

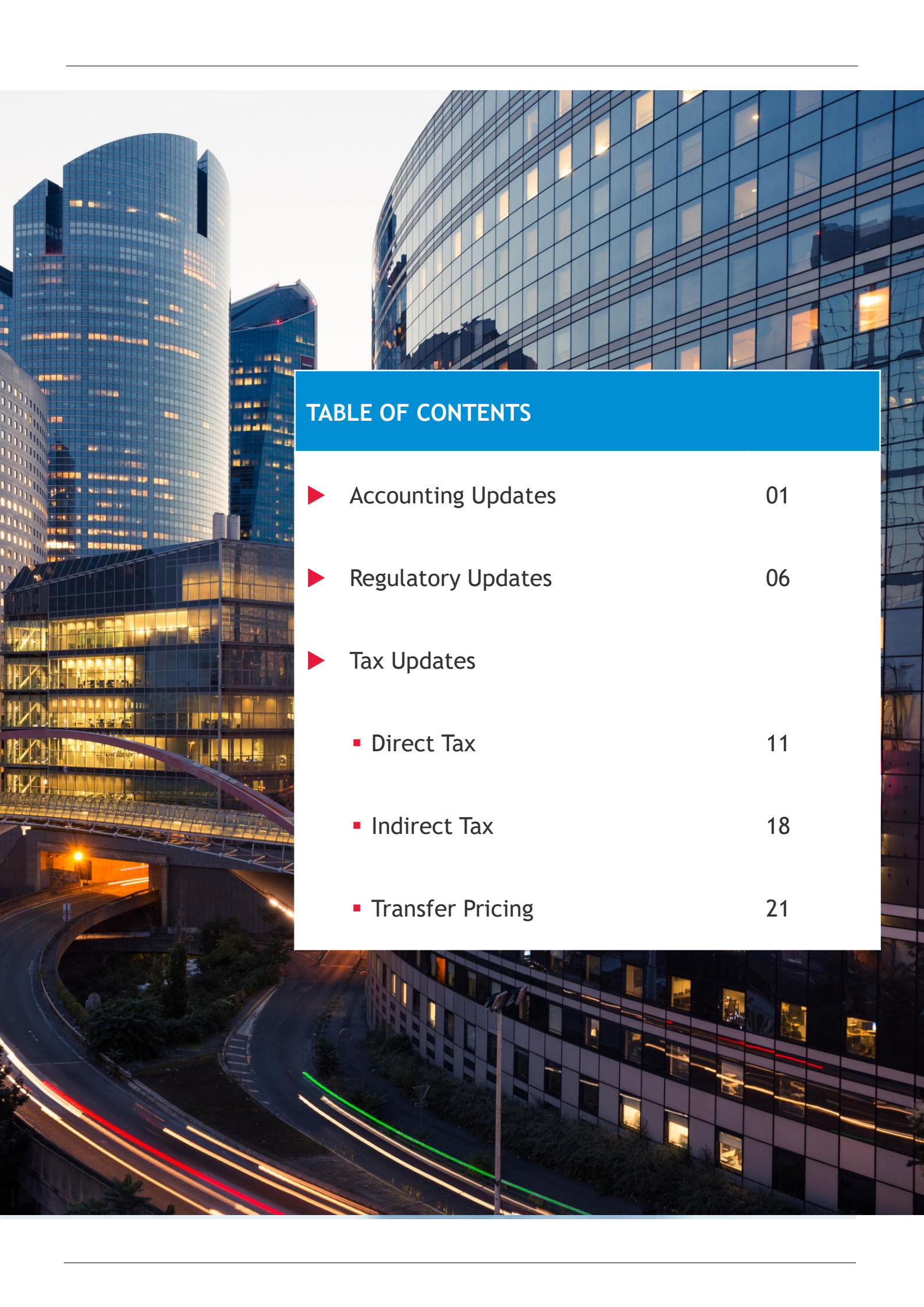


**ACCOUNTING,  
REGULATORY  
& TAX NEWSLETTER**  
**VOLUME 117**

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

October 2026

**|BDO**



## TABLE OF CONTENTS

|                      |    |
|----------------------|----|
| ▶ Accounting Updates | 01 |
| ▶ Regulatory Updates | 06 |
| ▶ Tax Updates        |    |
| ▪ Direct Tax         | 11 |
| ▪ Indirect Tax       | 18 |
| ▪ Transfer Pricing   | 21 |

## ACCOUNTING UPDATES

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

#### Classification of Bank Fixed Deposits held under Lien as Current or Non-Current Assets under Ind AS framework.

The Company avails Bank Guarantee (BG) and Letter of Credit (LC) facilities from various banks under general as well as specific lien arrangements. Under general lien arrangements, banks provide BG/LC facilities against a general lien over the Company's deposit portfolio without earmarking specific deposits, whereas under specific deposit-backed arrangements, fixed deposits are placed as margin money or security against individual facilities. The fixed deposits generally have original maturities of less than twelve months. The Company classified such deposits as current assets based on their original maturity. However, the C&AG auditors contended that deposits held as margin money or security under lien against BG/LC/borrowing facilities having claim periods extending beyond twelve months are not realisable within twelve months and, therefore, should be classified as non-current assets.

The Committee noted that under Ind AS 1, an asset is classified as current, inter alia, when it is expected to be realised within twelve months after the reporting period. The Committee observed that the bank deposits in the present case do not meet the definition of cash equivalents under Ind AS 7 and, therefore, their classification as current or non-current should be assessed based on whether they are expected to be realised within twelve months after the reporting period. While short-term bank deposits having an original maturity of less than twelve months would generally qualify as current assets, the classification should not be based solely on the contractual maturity of the deposits and should also consider the substance or economic reality regarding the expectation of realisation at the reporting date.

The Committee further observed that where restrictions arising from lien arrangements are such that the bank deposits are, in substance, not expected to be realised within twelve months from the reporting date, or where the deposits are required to be continued or renewed to support long-term BG/LC/borrowing arrangements resulting in such deposits not being expected to be realisable within twelve months, the deposits should be classified as non-current assets. Accordingly, the original maturity of the deposit by itself is not determinative of its current/ non-current classification and the nature and duration of the restriction and the expectation of realisation at the reporting date should also be considered.

The Committee also noted that under Ind AS Schedule III, bank balances other than cash and cash equivalents which meet the definition of current assets are presented as financial assets under current assets. Further, balances held as margin money or security against borrowings, guarantees and other commitments are required to be disclosed separately. Accordingly, bank deposits held under general or specific lien arrangements as margin money or security against guarantee or credit facilities should be presented as financial assets under current assets, with separate disclosure in the financial statements, provided that despite the restrictions arising from the lien arrangements, such deposits continue to meet the definition of current assets.

Accordingly, the Committee concluded bank deposits held (under general or specific lien arrangements) as margin money or security for individual guarantee or credit facilities (such as Letter of Credit) should be presented as 'financial assets' under 'current assets' with a separate disclosure for the same in the financial statements.

### Accounting treatment of restoration obligation on the project under the Service Concession Arrangement, under Ind AS framework.

The Company, a special purpose vehicle, entered into a concession agreement with the Ministry of Railways (MoR) for development, financing, construction, operation and maintenance of a railway project. Under the concession agreement, the Company is required to keep the project assets in proper working conditions, including replacement of project assets whose codal lives expire during the concession period, with the related replacement/restoration costs to be borne by the Company. In accordance with Appendix D to Ind AS 115, the Company classified the assets arising from the concession arrangement as intangible assets. During the audit for F.Y. 2023-24, the C&AG observed that the Company should estimate its restoration obligation and recognise the necessary provision. Accordingly, during F.Y. 2024-25, the Company estimated the total restoration obligation at INR 14,200 lakh and recognised INR 1,045.25 lakh, with the balance proposed to be recognised progressively over the remaining period up to the expected replacement/restoration of the respective assets. However, the C&AG contended that the entire estimated obligation of INR 14,200 lakh should be provided upfront and, accordingly, observed a short provision of INR 13,154.75 lakh.

The Committee noted that under Appendix D to Ind AS 115, contractual obligations of an operator to maintain infrastructure at a specified level of serviceability or restore infrastructure to a specified condition are required to be recognised and measured in accordance with Ind AS 37. Under Ind AS 37, a provision is recognised for a present obligation arising from a past event where an outflow of resources is probable and a reliable estimate can be made. Such provision is measured at the best estimate of the expenditure required to settle the present obligation at the reporting date.

The Committee further observed that the Company's restoration obligation arises as a consequence of the use of the project assets during the operating phase. Considering the assumption that the service potential of the project assets is consumed evenly over their useful lives, the best estimate of the expenditure required to settle the restoration obligation at any reporting date would be proportionate to the use of the project assets up to that date and would increase proportionately with each passing year. Accordingly, the provision should be increased in annual increments through a charge to the Statement of Profit and Loss over the useful life of the respective project assets until their expected date of replacement/restoration, rather than recognising the entire estimated restoration obligation upfront.

The Committee also noted that where the effect of the time value of money is material, the provision should be discounted to its present value in accordance with Ind AS 37. The carrying amount of the provision should thereafter be increased in each reporting period to reflect the passage of time, with such increase being recognised as borrowing or finance cost in the Statement of Profit and Loss.

Accordingly, the Committee concluded that since the Company's restoration obligation arises as a consequence of use of the project assets during the operating phase, it should be recognised and measured in accordance with Ind AS 37, i.e., at the best estimate of the expenditure required to settle the present obligation at the end of the reporting period. Further, since such best estimate of expenditure required to settle the obligation at any date is proportional to the use of the project assets by that date and which will increase proportionately by each passing year, the provision to be recognised should be increased in annual increments by charge to profit or loss over the useful life of the respective project assets till their expected date of replacement/restoration. Also, the provision should be discounted to its present value in accordance with Ind AS 37 and the carrying amount of provision in each reporting period is increased to reflect the passage of time, which is to be recognised as borrowing or finance cost in the Statement of Profit and Loss. Therefore, the in-principal approach followed by the Company to build and recognise the provision over the period (considering the expected replacement of assets); rather than recognising the entire amount at the end of the reporting period, is as per the requirements of Ind AS 37.

### Accounting treatment of expenditure incurred on repair, recovery and reinstallation of damaged subsea assets during construction phase of offshore fields, under Ind AS framework.

The Company was developing an offshore oil and gas field through Lump Sum Turnkey contracts, which included installation of critical subsea assets. Certain subsea assets, which had already been installed and confirmed for proper installation, were subsequently damaged and displaced, most likely due to the anchor of a drilling rig during its demobilisation. At the time of the incident, the field was still under development, and the overall subsea production system had not been commissioned. The Company incurred expenditure towards recovery, rectification, reinstallation and integration of the damaged subsea assets and capitalised such expenditure as part of Capital Work-in-Progress, which was subsequently transferred to Property, Plant and Equipment upon commissioning. The Company considered the expenditure to be directly attributable to bringing the production system to the condition necessary for its intended use. However, the C&AG contended that such expenditure represented abnormal amounts of wasted material, labour or other resources and should therefore be recognised in the Statement of Profit and Loss rather than capitalised.

The Committee noted that the subsea assets are production facilities/ equipment installed and reinstated for development of the oil field and, accordingly, are within the scope of Ind AS 16. The Committee also noted that the ICAI Guidance Note on Accounting for Oil and Gas Producing Activities provides that development costs include directly attributable expenditure incurred in respect of development activities, which is consistent with the requirements of Ind AS 16. However, the Committee observed that the subsea assets had initially been properly installed and were subsequently damaged due to the incident involving the demobilisation of the rig.

Accordingly, the expenditure incurred on reinstatement or rectification represented subsequent expenditure incurred following damage to already installed assets, rather than expenditure incurred to complete an unfinished construction or development activity. The Committee further observed that all costs relating to PPE, including subsequent costs incurred to add to, replace part of, or service an asset, are required to be evaluated based on the recognition and measurement principles of Ind AS 16. Accordingly, only costs directly attributable to bringing the asset to the location and condition necessary for it to operate in the manner intended by management can be capitalised. Further, abnormal amounts of wasted material, labour or other resources incurred in constructing an asset cannot form part of the cost of the asset. While Ind AS 16 does not specifically define abnormal costs, the Committee observed that these may be understood as costs that are not inherent to the construction or development activities and would not ordinarily be required to be incurred in the normal course of such activities. Determination of whether a cost is abnormal requires exercise of judgement considering the specific facts and circumstances, including the nature of the activities and the experience of the entity or similar entities undertaking such activities.

