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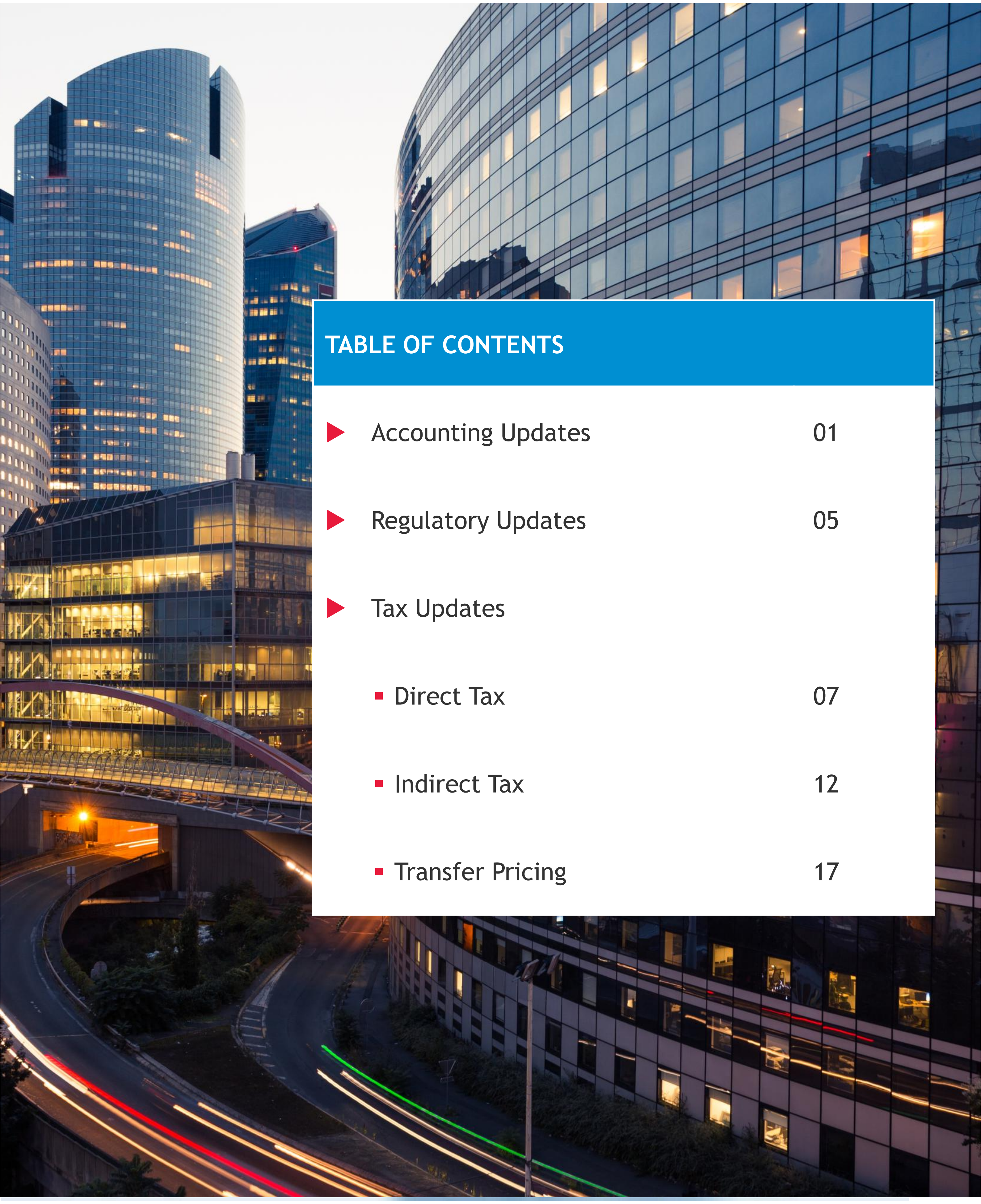

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ACCOUNTING UPDATES

The Institute of Chartered Accountants of India (ICAI):

Capitalisation of dry dock expenditure (major inspection costs) as a separate component of dredgers and depreciation thereon after completion of their estimated useful lives.

A Ltd., a dredging company, incurs significant dry dock expenditure on its dredgers (including four that have already exceeded their originally estimated useful life of 25 years) to obtain mandatory fitness certification. The Company capitalises such expenditure as major inspection costs under Ind AS 16 and depreciates them over the period up to the next inspection, on the basis that these costs generate future economic benefits. However, the CAG objected, stating that since the dredgers have already completed their useful life, such expenditure should be treated as repairs and charged to profit and loss.

The Committee noted that Ind AS 16 permits capitalisation of subsequent expenditure, including major inspections and replacements, if the recognition criteria are met—i.e., future economic benefits are probable, and costs can be measured reliably. It also clarified that the standard does not prohibit capitalisation merely because the original useful life of the asset has expired. However, it emphasised that not all dry dock expenses are eligible for capitalisation; each component of expenditure must be analysed individually. Only those costs that enhance the asset's performance or extend its useful life (such as major inspections or significant replacements) can be capitalised as separate components and depreciated over their respective useful lives (e.g., until the next inspection cycle), while routine repairs and maintenance must be expensed.

Further, the Committee observed that since the dredgers continue to be used beyond their initially estimated useful life, the Company should reassess and revise its useful life estimates in accordance with Ind AS 16. Overall, it concluded that capitalisation of qualifying dry dock expenditure, even after expiry of the dredgers' original useful life, is permissible under Ind AS, provided the recognition criteria are satisfied and proper assessment and componentisation of costs are carried out.

Accounting treatment of Grant (Structured Package of assistance for setting up a Hardwood Pulp Plant) under Ind AS 20

A listed company manufacturing paper using bagasse received incentives from the Tamil Nadu Government for setting up a Hardwood Pulp Plant, termed "capital subsidy" in lieu of SGST reimbursement. Although the subsidy was calculated based on capital investment, it was payable annually over 15 years only upon fulfilment of conditions such as continued operation of the plant, maintaining specified production levels, and meeting employment targets. The Company treated the subsidy as a grant related to income under Ind AS 20 and recognised it in profit or loss each year, while auditors contended that it should be treated as a capital (asset-related) grant.

The Committee observed that under Ind AS 20, the nature of a grant depends on its substance rather than its nomenclature. It noted that eligibility for the subsidy was not solely linked to the acquisition of the plant but also depended on ongoing operational and employment conditions, which were primary requirements. Since these conditions go beyond mere acquisition of a long-term asset, the subsidy cannot be classified as a grant related to assets. Accordingly, it qualifies as a grant related to income, as it is linked to operational performance and compliance over time. Therefore, the Company's accounting treatment of recognising the subsidy in profit or loss on a systematic basis was held to be appropriate and in compliance with Ind AS 20.

Accounting treatment of payment made to NHAI for the development of road connectivity to Exhibition-cum-convention Centre (ECC Centre) Project.

A public sector company developing an Exhibition-cum-Convention Centre (ECC) project incurred substantial expenditure by making payments to NHAI for the development of external road connectivity. The Company initially recognised these costs under CWIP and later capitalised them as part of PPE once the project became operational, considering them as directly attributable costs necessary to make the ECC functional under Ind AS 16. However, the auditor objected, stating that such payments should be expensed.

The Committee observed that under Ind AS 16, only those costs can be capitalised which are directly attributable to bringing an asset to the location and condition necessary for it to operate in the manner intended by management. It clarified that not all expenditures that enhance usability or accessibility qualify for capitalisation. In this case, the road connectivity developed by NHAI was not essential for the construction or operation of the ECC, but rather aimed at improving accessibility, convenience, and overall attractiveness of the project. Since the ECC could still operate without such additional road infrastructure, the expenditure cannot be regarded as directly attributable to making the asset operational.

Accordingly, the Committee concluded that the payment made to NHAI for external road connectivity should not be capitalised as part of PPE under Ind AS 16 and must instead be recognised as an expense in the Statement of Profit and Loss when incurred.

ICAI Sustainability Standard 5000

Sustainability Reporting Standards Board of the Institute of Chartered Accountants of India has issued the Exposure Draft of Standard on Sustainability Assurance (SSA -5000)- "General Requirements for Sustainability Assurance Engagements". SSA gives sustainability information about sustainability matters. An entity's disclosures about such matters may relate to several different topics (e.g., climate, labour practices, biodiversity) and aspects of topics (e.g., risks and opportunities, metrics and key performance indicators). This SSA applies to all assurance engagements on sustainability information. Last date for Comments/Suggestions is 19 June 2026.

REGULATORY UPDATES

Reserve Bank of India (RBI)

Foreign Exchange Management (Export of Goods and Services) (First Amendment) Regulations, 2026

The RBI has amended the Export of Goods and Services Regulations, 2015, to reduce the time limit for realisation and repatriation of export proceeds from 15 months to 9 months. This change applies to exporters receiving payments for goods and services and aims to speed up foreign exchange inflows and improve discipline in export payments. The amendment is effective from the date of publication in the Official Gazette, i.e., 5 June 2026.

Modification of Returns / Reporting requirements under FEMA, 1999 and Review of Circulars issued under Foreign Exchange Management Act, 1999 (FEMA)

RBI has issued circulars under the Foreign Exchange Management Act, 1999

- Reviewed the existing reporting framework and rationalised certain reporting requirements while prescribing/modifying reporting formats pursuant to the Foreign Exchange Management (Authorised Persons) Regulations, 2026. As part of this revision, the FLM-8 return has been updated to capture details relating to the write-off of foreign currency notes. Additionally, the requirement to obtain prior RBI approval for the write-off of foreign currency notes exceeding USD 2,000 has been discontinued. This specific change to the FLM-8 return introduces an important shift in operational compliance for Full-Fledged Money Changers (FFMCs) and Non-Bank Authorised Dealers (Category II).
- In continuation of its ongoing regulatory rationalisation exercise, it has reviewed circulars issued since 1 June 2000 and has withdrawn obsolete FEMA circulars that have ceased to be operative due to subsequent amendments, redundancy, overlap, or supersession by newer directives.

Securities and Exchange Board of India (SEBI)

Guidelines for winding up of AIFs with respect to retention of proceeds and 'Inoperative Fund' status

SEBI has provided flexibility to Alternative Investment Funds (AIFs) and erstwhile Venture Capital Funds (VCFs) during winding up by permitting retention of liquidation proceeds beyond the permissible fund life in cases of pending/anticipated litigation, tax or regulatory demands, or residual winding-up expenses. The circular is effective immediately.

Key provisions include:

- Retention of proceeds beyond the permissible fund life is allowed subject to specified conditions, including investor consent where applicable
- AIFs with retained monies may apply for an 'Inoperative Fund' status while surrendering active operations
- Inoperative Funds cannot launch new schemes and cannot charge management fees
- Certain regulatory compliance and reporting requirements will not apply to Inoperative Funds
- AIFs retaining monies and Inoperative Funds must submit an annual status report to SEBI and investors on retained amounts and outstanding liabilities
- The framework has also been extended to Venture Capital Funds registered under the erstwhile VCF Regulations.

