



# ACCOUNTING, REGULATORY & TAX NEWSLETTER

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## ACCOUNTING UPDATES



### ACCOUNTING UPDATES

Institute Of Chartered Accountants Of India (ICAI)

#### Expert Advisory Committee (EAC) Opinion: Treatment and presentation of perpetual loan under Ind AS Framework

EAC of the ICAI examined the accounting treatment of an earlier government loan, accrued interest, and guarantee fees against a bank loan into a zero-interest, perpetual loan of INR 372.22 crores converted by the Government of India (GoI).

The Company is part of the Ministry of Defence and is 100% equity owned by the GoI. The conversion was part of a financial restructuring package in FY 2010-11, and this perpetual loan resulted from such conversion. The Company had historically classified this loan as a long-term borrowing under IGAAP, but with the transition to Ind AS starting FY 2024-25, it sought guidance on the treatment of perpetual loan under Ind AS and whether the perpetual loan could be classified as equity in the financial statements.

The EAC notes that the perpetual loan was granted as a fresh loan with a perpetual term and no interest on the existing outstanding GoI loans and interest thereon, and the outstanding guarantee fee paid by GoI against bank loans. Further, the Company does not have repayment obligations with regard to the perpetual loan. There is no fact in the extant case that the loan will or may be settled in the Company's equity instruments; the evaluation related to conversion in the entity's own equity instruments is not applicable in this case.

The EAC analysed the issue primarily through the lens of Ind AS 32, "Financial Instruments: Presentation," and the Guidance Note on Division II - Ind AS Schedule III issued by

ICAI. Ind AS 32 requires financial instruments to be classified as a financial liability, financial asset, or equity instrument based on the substance of the contractual arrangement. A key factor for classifying an instrument as a financial liability is the existence of a contractual obligation to deliver cash or other financial assets or exchange financial instruments under potentially unfavourable conditions. Since the perpetual loan under consideration has no repayment obligation, no interest, and no requirement to deliver cash or exchange instruments, it does not meet the definition of a financial liability. Furthermore, the perpetual loan is not to be settled in the issuer's own equity instruments, so it is not a derivative or convertible instrument.

Consequently, the EAC concluded that the perpetual loan represents a residual interest in the net assets of the Company after deducting all liabilities, satisfying the definition of an equity instrument under Ind AS. Accordingly, this loan should be classified as an "Instrument entirely equity in nature" in the financial statements. With respect to presentation, the Company should follow and comply with the requirements of Ind AS 1 and the Guidance Note on Division II- Ind AS Schedule III to the Companies Act, 2013 (Revised 2022), showing it as a separate line item under equity on the balance sheet, placed after share capital but before other equity. The statement of changes in equity should provide a reconciliation of changes in this instrument, distinctly disclosing contributions or distributions related to it to ensure transparency and compliance with the presentation norms of Ind AS Schedule III.

## REGULATORY UPDATES

### Institute of Chartered Accountants of India (ICAI)

#### The Chartered Accountants (Limit on Number of Tax Audits) Guidelines, 2025

The Institute of Chartered Accountants of India (ICAI), in exercise of the powers conferred under Section 15(2)(fa) of the Chartered Accountants Act, 1949, has issued a new set of guidelines titled The Chartered Accountants (Limit on Number of Tax Audits) Guidelines, 2025. These guidelines were notified on 25 July 2025 and shall come into effect from the financial year commencing on 1 April 2026.

Under these revised guidelines, a Chartered Accountant in practice, or a proprietary firm of Chartered Accountants, shall not accept and sign more than 60 tax audit assignments under Section 44AB of the Income-tax Act, 1961, in a given financial year. In the case of a partnership firm, this limit of 60 assignments shall apply to each partner of the firm individually, thereby allowing the firm to take on tax audit assignments in proportion to the number of full-time partners. However, any partner who is also a partner in other firms or takes up assignments in his individual capacity must ensure that the total number of tax audit assignments across all affiliations does not exceed the prescribed limit of 60.

It is clarified that only the financial year in which the tax audit report is signed will be considered for computing the number of tax audits undertaken. Additionally, audits carried out under clauses (c), (d), and (e) of Section 44AB, namely those related to presumptive taxation under Sections 44AE, 44ADA, and 44AD, shall not be counted towards the audit limit. In cases where a revised tax audit report is issued, only the original audit shall be considered for the count, and the revision shall be excluded.

The guidelines also make it clear that the audit of both the head office and branch offices of an entity will be regarded as a single tax audit assignment. Furthermore, multiple branch audits of the same entity conducted by one Chartered Accountant will also be treated as a single assignment. Importantly, part-time partners of firms will not be considered while determining the number of tax audit assignments available to the firm, thus restricting the count to full-time practising partners only.

To ensure compliance and maintain transparency, every Chartered Accountant in practice is required to maintain a proper record of all tax audit assignments accepted and signed during each financial year. The format for such a record will be prescribed by the Council in due course.

These guidelines will replace all earlier guidelines related to the limit on tax audit assignments issued by the Institute. However, the existing provisions under Chapter VI of the Council General Guidelines, 2008, will continue to remain applicable until 31 March 2026.

#### Checklist of Certificates for Chartered Accountants.

ICAI has released an illustrative checklist for Issuance of Certificates. This checklist has been prepared based on the Guidance Note on Reports or Certificates for Special Purposes (Revised 2016) as an initiative by the Centre for Audit Quality of ICAI aimed to support members in adhering to the requirements outlined in the Guidance Note. The checklist is intended to serve as a practical aid. Users are strongly advised to refer to the original Guidance Note when applying this checklist in actual engagements, to ensure full compliance and professional accuracy.

#### Guidance Note on Tax Audit under Section 44AB of the Income Tax Act, 1961 (Revised 2025)

The Direct Taxes Committee of ICAI has issued the Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961 (Revised 2025) on 30 July 2025. In view of the recent amendments to Form No. 3CD and the changes introduced by the Finance (No. 2) Act, 2024 and the Finance Act, 2025, as well as the ongoing developments in legislation, judicial pronouncements, and professional practices, the Committee has come out with this revised edition. This revised edition aims to provide an updated, in-depth, and practical guide to assist members in discharging their professional responsibilities with diligence and confidence.

#### FAQs on Guidance Note on Financial Statements of Non-corporate Entities.

ICAI has released FAQs on the earlier released Guidance Note on the preparation and presentation of financial statements by Non-Corporate Entities (NCEs), which prescribes standardised formats for financial statements of various non-corporate entities such as partnerships, proprietorships, Hindu Undivided Families (HUFs), and certain trusts and societies.

The detailed FAQ provides additional clarity on the practical implementation of the guidance note covering key issues, including the treatment of comparative figures, flexibility in presentation formats and auditor responsibilities in the event of non-compliance. The document reiterates that while Guidance Notes are recommendatory in nature, any departure from the prescribed formats by an entity must be suitably evaluated and disclosed by the auditor in accordance with the Standards on Auditing.

The FAQ also addresses specific applicability scenarios, for instance, not-for-profit organisations (NPOs) are required to follow the Technical Guide on Accounting for NPOs. FAQ references to 'Revised Criteria for classification of non-company entities for applicability of Accounting Standards' wherein the non-company entities are classified into two categories, viz., micro, small and medium-sized entities (MSMEs) and large entities.

#### Expert Panel for addressing queries related to Statutory Audit pertaining to auditing aspects

ICAI, as part of its ongoing commitment to support members and enhance audit quality amid evolving regulatory and business environments, has constituted an Expert Panel under the Auditing and Assurance Standards Board (AASB) to assist members with audit-related queries for the upcoming audit season.

#### Panel Convenors:

- CA Sripriya Kumar, Chairperson, AASB
- CA Ravi Patwa, Vice Chairman, AASB

#### Key Details:

- **Duration:** 11 July 2025 - 30 September 2025
- **Purpose:** To provide technical support and address specific queries on auditing standards and statutory audit assignments.

#### How to Submit Queries:

Members can email their questions to: [auditfaq@icai.in](mailto:auditfaq@icai.in)

- Queries shall be concise with relevant facts without client/ entity names.
- Duplicate queries shall be avoided.
- No repeated follow-ups.

**Disclaimers:**

- Views expressed shall be personal opinions of panel members, not official ICAI positions.
- ICAI and panel members disclaim liability for decisions based on this guidance and apply professional judgement.
- Information from this panel cannot be used as evidence in any legal proceedings.
- The Board reserves the right to reject or not respond to any queries without explanation.

**Technical Guide on Accounting for Expenditure on Corporate Social Responsibility Activities**

ICAI has released the Revised Edition of the Technical Guide on Accounting for CSR Expenditure, updated in July 2025. This guide provides comprehensive guidance on recognition, measurement, presentation, and disclosure of CSR spend, in line with the Companies Act, 2013. Key changes compared to the prior edition include:

- Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR) released earlier by MCA vide General Circular No. 14 /2021
- Addition and deletion to the General Circulars
- Draft format of 'Independent Practitioner's Report on Utilisation of CSR Fund' released earlier by ICAI has now been added to the technical guide.

**Ministry of Corporate Affairs (MCA)****Lot 3 Forms FAQ's**

The final set of forms covering 38 e-forms has been migrated from V2 to the V3 portal of MCA. Effective from 14 July 2025, all 38 e-forms under the Companies Act would be fully migrated to the MCA V3 portal. The forms include AOC-4 series, MGT-7/MGT-7A, ADT forms, CSR filings, XBRL-related forms, and others. Forms in "Pending Payment" status in the V2 Portal will be cancelled and must be re-submitted in the V3 Portal by 15 August 2025. The V3 portal offers web-based filing, auto-save, pre-filled data, real-time validation, offline utility for bulk work and simplified login via email and OTP. New forms introduced in V3 as webforms and not available in V2 include AOC-1 & 2, ADT-4, extracts of Board and of Auditor Reports. A complete list of all 38 forms and their processing types is available on the MCA portal.

**Companies (Listing of equity shares in permissible jurisdictions) Amendment Rules, 2025.**

MCA on 3 July 2025, has notified the Companies (Listing of Equity Shares in Permissible Jurisdictions) Amendment Rules, 2025. The amendment, issued under sections 23(3) and 469 of the Companies Act, 2013, substitutes the existing Form LEAP-1 in the Second Schedule of the 2024 Rules. The amended rules shall come into force from the date of their publication in the Official Gazette.

**Companies (Corporate Social Responsibility Policy) Amendment Rules, 2025.**

MCA, through a notification dated 7 July 2025, has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014, via the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2025. Issued under Sections 135 and 469(1) & (2) of the Companies Act, 2013, the amendment replaces the existing e-Form CSR-1. The revised e-Form CSR-1 requires applicants to disclose whether they are a CSR implementing agency, their entity type (Section 8 Company, Trust, Society, or Others), registration number, details of the authorised representative, and upload a copy of the registration certificate. The amended rules come into effect from 14 July 2025.

**Mandatory Filing of Form IEPF-1A with Prescribed Excel Template under Rule 5 (4A) of the IEPF Rules**

The Investor Education and Protection Fund Authority (IEPFA) has issued a public notice on 31 July 2025 directing companies to comply with Rule 5(4A) of the IEPF Rules, 2016. This requires filing Form IEPF-1A with the prescribed Excel template if amounts have been transferred to the IEPF or Central Government but were reported in formats other than the mandated Excel template or not reported at all. Despite repeated instructions since the 2019 notification, over 3,000 companies remain non-compliant, and more than 31,000 past filings exist in incorrect formats, causing delays and errors in identifying investor dues.

With IEPFA now on the MCA21 V3 platform, companies have a final chance to submit the correct filings within 30 days, by 30 August 2025. Lists of non-compliant SRNs and the required templates will be emailed to the company Nodal Officers. Failure to comply with the deadline will invite regulatory action under the Companies Act, 2013, and companies and stakeholders are urged to ensure timely compliance.

**Securities and Exchange Board of India (SEBI)****Master Circular for Portfolio Managers**

SEBI has issued a Master Circular for Portfolio Managers, including all relevant circulars that were issued till 31 March 2025. This master circular supersedes the Master circular for Stockbrokers dated 7 June 2024

**Extension towards Adoption and Implementation of Cybersecurity and Cyber Resilience Framework (CSCRF) for SEBI Regulated Entities (REs)**

SEBI vide circular dated 30 June 2025, has extended the compliance timeline for CSCRF till Aug 31, 2025 (earlier timeline was till 30 June 2025), to all REs, except Market Infrastructure Institutions, KYC Registration Agencies, and Qualified Registrars to an Issue and Share Transfer Agents. Stock Exchanges/ Depositories are directed to bring the provisions of this circular to the notice of their members/ participants and also disseminate the same on their websites. The circular shall come into force with immediate effect.