Accordingly, the Committee concluded that in the extant case, accounting treatment of expenditure incurred for reinstatement of subsea assets during the development/ construction phase shall require exercise of judgement as to whether the reinstatement expenditure meets the recognition and measurement principles under Ind AS 16. For example, whether the expenditure qualifies as directly attributable cost in accordance with paragraph 16(b) of Ind AS 16 and whether the expenditure includes any element representing the cost of abnormal amounts of wasted material, labour or other resources (viz. abnormal costs), which cannot form part of the capitalised cost and must be recognised in profit or loss. Further, such judgement should be exercised in the specific facts and circumstances and considering the principles and various factors, as discussed above; and based on such judgement, it should be decided, whether these expenditure or costs need to be capitalised (included in the costs of PPE) or recognised in the statement of profit and loss. Also, in the extant case, when the incident causing damage to the assets occurred, the Company should assess the impairment as per the requirements of Ind AS 36 (even though the overall production facilities may not have been commissioned at that stage). Further, the Company should also evaluate whether any asset or any component of the previously capitalised asset is destroyed and consequently is no longer expected to generate future economic benefits; and therefore, whether any such asset or component would require derecognition under paragraph 67 of Ind AS 16. In the extant case, the expected insurance proceeds, which are in respect of damages/ losses occurred to sub-sea assets, are in the nature of compensation from third parties for items of PPE that were impaired, lost or given up and accordingly, the same should be recognised when it becomes receivable, as per the requirements of Ind AS 16.

## REGULATORY UPDATES

### National Financial Reporting Authority

#### NFRA Auditor-Audit Committee Interaction Series 6 - Dealing with Going Concern Assessment - SA 570 (Revised)

NFRA has published its Auditor-Audit Committee Interactions Series 6 focusing on Going Concern Assessment under SA 570 (Revised).

Key Highlights are:

- Emphasises the respective responsibilities of management, the Board, Audit Committee and statutory auditor in assessing going concern
- Highlights the auditor's responsibility to evaluate management's assessment and conclude on the appropriateness of the going concern basis and existence of any material uncertainty
- Stresses evaluation of management's assumptions, cash flow projections, sensitivity analysis, future plans and historical accuracy of forecasts
- Emphasises assessment of mitigating factors, including asset disposals, financing arrangements and financial support from parent/ promoter or other parties and feasibility of the management plans
- Highlights the different reporting implications under SA 570 (Revised), depending on the existence of material uncertainty, adequacy of disclosures and appropriateness of the going concern basis
- Clarifies that reporting under CARO 2020 Clause 3(xix) and SA 570 (Revised) are separate assessments and may result in different conclusions
- Highlights additional considerations for regulated entities, including capital, solvency, liquidity and other prudential requirements



## Ministry of Labour and Employment

### Revised wage ceiling notified under the Code on Social Security, 2020

The Ministry of Labour and Employment has enhanced the wage ceiling prescribed under Chapter III (Employees' Provident Fund) of the Code on Social Security, 2020 from Rs. 15,000 to INR 25,000 per month with effect from 17 September 2026.

#### Key Implications -

- The revised threshold will bring employees earning above INR 15,000 and up to INR 25,000 per month under mandatory PF coverage, subject to applicable membership and excluded employee provisions.
- The PF contribution ceiling may increase from INR 1,800 to INR 3,000 per month, potentially reducing employees' take-home pay.
- The revised ceiling may also expand mandatory pension coverage for eligible employees, subject to applicable conditions.
- The change affects the PF and pension allocation but does not change the overall 12% employer contribution rate.
- Employers should review contract labour arrangements, as the revised coverage may increase social security costs and contractor commercials.

## Ministry of Corporate Affairs (MCA)

### Extension of Companies Compliance Facilitation Scheme, 2026 (CCFS-2026) up to 15 September 2026

MCA had introduced the Companies Compliance Facilitation Scheme, 2026 (CCFS-2026) to provide an opportunity to companies to complete pending statutory filings. The Scheme was initially operational up to 15 July 2026. Subsequently, the last date of the Scheme was extended up to 31 August 2026. In the view of representations received from various stakeholders, it was further extended up to 15 September 2026.



## Reserve Bank of India (RBI)

### FAQs - All you wanted to know about NBFCs and ARCs

RBI has released FAQs on Non-Banking Financial Company and Asset Reconstruction Companies. These FAQs provide useful guidance for understanding RBI's regulatory expectations and assessing compliance with the applicable framework.

### Withdrawal of obsolete Circulars issued under Foreign Exchange Management Act, 1999 (FEMA)

RBI has withdrawn seven obsolete FEMA-related circulars as part of its ongoing initiative to streamline and rationalise the foreign exchange regulatory framework. The withdrawn circulars, issued between 2012 and 2015, primarily relate to External Commercial Borrowings (ECBs), overseas rupee-denominated bonds, investments in certain non-convertible bonds, and operational aspects of the Money Transfer Service Scheme. RBI clarified that these circulars have become redundant due to subsequent regulatory changes, overlap with existing provisions, or their replacement by newer directives. The move is aimed at simplifying the FEMA compliance framework and improving regulatory clarity for Authorized Persons and market participants.

### Reserve Bank of India (Priority Sector Lending - Targets and Classification) Third Amendment Directions, 2026

RBI has amended its Priority Sector Lending Directions, 2025, by shortening the eligibility period for certain deposit-linked exemptions used in the calculation of Adjusted Net Bank Credit (ANBC). Key highlights include:

- Revised the cut-off date for exclusion of advances backed by eligible FCNR(B) and NRE term deposits from 30 September 2026 to 31 August 2026.
- The exemption applies to Advances against fresh FCNR(B) deposits with tenors of 3 to 5 years mobilised between 8 June 2026, and 31 August 2026, and Advances against NRE term deposits of 3 years or more mobilised between 19 June 2026 and 31 August 2026.
- The amendment shall come into force with immediate effect.

### Reserve Bank of India (Commercial Banks - Minimum Capital Requirements for Market Risk) Directions, 2026

RBI has released the Commercial Banks - Minimum Capital Requirements for Market Risk Directions, 2026, which will come into effect from 1 April 2027. The framework applies to all commercial banks (excluding Small Finance Banks, Payments Banks, and Local Area Banks) and aligns market risk capital requirements with updated prudential regulations.

- Introduces a comprehensive framework for calculating capital requirements for interest rate risk, equity risk, and foreign exchange risk.
- Clearly defines the boundary between the banking book and trading book, with stricter controls on reclassification to prevent regulatory capital arbitrage.

- Establishes detailed rules for internal risk transfers between banking and trading books, including treatment of credit risk, interest rate risk, and credit valuation adjustment (CVA) hedges.
- Requires banks to compute market risk capital using a Simplified Standardised Approach (SSA), with prescribed scaling factors for determining risk-weighted assets.
- Expands guidance on foreign exchange risk, including treatment of structural FX positions and methodology for calculating Net Open Positions.
- Enhances the capital framework for debt mutual funds, ETFs, securitisation exposures, derivatives and options, along with strengthened Pillar 3 disclosure requirements and daily market risk capital compliance.

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

RBI through an amendment has introduced key changes to the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026. The amendments will come into effect from 1 October 2026.



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

##### Applicability of IT & Cyber Security Framework of MIs to their Subsidiaries

SEBI proposes extending the IT and Cyber Security Framework of Market Infrastructure Institutions (MIs) to subsidiaries that:

- undertake activities directly contributing to the MII's regulated domain,
- handle MII-related data, or
- share IT infrastructure with the MII.

Covered subsidiaries would be subject to requirements on cyber security, system audits, incident reporting, BCP-DR and technology governance. Subsidiaries outside these criteria would be exempt, while MIIs may seek SEBI exemption where coverage arises only due to shared infrastructure, subject to compensatory controls.

Public comments were invited till 2 October 2026.

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

##### Repeal of the 'Guidelines on repatriation of dividends by insurance intermediaries having majority by foreign investors'

The Insurance Regulatory and Development Authority of India (IRDAI), through its circular dated 22 September 2026, has repealed the 2020 Guidelines on repatriation of dividends by insurance intermediaries having majority foreign ownership, with effect from 30 July 2026.

The repeal follows the IRDAI (Insurance Intermediaries) (Amendment) Regulations, 2026, notified on 30 July 2026, which align the regulatory framework with the Sabka Bima Sabki Raksha (Amendment of Insurance Laws) Act, 2025 and the Indian Insurance Companies (Foreign Investment) Amendment Rules, 2025.

#### The Central Board of Direct Taxes (CBDT)

##### CBDT extends due date for furnishing Return of Income for AY 2026-27 in respect of persons subject to audit under the Income-tax Act, 1961

The Central Board of Direct Taxes (CBDT) has decided to extend the due date of furnishing of Return of Income from 31 October 2026 to 21 November 2026.

Accordingly, the specified date for furnishing of the report of audit under the provisions of the Income-tax Act, 1961 for Assessment Year 2026-27, in the case of persons referred in Section 139(1) [Explanation 2] of the Income Tax Act, 1961 stands extended from 30 September 2026 to 21 October 2026.

## REGULATORY UPDATES

### Ministry of Finance

#### Non-Debt Instruments (Fourth Amendment) Rules, 2026<sup>1</sup>

The Department of Economic Affairs, Ministry of Finance, has notified the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2026 vide S.O. 4870(E) dated 02 September 2026, amending the FEM (Non-Debt Instruments) Rules, 2019. The amendment came into force from the date of its publication in the Official Gazette.

#### Key Amendments include:

- The amendment inserts a new serial number 15.2.5 in Schedule I, permitting e-commerce entities to adopt an inventory-based model exclusively for exporting goods manufactured or produced in India, subject to the Foreign Trade Policy (FTP) 2023 and Foreign Exchange Management Act (FEMA) export regulations.
- The existing restrictions on B2C transactions and inventory-based models (serial numbers 15.2.1 to 15.2.4) do not apply to exports undertaken under this carve-out, but domestic B2C sales via inventory-based models remain barred.

Entities covered under serial no. 15.2.1 to 15.2.4 may also be eligible to the above-mentioned liberalisation subject to they being able to demonstrate, transaction by transaction, that goods are Indian origin, exported in accordance with the FTP, and that export proceeds are realised and reported as per FEMA export regulations. Any slippage into domestic sales would attract the same FEMA consequences as unauthorised inventory-based e-commerce.

### Reserve Bank of India (RBI)

#### Review of Circulars issued under Foreign Exchange Management Act (FEMA), 1999<sup>2</sup>

Reserve Bank of India (RBI) has withdrawn certain obsolete FEMA-related circulars as part of its ongoing initiative to streamline and rationalise the foreign exchange regulatory framework.

#### Key Highlights:

- The circulars listed below, which have ceased to be operative owing to subsequent regulatory amendments, redundancy, overlap or supersession by newer directives, were withdrawn:

| Sr. No. | Subject                                                                                                                                     | Date       |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 1       | External Commercial Borrowings (ECB) Policy - Issuance of Rupee-denominated bonds overseas                                                  | 29.09.2015 |
| 2       | External Commercial Borrowings (ECB) in Indian Rupees                                                                                       | 03.09.2014 |
| 3       | External Commercial Borrowings (ECB) Policy - Liberalisation of definition of Infrastructure Sector                                         | 06.01.2014 |
| 4       | Borrowing and Lending in Rupees - Investments by persons resident outside India in the tax-free, secured, redeemable, non-convertible bonds | 24.12.2013 |
| 5       | External Commercial Borrowings (ECB) Policy - Import of Services, Technical know-how and License Fees                                       | 26.06.2013 |
| 6       | Money Transfer Service Scheme - List of Sub Agents                                                                                          | 07.11.2012 |
| 7       | External Commercial Borrowings Policy - ECB by Small Industries Development Bank of India                                                   | 06.11.2012 |

<sup>1</sup> Ministry of Finance Notification S.O. 4870(E) dated 02 September 2026

<sup>2</sup> RBI/2026-27/254 A.P. (DIR Series) Circular No. 21, dated 08 September 2026

The withdrawn circulars, issued between 2012 and 2015, primarily relate to ECBs, overseas rupee-denominated bonds, investments in certain non-convertible bonds and operational aspects of the money transfer service scheme.

