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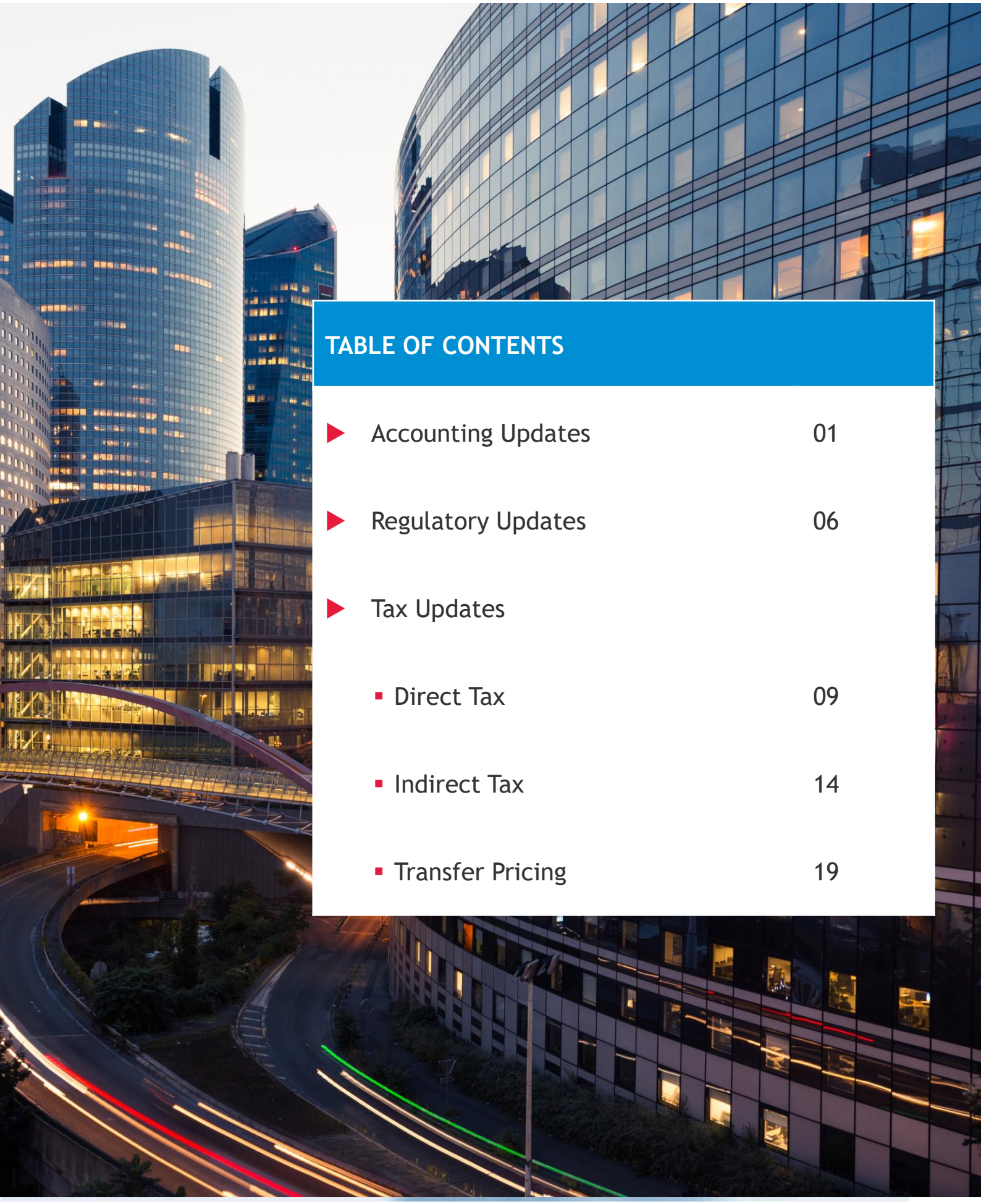

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ACCOUNTING UPDATES

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Institute Of Chartered Accountants of India (ICAI)

Expert Advisory Committee ('EAC') Opinion: Accounting for commission paid for performance bank guarantees, under IND AS Framework.

The Company is a Joint Venture Company ('JV'), formed by two PSU entities to lay, build & operate City Gas Distribution ('CGD') networks in Ambala-Kurukshetra and Kolhapur geographical area. Petroleum and Natural Gas Regulatory Board ('PNGRB') is the regulatory body for City Gas distribution (CGD) entities in India. During the 8th round of bidding held in 2018 for the Ambala Kurukshetra GA and Kolhapur GA, as per bidding terms, the JV Company was required to furnish an INR 1,948 crore Performance Bank Guarantee ('PBG') as a condition for regulatory approval. The promoters of JV arranged the PBG and charged the related bank guarantee commission to JV. Later, the JV consistently capitalised the BG Commission as cost eligible for capitalisation as per para 16(b) of INDAS 16- Property Plant and Equipment, stating cost directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. The BG Commission charged initially was booked as Capital Work-in-Progress and post completion of construction the entire capitalised value including BG commission was depreciated at rates provided for in the Companies Act, 2013.