**Special Window for Re-lodgement of Transfer Requests of Physical Shares**

SEBI has issued a circular announcing the opening of a special six-month window from 7 July 2025 to 6 January 2026 to provide investors with another opportunity to re-lodge transfer requests for physical shares that were originally submitted before 1 April 2019, but were rejected, returned, or left unattended due to deficiencies in documents, processes, or other reasons, and which also missed the earlier 31 March 2021 re-lodgement deadline.

This decision follows representations from investors, RTAs, and listed companies, and recommendations from a Panel of Experts that included legal and industry representatives. During this special window, all such transfers will be processed only in demat mode after following the due process, and it will also cover any pending requests with listed companies or RTAs. SEBI has directed listed companies, RTAs, and stock exchanges to publicise this window through print and social media at least every two months, set up dedicated teams to process these requests, and submit monthly reports to SEBI detailing the publicity carried out and the number and status of re-lodged transfer-cum-demat requests, as per the specified Annexure-A format.

### Consultation paper for review of LODR Regulations - measures towards Ease of Doing Business.

SEBI has issued a consultation paper dated 25 July 2025, inviting public comments on proposed amendments to the LODR Regulations to further ease compliance for issuers of listed non-convertible securities.

#### Key Proposals:

1. Amendment to Regulation 58(1)(b):  
Replacing the current requirement of sending a physical copy of financials with a letter containing a web link and QR code for debenture holders who have not registered their email IDs.
2. Introduction of Regulation 58(1A):  
Specify timelines for sending financials to debenture holders:
  - For companies, timelines under Section 136 of the Companies Act, 2013 will apply.
  - For entities under other statutes, their respective Acts will govern the timeline.
  - In the absence of such timelines, financials must be sent at least 21 days prior to the AGM.

Last Date to Submit Comments is 15 August 2025.

### Master Circular for ESG Rating Providers (ERPs)

On 11 July 2025, SEBI issued a Master Circular for ESG Rating Providers (ERPs), consolidating all applicable guidelines under the SEBI (Credit Rating Agencies) Regulations, 1999, as amended. The circular provides clarity on procedural, disclosure, and compliance obligations for ERPs, aiming to streamline regulatory expectations and ensure consistency across the industry.

ERPs are required to have appropriate systems and infrastructure in place to implement the provisions of this circular. The Board of Directors of each ERP is responsible for ensuring compliance. The circular supersedes earlier circulars related to ERPs, but actions, applications, or liabilities under those previous circulars will remain valid.

Monitoring compliance will be done through the annual internal audit mandated under Regulation 28S of the CRA Regulations.

### SEBI Issues Master Circular on Listing and Disclosure Requirements for Debt Securities

On 11 July 2025, SEBI released a Master Circular consolidating all relevant circulars related to the listing obligations and disclosure requirements for Non-Convertible Securities, Securitised Debt Instruments, and Commercial Paper. This circular brings together directions issued up to 30 June 2025, providing a single-point reference for issuers and stakeholders.

This Master Circular supersedes the earlier circulars listed in Annex-1, though any prior actions taken, applications filed, or obligations incurred under the rescinded circulars will continue to be valid under the corresponding provisions of this Master Circular. It also continues to recognise the applicability of any other SEBI guidance specifically related to these instruments. Issuers, recognised stock exchanges, and other stakeholders are required to comply with the provisions of the circular, update internal systems, disseminate the circular on their websites, and ensure awareness among market participants.

### Master Circular for Real Estate Investment Trusts (REITs)

On 11 July 2025, SEBI issued a Master Circular consolidating all applicable circulars issued until that date for Real Estate Investment Trusts (REITs). The circular aims to provide a single point of reference for REIT-related regulations, covering compliance, reporting, and procedural requirements. It replaces earlier circulars listed in the Appendix but preserves the legal validity of any actions, applications, rights, or obligations undertaken under those previous circulars. All REITs, parties involved in REIT structures, stock exchanges, depositories, and market intermediaries are required to comply with the provisions of this circular and submit the necessary reports on a periodic or continuous basis. Stock exchanges must also publish the circular on their websites.

### Master Circular for Infrastructure Investment Trusts (InvITs)

On 11 July 2025, SEBI issued a Master Circular for Infrastructure Investment Trusts (InvITs), consolidating all relevant circulars issued up to that date. This initiative aims to streamline regulatory references and ensure clarity for InvITs, their stakeholders, and market intermediaries. The circular replaces earlier directions listed in the Appendix but preserves the legal continuity of all actions, approvals, applications, and obligations made under the superseded circulars.

Entities involved in InvITs must comply with the provisions laid out in the Master Circular and submit necessary reports on a periodic or continuous basis. Stock exchanges are advised to disseminate the circular through their websites.

### Master Circular for Credit Rating Agencies (CRAs)

SEBI issued a Master Circular consolidating all circulars and guidelines for Credit Rating Agencies (CRAs) under the SEBI (Credit Rating Agencies) Regulations, 1999. The circular compiles various operational and procedural directives issued over time into a single comprehensive document, making it easier for CRAs, issuers, stock exchanges, and other stakeholders to access all applicable provisions. The Master Circular supersedes earlier circulars listed in its Appendix but ensures continuity by deeming all past actions, applications, rights, and penalties under the rescinded circulars valid under the new consolidated framework.

### Draft Circular on Modification in the conditions specified for reduction in denomination of debt securities and non-convertible redeemable preference shares (NCRPS)

SEBI issued a draft circular proposing modifications to the conditions for issuing debt securities and non-convertible redeemable preference shares at a reduced face value of Rs. 10,000. The original circular dated 3 July 2024 mandated that such securities must be interest or dividend-bearing, which excluded zero-coupon or zero-dividend securities. Based on market feedback, SEBI proposes including zero-interest/dividend securities as eligible for issuance at the reduced denomination. This change aims to facilitate issuance of such securities, which typically are issued at a discount but redeemed at face value, providing compounded returns attractive to non-institutional investors. SEBI directs stock exchanges, clearing corporations, and depositories to implement the changes, update their byelaws and rules, and disseminate them to market participants.

### Draft Circular on Revised Norms for the appointment of an independent third-party reviewer/ certifier for green debt security

SEBI issued a draft circular proposing revised norms for the appointment of an independent third-party reviewer or certifier for green debt securities. This move aligns with the requirements of other Environmental, Social, and Governance (ESG) debt securities like social bonds and sustainability bonds, as outlined in SEBI's 5 June 2025 circular. The existing regulations for green debt securities, established in February 2023 and incorporated in May 2024, lacked detailed norms for the appointment of third-party reviewers, unlike those for ESG debt securities.

The proposed modifications to Chapter IX of the Master Circular remove the existing provision and insert a new paragraph that requires issuers of green debt securities to appoint an independent third-party reviewer/certifier to ensure compliance with SEBI's definition of green debt securities and to review project evaluation and selection criteria. The reviewer must be independent of the issuer and its key personnel, be remunerated to avoid conflicts of interest, and possess expertise in assessing ESG debt securities. The scope of the review must be disclosed in the offer document. The circular also allows for various types of third-party reviews, such as second-party opinions, verification, certification, and scoring/rating, and permits SEBI-registered ESG rating providers to act as reviewers under specified conditions.

The draft circular applies to issuers of listed/ propose to list green debt securities, recognised stock exchanges, depositories, merchant bankers, trustees, credit rating agencies, and ESG rating providers. Public comments/ suggestions are invited on the draft circular by 21 August 2025, through an online web-based form.



### National Stock Exchange of India Limited (NSE) and BSE Limited (BSE)

#### Reporting of critical non-compliances observed in the internal audit of Trading Members

BSE vide circular, has mandated Internal Auditors to report certain critical non-compliances within 2 days of detection, without waiting for the formal submission of the Internal Audit Report.

This directive aligns with SEBI Circulars dated 22 August 2008 and 26 September 2016 and aims to further strengthen the internal audit mechanism.

Critical non-compliances to be reported immediately:

1. Unrecouped shortfall of client funds/securities/commodities.
2. Net worth shortfall, incorrect net worth reporting, or failure to meet MTF net worth criteria.
3. Offering fixed/assured/periodic returns or mobilising unauthorised deposits from investors.

Reporting Mode: Internal Auditors must report the above non-compliances via email to: [bse.reports@bseindia.com](mailto:bse.reports@bseindia.com). All Trading Members must inform their Internal Auditors and ensure compliance with this reporting requirement.

#### Joint Press Release: Advisory to Investors on dealing with Online Bond Platform Providers (OBPPs) and the factors affecting the yield of the bonds

NSE and BSE, vide joint press release on 11 July 2025, issued an investor advisory on bond investments through SEBI-registered Online Bond Platform Providers (OBPPs). Investors are urged to understand Yield to Maturity (YTM), conduct due diligence on credit rating, liquidity, tax implications, and transact only through registered OBPPs. The advisory aims to promote informed decisions and enhance investor protection in fixed-income markets. Investors are urged to conduct appropriate due diligence to avoid misjudged risks or potential capital loss.

Yield to Maturity (YTM) depicts the total annualised return expected if the bond is held until maturity. This is a key indicator for bondholders. YTM is influenced by the bond's market price, coupon payments, time to maturity, and the credit profile of the issuer. Notably, YTM is not a guaranteed return and is subject to market volatility, liquidity, and interest rate changes. Selling a bond before maturity may result in returns that differ from the initially indicated YTM. Investors must also differentiate between the coupon rate and the YTM. The coupon rate refers to the fixed periodic interest paid by the issuer, typically on a semi-annual or annual basis. These payments are contingent on the issuer's financial health, and any delays or defaults can negatively impact returns.

Additionally, the inverse relationship between bond prices and yields must be considered. Rising market interest rates can lower bond prices, increase yields, and vice versa. Investors should factor in such risks, especially when evaluating bonds in the secondary market. The advisory further notes that brokerage structures, including zero brokerage or brokerage reversal, can marginally enhance effective returns by reducing investment costs. Investors are encouraged to assess final returns net of all fees, taxes, and charges.

Before transacting through OBPP, investors should:

- Confirm that the platform is registered with SEBI.
- Review the bond's credit rating and issuer's repayment history.
- Understand settlement timelines and liquidity risks.
- Carefully read disclaimers and platform terms.

The advisory suggests a rating-based risk scale, akin to the mutual fund risk-o-meter, which may assist in assessing the relative risk of bond investments.

### Reserve Bank of India (RBI)

#### Amendment to Foreign Exchange Management (Export of Goods & Services) Regulations

RBI vide notification dated 24 June 2025, has amended the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. The amendment extended the exemption from furnishing the declaration required under Regulation 3 to Tugs or Tug Boats, Dredgers and Vessels used for providing offshore support services. The exemption is subject to their re-import into India.

#### Directions related to Closure of Shipping Bills in the Export Data Processing and Monitoring System (EDPMS) - Draft for Feedback.

RBI issued revised draft guidelines under the Master Direction - Export of Goods & Services. These changes pertain to the processing and closure of shipping bills in the Export Data Processing and Monitoring System (EDPMS).

Issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999, the new guidelines aim to ease the compliance burden for small-value exporters. In particular, for shipping bills of value up to INR 10,00,000 (or its equivalent), Authorised Dealer Category-I (AD) banks may now:

- Reconcile and close such bills in EDPMS based on a quarterly declaration from the exporter confirming realisation of export proceeds.
- Accept reduction in declared export value based on the same exporter declaration.
- Review and align charges for handling such transactions, ensuring no penal charges are levied for regulatory delays.

The intent is to simplify procedures while supporting small-value exporters.

#### Reserve Bank of India (Investment in AIF) Directions, 2025

RBI issued the Reserve Bank of India (Investment in AIF) Directions, 2025, superseding the earlier circulars, applicable to investments in units of AIF Schemes by the Commercial Bank (including Small Finance Banks, Local Area Banks and Regional Rural Banks), Primary (Urban) Co-operative Banks/ State Co-operative Banks/ Central Co-operative Banks, All-India Financial Institutions, and Non-Banking Financial Companies ('Regulated Entity' / 'RE'). The direction prescribes the regulatory guidelines in respect of investment by the Regulated Entities in the Alternative Investment Funds (AIFs).

