



# ACCOUNTING, REGULATORY & TAX NEWSLETTER

VOLUME 106

[www.bdo.in](http://www.bdo.in)

November 2025



## TABLE OF CONTENTS

▶ Accounting Updates	01
▶ Regulatory Updates	07
▶ Tax Updates	
▪ Direct Tax	09
▪ Indirect Tax	14
▪ Transfer Pricing	19

## ACCOUNTING UPDATES



### ACCOUNTING UPDATES

Institute Of Chartered Accountants Of India (ICAI)

#### **Expert Advisory Committee (EAC) Opinion: Accounting treatment of expenditure towards Special Development Plan (SDP) by the Company, under the Ind AS framework.**

The Company, a wholly owned undertaking of the Government of Karnataka ('GoK'), established as a Special Purpose Vehicle with the core objective of implementing irrigation and drinking water projects in drought-prone areas of various districts of Karnataka, is being transferred certain projects for expeditious implementation for which it receives financial assistance by budgetary support from GoK. Apart from these projects, the Company executes Special Component Plan (SCP) & Tribal Sub Plan (TSP) works and Special Development Plan (SDP), which also works through specific budgetary allocations.

In the Special Development Plan ('SDP'), grants received to execute the SDP are treated as "advances against equity," and consequently shares allotted to GoK. The work performed under the SDP project by the Company consists of the construction of barrages, check dams, roads, bridges, and community halls, improvement to roads, repairs of existing barrages, etc and the expenditure incurred for these works undertaken is treated as revenue expenditure and charged to Statement of Profit and Loss. Further, the capital assets (tangible and intangible) created under SDP are handed over to GoK upon completion.

The Statutory auditors, however, contended that since the nature of work is capital in form, treating capital expenditure as revenue expenditure violates the fundamental accounting assumptions. Conversely, the Comptroller and Auditor General (C&AG) opined that the Company is merely acting as an executing agency and does not create its own assets; the expenditure incurred was not capital in nature.

The EAC considered the issue and observed as follows – the Conceptual Framework for Financial Reporting under Ind AS issued by ICAI requires that an asset could be recognised only when there is: (a) a right; (b) potential to produce economic benefits by using that right; and (c) control over the right as a resource. In the extant case, the Company does not own or exercise control over the assets created by SDP, it does not have the ability to direct the use of the assets created under SDP or prevent other parties from directing their use or obtain economic benefits from them. Accordingly, the Company has neither right nor control over the resources created nor any potential for future economic benefits from the expenditure incurred or the resources created

The EAC concluded that the accounting treatment followed by the Company of treating the expenditure on construction of barrages, other civil infrastructures on SDP, not owned by the Company, as a revenue expenditure with a debit to the Statement of Profit and Loss account is appropriate.

## REGULATORY UPDATES

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

#### Handbook on Certificates by Chartered Accountants: Comprehensive Checklists & Formats

The publication released by ICAI provides comprehensive guidance on audit procedures, essential elements of certificates, relevant standards and ethical considerations, a checklist of certificates, FAQs on certificates by UDIN Directorate and illustrative certificate formats.

#### Technical Guide on Disclosure and Reporting of Key Performance Indicators ('KPIs') in Offer Documents (Revised 2025)

ICAI has released the revised "Technical Guide on Disclosure and Reporting of Key Performance Indicators (KPIs) in Offer Documents", considering the recent amendments introduced through the Industry Standards Forum ('ISF') KPI Standards, effective from 1 April 2025.

Developed in consultation with SEBI, the publication aims to provide guidance on key regulatory and reporting aspects, ensuring consistency and quality in financial reporting practices. The revised Guide aims to assist members in disclosing and reporting KPIs in alignment with SEBI's ICDR Regulations and the ISF KPI Standards, to enhance transparency and uniformity in IPO-related disclosures.

#### Updates on Corporate Laws (July-September 2025)

The Corporate Laws & Corporate Governance Committee of ICAI has released a publication titled "Updates on the Corporate Laws" for the period July to September 2025, which summarises recent developments and amendments in the corporate regulatory framework. The publication compiles key regulatory updates issued by the Ministry of Corporate Affairs and the Securities and Exchange Board of India during the quarter.

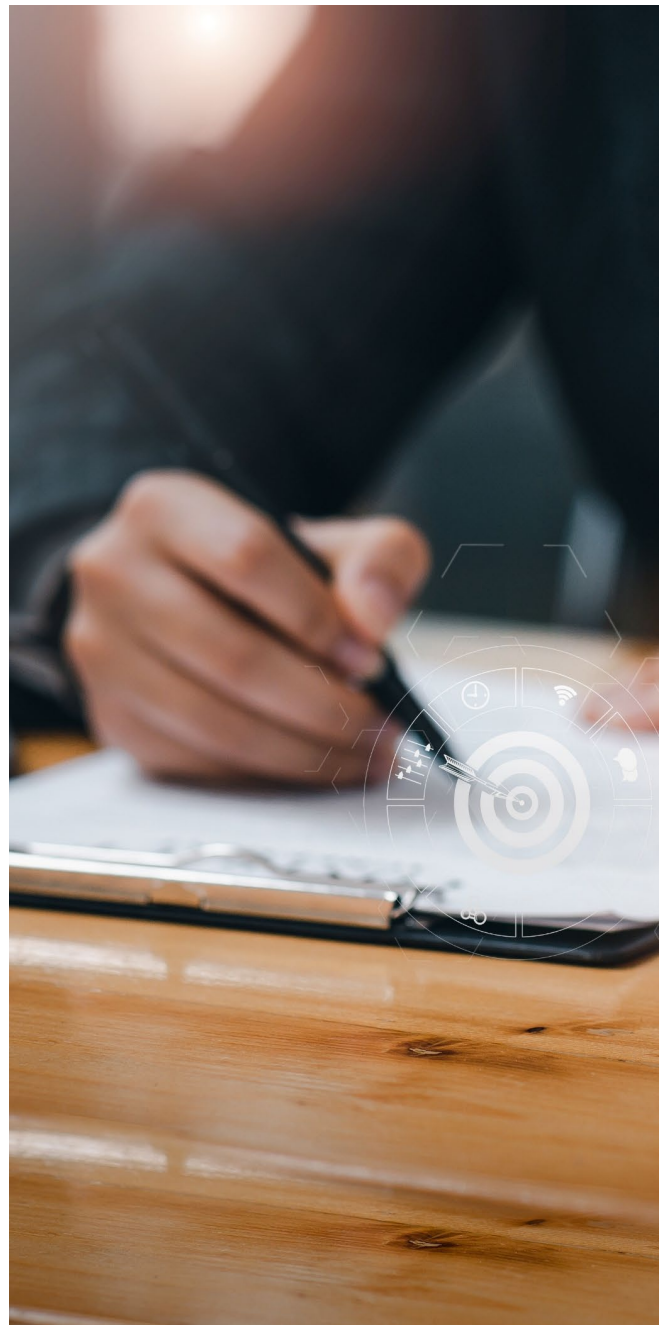
#### Addendum to FAQs on UDIN, 5th Edition

ICAI released the Addendum to FAQs on UDIN, 5<sup>th</sup> edition. The document *inter alia* clarifies that the Modified report on internal control over Financial Reporting and Audit Trail reporting under Legal and regulatory requirements does not require reporting under UDIN functionality. Further, it clarifies – for Clause 3(b) of Form 3CB, an audit opinion is to be given on the financial statements; in these cases, details of the audit opinion on the financial statement are to be provided while generating UDIN. But in the case of Clause 3 of Form 3CA and Clause 5 of Form 3CB, it requires an audit opinion on particulars given in Form 3CD. In these cases, the mandatory field for "Opinion on Financial Statements" in the UDIN portal may not apply.

Additionally, the document clarifies that, while generating UDIN, the option "No" is to be selected only where a true and fair view of the financial statements is not required. Also, an auditor's opinion is not required in case of concurrent audit/ stock audit/ revenue audit/ Internal audit/ valuation report/ system audit/ compilation engagements under SRS 4410.

#### Exposure Draft: 13th edition of ICAI Code of Ethics - Request for Comments

ICAI has released the Exposure Draft for the 13th edition of the ICAI Code of Ethics. The proposed revisions aim to update and enhance the ethical framework for Chartered Accountants, ensuring continued adherence to professional integrity, independence, and accountability in practice and business. The draft is divided into three volumes and proposes significant changes across several key areas: Volume I (Aligned with IESBA Code), Volume II (Domestic Provisions), Volume III (Guidelines on Ethical Issues, 2025). Comments and feedback from stakeholders are invited until 26 November 2025 and may be submitted via email or through the online submission form.



## Securities and Exchange Board of India (SEBI)

### Minimum information to be provided to the Audit Committee and Shareholders for approval of Related Party Transactions

SEBI, through circular dated 13 October 2025, has relaxed 'minimum information to be provided to the Audit Committee and shareholders for the approval of RPTs; for listed entities. These modifications, aimed at reducing compliance burden for low-value transactions, are effective immediately.

Key highlights include:

- Relaxation from comprehensive Industry Standards for RPT disclosures where transaction value is less than or equal to 1% of annual consolidated turnover or Rs. 10 crores, whichever is lower.
- Exemption from Industry Standard disclosures for RPTs not exceeding INR 1 crore in a financial year.
- In relaxed cases: Simplified disclosure format (Annexure-13A) specified for minimum information to the Audit Committee and shareholders for approval of related party.
- All other provisions of the SEBI Master Circular and the 26 June 2025 circular remain unchanged.

This circular shall come into effect immediately

### Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper

SEBI, through a Master Circular issued on 15 October 2025, has consolidated multiple circulars related to the issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities, and Commercial Paper.

The master circular is intended to provide issuers and market stakeholders with a single reference point for all applicable regulations and procedural guidance.

This Master Circular incorporates provisions up to 30 June 2025 and comes into effect immediately. Caveat of immunity from the rescinded circular has been incorporated in this master circular. Recognised Stock Exchanges, Depositories, SEBI-registered intermediaries, and issuers are directed to communicate and create awareness among stakeholders about the Master circular and comply with the conditions laid down in the circular.

### Consultation paper for review of LODR Regulations - clarification regarding the timeline for transfer of unclaimed amount by an entity having listed non-convertible securities

SEBI has proposed to amend Regulation 61A(3) of the SEBI (LODR) Regulations, 2015, to bring it in line with Section 125(2) of the *Companies Act, 2013* and Rule 3(3) of the *IEPF Rules*. Currently, any unclaimed amount lying in an escrow account must be transferred to the IEPF after seven years, irrespective of whether the instrument has matured.

The proposed amendment clarifies that such transfers should take place only after seven years from the maturity date of the instrument, ensuring better alignment with the intent of the law. The rule that no interest shall be payable on amounts transferred to the IEPF will remain unchanged.