### FAQs on Asset Reconstruction Companies (ARC)<sup>3</sup>

RBI has issued a consolidated set of FAQs titled “All You Wanted to Know About ARCs,” dated 11 September 2026.

#### Key Highlights:

- **NBFC framework inapplicable:** ARCs are registered under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and are not considered as a class of Non-Banking Financial Companies (NBFC). NBFC guidelines would apply to ARCs only if specifically addressed to ARCs under the provisions of SARFAESI.
- **Permissible activities:** Confined to securitisation and asset reconstruction, other functions under Section 10 of SARFAESI and RBI-permitted activities under Section 10(2) of SARFAESI.
- **No cross-investment in SRs:** ARCs cannot invest in Security Receipts (SRs) issued by another ARC.
- **NOF exemption for Insolvency and Bankruptcy Code (IBC) resolution applicants:** The INR 1,000 crore net owned fund (NOF) condition (paragraph 18) does not apply to an ARC for acting as a resolution applicant to acquire financial assets, unless the resolution plan involves non-SARFAESI permitted activities.
- **Restricted asset transfers:** ARCs can transfer financial assets only to entities explicitly permitted under the RBI (Asset Reconstruction Companies) Directions, 2025 (ARC Directions).
- **Transfers beyond eight years:** Permitted subject to adherence with conditions prescribed in paragraph 33 of ARC Directions.
- **Fair value of aged SRs:** Net unrealised gains on SRs held beyond eight years must be excluded from owned funds for Ind AS-compliant ARCs.
- **Yield and upside waterfall:** Under paragraphs 140-141 of the ARC Directions, yield and upside income on SRs are recognised only after full redemption of principal/ all SR classes; no preferential distribution of yield or upside income between SR holder classes is permitted before the redemption of all classes of SRs.
- **Restructuring bar on fraud/ wilful default accounts:** ARCs are not permitted to restructure borrower accounts classified as fraud/ wilful defaulter.
- **Outsourcing permitted, core functions excluded:** ARCs are not restricted from outsourcing their functions; however, core functions like acquisition decisions, realisation planning, debt rescheduling, security enforcement, settlement, or acting as IBC resolution applicant shall not be outsourced.
- **Management fee principles:** Fees must be performance-linked and tied to actual recoveries and the same to be consistent with the ARC Directions.

- **Ongoing due diligence:** ARCs shall carry out ongoing due diligence, including updation/ periodic updation of KYC information.

### FAQs on Non-Banking Financial Companies<sup>4</sup>

RBI has issued a consolidated set of FAQs titled “All You Wanted to Know About NBFCs,” dated 15 September 2026.

#### Key Highlights:

- **The 50-50 test:** Financial activity is a Company's principal business when both conditions are met:
  - (i) Financial assets are more than 50% of total assets (netted off by intangible assets).
  - (ii) Income from financial assets is more than 50% of gross income.

A Company that meets both criteria needs to register as an NBFC with the RBI. Companies mainly engaged in agriculture, industry, trading in goods, services or immovable property, with only some financial business in a small way, are outside the RBI's purview.
- **Non-50-50 companies accepting deposits:** Companies which do not comply with 50-50 test fall outside the purview of the RBI and acceptance of deposits by such Companies are regulated by the Ministry of Corporate Affairs.
- **Registration:** Under Section 45-IA of the RBI Act, 1934 (RBI Act), a Company needs a certificate of registration and Net Owned Funds (NOF) of ₹10 crore (with effect from October 01, 2022) to commence or carry on business of a NBFC. To obviate dual regulation, certain NBFCs regulated by other regulators, such as SEBI and Insurance Regulatory and Development Authority of India, are exempted from registration with the RBI.
- **Powers of RBI:** RBI can register, determine policy, issue directions, inspect, regulate and supervise NBFCs that fulfil the principal business criteria. It can penalise violations, including through cancellation of the Certificate of Registration (CoR).
- **Types of NBFCs:** Under Reserve Bank of India (Non-Banking Financial Companies - Registration, Exemptions and Framework for Scale Based Regulation) Directions, 2025 [Scale Based Regulation], NBFCs fall into Base, Middle, Upper and Top layers. By activity, the types are:
  - i. Investment and Credit Company (ICC)
  - ii. Housing Finance Company (HFC)
  - iii. Infrastructure Finance Company (IFC)
  - iv. Infrastructure Debt Fund (IDF-NBFC)
  - v. Core Investment Company (CIC)
  - vi. Micro Finance Institution (NBFC-MFI)
  - vii. Non-Banking Financial Company - Factors (NBFC-Factors)
  - viii. Mortgage Guarantee Companies (MGC)
  - ix. Standalone Primary Dealers (SPD)
  - x. Non-Operative Financial Holding Company (NOFHC)

<sup>3</sup> RBI FAQs on “All you wanted to know about ARCs” dated 11 September 2026

<sup>4</sup> RBI FAQs on “All you wanted to know about NBFCs” dated 15 September 2026

- xi. NBFC - Account Aggregator (NBFC-AA)
- xii. NBFC - Peer to Peer Lending Platform (NBFC-P2P)
- **Operating without registration:** Lending, investment or deposit acceptance as a principal business without a CoR contravenes the RBI Act. It invites penalty, fine or even prosecution in a Court of Law. The public should inform the nearest Regional Office of any entity doing such activity that is not on the RBI's list of authorised NBFCs.
- **Public funds:** Public funds include public deposits, inter-corporate deposits, bank finance and all funds received directly or indirectly from outside sources, such as Commercial Papers and debentures. Indirect receipt means funds received through associates and group entities that have access to public funds. CICs are not allowed to accept public deposits.
- **Restructured accounts:** Resolution of stressed assets is subject to the RBI (Non-Banking Financial Companies - Resolution of Stressed Assets) Directions, 2025. Shares acquired through conversion of debt into equity during a restructuring process are exempted from regulatory ceilings on capital market exposures.
- **Deposit-taking eligibility and limits:** Only NBFCs holding a deposit-accepting CoR and minimum 'BBB-' rating may accept public deposits, capped at 1.5x NOF, at a maximum interest rate of 12.5%, for tenors of 12-60 months; no demand deposits permitted. RBI has not issued fresh deposit-taking CoRs since 1997.
- **Proprietorship/ partnership deposit-taking:** Prohibited under the RBI Act; liable for penal action, if found accepting public deposits.
- **Chit funds vs deposits:** Chit subscriptions are excluded from the deposit definition; chit companies barred from accepting public deposits since 2009.
- **Recourse on default of repayment of deposits:** Depositors may approach NCLT/ Consumer Forum/Civil Court/State Government /State Legislations on Protection of Interest of Depositors.
- **Collective Investment Schemes (CIS):** CIS falls under SEBI Regulations and is not covered under NBFC Regulations.
- **MLM (Multi-Level Marketing) / Direct Selling / Online Selling companies:** Outside NBFC purview. They are governed by state government regulations and subject to provisions of the Consumer Protection Act, 2019 read with the Consumer Protection (Direct Selling) Rules, 2021.
- **NBFC-IFC investments in InvITs:** NBFC-IFCs may lend to or invest in InvITs, subject to applicable regulatory and exposure norms.
- **Unregistered Type I NBFCs:** NBFCs with no public funds, no customer interface and assets below INR 1,000 crore. RBI decided to grant them exemption from registration requirement under section 45IA of the RBI Act by exercising powers under section 45NC of the Act.
- **Registration as Type I NBFC:** Required where assets are INR 1,000 crore or more, or where the NBFC intends to make overseas investment in the financial services sector, even with no public funds or customer interface.
- **Exemption to new companies:** Exemption from registration is provided to Companies only if they intend to operate long-term without public funds or customer interface. They need not register until assets reach INR 1,000 crore. Any Company seeking public funds or customer interface must register irrespective of size.
- **Deregistration:** Optional, Eligible existing NBFCs may apply within six months. The lighter Type I framework applies only to NBFCs holding a Type I CoR.
- **Breach of conditions:** Availing public funds and/ or having a customer interface violates the exemption. Such an NBFC must first register as a Type II NBFC, failing which it faces penal action.
- **Type I vs non-deposit-taking NBFCs:** Type I NBFCs operate on their own funds with no customer interface, whereas non-deposit-taking NBFCs can access public funds in the form of borrowings and lend to customers.
- **Group aggregation:** For aggregation purposes, the asset size of 'Type I NBFCs' shall be considered but asset size of 'Unregistered Type I NBFCs' shall not be considered. It is emphasised that 'Type I NBFCs' shall always be classified in Base Layer regardless of such aggregation. Further, as prescribed in the any of NBFC Directions, in case of multiple 'Unregistered Type I NBFCs' in the Group, the asset size of all such 'Unregistered Type I NBFCs' shall be aggregated. If the aggregate asset size is INR 1,000 crore or above, all 'Unregistered Type I NBFCs' in the Group are required to be registered as 'Type I NBFC' and shall be subject to relevant instructions issued by the RBI.
- **CIC registration across group:** Where a group has four to five prospective CICs with an aggregate asset size exceeding INR 100 crore, each group Company qualifying as a CIC must independently obtain a CoR from the RBI, provided it has accessed public funds.
- **Public funds determine registration:** Within a group of CICs, only the CIC that has accessed or holds public funds is required to obtain registration with the RBI, provided it is not funding any other CIC in the group, directly or indirectly. Other CICs in the group need not register if they do not access public funds either directly or indirectly through the CIC that has accessed/ holds such funds.
- **Transition from NBFC to CIC:** An NBFC proposing to become a CIC may approach RBI with details of its restructuring plan. Details of the plan and exemptions could be considered on a selective basis on the merits of the case.
- **Holding Company outside CIC/NBFC criteria:** A holding Company that does not satisfy the CIC conditions and also fails the NBFC Principal Business Criteria, i.e., the prescribed financial asset and income thresholds would not be required to register as an NBFC. Registration would become necessary once the relevant NBFC criteria are met.

- **CICs crossing INR 100 crore:** A CIC with an asset size below INR 100 crore must apply for RBI registration within three months of reaching the INR 100 crore threshold, with the threshold determined based on the latest audited annual financial statements.

### Foreign Exchange Management (Export and Import of Goods and Services) (Amendment) Regulations, 2026<sup>5</sup>

RBI has issued a notification dated 22 September 2026 and made amendments in the the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026.

#### Key Highlights:

- **Reduction in export realisation period:** Regulation 5(1)(a) and (b) are amended to substitute “fifteen months” with “nine months” - shortening the period within which export proceeds must be realised and repatriated to India.
- The first proviso to Regulation 5(1) is amended to substitute “eighteen months” with “twelve months”.
- **Caution List exporters:** A new proviso is inserted in Regulation 13 - exporters on the RBI's Caution List as on 30 September 2026 (issued under Regulation 16 of the erstwhile 2015 Regulations) will continue to be governed by the original caution-listing order until removed from the list, rather than being automatically subject to the amended framework.
- **New Regulation 20 - Powers to Authorised Dealers:** Authorised Dealers are empowered to handle export, import, and merchanting trade transactions undertaken prior to 01 October 2026 that earlier required RBI's specific approval.

These amendments will come into effect from 01 October 2026. The notification was published in the Official Gazette on 24 September 2026.



## Securities and Exchange Board of India (SEBI)

### Board Meeting Decisions (215th Meeting, 24 September 2026)<sup>6</sup>

Securities and Exchange Board of India's (SEBI) Board, at its 215th meeting held in Mumbai on 24 September 2026 (PR No. 59/2026), approved a wide-ranging set of reforms.

The reforms/ measures discussed in the board meeting shall take effect post requisite corresponding amendments to the respective Regulations are notified.

The relevant transactional decision points are listed below:

#### Foreign Portfolio Investors (FPI) participation in Exchange Traded Commodity Derivatives (ETCDs)

- FPIs will be permitted to participate in:
  - (i) non-agricultural index derivatives contracts, whether cash-settled or not; and
  - (ii) non-cash settled non-agricultural commodity derivatives contracts.
- FPI participation in non-cash settled contracts is contingent on FPIs exiting before any delivery obligation arises.
- FPIs to exit positions before the Tender Period begins (three days before contract expiry); FPIs cannot increase positions from T-3 onward.
- FPIs must enter into an agreement with the Trading Member / Trading - cum - Clearing Member (TM/TCM) before being enabled to trade.

