions, no further attribution would be required to PE. However, the Supreme Court has carved an exception to the said principle where the transfer pricing analysis does not adequately reflect the functions performed and risks assumed by the PE. The case of the taxpayer falls under said exception.

The Tax Tribunal thus held that MAP resolution cannot be extended to subsequent years if the scope of activities of PE is widened, and attribution can be made to PE if TPSR does not adequately reflect the functions performed and risks assumed by the PE.

[BBC Global News Limited vs. Deputy Commissioner of Income-tax, Circle International Tax 1(1)(2) – ITA 1847/Del/2025, order dated 10 August 2026 (Delhi ITAT)]

Mumbai Tax Tribunal held that a recurring trademark fee paid to a foreign parent for a non-exclusive and time-bound right of use does not create an enduring benefit and is allowable as revenue expenditure

The taxpayer, an Indian company, is engaged in the business of clearing, forwarding, transport, etc. It had entered into an agreement with its foreign parent for use of trademark. The foreign parent is the sole owner of the trademark. The taxpayer is liable to pay 5% of its gross profit annually as trademark fee. During FY 2021-22, the taxpayer claimed trademark fee as business expenditure. The tax officer disallowed the claim, holding that the payment gave rise to enduring benefits and was therefore capital in nature. On appeal, the First Appellate Authority deleted the addition.

Aggrieved, the tax authorities appealed before the Mumbai Bench of Tax Tribunal. Before the Tax Tribunal, the tax authorities argued that despite legal ownership resting with the parent company, payment of a substantial trademark fee gave the taxpayer an effective right of usage and commercial exploitation akin to co-ownership, resulting in an intangible asset of a capital nature.

The Tax Tribunal, while ruling in favour of the taxpayer, made the following key observations:

- On a perusal of the trademark agreement, the sole proprietary rights and ownership over the trademark remain with the foreign parent. The taxpayer is allowed to use the trademark only for the period authorised by the owner and is bound to abstain from further use on termination of the agreement.
- The Apex Court in Ciba of India Ltd.[3] held that payments for use of trademarks and technical know-how, without transfer of ownership or exclusive rights, are revenue in nature. Where the foreign parent retains all proprietary rights and the Indian company receives only a limited right to use, no capital asset is acquired.
- The governing test is whether, under the terms of the agreement, the taxpayer acquires a benefit of an enduring nature which will constitute acquisition of an asset. Following the observations of the Apex Court in Ciba of India Ltd. and Alembic Chemical Works Co. Ltd.[4], in an era of fast-changing technology what is current today may become obsolete in no time, and state-of-the-art technology can be neither deemed to be permanent nor of enduring nature so as to satisfy the enduring asset test.
- The taxpayer merely enjoys a non-exclusive and time-bound right to use the trademark without acquiring any proprietary interest. The payment is recurring in nature and linked to gross profit, which is indicative of revenue expenditure as per the established legal principles.

The Tax Tribunal thus held that the trademark fee is deductible revenue expenditure and allowable under Section 37(1) of the Act.

[Assistant Commissioner of Income-tax v. Deugro Projects (India) Private Limited – ITA No. 1705/Mum/2026, order dated 13 August 2026 (Mumbai ITAT)]

[2] DIT vs Morgan Stanley & Co. reported as 162
[3] CIT v. Ciba of India Ltd. [1968] 69 ITR 692 (SC)
[4] Alembic Chemical Works Co. Ltd. v. CIT [1989] 177 ITR 377 (SC)

Supreme Court dismisses Revenue's SLP against the ruling in which the Delhi High Court held that payments for live telecast rights limited to the event do not constitute royalty

The taxpayer is a cricket association incorporated in Sri Lanka. It organises and conducts international cricket matches. The taxpayer granted live telecast rights of certain matches to a broadcaster in India, limited to live transmission within the period of the relevant series in lieu of fees.

The tax authorities held that the fees received by the taxpayer for the live telecast rights constituted royalty under section 9(1)(vi) of the Act. On appeal, the Tax Tribunal ruled in favour of the taxpayer, after which the tax authorities preferred an appeal before the Delhi High Court.

The Delhi High Court reasoned the same, stating that since the licensee had no right to record, preserve or re-telecast the matches beyond the stipulated period, no benefit arose in the present transaction. Further, the Delhi High Court referred to its own decision in Fox Network Group Singapore Pte. Ltd.[5] and held that payments for live telecast rights cannot be treated as royalty since royalty presupposes enduring benefits.

Aggrieved, the tax authorities filed a Special Leave Petition ('SLP') before the Supreme Court.

The Supreme Court, while dismissing the tax authorities' SLP, relied on its own earlier order in Shine Satellite Public Company Ltd.[6] where an identical issue had been decided against the tax authorities.

[CIT (International Taxation) v. Sri Lanka Cricket - Special Leave Petition (Civil) Diary No. 42869/2026, order dated 14 August 2026 (Supreme Court)]

Delhi Tax Tribunal held that profits on offshore supply of equipment, drawings and designs are not attributable to supervisory permanent establishment in the absence of a fixed place permanent establishment

The taxpayer, a company incorporated in Italy, engaged in the business of supplying plant and equipment, integrated designs and drawings, designs for indigenous equipment, civil works, spare parts and related services for iron making blast furnace projects. It entered into separate contracts with six Indian iron producers for the offshore supply of equipment, offshore supply of drawings and designs, supervision services and technical assistance. The taxpayer offered the supervision receipts to tax on the basis that it had a supervisory PE under Article 5(2)(j) of the India-Italy DTAA. It did not offer the receipts from offshore supply of equipment and offshore drawings and designs, on the ground that the goods were supplied outside India and all connected activities took place outside India. Further, technical assistance receipts were also offered to tax by the taxpayer.

The tax authorities rejected the taxpayer's position on non-taxability of offshore supply of equipment, drawings and design and held that the taxpayer's Indian group company and project sites of Indian customers were fixed place PE. The tax authorities invoked the force of attraction rule and held that the contracts formed a single composite contract artificially split and attributed 50% of the global profits on the offshore supplies to the alleged PE. The First Appellate Authority deleted these additions and held that the activities did not constitute either a fixed place PE or a supervisory PE, but supervision receipts are taxable as FTS and the offshore drawings and designs as royalty and FTS taxable on gross basis.