### Consultation paper on Relaxation in the threshold for identification of High Value Debt Listed Entities ('HVDLEs') and measures facilitating ease of doing measures for HVDLE, including provisions relating to Related Party Transactions

SEBI has released a consultation paper proposing amendments to the Listing Obligations and Disclosure Requirements ('LODR') Regulations, specifically applicable to HVDLEs. The primary proposal is a massive relaxation in the identification threshold for HVDLEs, raising it from INR 1,000 crores to INR 5,000 crores of listed outstanding non-convertible debt, which would exempt many entities from the stricter Chapter VA requirements. Change in financial terminology from 'income' to 'turnover' while defining Material Subsidiary Thresholds. Relaxations in the requirement for replacement by a new independent director in case of resignation/ removal shall not apply if HVDLE complies with the obligation with respect to independent directors. Exemption from the requirement of approval of shareholders for the sale of assets of a material subsidiary to another subsidiary, as long as the assets are within the group. An additional 3 months for filling up the vacancy of KMPs, subject to at least one full-time KMP for companies coming out of the corporate insolvency resolution process. Relaxation by removing the compliance requirement of disclosure of material transactions with related parties, along with the periodic compliance report of HVDLE, and replacing the timelines of 21 days for HVDLEs to submit the periodic compliance report with an enabling provision for the Board to prescribe timelines. Harmonisation of related party transaction provision and inclusion of provision relating to appointments, reappointment, removal and disqualifications for Secretarial Auditor for HVDLE. Exclusion of time taken for regulatory, statutory or government approvals from the timeline specified for obtaining shareholder approval for the appointment or reappointment of a director of a listed entity. Exemption from obtaining shareholder approval for nominee directors of financial sector regulators or those appointed by the Court or Tribunal, and extending the timeline of 3 months to fill up vacancies in board-appointed committees.

Comments from the public and stakeholders are invited until 1 November 2025, and may be submitted through the online web-based form available on the SEBI website



## Reserve Bank of India (RBI)

### RBI issues Draft Directions pursuant to Policy Announcement

RBI, in line with its Statement on Developmental and Regulatory Policies dated 1 October 2025, has released two important draft Directions for public comments:

- Draft RBI (Scheduled Commercial Banks - Capital Charge for Credit Risk - Standardised Approach) Directions, 2025

The draft proposes enhanced capital norms through refined risk weights for corporates, MSMEs, real estate, and credit card transactors, along with changes to off-balance sheet exposures and rating-linked risk weights. These revisions are expected to rationalise and potentially ease capital requirements for banks.

- Draft RBI (Scheduled Commercial Banks & All India Financial Institutions - Asset Classification, Provisioning and Income Recognition) Directions, 2025

The draft introduces an Expected Credit Loss (ECL) framework with defined staging criteria and prudential floors, aligning Indian banking practices with global standards. It seeks to strengthen credit risk management with minimal capital impact, supported by a phased five-year transition plan.

Comments and feedback from stakeholders have been invited by 30 November 2025.

### International Trade Settlement in Indian Rupees (INR)

RBI, through a master circular dated 3 October 2025, had permitted Authorised Dealer Category-I banks to allow surplus balances in Special Rupee Vostro Accounts to be invested in non-convertible debentures (NCDs), bonds, and commercial papers issued by Indian companies, subject to prescribed guidelines and limits under the referenced circular.

The aim is to facilitate broader utilisation of INR balances for trade settlement purposes. This is in addition to the previously allowed investments in Government securities and Treasury Bills, as per Circular No. 10 dated 11 July 2022.

### Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Seventh Amendment) Regulations, 2025

RBI, through a notification under FEMA, has issued the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Seventh Amendment) Regulations, 2025. These amendments are effective from the date of publication in the Official Gazette.

Key highlights include:

- Definition of 'International Financial Services Centre (IFSC)' has been formally introduced into the regulations.
- Exporters resident in India are permitted to open and maintain foreign currency accounts with banks outside India for receiving export proceeds and advance payments.
- Funds in such foreign currency accounts must be either utilised for imports or repatriated into India within three months for accounts in IFSCs or by the next month for accounts in other jurisdictions.
- The permitted foreign currency accounts "permitted to be opened outside India/abroad" can also be opened in an IFSC.

### RBI (Investment in AIF) Directions, 2025

RBI has issued revised circulars prescribing updated regulatory guidelines for investments by Regulated Entities ('REs') in Alternate Investment Funds ('AIFs'). Under new provisions, no RE shall individually contribute more than 10% of the corpus of an AIF scheme, and the collective contribution by all REs in any AIF scheme shall not exceed 20% of the corpus of that Scheme.

In case RE invests more than 5% of an AIF scheme that subsequently makes downstream investments (other than equity) in the RE's debtor company, the RE should make full provision for its proportionate investment, subject to a cap equivalent to its direct exposure to that debtor, and notwithstanding the above in case RE contribution is in the form of subordinate units, then entire investment from its capital funds shall be deducted- proportionately from both Tier-1 and Tier-2 capital.

These directions will come into effect from 1 January 2026, or from an earlier date if adopted by an RE based on its internal policy

### RBI issues Draft Directions pursuant to Policy Announcement

In continuation of its Statement on Developmental and Regulatory Policies released on 1 October 2025, the RBI has issued a set of draft Directions.

- Draft RBI (Commercial Banks - Capital Market Exposure) Directions, 2025 and the Draft RBI (Small Finance Banks - Capital Market Exposure) Directions, 2025

The proposals seek to bring greater discipline to how banks participate in capital markets and provide acquisition finance. Under the draft framework, a bank's total direct investment in capital markets and acquisition finance would be limited to 20% of its Tier 1 capital, while the overall capital market exposure (direct and indirect) would be capped at 40% of Tier 1 capital.

- Draft RBI (NBFC - Scale Based Regulation) Amendment Directions, 2025

Proposes a new sub-category – "High-Quality Infrastructure Projects". The draft also refines risk weight norms by factoring in the borrower's repayment history.

Comments on draft directions may be submitted by 21 November 2025.



## OTHER REGULATORY MATTERS

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

#### Insurance Regulatory and Development Authority of India (Insurance Fraud Monitoring Framework) Guidelines, 2025

IRDAI issued the Insurance Fraud Monitoring Framework Guidelines, 2025, dated 9 October 2025. The Guidelines are issued under the powers conferred by the Insurance Act, 1938 and the IRDAI Act, 1999, to establish a comprehensive regulatory framework for insurers and distribution channels to deter, prevent, detect, report, and remedy fraud risks effectively across the insurance industry.

Applicable to all insurers and distribution channels from 1 April 2026, the Guidelines mandate insurers to adopt a Board-approved Anti-Fraud Policy and constitute a Fraud Monitoring Committee ('FMC') and a Fraud Monitoring Unit ('FMU'). These bodies will oversee the implementation of a robust Fraud Risk Management Framework, ensure periodic risk assessments, and facilitate collaboration with industry bodies and enforcement agencies.

The Guidelines also emphasise the need for a strong cyber fraud prevention mechanism, active participation in the Insurance Information Bureau (IIB) fraud monitoring database, and mandatory training and awareness programs for employees and policyholders. IRDAI has repealed the earlier Insurance Fraud Monitoring Framework issued in January 2013.

### National Stock Exchange of India (NSE), BSE Ltd (BSE)

#### Submission of Half-yearly Net Worth Certificate as on 30 September 2025

BSE Trading Members must submit their Net Worth Certificate and Computation as of 30 September 2025, via the BSE Electronic Filing System (BEFS).

- The deadline for Members using the margin trading facility is 15 November 2025, while the deadline for all other Members is 30 November 2025.
- No extensions will be granted. Submissions must comply with the Net worth requirements as per SEBI notification dated 23 February 2022, and Exchange notice dated 23 January 2024.

#### Extension of time for submission of Annual Audited Net Worth Certificate, Auditor's Report & Audited Annual Accounts for the financial year ended on 31 March 2025

Citing the MCA circular no 06/2025 dated 17 October 2025, that extends the due date for filing financial statements and annual return under the Companies Act, 2013 for the FY 2024-25 from 31 October 2025, to 31 December 2025, the BSE, NSE and NSE Clearing Ltd have extended their due dates for their members to submit Annual Returns and related documents through respective online portals to on or before 31 December 2025. The Exchanges have reiterated that non-submission /delayed Submission shall attract penalty / disciplinary actions.

### Ministry of Labour and Employment

#### Launch of EPFO's Employees' Enrolment Scheme - 2025

Ministry of Labour and Employment vide notification dated 10 October 2025 introduced Employees' Provident Funds (Amendment) Scheme, 2025, coined as "Employees' Enrolment Campaign, 2025", which shall come into force on 1 November 2025 and cease on 30 April 2026

Key highlights of the Scheme inter alia are as follows:

- Enabling Employers covered / not covered under the EPF Act, including those under EPFO inquiry to regularise existing and eligible employees joined between 1 July 2017 and 31 October 2025, provided employees are active in employment, by paying the employer's share, interest and minimal damage with waiver of the employee's share.
- Declarations must be made via the EPFO portal.
- The Scheme provides for employer obligations towards registration and contribution towards the employer share if not previously deducted.
- Employees left the organisation -Suo motu action will be avoided based on the declaration and undertaking that no dues are pending for deposit in EPFO as per norms.
- Scheme applies even if inquiries under Section 7A, Para 26B, or Para 8 of EPS 1995 are pending; however, no case pertaining to prior to 1 July 2017 are to be covered in the Scheme.
- Employers registering or declaring additional employees under the Employees' Enrolment Campaign, 2025, enrolled via the Scheme can avail Pradhan Mantri-Viksit Bharat Rojgar Yojana (PM-VBRY) incentives for new employment; however, registration should be within 6 months from the date of declaration, i.e. up to 31 July 2027.
- Benefits shall commence under PM-VBRY if the eligibility criteria are met.

Employers registering or newly declared employees will be waived from employee contribution for the period 1 July 2017 to 31 October 2025, if not deducted from wages earlier and a nominal penalty of INR 100 for defaults.



## Ministry of Corporate Affairs (MCA)

### Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2025

MCA has notified on 1 October 2025, the Investor Education and Protection Fund ('IEPF') Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2025. The rule shall come into effect from 6 October 2025. The rule aims to amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. The amendment substitutes Form No. IEPF-5 with a new version, aimed at streamlining the process related to refund claims from the IEPF.

### Relaxation of additional fees and extension of time of Financial Statements and annual returns under the Companies Act 2013

In view of the recent revision and deployment of several annual filing forms on the MCA-21 V3 portal and considering the time required for companies to familiarise themselves with the updated filing process as well as stakeholder representations, MCA vide General Circular has granted relaxation from payment of additional fees for annual filings pertaining to the financial year 2024-25 for filings up to 31 December 2025.

However, MCA has clarified that the circular does not extend the statutory timeline for holding Annual General Meetings (AGMs). Companies remain bound by the AGM provisions under the Companies Act, 2013, and any failure to adhere to the statutory timelines shall continue to attract legal consequences under the Act.

### Waiver of Additional fees of CRA-4 for FY 2024-25 up to 31-12-2025

- Companies filing Form CRA-4 for the year ended 31.03.2025 by or before 31 December 2025 will not be required to pay any additional fees.
- Filings made after 31 December 2025 will attract normal and additional fees as prescribed under the Companies (Registration Offices and Fees) Rules, 2014 and other relevant provisions.



## REGULATORY UPDATES



### REGULATORY UPDATES:

#### Securities and Exchange Board of India (SEBI)

##### **Circular dated 30 October 2025: Further extension of timeline for mandatory implementation of systems and processes by Qualified Stockbrokers (QSBs) with respect to T+0 settlement cycle**

The Securities and Exchange Board of India (SEBI) has further extended the implementation timeline for Qualified Stock Brokers (QSBs) to operationalise systems for the optional **T+0 rolling settlement cycle** in the equity cash market.

Earlier, SEBI's circular dated 10 December 2024 had introduced the optional T+0 settlement alongside the existing T+1 cycle. QSBs meeting the prescribed criteria as of 31 December 2024 were required to ensure system readiness by 1 May 2025.