#### Issuance of Depository Receipts on units of REITs and InvITs

- The Board approved amending the SEBI (REIT) Regulations, 2014 and SEBI (InvIT) Regulations, 2014 to enable issuance of Depository Receipts (DRs) on units of REIT and InvIT, aimed at attracting foreign capital.
- The detailed framework will follow via a separate circular after the necessary amendments are notified.
- DRs issued shall be listed on International Financial Services Centre; all foreign investors, including NRIs, will be eligible to invest.

#### Ease of Doing Business measures for InvITs and REITs

The Board to enhance ease of doing business for InvITs and REITs, considered and approved amendments to SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014 for the following matters:

- Threshold for unitholder approval for certain matters.
- Framework for exit offer in case of change in sponsor.
- Recognition of remote common infrastructure as real estate.

<sup>5</sup> RBI Notification No. FEMA 23(R)/ (1)/2026-RB dated 22 September 2026

<sup>6</sup> SEBI Board Meeting dated 24 September 2026 PR No.59/2026

### Ease of mandatory listing of outstanding unlisted debt securities

- Regulation 62A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 currently requires an issuer listing Non-Convertible Debt security (NCD) for the first time to also list all its outstanding unlisted NCDs (issued on or after 01 January 2024) within three months of the new listing.
- The said requirement shall be done away with and going forward, an issuer will only need to list prospective NCD issuances, not existing unlisted ones.

### Unification of investor protection across all AIF structures

- Currently, where an Alternative Investment Funds (AIF) is constituted as a trust, the Fund Manager/its officers cannot use the trust's assets to cover their own losses, damages, or expenses (including costs of resolving investor disputes); a protection specific to the trust structure.
- This protection will now extend to all forms of AIF irrespective of the form in which they are set up.

### Ministry of Labour and Employment

#### Increase in EPF Wage Ceiling from INR 15,000 to INR 25,000<sup>7</sup>

The Ministry of Labour and Employment has notified an increase in the statutory wage ceiling for mandatory EPF coverage from INR 15,000 to INR 25,000 per month, vide Notification S.O. 5109(E) dated 17 September 2026, published in the Official Gazette on the same date. The notification prescribes INR 25,000 as the monthly wage ceiling for Chapter III of the Code on Social Security, 2020, and supersedes the earlier notification (S.O. 2702(E), dated 29 May 2026) that had prescribed the INR 15,000 ceiling.

- The Union Cabinet approved the increase of wage ceiling with effect from 17 September 2026.
- Employees drawing monthly wages between INR 15,001 and INR 25,000, who were previously outside mandatory EPF coverage, will now fall within it, subject to applicable EPFO provisions.



<sup>7</sup> Ministry Of Labour and Employment Notification S.O. 5109(E) dated 17 September 2026

## DIRECT TAX

### Circulars / Notifications / Release

#### **CBDT specifies guidelines for depositories and Registrars and Share Transfer Agents to furnish Statement of Financial Transaction on transactions in securities and mutual funds**

Section 508 of the Income-tax Act, 2025 ('the IT Act, 2025') and Rule 237 of the Income-tax Rules, 2026 ('IT Rules, 2026') require specified reporting persons to furnish a statement of financial transaction ('SFT'). Rule 237(6) provides that, for the purpose of pre-filling the return of income, SFT containing information on capital gains from transfer of listed securities or units of mutual funds is to be furnished by the reporting person specified in column 4 of serial number 1 of the table under Rule 237. The form, frequency and manner of furnishing this SFT is to be specified by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) ('DGIT (Systems)'), with the approval of the Central Board of Direct Taxes ('CBDT'). CBDT has now released format, guidelines and procedures for reporting by depositories and registrars and share transfer agents. SFT is to be furnished on half-yearly basis on or before 31 October and 30 April respectively. The reporting entities are also required to provide information of mutual fund transactions, as reported in SFT, to the accountholder to enable reconciliation with the information displayed in Annual Information Statement ('AIS').

**[Notification No. 1 of 2026 [DGITS/ADG(S)-2/Reporting Portal/2026/3768], dated 10 September 2026 and Notification No. 2 of 2026 [DGITS/ADG(S)-2/Reporting Portal/2026/3769], dated 10 September 2026]**

#### **CBDT lays down the procedure for registration of reporting persons/ entities and submission of Form No. 98 under Rule 160 of the Income-tax Rules, 2026**

Rule 160 of IT Rules, 2026 requires a person who receives a declaration in Form No. 97 regarding permanent account number ('PAN') for specified transactions to furnish a statement in Form No. 98.

CBDT has issued a Notification to lay down the procedure for registration of reporting person and filing Form No. 98. This notification is effective from 15 September 2026.

**[Notification No. 3 of 2026 (DGIT(S)/ADG(S)-2/Notification/3893), dated 15 September 2026]**

#### **OECD releases revised GloBE Information Return incorporating the Side-by-Side package**

On 11 September 2026, the Organisation for Economic Co-operation and Development ('OECD')/G20 Inclusive Framework released a revised GloBE Information Return ('GIR') incorporating the simplifications introduced under the Side-by-Side Package released in January 2026. The GIR is the standardised return used by tax administrations to obtain information necessary to assess an MNE group's liability under the Global Minimum Tax.

The revised GIR is applicable only to fiscal years commencing on or after 31 December 2025. GIRs for earlier fiscal years will continue to follow the January 2025 version. The revised return also incorporates reporting provisions for the Side-by-Side Safe Harbour, while an updated XML Schema is being developed to reflect the changes.

The OECD has also provided additional clarifications on completing certain GIR data points, which apply to all GIR filings, including those relating to earlier fiscal years.

**[OECD, Tax Challenges Arising from the Digitalisation of the Economy - GloBE Information Return (September 2026), released on 11 September 2026]**

#### **CBDT notifies the Income-tax (Fourth Amendment) Rules, 2026**

On 17 September 2026, the CBDT has notified the Income-tax (Fourth Amendment) Rules, 2026 and amended Rule 160, 176, 225, 246 and 256 of the IT Rules, 2026. The key changes include authentication of electronic records by various units by electronic communication, relaxation in arrest provisions relating to tax recovery, extension of time limit for application of registration as valuer/tax practitioner from 30 September 2026 to 31 March 2027 and revision in application forms for such registration

The changes to rules 160, 176 and 225 of the IT Rules, 2026 relating to electronic communication, relaxation of arrest provisions etc. are effective from 1 April 2026. The changes to rules 246 and 256 of the Rules and the substituted forms relating to registration as valuer and tax practitioner are effective from 17 September 2026.

**[Notification No. 120/2026 (G.S.R. 822(E)), F. No. 370142/30/2026-TPL, dated 17 September 2026]**

#### **CBDT amends Form Nos. 132 and 141 to cover withholding tax on immovable property bought from non-residents and removes the tax deduction account number requirement for such buyers**

The CBDT has notified the Income-tax (Fifth Amendment) Rules, 2026 ('the Amendment Rules') to amend Rules 215, 218 and 219 of the IT Rules, 2026.

The changes apply where a resident individual or Hindu undivided family ('HUF') buys immovable property from a non-resident. Such a buyer has to withhold tax on the consideration under Section 393(2) [Table: Sl. No. 17] of the Act. The need to obtain tax deduction account number has now been omitted in such cases.

As per this amendment, withholding tax from any consideration on transfer of any immovable property to a non-resident would be required to be paid within 30 days from the end of the month in which tax is withheld. The payment would be accompanied by a challan-cum-statement in Form No. 141 and the certificate of withholding tax would be furnished in Form No. 132 within fifteen days of due date for Form No. 141 (challan-cum-statement).

These changes are effective from 1 October 2026.

**[Notification No. 121/2026 (G.S.R. 830(E)), F.No. 370142/29/2026-TPL, dated 22 September 2026]**

#### **CBDT extends the due date for filing income-tax returns to 21 November 2026 and the tax audit report date to 21 October 2026 for FY 2025-26**

CBDT has issued Circular No. 07/2026 under Section 119 of the Act to extend the timelines for filing tax audit report and return of income for a company and assessee other than a company or a partner of firm whose accounts are required to be audited under any law. The revised timeline is as follows:

- (i) Return of income: The due date is extended from 31 October 2026 to 21 November 2026.
- (ii) Tax audit report: The specified date for filing tax audit report is extended from 30 September 2026 to 21 October 2026.

**[F.No.225/128/2026/ITA-II, dated 28 September 2026]**

#### **OECD releases the full version of the Model Tax Convention 2025**

OECD has released full version of the Model Tax Convention on Income and on Capital 2025 (Volumes I and II) on 30 September 2026. It brings in the 2025 Update, which the OECD Council adopted on 19 November 2025. The key amendments are as follows:

- New guidance on when an employee's home office in another country creates a permanent establishment ('PE') for the employer. The guidance sets a 50% working-time over 12-month period as threshold and a 'commercial reason' test.
- A new optional provision that lowers the PE threshold for activities linked to the exploration and exploitation of natural resources.
- Clarifications on Article 9 (associated enterprises) on how to treat a purported loan, and on how to factor the simplified and streamlined approach into the Mutual Agreement Procedure.
- Updates to the Commentary on Article 26 on the use and disclosure of information exchanged between countries.

**[OECD (2026), Model Tax Convention on Income and on Capital 2025 (Full Version): Volumes I and II]**



## JUDICIAL UPDATES

### **Punjab and Haryana High Court held that the retrospective amendment under Section 147A of the Act is unconstitutional and set aside reassessment notices issued by jurisdictional assessing officers without following faceless, randomised allocation**

The Finance Act, 2021 introduced a faceless assessment regime for reassessment of income escaping assessment, under which only a faceless assessing officer ('FAO') was empowered to issue reassessment notices, a position upheld by several High Courts against notices issued by jurisdictional assessing officers ('JAO'). To address this, the Finance Act, 2026 inserted Section 147A to the Income-tax Act, 1961 ('the Act') with retrospective effect from 1 April 2021, clarifying that the assessing officer for reassessment purposes shall mean a JAO, following which the Apex Court remitted pending matters on this issue to the jurisdictional High Courts for fresh consideration. In the present case, the taxpayer, a practising advocate, challenged a reassessment notice issued by her JAO before the Punjab and Haryana High Court, contending that only an FAO could legally issue such a notice under the faceless scheme, and the question before the High Court was whether the retrospective introduction of Section 147A was constitutionally valid. The High Court held that Section 147A is unconstitutional, holding that the legislature can amend the law but cannot retrospectively validate a statute or annul a judicial decision without curing the defect identified by the courts. The concerned provision does not address the requirement of randomised, automated allocation of tax authorities under Section 151A of the Act and the scheme framed thereunder. Further, its retrospective enactment amounted to legislative overreach seeking to upset the findings of various High Courts on the JAO versus FAO issue. Accordingly, the High Court set aside the notices issued to the taxpayer, holding that they had not been issued through the randomised, faceless allocation process prescribed under Section 151A of the Act. Please go to: [Punjab HC Strikes Down Retrospective Section 147A Amendment - BDO India](#)

The Apex Court has granted stay against the Punjab & Haryana High Court judgment and also stayed reassessment proceedings in this case.

**[Jyoti Sareen v. Union of India and others, CWP No.15791-2024 (O&M) and others, order dated 10 September 2026 (P & H HC) and SLP(C) No. 33196/2026, order dated 18 September 2026 (SC)]**

### **Delhi ITAT held that no fixed place PE arises in India where expatriate employees work under employment agreements with, and are paid and controlled by, the Indian subsidiary**

The taxpayer ('H Co') is a Korean company engaged in the business of manufacturing and sale of household electronic appliances and has an Indian subsidiary ('S Co'). It entered into transactions with S Co for sale of raw materials, finished goods, royalty and fees for technical services. While filing return of income, it offered royalty and fees for technical services to tax. The Transfer Pricing Officer accepted these transactions at arm's length and proposed no adjustment.