Some of the Key decisions taken in the SEBI Board Meeting dated 19 June 2026 are as mentioned below: -

- SEBI has approved amendments to the SEBI (Buy-back of Securities) Regulations, 2018, to re-introduce open market buy-back through stock exchanges and review buy-back processes, in light of the revision in the taxation framework and the suggestions received from stakeholders with the objective of providing greater flexibility in undertaking buy-backs, reducing procedural complexity and strengthening investor protection. Key proposals include:
  - Open market buy-backs through stock exchanges will be reintroduced from 1 August 2026, providing companies with an additional buy-back route.
  - Companies must inform shareholders about buy-backs through electronic communication, in addition to newspaper advertisements.
  - Open market buy-backs must be completed within 66 working days, with at least 40% of the buy-back amount utilised in the first half of the buy-back period.
  - Buy-backs through stock exchanges will be treated as normal market transactions, removing the need for a separate trading window and disclosure of the company's identity as the purchaser.
  - Promoters cannot participate in such buy-backs, and their holdings will remain frozen during the buy-back period, and the appointment of a merchant banker has been made optional to reduce compliance costs.
- GARUDA Mechanism through amendment in SEBI (Alternative Investment Funds) Regulations, 2012. As a result,
  - For Non- Accredited Investor Schemes, which exclude Large Value Funds (LVF), AI-only schemes, and Angel Funds ("Regular schemes"), the timeline for launch of new schemes by Alternative Investment Funds (AIFs) has been reduced to 10 working days, compared with a longer period required earlier.
  - Considering the level of sophistication of AIs, AI-only schemes and Angel Funds (which comprise only AIs) have been exempted from filing a Private Placement Memorandum (PPM) through a Merchant Banker and permitted to launch immediately upon the grant of SEBI registration or the filing of a PPM with SEBI.

Ministry of Corporate Affairs (MCA)

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2026.

The MCA has amended the CSR Rules, 2014 to introduce a new mode of CSR spending through "zero coupon zero principal instruments" issued by Not-for-Profit Organisations (NPOs) listed on Social Stock. Key highlights include:

- Not-for-Profit Organisation (NPO) and Zero Coupon Zero Principal (ZCZP) Instrument definitions have been introduced.
- Companies can now spend up to 10% of their annual CSR obligation by subscribing to Zero Coupon Zero Principal (ZCZP) Instruments issued by Social Stock Exchange-listed NPOs.
- The Company that has subscribed to a zero-coupon zero-principal instrument shall be exempted from undertaking an impact assessment of any project funded by such an instrument.
- The issuing NPO must complete the project within 3 financial years and transfer any unspent amount to a Schedule VII fund, while reporting compliance to SEBI.
- They shall come into force on the date of their publication in the Official Gazette.

Subscription to zero-coupon zero-principal instruments on the Social Stock Exchange

The Ministry of Corporate Affairs has amended Schedule VII of the Companies Act, 2013. A new CSR activity, "Subscription to Zero Coupon Zero Principal (ZCZP) Instruments on the Social Stock Exchange", has been added as Item (xiii) in Schedule VII (Activities which may be included by the Companies in their Corporate Social Responsibility Policies). This amendment makes investment in ZCZP instruments issued through the Social Stock Exchange an eligible CSR expenditure. The amendment came into force on the date of its publication in the Official Gazette.

Companies (Registered Valuers and Valuation) Amendment Rules, 2026

The MCA has amended the Companies (Registered Valuers and Valuation) Rules, 2017 through the Companies (Registered Valuers and Valuation) Amendment Rules, 2026.

Registered valuers' organisation must be registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013, having -

- A minimum paid-up share capital of twenty-five lakh rupees.
- The sole object of dealing with matters relating to the regulation of valuers of an asset class or asset classes; and
- Byelaws containing the requirements specified in Annexure–III

Provided that a registered valuer organisation which does not have the specified minimum paid-up capital as on the date of the commencement of the Companies (Registered Valuers and Valuation) Amendment Rules, 2026 shall comply with this requirement on or before 31 March 2028.

National Stock Exchange (NSE)

Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2026

NSE has issued FAQs on the submission of the Quarterly Integrated Filing, covering governance-related requirements including general submission norms, composition of the Board of Directors, composition of committees, meetings of the Board and committees and quarterly disclosures under Schedule III of the SEBI (LODR) Regulations, 2015.

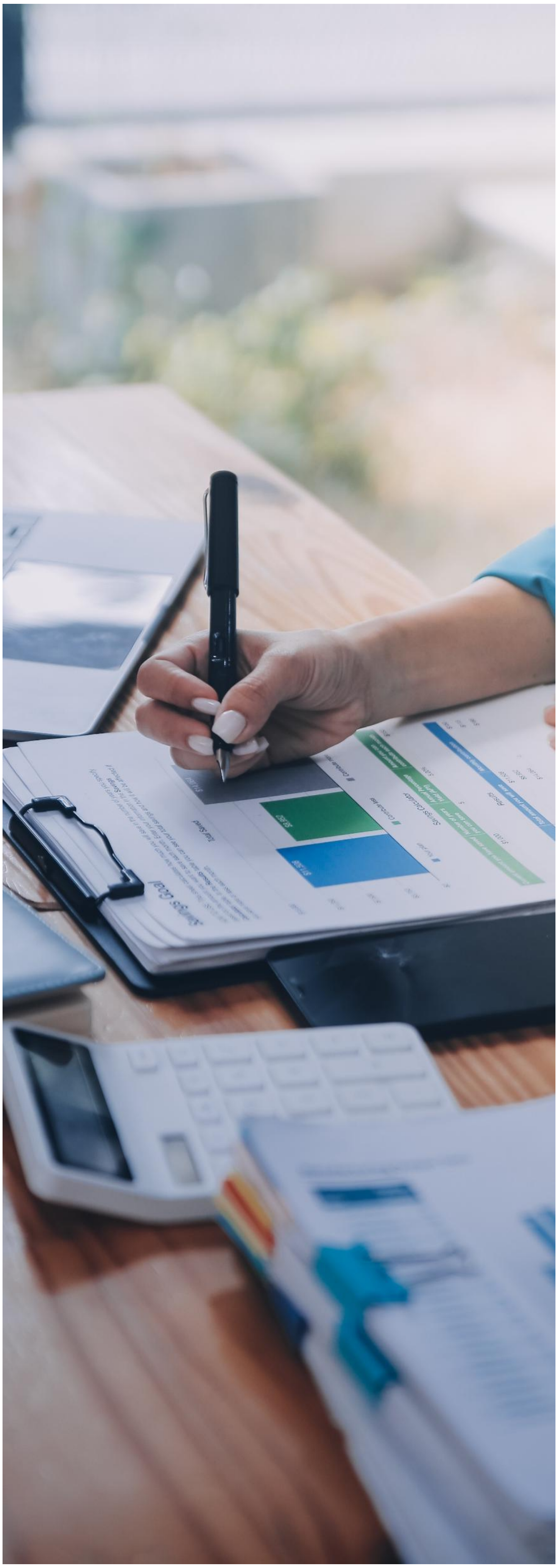
Ministry of Finance

Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2026

The Ministry of Finance has notified the Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2026. Key highlights include:

- The amendment expands the scope of investment eligibility from only NRIs/OCIs to all individuals resident outside India.
- Such individuals are now permitted to purchase and sell equity instruments of listed Indian companies on a repatriation basis through recognised stock exchanges.
- The rules prescribe strict limits, restricting individual holdings to less than 10% and aggregate holdings to 24% of the paid-up equity capital.
- Prior Government approval is required where investment or transfer results in ownership/control of an Indian company involving persons or beneficial owners from countries sharing land borders with India.

In the event of a breach of the 10% limit, the investor must divest within 5 trading days, failing which the investment will be reclassified as Foreign Direct Investment (FDI).



REGULATORY UPDATES

Securities and Exchange Board of India (SEBI):

Board Meeting dated 19 June 2026: Re-introduction of Open Market Buy-back through Stock Exchanges[1]

The SEBI Board has approved amendments to the SEBI (Buy-back of Securities) Regulations, 2018 to re-introduce open market buy-backs through stock exchanges and streamline the buy-back framework in light of the revised taxation regime and stakeholder feedback.

The amendments aim to provide greater flexibility to listed companies undertaking buy-backs, reduce procedural complexities and strengthen investor protection mechanisms.

The key amendments approved by SEBI are as follows:

- **Reintroduction of stock exchange route:** Open market buy-backs through stock exchanges shall be reintroduced as an additional buy-back mechanism with effect from 1 August 2026, alongside the existing tender offer and book-building routes.
- **Enhanced shareholder communication:** Companies undertaking open market buy-backs shall disseminate buy-back-related information to shareholders through electronic means in addition to the existing requirement of newspaper advertisements.
- **Timelines and utilisation requirements:** Open market buy-backs through stock exchanges shall be completed within 66 working days from the opening of the buy-back, and at least 40% of the earmarked buy-back amount shall be utilised during the first half of the buy-back period.
- **Removal of separate trading mechanism:** In view of the revised taxation framework and the restriction on promoter participation, open market buy-backs through stock exchanges shall be treated as normal market transactions, and accordingly, the requirement for a separate trading window and disclosure of the company's identity as purchaser on the trading screen has been dispensed with.
- **Restriction on promoter holdings:** Shares held by promoters and their associates shall remain frozen at the ISIN level during the buy-back period to prevent inadvertent trading.
- **Compliance with public shareholding norms:** Companies undertaking buy-backs shall be required to comply with minimum public shareholding requirements.
- **Alignment with Companies Act:** The interval between two buy-backs has been aligned with the requirements prescribed under the Companies Act, 2013.
- **Merchant banker appointment made optional:** To promote ease of doing business and reduce compliance costs, appointment of a merchant banker for buy-backs has been made discretionary. In cases where a merchant banker is not appointed, the associated responsibilities shall be discharged by the company, compliance officer, statutory auditor, secretarial auditor and stock exchanges, as applicable.

The amendments are intended to simplify the buy-back process, improve operational efficiency and facilitate ease of doing business while ensuring adequate safeguards for investors and market integrity.

[1] 33/2026

Master Circular dated 3 June 2026 for Alternate Investment Funds (AIFs)[2]

SEBI has issued a comprehensive, updated Master Circular for Alternative Investment Funds (AIFs) to enable fund houses and market stakeholders to access all applicable circular instructions in a single consolidated document

This handbook incorporates all standard circulars issued under the SEBI (Alternative Investment Funds) Regulations, 2012, up to 31 May 2026, and officially supersedes the previous baseline Master Circular dated 7 May 2024

The Master Circular brings together all directions and clarifications issued by SEBI for AIFs, ensuring that fund managers, trustees, custodians, and intermediaries have access to a unified regulatory document.