Subsequently, the deadline was extended to 1 November 2025, through SEBI's circular dated 29 April 2025.

The latest circular acknowledges ongoing challenges faced by QSBs in readiness for the November deadline and grants an additional extension for the mandatory implementation to ensure smooth adoption of the T+0 settlement cycle. Further details on the new timeline and guidelines will be communicated in due course.

SEBI has advised all Market Infrastructure Institutions (MIIs) to put in place the necessary systems to support T+0 settlements, amend their byelaws, rules, and regulations accordingly, and inform market participants (including investors) by publishing the circular details on their websites.

All other provisions outlined in SEBI's earlier circular dated 10 December 2024 remain unchanged.

##### **Circular dated 30 October 2025: Enabling Investment Advisers to Provide Second Opinion on Assets under Pre-Existing Distribution Arrangement**

The Securities and Exchange Board of India (SEBI) has issued a circular dated 30 October 2025, allowing registered Investment Advisers (IAs) to provide paid second opinions on client assets held under pre-existing distribution arrangements. Earlier, any portion of Assets Under Advice (AUA) held with another distributor could not be charged fees, which limited the ability of IAs to offer independent advice.

Following industry representations highlighting the need for clients to access second opinions, SEBI has revised the framework. IAs may now charge fees under AUA mode for such assets, capped at 2.5% per annum of the asset value. In these cases, IAs must disclose and obtain client consent on an annual basis, making clients aware that, in addition to advisory fees payable to the IA, costs toward the distributor may continue.

The circular takes immediate effect and aims to provide investors greater flexibility to seek independent advice without altering their existing holdings. It also allows IAs to expand their services and monetise advisory expertise within a regulated and transparent framework. This update primarily affects advisory services and investor engagement and does not impact corporate financial reporting.

This initiative reflects SEBI's effort to enhance investor choice, strengthen the role of Investment Advisers, and align the advisory framework with global best practices.

### Circular dated 30 October 2025: Ease of Doing Business - Interim Arrangement for Certified Past Performance of Investment Advisers and Research Analysts prior to operationalisation of Past Risk and Return Verification Agency (PaRRVA)

SEBI had earlier, through its circular dated 4 April 2025, established the framework for creation and operationalisation of PaRRVA to enable verified disclosure of performance metrics. The new circular provides interim relief to IAs and RAs who wish to communicate historical performance prior to PaRRVA's implementation.

**Key provisions under this circular are as follows:**

- IAs/RAs may share past performance data certified by a member of the Institute of Chartered Accountants of India (ICAI) or the Institute of Cost Accountants of India (ICMAI) with clients (including prospective clients) only upon specific request.
- Such certified data must be communicated strictly on a one-to-one basis and must not be published on websites, public media, or any other channel.
- Entities intending to share certified past performance data must enrol with PaRRVA within three months of its operationalisation.
- The data shared under this arrangement must relate only to periods prior to PaRRVA's operationalisation. Post operationalisation, only PaRRVA-verified metrics may be communicated or displayed.
- All such communications must include the prescribed SEBI disclaimer indicating that the data has not been verified by PaRRVA and past performance is not indicative of future results.
- After two years from the date PaRRVA becomes operational, IAs/RAs will be permitted to communicate only PaRRVA-verified performance data, and any use of uncertified past performance data will be discontinued.

Further, the Investment Adviser Administration and Supervisory Body (IAASB) and Research Analyst Administration and Supervisory Body (RAASB) are directed to finalise and publish standard templates for certified data communication within one month from the date of this circular, in consultation with SEBI and relevant industry forums.

### Circular dated 30 October 2025: Implementation of eligibility criteria for derivatives on existing Non-Benchmark Indices

SEBI has issued a circular on 30 October 2025, to implement eligibility criteria for derivatives on existing Non-Benchmark Indices (NBIs), with the objective of reducing concentration risk and ensuring that such indices represent a broad and diversified section of the market. These criteria originate from Clause 5.7 of SEBI Circular dated 29 May 2025, and supplement the framework contained in the SEBI Master Circular for Stock Exchanges and Clearing Corporations dated 30 December 2024.

Under the mandated eligibility criteria, any index on which derivative contracts are permitted must comply with the following:

1. The index shall comprise **at least 14 constituent stocks**.
2. The **largest constituent by weight must not exceed 20%**.
3. The **combined weight of the top three constituents must not exceed 45%**.

4. The weights of constituents must follow a **descending order**, meaning each lower-ranked constituent must have a weight less than or equal to that of any constituent ranked above it.

Following a public consultation (18 August 2025) and recommendations from SEBI's Secondary Market Advisory Committee (SMAC), SEBI has laid down separate implementation approaches for specific indices:

- **Existing NBIs** will achieve compliance through **adjustment of constituents and weights**, rather than creating new indices.
- **BANKEX (traded on BSE) and FINNIFTY (traded on NSE)** will adopt a **single round of adjustments**, to be completed **on or before 31 December 2025**
- **BANKNIFTY (traded on NSE)** will follow a **phased four-month adjustment process**, gradually aligning the weights of top constituents to meet prudential norms while minimising market disruption. The full implementation of adjustments must be completed by **31 March 2026**

This necessitates Stock Exchanges and Clearing Corporations to ensure appropriate system readiness, provide advance communication to market participants, and carry out necessary amendments to rules, regulations, and byelaws.

This circular is issued under SEBI's regulatory authority to protect investors and support the orderly development of the securities market.



## DIRECT TAX

### Circulars/ Notifications/ Press Release

#### **CBDT extends the due date for filing tax return and furnishing the tax audit report**

The due date for furnishing the tax audit report for Fiscal Year (FY) 2024-25 for taxpayers referred in clause (a) of Explanation 2 to section 139(1)<sup>1</sup> of the Income Tax Act, 1961 (IT Act) was initially extended from 30 September 2025 to 31 October 2025 vide CBDT Circular No. 14/2025 dated 25 September 2025<sup>2</sup>. With regard to said taxpayers, CBDT has further extended the due date for furnishing the tax audit report to 10 November 2025 and the due date for furnishing the tax return FY 2024-25 from 31 October 2025 to 10 December 2025.

The aforesaid due date for filing tax audit report and tax return is extended for the taxpayers covered in clause (a) of Explanation 2 to section 139(1) of the IT Act, which are as under:

- (i) a company; or
- (ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or
- (iii) a partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force or the spouse of such partner if the provisions of section 5A applies to such spouse.

The said clause excludes taxpayers who are required to furnish transfer pricing report as referred to in section 92E of the IT Act.

**[Circular No. 15/2025 dated 29 October 2025 and Press Release dated 29 October 2025]**

#### **CBDT authorises CPC Bengaluru to rectify mistakes and issue consequential demand notices in respect of all incomes**

With the growing volume of electronically processed returns, the need for a comprehensive centralised mechanism to correct processing errors and issue corresponding demands or refunds has become essential.

In view of the same, Central Board of Direct Taxes (CBDT) has issued a notification, effective from 27 October 2025 authorising the Centralized Processing Centre (CPC), Bengaluru, to undertake rectification of mistakes apparent from record and to issue demand notices arising from such rectifications. To read our detailed alert, please click on <https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbd-t-authorises-cpc-bengaluru-to-rectify-mistakes-and-issue-consequential-demand>

**[Notification No. 155/2025/F. No. CB/362/2025 dated 27 October 2025]**

#### **Government of India has notified revised India-Qatar Double Taxation Avoidance Agreement**

The Double Taxation Avoidance Agreement (DTAA or Tax Treaty or Treaty) between the Republic of India and the State of Qatar was signed on 18 February 2025. The provisions of the Agreement and Protocol shall be effective in India from Fiscal Year (FY) 2026-27. The Government of India has notified the revised India-Qatar DTAA, and the key changes introduced in the revised DTAA are as follows:

- **Article 1 - Persons Covered:** A specific paragraph which provides that if income is earned through an entity or arrangement that is considered wholly fiscally transparent entity in either country, then that income will be treated as the income of a resident of that country only to the extent that it is taxed as such in that country.

<sup>1</sup> Section 139(1) of the IT Act provides timeline for filing original tax return.

<sup>2</sup> Click here to read our detailed alert on the same: <https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbd-t-authorises-cpc-bengaluru-to-rectify-mistakes-and-issue-consequential-demand>

- **Article 4 - Resident:** In case a person (other than an individual) is a dual resident and the competent authorities cannot determine residence by mutual agreement, such person shall not be entitled to any relief or exemption from tax provided by the Agreement.
- **Article 5 - Permanent Establishment (PE):** A specific clause on service PE has been introduced.
- **Article 7 - Business Profits:** Revised article 7 restricts the deduction of amounts paid by a PE to its head office or other offices (other than reimbursement of actual expenses) by way of
  - royalties, fees or other similar payments in return for the use of patents,
  - know-how or other rights, or by way of commission or other charges for specific services
  - performed or for management, or, except in the case of banking enterprises, by way of interest on money lent to the permanent establishment.
- **Article 10 - Dividends:** Dividend paid by a company resident in one state to sovereign entities of the other contracting state shall be taxable only in that other State.
- **Article 11 - Interest:** Income from arrangements such as Islamic financial instruments where the substance of the underlying contract can be assimilated to a loan shall be treated as “interest”.
- **Article 13- Capital Gains:** 50% threshold has been introduced in the case of transfer of shares deriving value from immovable property.
- **Article 20 - Students And Apprentices:** Monetary limit on employment remuneration for a student or business apprentice is removed, provided the employment is directly related to studies or maintenance. It mentions that this income is exempt, besides grants, loans, and scholarships. Further, it also introduced an explicit time limit, stating that the benefits shall not be available for more than six consecutive years.
- **Article 28 - Entitlement To Benefits:** A specific anti-abuse provision which is commonly known as the Principal Purpose Test (PPT)<sup>3</sup> has been introduced.

**[Notification No.154/2025/F. No. 504/6/2004], dated 24 October 2025]**

### **NITI Aayog proposes an optional presumptive taxation scheme for profit attribution to PEs in India**

NITI Aayog’s Consultative Group on Tax Policy (CGTP) was established to facilitate ease of doing business, promote foreign direct investment (FDI), simplify tax laws and processes, and make the system future-ready. Recently, NITI Aayog published a working paper “Enhancing Certainty, Transparency, and Uniformity in Permanent Establishments and Profit Attribution for Foreign Investors in India”. This paper provides a comprehensive review of the evolution of PE jurisprudence in India, examines global best practices, and proposes pragmatic solutions such as an optional presumptive taxation regime. This approach seeks to balance India’s sovereign taxing rights with the need for a conducive investment climate, fostering trust between investors and tax authorities, reducing litigation, and aligning India’s tax policy with international norms while promoting sustainable, high-quality FDI.

### **Broad recommendations by NITI Aayog:**

1. Legislative Clarity and Safeguards
2. Enhance stakeholder engagement
3. Robust Dispute Resolution Framework
4. Capacity Building and Consistency
5. Introduction of an Optional Presumptive Taxation Scheme

### **Key Features of Proposed Optional Presumptive Taxation Scheme**

#### **1. Industry Specific Presumptive Profit Rates**

- The scheme will list specific sectors and assign a deemed profit percentage on gross receipts earned in India, which will represent the profits attributable to Indian operations.
- The rates to be based on historical data, industry profit trends and a margin of safety to protect revenue.