During supplementary audit, the C&AG objected to the accounting treatment, stating that capitalisation of BG commission by the JV Company is a contravention of para 8 of INDAS 23 'Borrowing Cost' which stipulates that borrowing costs that are directly attributable to the acquisition, construction, or production of a qualifying asset only should form part of the cost of asset. Other borrowing costs is to be recognised as an expense. Accordingly, C&AG commented capitalisation of the bank guarantee commission in the books of the Company has resulted in overstatement of profits and similarly overstatement of assets creating a material prior period error which calls for restatement of the financial statements of previous years. The matter was referred to the ICAI's Expert Advisory Committee (EAC).

The EAC noted that in the extant case there is no borrowing taken by the JV and the BG commission referred to in the fact pattern does not pertain to borrowing taken on the qualifying asset. Therefore, BG commission referred in the fact pattern is not covered under the requirements of INDAS 23. Further, referring asset created / to be created as qualifying asset does not apply as this reference are not contained in INDAS 16 rather contained in Ind AS 23.

Para 16 INDAS 16 states *any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management*. The Committee interprets 'directly attributable' cost as such costs which are necessary to enable or contribute to construction activity. The PBG was incurred for receipt of authorisation from PNGRB and not in relation to construction activity. The Committee further adds that the BG commission in the books of JV does not add any value to the project or to aid in bringing the project to condition and location necessary for it to be capable of operating. Therefore, the Committee opined that the BG Commission cannot be treated as directly attributable to bringing the asset / project to the location / condition necessary for it to be capable of operating in the manner intended by the JV. Further, since BG Commission does not satisfy the criteria of an asset, the said BG should be expensed in the Statement of Profit and Loss as and when incurred.

Since the JVs accounting treatment in the extant case is not in accordance with the accounting treatment, the error should be rectified in the current reporting period, as per the requirements of Para 15 of Ind AS 8, 'Accounting Policies, Changes in Accounting Estimates and Errors.

REGULATORY UPDATES

Reserve Bank of India (RBI)

Reserve Bank of India (Commercial Banks - Financial Statements: Presentation and Disclosures) Amendment Directions, 2026

RBI has issued the Reserve Bank of India (Commercial Banks - Financial Statements: Presentation and Disclosures) Amendment Directions, 2026, effective 1 January 2026. The Amendment modifies the disclosure requirements related to capital held under Section 11(2)(b)(i) of the Banking Regulation Act, earmarked as Credit Risk Mitigation (CRM). Under this framework, banks to separately disclose, by way of a note to Schedule 1 (Capital), the portion of such deposits earmarked as Credit Risk Mitigation for offsetting non-centrally cleared derivative exposures to the Head Office (including overseas branches), which shall not be reckoned as regulatory capital or for other statutory requirements.

Schedule 1: Capital to the Balance Sheet the amount of such capital set aside for CRM, including for head office and overseas branches, which is not reckoned for regulatory capital or other statutory requirements. The disclosure should follow the format:

"An amount of INR… (Previous year: INR….) out of the amount held as deposit under Section 11(2) of the BR Act has been earmarked as credit risk mitigation (CRM) for offsetting of exposures to Head Office (including overseas branches of Head Office) and is not reckoned for regulatory capital and any other statutory requirements, if any."

The Amendment applies to all banks, including those incorporated outside India and comes into force from the date a bank implements Paragraphs 3(1) to 3(4) of the RBI (Commercial Banks – Concentration Risk Management) Amendment Directions, 2025, or from 1 April 2026, whichever is earlier.

Reserve Bank of India (Non-Banking Financial Companies – Prudential Norms on Capital Adequacy) Amendment Directions, 2026

The Reserve Bank of India (Non-Banking Financial Companies – Prudential Norms on Capital Adequacy) Amendment Directions, 2026 is effective 1 April 2026. The Amendment revises risk weights for loans to high-quality infrastructure projects under NBFCs' capital adequacy framework.

Under the revised framework:

- Loans to high-quality infrastructure projects where the borrower has repaid at least 2% of sanctioned project debt will attract a 75% risk weight.
- Loans where the borrower has repaid at least 5% of sanctioned project debt will attract a 50% risk weight.

If a project subsequently fails to meet these repayment conditions, the exposure will be subject to the standard risk weights as per the original Directions. For projects with additional debt sanctioned later, the repayment threshold will be calculated based on the total sanctioned project debt.

NBFCs may adopt these directions earlier if desired. Exposures currently attracting lower risk weights can continue under the existing framework until the next review, renewal, or 31 March 2027, whichever is earlier.

Updated Master Directions

RBI has updated the following Master Directions. This consolidated update serves as a one stop reference for all related amendments and regulations.

- Reserve Bank of India (Commercial Banks – Prudential Norms on Capital Adequacy) Directions, 2025 (Updated as on 1 January 2026)
- Reserve Bank of India (Commercial Banks – Income Recognition, Asset Classification and Provisioning) Directions, 2025 (Updated as on 1 January 2026)
- Reserve Bank of India (Small Finance Banks – Income Recognition, Asset Classification and Provisioning) Directions, 2025 (Updated as on 1 January 2026)
- Reserve Bank of India (Small Finance Banks – Concentration Risk Management) Directions, 2025 (Updated as on 1 January 2026)
- Reserve Bank of India (Small Finance Banks – Prudential Norms on Capital Adequacy) Directions, 2025 (Updated as on 1 January 2026).