The regulation has enhanced investment thresholds for AIFs specifically:

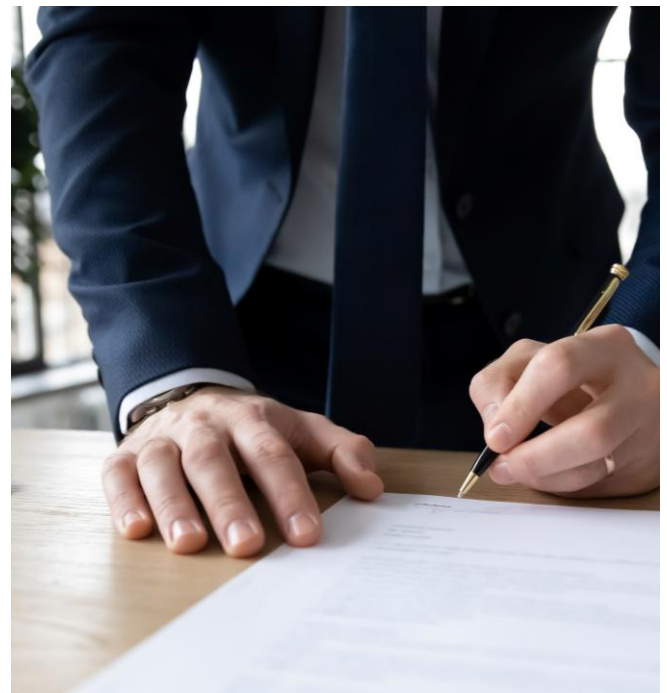
- REs investment policy to have suitable provisions governing investments in an AIF Scheme, compliant with extant law and regulations.
- At the individual level, RE shall not contribute more than 10 per cent of the corpus of an AIF Scheme.
- At the AIF level, collective contribution by all REs in the said AIF shall not be more than 20 per cent of the corpus of that AIF scheme.
- If a RE contributes more than five per cent of the corpus of an AIF Scheme, which also has downstream investment (excluding equity instruments) in a debtor company of RE, then the RE shall be required to make 100 per cent provision to the extent of its proportionate investment in the debtor company through the AIF Scheme, subject to a maximum of the direct loan and/ or investment exposure of the RE to the debtor company.

Additionally, if RE's contribution is made via subordinated units, the entire investment must be deducted from the RE's capital fund, split proportionately from both Tier-1 and Tier-2 capital (as applicable).

These Directions shall come into effect from 1 January 2026, or any earlier date as may be adopted by an RE in accordance with its internal policy.

#### Master Direction - Core Investment Companies Directions

RBI has amended the Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016, effective 1 August 2025, to mandate that all investments by Core Investment Companies (CICs) in Alternative Investment Funds (AIFs) shall be guided by the Reserve Bank of India (Investment in AIF) Directions, 2025, as amended from time to time.



## Insurance Regulatory And Development Authority of India (IRDAI)

### Amendment to Revised Guidelines on Insurance Repositories and Electronic Issuance of Insurance Policies

IRDAI vide circular dated 29 July 2025, issued an amendment to its “Revised Guidelines on Insurance Repositories & Electronic Issuance of Insurance Policies”. Original Clause of the above guideline mandated annual system audit of insurance repositories controls, systems, procedures and safeguards put in place, conducted by an external system audit firm approved by IRDAI on a yearly basis.

The amended clauses now stand modified. Going forward, a review of controls, systems, procedures and safeguards put in place by the insurance repository shall be conducted annually by an external auditor who is either a Certified Information System Auditor (CISA), a Chartered Accountant with DISA (ICAI) Qualification or a CERT-IN certified expert. The circular shall come into force with immediate effect.

## Other Regulatory Matters

### Select Committee of Lok Sabha submits report on Income Tax Bill, 2025

Select Committee of Lok Sabha, chaired by Mr. Baijayant Panda, submitted its report on the Income-Tax Bill, 2025, on 21 July 2025 to the Ministry of Finance for consideration. The Bill, introduced on 13 February 2025, aims to replace the Income-Tax Act, 1961, primarily to simplify the language without making substantive changes. Key Observations and Recommendations *inter alia* are as follows:

- Inconsistencies when compared to the 1961 Act, wherein certain re-drafted provisions unintentionally alter implications, like removal of deductions for inter-corporate dividends applicable for a certain set of companies, setting off long-term losses against short-term gains, which is contrary to current rules. The Committee recommends restoring and revising such provisions.
- Aligning definitions with the existing provision and avoiding new drafting that may broaden the applicability horizon beyond the intent.
- Terms like “parent company”, “cooperative bank”, and “beneficial owner” are undefined. The Committee suggests defining these.
- Investment Fund and Vessel Terminology: Certain definitions may cause misinterpretation, such as the use of “new inland vessels”, could create confusion.
- The Bill retains several references to the old Act, to which the Committee recommends relooking or weeding out those that are no longer relevant.
- Missing Amendments from Finance Acts 2024 & 2025, like changes to capital asset definitions, TCS compliance has not yet been incorporated.
- Redundant Text & Drafting Issues flag typographical errors, unclear references, and redundant clauses. Corrections are recommended for clarity.

## Other State Regulatory Matters

### Revocation of West Bengal Incentive Schemes and Obligations in the nature of Grants and Incentives Act, 2025 (the Revocation Act)

The State of West Bengal notified, vide Official Gazette dated 2 April 2025, the “Revocation of West Bengal Incentive Schemes and Obligations in the nature of Grants and Incentives Act, 2025” (Act No. 4 of 2025). This Act retrospectively rescinds, revokes, and discontinues all Incentive Schemes and all other State Government-sanctioned incentives included in the Schedule, from their respective dates of implementation. The Act applies retrospectively and has an overriding effect against any contract, grant, obligation, scheme, judgment, decree, arbitral award, direction by any authority, or any law to the contrary.

The stated objectives, as outlined in the Preamble, are to serve the larger public interest by redirecting State finances from industry-specific incentives to social welfare schemes for marginalised sections of society.

Under the Revocation Act, all industrial units are permanently barred from making any past, present, or future claims or demands for incentives—including subsidies, tax exemptions, refunds, financial support, advances, or any similar benefits—under the revoked schemes. Any liabilities, obligations, or rights relating to these incentive schemes, or under any related contracts or agreements, are deemed null and void from the schemes’ original commencement dates. Legal actions or proceedings for enforcing such incentives can no longer be initiated, maintained, or pursued; all current proceedings are immediately terminated. The State Government is also empowered to recover any excess payments previously made as arrears of land revenue, and it retains authority to make rules for implementing the Act or to address difficulties, with the option to apply the Act to additional schemes in the future.

#### Revoked Incentive Schemes (as listed in the Schedule):

- West Bengal Incentive Scheme, 1993, 1999, 2000, 2004, 2008, 2015 and 2021,
- West Bengal Incentive to Power Intensive Industries Scheme, 2005, and
- West Bengal State Support for Industries Scheme, 2008 and 2013

With the Act’s enactment, all rights to enforce dues or claims—past, present, or future—in respect of these incentive schemes stand extinguished.



## REGULATORY UPDATES



### REGULATORY UPDATES:

#### Reserve Bank of India (RBI)

##### Master Direction dated 23 July 2025: Lending to Micro, Small & Medium Enterprises (MSME) Sector

The Reserve Bank of India (RBI) issued an updated Master Direction on 23 July 2025 and has updated the criteria for classifying Micro, Small, and Medium Enterprises (MSMEs). These updated thresholds aim to streamline MSME registration and enable better access to various regulatory benefits and credit facilities.

The classification criteria for MSMEs are as follows:

- Micro Enterprise: Investment in plant and machinery or equipment does not exceed INR 2.5 crore and turnover does not exceed INR 10 crore.
- Small Enterprise: Investment in plant and machinery or equipment does not exceed INR 25 crore, and turnover does not exceed INR 100 crore.
- Medium Enterprise: Investment in plant and machinery or equipment does not exceed INR 125 crore, and turnover does not exceed INR 500 crore.

Additionally, the term “Priority Sector” refers to sectors specified under the Master Directions - Reserve Bank of India (Priority Sector Lending - Targets and Classification) Directions, 2025 dated 24 March 2025, as amended from time to time. The definition of “Adjusted Net Bank Credit (ANBC)” is also aligned with the same directions. These updates ensure consistency in regulatory classification and facilitate priority sector lending by banks.

##### Circular dated 2 July 2025: Reserve Bank of India (Pre-payment Charges on Loans) Directions, 2025

From 1 January 2026, no pre-payment charges will be levied on floating-rate loans taken by

- i. individuals for non-business purposes, or by individuals and

- ii. Micro & Small Enterprises (MSEs) for business purposes, provided they borrow from:

- A commercial bank (excluding Small Finance bank, Regional Rural bank and Local Area bank), a Tier 4 Primary (Urban) Co-operative bank, an NBFC-UL, and an All-India Financial Institution shall not levy any pre-payment charges
- A Small Finance bank, a Regional Rural bank, a Tier 3 Primary (Urban) Cooperative bank, a State Cooperative bank, a Central Cooperative bank and an NBFCML shall not levy any pre-payment charges on loans with a sanctioned amount/ limit up to INR 50 lakh.

In cases other than those mentioned above, pre-payment charges, if any, shall be as per the approved policy of the Regulated Entities (RE). However, in case of term loans, pre-payment charges, if levied by the RE, shall be based on the amount being prepaid. In case of cash credit/ overdraft facilities, pre-payment charges on closure of the facility before the due date shall be levied on an amount not exceeding the sanctioned limit.

##### Master Direction dated 17 July 2025: Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021

The Reserve Bank of India (RBI), prioritising public interest and financial stability, has exercised its authority to issue updated regulatory directions specifically for Housing Finance Companies (HFCs).

This direction comes as a supersession of the previous regulations outlined in Chapter XVII of the earlier guidelines, consolidating and modernising the regulatory framework for HFCs. The updated Master Direction—Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021, reflects the RBI’s commitment to ensuring that the operations of HFCs are conducted prudently, safeguarding the interests of investors and depositors, and maintaining the overall health and resilience of the housing finance sector.

The updated directions reflect evolving best practices and align HFC regulation closely with the broader non-banking financial company (NBFC) ecosystem.

### Master Direction dated 17 July 2025: Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022

The Master Direction now updates the revision of the qualifying asset criteria brought out by the RBI notification dated 6 June 2025, as below:

*Qualifying assets of NBFC-MFIs shall constitute a minimum of 60 per cent of the total assets (netted off by intangible assets), on an ongoing basis. If an NBFC-MFI fails to maintain the qualifying assets as aforesaid for four consecutive quarters, it shall approach the Reserve Bank with a remediation plan for taking a view in the matter.*

### Consultation Paper dated 21 July 2025 on Digital Banking Channels Authorisation Directions, 2025

RBI has released a press release on 21 July 2025 containing the draft circular on Digital Banking Channels Authorisation Directions. These directions aim to guide banks and provide a regulatory framework for offering digital banking services such as internet and mobile-based banking, and ensuring customer protection, operational integrity, and transparency. The framework also provides clarity by defining key terms related to digital banking, such as Digital Banking Channels, Internet Banking, Mobile Banking, View-Only Facility, and Transactional Facility. RBI has invited public feedback on the Draft Directions until 11 August 2025.

## Securities and Exchange Board of India (SEBI)

### Circular dated 23 July 2025: Frequently Asked Questions (FAQs) related to regulatory provisions for Research

The Securities and Exchange Board of India (SEBI) issued a circular on 23 July 2025 to provide clarity on the regulatory framework for Research Analysts (RAs), following the SEBI (Research Analysts) (Third Amendment) Regulations, 2024, notified on 16 December 2024, and subsequent guidelines on 8 January 2025. The circular introduces FAQs to clarify regulatory provisions and ensure consistent compliance by RAs.

#### Key Clarifications & Provisions inter alia, include:

- Certification Requirement for Individuals associated with research services from NISM
- Relaxation of the MITC Consent for Institutional investors and QIBs are which are exempted from mandatory signature/ consent on terms and conditions (MITC), though disclosure is still required.
- Client Categorisation and Compliance norms for non-fee-paying clients
- Clarifications related to entities requiring Registration & Regulation
- Segregation of Research & Distribution Activities
- Fees & Deposits, which vary by type (individuals, proxy advisers, corporate bodies).
- Trading & Disclosure Rules for RAs and associates, and mandatory disclosures of financial interests in public appearances or media recommendations.