A survey was conducted at S Co's premises where it was found that several expatriate employees were transferred to S Co for work. Salaries of such expats were borne by S Co after deduction TDS. Based primarily on the statements recorded during the survey, the tax authorities held that the expatriate employees posted with S Co were working under H Co's command and control, and that H Co was carrying on its business in India through them. The tax authorities treated S Co as constituting a fixed place PE of H Co and attributed 25% of profits to the alleged PE.

Aggrieved, the taxpayer preferred an appeal before the Delhi Bench of Income Tax Appellate Tribunal ('Tax Tribunal').

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

- The statements relied on by the tax authorities did not show that the expatriate employees were under H Co's direct control and employment. An employee's earlier service with H Co, or the Managing Director of S Co reporting to H Co's regional CEO, does not prove that expatriates worked for H Co, since a subsidiary naturally follows its holding company's product and marketing policy.
- As per the employment agreements, the expatriates were engaged by S Co, their salary was paid by S Co and was subject to withholding tax in India. S Co's rules and disciplinary process were applicable to them and they were required to work exclusively for S Co during their tenure. In an earlier ruling in S Co's own case<sup>1</sup>, the Tax Tribunal had held that the expatriates were wholly and exclusively working for S Co's business interest, and their salary was an allowable expense for S Co. Having accepted this position in S Co's case, the tax authorities cannot take a contrary stand in H Co's case on the same set of facts.
- In the jurisdictional High Court's ruling in the case of Samsung Electronics Co Ltd.<sup>2</sup>, it was held that a PE arises where a place is at the disposal and control of the taxpayer and where the employees' placement furthers the business of the foreign parent, and not where it merely facilitates the Indian subsidiary's own activities. The High Court referred to OECD Commentary on secondment and concluded that it would be relevant to ascertain whether the expat employees are working for their formal employer or for the enterprise they are working for. The evidence on record show that the expat employee worked for S Co.
- The tax authorities had relied on statements recorded during the survey, without any supporting documentary evidence, and ignored the employment agreements as well as the HR head's statement, which showed that expatriates were selected from a panel proposed by H Co strictly as per S Co's own requirement.

Accordingly, the Tax Tribunal held that the conditions to constitute a fixed place PE under the India-Korea tax treaty were not satisfied. PE was not formed and hence the question of profit attribution did not arise.

**[LG Electronics Inc. v. Assistant/Deputy CIT, International Taxation - IT Appeal Nos. 7011 & 7012 (Delhi) of 2019, 179 (Delhi) of 2021 & 1034 (Delhi) of 2023, order dated 17 August 2026 (Delhi ITAT)]**

<sup>1</sup> L.G. Electronics India (P.) Ltd. v. ACIT [2023] 150 taxmann.com 365 (Delhi - ITAT)

<sup>2</sup> Pr. CIT v. Samsung Electronics Co. Ltd. [2025] 478 ITR 271 (Delhi)

### Rajasthan High Court upholds the validity of the Explanation to Section 147 of the Act and held that tax authorities can widen a pending reassessment on any subsequent information or material from a new source

The taxpayer is an individual carrying on construction business through a proprietary concern. Reassessment proceedings for FY 2017-18 were initiated on information from the National E-Assessment Centre which showed that a joint venture had made a payment to the taxpayer's proprietary concern. The tax authorities followed the procedure under Section 148A of the Act and issued a notice under Section 148.

During the pendency of the reassessment proceedings, the tax authorities enlarged the scope of proceedings by issuing a show-cause notice in respect of further escaped income that came to their notice subsequently during search proceedings. The tax officer passed the reassessment order proposing an addition relating to the new issue without any addition to the already existing matter.

Aggrieved, the taxpayer filed a writ petition before the Rajasthan High Court. The taxpayer challenged the scope of Explanation to Section 147 of the Act<sup>3</sup> (as amended by the Finance Act, 2021) as ultra vires. The taxpayer also relied on rulings of various High Courts which held that additions on new information are not sustainable unless the original escaped income is also added.

The High Court, while ruling in favour of the tax authorities, made the following key observations:

- The decisions on which the taxpayer relied to state that addition to subsequent income shall be sustainable only when there is an addition to the originally escaped income were no longer relevant post the amendment of Section 147. Those rulings rested on the words 'and also' in the unamended Section 147. The amended provision does not have these words.
- Regarding the scope of Explanation, it ordinarily clarifies the main provision or removes any ambiguity. It cannot widen the ambit of provision. But if the legislative intent to widen the scope is clear, effect must be given to that intent even if the provision is labelled an Explanation. The legislature consciously retained the substance of Explanation 3 of the unamended provision. It made certain modifications. It also added the words 'irrespective of the fact that the provisions of Section 148A have not been complied with'. So, the Explanation was not inserted inadvertently or without application of mind and hence, it cannot be struck down.
- Further, the words 'any issue' as used in Explanation to Section 147 are not limited to material available with the tax authorities when the reassessment began. Any restricted meaning violates the plain interpretation of the provision. Material from a source outside the original proceedings can also be a basis to widen the reassessment. Where the language of a provision is clear, there is no need to look at other provisions relating to search proceedings to interpret it.
- Where a reassessment is already pending, the tax authorities have two options, either to widen the pending reassessment on the search material or to independently initiate proceedings on that material under the prescribed procedure. Adopting one option does not make the proceedings illegal.

Accordingly, the High Court held that the Explanation to Section 147 of the Act is valid and dismissed the writ petition.

**[Papu Ram v. ACIT - D.B. Civil Writ Petition No. 6502/2023, order dated 15 September 2026 (Rajasthan HC)]**

### Mumbai ITAT held licensing receipts from non-resident customers for exploiting TV content and films in India are not taxable as royalty, absent statutory nexus under Section 9(1)(vi) or payer-PE under Article 13(7) of the India-UK tax treaty

The taxpayer is a company incorporated in and tax resident of United Kingdom engaged in licensing television content and films. The taxpayer had a manpower supply agreement with its Indian associate enterprise, under which an employee assisted with content licensing and distribution activities in India. For FY 2018-19 and 2019-20, based on this arrangement, the taxpayer claimed that it had a PE in India and attributed 4% of the revenue from the relevant contracts to the PE as business income and separately offered royalty received from one resident customer to tax. It also earned licensing revenue from non-resident customers by granting licences under copyright for the distribution and exhibition of the licensed content, which was not offered to tax in India as royalty.

The tax authorities treated the entire licensing revenue as royalty under Section 9(1)(vi) of the Act and Article 13 of the India-UK DTAA. The tax authorities also rejected the taxpayer's PE claim and its reliance on Article 13(6), holding that there was no effective connection with the PE. In relation to receipts from non-resident customers, the tax authorities held that Article 13(2) gave India the right to tax the receipts and that Article 13(7) did not restrict this right. The tax authorities also noted that the taxpayer had not established that the non-resident customers did not have a PE in India. The DRP upheld the tax authorities' position for both years. Aggrieved, the taxpayer appealed before the Mumbai Bench of the Tax Tribunal.

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

- Under Section 9(1)(vi)(c), royalty payable by a non-resident is deemed to accrue or arise in India only if the licensed right is used, directly or indirectly, for a business carried on by that non-resident payer in India or for making or earning income by that payer from an Indian source. The existence of a PE of the payer is not express condition in section 9(1)(vi)(c) Explanation 5 does not dispense with the source conditions.
- The tax authorities are still required to establish that the respective rights were used, directly or indirectly, for the purposes of a business carried on by the non-resident payer in India or for making or earning income by that payer from an identified source in India. The tax authorities have not identified such business or source of income, the entity through which the rights were exploited, the income accruing to the payer from such exploitation or the connection of the royalty payment with that income. The conditions of section 9(1)(vi)(c) have not been established.

<sup>3</sup> Section 147 of the Act provides that reassessment proceedings may be initiated by the tax authority for incomes escaping assessment subject to other provisions of the Act. The Explanation to section 147 brings within its ambit any subsequent information relating to income which has escaped assessment and which comes to the notice of tax officer in the course of the proceedings.

- Article 13(6) of the tax treaty, which deals with the recipient's PE, and Article 13(7), which deals with the payer's PE, deal with two different issues and should not be treated as the same. Since the tax authorities had themselves rejected the taxpayer's PE claim, Article 13(6) could not apply. The receipts therefore had to be examined under Article 13(2) read with Article 13(7).
- Whether Article 13(7) is an exhaustive treaty source rule for royalty, or whether Article 13(2) can independently import the domestic-law deeming rule in section 9(1)(vi), remained an open legal question on which coordinate benches had taken differing views.<sup>4</sup>
- If the interpretation adopted in the case of *Decca Survey Overseas Limited (supra)* is applied, the disputed receipts would not arise in India because the payers were non-residents, they did not have PE or fixed base in India and the payments were neither incurred in connection with nor borne by any such establishments. Even if the interpretation adopted in *Global Cricket Corporation (supra)* is applied, the tax authorities must first establish that the royalty accrued or arose, or was deemed to accrue or arise, in India under sections 5 and 9 of the Act.
- Merely stating India as part of the licensed territory only showed that the customers had a contractual right to exploit the content in India. It did not, by itself, establish that a particular non-resident customer actually used the licensed rights for a business carried on in India or for earning income from an Indian source. Such customer-wise findings were also not made by the tax officer.
- The tax authorities' finding that the taxpayer had failed to prove the payers had no PE could not replace the positive requirement under Article 13(7); that a PE existed, that the royalty liability was incurred in connection with it, and that the payment was borne by it. Since no-PE declarations were on record for the non-resident customers, the existence of their PEs in India cannot be presumed merely from the inclusion of India within the licensed territory.

The Tax Tribunal directed limited verification of records confined to the availability, period and authenticity of the no-PE declarations furnished for each non-resident customer and in cases where such declaration is not available, enquiry into existence of PE of such customer in India and satisfaction of other conditions. The Tax Tribunal held that, subject to limited verification, the licensing receipts received from non-resident customers could not be brought to tax in India under section 9(1)(vi)(c) or Article 13(2).

**[Paramount Pictures International Ltd. v. DCIT (IT) - IT Appeal No. 2148 (Mum.) of 2022 & 3263 of 2023, order dated 24 August 2026 (Mumbai - ITAT)]**

### **Delhi ITAT held that for a supervisory permanent establishment in India, the duration test under Article 5(4) of the India-Japan tax treaty must be applied project-wise and not employee-wise**

The taxpayer is a Japanese company, engaged in the business of trading and earning income from supervisory services, software usage fees, technical fees, commission income and offshore supply of goods to its Indian affiliates and customers. The taxpayer provided supervisory activities through its technical employees or Japanese expatriates who were present in India for providing services for more than a year to its customers in India. The tax authorities held that the taxpayer had a supervisory PE in India under Article 5(4) of the India-Japan tax treaty ('tax treaty') read with Section 9(1) of the Act, and attributed income to the PE.

The First Appellate Authority held that no supervisory PE existed on the grounds that the employees duration shall be seen project-wise and not employee-wise. Aggrieved, both the taxpayer and the tax authorities appealed before the Delhi Bench of the Income Tax Appellate Tribunal ('Tax Tribunal').

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

- Article 5(4) of tax treaty requires supervisory activities to continue for more than six months and to be connected with a building site, construction, installation or assembly project; both conditions are cumulative and mandatory.
- The duration test must be applied project-wise and not employee-wise; the tax authorities erred in aggregating the stay of all expatriate employees and treating the cumulative employee-days as the project duration.
- Barring one Indian customer, the expatriates rendered services to each Indian customer for less than six months, so the threshold was not breached. Further, no material showed that the expatriates' presence was linked to any qualifying project.
- Though the expatriates were present for more than six months, the Indian customer carried on only automobile dealership activities, with no installation or assembly project. Therefore, the qualifying-project condition failed<sup>5</sup>.

The Tax Tribunal held that the taxpayer has no supervisory PE in India and no income was attributable in India.