Interest Subvention for Pre- and Post- Shipment Export Credit under Export Promotion Mission (EPM) - Niryat Prothsahan

RBI has issued regulatory instructions vide circular on Interest Subvention for Pre- and Post-Shipment Export Credit under Export Promotion Mission (EPM) – Niryat Prothsahan. This instruction applies to Scheduled Commercial Banks (excluding RRBs), Primary (Urban) Co-operative Banks, State Co-operative Banks, and All-India Financial Institutions. The Scheme has been announced by the Government of India on a pilot basis. The operational instructions were earlier issued by DGFT vide Trade Notice No. 20/2025-26 dated 2 January 2026 and Trade Notice No. 22/2025-26 dated 16 January 2026.

Key highlights:

- Eligible lending institutions are required to extend interest subvention only for eligible pre- and post-shipment export credit as defined under the Scheme.
- Claims for interest subvention submitted are to be strictly in accordance with the operational instructions and procedures prescribed by DGFT.
- Lending institutions to ensure full compliance with RBI's regulatory instructions while implementing the Scheme.

The circular emphasises that interest subvention benefits should be correctly applied, documented, and monitored to ensure adherence to Scheme provisions and RBI guidelines.

Reserve Bank of India (Commercial Banks – Cash Reserve Ratio and Statutory Liquidity Ratio) Amendment Directions, 2026

RBI has issued Amendment Directions to the framework of Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR) with immediate effect. The amendments align the framework with recent legislative and regulatory changes and facilitate the inclusion of development financial institutions licensed under Section 29 of the National Bank for Financing Infrastructure and Development Act, 2021.

Key highlights:

- Terminology in reporting has been rationalised by deleting restrictive expressions and replacing "specified" with "notified."
- Reporting of certain items, particularly balances maintained under Standing Deposit Facility under 'Cash in hand' in statutory forms—Annex II, Form VIII has been deleted.
- A separate reporting category titled "Amount deposited with the Reserve Bank under Standing Deposit Facility Scheme" has been introduced.

These directions are applicable to Commercial Banks, Small Finance Banks, Payments Banks, Regional Rural Banks, Local Area Banks, Urban Co-operative Banks, and Rural Co-operative Banks.

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

RBI vide notification dated 13 January 2026, has issued the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026. The Regulation consolidates and supersede the existing Master Directions on Export of Goods and Services and Import of Goods and Services, along with all related circulars and instructions currently in force. The new framework aims to streamline and rationalise the regulatory regime governing cross-border trade transactions.

One significant change relates import advances not repatriated within the contractual period or any extended period, in such case subsequent advance payments will be permitted only against unconditional and irrevocable standby Letter of Credit, or a guarantee from an internationally reputed bank, or a guarantee issued by an Authorised Dealer ('AD') in India backed by a counter-guarantee from an internationally reputed bank.

On realisation of export proceeds, exporters are required to realise and repatriate proceeds within 15 months from the date of shipment in the case of goods (other than warehouse exports), from the date of invoice in the case of services, and from the date of sale for goods exported to a warehouse outside India.

In the case of project exports, the time period will be as per the contractual payment terms. Where exports are invoiced or settled in Indian Rupees, the time limit for realisation is extended to 18 months from the relevant date. AD may grant extensions on valid grounds and is responsible for monitoring and follow-up to ensure timely realisation.

Further, in cases of unrealised export proceeds, where the amount remains outstanding beyond one year from the due date of realisation (or extended due date), any subsequent exports may be undertaken only against receipt of full advance payment or an irrevocable Letter of Credit.

Additionally, for small-value exports up to INR 10 lakh per shipping bill (for goods) or per invoice (for services), the AD may, for recorded reasons, permit realisation of an amount lower than the full export value based solely on a declaration from the exporter, without requiring detailed justification or additional documentation.

These Regulations will come into effect from 1 October 2026.

Recognition of FEDAI as a Self-Regulatory Organisation (SRO) for Authorised Dealers

RBI has officially recognised the Foreign Exchange Dealers' Association of India (FEDAI) as a SRO for all Authorised Dealers under its Omnibus Framework for SROs issued on 21 March 2024. FEDAI's application was approved after noting its existing role in setting conduct standards for members.

Amendment Directions on Lending to Related Parties by Regulated Entities

RBI has issued amended directions on Credit Risk Management following the finalisation of its draft directions on lending to related parties. Separate similar directions have been notified for Commercial Banks, Small Finance Banks, Local Area Banks, Regional Rural Banks, Urban Co-operative Banks, Rural Co-operative Banks, Non-Banking Financial Companies (NBFCs), and All India Financial Institutions (AIFIs).