The key features of the Master Circular include:

- Consolidation of circulars and operational guidelines issued under the AIF framework up to 31 May 2026;
- Incorporation of recent regulatory developments, including provisions relating to winding up of AIFs, retention of proceeds and "Inoperative Fund" status;
- Rescission of earlier circulars specified in the Circular while preserving the validity of actions, approvals and applications undertaken under the earlier framework; and
- Requirement for trustees, sponsors and managers to ensure that Compliance Test Reports capture compliance with all applicable provisions of the Master Circular.

The Circular is intended to improve regulatory clarity, streamline compliance requirements and provide a comprehensive reference framework for AIFs and related market intermediaries.

Reserve Bank Of India (RBI)

Circular dated 5 June 2026: Investments by Foreign Portfolio Investors in Government Securities (Amendment)[3]

RBI has revised the regulatory framework under the FEMA (Debt Instruments) Regulations, 2019 and the Master Direction - Non-resident Investment in Debt Instruments, 2025 to simplify norms for FPI investments in Government Securities. The move aims to simplify the investment framework, enhance ease of doing business and reduce compliance burden for FPIs.

The key amendments laid out in the Circular are as follows:

- **Withdrawal of Limit:** The requirement for FPIs investing under the General Route to comply with short-term investment limits, security-wise limits and concentration limits has been withdrawn.
- **Consolidation of Investment Limit:** The existing sub-categories of investment limits, namely "General" and "Long-term", have been merged into a single investment limit for investments in Central Government Securities and State Government Securities ("SGSs").
- **Revised Limits for FY 2026-27 (in INR crore):**
  - Central government securities: INR 4,62,490 (Apr-Sep 2026); INR 4,77,006 (Oct 2026-Mar 2027)
  - State government securities: INR 1,53,043 (Apr Sep 2026); INR 1,64,242 (Oct 2026-Mar 2027)
- **Designation of Additional 'Specified Securities' under Fully Accessible Route:**
  - Government Securities: All new issuances in 15, 30, and 40-year tenors
  - Sovereign Green Bonds: All new issuances in 5, 7, 10, 15, 30, and 40-year tenors
  - Existing securities: 6.68% GS 2040, 7.24% GS 2055 and 7.71% GS 2066

The Amendment directions in this circular shall come into effect immediately.

Circular dated 8 June 2026: Introduction of USD-INR Swap Facility for External Commercial Borrowings and Overseas Foreign Currency Borrowings[4]

RBI has introduced a USD-INR Forex Swap Facility for certain eligible External Commercial Borrowings ("ECBs") and Overseas Foreign Currency Borrowings ("OFCBs"). The measure aims to facilitate foreign currency inflows, reduce hedging costs and provide greater flexibility in managing foreign exchange risk for eligible borrowers and AD Category-I banks.

The key features of the Circular are as follows:

- **Eligible ECB borrowers:** The facility shall be available to:
  - Public Sector Undertakings ("PSUs") having majority ownership with the Central and/or State Government (excluding banks); and
  - PSUs incorporated, established or registered under a Central or State Act and controlled by the Central or State Government
- **Eligible ECBs:** The facility shall apply to ECBs having an average maturity of three years or more, drawn on or after the date of the Circular up to 31 December 2026. The facility shall also be available for the undrawn portion of existing eligible ECBs.
- **Exclusions:** The facility shall not be available for:
  - ECBs containing embedded options; or
  - ECBs raised for refinancing or repayment of existing ECBs.
- **Eligible OFCBs:** Authorised Dealer Category-I Banks may avail the facility for Overseas Foreign Currency Borrowings having a minimum maturity of three years.
- **Swap mechanism:** Eligible borrowers may access the facility through their AD Category-I banks, which may enter into a USD-INR swap arrangement with the RBI. The swap shall be available for a period coterminous with the repayment schedule of the borrowing, subject to a maximum tenor of five years.
- **Pricing:** The swap shall be available at a fixed rate of 1.5% per annum, compounded semi-annually.
- **Operational framework:** The facility shall be administered by the Financial Markets Operations Department ("FMOD") of RBI.

The Circular comes into effect immediately, and the swap window shall remain available until 15 January 2027 for eligible ECB drawdowns and OFCB inflows received up to 31 December 2026.

[2] HO/19/34/11(6)2025-AFD-POD1/I/12928/2026
[3] RBI/2026-27/97
[4] RBI/2026-27/100

DIRECT TAX

Circulars / Notifications / Press Release

CBDT issues guidelines for compulsory selection of tax returns for complete scrutiny during FY 2026-27

The Central Board of Direct Taxes ('CBDT') has issued guidelines wherein it has laid down the parameters for selection of returns for complete scrutiny with respect to the returns filed during Fiscal Year ('FY') 2025-26 and procedures for conducting assessment. The prescribed parameters are as under:

i. cases where survey under section 133A of the Income-tax Act, 1961 ('the Act') has been conducted on or after 1 April 2024,

ii. cases pertaining to search initiated or requisition made under section 132/132A of the Act on or after 1 April 2024,

iii. cases where notice under section 148 of the Act has been issued;

   a. pursuant to search and seizure initiated on or after 1 April 2021 and before 1 September 2024; survey has been conducted on or after the 1 April 2021;

   b. pertains to other than search and survey which are to be completed on or before 31 March 2027;

iv. cases related to registration/approval under sections 12A, 12AB, 35(1)(ii)/(iia)/(iii), 10(23C) of the Act etc.

v. cases involving additions on a recurring issue of law and/or fact in an earlier assessment year exceeding prescribed thresholds, and

vi. cases where specific information regarding tax evasion has been received from law-enforcement/intelligence/regulatory agencies.

It is further clarified that returns filed in response to notices under section 142(1) of the Act based on NMS Cycle/AIS/SFT/CPC-TDS/I&CI information will not be taken up for compulsory scrutiny unless falling under parameter of tax evasion. The time limit for service of notice under section 143(2) of the Act for ITRs filed in FY 2025-26 is 30 June 2026.

[F.No.225/56/2026/ITA-II, dated 4 June 2026]

JUDICIAL UPDATES

Supreme Court dismisses Revenue's SLP and confirms that receipts from provision of freight/logistics support services cannot be taxed as FTS/FIS under the Act or India-USA DTAA

The taxpayer is a US-based company engaged in providing global freight logistics services worldwide. For the FY 2021-22, the taxpayer received fees for provision of logistic and global account management services from its associated enterprise ('AE') in India. During the course of assessment proceedings, the tax officer added the said receipts to the taxpayer's total income, treating the same as Fee for Technical Services ('FTS') under the provisions of the Act as well as under the India-USA Double Taxation Avoidance Agreement ('DTAA').

Aggrieved, the taxpayer preferred an appeal before the Delhi Income Tax Appellate Tribunal ('ITAT') wherein it was held that the amounts received by the taxpayer from freight/logistic support services could not be treated as FTS/FIS either under the Act or under the treaty provisions. On further appeal by the Revenue, the Delhi High Court ('HC') dismissed the appeal and held that there exists no substantial question of law to consider the appeal. Aggrieved by this, the Revenue filed a Special Leave

Petition (‘SLP’) before the Hon’ble Supreme Court (‘SC’). The SC dismissed the SLP without interfering with the HC's order and affirmed that freight and logistics support services rendered by a foreign company do not constitute FTS/FIS either under the domestic provisions of the Act or under the India-USA DTAA.

[CIT (Int. Tax) vs. Expeditors International of Washington Inc., SLP Appeal (C) Diary No. 25133 of 2026, (SC)]

Mumbai Tax Tribunal holds that losses cannot be carried forward and set off in the absence of satisfaction of conditions specified under section 2(19AA) of the Act

Business restructurings such as demergers have emerged as one of the most preferred tools for corporates in India, enabling segregation of distinct undertakings and unlocking long-term value. Section 2(19AA) of the Act provides a tax-neutral framework for transfer of undertakings pursuant to a demerger, subject to certain conditions being satisfied. One of the conditions for a demerger to qualify as a tax-neutral demerger is that the resulting company is required to issue the shares to the shareholders of the demerged company.

Recently, the Mumbai ITAT pronounced a significant ruling wherein it is held that where shares are issued by the holding company of the resulting company, and not by the resulting company itself, the transaction fails to satisfy the conditions specified under section 2(19AA) of the Act. Consequently, the accumulated business losses and unabsorbed depreciation of the demerged undertaking cannot be carried forward and set off by the resulting company under section 72A of the Act. To read our detailed analysis, please go to https://www.bdo.in/en-gb/insights/alerts-updates/mumbai-tribunal-holds-that-losses-cannot-be-carried-forward-and-set-off-in-absence

[Sterling Holiday Resorts Limited vs. DCIT in ITA No. 843 & 941/MUM/2024 (Mumbai ITAT)]

Delhi High Court holds that secondment reimbursements wherein control and lien over seconded employees is retained, are taxable as FTS as 'make available' test is also satisfied

The taxpayer is a US-based limited liability partnership engaged in providing assurance, tax, transaction and business advisory services to clients globally, including India. The taxpayer entered into a deputation agreement with its Indian network firms under which some of its employees were seconded to work with the Indian entities for a limited tenure of 2-3 years, on completion of which the secondees were repatriated back to taxpayer. The taxpayer received cost-to-cost reimbursement from the Indian entities towards salary and related costs of the seconded employees and received separate fees from Indian clients for professional services rendered in and from the USA. The tax officer treated both the secondment reimbursements and the professional service receipts as FTS under section 9(1)(vii) of the Act and Article 12 of the India-USA DTAA, which was upheld by the Dispute Resolution Panel (DRP). On further appeal, the Delhi ITAT ruled in favour of the taxpayer, holding that the secondees were employees of the Indian entities and that the 'make available' condition under Article 12(4)(b) of the India-USA DTAA was not satisfied. Aggrieved, the tax authorities preferred an appeal before the Delhi High Court.

The Delhi High Court set aside the ITAT's order and ruled in favour of the tax authorities, making the following observations:

- On a reading of the deputation agreement, it is clear that the secondees were working under the control of the Indian entities only during the period of assignment. However, India entities had no power to sever the relationship between the secondees and the taxpayer. This makes it clear that the taxpayer retains a lien on the employment of the secondees, and the secondees never ceased to be employees of the taxpayer.
- Secondees were entitled to social security and other benefits from the taxpayer during their assignment in India. Accordingly, the arrangement was akin to a deputation enabling the Indian entities to use the technical knowledge and expertise of the secondees.
- The agreement is described as ‘Deputation agreement’, which means the employee continues to maintain on their employment lien with the leading entity (taxpayer) unless a secondee is absorbed in the foreign entity (Indian entities). Herein, the secondees never ceased to be the employees of taxpayer and the taxpayer retained an overarching control over them.
- The scope of work under the engagement demonstrated that certain training was also imparted by the seconded employees to the Indian entities, establishing a transfer of technical knowledge, experience, skill or know-how. Accordingly, the 'make available' test under Article 12(4)(b) of the India-USA DTAA stands satisfied and the cost-to-cost reimbursement received by the taxpayer is taxable as FTS.
- In relation to the receipts on account of provision of services to Indian clients, the ITAT had overlooked the factual distinction between the portion of receipts already allowed by the tax officer as exempt professional services under Article 12(5)(e) of the India-USA DTAA, and the balance receipts which were taxed as FTS on account of being technical and consultancy services in nature. The ITAT ought to have examined the specific nature of each set of services rather than returning a blanket finding in the taxpayer's favour.