**[Toyota Tsusho Corporation v. DCIT (IT), Circle-3(1)(1), New Delhi - ITA Nos. 1828 and 1911/Del/2018, 1513 and 1908/Del/2020, 1508 and 1514/Del/2020, order dated 21 September 2026 (Delhi ITAT)]**

<sup>4</sup> *Decca Survey Overseas Limited UK v. ITO - IT Appeal Nos. 8506 to 8508, 8895 and 8897 (Bom) of 1990 and 8625 (Bom) of 1991 and ADIT (International Taxation) v. Global Cricket Corporation (P.) Ltd. [2022] 145 taxmann.com 570 (Mumbai - Trib.)*

<sup>5</sup> *FCC Co. Ltd. v. ACIT - ITA Nos. 54 and 8960/Del/2019 (Delhi ITAT)*

### Delhi High Court held that mere payment by an Indian resident to a non-resident is not income arising in India

The taxpayer ('S Co'), a company incorporated in the United States of America ('US'), is engaged in the business of marketing pharmaceutical products. It is a subsidiary of an Israeli company ('H Co'). An Indian pharmaceutical company, R Ltd. ('Indian payer'), through its subsidiary in US, had challenged certain pharmaceutical patents in US and was granted exclusive period of 180 days to market generically manufactured drugs relating to those patents in the US. The subsidiary of R Ltd. in the US had entered into agreement with S Co whereby these exclusive rights could have been relinquished or selectively waived in favour of S Co in certain circumstances. A dispute arose between them on this agreement and was settled in the US. Under the settlement terms, 50% of R Ltd.'s profit from sale of that generic drug during the exclusivity period became payable to S Co. S Co assigned the right to receive this payment to H Co. in Israel. R Ltd. remitted the agreed amount from India to H Co after withholding taxes.

The tax authorities issued notices to S Co for FY 2011-12 and 2012-13 to tax such income as income escaping assessment on the ground that the income has accrued in India and an Indian resident has made the payment.

H Co later sought a ruling from the Authority for Advance Rulings ('AAR') that the receipt was not taxable in India. The AAR declined to rule and held that the income belonged to S Co and that the arrangement was *prima facie* designed for tax avoidance.

For FY 2013-14, the tax authorities invoked the extended ten-year limitation against S Co to treat the deposit in H Co's bank account as S Co's asset representing escaped income. Independently, the tax authorities withheld H Co's refund of tax deducted by R Ltd. while the proceedings against S Co were pending.

Aggrieved, both S Co and H Co filed writ petitions before the Delhi High Court.

Before the High Court, tax authorities contended that the amount paid by R Ltd. was towards illegal consideration since the Office of Attorney General expressed an opinion during an anti-trust proceeding indicating that certain clauses of the agreement between the parties violated the anti-compete laws of the US. They also contended that the assignment of income by S Co to H Co without there being any corresponding assignment of obligation was illegal and was intended only to avoid tax under US and Israel income tax laws. The High Court, while ruling in favour of S Co and H Co, made the following key observations:

#### Re. Reassessment notices for FY 2011-12 and 2012-13

- The dispute concerned marketing rights in the US. No transaction with S Co took place in India and the payment went directly to H Co under the assignment. Any Israeli tax motive behind the assignment is no concern of the Indian tax authorities. Also, reliance on an Attorney General's opinion in anti-trust proceedings is not a court finding and not a ground to attract tax in India.
- The residence of the payer alone is not a universal source rule. The tax authorities must determine whether the income accrued or arose in India show a real nexus between India and its income-producing right.

- The fact that an Indian resident ultimately bore the payment and accounted for it and claimed deduction of the expenditure in India, does not and cannot singularly determine the situs at which the income accrued or arose to the non-resident recipient.
- The legislative history of the amendments introduced in 1976 relating to income deemed to accrue or arise in India does not support the 'default source rule' under section 5(2)(b) on the basis of location of payer as canvassed by the tax authorities. The deeming fiction can be invoked with regard to only those incomes which are enumerated under various clauses of section 9 and income would be deemed to accrue or arise in India only in respect of such receipts.
- None of the rulings relied on by the tax authorities held that every payment by an Indian resident is Indian income. The underlying pharmaceutical rights, the ANDA regime, the disputed Ready Date Notice, the litigation which preceded the settlement, the alleged obligations of forbearance and the market whose exploitation generated the economic return were all substantially situated outside India.
- The revenue had not demonstrated any nexus between the amount paid by the Indian payer and the territory of India. The transaction neither falls within the provisions of section 5(2)(b) or section 9. Therefore, the reassessment notices were without jurisdiction and were to be quashed.



### Re. Advance ruling

- The AAR's power is limited to the questions raised in application and binding on the transition and applicant. The finding that the income belonged to S Co was recorded behind its back, so it does not bind S Co. After admitting the application, the AAR could not apply the tax avoidance bar at the final stage. A finding of prima facie tax avoidance needs the AAR to identify the Indian tax being avoided. Without a finding of Indian taxability, avoidance cannot be found.
- The AAR's findings of a 'tacit understanding', collusion and sham rested on conjecture. Non-payment of tax in the US or Israel is not India's concern. The right to tax is a right of exaction, not exclusion.
- The receipt arose from a settlement in the US with no link to India and money leaving India does not trigger the charge to tax. Hence, the AAR order was set aside and the receipts were held not taxable in India.

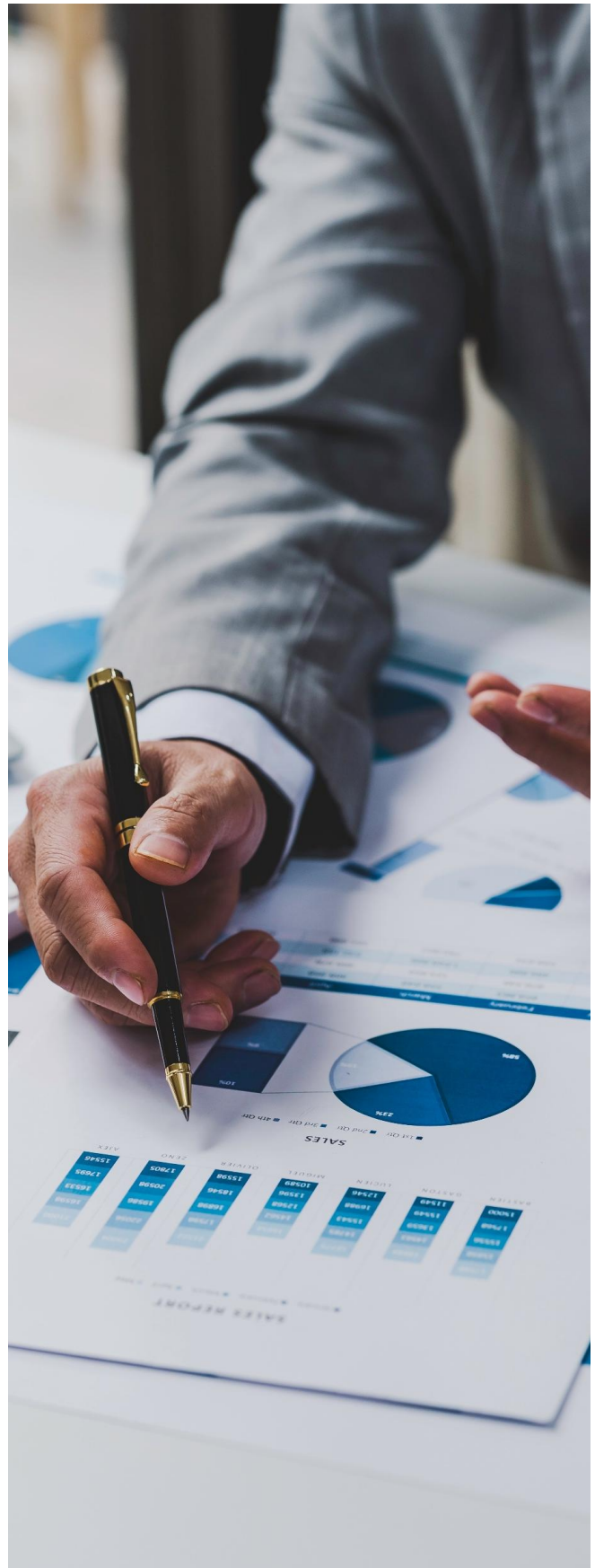
### Re. Reassessment notice for FY 2013-14

- The existence of a qualifying asset is a jurisdictional fact and comes before the question of whose income it is. The asset must belong to the taxpayer proceeded against. A deposit in H Co's account is not an asset of S Co.
- The tax authorities introduced the asset basis for the first time in the final order which was contrary to the reassessment scheme. S Co had no prior notice and no chance to respond.
- The pre-condition for extended limitation of ten years is not satisfied in this case. As regards ordinary period of limitation of three years, the original notice was issued on the last day of the extended period under the relaxation law<sup>6</sup>. Following the Supreme Court ruling<sup>7</sup>, no surviving period was left after S Co's reply. Even with a 7-day grace period after taxpayer's reply, the limit expired.
- An AAR remark in an undecided application is not a ruling. It cannot be a jurisdictional fact against S Co, which had not received the amount. The final order and the notice were time-barred and were to be quashed.

### Re. Refund of withholding tax

- There is a concept of protective assessment in law but not of protective recovery. Holding the refund for over a decade was arbitrary and confiscatory.
- The refund is payable only after S Co furnishes a corporate guarantee or solvent security. H Co must also give a guarantee to pay the dues if S Co cannot.

**[Teva Pharmaceuticals USA Inc. v. DCIT - W.P.(C) Nos. 10711 and 10714 of 2017 and others, order dated 15 September 2026 (Delhi HC)]**



<sup>6</sup> Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

<sup>7</sup> Union of India v. Rajeev Bansal [2024] 167 taxmann.com 70/301 Taxman 238/469 ITR 46 (SC)

## INDIRECT TAX



### Omission of Rule 96(10) of the CGST Rules without a saving clause applies to all pending refund proceedings

#### M/s. Goodluck India Limited & Anr. Vs. Union of India & Ors. [2026-VIL-75-SC - Supreme Court]

M/s. Goodluck India Limited ('Taxpayer') claimed refund of Integrated Goods and Services Tax ('IGST') paid on goods and services exported out of India. Rule 96(10) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') restricted such refund claims for exporters who had received supplies after availing the benefits of the notifications specified in clauses (a) and (b) of the sub-rule.

Rule 96(10) of CGST Rules was omitted with effect from 8 October 2024 by notification no:20/2024, without any saving clause. The GST Council, in its 54<sup>th</sup> meeting held on 9 September 2024, had recommended that the omission be made with prospective effect. Subsequently, the Gujarat High Court ruled that the said omission applies to all proceedings pending on the date of omission and therefore, the restriction under Rule 96(10) of CGST Rules could not be applied in such cases.

Aggrieved by the above, the tax authorities filed appeals before the Supreme Court *inter alia* challenging the vires and validity of Rule 96(10) of CGST Rules. The Supreme Court dismissed the appeals of the tax authorities and upheld the Gujarat High Court's judgment by *inter alia* holding as under:

#### ▪ Effect of omission of a Rule without a saving clause

- Relying on the Constitution Bench decision in *Kolhapur Canesugar Works Ltd. Vs. Union of India [(2000) 2 SCC 536]*, the Supreme Court held that omission of a provision obliterates it from the statute book as completely as if it had never existed.

- Section 6 of General Clauses Act, 1897, which saves pending proceedings on repeal is applicable only to Central Acts and regulations and is not applicable to Rules framed under such law.
- Proceedings initiated under an omitted Rule can continue only if the omission is accompanied by a saving clause or a legal device providing for continuance of such proceedings. Since the Government did not provide for any such saving or sunset clause while omitting Rule 96(10) of CGST Rules, the said omission applies to all pending proceedings.

#### ▪ GST Council recommendation for prospective omission

- The Additional Solicitor General (appearing on behalf of tax authorities) conceded that the GST Council's recommendation is only advisory and not mandatory for the rule-making authority to accept.
- The GST Council itself had observed that Rule 96(10) of CGST Rules was leading to unnecessary complications without any intended benefit. The intention behind omitting the Rule without a saving clause was to end such complications once and for all, and it cannot be intended to keep them alive in pending proceedings.

#### ▪ Directions to the High Courts

- Noting that several proceedings on this issue are pending before various High Courts and that conflicting decisions have been rendered, the Supreme Court directed the Registry to send a copy of the order to all High Courts.
- The High Courts were also requested to list such matters expeditiously before the roster benches to bring quietus to the litigation.