The amended directions, *inter alia*, provide clarity on the sanction or grant of credit facilities to companies in India by foreign banks operating through branches in India, exemptions relating to advances to bank directors, and the general principles and procedures to be followed for prudent risk management of loans granted to related parties.

The directions also prescribe regulatory prohibitions and restrictions on loans to directors, promoters, their relatives, and shareholders holding more than 10% of share capital, specify materiality thresholds beyond which prior approval of the Board or a designated Committee is required. Mandate states recusal of interested parties in the approval process and lays down monitoring requirements for loans to related parties. Additionally, in case a listed entity ensures continued compliance with the SEBI (LODR) Regulations.

Consequently, RBI has also issued the Presentation and Disclosure – Amendment Directions, 2026, applicable to the aforesaid institutions. Under the "Credit Concentration Risk" section in the Notes to Accounts forming part of the Financial Statements, regulated entities are now required to disclose detailed information on exposures to related parties, including the aggregate value of loans, contracts, and arrangements, awarded during the year and outstanding as on 31 March, for both the current and previous financial years.

The amended directions shall come into effect from 1 April 2026.

Securities and Exchange Board of India (SEBI)

Master Circular for Framework on Social Stock Exchange

SEBI had earlier issued various circulars/ directions with respect to the aforesaid framework for SSE under relevant provisions of the SEBI (ICDR) Regulations, 2018 and the SEBI (LODR) Regulations, 2018. In order to enable the stakeholders to have access to all the applicable circulars relating to the SSE, a single, comprehensive reference document for stakeholders — namely Non-profit organisations and other eligible entities - has been released.

The aforesaid master circular consolidates all earlier circulars and guidelines issued in relation to the functioning, compliance, and fundraising mechanisms of the SSE. All recognised stock exchanges, depositories, Merchant bankers, social enterprises, social impact assessment firms, ICAI, ICSI and ICMAI are advised to take note.

Master Circular for compliance with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by listed entities

SEBI has updated the Master Circular for compliance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, by consolidating all relevant circulars issued up to 30 December 2025. The Master Circular was originally issued on 11 July 2023 and last updated on 11 November 2024.

A new section inserted as follows:

1. Clarification on the role of Compliance Officer under Regulation 6 of the SEBI (LODR) Regulations, 2015.
2. Implementation of Expert Committee recommendations to ease compliance for listed entities.

Key highlights: -

- Actions taken or penalties imposed under earlier circulars remain valid
- Earlier circulars listed in the Appendix stand rescinded to the extent they relate to compliance.
- Applicable to listed entities, recognised stock exchanges, depositories, and relevant other stakeholders.
- Stock exchanges and depositories must establish systems and infrastructure for effective monitoring and implementation.

Ease of Doing Investment and Ease of Doing Business - Doing away with the requirement of issuance of Letter of Confirmation (LOC) and to effect direct credit of securities in the dematerialisation account of the investor

SEBI has simplified the dematerialisation process for investor service requests by eliminating the requirement of issuing a Letter of Confirmation (LOC), effective 2 April 2026.

Key Highlights:

- Prescribed procedure for credit of securities in dematerialised form for various investor service requests such as duplicate certificate, transmission, transposition, claims from unclaimed suspense accounts, and corporate actions vide Master Circular for RTAs dated 23 June 2025. The relevant provisions and annexures of the Master Circular for RTAs have been amended.
- The LOC requirement has been eliminated to reduce timelines and risks such as loss or pilferage.
- Depositories will enable systems for RTAs and listed companies to directly credit securities to investors' demat accounts after due diligence.
- Requests must include the latest Client Master List (CML), not older than two months, duly attested by the Depository Participant.
- LOCs issued earlier may be used for dematerialisation within 120 days from their issuance date.

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2026

SEBI notified the LODR (Amendment) Regulations, 2026, the amendments *inter alia* focus on High Value Debt Listed Entities ('HVDLEs') and the dematerialisation of securities.

Key Highlights:

- Revision of the threshold for classification of HVDLEs from INR 1,000 crore to INR 5,000 crore of outstanding listed non-convertible debt securities.
- HVDLE entities ceasing to meet the revised threshold are not required to comply with certain specific corporate governance provisions.
- Listed entities due to investor service requests in case of credit securities, such as split, consolidation, renewal, exchange, or duplicate certificates— it shall be effected only in dematerialised form within 30 days.
- Where a resolution plan under the Insolvency and Bankruptcy Code is approved, KMP vacancies of HVDLEs shall be filled within 3 months, with interim management safeguards.
- Transfers of securities will be processed only in dematerialised form; transmission and transposition from physical or demat holdings must also be effected in demat mode.
- Unclaimed amounts in escrow accounts relating to non-convertible securities shall be transferred to the Investor Education and Protection Fund (IEPF) or SEBI's Investor Protection and Education Fund, as applicable, after 7 years.
- Amendments clarify timelines, exemptions for appointment, re-appointment, age limits, and vacancies of directors, including exclusions for nominees of regulators, courts, tribunals, or debenture trustees.
- HVDLEs must comply with Regulation 23 on RPTs with specified exemptions, including transactions involving government and public sector entities and payment of statutory dues.
- Provisions relating to secretarial audit, committee meetings (specified on a financial year basis), and corporate governance reporting have been streamlined.