Aggrieved, both the taxpayer and tax authorities appealed before the Delhi Bench of Tax Tribunal.

The Tax Tribunal, while ruling in favour of the taxpayer, made the following key observations:

Re. Offshore supply of equipment

- All activities relating to manufacture, design, fabrication etc. of the plant and machinery took place at the taxpayer's factory in Italy. Except for the supervision services, the sale was on FOB basis and all payments were made outside India in foreign currency through telegraphic transfer or irrevocable letter of credit, and the buyer was named as consignee. Ownership therefore passed on loading of the equipment onto the vessel outside India.[7]
- Conditionalities attached to the contract relate to successful installation of the plant and do not give the taxpayer any right to cancel the contract. The taxpayer was not responsible for installation of the equipment supplied by it. These conditionalities do not shift the supply of equipment to India, so as to become taxable in India.
- The acceptance test clause and the right to examine and repudiate do not postpone the passage of title. A right to examine and repudiate does not by itself indicate that property in the goods has not passed.[8]

[5] CIT (International Taxation) v. Fox Network Group Singapore Pte. Ltd. [2024] 158 taxmann.com 434 (Delhi HC)
[6] Deputy Director of Income-tax (International Taxation) v. Shine Satellite Public Company Ltd. - Civil Appeal Nos. 586-593/2012, order dated 13 January 2026 (Supreme Court)
[7] Linde AG v. DDIT [2014] 268 CTR 274 (Delhi HC)
[8] DIT v. LG Cable Ltd. [2011] 197 Taxman 100 (Delhi HC); Mahabir Commercial Co. Ltd. v. CIT [1972] 86 ITR 417 (SC)

- The facts are almost identical to the case of Ishikawajima Harima Heavy Industries Co. Ltd.[9] where the consideration for the offshore contract and the onshore contract were held to be separate and distinct from each other, and it was held that the entire contract cannot be considered to be an integrated contract. Where the transfer of property in the goods and the payment both occur outside India, the transaction cannot be taxed in India, and only income attributable to operations carried out in India is taxable.

Re. Fixed place permanent establishment

- The Indian company is a subsidiary of its parent company and only an associate of the taxpayer, not its subsidiary.
- The fact that the officer of the Indian company signed the contract as a witness cannot lead to an inference that it had a role in securing the contract or that there was a fixed place PE.
- Under Article 5(6) of the DTAA, the mere existence of a subsidiary does not create a PE in India. A subsidiary cannot by itself constitute a PE unless evidence is brought on record to show that it qualifies under Article 5.[10]
- No evidence was brought on record to show that the taxpayer's employees had any control over the customer's premises. A site can be regarded as a fixed place PE only where there is dominant control over that site.[11]

Re. Attribution to the supervisory permanent establishment

- No evidence was brought on record to show that the supervisory PE had any role in the supply of goods, which was carried out outside India. Supervisory activity is a stage subsequent to the completion of the supply, and the PE came into existence only after the offshore supplies were complete.
- The force of attraction rule under Article 7(1) of the tax treaty applies only where the enterprise carries on business in the other State through a PE. There is no fixed place PE, and with the presence of supervisory PE in India, the force of attraction rule cannot be invoked to tax the business profits arising on the sale of offshore equipment, drawing and designs taking place outside India.

Re. Characterisation of supervisory receipts

- The taxpayer performed onshore supervisory activities for all the relevant projects for a period exceeding six months, and therefore, it has supervisory PE in India[12]. Where receipts are connected with a PE in the source country, they are to be taxed as business profits under Article 7 on net basis and not as FTS on gross basis.

Re. Characterisation of drawings and designs

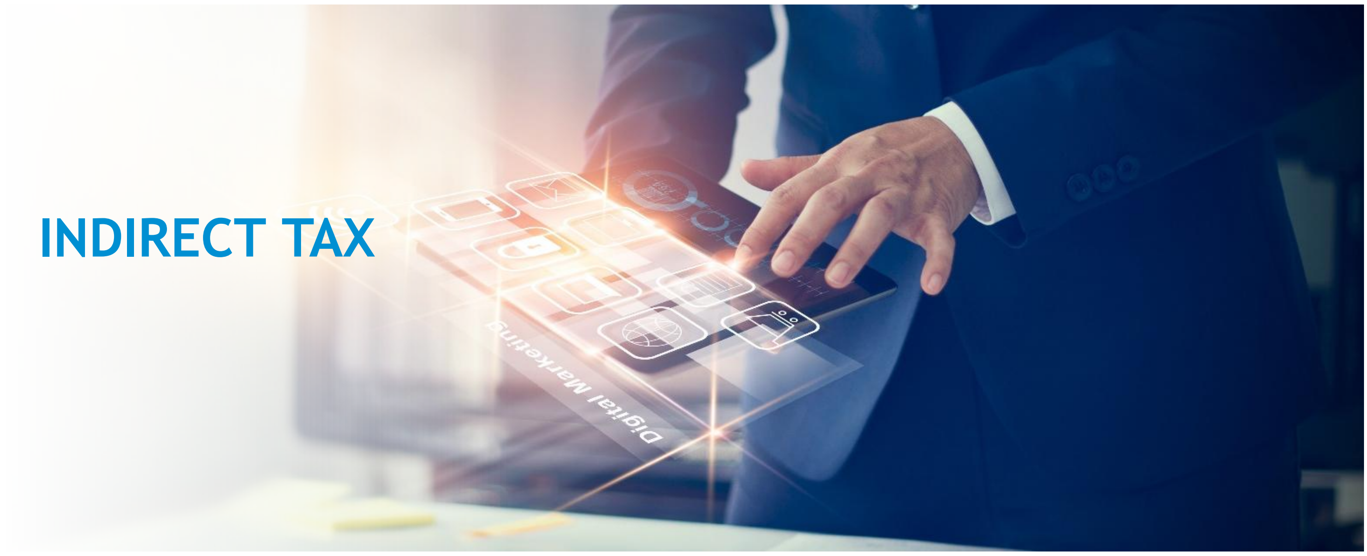
- The customers used the designs only for completing, operating and maintaining their own plants and acquired no right of commercial exploitation. Sale of designs and drawings is the sale of a copyrighted article and not the use of a copyright[13]. Therefore, income earned from these receipts is in the nature of business income and does not fall under the head royalty or FTS.