#### Other Notables:

- No renewal needed for registration if fees are paid every five years.
- Compliance officer appointment is mandatory for non-individual RAs.
- Technical charts alone are not sufficient; recommendations must be backed by documented rationale and data.

The amendments will take effect upon publication in the Official Gazette.

### Consultation Paper dated 18 July 2025 on Categorisation and Rationalisation of Mutual Fund Schemes

SEBI has invited comments/ views from the public on the draft circular titled “Categorisation and Rationalisation of Mutual Fund Schemes”. The draft circular contains proposals to revise the categorisation of mutual funds in order to improve clarity, introduce new schemes and address the issue of overlap in portfolios of schemes in the Mutual Fund. Public comments were invited to be sent by 8 August 2025.

### Consultation Paper dated 9 July 2025 on Measures for Regulation of Activities of Credit Rating Agencies (CRAs)

SEBI has released a Consultation Paper proposing amendments to Measures for Regulation of Activities of Credit Rating Agencies (CRAs) dated 9 July 2025 to address activities undertaken by CRAs that fall outside SEBI’s regulatory domain, such as credit ratings for financial instruments under other financial sector regulators. Public comments were invited to be sent by 30 July 2025.

## Bombay Stock Exchange (BSE)

### Circular dated 23 July 2025: Frequently Asked Questions (FAQs) related to regulatory provisions for Research

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#### Key Clarifications & Provisions inter alia, include:

- Certification Requirement for Individuals associated with research services from NISM
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- Client Categorisation and Compliance norms for non-fee-paying clients
- Clarifications related to entities requiring Registration & Regulation
- Segregation of Research & Distribution Activities
- Fees & Deposits, which vary by type (individuals, proxy advisers, corporate bodies).

## DIRECT TAX

### Circulars/ Notifications/ Press Release

#### **CBDT notifies Cost Inflation Index for FY 2025-26**

Cost Inflation Index (CII) is used to compute the indexed cost of acquisition and cost of improvement for the purpose of calculating capital gains arising from the transfer of long-term capital assets. CII is notified annually under clause (v) of the Explanation to section 48<sup>1</sup> of the IT Act. In this regard, CBDT has issued a notification specifying the CII for FY 2025-26 as 376.

This notification is effective from 1 April 2026 and applies to FY 2025-26 and subsequent years.

**[Notification No. 70/2025, dated 1 July 2025]**

#### **CBDT notifies IREDA bonds as long-term specified assets under section 54EC of the IT Act**

Section 54EC of the IT Act provides exemption from long-term capital gains tax arising on transfer of land or building or both if such gains are invested within 6 months in notified bonds that are redeemable after a minimum lock-in period of 5 years. In this regard, the CBDT has notified bonds issued by the Indian Renewable Energy Development Agency (IREDA) on or after the date of this notification, i.e. 9 July 2025, as 'long-term specified assets' under clause (ba) of the explanation to section 54EC of the IT Act.

Further, it is clarified that the proceeds from these bonds shall be used by IREDA solely for renewable projects capable of servicing the debts out of project revenues without reliance on the State Government for service of debts.

**[Notification No. 73/2025, dated 9 July 2025]**

#### **CBDT issues advisory on fraudulent claims in Income-tax returns**

The income tax authorities launched a large-scale verification operation across multiple locations in the country on 14 July 2025, targeting individuals and entities facilitating fraudulent claims of deductions and exemptions in income tax returns (ITRs). It is observed that certain ITR preparers and intermediaries are operating organised rackets, who have been filing returns claiming fictitious deductions and exemptions. Some of these include the abuse of beneficial provisions and submission of false withholding tax returns for claiming excessive refunds.

Further, deductions under sections 10(13A)<sup>2</sup>, 80GGC<sup>3</sup>, 80E<sup>4</sup>, 80D<sup>5</sup>, 80EE<sup>6</sup>, 80EEB<sup>7</sup>, 80G<sup>8</sup>, 80GGA<sup>9</sup> and 80DDB<sup>10</sup> of the IT Act were claimed without a valid justification. Moreover, the ITR preparers create temporary email IDs solely for filing bulk returns, which are later abandoned, leading to official notices going unread, despite a fully e-enabled tax administration system.

Considering the above, the CBDT has issued a press release stating that the department is now poised to take stern action against continued fraudulent claims, including penalties and prosecution wherever applicable. Further, the ongoing verification exercise is expected to provide crucial evidence, including digital records that will help dismantle the networks behind these schemes and ensure accountability under the law. Therefore, taxpayers have been advised to file correct particulars of their income and communication details without being influenced by advice from unauthorised agents or intermediaries who promise undue refunds.

**[Press Release, dated 14 July 2025]**

<sup>1</sup> Section 48 of the IT Act provides mode of computation of income chargeable under the head 'Capital Gains'.

<sup>2</sup> Section 10(13A) of the IT Act provides exemption in respect of house rent allowance (HRA) received by an employee.

<sup>3</sup> Section 80GGC of the IT Act allows deduction for contributions made to a political party or to an electoral trust.

<sup>4</sup> Section 80E of the IT Act allows a deduction for the interest paid on education loans for higher education.

<sup>5</sup> Section 80D of the IT Act allows deductions for premiums paid towards health insurance policies.

<sup>6</sup> Section 80EE of the IT Act provides deduction of interest paid on loan taken for the acquisition of a residential house property.

<sup>7</sup> Section 80EEB of the IT Act provides deduction of interest paid on a loan taken for the purchase of an electric vehicle.

<sup>8</sup> Section 80G of the IT Act allows deductions for donations made to certain charitable institutions & government relief funds.

<sup>9</sup> Section 80GGA of the IT Act provides deduction of donations for scientific research or rural development.

<sup>10</sup> Section 80DDB of the IT Act provides deductions for expenses related to medical treatment.

### CBDT issues relief from higher TDS/TCS liability on short deduction/collection of taxes due to PANs of deductees / collectees becoming inoperative

The CBDT *vide* Circular No 3 of 2023 dated 28 August 2023 had clarified the consequences that an individual taxpayer would face on failure to intimate the Aadhar number in accordance with section 139AA<sup>11</sup> of the IT Act read with Rule 114AAA<sup>12</sup> of the IT Rules. One such consequence was tax withholding/ tax collection at a higher rate under section 206AA and 206CC<sup>8</sup> of the IT Act. As a result, the deductors received notices for short withholding/ collection of tax where the PANs of the deductees / collectees were made inoperative.

With a view to addressing the grievances faced by such deductors/ collectors, CBDT issued a Circular<sup>14</sup> in April 2024 by stating that for the transactions entered upto 31 March 2024 and in cases where the PAN becomes operative as a result of linking it with Aadhar on or before 31 May 2024, there shall be no liability on the deductor/ collector to withheld or collect the tax at higher rates as prescribed under section 206AA and 206CC of the IT Act.

In partial modification and in continuation of Circular No. 3 of 2023, the CBDT has clarified that no liability shall arise on the deductor/collector for not deducting/collecting tax at higher rates under section 206AA/206CC of the IT Act, if:

- The amount is paid or credited between 1 April 2024 and 31 July 2025, and the PAN is made operative (via linkage with Aadhaar) on or before 30 September 2025
- The amount is paid or credited on or after 1 August 2025, and the PAN is made operative (via linkage with Aadhaar) within 2 months from the end of the month in which the amount was paid or credited.

In such cases, deduction/collection as required in other provisions of Chapter XVII-B (Deduction at source) or Chapter XVII-BB (Collection at source) of the IT Act shall be applicable.

**[Circular No. 9/2025, dated 21 July 2025]**

### The Select Committee presents a report on the Income-Tax Bill, 2025, in the Lok Sabha

The Income-Tax Bill, 2025 (IT Bill) was introduced in Lok Sabha on 13 February 2025 and referred to the Select Committee on the same day through a motion moved by Smt. Nirmala Sitharaman, Minister of Finance and Corporate Affairs. The Committee, comprising 31 Members of Lok Sabha, was tasked with examining the IT Bill and submitting its report by the first day of the Monsoon Session of 2025. The Select Committee reviewed the IT Bill in detail, and the Chairperson of the Select Committee, on 21 July 2025, presented the report in Lok Sabha proposing several key amendments aimed at improving clarity, alignment with existing laws, and consistency in tax administration.

**[Press Release, dated 21 July 2025]**

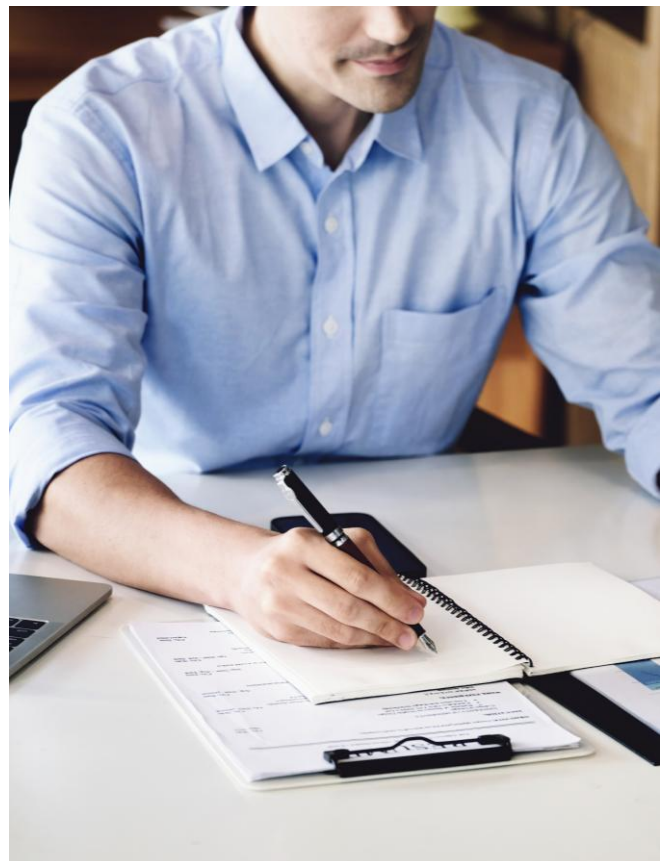
### CBDT relaxes the time limit for processing of returns of income filed electronically, which were erroneously invalidated by CPC

Central Processing Centre (CPC) Bengaluru has received multiple grievances regarding erroneous invalidation due to various technical reasons while processing the returns filed electronically for different FYs. As the time period for processing these returns had lapsed, the latest being 31 December 2024 for FY 2022-23, there was a need to validate and process such returns in accordance with law.

In this regard, CBDT has issued a circular providing relaxation of the time limit prescribed under the second proviso to section 143(1)<sup>15</sup> of the IT Act. Accordingly, all returns of income filed electronically up to 31 March 2024 which were erroneously invalidated by CPC shall now be processed. The intimation under section 143(1) of the IT Act in respect of processing such returns shall be sent to the concerned taxpayers by 31 March 2026.

All subsequent effects under the IT Act, including the issuance of refunds along with applicable interest, shall also be undertaken in these cases. However, in instances where the PAN is not linked with Aadhaar, refund of any amount of tax due under the provisions of the IT Act shall not be made.

**[Circular No. 10/2025, dated 28 July 2025]**



<sup>11</sup> Section 139AA of the IT Act provides that if the PAN & Aadhar is not linked before the specified date then PAN shall be treated as inoperative.

<sup>12</sup> Rule 114AAA of the IT Rules provides for the consequences on PAN becoming inoperative, fees & timeline within which PAN will be made operative.

<sup>13</sup> Section 206AA of the IT Act and section 206CC of the IT Act provides for higher tax withholding / tax collection if valid PAN is not furnished.

<sup>14</sup> Circular No. 06 of 2024, dated 23 April 2024

<sup>15</sup> Section 143(1) of the IT Act provides the manner of processing the return of income.

## Judicial Updates

### Supreme Court holds operational control and oversight of Indian operations, resulting in a Fixed Place PE in India

The business profits earned in the source country are taxable in the source country only if the taxpayer has a Permanent Establishment (PE) in the source country. Hence, the concept of PE plays a pivotal role in determining a country's taxing rights over the business profits of foreign enterprises. Article 5 of most of the tax treaties covers various types of PE, such as fixed place PE, Agency PE, Service PE, etc. In a typical business set-up of Multinational Enterprises (MNE)/ Ultimate Parent Entity having offices/ presence in different countries, it prefers to have standard infrastructure. In order to ensure uniformity across its different locations, MNEs generally have a Standard Operating Procedure (SOP) in place. In terms of the SOP, some people may visit different locations to oversee its implementation, operational control and oversee the operation.