#### **2. Optional Regime (Rebuttable Presumption)**

- The presumptive regime will be optional for the taxpayer.
- A foreign company can choose to opt in for a given FY and declare income on presumptive basis.
- However, if it believes that its actual profits attributable to India are lower than the presumptive figure, it can opt out and file a normal tax return.

#### **3. No Separate PE Determination needed (Safe Harbour)**

- If a foreign company opts for presumptive taxation for a particular activity, the tax authorities would not separately litigate the existence of a PE for that activity.

#### **4. Safe Harbour for PE attribution**

- Transfer Pricing principles would be used for determining profits attributable to a PE.
- Existing safe harbour rules to include transaction and remuneration approaches, along with arm’s length rates for PE attribution.

#### **5. APA for PE attribution**

- The CBDT should actively promote bilateral APA negotiations involving PE attribution.
- A formal framework outlining modalities for bilateral APA negotiations, including acceptable attribution methods, documentation standards, timelines, and coordination protocols with treaty partners, should be laid down.
- Clarity on access and procedure for multilateral MAP or APA in triangular structures, involving more than two jurisdictions, is also crucial to reduce double taxation and enhance certainty for multinational groups with integrated operations.

#### **6. Coverage of taxation scope**

- The presumptive taxation provisions should clarify that when income is offered to tax under the presumptive taxation provisions, such income shall not be subject to any other provision of the IT Act that could yield a higher tax.

#### **7. Administrative Simplicity and Audit:**

- Compliance should be straightforward, with exemption from maintaining detailed accounts in India for those activities.

<sup>3</sup> Principal Purpose Test denies a treaty benefit if obtaining it was one of the principal purposes of any arrangement or transaction, unless granting the benefit is in accordance with the object and purpose of the relevant provisions.

## 8. Treaty eligibility for US LLCs:

- Treaty eligibility under India US DTAA should be explicitly extended to fiscally transparent<sup>4</sup> US LLCs that meet Limitation of benefits (LOB) criteria, facilitating dispute resolution access to APA and MPA mechanism for such entities.

## 9. Scope of Activities and Nexus:

- The rules should enumerate the types of Indian activities and income each presumptive rate applies to, aligning with common dispute scenarios such as construction/EPC project, provision of service, royalty/technology-intensive sectors, and digital/ e-commerce streams.

The proposed presumptive profit rates for key industries based on typical profit margins is as under:

Industry / Sector	Proposed Presumptive Profit Rate (on gross receipts)
Infrastructure Construction/EPC	10%
Engineering Services/Oilfield Services	10%
Telecom/Technology Equipment Supply with Installation	5% (supply portion), 20% (services portion)
Digital / E-commerce (Online platforms, Streaming, etc.)	30% of gross revenue from Indian users
General Services (Consultancy, Management, Software)	20% of gross fees
Marketing and Distribution Support	15% of gross revenue from India



## Judicial Updates

### Supreme Court holds temporary lull does not mean cessation of business, allows set-off under section 71 of the IT Act

The taxpayer, a non-resident company incorporated in France is engaged in oil drilling activities.

The taxpayer entered into 10-year drilling contract with ONGC, i.e., from 1983-1993. There was no active contract between 1993-1998. During this period, the taxpayer carried on business correspondences with ONGC from its office at Dubai and headquarters at France and also submitted a bid for oil exploration in 1996. During this period, the taxpayer also undertook various expenditures including administrative charges, audit fees, etc. with the intention of carrying out its business activities.

For FYs 1996-97, 1997-98 and 1998-1999, the taxpayer filed a Nil tax return. The only income credited under the head 'Income from Business' was interest received on income tax refunds. The taxpayer having incurred various expenditure like administrative charges, audit fees, etc., such expenses and unabsorbed depreciation were claimed as deductions against the income. The tax officer disallowed deduction of business expenditure as well as the carry-forward of unabsorbed depreciation on the ground that the taxpayer was not carrying on any business during the relevant FYs. Aggrieved, the taxpayer preferred an appeal. The first appellate authority upheld the order of the tax officer while the second appellate authority ruled in favour of the taxpayer. The Hon'ble Delhi High Court, however, reversed the order passed by the second appellate authority. Aggrieved, the taxpayer further preferred an appeal before the Hon'ble Supreme Court of India.

The Hon'ble Supreme Court while ruling that the taxpayer carried on business during the relevant FY and the business expenditure were eligible for deduction under section 37 of the IT Act, made the following observations:

- In the present case, the taxpayer had been awarded 10 years' drilling contract which continued till 1993, but thereafter, it failed to procure another contract till October 1998. But ample materials have been placed on record to show that during the interim, the taxpayer had continuous business correspondences with ONGC with regard to hiring of manpower services in respect of expert key personnel for drilling in deep waters. The taxpayer had even unsuccessfully submitted a bid in 1996.
- It must be construed from the taxpayer's conduct, whether the failure to procure the drilling contract with ONGC was owing to the taxpayer's disinterest to carry on business during the relevant period or not.
- If such conduct, from the standpoint of a prudent businessman, evinces intention to carry on business, mere failure to obtain a business contract by itself would not be a determining factor to hold the taxpayer had ceased its business activities in India.
- The second appellate authority rightly noted that a business going through a lean period of transition which could be revived if proper circumstances arose, must be termed as lull in business and not a complete cessation of the business.

<sup>4</sup> A fiscally transparent US LLC is an entity that, for US federal income tax purposes, is not taxed at the entity level. Instead, its income, gains, losses, and deductions "pass through" to its owners or members, who are then individually taxed on their share of income.

- Continuous correspondence between the taxpayer and ONGC regarding supply of manpower for oil drilling purposes and its unsuccessful bid in 1996 demonstrates various acts aimed at carrying on business in India which unfortunately did not fructify in procuring a contract country to be chargeable to tax on any income accruing in India.
- The High Court's view that the taxpayer did not carry on business in India since it did not have a permanent establishment in India and corresponded with ONGC from its foreign office is wholly fallacious and contrary to the very scheme of the IT Act.
- The IT Act does not require a non-resident company to have a permanent office within the country to be chargeable to tax on any income accruing in India. A combined reading of the charging provisions under Section 4 and Section 5(2) of the IT Act read with Section 9(1)(i) of the IT Act makes it clear that a non-resident person shall be liable to pay tax on income which is deemed to accrue or arise in India.
- Under Section 9(1)(i) of the IT Act, income accruing or arising, directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India and is accordingly chargeable to tax as business income under Section 28 of the IT Act.
- None of these provisions make it mandatory for a non-resident taxpayer to have a PE in India to carry on business or have any business connection in India. The issue of 'PE' may be relevant for the purposes of availing the beneficial provisions of the DTAA between India and France.
- In an era of globalisation whose life blood is transnational trade and commerce, the High Court's restrictive interpretation that a non-resident company making business communications with an Indian entity from its foreign office cannot be construed to be carrying on business in India is wholly anachronistic with India's commitment to Sustainable Development Goal relating to 'ease of doing business' across national borders.

**[Pride Foramer S.A. v Commissioner of Income Tax & Anr. (Civil Appeal Nos. 4395-4397/2010)]**



### **Mumbai Tax Tribunal holds that eBay Singapore is eligible for treaty benefit on capital gains arising from sale of shares of Flipkart Singapore.**

The taxpayer, a non-resident company incorporated in Singapore provides e-commerce-related services to its group companies, such as product management, business development, customer service support, legal, human resources, and finance since 2003. From 2018, the taxpayer is also licensed to provide an online platform to facilitate export sales from Indian sellers to overseas buyers. The taxpayer is a resident of Singapore and has duly obtained the Tax Residency Certificates (TRC) for the calendar years 2018 and 2019.

During FY 2018-19, the taxpayer sold its shares in Flipkart Singapore on 17 August 2018 for a sale consideration of INR 74,407.95mn on which it earned a short-term capital gain (STCG) of INR 22,257.9mn. The taxpayer filed a tax return declaring nil income claiming STCG as not taxable as per Article 13(5) of the India-Singapore DTAA. The tax authorities, however, argued that the effective management and control of eBay Singapore was actually in the United States and therefore, the company should not be considered a Singapore resident for treaty purposes. The tax authorities also relied on Explanation 5 to Section 9(1)(i) of the IT Act, which taxes indirect transfers of Indian assets. Therefore, the taxpayer filed objections before the Dispute Resolution Panel (DRP). The DRP upheld the additions made by the tax officer. Aggrieved by the final assessment order, the taxpayer preferred an appeal before the Mumbai Tax Tribunal. The Mumbai Tax Tribunal, while ruling in favour of the taxpayer, made the following observations:

- The taxpayer has furnished sufficient evidence to establish that control and management of the taxpayer is with the Directors of the taxpayer situated in Singapore and Hong Kong. The taxpayer has also submitted that neither there are any nominees of eBay Inc., amongst the directors of the taxpayer, nor eBay Inc., seconded any one to the Board of directors of the taxpayer.
- Documents like the board resolutions passed by the taxpayer and the directors of the other group companies including eBay Inc., were not found to be incorrect by the tax authorities. None of the documents point to the fact that eBay Inc. is ultimate beneficiary.
- Unless a layered transaction is established by the tax authorities, the preliminary observation by the Hon'ble Supreme Court in Tiger Global International II Holding<sup>5</sup> may not be applicable.
- Analysis of various clauses of Article 13 of the DTAA:
  - Clause 1 is not applicable as what was sold were shares of Flipkart Singapore.
  - Clause 2 will be applicable only if eBay Singapore has a PE in India. Since eBay Singapore sold its entire business in India to Flipkart Singapore on 10 April 2017, against which taxpayer received consideration as per the share purchase agreement, eBay Singapore cannot be said to have a PE in India.
  - Clause 3 would not apply as it deals with alienation of ships, aircraft operated in international traffic or movable property pertaining to operation of such ships or aircraft.

- Clause 4A is a grandfathering clause and will not apply as the shares of Flipkart Singapore were acquired by the taxpayer after 1 April 2017.
- Clause 4B would be applicable only where the alienator of the shares and the company whose shares are being transferred are residents of two different contracting states. Here, the alienator (taxpayer) is resident of Singapore and the company whose shares are being alienated (Flipkart Singapore) is also a resident of Singapore.
- The sunset clause in 4C is applicable only in case of applicability of clause 4B. As 4B is not applicable, the question of considering clause 4C to the said transaction does not arise.
- Clause 5 is a residual clause applicable to any other asset, not falling under the above-referred clauses. As the share of Flipkart Singapore (being the asset transferred) does not fall into any of the other clauses under Article 13, applicability of clause 5 needs to be analysed. As per clause 5, the taxability of any gains upon transfer of any other asset will be in the state of residence of the alienator i.e. Singapore.
- Under section 9(1)(i) of the IT Act, an indirect transfer may be deemed to be taxable in India. However, what is transferred are shares of Flipkart Singapore, a company incorporated and tax resident in Singapore. The gains therefrom, though arising from an entity with underlying Indian business assets, are gains from alienation of foreign-situs shares.
- As the transaction does not fall within the ambit of clause (2), or Clause 4B of Article 13 to India Singapore Treaty, by virtue of section 90(2) of IT Act, the beneficial provisions of Article 13(5) of India-Singapore DTAA, would prevail.
- Unlike certain other treaties (India-Mauritius and India-Cyprus) which expressly confer source-state taxing rights on shares deriving value from immovable property or local assets, the India-Singapore DTAA does not contain such 'look-through clause'. Accordingly, the gains in question cannot be held chargeable to tax in India.