OTHER REGULATORY MATTERS

National Financial Reporting Authority (NFRA)

Effective Communication Between Statutory Auditors and Those Charged with Governance, Including Audit Committees.

NFRA has issued a circular dated 7 January 2026 on effective communication between Statutory Auditors and Those Charged with Governance (TCWG), including Audit Committees. The circular reiterates and clarifies certain applicable provisions of the Companies Act, 2013, SA 260 (Revised) and SA 265 and common non-compliances observed during NFRA inspections.

Key highlights:

- Audit firms to appropriately determine and document TCWG, ensuring that any sub-groups, such as Audit Committees or management, with whom they communicate have the authority to act on matters discussed.
- Emphasises robust, timely and two-way communication with TCWG throughout the audit cycle, supported by proper documentation, rather than limiting communication to the conclusion of the audit.
- Mandates inclusion of key matters in discussions with TCWG, such as audit strategy and plan, materiality, timing, key risks, significant judgments, going concern, unusual transactions, fraud risks, ethics, and auditor independence.
- Auditors are required to communicate in writing any difficulties encountered during the audit, including challenges in obtaining sufficient appropriate audit evidence, determining appropriate accounting policies, or identifying material weaknesses in internal financial controls, in line with SA 265
- Avoid pitfalls such as treating discussions with management as communication with TCWG, making last-minute presentations prior to approval of financial statements, or failing to communicate significant matters and findings.

The circular reinforces that effective, documented and timely communication with TCWG is essential for audit quality, regulatory compliance and transparency in the audit process.

Ministry of Finance

Union Budget 2026-27

The Union Minister for Finance and Corporate Affairs tabled the Union Budget 2026-27 in Parliament. The Budget is anchored around three Kartavyas aimed at accelerating economic growth, building capacity, and ensuring inclusive development.

Key Highlights:

- New Income Tax Act, 2025, to be effective from April 2026; simplified rules and return forms to be notified.
- Rationalisation of TDS/TCS, extended timelines for return revision, and measures to reduce litigation.
- MAT proposed to be made final tax from 1 April 2026, with the rate reduced to 14%. Set off using available MAT credit to the extent of 1/4th of the tax liability in the new regime.
- For minority shareholders, buyback for all types of shareholders to be taxed as Capital Gains. Promoters to pay an additional buyback tax, making the effective tax 22% for corporate promoters and 30% for non-corporate promoters.
- A Joint Committee of MCA and CBDT to be constituted for incorporating the requirements of ICDS in the Ind AS. Separate accounting requirements based on ICDS will be done away with from the tax year 2027-28
- Definition of accountant for the purposes of Safe Harbour Rules to be rationalised.
- Tax incentives and presumptive regimes to attract data centres, cloud services and global manufacturing.

REGULATORY UPDATES

REGULATORY UPDATES:

Simplification of requirements for grant of accreditation to investors[1]

SEBI has issued a circular dated 9 January 2026 in relation to the accredited investor framework for Alternative Investment Funds (AIFs) with an objective to simplify investor accreditation by easing net worth documentation, and allowing conditional onboarding pending certification.

Key Highlights

- Pending receipt of the accreditation certificate, AIF managers may execute contribution agreements and initiate processes based on their own assessment of investor eligibility.
- Investor commitment shall not be included in the scheme corpus, and funds shall not be accepted until the investor obtains an accreditation certificate from an accreditation agency.
- The requirement of providing the detailed breakup of net worth has been waived off.
- It is now optional for a certifying chartered accountant to specify the actual net worth in the net worth certificate, while certifying whether it meets the specified threshold.

Compliance reporting formats for Specialised Investment Funds (SIFs) by SEBI[2]

SEBI has issued a circular on 8 January 2026, to standardise and provide clarity in compliance reporting for SIFs.

Key Highlights

- All reporting requirements which were applicable earlier in the SEBI (Mutual Funds) regulations 1996, the Master Circular for Mutual Funds dated 27 June 2024 ('MF Master Circular'), and any other circulars or guidelines issued thereunder are now also applicable to SIFs.
- The Format of Compliance Test Report (CTR) as prescribed under Format No. 2.B of the MF Master Circular is modified to include an additional Part IV as prescribed in Annexure given in this circular.
- All Asset Management companies managing SIFs shall additionally report compliance under Part IV of CTR submitted for Mutual Funds.
- The Half Yearly Trustee Report (HYTR) prescribed under Format No. 2.C of MF Master Circular is modified to include Clause 72A as prescribed in Annexure given in this circular. The Trustee Companies of Mutual Funds managing SIF to also report compliance under Clause 72A.

Foreign Exchange Management (Guarantees) Regulations, 2026[3] notified by the Reserve Bank of India (RBI)

The RBI has notified the Foreign Exchange Management (Guarantees) Regulations 2026 dated 6 January 2026. It aims at strengthening India's regulatory framework for cross-border guarantees by consolidating and updating the earlier regime, reducing ambiguity and streamlining compliance for foreign exchange guarantee transactions.