The Tax Tribunal dismissed the appeals of the tax authorities and held that the Indian group company was not a fixed place PE and no profits on offshore supply of equipment, drawings and designs could be attributed to India. It also held that such profits cannot be attributed to the supervisory PE. Also, the supervision receipts cannot be treated as FTS but will be taxed as business profits on net basis and the drawings and designs cannot be treated as royalty and FTS.

[DCIT v. Paul Wurth Italia SPA - ITA No. 5254/Del/2017 and others, order dated 7 August 2026 (Delhi ITAT)]

[9] Ishikawajima-Harima Heavy Industries Ltd. v. DIT [2007] 288 ITR 408 (SC)
[10] DIT v. E-Funds IT Solutions Inc. [2014] 42 taxmann.com 50 (Delhi HC)
[11] Formula One World Championship Ltd. v. CIT [2017] 80 taxmann.com 347 (SC)
[12] Andritz AG v. DCIT [2024] 165 taxmann.com 76 (Delhi ITAT)
[13] Outotec GmbH v. DDIT [2015] 172 TTJ 337 (Kolkata ITAT) and Engineering Analysis Centre of Excellence (P.) Ltd v. CIT [2021] 125 taxmann.com 42 (SC)

INDIRECT TAX



LEGISLATIVE UPDATES

GST

Mechanism established for sharing intelligence on illegal mining between CGST and State Mining Authorities

Pursuant to observations in the Comptroller and Auditor General's Performance Audit Report on "***Assessment, Levy and Collection of GST on Minerals***", it was noted that instances of illegal mining, excess extraction and illicit transportation of minerals detected by State Mining Authorities often carry GST implications — suppression of taxable supplies, non-registration, undervaluation, and short/non-payment of tax — but no structured mechanism existed for sharing such intelligence with CGST formations. In this regard, the Central Board of Indirect Taxes and Customs (CBIC) has directed that:

- A Nodal Officer be designated in each CGST Zone to coordinate with the respective State Mining Department for periodic sharing of information on illegal mining and transportation of minerals;
- CGST authorities analyse the shared information to identify GST implications and initiate action under the CGST Act, 2017, wherever warranted;
- Intelligence generated be disseminated to jurisdictional Commissionerates/DGGI, wherever necessary; and
- Periodic meetings be held with State Mining Authorities to review the effectiveness of the mechanism and resolve operational issues.

[*Source: Instruction no.:01/2026-GST dated 3 August 2026*]

Customs

Discontinuation of manual documentation for duty-free durable containers imported by shipping lines

CBIC has revised the monitoring framework for durable containers imported duty-free under notification no:104/94-Customs dated 16 March 1994, replacing manual intimation and transaction-wise manual bond debit/credit with a system-driven process:

- DG Systems will generate periodic reports of containers not re-exported within the stipulated six-month period and publish them on the ICEGATE portal for action by shipping lines/Customs officers;
- Shipping lines, Non-Vessel Operating Common Carriers and steamer agents will continue to execute bonds without surety, dispensing with manual transaction-wise endorsements; and
- Under the "One Nation One Port Process", Port/Terminal Operating Systems are being integrated with Customs systems to capture electronic Gate-in/Gate-out movement, eliminating manual verification at port gates.

[Source: Circular no.:32/2026-Customs dated 11 July 2026]

End-to-end automation of refund application and processing for courier imports enabled on Express Cargo Clearance System ("ECCS")

To expedite refund claims under Section 27 of the Customs Act, 1962 for courier imports, the Central Board of Indirect Taxes and Customs (CBIC) has developed an ECCS Refund Module on the ECCS (https://eccs.cbic.gov.in/eccs):

- Authorised Couriers can file refund applications electronically with supporting documents (Bill of Entry, AWB, duty payment proof, invoice, Unjust Enrichment Certificate, importer NOC), generating an instant Refund Request Number ("RRN");
- The Proper Officer must scrutinise the application and intimate any deficiency in a single consolidated communication within 10 days of RRN generation, avoiding piecemeal queries;
- Speaking orders sanctioning/rejecting refunds (including examination of unjust enrichment) are communicated electronically;
- Concurrent audit of courier refund claims is replaced with post-clearance audit, with the selection methodology to be finalised by DG Audit in consultation with DGARM; and
- Couriers may file manually or electronically till 30 September 2026, after which electronic filing on ECCS becomes mandatory (barring reasoned exceptions permitted by the jurisdictional Commissioner).

Alignment of export contract denomination and FTP scheme eligibility for INR realisations with FEMA regulations

Paras 2.52 and 2.53 of the FTP have been amended to align export-contract denomination and INR-realisation benefit eligibility with the FEMA (Manner of Receipt and Payment) Regulations, 2023:

- Export contracts/invoices (other than those involving ACU member countries) may be denominated in foreign currency or INR, with proceeds realisable in any foreign currency or INR;
- Contracts involving ACU members (other than Nepal and Bhutan) shall be denominated in a currency determined by the ACU, though transactions may also follow RBI directions;
- Contracts involving Nepal and Bhutan continue to be denominated and settled in INR (or per RBI directions); and
- Export proceeds realised in INR through banking channels, credited to non-resident INR accounts opened under FEMA, are eligible for export benefits/incentives and fulfilment of Export Obligations at par with proceeds realised in freely convertible currency (for all countries other than Nepal and Bhutan, with exports to Iran subject to compliance with Para 2.19 of the FTP).