**[eBay Singapore Services Private Limited v Deputy Commissioner of Income Tax (ITA No. 2378/Mum/2022)]**

**Mumbai Tax Tribunal holds that carry forward of unabsorbed depreciation cannot be denied on the ground of non-est return filed beyond due date under section 139(1) of the IT Act**

The taxpayer, a company engaged in the business of providing innovative technology leasing and financial asset management solutions to customers in India is a subsidiary of HPFS Ventures Holdings Ltd. USA and earns income from loan arrangements, hire purchase and finance lease (other than hire purchase).

The taxpayer claimed carry forward of unabsorbed depreciation pertaining to FYs 2001-02 to 2007-08. The tax

authorities denied the claim on the ground that the tax returns for these years were either not filed or were filed beyond the due date prescribed under section 139 of the IT Act, rendering them as non-est (non-existing). The tax officer contended that Section 32(2) of the IT Act allows the carry forward of unabsorbed depreciation only to the extent determined in assessment and in taxpayer's case where the return is non-est, unabsorbed depreciation cannot be allowed to be carried forward. The first appellate authority upheld the order of the tax officer. Aggrieved, the taxpayer preferred an appeal before the Mumbai Tax Tribunal. The Mumbai Tax Tribunal while ruling in favour of the taxpayer, made the following observations:

- As per Section 139(3)<sup>6</sup> and section 80<sup>7</sup> of the IT Act, the losses under the head "Profits and gains from business of profession" and loss under "Capital Gains" are not allowed to be carried forward if the tax return is not filed within the due date as specified under section 139(1) of the IT Act.
- Section 157 of the IT Act contain provisions relating to intimation of loss by the tax officer in the course of assessment. The said section provides for intimation of various losses under section 72(1), section 73(2), section 74 (1) / 74(3) or section 74A(3) of the IT Act, but does not talk about the unabsorbed depreciation under section 32(2) of the IT Act.
- The taxpayer's contention that the requirement to file the tax return within the due date under section 139(1) of the IT Act is not a condition precedent to carry forward the unabsorbed depreciation is valid.
- Reliance is placed on Hon'ble Andhra Pradesh High Court's decision in case of Sri Vijayalakshmi Minerals & Trading Co<sup>8</sup> wherein it was held that unabsorbed depreciation for a preceding year, even where the return was treated as non-est under section 139(10)<sup>9</sup>, could still be carried forward and set off in the subsequent year.
- Therefore, unabsorbed depreciation for FY 2001-02 to FY 2007-08 cannot be denied being carried forward on the ground that the tax return for the said FYs are non-est.
- Explanation 5 to section 32 of the IT Act provides that provisions of section 32(1) of the IT Act shall apply whether or not the taxpayer has claimed the deduction in respect of depreciation in computing his total income. Therefore, even if the taxpayer has not claimed the depreciation allowance in the tax return, the law deems it to have been claimed.
- In the tax returns filed beyond the due dates under section 139(1) of the IT Act, the taxpayer has claimed depreciation. The tax officer cannot deny the unabsorbed depreciation as not having been claimed since the return of income is non est.

**[Hewlett Packard Financial Services (India) Pvt. Ltd v ACIT (I.T.A. No. 915/Mum/2017)]**

<sup>6</sup> Section 139(3) of the IT Act provides that where a taxpayer has sustained a loss in any fiscal year under the head "Profits and gains of business or profession" or "Capital gains" and intends to carry forward such loss under sections 72, 73, 74 or 74A of the IT Act, the return of loss must be filed within the time prescribed under section 139(1). Failure to do so disentitles the taxpayer from carrying forward such loss to subsequent years.

<sup>7</sup> Section 80 of the IT Act contains multiple provisions that allow taxpayers to claim deductions on various investments, expenses, and donations to reduce their taxable income. These deductions are primarily available under the Old Tax Regime for individuals and Hindu Undivided Families (HUFs). Section 80 of the IT Act provides that no loss which has not been determined in pursuance of a return filed in accordance with the provisions of section 139(3), shall be carried forward and set off under section 72(1) or section 73(2) or section 73A (2) or section 74(1)/74(2)/74(3) or section 74A(3) of the IT Act.

<sup>8</sup> CIT vs Sri Vijayalakshmi Minerals & Trading Co ([1998] 101 taxman 283 (Andhra Pradesh))

<sup>9</sup> Section 139(10) of the IT Act (omitted by the Finance (No. 2) Act, 1991, with effect from 1 April 1991), provided that a tax return filed after the due date or found defective could be treated as non-est.

## INDIRECT TAX



**Assignment of leasehold right is a taxable supply and not outright sale of land and hence, leviable to GST**

**In Re: Kobelco Construction Equipment India Pvt. Ltd. [TS-897-AAR(AP)-2025-GST]**

### Facts of the case

- Sri City Pvt. Ltd. ('Lessor') is the absolute owner of the land situated in Satyavedu and Varadaiahpalem Mandals. The Lessor acquired the land for developing a mixed-use and integrated industrial park comprising of commercial, residential and recreational facilities including developing Special Economic Zone, Domestic Tariff Area, Free Trade Warehousing Zone.
- A portion of the land was leased by the Lessor to Kobelco Cranes India Pvt. Ltd. ('Initial Lessee') for a period of 99 Years starting from 29 May 2015 *vide* the Original Lease Deed. As per clause 4(2) of the Lease Deed, in case of further transfer of the said leasehold premises, the Lessor shall have the Right of First Offer ('ROFO'). Subsequently, the National Company Law Tribunal approved a Scheme of Amalgamation wherein the Initial Lessee was merged into Kobelco Construction Equipment India Pvt. Ltd. ('Taxpayer'). The Taxpayer is engaged in the manufacture and supply of earth-moving equipment, mainly excavators.
- Later, the Taxpayer proposed to further transfer the leasehold right along with superstructure constructed thereon. Accordingly, as per clause 4(2) of the Lease Deed, the first right of refusal concerning the leasehold rights was given by the Taxpayer to the Lessor, which was declined. Consequently, the Taxpayer expressed its intent to transfer the leasehold rights in favour of India Metal One Steel Plate Processing Pvt. Ltd. ('Transferee').
- Accordingly, the leasehold right together with all rights, title and interest in the superstructure was agreed to be transferred in favour of Transferee with the express consent and approval of the Lessor. The transfer was subject to the terms and conditions set out in the Memorandum of Understanding dated 13 June 2025 ('MOU'). It was agreed that the Superstructure shall be transferred on 'as is where is basis'.
- Hence, an agreement was executed for transfer of leasehold land along with superstructure for the remaining unexpired term of the lease i.e., 89 years, subject to the same terms, conditions, covenants and obligations as set forth in the Original Lease Deed and Agreement for Transfer of Leasehold rights *inter alia* on payment of the following amounts by Transferee to Taxpayer:
  - INR 113.5mn for transfer of leasehold rights together with Superstructure; and
  - INR 40.3mn for all improvements and appurtenances, i.e., or recovery of the cost of land development and other related costs.
- For undertaking such transfer, the Taxpayer shall also be liable to pay transfer fees to the Lessor equivalent to 15% of the total consideration agreed with such Transferee.
- In light of the aforesaid background, the Taxpayer filed an application before the Authority for Advance Ruling, Andhra Pradesh ('AAR') to determine the following:
  - Whether assignment of leasehold rights would be covered under the scope of 'supply' under section 7 of the Central Goods and Services Tax Act, 2017 ('CGST Act')? If yes, whether GST is leviable on the consideration paid by the Transferee for transfer of leasehold rights?

- Whether recovery of cost of land development and other related cost is covered under the purview of 'supply' under section 7 of CGST Act? If yes, whether GST is leviable on the consideration paid by Transferee to the Taxpayer?
- Whether the Taxpayer is entitled to claim input tax credit ('ITC') if GST is paid on commission to be paid to Lessor in relation to the transfer of leasehold rights?

#### Contentions of the Taxpayer

- The term 'supply', as per section 7 of the CGST Act, encompasses all supplies of goods and services, including lease and rental activities. Schedule III of CGST Act enumerates the transactions/activities (such as sale of land) which will neither be treated as 'supply of goods' nor as 'supply of services'.
- The GST law does not define 'land' and hence, reference may be placed on other laws for its interpretation which unanimously define 'land' or 'immovable property' to include benefits arising out of land. Since leasehold rights confer benefit over land for a certain period, it can constitute as 'benefits arising out of land' and consequently, within the purview of land.
- Reliance was also placed on the Gujarat High Court's decision in *Gujarat Chamber of Commerce and Industry*<sup>1</sup> ('GIDC Ruling') wherein it was held that assignment of leasehold rights in land allotted by GIDC constitutes transfer of immovable property and hence, is outside the purview of GST.

#### Observations and ruling of the AAR

- **Taxability of consideration received for assignment of leasehold rights:**
  - The GIDC Ruling has been assailed before the Supreme Court in Special Leave Petition No. 25536/2025 and the same is currently pending.
  - Under the CGST Act, assignment or transfer of leasehold rights is generally taxed as a supply of service and not as sale of land. Schedule II of CGST Act specifically classifies the grant of the right to use immovable property for consideration as a 'supply of service'.
  - Assignment of leasehold rights does not amount to ownership. Instead, it merely provides the Transferee with the right to use the property for a defined period under specific conditions. Hence, equating such assignments with outright sale of land may be a misapplication of law.
  - Reliance in this regard was placed on various Advance Rulings<sup>2</sup> and Circular No. 44/18/2018-GST dated 2 May 2018 that have held that assignment of leasehold rights is taxable under the GST law.
  - In view of the above, it was held that assignment of leasehold rights is covered under the scope of the term 'supply' and hence, GST is leviable on the consideration received for transfer of such leasehold rights.

- **Taxability of consideration received for land development and other related costs:**

- Unlike the leasehold rights which pertain to immovable property, the infrastructural developments, such as laying roads, constructing compound walls, providing utilities, etc. involve rendering of services and result in tangible improvements. These are separately valued and reimbursed.
- As per Para 5(b) of Schedule II of CGST Act, construction of a building or civil structure intended for sale, wholly or partly, constitutes a 'supply of services'. Further, Circular No. 177/09/2022-GST dated 3 August 2022 clarifies that the activities involving land development, levelling, laying of drainage or any civil works are taxable services under GST.
- Hence, the related civil development work undertaken by the Taxpayer and reimbursed by Transferee qualifies as a taxable supply of service and thereby attracts applicable GST.
- **Eligibility to claim ITC on commission paid to Lessor:**
  - The transfer fee charged by the Lessor is in the nature of consideration for tolerating an act that the Taxpayer is otherwise refrained from doing in terms of clause 4(z) of Original Lease Deed. It is classifiable under 'Other Miscellaneous Service' (HSN Code - 999794) and taxable @ 18% as per Sl. No. 35 of Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017.
  - Thus, it represents consideration payable to the Lessor for providing a service in the course or furtherance of business, more specifically because business includes supply or acquisition of goods or services in connection with the business.
  - Hence, the GST to be paid on such transfer fee is admissible as ITC.



<sup>1</sup> Gujarat Chamber of Commerce and Industry and Ors. Vs. Union of India and Ors. [TS-03-HC(GUJ)-2025-GST]. Our alert on the same may be accessed by clicking [here](#).