Key Highlights

Clear definitions and roles:

- The regulations expressly define a "guarantee," including counter-guarantees, and clarify the roles of principal debtors, sureties and creditors in cross-border arrangements.

Prohibitions

- No resident in India may be a party (as a principal debtor, surety, or a creditor) to a guarantee where any other party to that guarantee is aresident outside India, except to the extent permitted under these Regulations or as allowed under the Foreign Exchange Management Act,1999 (FEMA) or with general or special permission of RBI.

[1]SEBI circular No. HO/19/34/11(9)2025-AFD-POD1/I/2286/2026 dated 9 January 2026
[2] SEBI circular No. HO/24/13/12(4)2025-IMD-POD-1/I/2062/2026 dated 8 January 2026
[3] No. FEMA 8(R)/2026-RB dated 6 January 2026

Exemptions

- Specific exemptions are provided, including guarantees undertaken by authorised dealer bank branches outside India, irrevocable payment commitments by custodian banks for certain foreign portfolio investors and guarantees under FEMA regulations for overseas investments.

Structured reporting framework

- The Regulations provide for a reporting obligation for the issuance, modification in guarantee terms and invocation of guarantees, to be filed quarterly through authorised dealer banks within prescribed timelines.

Permission to act as surety or a principal debtor

- A resident in India may act as a surety or a principal debtor for a guarantee, provided that the underlying transaction is not prohibited under FEMA and the surety or the principal debtor are eligible for lending/ borrowing under FEMA regulations, subject to certain prescribed exemptions.

Permission to obtain a guarantee as a creditor

- A person resident in India being a creditor may obtain guarantee in its favour provided that the underlying transaction is not prohibited under FEMA and both surety and principal debtor are persons resident outside India.

Late submission fee

- Defined late submission fee mechanism for delay in reporting compliance discipline for delayed reporting.

Single Window Automatic and Generalised Access for Trusted Foreign Investors ('SWAGAT-FI') to Foreign Portfolio Investors (FPIs) and Foreign Venture Capital Investors (FVCIs) by SEBI[4]

With an objective to make compliance simpler and improve ease of doing business for SEBI-registered FPIs, SEBI has issued two circulars Single Window Automatic and Generalised Access for Trusted Foreign Investors (SWAGAT-FI) framework dated 16 January 2026[4].

The circular shall take effect from 1 June 2026.

Key Highlights

Unified registration process

- The framework introduces a single-window access for eligible foreign investors to obtain both FPI and FVCI registrations through one consolidated application process and reduces repetitive compliance requirements and documentation.

Eligibility

- The key beneficiaries include government-related investors, regulated mutual funds, insurance companies, pension funds, and public retail funds.
- Eligible investors that currently hold FPI or FVCI registrations can migrate to SWAGAT-FI status through their Designated Depository Participant (DDP).

Simplified compliance & extended validity

- Validity of registration for SWAGAT-FI investors is extended to tenyears.
- Periodicity of KYC review by custodians shall be ten years in case of SWAGAT-FI FPI.

SEBI notifies SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2026[5]

The SEBI has notified the amendment regulation to amend the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 which shall be effective from the date of publication of the amendment regulation.

Key Highlights

- The amendments introduce a new definition of retail individual investor as an individual who applies or bids for debt securities for a value of up to two lakh rupees.
- Issuers may offer incentives, such as additional interest or a discount on the issue price, to specified categories of investors.
- These incentives shall apply only to the original allottee and shall not be available if the debt securities are transferred or transmitted after the initial allotment.

Specification of the consequential requirements with respect to the Amendment of SEBI (Merchant Bankers) Regulations, 1992[6]

SEBI issued a circular on the SEBI (Merchant Bankers) Amendment Regulations 2025 effective 3 January 2026 to ease implementation and transition.

Key Highlights

- The amended Regulation focuses on enhanced investor protection, better governance and a larger capital pool.
- It introduces enhanced capital adequacy and liquid net worth norms, with phased compliance by 2 January 2027 (Category I & II MBs) and 2 January 2028.
- The amended Regulation mandates compulsory National Institute of Securities Market (NISM) certifications for employees & compliance officers.
- No outsourcing of core merchant banking activities and any existing agreement with any third party, shall be required to be closed on or before the effective date. i.e., 3 April 2026.
- The Regulation prescribes minimum revenue thresholds:
  - Category I: at least INR 25 crore
  - Category II: at least INR 5 crore
- The Regulation mandates Merchant Bankers (MBs) to maintain enhanced disclosures and strict ring-fencing of SEBI-regulated and Non-SEBI-regulated activities through separate business units.

[4] SEBI circular No.: HO/19/34/14(5)2025-AFD-POD2/I/2703/2026 & HO/19/34/14(5)2025-AFD-POD2/I/199/2025 dated 16 January 2026
[5] SEBI notification No. SEBI/LAD-NRO/GN/2026/296 dated 20 January 2026
[6] SEBI circular No. HO/49/11/11(106)2025-CFD-RAC-DIL3/I/1796/2026 dated 2 January 2026

Special window for transfer and dematerialisation of physical securities[7]

SEBI has issued a circular dated 30 January 2026 providing for a special window for Transfer and Dematerialisation of Physical Securities to facilitate ease of investing for investors and to secure their rights in the securities which were sold/purchased prior to 1 April 2019.