## Leasehold rights in a GIDC industrial plot are not a taxable supply

### M/s. Kor Chems Vs. Assistant Commissioner, CGST and Central Excise & Anr. [TS-750-HC(GUJ)-2026-GST - Gujarat High Court]

M/s. Kor Chems ('Taxpayer'), a partnership firm engaged in the trading of industrial chemicals such as Hydrogen Peroxide, Caustic Flakes and Phosphoric Acid, acquired leasehold rights in a Gujarat Industrial Development Corporation ('GIDC') industrial plot at Ankleshwar from M/s. Myspace Infracon ('Supplier') in February 2022. The total consideration was INR 1,91,75,000/- inclusive of GST of INR 29,25,000/- (CGST and SGST of INR 14,62,500/- each), which the Supplier charged on its tax invoice.

The Taxpayer availed the Input Tax Credit ('ITC') in its Form GSTR-3B for February 2022, under a *bona fide* belief that it was admissible. During an inspection under Section 67(1) of CGST Act on 16 January 2023, the partners admitted that ITC was availed on GST paid towards the leasehold rights. Thereafter, without waiting for further proceedings, the Taxpayer voluntarily reversed the entire ITC of INR 29,25,000/- through Form DRC-03 dated 21 January 2023 and also paid interest of INR 4,44,280/- through Form DRC-03 dated 22 December 2023.

Despite this, a Show Cause Notice dated 31 March 2024 was issued under Section 74(1) of CGST Act proposing disallowance and recovery of the ITC along with interest and penalty, on the allegation that the ITC claimed by the Taxpayer was blocked under Section 17(5)(d) of the CGST Act and that the said fact was suppressed. Thereafter, the Adjudicating Authority confirmed the demand of tax, interest and an equal penalty of INR 29,25,000/- and also appropriated the amounts already paid. On further appeal filed by the Taxpayer, the First Appellate Authority upheld the order passed by the Adjudicating Authority.

Aggrieved by the above, the Taxpayer filed a Writ Petition before the Gujarat High Court seeking to quash the aforesaid orders and allow refund of the tax and interest paid by the Taxpayer by *inter alia* contending that:

- Assignment of leasehold rights in a GIDC plot is not a taxable supply, as held in **Gujarat Chamber of Commerce and Industry & Ors. Vs UOI & Ors. [TS-03-HC(GUJ)-2025-GST]**.
- Section 17(5)(d) of CGST Act applies only to construction of an immovable property, and the Taxpayer had not undertaken the construction activity.
- GST paid by it was without the authority of law, and there was no fraud or suppression, as the transaction was duly disclosed in Form GSTR-3B and was also reflected in Form GSTR-2A.

The High Court allowed the petition and directed refund of the tax and interest by *inter alia* holding as under:

- **Taxability of assignment of leasehold rights**
  - Relying on **Gujarat Chamber of Commerce and Industry (supra)**, the High Court reiterated that assignment of leasehold rights in a GIDC plot to a third-party assignee is a transfer of benefits arising out of immovable property.

- Accordingly, Section 7(1)(a) read with Clause 5(b) of Schedule II and Clause 5 of Schedule III does not apply and such a transaction cannot be subjected to the levy of GST under Section 9 of CGST Act.
- It is a settled law that when the charging provision itself does not apply, any amount collected or retained by the Department, whether directly as tax or indirectly through ITC reversal and interest, has no legal sanctity. Thus, GST charged by supplier and paid by Taxpayer was therefore contrary to law.
- The reversal of ITC and payment of interest, which was premised solely on the assumption that GST was leviable, therefore cannot survive.

#### ▪ Applicability of Section 17(5)(d) of CGST Act

- The tax authorities erroneously proceeded on the footing that the ITC was blocked. Section 17(5)(d) pre-supposes the existence of a taxable inward supply on which tax is lawfully leviable and paid.
- Since the transaction neither qualifies as a 'supply' under Section 7 of CGST Act nor is chargeable to GST under Section 9 of CGST Act, the question of applying the provision for blocked credits does not arise at all.
- Relying on **Gujarat Chamber of Commerce and Industry (supra)**, the High Court observed that the restriction to claim ITC under Section 17(5)(d) of CGST Act applies only to construction-related expenditure. It was not disputed that the Taxpayer had not undertaken any construction activity.

#### ▪ Invocation of Section 74(1) and refund

- As the ITC was not blocked, the question of fraud, wilful misstatement or suppression of facts did not arise, and Section 74(1) of CGST Act could not be invoked.
- The High Court quashed the Impugned Orders and directed the Revenue to refund the tax of INR 29,25,000/- and interest of INR 4,44,280/- paid through DRC-03 within three weeks from the receipt of the order.



**Allows refund of accumulated ITC on packing materials under Section 54(3)(ii) even where the principal input (bulk tea) and the output (packaged tea) attract the same GST rate**

**The Pr. Commissioner, CGST & CX, Siliguri Vs. M/s. Dalmia Tea Packaging Pvt. Ltd. [2026-VIL-81-GSTAT-KOL - GSTAT Kolkata, dated 03.09.2026]**

M/s. Dalmia Tea Packaging Pvt. Ltd. ('Taxpayer') purchases tea in bulk, blends it and sells it in packaged form under a brand name, in containers, pouches, jars and sachets. The inputs are bulk tea, taxable at 5%, and packing materials such as plastics, cartons and jars, taxable at 12% and 18%. The output supply of packaged tea is a composite supply taxable at 5%, as tea is the primary supply.

The Taxpayer claimed a refund of INR 19,99,283/- of accumulated ITC under Section 54(3)(ii) of CGST Act for the period May 2020 to June 2020, on account of an inverted duty structure ('IDS'). The Adjudicating Authority sanctioned refund of INR 16,80,024/-. On further appeal filed by the tax authorities, the First Appellate Authority upheld the refund.

Aggrieved by the above, the tax authorities filed an appeal before the Goods and Services Tax Appellate Tribunal ('GSTAT') *inter alia* contending that:

- Refund is not available as the input and output are the same, namely tea at 5%.
- Para 3.2 of Circular No. 135/5/2020-GST dated 31 March 2020 ('2020 Circular'), as amended by Circular No. 173/05/2022-GST bars refund where the input and output supplies are the same.
- The higher rate on packing materials alone cannot be a ground for claiming refund under IDS as per Section 54(3)(ii) of CGST Act.

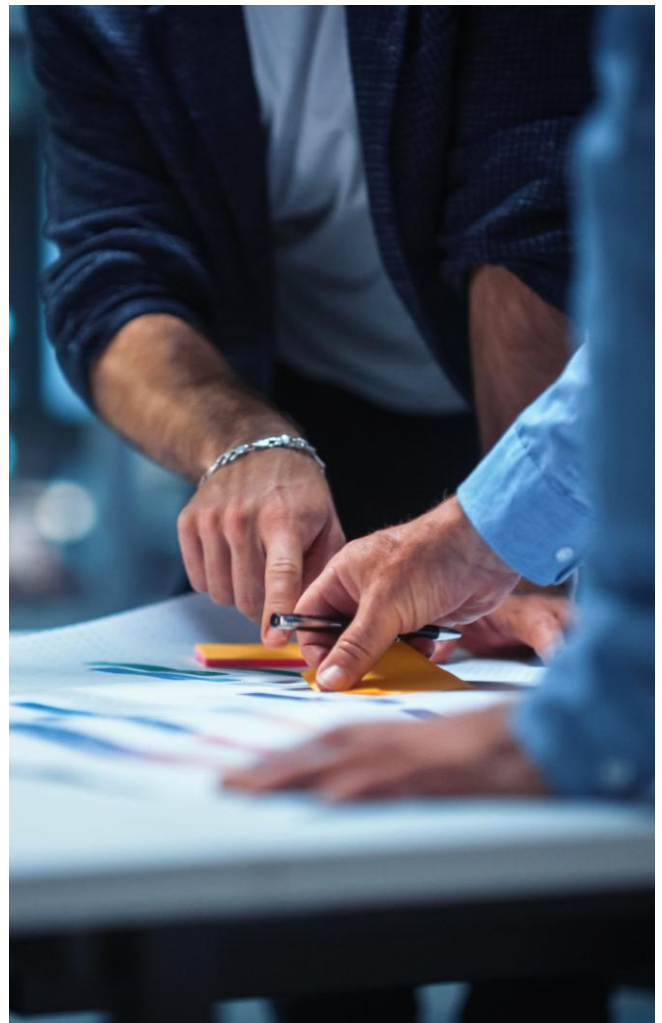
The GSTAT dismissed the Revenue's appeal and upheld the refund by *inter alia* holding as under:

- **Eligibility under Section 54(3)(ii) of CGST Act**
  - Section 54(3)(ii) of CGST Act permits refund where credit accumulates because the rate of tax on inputs is higher than the rate on output supplies. The legislature used the word "inputs" in the plural and made no distinction between principal and ancillary inputs.
  - Comparing the purchase of bulk tea with the sale of packaged tea, while ignoring other inputs such as packing materials, is factually incorrect. The Revenue's argument lacks basis and logic.
  - Relying on the Delhi High Court ruling in *Indian Oil Corporation Ltd. vs. Commissioner of Central Goods and Services Tax and Ors. [2023-VIL-847-DEL]*, the GSTAT observed that the use of "inputs" and "output supplies" in the plural shows that refund is not confined to ITC on a single input.
- **Packing materials as inputs**
  - "Input" is defined broadly in Section 2(59) of CGST Act to cover all goods, other than capital goods, used in the course or furtherance of business.

- Packing materials, labels, cartons and plastic containers are indispensable for marketing packaged tea and qualify as inputs. Para 13 of Circular No. 79/53/2018-GST dated 31 December 2018 also recognises packing materials as eligible inputs.
- Once ITC is available on goods, it is eligible for refund under Section 54 of CGST Act unless specifically disallowed by the statute.

▪ **Applicability of 2020 Circular**

- The heading of Para 3 of the 2020 Circular refers to refund of accumulated ITC "**on account of reduction in GST rate**" and para 3.2 covers only cases where the same goods attract different rates at different points in time.
- In the present case, the tea purchased in bulk and the tea sold in packages attract the same 5% rate, and hence, the 2020 Circular does not apply.
- Following the Delhi High Court ruling, the GSTAT observed that CBIC cannot add to or curtail the provisions of the legislation through a circular. Section 168(1) of CGST Act only allows circulars for uniform implementation. A refund admissible under Section 54 of CGST Act cannot be denied by a circular.



# TRANSFER PRICING



## Circulars / Notifications / Press Release

### JUDICIAL PRECEDENTS

**The High Court upheld the Tribunal's exclusion of a comparable on grounds of functional dissimilarity and held that working capital adjustment and foreign exchange filter issues are factual and do not give rise to a substantial question of law.**

The taxpayer is an Indian company, engaged in the business of manufacturing pesticides using chemical formulations imported from its associated enterprise ('AE'). It also trades in imported chemicals and formulations and provides support services to its AEs.

For fiscal year ('FY') 2012-13, the case was referred to the transfer pricing officer ('TPO'). The TPO proposed a transfer pricing adjustment in the manufacturing segment. The tax officer passed the assessment order in line with the TPO's order. The First Appellate Authority partly allowed the appeal of the taxpayer. Aggrieved, the taxpayer and the tax authorities appealed before the Bengaluru Bench of Income Tax Appellate Tribunal ('Tax Tribunal').

The Tax Tribunal partly allowed the taxpayer's appeal and disposed of the appeal of the tax authorities. It gave the following directions:

- A comparable was excluded because it was engaged in manufacturing non-pesticide products and had a materially different functional profile.
- The taxpayer was directed to furnish details on the difference in working capital. The issue was remanded to the tax officer and the TPO, to be decided as per the principles laid down in Huawei Technologies India (P.) Ltd.<sup>1</sup>

- The Tax Tribunal found no proper basis for the 40% foreign exchange revenue filter adopted by the First Appellate Authority. The taxpayer had claimed a 25% filter, as its operations are predominantly domestic. The issue was remanded to the tax officer and the TPO to adopt a consistent approach in selecting the filter.
- The adjustment was to be restricted to international transactions relating to import of raw materials.