<sup>2</sup> In Re: General Motors [2025 (4) TMI 1047 - Authority for Advance Ruling, Maharashtra], In Re: Remarkable Industries Pvt. Ltd. [2024 (2) TMI 647 - Authority for Advance Ruling, Uttar Pradesh] and In Re: Enfield Apparels Pvt. Ltd. [2020 (8) TMI 251 - Authority for Advance Ruling, West Bengal]

## Documents are admissible before Appellate Authority despite its non-production at Adjudication stage

### U.S. Technology International Pvt. Ltd. Vs. The State of Kerala & Ors. [TS-866-HC(KER)-2025-GST]

#### Facts of the case

- U.S. Technology International Pvt. Ltd. ('Taxpayer') is registered under the GST law in Kerala. For FY 2018-19, the Taxpayer furnished the requisite GST returns and paid applicable taxes.
- On 30 January 2024, the tax authorities issued a show cause notice ('SCN') alleging that the ITC available as per Form GSTR-2A was less than the ITC availed in Form GSTR-3B.
- While the SCN directed the Taxpayer to submit the reply within 30 days, a personal hearing was scheduled on 15 February 2024. As a result, the Taxpayer did not appear for the personal hearing on the said date.
- Subsequently, a reminder notice was shared directing the Taxpayer to file objection on 3 March 2024. On 29 February 2024, the Taxpayer filed an adjournment letter seeking additional time of 20 days to submit the reply since they were in the process of collating the required documents.
- Despite the adjournment letter, a further reminder notice was issued on 6 March 2024 proposing to conduct a hearing on 16 March 2024. On 16 March 2024, the tax authorities took note of the additional time sought by the Taxpayer to submit a reply and hence, the matter was posted on 23 March 2024.
- However, the Taxpayer did not appear on 23 March 2024. Consequently, on 25 March 2024, an order was issued by the tax authorities confirming the discrepancies highlighted in the SCN.
- Thereafter, on 26 March 2024, the Taxpayer submitted a letter requesting rectification of the aforesaid order by producing necessary documents to substantiate its claim by *inter alia* contending that the value entered in Table 8C of Form GSTR-9C for FY 2018-19 was incorrect.
- The aforesaid rectification application was rejected by tax authorities on the ground that the rectification sought by Taxpayer was beyond the scope of powers under section 161 of CGST Act.
- Against this, the Taxpayer filed an appeal before the First Appellate Authority. However, as regards the Taxpayer's contention to accept the documents, it was held that the Taxpayer failed to establish sufficient reasons provided in rule 112(1) of Central Goods and Services Tax Rules, 2017 ('CGST Rules'). Accordingly, the appeal filed by the Taxpayer was dismissed.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Kerala High Court.



#### Contentions of the Taxpayer

- The tax authority failed to grant a proper opportunity for hearing as all the hearing dates were fixed at very short intervals. The same is substantiated from the following:
  - As regards the first hearing, even though the time granted for filing the reply to SCN was 30 days, the personal hearing was scheduled after 15 days, which cannot be treated as an effective opportunity.
  - The Taxpayer *vide* letter dated 29 February 2024 had sought further time of 20 days and hence, the hearing scheduled on 16 March 2024 cannot be treated as a proper opportunity.
- Thus, the only effective opportunity granted to the Taxpayer was the hearing scheduled on 23 March 2024. However, the Taxpayer could not collate necessary data/documents and furnish reply to the SCN before the issuance of the order.
- Reliance was placed on various judicial precedents<sup>3</sup> to contend that as per rule 112 of CGST Rules, the appellate authority ought to have accepted the Taxpayer's request to accept the said documents into the file. However, the appellate authority failed to accept the additional evidence produced in the appeal.
- The appellate authority could have invoked the powers under rule 112(4) of CGST Rules and directed production of requisite documents for proper disposal of appeal.

#### Contentions of the tax authorities

- The tax authorities granted ample opportunities to the Taxpayer. However, the Taxpayer did not avail of any of the said opportunities, apart from adjournment letter filed on 29 February 2024.
- Despite the fact that personal hearings were scheduled on multiple occasions, the Taxpayer did not appear in any of them and consequently, the order was passed by the tax authority.
- As regards the rejection of the appeal by first appellate authority, it is pertinent to note that none of the circumstances that warrant invocation of rule 112 of CGST Rules were in existence. Hence, the said power was rightly exercised by the appellate authority.

#### Observations and ruling of the AAR

- **Violation of Natural Justice *vide* the order passed by tax authorities:**
  - As regards the first hearing, while the period fixed for submitting the reply was 30 days, a personal hearing was scheduled well before the expiry of the term fixed for objections, which is unreasonable. When a time limit is fixed for submitting a reply, a hearing can only be scheduled after the expiry of such time limit. Reliance was placed on *Modine Thermal Systems Pvt. Ltd.*<sup>4</sup>
  - On perusal of the entire sequence of events, it appears that the entire proceedings were concluded within a period of 60 days. The specific case of the Taxpayer is that despite all earnest efforts, they could not collect necessary data to submit an effective and detailed reply to SCN. Considering the volume of transactions, the aforesaid reason cannot be ignored.

<sup>3</sup> Sanjay Kumar Singh Vs. State of Jharkhand [2022 (7) SCC 247], Rakesh Manda Vs. Assistant Commissioner of CGST & Central Excise [2023 (3) Centax 106 (Cal.)], Central Board of Indirect taxes and Customs Vs. M/s. Aberdare Technologies Pvt. Ltd. & Ors. [SLP(C) No. 6332/2025], Anaiakar Trades and Estates (P) Ltd. Vs. Commissioner of Income-tax [1990 SCC Online Mad 703] and Suchismita Majji Vs. Assistant Commissioner of CGST and CX [WPA 4133/2025]

<sup>4</sup> Modine Thermal Systems Pvt. Ltd. Vs. State of Uttarakhand and Ors. [2025 (6) TMI 989 - Uttarakhand High Court]

- In view of the above, the opportunity provided by the tax authorities to submit reply to SCN and attend personal hearings cannot be considered as a proper opportunity.
  - Apart from the fact that the Taxpayer submitted the adjournment letter, there was no response from the Taxpayer to the repeated notices issued by tax authorities.
  - Considering the volume of transactions and the amount involved in the proceedings, the Taxpayer's contention that it required some time to collate all the details cannot be ignored. Thus, the opportunities provided by the tax authorities did not amount to a reasonable opportunity to the Taxpayer to defend its case.
- **Non-consideration of additional evidence by appellate authority:**
- Despite the fact that a specific request was made to the appellate authority to accept the documents to substantiate the contentions raised in the appeal, the same was not accepted.
  - The order passed by the appellate authority, that the explanations offered by the Taxpayer do not fall under any of the circumstances referred to in rule 112(1) of CGST Rules, is not justifiable. If the Taxpayer was prevented by sufficient cause from producing the evidence before the adjudicating authority, the same can be accepted by appellate authority.
  - Since the time granted to the Taxpayer was very short, they could not collect all the documents despite their earnest efforts. Considering the voluminous nature of transactions, the explanation offered by Taxpayer is plausible. Hence, the present case falls under rule 112(1)(c) of CGST Rules.
  - As regards invocation of rule 112(4) of CGST Rules, the Taxpayer cannot claim it as a matter of right and it is for the appellate authority to decide whether such documents are directed to be produced upon being satisfied about the necessity of production of such documents for disposal of the appeal.
  - The proper course ought to have been taken by the appellate authority by taking a liberal approach and invoking rule 112 of CGST Rules. Such lenient approach is necessary since there is a specific prohibition against the remand of the matter to the tax authority. Thus, if an appropriate opportunity was not granted by the tax authority, the appellate authority is obligated to adopt a liberal view and accept the documents if those documents are necessary for a just and proper disposal of the issue involved in the appeal.
  - Considering the above, the documents produced by the Taxpayer before the appellate authority ought to have been accepted and the same should be considered on merits. Since such an exercise is not done, an interference is required.
- In view of the above, the writ petition was allowed and the order passed by the appellate authority was quashed and the matter is remanded to the appellate authority with the following directions:
- To accept the documents produced by the Taxpayer along with the appeal and reconsider the appeal;
  - To pass a fresh order-in-appeal on merits; and
  - To pass the order in a time bound manner after giving a reasonable opportunity for hearing.

**Minimum Guarantee Off-take charges are in the nature of liquidated damages; not leviable to GST**

**In Re: Oil And Natural Gas Corporation Ltd. [TS-847-AAR(TN)-2025-GST]**

**Facts of the Case**

- M/s. Oil and Natural Gas Corporation Ltd. ('Taxpayer') is *inter alia* engaged in the supply of crude oil and natural gas through pipelines across India. The Taxpayer has establishments situated at onshore and offshore locations in India wherein petroleum operations are carried out to produce natural gas for onward sale to various customers in India.
- The Taxpayer entered into Pan-India Gas Sales and Transportation Agreement ('GSTA') with Gas Authority of India Ltd. ('GAIL'). As per GSTA, the Taxpayer agreed to sell and deliver Natural Gas produced from Government-nominated fields under Administered Price Mechanism ('APM') and Non-Administered Price Mechanism ('Non-APM'). The terms of the GSTA *inter alia* included:
  - The Taxpayer shall sell and deliver natural gas to GAIL on fall back basis. The Taxpayer shall provide a tentative Annual Production Quantity ('APQ') for each successive financial year based on its production plan for the remaining period.
  - GAIL shall pay the price for the actual quantity of gas offtake. In case, GAIL fails to off-take 90% of the Adjusted Annual Contract Quantity ('AACQ') - determined on basis of Daily Contract Quantity - it shall pay Minimum Guaranteed Off-take ('MGO') charges to the Taxpayer.
  - The amount of Quarterly MGO charges received from GAIL are treated as 'deposit' in the books of accounts of the Taxpayer. These charges are adjusted by Taxpayer on an annual basis, based on the AACQ and excess, if any, is refunded to GAIL, whereas the adjusted MGO charges are accounted as 'Other Income' in the Taxpayer's books of accounts.
  - For APM and Non-APM gas supplies, the AACQ is determined separately and in determining the AACQ for any Financial Year, certain deductions are made.
- The proof of the accounting treatment of MGO charges collected and its break-up for two financial years was submitted *vide* an email dated 01 August 2025.
- The Taxpayer approached the Authority for Advance Ruling, Tamil Nadu ('AAR') to determine the GST implications on MGO charges recovered from GAIL.