[Source: Notification no:30/2026-27 dated 20 August 2026]

Foreign Trade Policy

Introduction of Inventory-based Cross-border E-Commerce Export Framework under Foreign Trade Policy, 2023 ("FTP")

DGFT has inserted Paras 9.13 to 9.19 into the FTP, establishing an inventory-based export facilitation framework through registered Exporters-on-Record (EOR), aligned with the Consolidated FDI Policy:

- Non-marketplace e-commerce entities may undertake export-only inventory operations through a registered EOR, which procures Indian-origin goods from Sellers-on-Record (SOR) solely against confirmed overseas export orders; speculative inventory build-up without an export order is prohibited;
- The EOR must maintain a digital repository ensuring identification, tracking, and physical segregation of Export Inventory from domestic goods;
- Payment to the SOR must be released within 7 days of acceptance of goods, and cannot be made contingent on customer payment or overseas returns;
- Export Rebates and Refunds (e.g., RoDTEP, RoSCTL, Duty Drawback) claimed by the EOR must be passed through to SORs on a pro-rata FOB value basis, after deducting permissible administrative charges; and
- Reverse logistics for rejected/returned consignments must be managed and funded by the EOR, with an express bar on clearing or selling such returned goods into the DTA.

[Source: Notification no:27/2026-27 dated 5 August 2026]

JUDICIAL PRECEDENTS

Laser imagers compatible with machines across multiple tariff headings classifiable as accessories under residuary heading, viz., heading 9033 00 00

M/s. Carestream Health India Pvt. Ltd. Vs. Commissioner of Customs [2026 (8) TMI 816 - Supreme Court]

Carestream Health India Pvt. Ltd. ('Taxpayer') imported '***Dryview 6850 Laser Imagers W/3D***' from China and classified them under the Customs Tariff Heading ('CTH') 9018 90 19 as '***Other diagnostic instruments and apparatus***'. The imported laser imager is a printer utilising photo thermographic technology to develop images on film, interfacing with digital diagnostic machines such as Magnetic Resonance Imaging ('MRI') and Computed Tomography ('CT'). It does not possess any independent diagnostic capabilities.

The Customs Authorities rejected the Taxpayer's classification and directed re-classification under CTH 9033 00 00 as accessories not specified elsewhere in Chapter 90, resulting in an incremental customs duty liability. This re-classification was subsequently affirmed by first appellate authority and the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT').

Aggrieved by the above, the Taxpayer filed an appeal before the Supreme Court. The Supreme Court dismissed the appeal and upheld the classification of the imported laser imagers as accessories under the residuary CTH 9033 00 00 by *inter alia* holding as under:

- **Nature of the equipment**
  - The laser imager lacks independent diagnostic skill or capability and relies entirely on receiving inputs from diagnostic equipment to carry out its function of printing films.
  - The equipment does not aid in or augment the performance of the medical equipment from which it receives inputs; it merely performs the ancillary function of transferring diagnostic data onto film for preservation.
  - Consequently, the laser imager cannot be classified as a diagnostic instrument or apparatus in its own right under CTH 9018 90 19 but rather functions as an accessory.
- **Interpretation of Chapter 90 Classification Notes**
  - Note 2(b) of Chapter 90 mandates that accessories suitable for use '***solely or principally***' with a particular kind of machine or with a number of machines under the same heading would have to be classified with such machine(s).
  - The phrase '***solely or principally***' clearly distinguishes such accessories (which are suitable for use with such machines, instruments or apparatus under a particular tariff heading) from those that are suitable for use with a variety of machines falling under another tariff heading.
  - Such accessories would necessarily be brought under the residuary CTH 9033 00 00, being accessories suitable for use with the machines, appliances, instruments or apparatus falling under Chapter 90, which have not been specified or included under a particular tariff heading.

Scope of scrutiny under Rule 90(2) is confined to completeness of application; deficiency memo cannot be issued on merits, limitation, or document nomenclature

ABE Service Private Limited Vs. Deputy Commissioner, Central Refund Processing Formation, SGST Department, Thiruvananthapuram [2026-VIL-721-KER]

ABE Service Private Limited ('Taxpayer') filed an application for claiming refund of GST paid on Educational Consultancy services provided to foreign educational institutions, treating the transactions as export of services.

The proper officer issued deficiency memos in Form GST RFD-03 under Rule 90(3) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') *inter alia* on the following grounds:

- Selection of incorrect category ("Any Other" instead of "Refund of IGST paid on Zero-rated supply");
- Non-furnishing of statements (Statement 3 and Annexure-B) prescribed under Circular no:125/44/2019;
- Submission of an invalid realisation proof, asserting that a bank-issued "Remittance Advice" cannot substitute a Bank Realisation Certificate ('e-BRC') or Foreign Inward Remittance Certificate ('FIRC') as required under Rule 89(2)(c); and
- The refund claims are barred by limitation.

Aggrieved by the above, the Taxpayer filed Writ petitions before the Kerala High Court. The Kerala High Court disposed the Writ petitions, holding that none of the grounds raised in the deficiency memos fell within the scope of scrutiny under Rule 90(2) of CGST Rules and directed the authorities to entertain the re-filed refund applications without treating these grounds as deficiencies by *inter alia* holding that:

- **Scrutiny under Rule 90(2) of CGST Rules is limited to completeness and not merits**: The exercise the proper officer undertakes within 15 days of filing under Rule 90(2) of CGST Rules is confined to verifying that the application meets the completeness requirements of sub-rules (2), (3) and (4) of Rule 89 of CGST Rules. Whether the documents furnished are otherwise acceptable, or whether the claim holds up on merits, falls outside this threshold check and can only be gone into during adjudication, after the applicant is given a hearing.
- **Category selected for the supply cannot be a ground for issuing a deficiency memo**: A dispute over how the service/supply has been categorised is not a ground listed under Rule 90(2) of CGST Rules and, therefore, the tax authorities cannot justify the issuance of a deficiency memo. Given that the common portal may not offer the appropriate option and that business activities can genuinely overlap between categories, the correct classification is a merits issue; rejecting the application at the threshold stage denies the taxpayer the chance to contest it.
- **Circular no:125/44/2019 has no application to refund of GST paid under Reverse Charge Mechanism ('RCM')**: The statements required under the Circular (Statement 3 and Annexure-B) are tied specifically to refund of unutilised input tax credit. Since the Taxpayer was claiming refund of tax paid under RCM, insisting on this compliance was misplaced.