Key Highlights

- The window shall be open for one year from 5 February , 2026 to 4 February 2027 and will allow investors to re-lodge transfer requests of physical shares, including those that were earlier rejected, returned or not attended to due to documentation or procedural deficiencies.
- Transfers made under this window shall be mandatorily credited in demat mode and shall have a one-year lock-in from the date of registration of transfer.
- Cases involving a dispute between transferor and transferee or securities which have been transferred to the Investor Education and Protection Fund (IEPF) are excluded.Top of Form

Conditions to be fulfilled by the investor

- The investor must submit the requisite documents like original security certificate, transfer deed, proof of purchase, KYC documents, latest client master list and undertaking cum-indemnity as per prescribed format.

Obligations on listed companies/Registrar and Transfer Agent (RTAs)/ Depositories

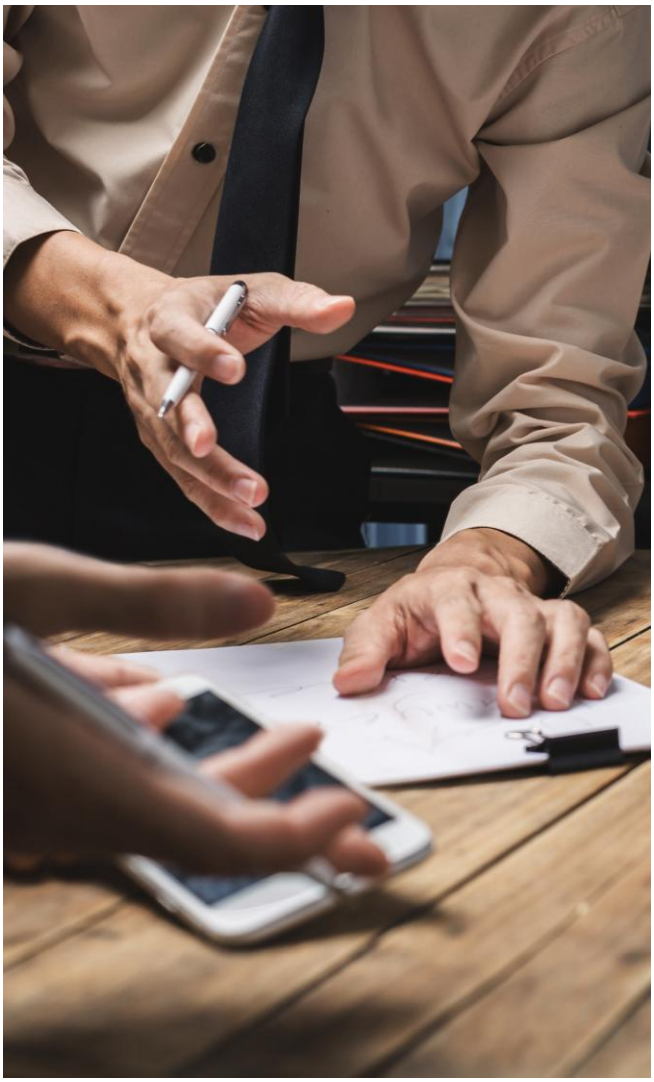
- Submit PAN, identity and address proof; provide additional documents if discrepancies exist.
- Signature verification must be done in case of any difference or non-availability of signatures of transferors.
- If objection memo is not delivered to the transferor, publish an advertisement, giving notice of the proposed transfer and seeking objection, in one English and one regional newspaper; transfer to be effected after the expiry of 30 days from advertisement.
- Legal heirs may claim securities on death as per the specified transmission procedure.
- In case of fraud, lock-in continues until further intimation and will be released as per competent court order.
- Transfer requests to be processed within 70 days from the date of receipt of request.
- Publicise the opening of this special window once every two months during the lock-in period.

Discontinuation of Letter of Confirmation ('LOC') and effect direct credit of securities in dematerialised form[8]

With an objective of ease of doing investment, enhanced operational efficiency and strengthen investor protection, effective 2 April 2026 SEBI has discontinued the requirement for issuance of Letters of Confirmation (LOC).

Key Highlights

- The move shall ensure faster, secure, and fully digital credit of securities directly into investors' demat accounts, minimising risks of loss or pilferage.
- All investor service requests, including duplicate certificates, transmission, transposition, unclaimed suspense account claims and corporate actions, will now result in securities being credited solely in demat mode.
- Depositories will facilitate RTAs and listed companies to credit securities directly to the demat account after necessary due diligence by RTAs and listed companies, while investors must submit a DP-attested Client Master List (CML) with their requests which should not be older than two months.
- The new system is expected to reduce the processing time to 30 days from receipt of such request after removing objections, if any, as against existing timelines of 150 days.
- LOCs issued prior to 2 April 2026 remain valid for dematerialisation if submitted within 120 days of issuance.