Recently, the Hon'ble Supreme Court had an occasion to analyse whether operational control and oversight of Indian operations would constitute PE in India. To read our detailed analysis, please go to: <https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-supreme-court-rules-active-participation-and-control-over-core-operations-of-indian>

**[Hyatt International Southwest Asia Ltd v ADIT (C. A. No. 9766 OF 2025) (Supreme Court)]**

### Delhi Tax Tribunal holds that capital gain arising on transfer of shares is not taxable in India under India-Mauritius DTAA on account of foreign control and management, valid TRC and absence of LOB clause

Article 13(4) of the India-Mauritius Double Taxation Avoidance Agreement (DTAA), prior to its amendment in 2016, provided exclusive taxing rights on capital gains arising from the sale of shares in an Indian company to the country of residence. Prior to its amendment, the India-Mauritius DTAA did not contain a Limitation of Benefits (LOB) clause. Unlike other DTAA entered into by India with countries such as the United States of America (USA), Singapore, and the United Arab Emirates (UAE), which incorporated specific anti-abuse provisions, the India-Mauritius DTAA did not impose any additional restrictions or thresholds for accessing capital gains exemption. The LOB clause was introduced prospectively through Article 27A<sup>16</sup>, effective from 1 April 2017 and did not apply retrospectively to earlier years.

In this regard, the Delhi Tax Tribunal, in a significant ruling involving a Mauritian company of the Essar Group, examined whether the capital gains arising from the sale of shares of Vodafone Essar Ltd. (VEL) to a Vodafone group entity were taxable in India or exempt under Article 13(4) of the India-Mauritius DTAA. To read our detailed analysis, please go to: <https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-capital-gain-arising-on-transfer-of-shares-is-not-taxable-in-india>

**[Essar Com Limited v. ACIT, I.T.A. No. 339/DEL/2022; Essar Communications Limited v. ACIT, I.T.A. No. 340/DEL/2022 (Delhi Tax Tribunal)]**

### Delhi High Court in the case of Category III AIFs, holds that non-mentioning of investor names in the original trust deed does not render a trust indeterminate, and allows the trust to be taxed at normal rates instead of the maximum marginal rate (MMR).

Alternative Investment Funds (AIFs) are privately pooled investment vehicles regulated by the Securities and Exchange Board of India (SEBI) under the SEBI (Alternative Investment Funds) Regulations, 2012. AIFs are classified into three categories: Category I, II, and III, based on their investment strategy and target sectors. Category III AIFs are permitted to employ complex and diverse trading strategies, including leverage through investment in listed or unlisted derivatives. For taxation purposes, AIFs are governed by sections 10(23FBA), 115UB, 161, and 164 of the IT Act. While pass-through taxation is permitted for Category I and II AIFs under section 115UB of the IT Act, Category III AIFs are subject to special treatment, particularly when structured as discretionary trusts.

In this regard, the Delhi High Court has ruled on a significant issue in the case of Equity Intelligence AIF Trust, a Category III AIF, which challenged the applicability of CBDT Circular No. 13/2014 which mandates that unless the names and beneficial interests of investors are specifically mentioned in the original trust deed, the trust would be taxed at the maximum marginal rate (MMR) under Section 164 of the IT Act. To read our detailed analysis, please go to: <https://www.bdo.in/en-gb/insights/alerts-updates/delhi-high-court-in-the-case-of-category-iii-aifs-holds-that-non-mentioning-of-investor-names>

**[Equity Intelligence AIF Trust vs. CBDT & Anr., TS-979-HC-2025 (Delhi High Court)]**

### Mumbai Tax Tribunal holds capital gains from derivatives shall be taxable in the resident country, as derivatives are distinct from shares

The taxpayer, a corporate entity, was registered under the laws of the Republic of Mauritius and held a tax residency certificate (TRC) issued by the Mauritius Revenue Authority. During FY 2021-22, the taxpayer earned income from the sale of derivatives and claimed an exemption under Article 13(4)<sup>17</sup> of the India-Mauritius DTAA. The tax officer held that the taxpayer failed the Principal Purpose Test and, accordingly, is not entitled to treaty benefits. Therefore, while passing the draft assessment order, income from derivatives was brought chargeable to tax. Aggrieved, the taxpayer raised objections before the Dispute Resolution Panel (DRP), which held that the taxpayer was entitled to the treaty benefits. However, the DRP, while holding that derivatives and shares are closely related, rejected the contention of the taxpayer that income from derivatives was exempt in India under Article 13(4) of the DTAA. Further aggrieved, the taxpayer filed an appeal before the Mumbai Tax Tribunal. The Mumbai Tax Tribunal made the following observations while ruling in favour of the taxpayer:

- As per section 2(84) of the Companies Act, 2013 (Companies Act), shares are defined as "a share in the share capital of a company and includes stock". Further, the owner of the shares has various rights, including voting rights. Although the term "derivatives" is not defined under the Companies Act, the term "securities", as defined under section 2(81) of the Companies Act, which refers to section 2(h) of the Securities Contracts (Regulations) Act, 1956, includes derivatives. Therefore, as per the Companies Act, shares and derivatives are considered separate assets.

<sup>16</sup> Article 27A (LOB clause) provides for restriction on the benefits available under Article 13 of the DTAA (Capital Gains) that a company shall not be entitled to the benefits of DTAA if the primary purpose was to take advantage of the DTAA and the company is a shell company incurring expenditure on operations of less than Mauritian Rupees 1.5 mn in Mauritius.

<sup>17</sup> Article 13(4) of the India-Mauritius DTAA provides that gains from alienation of property not covered in paras (1) to (3B) of Article 13 of the India-Mauritius DTAA shall be taxable only in the resident country.

- In general parlance, a derivative is a financial contract between parties whose value is derived from the changes in the value of underlying assets, which can be in the form of shares, bonds, commodities, interest rates and market indices. Further, a derivative contract is a complex financial product that is traded in the exchange or over the counter, allowing the investor to earn profits or incur losses without actually buying or selling the underlying asset.
- Therefore, derivatives are financial contracts that are distinct from the underlying assets. The underlying asset can be of any nature and is not restricted to shares. Furthermore, an investor is not required to own the underlying assets in order to trade in derivatives. Such derivative contracts are separate financial instruments that can be traded without buying or selling the underlying assets.
- Reliance is placed on the decision of the co-ordinate bench in the case of Vanguard Emerging Markets Stock Index Funds<sup>18</sup> wherein it was held that derivatives are distinct from shares while considering the issue of applicability of Article 13(6)<sup>19</sup> of India-Ireland DTAA to the sale of "rights entitlement".
- Further reliance is placed on the decision of the Cochin tax tribunal in K.E. Faizal<sup>20</sup> wherein the tribunal considered the different definitions of shares and securities under the Companies Act, while holding that "mutual funds" are different from shares.
- Additionally, in mutual funds, if the underlying assets are shares, then it is also treated as different from shares. Therefore, derivatives cannot be equated to shares merely because one of the underlying assets can be shares. Accordingly, the gain from the alienation of derivatives would fall within the purview of Article 13(4) of the India-Mauritius DTAA, and, therefore, the gain arising from the transfer of derivatives cannot be taxed in India.
- Section 54EC of the IT Act provides exemption against capital gains arising from the transfer of a long-term capital asset, being land or building or both, if the whole or any part of the capital gains is invested in long-term specified assets (notified bonds) within a period of 6 months from the date of transfer.
- As per section 50B of the IT Act, profits/gains arising from the slump sale of any capital asset, being one or more undertakings owned and held by the taxpayer for more than 36 months immediately preceding the date of its transfer, shall be chargeable to income tax as capital gains arising from the transfer of a long-term capital asset.
- Therefore, on conjoint consideration of sections 50B and 54EC of the IT Act, the profits/gains arising from the slump sale are held to be capital gains arising from the transfer of a long-term capital asset. Accordingly, the pre-condition under section 54EC of the IT Act that capital gains should arise from the transfer of long-term capital asset, being land or building or both, is satisfied to the extent the sale consideration received on the slump sale is linked to the "book value" of the said long-term capital asset i.e. the land or building or both.
- Further, the claim for deduction under section 54EC of the IT Act presupposes that the capital gain arises from the transfer of a long-term capital asset, being land or building or both. However, the profits/gains arising from the slump sale are chargeable to tax as capital gains arising from a long-term capital asset, except where the capital asset, i.e. undertaking, is owned and held for not more than 36 months immediately preceding the date of transfer.
- Therefore, since the sale of the unit by the taxpayer as a slump sale included land having a book value of INR 70 mn, the profits/gains from the slump sale restricted to the extent of the "book value" of the land should be allowed as a deduction under section 54EC of the IT Act.
- Additionally, the return of income filed by the taxpayer in Income Tax Return (ITR)-6 in column 2 has a provision for claiming a deduction under section 54EC of the IT Act against the full value of the consideration received on a slump sale. Therefore, the claim for deduction under section 54EC of the IT Act against the long-term capital gains arising from the slump sale is to be allowed.

**[3 Sigma Global Fund v. ACIT, ITA No. 1130/MUM/2025 (Mumbai Tax Tribunal)]**

**Hyderabad Tax Tribunal allows deduction under section 54EC of the IT Act on capital gains arising from the slump sale of an undertaking, as it included the transfer of land**

The taxpayer, a corporate entity, carried out a slump sale of its manufacturing unit, which included land having a book value of INR 70 mn and claimed a deduction under section 54EC of the IT Act against the capital gains arising from such transfer. However, the tax authorities observed that the deduction under section 54EC of the IT Act was available only on the sale of long-term capital assets, "being land or building or both". Accordingly, the tax authorities disallowed such a claim by holding that the entire business undertaking was to be considered as an "asset" for the purpose of transfer in the case of a slump sale instead of considering individual assets within the business undertaking. Consequently, in the absence of transfer of a long-term capital asset, being land or building or both, the taxpayer's claim for deduction under section 54EC of the IT Act was held to be inadmissible. Aggrieved, the taxpayer filed an appeal before the Hyderabad Tax Tribunal, which made the following observations while ruling in favour of the taxpayer:

**[Net Matrix Corp Care (P.) Ltd. v. DCIT, ITA No. 599/2025 (Hyderabad Tax Tribunal)]**



<sup>18</sup> Vanguard Emerging Markets Stock Index Fund A Series of VISPLC v. ACIT, I. T. A. No. 4657/MUM/2023 (Mumbai Tax Tribunal)

<sup>19</sup> Article 13(6) of the India-Ireland DTAA provides that gains from alienation of property not covered in paras (1) to (5) of Article 13 of the India-Ireland DTAA shall be taxable only in the resident country.

<sup>20</sup> DCIT v. K.E. Faizal, I.T.A. No. 423/CoCh/2018 (Cochin Tax Tribunal)

## INDIRECT TAX



### ITC is eligible on concrete structure to support heavy machinery for a vertical continuous vulcanization line

**In Re: M/s. KEI Industries Ltd. [TS-696-AAAR(GUJ)-2025-GST]**

#### Facts of the case

- M/s. KEI Industries Ltd. ('Taxpayer') is engaged in the manufacture and supply of extra high voltage ('EHV'), medium voltage and low voltage cables up to 400 KV. They manufacture EHV cables using the continuous catenary vulcanization process. However, they have collaborated with M/s. Brugg Kabel AG, Switzerland to manufacture EHV cables up to 400 KV using the vertical continuous vulcanization ('VCV') process by setting up a new manufacturing plant in Gujarat.
- In VCV, the process of insulation of cable cores is done in vertical tubes. VCV manufacturing line ('VCV Line') must be supported by a concrete structure in square form on all sides ('VCV Tower'). The total height of VCV Line from the ground floor would be approximately 152m and each floor inside the VCV Tower would be 12m in height up to the initial 60m - 70m and thereafter, as per the requirements of VCV Line, the height of each floor would be up to 6m.
- Passenger lifts and material handling lifts are also installed in VCV Tower along with a staircase with an emergency exit and fire hydrants on each floor. VCV Tower is used exclusively for manufacturing EHV cables and the total load on different floors is transferred through tower columns to the VCV Tower footings.
- The Taxpayer procured various inputs and input services to construct the VCV Tower and the concrete foundation required to support erection of VCV Line. In this regard, the Taxpayer approached the Gujarat Authority for Advance Ruling ('GAAR') to determine their eligibility to claim Input Tax Credit ('ITC') on procurements used for construction of VCV Tower.