[Ernst And Young U.S. LLP; ITA Nos. 423, 424, 715, 753 & 760/2025 (Delhi High Court)]

Madras High Court holds that consolidated remittance to a non-resident parent company under Production Sharing Contract not deductible as reimbursement without break-up of expenses

The taxpayer is a company engaged in the exploration and production of natural resources. Pursuant to a Production Sharing Contract (PSC) entered in 1994 between the Union of India, Oil and Natural Gas Corporation (ONGC) and three private companies, the taxpayer made certain remittances to its non-resident Australian parent company Cairn Energy Asia Limited (CEAL) for expenses related to geological and geophysical services, seismic processing, petroleum engineering, IT and communication services etc. and claimed the same as reimbursement of actual costs incurred by CEAL on behalf of the taxpayer. Since no profit element was embedded in the said payments, the taxpayer did not deduct tax at source under section 195 of the Act.

During the course of assessment proceedings, the tax officer held the taxpayer is liable for short deduction and levied interest under sections 201(1) and 201(1A) of the Act. Aggrieved, the taxpayer filed an appeal before the First Appellate Authority wherein the taxpayer's appeal was dismissed. On further appeal, the Chennai ITAT also confirmed the assessment order. Aggrieved by this, the taxpayer filed an appeal before the Madras High Court.

Before the High Court, the taxpayer contended that since CEAL had charged only actual costs without any profit markup, the payments were pure reimbursements with no income element and therefore outside the scope of Section 195 of the Act. The taxpayer also raised an alternate plea that even if the payments were treated as service charges, they could not be taxed in India in view of the India-Australia DTAA.

The Madras High Court dismissed the taxpayer's appeals and made the following key observations:

Re. Consolidated reimbursement claim without break-up unsustainable

- Relying on the Supreme Court's ruling in GE India Technology Centre (P.) Ltd[1]. and Enron Oil & Gas India Ltd[2]., and the Uttarakhand High Court's ruling in Enron Expat Services Inc[3]. and the provisions of the Act, it is amply clear that where the PSC restricts reimbursement of expenditure strictly on a cost-to-cost basis, Section 44BB of the Act is not attracted.
- However, where the taxpayer makes a consolidated claim under the head 'reimbursement of expenses' without furnishing a proper break-up of individual items of expenditure, the taxpayer is not entitled to relief without a prior determination by the Commissioner under Section 195(2) of the Act.
- Section 44BB of the Act is not applicable and as a consequence it is not a deemed income of the non-resident company so as to deduct tax at source under section 195 of the Act. Unfortunately, the taxpayer had failed to satisfy the tax Officer by not placing expenditures on those individual heads and not determining the taxability under section 195(2) of the Act.
- Accordingly, taxpayer is liable under sections 201(1) and 201(1A) of the Act.

Re. India-Australia DTAA benefit unavailable to private consortium

- The taxpayer's alternate plea that the payments, even if treated as service charges, could not be taxed in India in view of the India-Australia DTAA, is rejected as misconceived.
- During the relevant years under consideration, the benefit of double taxation relief under Chapter IX of the Act was available only in respect of agreements with Foreign Governments, and not to consortiums of private parties having contracted with the Government of India and ONGC.

[Vedanta Limited (Successor in Interest to Cairn India Limited) vs. ACIT, TDS-II, T.C.A. Nos. 733 to 735 of 2010 (Madras HC)]

Mumbai Tax Tribunal holds that entire execution revenue from M&A deals cannot be attributed to Indian PE where UK branch played a significant role in execution functions

The taxpayer, a non-resident corporate entity incorporated in Hong Kong was engaged in providing mergers and acquisitions ('M&A') advisory services globally and had a branch office in Mumbai. As per its business model, revenue from successful execution of M&A was allocated equally between origination and execution functions. Thereafter, depending upon the role played by a particular branch, the revenue was shared between branches accordingly.

During the FY 2022-23, out of nine deals, in seven cases the entire 50% revenue related to execution function was allocated to the Indian branch. However, in respect of two specific deals, only 25% of execution revenue was attributed to the Indian branch and the remaining 25% was attributed to the UK branch. During assessment proceedings, the tax officer held that sharing of execution revenue with the UK branch was impermissible and added INR 64.9mn as profit attributable to the Indian Branch. Pursuant to the objections filed before the DRP, the DRP upheld the tax officer's findings. Aggrieved, the taxpayer preferred an appeal before Mumbai ITAT.

The Mumbai ITAT, while ruling in favour of the taxpayer, made the following key observations:

- Email communications placed on record clearly demonstrated that a team in the UK Office was actively involved in execution functions relating to the M&A process.
- The ultimate buyers in both deals were in the UK, and therefore it cannot be denied that the UK Office played a significant role in the successful execution of these transactions.
- The very fact that in all other M&A deals (except these two) the taxpayer had attributed the entire 50% execution revenue to the Indian branch itself indicates that a significant role was played by another branch in these two deals, necessitating the sharing of revenue.
- The tax authorities' acceptance of the origination revenue allocation where only 5% was attributed to India and 45% to the UK and the USA branches further undermines its basis for attributing the entire execution revenue to the Indian PE.

[1] GE India Technology Centre (P) Ltd vs. CIT (2010) 327 ITR 456 (SC).
[2] CIT vs. Enron Oil and Gas India Ltd (2008) 173 Taxman 348 (SC)
[3] CIT vs. Enron Expat Services Inc. (2009 SCC OnLine UTT 1416)

- Considering the facts and circumstances, the addition of INR 64.9mn was directed to be deleted.

[BDA Partners Ltd. vs. DCIT, Int. Tax, ITA No. 6053 (MUM) of 2025 (Mumbai ITAT)]

Mumbai Tax Tribunal holds that deeming fiction under section 50 of the Act does not alter the long-term character of the asset, hence set off under section 74 of the Act permissible

The taxpayer company is engaged in the business of infrastructure development and allied activities. For the FY 2020-21, the taxpayer had filed its original return of income declaring business loss of INR 12,499.8mn. During the year under consideration, the taxpayer transferred a depreciable capital asset and computed capital gain of INR 7,523.4mn under section 50 of the Act. After considering all the components of income, including long-term capital loss of INR 2,572.5mn, gross total loss of INR 4,322.2mn was computed. The taxpayer subsequently revised the return declaring a total loss of INR 4,214.3mn.

Considering various computational mistakes in the assessment order, the taxpayer filed a rectification application under section 154 of the Act. While disposing of the taxpayer's rectification application, the tax authorities declined to allow set-off of the long-term capital losses against this gain computed under section 50 of the Act, taking the view that once the gain stood characterised as short-term capital gain by virtue of the deeming fiction under section 50 of the Act, section 74 of the Act did not permit such adjustment.

Aggrieved by this, the taxpayer filed an appeal before the first appellate authority, wherein relying on the jurisdictional High Court ruling in the case of Parrys (Eastern) Pvt. Ltd.[4] it held that the fiction under section 50 of the Act is confined to the mode of computation under sections 48 and 49 of the Act and does not alter the nature and character of the underlying asset, and directed the tax officer to allow the set-off under section 74 of the Act.

Aggrieved by the order of the first appellate authority, the tax authorities filed an appeal before the Mumbai ITAT. The Mumbai ITAT, while ruling in favour of taxpayer, made the following observations:

- It is trite law that a deeming provision has to be construed strictly and confined to the purpose for which it has been enacted. The same cannot be enlarged beyond the object sought to be achieved.
- The legislative intent is to ensure that while computing capital gains on transfer of such depreciable assets, the taxpayer does not derive computational benefits otherwise available in the case of ordinary long-term capital assets.
- Section 50 of the Act nowhere provides that the underlying capital asset itself shall cease to be a long-term capital asset. The fiction is directed towards computation of gain and not towards altering the intrinsic character of the asset.
- Reliance is placed on the jurisdictional High Court decision in the case of Parrys (Eastern) Pvt. Ltd. (*supra*) and the Apex Court decision in the case of Dempo Company Ltd[5]., wherein collectively it has been held that the fiction created under section 50 of the Act cannot be imported into provisions where the legislature has not expressly extended its operation.
- Since the asset transferred by the taxpayer was a long-term capital asset, the gain arising therefrom, notwithstanding the computational fiction contained in section 50 of the Act, continued to retain its character as gain arising from transfer of a long-term capital asset for the purpose of set-off provisions.
- Accordingly, the taxpayer is entitled to adjust long-term capital losses against the gain computed under section 50 of the Act.

[Reliance Infrastructure Limited Vs ACIT (Mumbai) [ITA No. 5969/Mum/2025]]

Hyderabad ITAT holds that remittance made by Indian PE to its head office is subject to disallowance, in the absence of compliance under section 195 of the Act

The taxpayer is a US-based company engaged in providing professional consultancy services. It carried its business operations in India through a branch and five project offices. During the course of reassessment proceedings, the tax officer observed that the taxpayer had claimed deductions for backstopping technical support expenses and business development expenses, being reimbursements to its US head office for costs incurred on a dedicated team based there. The tax officer contended that these were not mere reimbursements but payments for managerial and technical services provided by head office personnel and since the taxpayer had failed to withhold tax under section 195 of the Act, the entire amount was liable to be disallowed under section 40(a)(i) of the Act. Additionally, the tax officer contended that the said reimbursements fell within the meaning of 'head office expenditure' under section 44C of the Act. However, the taxpayer opined that since the expenses were incurred wholly and exclusively for Indian projects, they should be kept outside the scope of that provision.

Aggrieved, the taxpayer preferred an appeal before the Hyderabad Tax Tribunal. The Hyderabad Tax Tribunal, while ruling against the taxpayer, made the following key observations:

Re. Categorisation of reimbursed expenses as 'Head Office' expenses

- Reliance is placed on the Apex Court's ruling in American Express Bank[6], wherein it is held that once the expenditure falls within the nature of Head Office expenditure contemplated under section 44C of the Act, the statutory limitation prescribed therein would apply even if such expenditure was incurred exclusively in connection with Indian operations.
- The matter is remitted back to the tax officer for verifying if the given expenses fall within the definition of 'head office expenditure' under the Explanation to section 44C of the Act.