- **Consideration of the substance of remittance document**: The purpose of requiring an e-BRC/FIRC under Rule 89(2)(c) of CGST Rules is to establish that the foreign remittance is genuine and to verify its quantum. Where the bank-issued "***Advice of Foreign Inward Remittance***" contains the particulars needed to establish this, the authority cannot reject it merely because of the label the bank has given it; the document must be examined on its contents and considered on merits.
- **Limitation is a merits question**: If a refund claim is suspected to be time-barred, that objection can only be raised and decided after issuing notice and hearing the taxpayer at the adjudication stage; it cannot be used as a ground for a deficiency memo under Rule 90(2) of CGST Rules.

Corporate Guarantees between related persons constitute a taxable supply; Rule 28(2) upheld prospectively, subject to reading down of expression 'whichever is higher', to permit valuation on actual consideration

Torrent Power Ltd. Vs. Union of India & Ors. [2026 (8) TMI 990 - Gujarat High Court]

Torrent Power Ltd. ('Taxpayer') had furnished Corporate Guarantees without consideration to its subsidiaries to enable the subsidiaries to avail credit facilities from banks. On being objected by Authorities, the Taxpayer challenged the vires of Rule 28(2) of the CGST Rules and Section 15(4) of the Central Goods and Services Tax Act, 2017 ("CGST Act") as violative of Articles 14, 19(1)(g) and 265 of the Constitution of India ("Constitution"), along with the validity of the CBIC Circulars dated 27 October 2023 and 11 July 2024 and the show cause notices issued under Section 74 of CGST Act alleging fraud/suppression for non-payment of GST on such guarantees.

The petitioners contended that a corporate guarantee is a contingent contract under Section 31 of the Indian Contract Act, involves no consideration, and does not satisfy the four ingredients of a treatment as "supply" — Activity, Service, Related-party transaction, and furtherance of business. The Revenue contended that such guarantees are deemed supplies under Section 7 read with Schedule I Article 2 and Entry 5(e) of Schedule II of the CGST Act.

The Gujarat High Court disposed of the Writ petitions and held as under:

- **Corporate guarantee without consideration is a taxable supply**: A corporate guarantee furnished by a holding company for its subsidiary, even without consideration, falls squarely within Entry 2 to Schedule I of the CGST Act, which deems supplies between 'related persons' to be taxable when made in the course or furtherance of business. Though contingent in nature and involving no immediate cost, its execution constitutes "agreeing to the obligation" under Entry 5(e) of Schedule II of the CGST Act and is thus an identifiable service. Extending such guarantee to help a subsidiary secure credit facilities is an activity incidental to trade/commerce and thus satisfies the definition of "business".
- **Rule 28(2) deemed valuation at 1% is valid, but the phrase "whichever is higher" in the said rule must be struck down**: A deeming fiction for valuation is well recognised in taxation where actual value cannot be ascertained. Hence, the deemed valuation of 1% is constitutionally valid. However, the qualifying phrase "***whichever is higher***" compels payment of tax at 1% even where actual consideration is demonstrably lower (shown to be 0.25%–0.3% in these cases). Thus, it has no nexus to actual cost, becomes confiscatory, and deprives Taxpayer of the flexibility available under Rules 30 and 31 of CGST Rules. This expression is therefore arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution and is liable to be read down.
- **Time of supply**:
  - Applying Section 13(2)(c) of the CGST Act, the time of supply is the date on which the subsidiary records the guarantee in its books of account and not the date of execution of the guarantee itself.
  - The outstanding amount of debt as reflected in the books of accounts by the subsidiary for each financial year will be supply of service triggering the valuation mechanism under Rule 28(2) of CGST Rules. Where there is no actual consideration involved, once the corporate guarantee deed is executed by the guarantor, the activity of provision of guarantee is crystallised. It is only the operation of the guarantee that is continuous over a period. Thus, the benefit of the guarantee accrues to the principal debtor at the time of execution of the contract of guarantee by the surety with the creditor.
- **Retroactive levy prior to 26 October 2023 is unconstitutional**: Rule 28(2) of CGST Rules introduced with effect from 26 October 2023 operates retroactively when applied to guarantees executed before that date. While the legislature has competence to enact retrospective/ retroactive tax laws, this power is subordinate to fundamental rights. Levying tax for a period when no such levy existed defeats legal certainty, imposes an unanticipated burden and invokes the doctrine of unjust enrichment. Therefore, the levy prior to 26 October 2023 is struck down as being violative of Articles 14 and 19(1)(g) of the Constitution. However, the levy is permissible only from 26 October 2023 onwards, for so long as the guarantees continue in force.
- **Section 74 cannot be invoked for a *bona fide* interpretational dispute**: Section 74 of the CGST Act requires a clear showing of fraud, wilful misstatement or suppression with deliberate intent to evade tax. Since the taxability of corporate guarantees involved a genuinely disputed interpretation of the CGST Act read with the Indian Contract Act, 1872 and Transfer of Property Act, 1882, the Taxpayer could not be held guilty of fraud or suppression merely for having taken a *bona fide* legal position that was later disputed by the Revenue. Consequently, Section 74 proceedings/orders are quashed, and the Taxpayers need not be relegated to the alternative remedy of appeal.
- **Circulars set aside to the extent inconsistent with the judgment**: The CBIC Circulars dated 27 October 2023 and 11 July 2024 were set aside to the extent they ran contrary to the aforesaid findings. However, liberty was granted to the tax authorities to issue fresh circulars/administrative instructions in line with this decision.