## Contentions of the Taxpayer

- The Taxpayer makes provisions for producing natural gas while keeping in mind the quantities committed to be purchased by GAIL or any Buyer in terms of the Agreement(s).
- 'Minimum take or pay' or 'MGO charges' are a common practice in Oil and Gas industry and are imposed on the buyer for breach of contract and to retribute for loss (if any) incurred by the Taxpayer, on off-take of lower quantities. MGO charges are in the nature of 'liquidated damages' received as compensation for breach of contract and do not qualify as 'consideration' received for any supply. Hence, GST is not leviable on MGO charges recovered by Taxpayer from GAIL.
- GST is a contract-based levy and supply emanates from a contract that is entered between the contracting parties. Therefore, a contractual supply is the essence for the levy of GST. Hence, the provision of supply must be seen *qua* the contract entered between the parties.
- For an activity to qualify as 'supply', there should be an activity resulting in supply of 'goods' or 'services' or both, undertaken by a person for another; the said activity should result in 'consideration'; and the activity should be undertaken in the course or furtherance of business. For a transaction between unrelated parties, to qualify as a supply, an activity has to be positively done for the benefit of another person for a consideration<sup>5</sup>.
- The term 'consideration' involves an element of contractual relationship where the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An amount will partake the character of consideration only if the amount is contractually agreed to be provided by a person in exchange for a service and such amount has a nexus with a service rendered. Thus, absent contractual reciprocity *qua* consideration, the same would not amount to an activity for 'consideration' which is an important ingredient as per the definition of supply<sup>6</sup>. Reliance in this regard was placed on Circular No. 178/10/2022-GST<sup>7</sup>.
- Liquidated damages are in the nature of penalty or compensation and are liable to be paid by a person to another for breach of contract. The same is not in the nature of 'consideration' towards any supply. Consideration should flow at the desire of the promisor. Absent such desire, it ceases to be a consideration. The parties entering into contract would not desire for breach of contractual obligations. Hence, any payment made due to breach will not partake the character of 'consideration'. Hence, such amount will not be treated as consideration towards supply.
- Thus, no GST is leviable on MGO charges imposed by the Taxpayer on GAIL as there is no supply rendered in exchange for MGO charges and they are only in the nature of compensation paid for breach of contract<sup>8</sup>.
- Only in cases where agreeing to the obligation to tolerate an act constitutes a 'supply' in terms of Section 7(1) of CGST Act, it shall be treated as a supply of service under GST, i.e., the activity of 'toleration' must be performed in return for consideration.

- Accordingly, MGO charges do not qualify as consideration received for agreeing to the obligation to tolerate an act or situation in terms of Para 5(e) of Schedule II to the CGST Act and hence, the same is not leviable to GST.

## Observations and Ruling of the Authority for Advance Ruling, Tamil Nadu

- The service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. Only then would the activity fall within the ambit of the entry at Sl. No. 5(e) of Schedule II to the CGST Act.
- Section 73 of the Indian Contract Act, 1972 ('Contract Act') provides that when a contract is broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity, but rather is just an event in the course of performance of that contract. Such compensation is usually specified in a written contract for breach or non-performance of the contract and is referred to as 'liquidated damages'.
- The intended purpose of GSTA is the execution and performance of the agreement and not its breach. MGO charges cannot be said to be 'consideration' received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Imposition of MGO charges stipulated in the contract is to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.
- If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. By charging and accepting the MGO charges, the Taxpayer cannot be said to have permitted or tolerated the deviation or non-fulfilment of the GSTA by GAIL and shall not be construed as the activity of refraining from or tolerating an act or doing anything.
- The contract between the Taxpayer and GAIL primarily is for sale and purchase of Natural gas which is subjected to Central Excise duty and Value Added Tax and is out of the purview of GST. Hence, such payments will not be taxable if the principal supply is exempt.
- The MGO charges are merely a flow of money from GAIL to the Taxpayer and are not collected as a consideration, as there is no such separate contract entered into between the Taxpayer and GAIL.
- Accordingly, the activity of the Taxpayer would not fall within the scope of supply under section 7(1A) of CGST Act read with Sl. No. 5(e) of Schedule II to CGST Act. Hence, MGO charges do not constitute consideration for supply and consequently, are not leviable to GST.

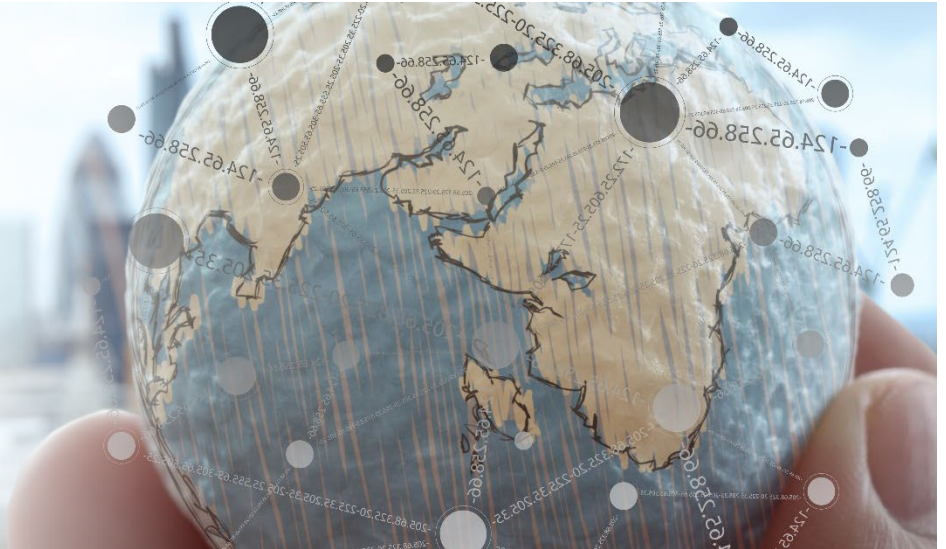
<sup>5</sup> Reference was placed on precedents in Australia, New Zealand, Britain and South Africa wherein in the context of GST / VAT to contend that a supply occurs when there is a positive act on the part of the supplier.

<sup>6</sup> Definition of 'consideration' under section 2(31) of CGST Act and section 2(d) of Indian Contract Act, 1972. *M/s Bhayana Builders Pvt. Ltd. and Ors. Vs. CST, Delhi and Ors.* [2013 (9) TMI 294 - CESTAT New Delhi-LB], maintained in *Commissioner of Service Tax Vs. M/s. Bhayana Builders Pvt. Ltd.* [2018 (2) TMI 1325 - Supreme Court]. *Commissioner of Service Tax, Chennai Vs. M/s Repco Home Finance Ltd.* [2020 (7) TMI 472 - CESTAT Chennai]

<sup>7</sup> Dated 3 August 2022

<sup>8</sup> *M/s. Paradip Port Trust Vs. Commissioner of CGST and Excise, Bhubaneswar* [2022 (2) TMI 1010 - CESTAT Kolkata], *M.P. Poorva Kshetra Viduyt Vitran Co. Ltd. Vs. Principal Commissioner of CGST and Central Excise, Bhopal* [2021 (2) TMI 821 - CESTAT New Delhi], *M/s South Eastern Coalfields Ltd. Vs. Commissioner of Central Excise and Service Tax, Raipur* [2020 (12) TMI 912 - CESTAT New Delhi], *M/s K.N. Food Industries Pvt. Ltd. Vs. The Commissioner of CGST and Central Excise, Kanpur* [2020 (1) TMI 6 - CESTAT Allahabad], *M/s Amit Metals Ltd. Vs. The Commissioner of CGST, Bolpur* [2019 (11) TMI 183 - CESTAT Kolkata]

# TRANSFER PRICING



## ITAT: Restores adjustment w.r.t IGS, rules on comparables for contract R&D services

Schneider Electric Private Limited (“SEPL” or “the Appellant”) is an Indian subsidiary of Schneider Electric Industries SAS, Belgium, which in turn is a wholly owned subsidiary of Schneider Electric SE.

For AY 2021-22, SEPL rendered various international transactions to its Associated Enterprises (AEs), including **Business Support Services, Contract R&D Services, and Intra-Group Services**, apart from maintaining **outstanding trade receivables**. The case was referred to the Transfer Pricing Officer (TPO), who proposed multiple adjustments, which were confirmed by the AO in the final assessment order passed u/s 143(3) r.w.s. 144C(13) and 144B of the Income-tax Act, 1961.

### **Issue 1: Adjustment in respect of the Provision of Business Support Services**

#### **TPO’s Objection:**

The TPO benchmarked the international transaction relating to the provision of business support services rendered by the Appellant to its AEs by applying the Transactional Net Margin Method (TNMM).

TPO computed Appellant’s operating margin and compared it with the margins of selected comparable companies engaged in similar business activities. Profit Level Indicator - (PLI) Operating Profit to Total Cost (OP/TC).

While preparing the appeal effect order, the AO/TPO:

- Included functionally dissimilar companies that were full-fledged risk-taking entrepreneurs and high-profit entities, thereby not comparable to a captive service provider operating on a cost-plus model like the Appellant.
- Committed factual and computational errors in calculating the operating margins of comparables.

- Did not properly consider the working capital adjustment and other comparability adjustments that could affect the profit margin computation.
- Specifically, for Forbes Facility Services Pvt. Ltd., despite the DRP’s direction (in para 6.14 of its order) to verify the margin details submitted by the Appellant, the TPO adopted a margin of 8.55% without offering any explanation, reasoning, or data-based substantiation

#### **Appellant Contention:**

- Functionally incomparable comparables selected by TPO.
- Errors in the computation of margins by the TPO in the appeal effect order.
- TPO/AO failed to follow DRP’s direction to verify the margins submitted by the Appellant.
- Appropriate working capital adjustments were ignored by TPO.

#### **Tax Tribunal’s Analysis and Conclusion**

ITAT held that the AO/TPO did not properly implement the DRP’s directions and directed to adopt the corrected margin and recompute the transfer pricing adjustment in the Business Support Services segment.

### **Issue 2: Enhancement of Income in relation to Intra Group Service fees.**

#### **TPO’s / AO’s Objection:**

- The TPO rejected TP document alleging Appellant failed to substantiate the actual receipt of such services and the benefit derived therefrom.
- No independent third party that would pay for such services in an uncontrolled situation and accordingly determined the arm’s length price (ALP) as ‘Nil’ by applying the Comparable Uncontrolled Price (CUP) method.

The TPO concluded that the Appellant had not demonstrated any tangible or direct benefit from the alleged intra-group services and, therefore, disallowed the entire payment. The DRP upheld the TPO’s approach.

**Appellant Contention:**

- The Appellant submitted that comprehensive documentation was maintained in accordance with Section 92D and Rule 10D, including inter-company agreements, sample emails, presentations, reports, and cost allocations evidencing actual service delivery by its AEs.
- TPO's determination of ALP at 'Nil' was arbitrary and contrary to the established judicial principle that the commercial wisdom of the taxpayer cannot be questioned by the revenue authorities.
- Relied on the decision of the Ahmedabad Bench of ITAT in the case of *Schneider Electric Infrastructure Ltd. (ITA No. 361/AHD/2022)*, a group company engaged in similar business segments and availing similar intra-group services, where the ITAT had accepted the genuineness and benefit of such services.

Appellant, the adjustment should be deleted or, alternatively, remanded for verification of the evidence already submitted.

**Tax Tribunal's Analysis and Conclusion**

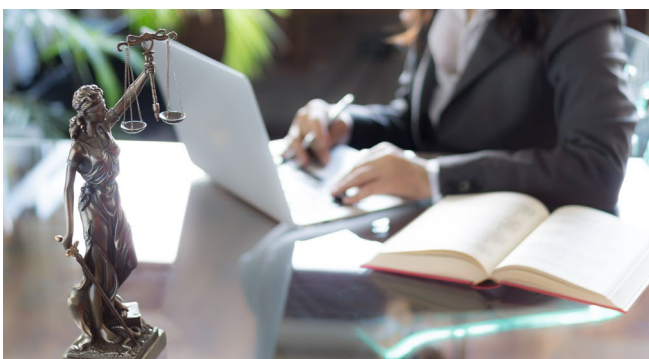
The Hon'ble ITAT relied upon the decision of the coordinate bench in the case of *Schneider Electric Infrastructure Ltd.* (supra), however, in the present case, it was not evident from the record whether the AO/TPO had properly examined or verified the documentation and evidence submitted by the Appellant to substantiate the receipt of services and benefits derived therefrom.