[4] CIT vs. Parrys (Eastern) Pvt. Ltd. [384 ITR 264 (Bombay HC)]
[5] CIT vs. Dempo Company Ltd. [387 ITR 354 (SC)]
[6] DIT (International Taxation) vs. American Express Bank Ltd. (2025) 181 taxmann.com 433 (SC)

Re. Applicability of 40(a)(i) of the Act on reimbursed 'Head Office' expenses

- Merely because a payment is styled as a reimbursement does not, by itself, determine its taxability. It is not the nomenclature but the real nature and substance of the transaction that is required to be examined.
- The nature of services involved project design, supervision, monitoring and technical support, indicating a continuous transfer of technical expertise and managerial inputs to the Indian operations.
- As per Article 12 of the India-USA DTAA, managerial and consultancy services become taxable when they 'make available' technical knowledge, experience, skill, or know-how. However, the taxpayer has failed to place sufficient material demonstrating that no technical knowledge or expertise was made available to the Indian PE.
- Further, the taxpayer had neither approached the tax officer under section 195(2) of the Act nor obtained any authoritative determination regarding the non-taxability of the payments.
- In the absence of sufficient material conclusively demonstrating that the payments were not chargeable to tax in India, the taxpayer cannot be absolved of its statutory obligation cast under section 195 of the Act.
- A co-ordinate bench in a past FY had already upheld an identical disallowance in the taxpayer's own case and there is no reason to take a different view.
- Further, reliance placed by the taxpayer on Article 26 of India-USA DTAA is misplaced. Article 26 of India-USA DTAA prohibits discrimination based on nationality. As, the distinction drawn by the statute is residence-based and not nationality-based, the taxpayer has failed to demonstrate any discrimination prohibited under Article 26 of the India-USA DTAA.

[Sheladia Associates INC vs ADIT (Int Tax.) (ITA No. 574/Hyd/2026)(Hyderabad ITAT]

Hyderabad Tax Tribunal holds that automated Google AdWords programme is an advertising contract under section 194C of the Act and not FTS under section 194J of the Act

The taxpayer is a company engaged in the business of running an online gaming platform offering card games for online users. During the FY 2017-18, the taxpayer availed online advertising space under the Google AdWords programme through Google India Private Limited for displaying sponsored links and digital advertisements and withheld tax @2% under section 194C of the Act, treating the arrangement as a contract for advertising.

In a survey conducted under section 133A of the Act, the tax officer contended that the 'Google AdWords' platform involved highly sophisticated automated algorithmic structures, real-time bidding mechanisms and data analytics. Accordingly, characterised the payment as FTS taxable under section 194J of the Act read with Explanation 2 to section 9(1)(vii) of the Act, attracting withholding tax @10%. The tax officer passed an order under section 201(1) and 201(1A) of the Act treating the taxpayer as an 'assessee in default' for short deduction of tax of INR 25.59mn and consequent interest of INR 5.78mn.

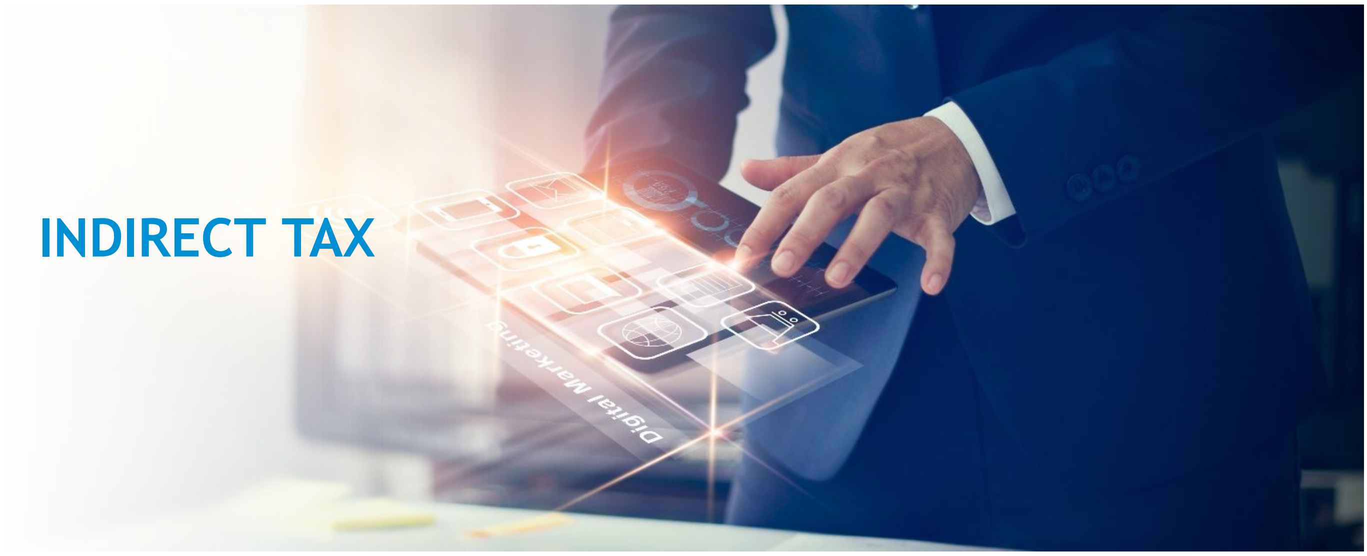
Aggrieved by the order of the tax officer, the taxpayer filed an appeal before the First Appellate Authority. The First Appellate Authority, by relying on CBDT Circular No. 715 dated 8 August 1995 and the decision of the Bangalore ITAT in the case Google India Private Limited[7], deleted the addition.

On further appeal by the tax authorities, the Hyderabad ITAT, while ruling in favour of the taxpayer, laid down the following observations:

- For a payment to be characterised as FTS, the services rendered must be managerial, technical or consultancy in nature, requiring application of human skill, intelligence or direct human intervention, as stated by the Apex Court in Bharti Cellular Ltd[8].
- The mere use of a highly sophisticated, automated technology, facility or standard software interface by the consumer does not mean that the service provider is rendering technical services to the customer.
- The Google AdWords platform is a standard, automated, self-service portal where keyword matching, ad rank auctioning and publishing are managed through Google's packaged algorithm, without evidence of human intervention. Therefore, it is a tailor-made 'Ad Program' which can be used by any customer depending upon their requirement by logging into Google.
- Since the legislature has consciously made advertising the subject matter of section 194C of the Act, it cannot be brought within the ambit of Section 194J of the Act because specific provision overrides a general provision.
- CBDT Circular No. 714 dated 3 August 1995 clarified that the provisions of Section 194J of the Act, are applicable for payment made to advertising agencies. However, when the advertising is made in print media or electronic media, Section 194C of the Act would be applicable.
- Merely because the medium used was electronic or highly advanced, the tax authorities cannot bring a digital advertising contract within the residual ambit of section 194J of the Act.
- In order to reduce litigation, Memorandum to the Finance Bill 2020 reduced the withholding rate from 10% to 2% in relation to FTS other than professional services. While the amendment was applicable from 1 April 2020. However, the same should be applicable to earlier years as well considering the legislative intent.
- Consequently, the demand raised under sections 201(1) and 201(1A) of the Act is deleted.

[Head Digital Works Pvt Ltd vs DCIT TDS Hyderabad; I.T.A.No.279/Hyd/2025 (Hyderabad ITAT)]

[7] Google India Private Limited vs DCIT [2022] 143 taxmann.com 302 (Bangalore Tribunal)
[8] CIT vs Bharti Cellular Ltd [2011] 330 ITR 239 (SC)



LEGISLATIVE UPDATES

Goods and Services Tax

The due date to file an appeal before the Goods and Services Tax Appellate Tribunal ('GSTAT') extended till 31 July 2026

In light of the technical glitches encountered by litigants in filing appeals on the GSTAT portal, the due date to file an appeal before the GSTAT in respect of orders communicated before 1 May 2026 has been extended up to 31 July 2026. The earlier due date was 30 June 2026 in respect of orders communicated before 1 April 2026.

[Source: Press Release ID: 2279274 and notification bearing F. no. A-50/7/2025-GSTAT-DoR dated 30 June 2026]

Clarifications on the validity of proceedings pursuant to a change in Taxpayer's jurisdiction

CBIC has *inter alia* clarified the following aspects concerning the validity of actions and the competent authority for various proceedings under the Central Goods and Services Tax Act, 2017 ('CGST Act') in cases where a taxpayer's jurisdiction is changed due to a change in its Principal Place of Business ('PPOB'):

- Any action corresponding to any stage of proceedings validly undertaken by the officer having jurisdiction over the taxpayer at the time of transfer continues to remain valid, notwithstanding the taxpayer's subsequent migration or transfer to another jurisdiction.
- Once the taxpayer is transferred to a new jurisdiction, the erstwhile (transferor) jurisdictional officer ceases to have authority to initiate any further action or proceed against the taxpayer. Any issue identified thereafter also must be communicated to the current, i.e., transferee, jurisdictional officer for appropriate action.
- The transferee jurisdictional officer must take over all pending proceedings from the stage at which they stood on the date of transfer and is empowered to complete the proceedings. This includes implementing earlier orders, initiating consequential actions, representing the department in appeals and handling all appellate and tribunal proceedings arising from such cases.

[Source: Circular no:255/01/2026-GST dated 25 June 2026]

Customs

Regularisation of customs duty payable on the import of goods for the generation of nuclear power from 1 April 2019 to 31 January 2026

Import of '***All goods, for generation of nuclear power***', classifiable under tariff item 8401 3000 ('subject goods') was exempted from the levy of Basic Customs Duty and Integrated Goods and Services Tax (collectively referred to as 'customs duty') v*ide notification no:* 02/2026-Customs dated 1 February 2026. However, no such exemption was specifically available during the period starting from 1 April 2019 to 31 January 2026 ('relevant period').

As a matter of established trade practice, customs duty was not paid on imports of the subject goods during the relevant period. To formally recognise and validate this practice, the CBIC issued a notification under Section 28A of the Customs Act, clarifying that customs duty is not required to be paid on such imports during this period.

[Source: notification no:53/2026-Customs(N.T.) dated 11 June 2026]

Foreign Trade Policy

BIS Quality Control Orders ('QCOs') is not applicable on goods imported in Special Economic Zones ('SEZs') for Authorised operations without its clearance into the Domestic Tariff Area ('DTA')

Para 2.03A(iii) of the Foreign Trade Policy, 2023 has been amended to align the provisions relating to exemption from the applicability of QCOs for imports by SEZ Units and Developers under the SEZ law by *inter alia* providing that:

- SEZ Units/Developers are exempt from BIS QCOs for import of all permissible goods, including raw materials, components, consumables, spares and capital goods required for Authorised operations in the SEZs.
- The exemption applies only to the use of imported goods within the SEZ for Authorised operations. Any clearance, transfer or removal of such goods or goods manufactured/processed therefrom into the DTA must comply with applicable QCOs, BIS requirements and other prevailing laws.
- SEZ Units/Developers must submit an undertaking to the SEZ Development Commissioner at the time of import confirming compliance with the aforesaid conditions.