- The GAAR held that the taxpayer is not eligible to claim ITC on inputs and input services used for construction of VCV Tower to support and to erect VCV Lines at its factory by relying on the Supreme Court ruling in *M/s. Safari Retreats*<sup>1</sup> and based on the following:
  - The restriction to claim ITC under section 17(5)(d) of Central Goods and Services Tax Act, 2017 ('CGST Act') is subject to the following two exceptions:
    - Construction of an immovable property which constitutes 'plant or machinery'; and
    - Construction of an immovable property made otherwise than on taxable person's own account.
 However, the Taxpayer failed to prove that VCV Tower is not constructed on their own account.
  - Circular No.219/13/2024-GST<sup>2</sup> ('Circular 219') which *inter alia* clarifies about eligibility of ITC on ducts and manholes used in the network of optical fibre cables is not applicable.
- Aggrieved by the above, the Taxpayer appealed before the Gujarat Appellate Authority for Advance Ruling ('GAAAR').

#### Contentions of the Taxpayer

- Pursuant to the Supreme Court ruling in *M/s. Safari Retreats (supra)*, section 17(5)(d) of CGST Act was amended with retrospective effect from 1 July 2017 vide section 124 of Finance Act, 2025 ('FA 2025') by replacing the phrase 'plant or machinery' referred to in that provision with 'plant and machinery', meaning thereby that the definition of 'plant and machinery' in the Explanation to section 17 of CGST Act shall apply to both sections 17(5)(c) and 17(5)(d) of CGST Act.
- The services procured by the Taxpayer for construction of VCV Tower are in the nature of works contract service. Further, inputs and input services procured for construction of VCV Tower, to support and erect VCV Line, is in the course or furtherance of their business.

<sup>1</sup> Chief Commissioner of CGST and Ors. Vs. M/s. Safari Retreats Pvt. Ltd. and Ors. [TS-622-SC-2024-GST]. Our alert on the same may be accessed by clicking [here](#).

<sup>2</sup> Dated 26 June 2024

- The VCV Tower serves as a critical foundation and support system for the manufacturing process and provides a stable base for tower components while absorbing vibrations and ensuring accurate positioning of extruder, cross head and other elements.
- ITC is not restricted where the supply involves construction of plant and machinery if:
  - It is an apparatus, equipment or machinery fixed to earth by foundation or structural support; and
  - It is used for making an outward supply of goods or services or both.
- VCV Lines which are to be set up for manufacturing of EHV cables qualify as ‘apparatus’ and hence, can be said to be ‘machinery’. Further, the second condition that plant and machinery should be used for making outward supply of goods / services also stands satisfied.
- Since VCV Lines qualify as plant and machinery, construction of VCV Tower and a foundation for VCV Lines also qualify as plant and machinery in terms of Explanation to section 17 of CGST Act. Although the construction of VCV Tower is undertaken on the Taxpayer’s own account, since the same qualifies as plant and machinery, ITC would be available.

#### Observations and ruling of GAAAR

- GAAAR has not given a particular finding on whether the VCV Tower, which is claimed by the Taxpayer as being necessary to support and erect VCV Lines, forms part of ‘plant and machinery’.
- Irrespective of whether the procurement is in the nature of a works contract or otherwise, ‘plant and machinery’ stands excluded from being blocked credit under sections 17(5)(c) and 17(5)(d) of CGST Act. While section 17(5)(d) uses the phrase ‘plant or machinery’, **vide section 124 of FA 2025, the word ‘or’ was replaced with the word ‘and’, although the same is yet to be notified.**
- On perusal of the layout of the VCV Line, it is beyond doubt that the VCV Tower is essential to support and erect VCV Lines. This is more particularly because the Taxpayer has contended that the VCV Tower serves as a critical foundation and support system for the manufacturing process and provides a stable base for tower components while absorbing vibrations and ensuring accurate positioning of extruder, cross head and other elements.
- On considering the process undertaken inside the VCV Tower at each floor and the weight of the significantly heavy components to be placed on each floor, it is agreed that the VCV Tower is essential to support and erect the VCV Lines.
- As per Explanation to section 17(5) of CGST Act, the exclusions from ‘plant and machinery’ covers land, building or any other civil structures. ‘Other civil structures’ is defined to mean civil structures other than foundation and structural support for plant and machinery.
- Thus, the moment it is held that ITC sought to be availed is on construction of foundation and structural support for plant and machinery, it moves out of the ambit of section 17(5)(c) and 17(5)(d) of CGST Act, even if such construction is on the Taxpayer’s own account.

- Consequently, the Taxpayer is eligible for availing the ITC on inputs and input services used for construction of VCV Tower to support and to erect VCV Lines at the factory of the Taxpayer for manufacture of EHV cables.
- Drawing an analogy from Circular 219 wherein it was clarified that ITC is not restricted in respect of ducts and manholes used in optic fibre cable network, it can be construed that ITC on inputs and input services used for construction of VCV Tower to support and erect VCV Lines is not restricted.
- Thus, the ruling of the GAAR is set aside in favour of the Taxpayer and the Taxpayer is eligible to avail ITC on inputs and input services used for construction of VCV Tower to support and erect VCV Lines at the factory of the Taxpayer for manufacture of EHV cables.

**Unsigned, unauthenticated Summary statement cannot be issued in lieu of SCN; Personal hearing mandatory when adverse order is being contemplated**

**Shree Arihant Logistics Pvt. Ltd. Vs. The State of Assam and Ors. [2025-VIL-803-GAU]**

#### Facts of the Case

- Shree Arihant Logistics Pvt. Ltd. (‘Taxpayer’) received a Summary of Show Cause Notice dated 28 September 2023 in **Form GST DRC-01** (‘Summary SCN’) for the period from July 2017 to March 2018 along with an attachment indicating the manner determination of tax. Since the proper show cause notice was not attached to the Summary SCN, no reply was filed by the Taxpayer.
- Consequently, the Impugned Order dated 28 December 2023 was issued in **Form GST DRC-07** on the ground that Taxpayer failed to make payment within 30 days of issue of Summary SCN.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Gauhati High Court.

#### Contentions of the Taxpayer

- As per rule 142 of the Central Goods and Services Tax Rules, 2017 (‘CGST Rules’), the notice under section 73 must be issued and a summary thereof is to be additionally issued electronically in Form GST DRC-01. Under no circumstances, the attachment to Summary SCN can be said to be a show cause notice as in the said document. There is no mention that the Taxpayer is required to show cause.
- The attachment, the Summary SCN and the Impugned Order do not contain the signature of the tax authorities and the same is contrary to rule 26 of CGST Rules which mandates that the show cause notice must be authenticated with digital signature or through E-signature as per the Information Technology Act, 2000 or verified by any other notified mode of signature or verification.
- The Telangana High Court in *M/s. Silver Oak Villas LLP*<sup>3</sup> had held that if the impugned order is an unsigned document, it loses its efficacy as per rule 26(3) of CGST Rules. Consequently, it was held that the show cause notice and impugned order are unsustainable and deserved to be set aside and quashed. Reliance was also placed on *A.V. Bhanoji Row*<sup>4</sup>, *Nkas Services Pvt. Ltd.*<sup>5</sup> and *LC Infra Projects Pvt. Ltd.*<sup>6</sup>

<sup>3</sup> M/s. Silver Oak Villas LLP Vs. The Assistant Commissioner of Service Tax [2024-VIL-281-TEL]

<sup>4</sup> A.V. Bhanoji Row Vs. Assistant Commissioner (ST) and Ors. [2023-VIL-986-AP]

<sup>5</sup> Nkas Services Pvt. Ltd. Vs. The State of Jharkhand and Ors. [2021-VIL-732-JHR]

<sup>6</sup> LC Infra Projects Pvt. Ltd. Vs. Union of India and Ors. [2019-VIL-365-KAR]

- Where an adverse decision is being contemplated by the tax authorities, there exists a requirement for providing an opportunity of being heard irrespective of whether the Taxpayer has sought such an opportunity or not. However, there is no mention whatsoever about a date for conducting a hearing in the Summary SCN and such column had been left blank.
- The use of the word ‘or’ in Section 75(4) of CGST Act between the words ‘when a request is received in writing from the person chargeable with tax or penalty’ and ‘where any adverse decision is contemplated against such person’ indicates the legislative intent to the effect that irrespective of a request made by a taxpayer, when an adverse decision is being contemplated, an opportunity for hearing is mandated.
- Reliance was also placed on the Chhattisgarh High Court ruling in *Mahindra and Mahindra Ltd.*<sup>7</sup> wherein the High Court examined the scope of section 75(4) and held that when the statute contains a mandate of hearing being synonym to natural justice, it cannot be given a go by or be made porous.

#### Contentions of the tax authorities

- The Summary SCN was accompanied by an attachment indicating the manner of determination of tax which would have provided all the details to enable the Taxpayer to submit their reply.
- As regards the lack of signatures, it was submitted that in the attachments, it is mentioned as ‘Sd-Proper Officer’. When the Summary SCN and the Impugned Order are uploaded in Forms GST DRC-01 and GST DRC-07 respectively, the same are duly authenticated on GST with digital signatures and without such authentication, the portal cannot be operated.

#### Observations and ruling of Gauhati High Court

- **Requirement to issue a proper show cause notice:**
  - *Vide* order dated 28 July 2025, the tax authorities were requested to verify whether a proper show cause notice was issued. However, no positive response was given by tax authorities.
  - The tax authority is mandated to issue a show cause notice only under the specific circumstances outlined in section 73 of CGST Act. The show cause notice must clearly state reasons and circumstances justifying its issuance under the said provision. Only then can the recipient effectively respond, particularly if they wish to challenge the applicability of section 73.
  - A combined reading of sections 73(1) to 73(4) shows that -
    - The legislature has made a clear distinction between a show cause notice and a Statement (for demands pertaining to subsequent periods). Even in respect of Statement, a separate and proper show cause notice must be issued.
    - The issuance of the show cause notice and the Statement of determination of tax are mandatory requirement in addition to the summary of show cause notice in Form GST DRC-01 and summary of statement in Form GST DRC-02.
- Relying on the ratio laid down in *Nkas Services Pvt. Ltd. (supra)* and *LC Infra Projects Pvt. Ltd. (supra)*, it was observed that merely attaching a tax determination order to the Summary SCN does not amount to valid initiation under section 73 of CGST Act. The summary is only supplementary to a full show cause notice. Since the Impugned Order is passed without a proper show cause notice, it amounts to violation of section 73 of CGST Act and rule 142(1)(a) of CGST Rules. Thus, the contention of the tax authorities that the statement attached to Summary SCN constitutes a valid show cause notice is misconceived and contrary to law.
- **Requirement of the signatures:** The Taxpayer’s contention is correct as the attachments to both Forms GST DRC-01 and GST DRC-07 lack legal value as they bear no authentication by the tax authorities, thereby violating rule 26(3) of CGST Rules based on the following:
  - Rule 26(3) of CGST Rules lays down the manner of authentication for notices, certificates and orders. However, the said rule falls under Chapter III of CGST Act which relates to Registration and not Demand and Recovery (governed by Chapter XVIII). Therefore, direct applicability of rule 26(3) to the documents issued under section 73 may be limited unless specifically extended or adopted by the relevant provisions or judicial interpretation.
  - This view is supported by Delhi High Court ruling in *Railsys Engineers*<sup>8</sup> wherein it was held that-
    - At least digital signatures must be affixed on the show cause notices and orders.
    - Unless these documents are duly authenticated by Proper Officer, they fail to meet the statutory requirements and are rendered invalid and unenforceable.
    - Section 73 of CGST Act requires that notices and orders be issued by the Proper Officer but does not prescribe any mode for authentication outside Chapter III. Since no specific rule under Chapter XVIII governs the authentication of such documents, a regulatory gap exists.
    - However, given the critical importance of authentication, until proper rules or notifications are issued by CBIC to address this gap, rule 26(3) of CGST Rules must be applied by default.
    - This would ensure that a notice, statement or order issued under the CGST Act maintains its legal validity and enforceability.
  - Reliance was placed on *M/s. Silver Oak Villas LLP (supra)* and *A.V. Bhanoji Row (supra)*.
  - The summaries issued in Forms GST DRC-01, GST DRC-02 and GST DRC-07 are merely supplementary and cannot override or replace the requirement of issuing a proper and authenticated primary document as per rule 26(3) of CGST Rules.