The Hon'ble ITAT restored the issue to the file of the AO/TPO for the limited purpose of verifying the evidence submitted by the Appellant and to decide the matter afresh in accordance with law, after affording due opportunity of hearing.

**Issue 4: Adjustment in respect of Provision of R&D Services****TPO's / AO's Objection:**

The AO/TPO observed that the Appellant was engaged in providing contract R&D services to its AE in the domain of electronic and electromechanical product development, including customisation and testing of embedded intelligence or software for automation hardware.

The TPO rejected the economic analysis and benchmarking study and conducted a fresh comparability analysis by applying revised filters, and included several companies engaged in software development and full-fledged entrepreneurial activities.

**Appellant Contention:**

- The TPO's analysis was erroneous and inconsistent with SEPL's limited-risk contract R&D profile.
- Selected comparables were functionally dissimilar, being engaged in software development or acting as independent, full-risk entrepreneurs.
- The DRP, in para 8.11, directed that only segmental financial data be used for nine comparables, while AO/TPO failed to comply with these specific DRP directions.
- The appellant argued that segmental data was unavailable for certain companies—Cybage Software Pvt. Ltd., Mindtree Ltd., Tata Elxsi Pvt. Ltd., Great Software Laboratory Pvt. Ltd., and Infosys Ltd.
- Exclusion of these companies would neutralise the margin in favour of the appellant.
- Consequently, no TP adjustment would be warranted in the Contract R&D segment

**Tax Tribunal's Analysis and Conclusion:**

- The Tribunal noted non-compliance by the AO/TPO with the DRP's directions on using segmental financial data.
- Several comparables lacked segmental information and were functionally dissimilar to the appellant's contract R&D activities and were considered unsuitable for benchmarking against a limited-risk R&D service provider.
- The Tribunal directed the exclusion of five companies and instructed the AO/TPO to recompute the arm's length margin after removing these companies.
- The ground was allowed for statistical purposes, with directions to re-determine margins afresh based on the revised comparables.

**Issue 5: Adjustment in respect of notional interest on delayed collection of trade receivables****TPO's / AO's Objection:**

The TPO made an upward adjustment on account of notional interest on the delayed collection of trade receivables from AEs. The TPO treated such outstanding receivables as a separate international transaction under section 92B of the Income Tax Act and benchmarked it separately.

In doing so, the TPO relied on the decision of the Hon'ble Delhi High Court in *Cotton Naturals (I) Pvt. Ltd. [2015 SCC OnLine Del 8414]*, wherein it was held that interest on delayed receivables is a distinct international transaction warranting separate benchmarking.

The Dispute Resolution Panel (DRP) also upheld the TPO's approach and confirmed the adjustment.

**Appellant Contention:**

- Outstanding receivables were argued to be a consequence of primary international transactions, not a separate transaction under section 92B.
- Appellant contended that working capital adjustment already captures the impact of credit terms and payment delays.
- Any separate interest adjustment would therefore lead to double taxation and distort profitability.
- Reliance was placed on *Kusum Healthcare Pvt. Ltd. v. ACIT (ITA No. 6814/Del/2014)*, where the Tribunal held that once working capital adjustments are made, further adjustment for receivables is unwarranted.

### Tax Tribunal's Analysis and Conclusion:

- The TPO/DRP relied on Cotton Naturals (supra) but did not apply any actual comparables to justify the notional interest adjustment.
- The Tribunal observed that if receivable impact is already captured in the working capital adjustment, a separate interest adjustment is unwarranted.
- Relying on **Kusum Healthcare Pvt. Ltd. (supra)**, it held that double adjustment would distort profitability.
- The AO/TPO was directed to re-examine the issue by considering the effect of receivables on working capital and the ground was allowed for statistical purposes.

### **Schneider Electric Private Limited [TS-622-ITAT-2025(DEL)-TP]**

#### **ITAT Mumbai Deletes TP Adjustment on Bareboat Charter Hire Fees**

##### Case Background

SP Armada Oil Exploration Pvt. Ltd. ('taxpayer') is a joint venture between Shapoorji Pallonji Energy Pvt. Ltd. (51.002%) and Bumi Armada Berhad, Malaysia (48.998%).

As the taxpayer did not own a Floating Production Storage and Offloading (FPSO) vessel, it chartered one from its Singapore-based Associated Enterprise ('AE'), Armada C7 Pte. Ltd., under a bareboat charter hire agreement. The payments made towards this hire were reported as international transactions and benchmarked using the "Other Method" under Rule 10AB, considering that FPSO leasing is a highly specialised and non-standardised industry.

##### TPO's Findings and Adjustment

During transfer pricing assessment, the TPO observed that the taxpayer paid INR 418.92 crore to its AE as bareboat charter fees, which matched the amount received from ONGC for FPSO leasing. The taxpayer did not retain any margin. It was only through the taxpayer's efforts that the AE earned revenue; hence, the taxpayer should be compensated with a margin, thus the TPO determined an arm's length margin of 2.5%, imputing a commission income and making a TP adjustment of INR 10.47 crore.

##### DRP's Directions

The Dispute Resolution Panel (DRP) upheld the TPO's conclusions, observing that the earlier DRP ruling in AY 2016-17 could not be relied upon. Retaining 2.5% as a facilitation margin was "reasonable and justified." Final order, maintaining the TP adjustment and assessing income at INR 42.11 crore was passed.

##### Taxpayer's Submissions before ITAT

The taxpayer argued that:

- The contract with ONGC was entered on a principal-to-principal basis, not as an agent of its AE. ONGC itself recognised Armada C7 Pte. Ltd. as the vessel owner through commitment letters attached to the main contract.
- The AE was responsible for the construction, conversion, and leasing of the FPSO. The taxpayer handled O&M, compliance, and project execution under Indian jurisdiction. Thus, the JV was formed to leverage the technical strength of Bumi Armada and the local expertise of Shapoorji Pallonji.

- A similar transaction was accepted by the DRP in AY 2016-17. Since the contract was for nine years with no material change in facts, the principle of consistency should apply.
- The taxpayer compared the ratio of bareboat hire to time charter revenue with similar ratios observed in unrelated FPSO contracts. The comparison showed the taxpayer's payment to the AE was lower than comparable third-party instances.
- When a 2.5% mark-up is imputed, the transaction still remains within arm's length, rendering the adjustment redundant.

##### Department's Counter-Arguments

The Department contended that the taxpayer and AE shared joint risks under the ONGC contract; hence, a profit element was warranted. The taxpayer's accounting disclosure (showing the same receipt and payment) proved a back-to-back arrangement. Differences in vessel specifications invalidated the comparables used under the "Other Method."

##### Tax Tribunal's Key Observations

- The JV partners possessed distinct and complementary expertise – Bumi Armada (via Armada C7 Pte. Ltd.) provided the vessel, while the taxpayer undertook O&M operations boring separate functions and risks. The contract was composite in nature, but that did not imply an agency relationship. "The fact that the contract was entered into between the joint venture and ONGC does not undermine the expertise of each partner, each party was responsible for its own scope of work."
- Clause 12 of the ONGC agreement explicitly stated that the taxpayer was acting as an independent contractor, not as an agent of its AE. Hence, the TPO's assumption that the taxpayer merely facilitated revenue for the AE was incorrect.
- Since the AE was one of the JV partners and the vessel was bespoke to ONGC's specifications, the ITAT held that independent quotations were neither practical nor relevant.
- The Tribunal observed that the same contract existed during AY 2016-17, for which the DRP had accepted the "Other Method" benchmarking and upheld the ALP. Merely because of changes in Ind-AS 116 presentation (lease accounting standards), the transaction's character could not be altered. "It is well settled that book entries are not determinative of tax liability. Since there is no change in facts, a different stand cannot be taken."
- ITAT accepted the taxpayer's computation showing that even after including a 2.5% commission, the payment remained below comparable rates, confirming ALP compliance.

**Final Ruling:- The TP adjustment on bareboat charter hire was directed to be deleted.**

##### Key Takeaways

- Participation in a composite contract does not make one JV partner an agent of another, where distinct responsibilities are defined.
- The Tribunal reaffirmed the use of the Other Method for benchmarking leases.
- In the absence of factual or contractual changes, earlier DRP/ITAT findings must be followed.
- Reclassification under Ind-AS 116 cannot change the substance of a transaction for TP purposes.
- The Tribunal observed that, even with an assumed 2.5% margin, the payment was within the ALP range.

### **SP Armada Oil Exploration Private Limited [TS-583-ITAT-2025(Mum)-TP]**

## ABOUT BDO GLOBAL

BDO is an international network of independent public accounting, tax and advisory firms. We support organisations with an unwavering focus on quality, industry expertise, and the innovative use of technology to deliver impactful solutions. Our commitment to people, clients, and communities is at the core of everything we do. With our people-first culture, we foster an environment where diversity thrives, growth is nurtured, and continuous learning drives lasting progress for a sustainable future.

## ABOUT BDO INDIA

BDO India offers Assurance, Tax, Advisory, Technology Products & Solutions, Digital Transformation, and Managed Services & Outsourcing to domestic and international clients across various industries. Bringing together expertise, innovatively driven and delivered through technology, we empower businesses to navigate their unique challenges with transformative, impactful, client-centric solutions. The team in India comprises over 11,000\* professionals, led by more than 350 Partners and Directors, operating out of 20 offices across 14 key cities.

\*Includes employees from BDO RISE and BDO EDGE

## 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

BDO India LLP  
Westgate Business Bay, Block - A,  
Level-6, Opp. Nirvana Party Plot,  
S. G. Highway, Ahmedabad - 380051, INDIA

### Bengaluru - Office 1

Prestige Nebula, Floor 3  
Infantry Road  
Bengaluru 560001, INDIA

### Bengaluru - Office 2

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

### Bhopal

11th Floor, Bansal One Building  
Office No. EL-012 & EL-021  
Rani Kamalapati Railway Station  
Bhopal 462016, INDIA

### Chandigarh

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

### Chennai

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

### Coimbatore

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

### Delhi NCR - Office 1

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

### Delhi NCR - Office 2

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

### Goa

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

### Hyderabad

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

### Kochi

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

### Kolkata

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

### Mumbai - Office 1

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

### Mumbai - Office 2

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

### Mumbai - Office 4

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

### Pune - Office 1

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

### Pune - Office 2

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

### Vadodara

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

Ahmedabad | Bengaluru | Bhopal | Chandigarh | Chennai | Coimbatore | Delhi | Goa | Hyderabad | Kochi | Kolkata | Mumbai | Pune | Vadodara

This publication has been carefully prepared, but it has been written in general terms and should be seen as containing broad statements only. This publication should not be used or relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained in this publication without obtaining specific professional advice. Please contact BDO India Services Private Limited to discuss these matters in the context of your particular circumstances. BDO India Services Private Limited, its directors, promoters, employees and agents do not accept or assume any responsibility or duty of care in respect of any use of or reliance on this publication, and will deny any liability for any loss arising from any action taken or not taken or decision made by anyone in reliance on this publication or any part of it. Any use of this publication or reliance on it for any purpose or in any context is therefore at your own risk, without any right of recourse against BDO India Services Private Limited or any of its directors, promoters, employees or agents.

BDO India Services Private Limited, a private limited company incorporated in India, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member entities.

BDO is the brand name for the BDO network and for each of the BDO Member Entities

Copyright © 2025 BDO India Services Private Limited. All rights reserved. Published in India.

Visit us at [www.bdo.in](http://www.bdo.in)