[Source: notification no:20/2026-27 dated 2 June 2026]

JUDICIAL PRECEDENTS

Input tax credit ('ITC') on services used for Qualified Institutional Placement ('QIP') is available in proportion to the proceeds utilised for repayment of loans

In Re: M/s RHI Magnesita India Limited [2026 (6) TMI 939 - Appellate Authority for Advance Ruling, Haryana]

M/s. RHI Magnesita India Limited ('Taxpayer') raised capital through QIPs as per the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('ICDR Regulations'). The capital was intended for repayment/prepayment of certain borrowings as well as for investment in the equity shares of its wholly owned subsidiary. For this, HSBC Securities and Capital Markets (India) Pvt. Ltd. ('HSBC') was appointed as the Book Running Lead Manager.

HSBC provided various services to the Taxpayer and as consideration, HSBC was entitled to receive consideration basis the prescribed percentage of equity funds raised through QIP. The Taxpayer also procured ancillary services such as legal services, consultancy and other professional inputs directly from other vendors.

The Taxpayer filed an application with the Authority for Advance Ruling, Haryana ('HAAR') to determine its eligibility to claim ITC on tax paid for services procured in connection with raising funds through QIP. The HAAR held that the Taxpayer is not eligible to claim ITC on the services related to the QIP as the activity of raising capital through QIP is not in the course or furtherance of business.

Aggrieved by the above, the Taxpayer preferred an appeal before the Haryana Appellate Authority for Advance Ruling ('HAAAR'). The HAAAR, while partially allowing ITC to the extent of QIP proceeds used for payment of certain borrowings held as under:

- **ITC on proceeds used for repayment/pre-payment of borrowings**
  - Such payment represents a discharge of financial liabilities undertaken in the course of or in furtherance of business. Reduction of debt obligations improves the Taxpayer's financial health, reduces interest burden, enhances liquidity and strengthens its capacity to allocate financial resources towards operational activities.
  - Efficient financial management is an integral component of the functioning of any commercial enterprise. The activities undertaken for restructuring/repayment of borrowings directly contribute to the stability and sustainability of the business.
  - Hence, services availed for raising capital, which is utilised for repayment/pre-payment of borrowings, can reasonably be regarded as services used in the course or furtherance of business in terms of section 16(1) of the CGST Act.
  - Reliance was placed on various rulings[1] under the erstwhile indirect tax regime wherein it was held that expenses incurred for raising finance for business operations bears nexus with the business activities.
  - The language employed in section 16(1) of the CGST Act and the definition of business under section 2(17) of the CGST Act are very broad to include the activity of raising finances through QIP, which would fall as a transaction that is incidental or ancillary to the main business and is essential to run the business activity.
  - In view of the above, ITC on services attributable to the portion of QIP proceeds utilised for repayment of loans is available under section 16(1) of the CGST Act.
- **ITC on QIP proceeds used for investment in a wholly owned subsidiary**
  - The strategic benefits arising from investment in a subsidiary arise indirectly through equity participation and corporate control rather than through consumption of services used directly in making taxable supplies.
  - In the present case, the funds are utilised for augmentation of capital base and funding of the subsidiary. Accordingly, the condition of '***use in the course of or furtherance of business***' is satisfied *qua* the subsidiary **but not in respect of the Taxpayer**. It is trite law that a holding company and its subsidiary are distinct legal entities, and expenditure incurred by one entity cannot be claimed as ITC in the hands of another entity.

[1] Steel Strips Wheels Ltd. Vs. Commissioner of Central Excise, Chandigarh [2016 (42) S.T.R. 72 (Tri.-Del)], Commr. of Commissioner of Central Excise, Customs and Service Tax, Visakhapatnam-I Vs. GMR Industries Ltd. [2015 (38) S.T.R 72 (Tri.-Bang)] and M/S Hinduja Global Solutions Ltd. Vs. The Commissioner of Commissioner of Central Excise, Customs and Service Tax, Bangaluru-II [2016 (42) S.T.R. 932 (Tri.- Bang)]

- Though the tax invoices for input services in relation to QIP may be issued in Taxpayer's name owing to discharge of consideration by it, the actual consumption and economic benefit of such services accrue to the subsidiary due to its corporate restructuring and capital-raising
- In the absence of a direct and proximate nexus between the input services and the business of the Taxpayer, the Taxpayer is ineligible to avail ITC on services attributable to the portion of QIP proceeds utilised for investment in a wholly owned subsidiary.

Notification issued beyond the recommendations of the GST Council cannot be retrospectively ratified by it

Guru and Co. Vs Union of India and Ors. [TS-451-HC(MAD)-2026-GST]

Legislative background

Legislative Event	Description
Notification no:1/2017-Central Tax (Rate) dated 28 June 2017	Prescribed GST rate of 5% on '*Dried leguminous vegetables, shelled, whether or not skinned or split (put up in unit container and **bearing a registered brand name**)*'.
Notification no:2/2017-Central Tax (Rate) dated 28 June 2017	Exempted the levy of GST on the supply of '*Dried leguminous vegetables, shelled, whether or not skinned or split*'.
Corrigendum to notification no:2/2017-Central Tax (Rate) dated 12 July 2017	Exempted the levy of GST on supply of '*Dried leguminous vegetables, shelled, whether or not skinned or split (other than put up in unit container and **bearing a registered brand name**)*'.
21st GST Council Meeting	It was recommended that a mark or name in respect of which an **actionable claim is available** shall be deemed to be a registered brand name and hence, leviable to GST @ 5%.
Notification nos:27 & 28/ 2017-Central Tax (Rate) dated 22 September 2017 and notification nos:27 and 28/2017-Integrated Tax (Rate) dated 22 September 2017 ('Impugned Notifications')	Clarified that a product bearing a brand name on which ***an actionable claim or enforceable right in a court of law is available*** (other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily, subject to prescribed conditions) would attract GST.
22nd GST Council Meeting	Impugned Notifications were ratified on 6 October 2017.

Facts of The Present Case

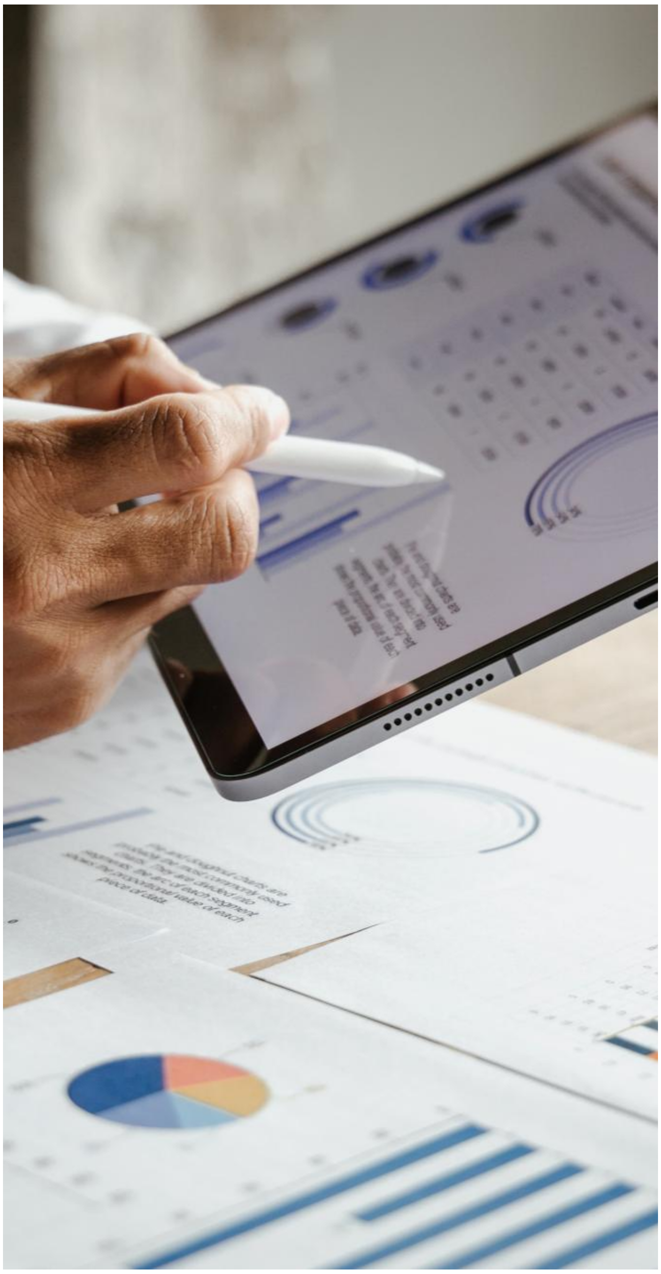
M/s. Guru and Co. ('Taxpayer') is, inter alia, engaged in the supply of pulses such as Moong Dal and Toor Dal and has been selling its products under brand names, which are not registered under the Trade Marks Act, 1999 or the Copyright Act, 1957.

Pursuant to the issuance of the Impugned Notifications, a show cause notice was issued to the Taxpayer seeking to levy GST in line with the amendments made by the Impugned Notifications. Aggrieved by the same, the Taxpayer preferred a writ petition before the Madras High Court seeking to declare the Impugned Notifications as *ultra vires* Article 279A of Constitution of India ('Constitution'). The Madras High Court, while setting aside the Impugned Notifications, ruled in favour of the Taxpayer and held as under:

- **Mandatory to comply with the GST Council's recommendations while issuing notifications**
  - In ***Mohit Minerals***[2], the Supreme Court observed that the legislature is bound by the recommendations of the GST Council while exercising its Rule-making powers under the GST Law. However, the recommendations of the GST Council are not binding on the legislature.
  - Under the GST law, both rules (issued under section 164 of the CGST Act) and notifications (issued under sections 9 and 11 of the CGST Act) are on the same pedestal and fall in the realm of subordinate legislation. The language of sections 9 and 11 of the CGST Act provides that a notification **should be preceded by the recommendations of the GST Council**.
  - Even applying the ratio in ***Mohit Minerals (supra)***, since GST Council recommendations are binding on the Government while exercising rule-making powers, applying the very same yardstick, the said recommendations will bind the Government when it issues statutory notifications under sections 9 and 11 of the CGST Act.
  - GST Council recommendations reflect the collective wisdom of both the Centre and States and should not be disregarded unilaterally by the Centre.