TRANSFER PRICING

Circulars / Notifications / Press Release

JUDICIAL PRECEDENTS

Delhi Tax Tribunal held that 'negative lien' created by a taxpayer over its receivables and participating interest in oil & gas blocks is a valuable right and constitutes an international transaction

The taxpayer, an Indian company engaged in oil and gas exploration and production, holds participating interest ('PI') in eight oil and gas blocks in India and one in Myanmar. The taxpayer is a step-down subsidiary of JE Energy BV ('JEEBV'), Netherlands, which in turn is a subsidiary of Jubilant Energy (Holding) BV ('JEHBV'), Netherlands, the ultimate Indian holding company being JE Energy Ventures Private Limited ('JEEVL'). JEEBV and JEHBV had availed foreign currency term loans in August 2011 and January 2014 respectively from Export Import Bank of India ('Exim Bank'), for which JEEVL furnished a corporate guarantee. Pursuant to such guarantee, the taxpayer executed a negative lien in favour of Exim Bank over its PI and receivables, undertaking not to create any further charge over these assets without Exim Bank's prior written consent. The transfer pricing officer (‘TPO’) treated the negative lien as a corporate guarantee constituting an international transaction, and computed its arm's length price ('ALP') by averaging the corporate guarantee rates of two banks at 1.65%. The Dispute Resolution Panel (‘DRP’) upheld the international transaction characterisation but directed benchmarking using a LIBOR+ rate, relying on the Delhi High Court's ruling in Cotton Naturals[1]. Aggrieved, the taxpayer appealed before the Delhi Bench of Income Tax Appellate Tribunal (‘Tax Tribunal’), relying on an order in its own case[2] holding that a negative lien does not constitute an international transaction (an order presently under challenge before the High Court).

The Tax Tribunal made the following key observations:

- Merely because JEEVL furnished a corporate guarantee does not mean the taxpayer, a separate legal entity, was obliged to create the negative lien — it was Exim Bank's independent stipulation, executed by the taxpayer via a distinct undertaking.
- The negative lien is a valuable right in itself, as JEEVL, JEHBV and JEEBV are mere investment holding companies while the underlying real assets are owned by the taxpayer; the guarantee's real strength is derived from this lien.
- Issuance of the negative lien by the taxpayer, to secure loans granted to its associated enterprise (‘AE’) (JEEBV), constitutes an international transaction under Explanation 1(c) to Section 92 of the Act.
- The negative lien continues to operate in Exim Bank's favour even after JEEBV/JEHBV came under bankruptcy; the taxpayer's contention that the service ceased upon the loans becoming NPA was rejected.
- By creating the negative lien, the taxpayer has crippled its own capacity to borrow and expand and adversely impacted its credit rating. Both TPO and DRP have erred in computing ALP.

The Tax Tribunal accordingly held that the negative lien is a valuable right constituting an international transaction requiring arm's length compensation and restored the matter to the tax officer/TPO for fresh computation of ALP.

[JOGPL Pvt. Ltd. vs. DCIT - IT(TP)A No. 65/Del/2026, (Delhi ITAT)]

[1] CIT v. Cotton Naturals India Private Limited, (2015) 55 taxmann.com 523(Del.HC)
[2] ITA no. 1718/Del/2022, dated 08.10.2025

Delhi Tax Tribunal held that advertising, marketing and promotion expenditure incurred by a taxpayer in the course of its own business is not a separate international transaction

The taxpayer is an Indian company engaged in the business of manufacturing and trading of consumer electronics, home appliances, mobile phones and IT products. It is a wholly owned subsidiary of an overseas parent and operates through licensed manufacturing, trading and networking segments. For Fiscal Years ('FYs') 2015-16 and 2016–17, the taxpayer incurred advertising, marketing and promotion ('AMP') expenditure across all three segments. The TPO treated this as an international transaction and proposed intensity-based adjustments under the transactional net margin method ('TNMM') in the manufacturing and networking segments as well as bright line test ('BLT') adjustments for the trading segments. The TPO also proposed protective BLT adjustment for the manufacturing segment. These adjustments were confirmed by DRP.

The taxpayer also paid royalty to its overseas parent for use of technical know-how. It aggregated the royalty with its licensed manufacturing transactions and benchmarked them under TNMM. The TPO rejected the aggregation, applied the comparable uncontrolled price ('CUP') method using three third-party royalty agreements from the agricultural sector.

During FY 2016-17, the taxpayer imported telecommunication equipment from its parent company. It also availed network support services of network design, installation and commissioning and network maintenance services from its parent company's project office in India. The taxpayer benchmarked the import and distribution of telecommunication equipment separately from networking support services. The distribution transaction was benchmarked under the other method using the Berry Ratio, and the network support services were benchmarked under TNMM with the overseas parent's Indian project office as the tested party. The TPO rejected the segregated approach and aggregated both transactions under TNMM.

Aggrieved, the taxpayer appealed before the Delhi Bench of the Tax Tribunal.

The Tax Tribunal, while ruling in favour of the taxpayer, made the following key observations:

Re. AMP expenditure

- There is no arrangement, understanding or agreement obligating the taxpayer to incur AMP expenditure for brand promotion on behalf of the overseas parent.
- The AMP expenditure is incurred in the course of the taxpayer's own business in India. In the absence of an international transaction, no benchmarking of AMP expenditure can be undertaken, and the BLT and intensity approaches were wrongly applied. Both substantive and protective adjustments are to be deleted.

Re. Royalty benchmarking

- The royalty agreements relied on by the TPO belong to the agricultural industry and involve seed-related products. The taxpayer sells consumer electronics and home appliances to the general public.
- Strong similarity of product, along with the geographical market, is essential for applying the CUP method. The technology and economic parameters in the electronics industry are unique and fast evolving. These conditions are not met, and the royalty adjustments are to be deleted.

Re. Segregated benchmarking and the Berry Ratio

- Transactions can be aggregated only where they are closely linked and inextricably connected, and the onus lies on the taxpayer[3]. The segregated approach adopted by the taxpayer is therefore approved.
- In respect of the import of telecommunication equipment, the taxpayer operates as a merchant trader and merely acts as a facilitator between the associated enterprise and the end customer. The taxpayer obtains only flash title to the goods sold to the customer.
- The taxpayer does not perform any significant functions or assume any significant risks in respect of the value of goods recorded in its profit and loss account. Considering the functional profile and business model of the taxpayer in respect of the distribution activity, the cost of goods sold ('COGS') can be considered as a non-value-added expense. Accordingly, the COGS do not form part of the value-added functions and is not material for computation of the taxpayer's profitability. Therefore, profit level indicator ('PLI') based on gross profit to operating expenses, excluding COGS (Berry Ratio), is the most appropriate PLI in the facts and circumstances of the case.
- The rejection of the Berry Ratio by TPO/DRP is flawed, as the taxpayer was wrongly treated as a full-fledged risk-bearing distributor.