Aggrieved, the tax authorities preferred appeals before the Karnataka High Court, arguing that the Tax Tribunal's order was perverse. The tax authorities contended that:

- Selection of comparables depends on the Functions, Assets and Risks analysis.
- The working capital adjustment was directed without an upper limit and without proof of its impact.
- The taxpayer and the TPO had not applied a foreign exchange filter in the manufacturing segment.
- Restricting the adjustment to international transactions was contrary to the Act.

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

#### Re. Exclusion of a comparable

- The Tax Tribunal did not exclude the comparable merely on a broad classification. It examined the functions performed, the products manufactured and the raw materials used by both the taxpayer and the comparable. It then found a material functional difference. Such a finding cannot be called perverse merely because another view is possible.

<sup>1</sup> Huawei Technologies India (P.) Ltd. v. JCIT [2019] 101 taxmann.com 313 (Bangalore - Trib.)

- The High Court cannot undertake a fresh comparability analysis. It can interfere only if the finding is perverse, based on no evidence or contrary to the statutory scheme. The tax authorities did not show any such defect.

#### Re. Working capital adjustment

- The Tax Tribunal did not grant a quantified or unconditional adjustment. Whether an adjustment is warranted and its extent were left open for the tax officer and the TPO, to be decided as per the principles laid down in Huawei Technologies India (P.) Ltd. (supra).
- The direction preserves the requirement that the adjustment must rest on relevant material and reasonable accuracy. It is neither perverse, contrary to law nor does it give rise to substantial question of law.

#### Re. Foreign exchange revenue filter

- The Tax Tribunal did not finally decide that a particular filter must be applied. It only found that the 40% filter lacked a proper basis and directed a consistent reconsideration as per law.
- The tax authorities will have full opportunity in the remand proceedings to establish the appropriate filter. The remand is a factual and procedural direction. It raises no substantial question of law.

#### Re. Restriction of the adjustment to international transactions

- The Tax Tribunal's direction rests on the principle that transfer pricing provisions deal with the arm's length price ('ALP') of international transactions under consideration, undertaken with AEs. The Tax Tribunal applied this principle to the facts.
- The tax authorities did not show perversity or a patently unsustainable interpretation of the Act. Mere disagreement with the Tax Tribunal's conclusion is not enough.

The High Court held that several of the Tax Tribunal's directions are remand directions. The tax authorities have not been shut out from examining the issues. The questions raised only sought reconsideration of factual findings, which are outside the High Court's limited jurisdiction. It dismissed both appeals and confirmed the Tax Tribunal's order.

**[PCIT v. FMC India Pvt Ltd - ITA No. 575 of 2023 with ITA No. 580 of 2023, order dated 25 August 2026 (Karnataka HC)]**



#### Mumbai ITAT held that recharacterisation of compulsorily convertible debentures as equity is not permissible without invoking GAAR procedure

The taxpayer is an Indian company formed for the purpose of developing, maintaining and leasing commercial property. It has issued unsecured compulsory convertible debentures ('CCDs') to its AE and reported interest paid on CCDs as an international transaction. There was no fresh issue of CCDs during the year. The terms of the CCDs have also not changed since the original issue.

TPO did not accept CCDs as a debt instrument and held that CCDs were in substance equity instruments since they were mandatorily convertible into equity shares without any repayment of principal. The TPO accordingly determined ALP of interest at Nil, holding that no interest will be paid on equity capital. The Dispute Resolution Panel ('DRP') upheld this adjustment.

Aggrieved, the taxpayer appealed before the Mumbai Bench of Tax Tribunal. The taxpayer argued that the TPO can only determine the ALP of the transaction as actually undertaken. The TPO cannot disregard its legal character and substitute another transaction according to what, in his opinion, ought to have been entered into by the parties. The taxpayer also argued that recharacterising debt as equity is possible only under the General Anti-Avoidance Rule ('GAAR') provisions. These provisions come with a specific procedure, which was not followed. The tax authorities argued that the TPO had only examined the economic substance of the CCDs to determine the ALP. The GAAR provisions were not attracted, as the adjustment arose solely from the transfer pricing provisions.

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

- The issue of whether the TPO can disregard legal character of transaction and substitute it has been considered by Special Bench<sup>2</sup> of the Tax Tribunal, which observed that CCDs are hybrid instruments but continue as debt instruments until their conversion into equity.
- The Tax Tribunal<sup>3</sup>, after considering the Apex Court's decision<sup>4</sup>, held that a debenture continues to be debt until it is converted into shares and does not partake the character of equity before such conversion.
- Chapter X-A of the Act expressly contemplates recharacterisation as one of consequences after an arrangement is declared to be an impermissible avoidance arrangement.
- The exercise of the provisions of Chapter X-A is accompanied by specific procedure prescribed. The statutory scheme contemplates reference by the tax officer to the Principal Commissioner/ Commissioner, notice and opportunity of hearing the taxpayer and, where the objection is not accepted, reference to the Approving Panel. Such procedure was not followed.

The Tax Tribunal held that the impugned re-characterisation of CCDs as equity to determine the ALP of interest at Nil cannot be sustained.

**[Eranthus Developers Pvt. Ltd. v. AO, NFAC - ITA No. 8997/Mum/2025, order dated 9 September 2026 (Mumbai ITAT)]**

<sup>2</sup> Hyderabad Infratech Pvt. Ltd. v. DCIT ITA-TP No. 1856/Hyd/2019, order dated 29 January 2025 (Hyderabad ITAT)

<sup>3</sup> Goldman Sachs (India) Finance Pvt. Ltd. v. Assessment Unit ITA No. 6766/Mum/2024, order dated 22 August 2025 (Mumbai ITAT)

<sup>4</sup> IFCI Ltd. v. Sutanu Sinha (2023) 156 taxmann.com 681 (SC)

### **Delhi ITAT held that internal transactional net margin method was the appropriate method for benchmarking where taxpayer maintained separate segments for associated enterprises**

The taxpayer is an Indian company engaged in providing back-office support services, Information Technology Enabled Services ('ITeS') support service and various other services to AEs and non-AEs in and outside India.

The taxpayer maintained AE and non-AE segments. It benchmarked its AE transactions during FY 2009-10 using internal transactional net margin method ('TNMM') against non-AE transactions. The TPO rejected internal TNMM on the ground that allocation keys for bifurcation of expenses between AE and non-AE segments were absent and there were no audited segments maintained. He aggregated both segments at the entity level and applied external TNMM using external comparables to make a transfer pricing adjustment. The First Appellate Authority upheld TPO's order. Tax Authorities preferred an appeal before Delhi Bench of Tax Tribunal challenging exclusion/ inclusion of various comparables, while the taxpayer filed cross-objections challenging rejection of internal TNMM and segmental accounts.

The Tax Tribunal, while ruling in favour of the taxpayer, followed its own decisions in taxpayer's case for FYs 2011-12 and 2012-13 on a similar issue where the following key observations were made:

- The services to non-AEs were broadly customer care and technical support. The processes for AEs and non-AEs may differ. Still, the fundamental functions under each process are the same and fall under the ITeS industry. The tax authorities had not shown how the services were fundamentally different.
- Rejecting internal TNMM because the segments were not audited was not valid. The tax authorities had not pointed out any discrepancy in the segmental analysis, which was based on valid allocation keys furnished in the transfer pricing study.
- Financial data of internal segments is more reliable and accurate than that of external comparables. Internal benchmarking is therefore preferred over external benchmarking. Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations issued by the Organisation for Economic Co-operation and Development ('OECD'), also prefer internal comparables. The United Nations Practical Manual on Transfer Pricing for Developing Countries notes that TNMM is less dependent on product comparability.

The Tax Tribunal held that Internal TNMM was the appropriate method, in line with its rulings in the taxpayer's own case for later years.

**[ITO, Ward-2(4) v. Majorel India (P.) Ltd. - IT Appeal No. 66 (Del) of 2018 with CO No. 60 (Del) of 2018, order dated 31 August 2026 (Delhi ITAT)]**

### **Mumbai ITAT held that TPO exceeded his jurisdiction determining the existence of a permanent establishment**

The taxpayer ('S Co') is a Singapore company engaged in expanding its group's customer base in India, Bangladesh and Sri Lanka. It was a wholly owned subsidiary of an Indian company ('H Co'), which provided sales processing, marketing and bookkeeping support to S Co Vendors directly paid rebate incentives to H Co for these services.

For FY 2007-08, S Co filed its return under protest declaring Nil income, claiming that it had no permanent establishment ('PE') in India under the India-Singapore Double Taxation Avoidance Agreement ('DTAA'). The tax officer treated H Co as S Co's PE and initially made a 100% addition of the rebate incentives. The Tax Tribunal set aside the assessment and directed the tax officer to allow cross-examination of persons whose statements were relied upon and to re-examine the PE issue.

During remand, the tax officer referred the matter to the TPO to determine the ALP, stating that H Co was conducting S Co's business in India. The TPO held that S Co had a PE in India and proposed an adjustment. The tax officer subsequently attributed 100% of H Co's revenue to S Co's Indian activities. The DRP upheld the PE and held that 95% of the profits from Indian operations were attributable to it. The final assessment was accordingly made at 95% of such profits.

Before the Mumbai Bench of Tax Tribunal, S Co challenged the validity of the TPO and assessment orders, arguing that the TPO reference exceeded the scope of remand, that it was vague and did not identify any international transaction. It further contended that the TPO lacked jurisdiction to determine the existence of a PE and taxability of profits, which were matters for the tax officer, and that the tax officer had relied on the TPO's findings without independent examination.

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

- The scope of the remand must be read with the specific directions of the Tax Tribunal. These directions were cross-examination opportunities to the taxpayer and a fresh examination of the existence of a PE. The issue of PE was specifically restored to the tax officer.
- Determining the existence of a PE is fundamentally different from determining the ALP of an international transaction. The reference to the TPO is transaction-specific. It does not give the TPO a general jurisdiction to decide the taxable income of the taxpayer or the applicability of a DTAA.
- The scheme of the transfer pricing provisions supports this view. The TPO's function is to determine the ALP of the international transaction referred to him. The words "in relation to" do not give unrestricted power to the TPO to adjudicate matters falling outside his statutory function of determining the ALP.

- The statutory scheme distinguishes between the determination of the ALP by the TPO and the computation of the taxpayer's total income by the tax officer. The binding nature of the ALP on the tax officer does not enlarge the TPO's jurisdiction to decide the existence of a PE or taxability of business profits. The reference to the TPO, to the extent it sought to transfer the determination of the PE, was not in line with the scope of the remand. The tax officer had to discharge the responsibility given by the Tax Tribunal. He could not give the TPO jurisdiction over the very issue restored to him, merely by making a reference.
- Also, the reference to TPO did not identify any international transaction between S Co and H Co. A general reference, without identifying the international transaction, is not a valid reference for determining ALP.
- The tax officer relied on the TPO's conclusions without examining the issue independently under the DTAA. The responsibility to decide tax liability, including the existence of a PE, remained with the tax officer.

Accordingly, the Tax Tribunal held that the TPO exceeded his jurisdiction by determining the existence of PE and taxability of profits. The reference made by the tax officer, to the extent it sought to transfer the determination of the existence of a PE to the TPO, was beyond the scope of the Tax Tribunal's remand directions. The assessment, founded only on the TPO's order, could not stand.

*[Ingram Micro (India) Exports Pte. Ltd. v. DCIT - ITA No. 1746/Mum/2016 and CO No. 70/Mum/2017, order dated 15 September 2026 (Mumbai ITAT)]*



## 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. Helping people thrive is at our core, underpinning our commitment to building a sustainable future for our clients, people and communities. The team in India comprises over 12,500\* professionals, led by more than 450 Partners and Directors, operating out of 21 offices across 14 key cities.

\*Includes employees from our shared services centres in India

## CONTACT US

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

## BDO INDIA OFFICES

### Ahmedabad

Westgate Business Bay, 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 Kamlapati 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

Infinity Benchmark, Unit 1302, 13th Floor  
Plot No. G-1, Block - EP & GP  
Sector - V, Salt Lake  
Kolkata - 700 091, 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

### Mumbai - Office 5

8th & 9th Floor, Kalpataru Infinia  
Near Grand Hyatt, Shanti Nagar,  
Vakola, Santacruz East  
Mumbai 400055, 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 Bungalow  
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 NCR | 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 © 2026 BDO India Services Private Limited. All rights reserved. Published in India.

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