[2] Union of India Vs. Mohit Minerals Pvt. Ltd. [2022 (10) SCC 70]

- **The Impugned Notifications are beyond the recommendations of the 21st GST Council Meeting**
  - A bare comparison of the Impugned Notifications with the recommendations made in the 21st GST Council Meeting would show that there is an addition of the phrase '***enforceable right in a court of law***' along with the Annexure that lays down the procedure for voluntarily foregoing an actionable claim or an enforceable right to a brand name.
  - The expression '***enforceable right in a court of law***' is of a very wide ambit and the expressions '***actionable claim***' and '***enforceable right in a court of law***' are not synonymous.
  - While actionable claims may be enforceable rights, the reverse position may not hold good, and hence, the insertion of the phrase '***enforceable right in a court of law***' in the Impugned Notifications should be considered as an addition by the Government, being over and above what was recommended by the GST Council.
  - In ***Tata Play***[3], it was held that the Government may decline to act on the recommendation of the GST Council, but it cannot act without it. The present case is also similar, as the Impugned Notifications contain aspects of '***no recommendation***' whereby the Government has gone beyond the recommendations of the GST Council.
  - Accordingly, the Impugned Notifications are *ultra vires* the parent statute is as much as they incorporate the expression '***enforceable right in a court of law***'.
- **The GST Council cannot retrospectively ratify a notification**
  - Article 279A of the Constitution empowers the GST Council to make recommendations on matters specified therein. However, the Constitution does not confer any power of ratification on the GST Council.
  - While considering the effect of ratification in the context of exercising statutory powers, the Supreme Court[4] has held that the principle of ratification is alien to the exercise of power under a statutory provision.
  - The Telangana High Court[5] held that the GST Council does not have the power to ratify decisions retrospectively. It was observed that ratification cannot be equated with recommendation, and any *post facto* ratification of a notification by the GST Council cannot give life to the notification.
  - The term '***ratification***' refers to the subsequent approval of an act that was initially performed without proper authority, thereby validating it retrospectively[6].
  - Any authority, whether created under the Constitution or by statute, can exercise only those powers which are either expressly conferred upon it or are implied as necessary. Such bodies do not possess inherent powers. The power of ratification must be expressly or impliedly conferred.
  - Neither the Constitution nor the GST law empowers the GST Council with the power to ratify, and hence, the ratification of the Impugned Notifications in the 22nd GST Council Meeting is without jurisdiction.
- In view of the above, the show cause notices are set aside with liberty to the tax authorities to issue fresh notices in line with valid parts of the Impugned Notifications.



[3] Tata Play Ltd. Vs. Union of India [TS-616-HC(MAD)-2025-GST]
[4] Marathwada University Vs. Seshrao Balwant Rao Chavan [1989 (3) SCC 132]
[5] Brunda Infra Pvt. Ltd. Vs. Commissioner of Central Tax [2025 139 GSTR 657]
[6] Maharashtra State Mining Corporation Vs. Sunil [2006 (5) SCC 96]

CBI can prosecute for evasion of Excise Duty even where proceedings were dropped by the Excise authorities due to lack of supporting evidence

Suresh Kevalram Khemani and Ors. Vs. The Central Bureau of Investigation and Ors. [TS-193-HC-2026(BOM)-NT]

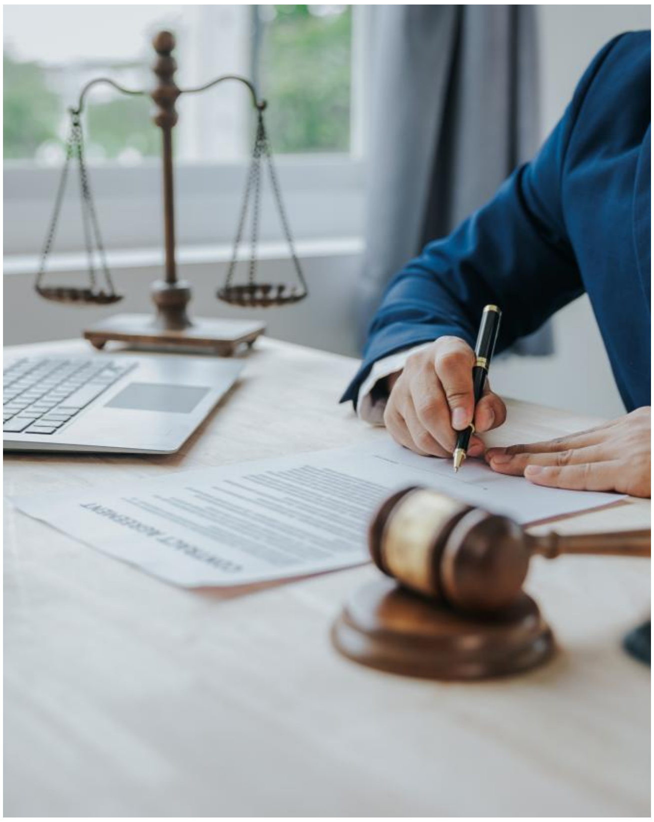
The Promoters and Directors of Royal Distilleries Pvt. Ltd. ('Taxpayer'), engaged in the business of manufacturing and sale of alcohol and liquor, were alleged to have evaded Excise duties and Value Added Tax ('Excise and VAT') of INR 3.4 Bn. during the period 2005 to 2010. It was also alleged that the Taxpayer had forged documents concerning the manufacture and sale of liquor, prepared bogus bills related to the sale of liquor and forged transportation bills for the transportation thereof in conspiracy with the officials of the Excise Department ('Excise Officers').

The aforesaid allegations were adjudicated by both Excise and VAT authorities, and each of them had fully exonerated the Taxpayer from these allegations. The order of the Excise authority was challenged before the First Appellate Authority, which had upheld the validity of the order issued by the Excise authority on the ground that there does not exist any legal, tangible and concrete evidence.

Pursuant to a detailed investigation, a Charge Sheet was filed by the Central Bureau of Investigation ('CBI') against the Taxpayer under section 120-B read with sections 420, 468 and 471 of the Indian Penal Code, 1860 and against the Excise authority under the provisions of the Prevention of Corruption Act, 1988.

Aggrieved by the above, the Taxpayer approached the Special Judge, Daman, *vide* a discharge application, which was rejected. Against this, the Taxpayer approached the Bombay High Court *vide* a criminal revision application, contending that it cannot be subjected to trial for the same allegations as those made by the Excise Authority and VAT Authority. However, the Bombay High Court, while upholding the Order of the Special Judge, held as under:

- **Distinction in scope of tax adjudication and criminal proceedings**: The scope of adjudication before the Excise authority and the VAT authority pertained to the validity of the notices issued to the Taxpayer in respect of evasion of Excise and VAT. However, in the criminal proceedings, pursuant to an investigation, the CBI has collected evidence in respect of conspiracy, forgery and cheating.
- **Difference in standard of evidence**: The principles of the Indian Evidence Act, 1872 are strictly applicable to CBI's case, whereas the same may not be applied strictly in the adjudication proceedings under Excise and VAT, especially because no evidence was produced before the Excise authority. The scope of adjudication in both these proceedings is vastly different.
- **Independent Role of CBI**: The Excise and VAT authority, which conducted the adjudication under Excise and VAT laws, is distinct from the proceedings initiated by CBI, being the authority which had conducted the prosecution proceedings. Further, CBI was neither a party before the Excise Authority nor the First Appellate Authority.
- **Findings of** the **Excise and VAT Authorities are not conclusive for determining criminal liability**
  - The Excise authority has not held that the allegations made against the Taxpayer are baseless or incorrect but has only dropped the SCNs due to lack of cogent evidence.
  - The material and evidence collected by the CBI is different than the material which was produced before the Excise and VAT Authorities. The evidence collected by the CBI during the investigation and the Charge Sheet filed against the Taxpayer were not placed before the Excise Authority even though an FIR was registered against the Taxpayer.
- **Existence of a *Prima Facie* case**
  - There are serious allegations against the Taxpayer, and CBI has collected bogus bills, forged transport bills and recorded confessional statements of witnesses to support the charge of forgery of documents for the purpose of cheating and evasion of Excise duty. Further, the CBI has also collected sufficient evidence against the Excise Officers.
  - The chargesheet records a *prima facie* case against the Taxpayer, and it cannot be said that the charges levelled against them are baseless.
- The Special Judge, Daman, has passed a well-reasoned order and no interference is warranted.
- In view of the above, the order passed by the Special Judge, Daman, is upheld, and the criminal revision application filed by the Taxpayer is rejected.



TRANSFER PRICING

Circulars / Notifications / Press Release

JUDICIAL UPADTES

Bombay High Court holds that excess royalty refunded pursuant to APA is not taxable as the doctrine of real income applies

Cross-border transactions have always been a subject matter of evaluation from a Transfer Pricing ('TP') perspective. To bring certainty and reduce future litigation, an Advance Pricing Agreement ('APA') mechanism was introduced, wherein the taxpayer and the Central Board of Direct Taxes ('CBDT') agree in advance on the TP methodology to be applied to specified international transactions. A recurring question, however, has been whether an APA overrides the ordinary TP provisions of the Income-tax Act, 1961 ('the Act'), particularly in situations involving refunds of income between associated enterprises ('AEs'). Separately, in cross-border group structures, tax authorities have often sought to argue that an Indian AE constitutes a Permanent Establishment ('PE') of its foreign parent merely on account of the Indian AE using the parent's technology, brand, or business model.

Recently, a Division Bench of the Hon'ble Bombay High Court pronounced a significant ruling wherein it is held that where a foreign entity refunds excess royalty to its Indian AE pursuant to an APA, the real income theory applies and only the amount actually received by the foreign AE can be brought to tax in India. The Court further held that an Indian subsidiary merely using its parent's technology and brand does not, by itself, result in the Indian AE constituting a PE of the foreign parent, particularly where the foreign AE holds only a controlling interest while the economic risks of the business are borne by the Indian AE. To read our detailed analysis, please go to: [Bombay HC on APA, Transfer Pricing Adjustments and PE Exposure of Foreign Parent - BDO]

[CIT vs. Gemological Institute of America Inc [ITA No. 2306 / 2022 & Others] (Bombay HC)]

Bangalore Tax Tribunal holds that companies having significantly high turnover cannot be considered as comparables

The taxpayer company is a part of the global Oplus/OPPO group and is engaged in the business of providing software development (SWD) services to its AEs on a cost-based model. For Fiscal Year (FY) 2021-22, the taxpayer benchmarked its international transactions under the SWD segment by adopting the transactional net margin method (TNMM) as the most appropriate method, reporting a margin of 15.75% on a turnover of INR 1,141.5mn. The Transfer Pricing Officer (TPO) rejected the taxpayer's comparables and reclassified the SWD services as research and development (R&D) services and undertook a fresh search, wherein initially 24 companies were selected and thereafter applied an additional R&D filter to arrive at six final comparables. Applying the average margin of 29.99% earned by these comparables, the TPO made an upward adjustment of INR 143.2mn, which was subsequently upheld by the Dispute Resolution Panel (DRP).

Aggrieved, the taxpayer preferred an appeal before the Bangalore Income Tax Appellate Tribunal (ITAT). The Bangalore ITAT, while ruling in favour of the taxpayer, laid down the following observations held that:

- Filters intended to be applied in a comparability search must form part of the initial search criteria. Once the search process was completed and 24 comparables were identified, the TPO could not subsequently introduce a fresh filter and alter the final set of comparables.
- Reliance in this regard is placed on the decision of the Mumbai ITAT in the case of DNV Business Assurance India (P.) Ltd.[1] wherein it was held that a turnover filter cannot be applied as a tool for cherry-picking the comparables at a later stage after completion of the search process with the object of excluding comparables which were otherwise found to be functionally comparable after the Functions Assets Risks (FAR) Analysis.