The Tax Tribunal deleted the AMP and royalty adjustments (including the protective adjustment for AMP) and upheld the segregated benchmarking of the distribution transaction using the Berry Ratio.

[Samsung India Electronics (P.) Ltd. v. Addl. Commissioner of Income-tax, National E-Assessment Centre, New Delhi - IT Appeal Nos. 1955 (Del) of 2021 and others, order dated 12 August 2026 (Delhi ITAT)]

[3] Knorr-Bremse India (P.) Ltd. v. ACIT [2015] 63 taxmann.com 186 (P&H HC)

Chennai Tax Tribunal held that in the taxpayer's first year of operations, capacity underutilisation adjustment should be granted based on available comparable data, pre-commencement expenses are to be excluded from the operating cost base, and working capital adjustment computed per ICAI guidelines is acceptable.

The taxpayer is an Indian company engaged in business manufacturing parts and accessories for telecommunication makers. It operated for about seven months during FY 2006-07. It benchmarked its international transactions with its AEs using TNMM, reporting an adjusted margin after claiming economic adjustments across 13 comparables. The taxpayer claimed adjustment for capacity underutilisation against comparables for which the data relating to capacity utilisation was not available. The taxpayer also requested exclusion of abnormal packing material cost and pre-commencement expenses from its operating cost base.

The tax authorities accepted the TNMM method, but rejected the claim towards adjustment of idle capacity, abnormal packing cost, pre-commencement expenses, and working capital adjustment, retaining 9 comparables and held that transactions were not at arm's length.

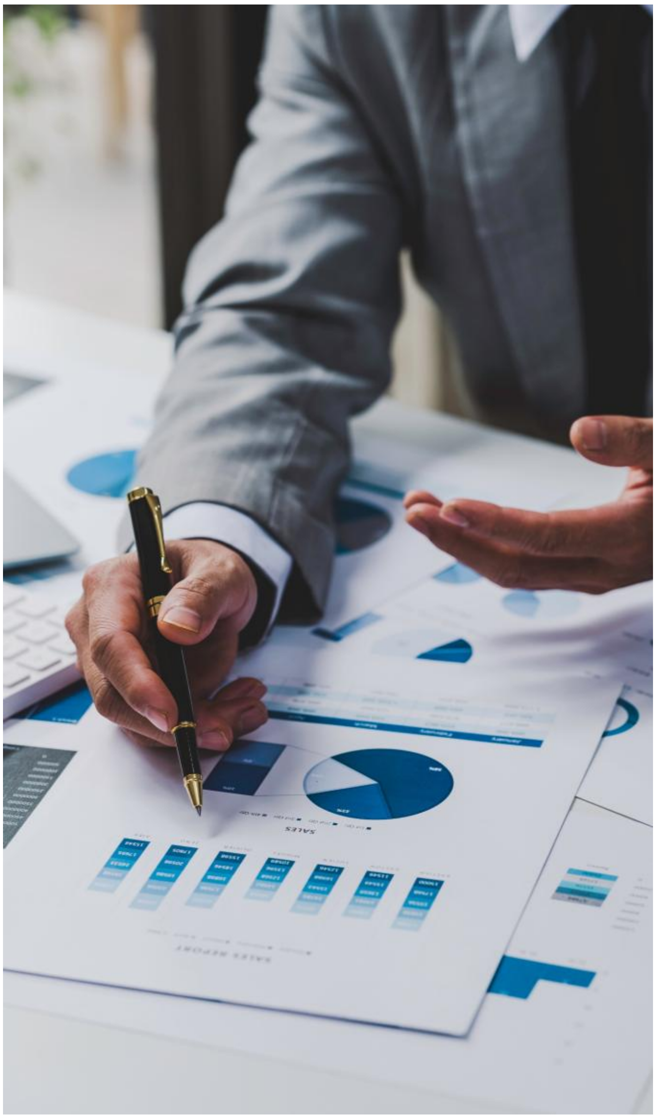
On appeal, the First Appellate Authority upheld the order of the TPO regarding rejection of capacity underutilisation adjustment and other adjustments except the exclusion of 2 loss-making comparables, holding that they were not persistent loss-making companies and should be included as comparables. Aggrieved, the taxpayer preferred an appeal before the Chennai Bench of the Tax Tribunal, and the tax authorities preferred a cross-appeal against inclusion of 2 comparable companies.

The Tax Tribunal, while ruling partly in favour of the taxpayer, made the following key observations:

- Since the taxpayer was in its first year of operation while selected comparables were all in existence for more than 5 years, expectation of achieving optimum capacity was unreasonable, and a reasonable adjustment for differential capacity utilisation ought to be granted. Such adjustment could not be denied merely because capacity utilisation data was not available for all comparables. As long as capacity data of some comparables is available, it should be treated as an indicator of the industry trend, and the TPO should grant the adjustment based on the available data relating to average capacity.
- The abnormal packing material cost being a routine business expense forms part of operating costs, as the taxpayer failed to establish its recoverability from customers.
- Comparables being well-established companies have no pre-commencement expenditure, and such expense had no bearing on international transactions undertaken by the taxpayer with the AEs, thus, to be excluded from operating cost base while computing margin.
- One of the comparables had ceased its business operations only in subsequent fiscal year, thus remaining a valid comparable for the fiscal year under consideration.
- Working capital adjustment computation prepared following guidelines of Institute of Chartered Accountants of India ('ICAI') was acceptable and could not be denied merely because movement and trade/non-trade breakup data for debtors, creditors and inventory were not furnished.
- A comparable that incurred losses in only 2 out of 3 years could not be excluded as a persistent loss-making company, since this filter applies only where losses are incurred in all 3 years.