<sup>7</sup> Mahindra and Mahindra Limited Vs. Union of India and Ors. [2024-VIL-751-CHG]

<sup>8</sup> Railsys Engineers Pvt. Ltd. Vs. Additional Commissioner of CGST (Appeals-II) [2022-VIL-523-DEL]

- **Requirement to provide hearing:**
  - In the present case, the Taxpayer was merely asked to submit a reply without being offered a clear opportunity of personal hearing. Thus, it appears that the tax authorities may have presumed that a personal hearing was only necessary if the Taxpayer has explicitly requested for the same in their reply. However, in *Mahindra and Mahindra (supra)* it was held that even when no reply is filed by the taxpayer, the second limb of the section 75(4) of CGST Act still applies and hence, if an adverse decision is contemplated, a hearing must be granted.
  - Failure to provide personal hearing renders the second part of section 75(4) meaningless and thus, passing an adverse order without providing an opportunity of being heard in such circumstances violated both, the statutory mandate and the principles of natural justice.
  - In a situation where no reply is submitted, the tax authorities cannot proceed to pass an adverse order without granting an opportunity of hearing, as doing so would render the safeguards under section 75(4) ineffective and violate principles of natural justice
- In view of the above, the Impugned Order was set aside and as it appears that the tax authorities had proceeded under the mistaken impression that attaching the determination of tax to the Summary SCN constitutes a valid show cause notice, they are at liberty to initiate *de novo* proceedings under section 73 of CGST Act, if considered appropriate. Further, the period between the date of Summary SCN and the date of service of certified copy to the tax authorities would be excluded from the computation of limitation period under section 73(10) of CGST Act.

### Upholds the validity of show cause notice issued by Central Tax Authorities who had initiated investigation proceedings prior to State Tax Authorities

#### South Eastern Coalfields Ltd. Vs. Principal Commissioner, CGST, Raipur and Ors. [2025-VIL-805-CHG]

##### Facts of the Case

- South Eastern Coalfields Ltd. ('Taxpayer') is a registered Taxpayer *inter alia* engaged in mining activities.
- On 27 August 2021, an inspection was carried out by the Central Tax ('CT') Authorities under section 67(1) of CGST Act for non-payment of GST under Reverse Charge Mechanism ('RCM') on Development Cess and Environment Cess for the period from July 2017 to August 2021.
- On 30 August 2021, a memo was issued by CT Authorities for payment of GST under RCM to the tune of INR 1.2bn.
- Pending proceedings in respect of inspection carried out by CT Authorities, on 21 September 2021 and 13 October 2021, the Summary of Show Cause Notice in Form GST DRC-01 and the Statement in Form GST DRC-02 was respectively issued by ST Authorities ('SCN I'). SCN I was issued without issuing a Pre-Show Cause Notice in Form GST DRC-01A. A reply to SCN I was filed by the Taxpayer.
- Thereafter, the State Tax ('ST') Authorities issued another show cause notice along with summary thereof in Form GST DRC-01 on 21 February 2022 and 16 March 2022, respectively ('SCN II'). This time as well, the SCN II was issued without issuing a Pre-Show Cause Notice in Form GST DRC-01A. A reply to SCN II was filed by the Taxpayer.
- On 27 April 2022, the proceedings in respect of SCN I were dropped by ST Authorities, considering the issuance of SCN II. Further, *vide* Order dated 13 June 2022, SCN II was not proceeded with in light of the reply to SCN II filed by the Taxpayer. However, neither any reason was provided to the Taxpayer nor any adjudication was done by ST Authorities.
- Pursuant to the above, the CT Authorities issued a Pre-Show Cause Notice in Form GST DRC-01A ('Pre-SCN'). A reply to the Pre-SCN was filed by Taxpayer on 14 December 2022.
- Subsequently, a Show Cause Notice was issued by CT Authorities under section 73 of CGST Act ('SCN III') along with letters, summons and the statement of the Taxpayer's Finance Manager.
- Aggrieved by the above, the Taxpayer preferred a writ before the Chhattisgarh High Court which was dismissed by a Single Judge bench of the Chhattisgarh High Court *vide* Order dated 9 October 2023 by providing liberty to the Taxpayer to file reply to SCN III.
- Against the above order, the Taxpayer filed the present writ appeal to a Division Bench of the Chhattisgarh High Court questioning the legality, validity and correctness of the Order passed by the Single Judge bench of Chhattisgarh High Court.



### Contentions of the Taxpayer

- SCN III issued by CT Authorities is barred by section 6(2)(b) of CGST Act as SCN I and SCN II, which were already issued by ST Authorities were concluded. Reliance in this regard was placed on *G.K. Trading Company*<sup>9</sup> and *Kuppan Gounder P.G. Natarajan*<sup>10</sup>.

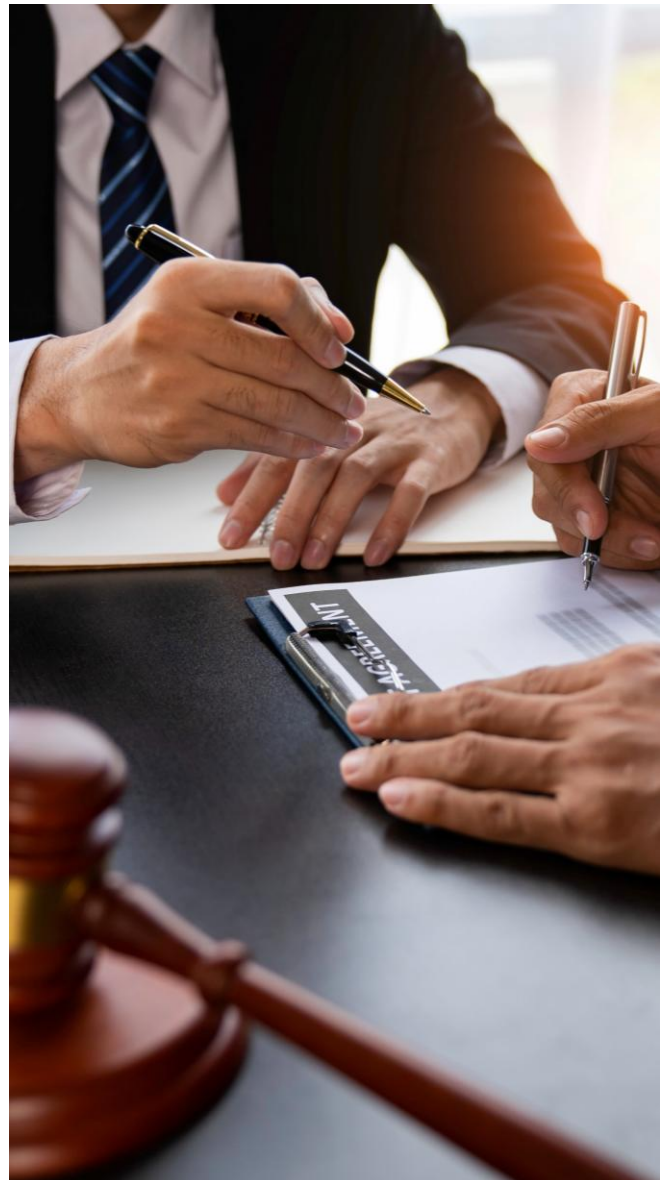
### Contentions of the tax authorities

- Inspection by CT Authorities was carried out well before the issuance of SCN I by ST Authorities.
- The Taxpayer has evaded specific pleading with respect to the date of initiation of proceedings by CT Authorities by stating that proceedings were initiated simultaneously by both CT Authorities and ST Authorities.
- Mere issuance of Form GST DRC-01 would not constitute initiation of proceedings and similarly, issuance of Form GST DRC-01 and a show cause notice without issuing Form GST DRC-01A for the period when it was mandatory to issue Pre-Show Cause Notice will not constitute proper proceedings to act as a bar under section 6(2)(b) of CGST Act.
- There is absolutely no adjudication by ST Authorities as no reason was assigned for dropping the proceedings as similar proceedings were initiated by the CT Authorities. Reliance is placed on *G.K. Trading Company (supra)* and *Sonam Berlia*<sup>11</sup>.

### Observations and ruling of Chhattisgarh High Court

- Section 6(2)(b) of CGST Act bars an officer under the CGST Act to initiate a proceeding on a subject matter in cases where the proceeding on the same subject matter has already been initiated by another officer under the State / Union Territory Goods and Services Tax Act, 2017.
- Section 6(2)(b) of CGST Act read with the letter bearing D.O.F. No. CBEC/20/43/01/2017-GST (Pt.) dated 5 October 2018 makes it apparent that -
  - The CT Authorities and ST Authorities are both entitled to initiate intelligence-based enforcement action separately and cross-empowerment of both authorities is permitted under the scheme of CGST Act.
  - Such intelligence-based enforcement action can be initiated by both CT Authorities and ST Authorities on the entire Taxpayer's base irrespective of the administrative assignment of the Taxpayer to the authority. Further, the authority which initiates such action is empowered to complete the entire proceedings of investigation, issuance of show cause notice, adjudication, recovery, filing of appeal, etc. arising out of such action.
- Reliance was placed on *G.K. Trading Company (supra)* wherein it was held that the words 'any proceeding' on the same 'subject matter' used in section 6(2)(b) of CGST Act, means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include proceedings for assessment, penalties and demand and recovery under sections 73 and 74, etc.

- Since the first proceeding was initiated by CT Authorities, the ST Authorities were not competent to initiate any proceedings. Further, the proceedings in pursuance of SCN I were closed in light of SCN II having been issued whereas SCN II was not proceeded with in view of reply filed by the Taxpayer without specifying any reason and without any adjudication proceeding including proceedings for assessment and demand and recovery under sections 73 and 74 of CGST Act. Thus, the proceeding initiated by CT Authorities was not barred by Section 6(2)(b) of CGST Act.
- It is quite apparent that CT Authorities had initiated proceedings against the Taxpayer by carrying out inspection under section 67(1) of the CGST Act and subsequently issuing SCN III.
- The Learned Single Judge had rightly dismissed the writ petition and there is no merit in the writ appeal, and hence, the same deserves to be and is accordingly dismissed.

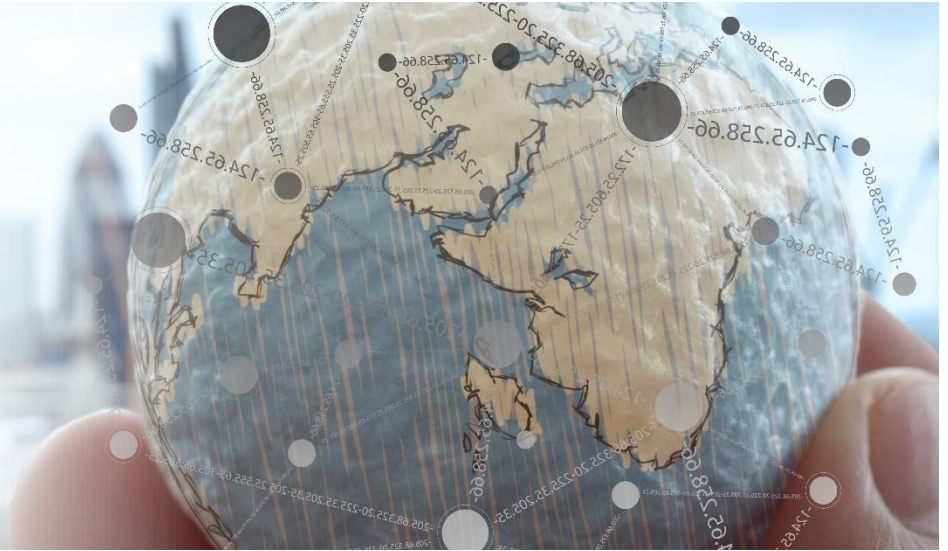


<sup>9</sup> G.K. Trading Company Vs. Union of India and Ors. [2021-VIL-12-ALH]

<sup>10</sup> Kuppan Gounder P.G. Natarajan Vs. Directorate General of GST Intelligence, New Delhi [2021-VIL-652-MAD]

<sup>11</sup> Sonam Berlia Vs. State of Odisha [2021-VIL-641-ORI]

## TRANSFER PRICING



### ITAT (Bench): Confirms CIT(A)'s Elimination of Transfer-Pricing Adjustment on Management Fee Payment

#### Background of the Case:

The taxpayer is a wholly owned subsidiary of IACNA Mauritius Ltd., engaged in designing and manufacturing automotive interior systems, and entered into various international transactions with its Associated Enterprises (AEs) during Assessment Year (AY) 2013-14. One such transaction involved payment of INR 3.32 crores as management fees to IAC (Shanghai) Management Co. Ltd. for commercial, operational, HR, and finance-related support services. The taxpayer benchmarked the payment under the Transactional Net Margin Method (TNMM), selecting the AE as the tested party, and claimed the markup of 5% was in line with market standards.