[1] DNV Business Assurance India (P.) Ltd. vs. Asstt. CIT [2024] 158 taxmann.com 263 (Mumbai ITAT)

- Turnover is a relevant criterion for comparability, as the scale of operations has a direct bearing on profitability owing to economies of scale. Turnover filters cannot be applied mechanically and must depend on the facts of each case, keeping in mind the turnover of the tested entity
- Guidance Note issued by the Institute of Chartered Accountants of India (ICAI) on Transfer Pricing (TP) emphasises that significant differences in company size and turnover materially affect profitability and comparability under Rule 10B(2) of the Income Tax Rules, 1962 ('IT Rules').
- Reliance is placed on the co-ordinate Bench rulings in the case of Autodesk India (P.) Ltd.[2] and Robert Bosch Engineering and Business Solutions (P.) Ltd.[3] wherein consistently it has been held that large or medium-scale companies with substantially higher turnover cannot be compared.
- Accordingly, in the given case, since the turnover of comparable companies selected by TPO is far higher than that of the taxpayer, the said comparables need to be excluded.

[Oplus India Research and Development (P.) Ltd vs. DCIT, IT(TP)A No. 780 (Bang) of 2026]

Delhi Tax Tribunal holds that unaudited segmental accounts maintained by taxpayer cannot be rejected, and where the accounts are segregated, benchmarking is to be restricted to international transactions

The taxpayer company is engaged in the business of manufacturing and exporting readymade garments and home furnishings, operating as a 100% Export Oriented Undertaking ('EOU') with approximately 96% of its revenue derived from export sales. During FY 2006-07, the taxpayer entered into international transactions with its AE and adopted the Cost-Plus Method ('CPM') as the most appropriate method for determining the arm's length price (ALP). The taxpayer maintained a Chartered Accountant-certified segmental account distinguishing its AE and non-AE transactions. The TPO rejected the taxpayer's TP analysis and applied TNMM at the entity level as the most appropriate method on the grounds that the segmental financials were unaudited. Aggrieved, the taxpayer preferred an appeal before the Delhi ITAT.

The Delhi ITAT, while ruling in favour of the taxpayer, laid down the following observations:

Re. Entity-level versus transaction-level benchmarking

- As the taxpayer is a small company and its turnover is approx. INR 240mn to 250mn, Accounting Standard 17 is not mandatorily applicable, and it is not required to maintain financials for the AEs segment or the non-AEs segment.
- Nevertheless, the taxpayer had maintained duly certified segmental accounts capable of segregating AE from non-AE transactions.
- Where the transactions are so intertwined that segregation is difficult, profitability should be ascertained at the entity level. However, where transactions can be segregated, the law mandates that profitability from AE Transactions can only be benchmarked and not profitability at entity level.

Herein, the tax officer has committed a mistake in determining the profitability at the entity level instead of international transactions.

Re. Selection of comparables

- As per rule 10B(2) of the IT Rules, companies operating in the retail market are not comparable to wholesale as they have different FAR profiles. Comparables selected under external TNMM must exhibit a comparable FAR profile.
- Companies operating as manufacturers of fabric or yarn, contract manufacturers of socks, and manufacturers of leather garments cannot be compared with companies operating in the segments of readymade garments or designer readymade garments.
- Further, companies undergoing a merger or acquisition during the relevant year cannot be considered as comparables.
- Considering that 95% of the taxpayer's sales are export sales, companies deriving less than 75% of their revenue from exports could not be regarded as valid comparables, particularly since the tax authorities had applied this very filter in the taxpayer's own case for the immediately succeeding FY.

[Cornell Overseas (P.) Ltd. vs. DCIT, ITA No. 850 (Delhi) of 2017 (Delhi ITAT]

Delhi Tax Tribunal holds that merely embossing logos on SIM cards does not alter functional characterisation

The taxpayer company is engaged in the business of importing chip-based products such as SIM cards, point of sale equipment and smart cards, etc., from its AE and reselling to Indian customers. FY 2005-06 and 2006-07. The taxpayer submitted that it is a Tier 3 entity within the group structure and that the only value addition undertaken on the imported, ready-to-use SIM and smart cards is the electrical embossing of the cell phone operator's logo and design on customer request, a process termed 'Personalisation', which is carried out at its Chip Personalisation Unit located in Noida. The taxpayer benchmarked the purchase of finished goods as per the TNMM method, applying a net margin of 2.83%. The TPO opined that the taxpayer is not merely a distributor but rather is engaged in diverse activities, including services. Accordingly, the taxpayer's comparables were rejected, and he substituted his own fresh set of comparables and proposed additions of INR 111.5mn and INR 62mn for FY 2005-06 and 2006-07, respectively. Aggrieved, the taxpayer preferred an appeal before the Delhi ITAT.

The Delhi ITAT, while ruling in favour of the taxpayer, laid down the following observations:

Re. Functional characterisation of the taxpayer

- The TPO had erroneously interpolated the functional profile of the Tier 1 group entity, which bears the group's entrepreneurial and economic risk, onto the taxpayer's Tier 3 profile.
- Mere embossing activity carried out at the taxpayer's facility does not alter its status as a distributor of finished goods purchased from its AE. Hence, the taxpayer is neither engaged in the business of providing services or software solutions, etc., nor is it engaged in the manufacturing of goods.

[2] Autodesk India (P.) Ltd. vs. DCIT [2018] 96 taxmann.com 263 (Bangalore ITAT)
[3] Robert Bosch Engineering and Business Solutions (P.) Ltd. vs. DCIT, IT(TP)A No. 593/Bang/2020 (Bangalore ITAT)

Re. Selection of comparables

- Out of the comparables proposed by the TPO, 2 of them are to be excluded on the ground of functional dissimilarity, i.e., the said entities were engaged in system integration, telecommunication services, or manufacturing of computer peripherals, etc., none of which corresponded to the taxpayer's profile as a reseller.
- Further, two comparables proposed by the taxpayer are to be included, as the TPO had accepted those companies as comparable in other fiscal years on an unchanged business profile.
- With regard to the comparables rejected by TPO on the ground of non-availability of financial data on Prowess /Capitaline, TPO is directed to collect data through internal databases or under section 133(6) of the Act.

[Gemalto Digital Security (P.) Ltd. vs. DCIT, ITA No. 3869/Del/2010 & ITA 4071/Del/2011]

Bangalore Tax Tribunal holds that final assessment order passed without giving effect to DRP's directions is liable to be quashed

The taxpayer is engaged in providing software development services to its AEs. During the course of assessment proceedings for FY 2021-22, the TPO proposed a TP adjustment of INR 61.59mn. Aggrieved, the taxpayer filed objections before the DRP. The DRP, after considering the objections, granted partial relief and reduced the TP adjustment to INR 45.31mn. However, while passing the final assessment order, the tax officer failed to give effect to the DRP's directions and instead proceeded on the basis of the original adjustment proposed by the TPO. Aggrieved, the taxpayer preferred an appeal before the Bangalore ITAT.

The Revenue contended that this was not a case of complete non-consideration of the DRP's directions, as the tax officer had reproduced the relevant portions thereof in the final order but had merely proceeded on an erroneous understanding of them. It was argued that this constituted a mistake apparent from the record, curable under section 154 of the Act, and that the matter should at most be remanded to the tax officer for proper implementation of the DRP's directions, rather than the assessment being quashed.

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

- Section 144C(13) of the Act mandates that upon receipt of the DRP's directions, the tax officer 'shall' complete the assessment in conformity with such directions. This is a mandatory obligation, and the tax officer has no discretion to ignore or deviate from the directions issued.
- In the present case, the final assessment order passed without incorporating the DRP's directions amounts to a violation of the mandatory provisions of section 144C(13) of the Act and reflects a clear lack of application of mind on the part of the tax officer.
- Reliance is placed on the coordinate bench ruling in the case of Tavant Technologies India Pvt. Ltd.[4] wherein it was held that a final assessment order passed without giving effect to the DRP's directions is void ab initio and liable to be quashed.
- Once the final assessment order is found to be contrary to the directions of the DRP, the same suffers from a jurisdictional defect and cannot be treated as a mere clerical or arithmetical mistake capable of rectification under section 154 of the Act.
- The validity of the assessment must be tested with reference to the order actually passed, not what the tax officer may have intended to pass. The existence of a rectificatory power cannot validate an order that is otherwise contrary to the express mandate of the statute.

[Symbol Technologies India Pvt. Ltd. v. DCIT, IT(TP)A No. 626/Bang/2026 (Bangalore ITAT)]

Visakhapatnam Tax Tribunal holds that no TP adjustment can be made in a year in which the expenditure has neither been claimed nor resulted in any tax benefit

During FY 2015-16, the taxpayer accounted for interest of INR. 29.8mn on External Commercial Borrowings (ECBs) availed from its AE and capitalised the same in its books rather than charging to the Profit & Loss Account. During the course of assessment proceedings, the TPO made an upward adjustment by benchmarking the interest rate at LIBOR+350 points. This adjustment was upheld by the First Appellate Authority. Aggrieved, the taxpayer filed an appeal before the Visakhapatnam ITAT. The ITAT merely revised the benchmark to LIBOR + 200 points.

The taxpayer subsequently filed a Miscellaneous Application (MA) pointing out that the Tribunal had not adjudicated its core contention that since the interest was capitalised and never claimed as a deduction in the Profit & Loss Account, no TP adjustment could be made on it at all. Accepting this, the Tribunal recalled its earlier order to the limited extent of examining whether a TP adjustment can be made on interest that was never claimed as an expense, and the appeal was heard afresh on this limited issue.

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

- Transfer pricing provisions under Chapter X of the Act are not charging provisions but machinery provisions, which operate only for the computation of income.
- In the present case, the interest cost was not debited to the Profit & Loss Account nor claimed as a deduction and consequently did not result in any reduction of taxable profits.
- Capitalisation of an expenditure does not give rise to any immediate tax deduction and therefore cannot result in an understatement of income.
- Section 92 of the Act does not envisage taxation or adjustment of amounts that do not enter the computation of taxable income and hence, in the absence of any debit to the Profit & Loss Account or claim of deduction, provisions of Section 92 of the Act are not attracted.
- Reliance is placed on the coordinate bench rulings in the case of Chemetall Rai India Ltd.[5] and Tata Bluescope Steel Ltd.[6] where it was held that no TP adjustment can be made on amounts capitalised without being claimed as revenue expenditure. Hence, no TP adjustment can be made in a year in which the expenditure has neither been claimed nor resulted in any tax benefit. Accordingly, the adjustment made by the TPO is deleted.

[SNF (India) Pvt. Ltd. vs. DCIT, Circle-3(1), I.T.A. No. 204/VIZ/2025 (Visakhapatnam ITAT)]

[4] Tavant Technologies India Private Limited vs. DCIT in IT(TP)A No.1582/Bang/2024
[5] M/s. Chemetall Rai India Limited v. DCIT, Circle-1(1), Pune in ITA No. 1720/PUN/2016
[6] M/s. Tata Bluescope Steel Ltd., v. DCIT, Circle-7, Pune in ITA No. 847/PUN/2015

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