The Tax Tribunal accordingly directed the tax authorities to allow the adjustment for underutilisation of capacity, exclude the pre-commencement expenses from the operating cost, include comparable that has ceased operations in subsequent year or incurred losses in only 2 out of 3 years and to grant the working capital adjustment but upheld inclusion of packing material cost in operating cost.

[FIH India (P.) Ltd. v. Deputy Commissioner of Income-tax - IT(TP)A No. 137 (Chny) of 2024 and IT(TP)A No. 1 (Chny) of 2025, order dated 21 July 2026 (Chennai ITAT)]



The Mumbai Tax Tribunal held that Section 92A(2) cannot be read independently of Section 92A(1), and that commercial dependence or exclusivity in a distribution arrangement does not, by itself, amount to participation in the management, control or capital of the distributor

The taxpayer is an Indian company engaged in the business of computer training and coaching institutes. It has paid royalty to its overseas parent for distribution of software. The taxpayer benchmarked the royalty transaction under the CUP method on a transaction-by-transaction basis. It applied internal CUP by relying on a distribution agreement entered into by its overseas parent with a distributor in Israel.

The TPO initially rejected CUP method and applied the TNMM. During the first round of appellate proceedings, the Tax Tribunal restored the matter back to the tax authorities with a direction to record proper reasons for rejecting the CUP method. In the remand proceedings, the TPO reiterated the earlier approach and rejected the CUP method on two grounds.

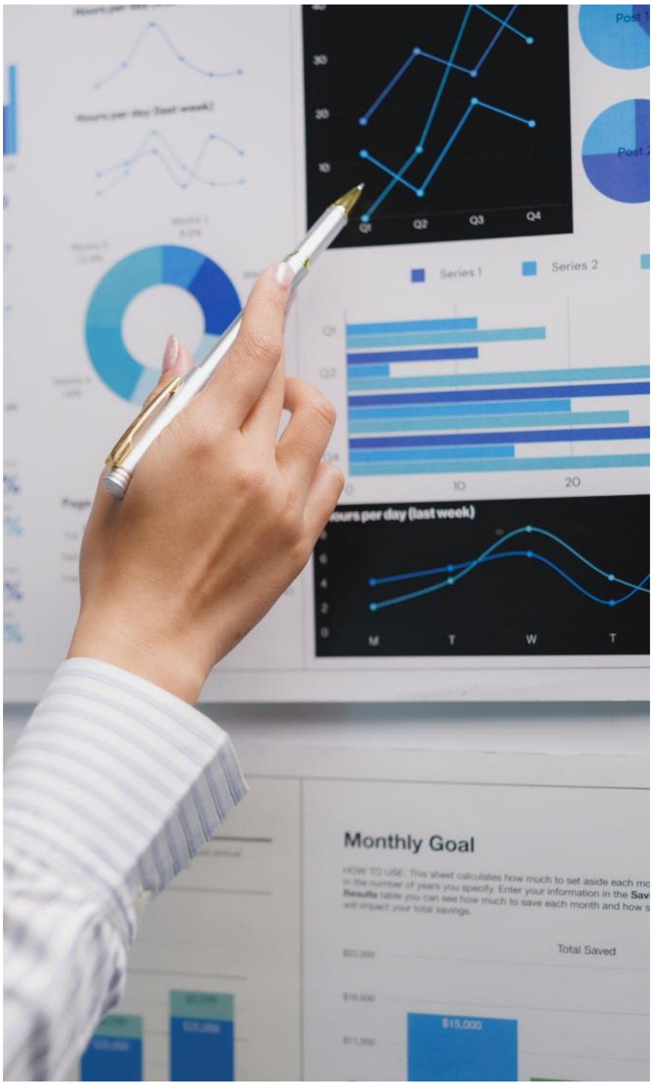
One of the grounds for rejection was that the Israeli distributor was an associated enterprise of the overseas parent under section 92A(2)(g), because its business was wholly dependent on the overseas parent and it held the exclusive right to sub-license and distribute the software. The DRP upheld the order of the TPO.

Aggrieved, the taxpayer appealed before the Mumbai Bench of Tax Tribunal.

The Tax Tribunal, while ruling in favour of the taxpayer, made the following key observations:

Re. Interplay between Sections 92A(1) and 92A(2)

- Section 92A(1) lays down the basic test and requires participation in the management, control or capital of the other enterprise. Sub-section (2) identifies circumstances in which such participation is deemed and opens with the words "For the purposes of sub-section (1)".
- Section 92A(2) cannot be read as an independent provision that dispenses with the foundational requirement in Section 92A(1), as that would detach the deeming provision from the substantive provision it serves. The two sub-sections must be read harmoniously, with Section 92A(2) operating as statutory indicators for determining the participation contemplated under Section 92A(1).
- The Explanatory Memorandum to the Finance Act, 2002 states that mere participation in management, control or capital would not by itself make two enterprises AEs unless the criteria specified in Section 92 are satisfied. This does not mean that Section 92A(2) substitutes the requirement of Section 92A(1). Rather, it reinforces the intent that the circumstances in sub-section (2) are to be applied to determine whether the participation contemplated in sub-section (1) is satisfied.
- Therefore, a condition under Section 92A(2) cannot be viewed in isolation, divorced from the requirement of participation in management, control or capital contemplated under Section 92A(1).



Re. Commercial dependence and participation

- Commercial dependence or exclusivity in a distribution arrangement cannot, by itself, be equated with participation in the management, control or capital of the distributor. Exclusive dealing in one manufacturer's products may establish economic or contractual dependence, but that circumstance, without more, does not establish participation.
- The taxpayer placed on record the group organisational structure, website extracts and a certificate confirming that the distributor was an independent third party. The tax authorities brought nothing on record showing ownership, voting rights, participation in management, appointment of directors or financial control.

The Tax Tribunal set aside the transfer pricing adjustment made by rejecting the CUP method and restored the matter to the tax authorities to identify the precise differences between the two agreements and examine whether they materially affect the royalty rate and can be adjusted for.

[SAS Institute (India) Pvt. Ltd. v. Assistant Commissioner of Income-tax - ITA Nos. 6671 and 6672/Mum/2019, order dated 17 August 2026 (Mumbai ITAT)]

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