#### TPO's Findings and Adjustment

The Transfer Pricing Officer (TPO) rejected the TNMM, chose the "Other Method" under Rule 10AB, and determined the Arm's Length Price (ALP) at NIL. The TPO argued that the taxpayer failed to prove the actual receipt of services or quantify the benefits, that the services resembled "shareholder activities," and that cost allocation lacked a proper basis. No comparable uncontrolled transaction was provided to substantiate the NIL valuation. The final assessment order incorporated this upward adjustment.

#### Commissioner of Income Tax (Appeals) [CIT(A)]'s Decision

On appeal, the CIT(A) deleted the adjustment, holding that the taxpayer:

- Had a valid service agreement detailing service scope and fee computation.
- Demonstrated that the 5% markup was comparable to industry PLI in the Asia-Pacific region.

- Provided detailed cost allocation workings, AE employee roles, invoices, and over 200 pages of emails evidencing services rendered.

The CIT(A) criticised the TPO for invoking "Other Method" without comparable data, rejecting the "shareholder activity" classification, and ignoring consistent treatment of this transaction in subsequent years where no TP adjustment was made. The fact that the AE declared the income in India and TDS was duly paid further supported the taxpayer's position.

#### Revenue's Appeal Before Income Tax Appellate Tribunal (Tax Tribunal)

The Revenue challenged the use of AE as the tested party, citing functional differences and different accounting periods; disputed the finding that services were not shareholder activities; objected to excluding TDS from the markup; and claimed that reliance on agreements, sample emails, and invoices was insufficient proof of service receipt.

#### Tax Tribunal's Observations

The Tax Tribunal upheld the CIT(A)'s order, observing that the TPO failed to meet the requirements of Rule 10AB, as no comparable uncontrolled transaction was produced to justify the NIL ALP. It reiterated that the TPO's jurisdiction is limited to ALP determination and does not extend to assessing commercial expediency or business necessity, citing *EKL Appliances* and other precedents. The Tribunal noted that substantial documentary evidence supported the taxpayer's claims, and consistent acceptance of similar transactions in subsequent years strengthened its case.

#### Final Outcome

The Tax Tribunal dismissed the Revenue's appeal, confirming that the management fee payment was at arm's length and that the TPO's NIL ALP determination was unsustainable. The deletion of the INR 3.32 crore TP adjustment was upheld in full.

*IAC International Automotive India Private Limited [TS-397-ITAT-2025(PUN)-TP]*

## ITAT (Chennai Bench): Upholds CIT(A)'s Determination – Recognises Philips Foods India Pvt. Ltd. as the 'Tested Party' and Applies APA-Derived Margin

### Background:

The taxpayer, a captive contract manufacturer engaged in processing and exporting crab meat to its Associated Enterprise (AE), filed its return for Assessment Year (AY) 2015-16. The Transfer Pricing Officer (TPO) rejected the taxpayer's benchmarking, adopted the foreign AE as the tested party, and made an upward adjustment of INR 13.98 crores, which was incorporated in the final assessment order.

### Commissioner of Income Tax (Appeals) (CIT(A)) Ruling:

The taxpayer has filed an appeal before CIT(A) against the final assessment order. On appeal, the taxpayer furnished a Unilateral Advance Pricing Agreement (APA) entered into with the Central Board of Direct Taxes (CBDT) for AYs 2021-22 to 2025-26, under which the taxpayer was accepted as the tested party with a 4.5% operating profit-to-operating cost margin. The CIT(A) held that the same margin should apply for AY 2015-16, given that the taxpayer's functions and transactions were identical in both periods, thereby reducing the TP adjustment to INR 4.15 crores.

### Revenue's Contentions:

The Revenue argued that APA terms could not be applied to non-APA years, citing section 92CA(4), and that Rule 46A procedures were breached as the APA was new evidence not available during assessment.

### Income Tax Appellate Tribunal (Tax Tribunal) Findings:

The Tax Tribunal noted that the taxpayer's business profile and transactions remained unchanged and referred to judicial precedents allowing APA margins to be applied to prior years when facts are consistent. It found the CIT(A)'s approach reasonable and dismissed the Revenue's appeal.

### Cross-Objection:

The taxpayer's cross-objection alleging limitation and procedural defects was dismissed as infructuous, as no specific arguments were advanced.

### Outcome:

Both the Revenue's appeal and the taxpayer's cross-objection were dismissed, upholding the application of the APA margin for AY 2015-16.

*Phillips Foods India Pvt. Ltd [TS-404-ITAT-2025(CHNY)-TP]*

## Appeals Tribunal Favours Rejects recharacterisation of expense reimbursement as business support services sans mark-up

The Appellant in this case engaged in the business of distribution of ethical pharmaceutical products developed, patented and manufactured by other related parties, rendering clinical trial services on a contractual basis for its holding company, and provision of business support services (BSS) to its Associated Enterprises (AEs).

The case of the Appellant for the Assessment Year (AY) 2020-21 was referred to the Transfer Pricing Officer (TPO) by the Assessing Officer (AO) to compute the Arm's Length Price (ALP) in relation to international transactions carried out by the taxpayer with its Associated Enterprise (AE). The TPO proposed the primary adjustment:

- Recharacterising the recovery of expenses of INR 1.92 crore from Associated Enterprises (AEs) as provision for Business Support Services- INR 21.44 Lakhs.

The total proposed adjustment amounted to INR 21.44 Lakhs. The Appellant contested these adjustments before the Dispute Resolution Panel (DRP). The DRP did not accept the objections, and subsequently, the matter was taken before the Income Tax Appellate Tribunal (Tax Tribunal).

### Issue 1: Recharacterising the recovery of expenses as a provision for Business Support Services

#### ▪ Facts:

For the AY 2020-21, the Appellant raised a debit note on its AEs for the recovery of certain expenses incurred on their behalf. Owing to an inadvertent clerical error, the narration in the said debit note described the transaction as pertaining to "business support services" instead of "reimbursement of expenses". Notably, the column for "mark-up" was clearly stated as "NIL". As per the inter-company agreement, mark-up is leviable only on BSS transactions, whereas pure reimbursements are passed on at cost without mark-up.

#### ▪ TPO's Objection:

The TPO relying solely upon the nomenclature in the debit note, recharacterised the transaction as BSS, applied a mark-up of 11.17%, and proposed an upward transfer pricing adjustment amounting to INR 21.44 Lakhs, which was confirmed by the Assessing Officer pursuant to directions of the DRP.

#### ▪ Appellant's Contention:

The Appellant argued that the debit notes, which mistakenly referenced "business support services", were in fact only for the reimbursement of actual expenses incurred on behalf of AEs, with no markup applied. This was substantiated by the fact that the "markup" column in the debit notes was explicitly marked as "Nil".

As a secondary point, the Appellant also demonstrated that even if the recharacterisation was accepted, the revised markup for the BSS segment will be 10.18% would still fall within the arm's length range determined by the TPO i.e., 4.03% to 14.23% with median of 5.33%, so no TP adjustment would be warranted in any event.

#### ▪ Tax Tribunal analysis and conclusion:

The Tribunal examined the documentation and found that despite the mislabelling of the debit note, the absence of any markup clearly indicated that no profit element was involved, thus distinguishing these payments from actual BSS. The Tribunal concluded that the payments were merely expense reimbursements and not BSS transactions. The absence of a markup was decisive evidence, even if the debit note was misfiled.

The Tribunal also noted that, even if the reimbursements in question are treated as business support services, the profit margin would still fall within the acceptable arm's length range set by the TPO. Therefore, even if this reclassification is accepted, no transfer pricing adjustment would be needed.

In conclusion, the Tribunal found no legal or factual basis for the transfer pricing adjustment and, relying on the substance of the transactions, deleted the impugned addition. Thus, the appeal of the appellant was allowed in full.

*[Eli Lilly & Company (India) Pvt. Ltd [TS-411-ITAT-2025(DEL)-TP]*

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## CONTACT US

For any content related queries, you may please write to the service line experts at [accountingadvisory@bdo.in](mailto:accountingadvisory@bdo.in)

For any other queries or feedback, kindly write to us at [marketing@bdo.in](mailto:marketing@bdo.in)

## BDO INDIA OFFICES

### Ahmedabad

Westgate Business Bay, Floor 6  
Office No. 601, Block A, S.G. Highway  
Makarba, Ahmedabad 380051, INDIA

### Bhopal

Floor 3, Pradhan Business Center  
Ansal Pradhan Enclave, E 8 Arera  
Colony Near Dana Pani Square,  
Bhopal 462026, INDIA

### Coimbatore

Pacom Square, Floor 3, 104/1, Sakthi  
Main Road, Bharathi Nagar, Ganapathy  
Coimbatore 641006, INDIA

### Goa

BIZ - Nest, Floor 7  
A Wing, Sunteck Corporate Park  
Opp. Shram Shakti Bhavan, Patto  
Panaji, Goa 403001, INDIA

### Kolkata

Floor 4, Duckback House  
41, Shakespeare Sarani  
Kolkata 700017, INDIA

### Mumbai - Office 3

Floor 20, 2001 & 2002 - A Wing, 2001-  
F Wing Lotus Corporate Park, Western  
Express Highway, Ram Mandir Fatak Road,  
Goregaon (E) Mumbai 400063, INDIA

### Pune - Office 2

Floor 2 & 4, Mantri Sterling, Deep Bungalow  
Chowk, Model Colony, Shivaji Nagar  
Pune 411016, INDIA

### Bengaluru - Office 1

Prestige Nebula, Floor 3  
Infantry Road  
Bengaluru 560001, INDIA

### Chandigarh

Plot no. 55, Floor 5  
Industrial & Business Park  
Phase 1, Chandigarh 160002, INDIA

### Delhi NCR - Office 1

Magnum Global Park, Floor 21, Archview  
Drive, Sector 58, Golf Course Extn Road  
Gurugram 122011, INDIA

### Hyderabad

1101/B, Manjeera Trinity Corporate  
JNTU-Hitech City Road, Kukatpally  
Hyderabad 500072, INDIA

### Mumbai - Office 1

The Ruby, Level 9, North West &  
South East Wings, Senapati Bapat Marg  
Dadar (W), Mumbai 400028, INDIA

### Mumbai - Office 4

2nd floor, Empire Complex  
414, Senapati Bapat Marg  
Lower Parel West,  
Mumbai 400013, INDIA

### Vadodara

1008, Floor 10, "OCEAN", Sarabhai  
Compound, Nr. Centre Square Mall,  
Dr. Vikram Sarabhai Marg Vadodara  
390023, INDIA

### Bengaluru - Office 2

SV Tower, No. 27, Floor 3 & 4  
80 Feet Road, 6th Block, Koramangala  
Bengaluru 560095, INDIA

### Chennai

Olympia Cyberspace, Floor 10, Module 4  
No: 4/22 Arulayiammanpet, SIDCO Industrial  
Estate Guindy, Chennai 600032, INDIA

### Delhi NCR - Office 2

Windsor IT Park, Plot No: A-1  
Floor 2, Tower B, Sector 125  
Noida 201301, INDIA

### Kochi

XL/215 A, Krishna Kripa  
Layam Road, Ernakulam  
Kochi 682011, INDIA

### Mumbai - Office 2

601, Floor 6, Raheja Titanium, Western  
Express Highway, Geetanjali Railway  
Colony, Ram Nagar Goregaon (E),  
Mumbai 400063, INDIA

### Pune - Office 1

Floor 6, Building No. 1  
Cerebrum IT Park, Kalyani Nagar  
Pune 411014, INDIA

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