[7] SEBI circular no. HO/38/13/11(2)2026-MIRSD-POD/ I/3750/2026 dated 30 January, 2026
[8] SEBI circular no. HO/38/13/(3)2026-MIRSD-POD/I/3763/2026 dated 30 January 2026

DIRECT TAX

CIRCULARS AND NOTIFICATIONS

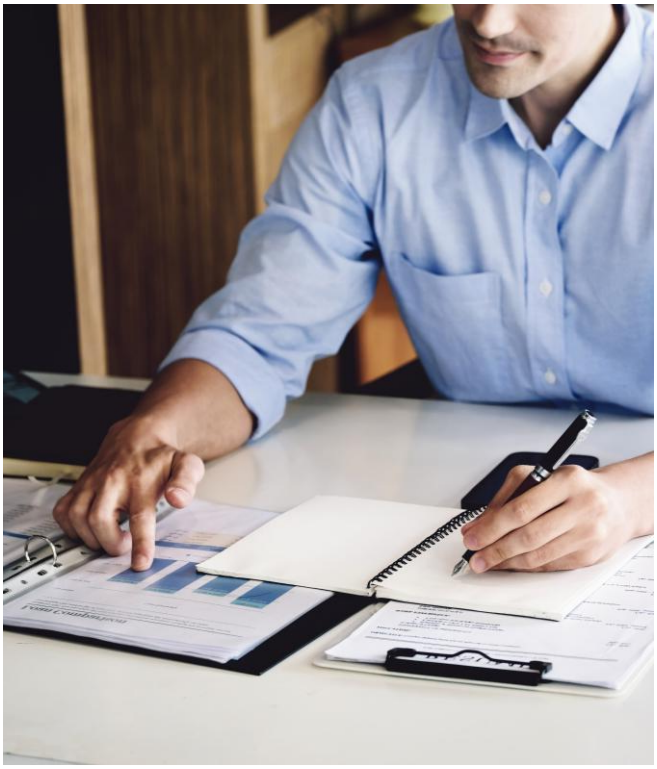
Government notifies Income-tax Appellate Tribunal (ITAT or Tax Tribunal) Amendment Rules

The Ministry of Law and Justice has notified the ITAT Amendment Rules, 2025 on December 19, 2025. However, the same shall be effective from the date of publication in the Official Gazette, i.e. 3 January 2026. The amended rules are in line with India's digital governance framework. Some of the key amendments notified in the Rules are as under:

1. **Digital filing of Appeal-** Memorandum of appeal (MOA) shall be filed by the taxpayer or its authorised agent using DSC, eliminating physical presence.
2. **Reduced Paperwork -** Instead of two copies of the order, a certified copy, a tax officer's order, and other documents, only one copy shall be required.
3. **Mandatory Documentation - E**very MOA shall be accompanied by the order appealed against or a certified copy thereof, order of the tax Officer, order of the Transfer Pricing Officer (TPO), if any, grounds of appeal and statement of facts in form 35, if any, filed before the first appellate authority.
4. **Where the order appealed against pertains to assessment order passed in pursuance of Dispute Resolution panel (DRP) directions** - MOA shall be accompanied by order passed by TPO, draft order passed by tax officer, grounds of objections filed before DRP in form 35A, and directions issued by DRP.
5. **When an appeal is preferred against an order passed by higher tax authorities[1] -** MOA shall also be accompanied by a copy of such order.

Further, the terms 'digital signature', 'e-mail address' and 'mobile number' have been specifically defined in the rules.

[Notification No. 71-Ad(AT)/2025 dated 19 December 2025, published on 3 January 2026)



[1] Higher tax authorities herein mean Principal Chief Commissioner, Chief Commissioner, Principal Director General, Director General, Principal Commissioner, Commissioner, Principal Director, or Director.

JUDICIAL UPDATES

Supreme Court emphasises economic substance over legal form to deny benefits of the India-Mauritius tax treaty

Under offshore holding structures, controversies have centred on whether foreign investment vehicles holding valid Tax Residency Certificates (TRCs) under the tax treaty entered into with India are eligible for treaty benefits in respect of capital gains.

Recently, the Supreme Court (SC), in a significant ruling, had an occasion to examine the issues in the context of the sale of shares as part of a large multinational acquisition, touching upon treaty benefits, tax treaty abuse, the effect of Central Board of Direct Taxes (CBDT) circulars, and the scope of General Anti-Avoidance Rule (GAAR) override under section 90(2A)[2] of the Income-tax Act, 1961 (the Act), and the circumstances in which treaty relief may be denied notwithstanding the existence of a TRC. The SC held that TRC is not conclusive evidence, and a treaty exemption has to be denied where the arrangements are posed without any commercial substance. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-supreme-court-emphasises-economic-substance-over-legal-form-to-deny-benefits

[The AAR v. Tiger Global International II Holdings; CIVIL APPEAL NO. 262 OF 2026 (SC)]

Supreme Court holds receipt of shares in amalgamated company in lieu of shares held as stock-in-trade is taxable as business income if commercially realisable and capable of definite valuation

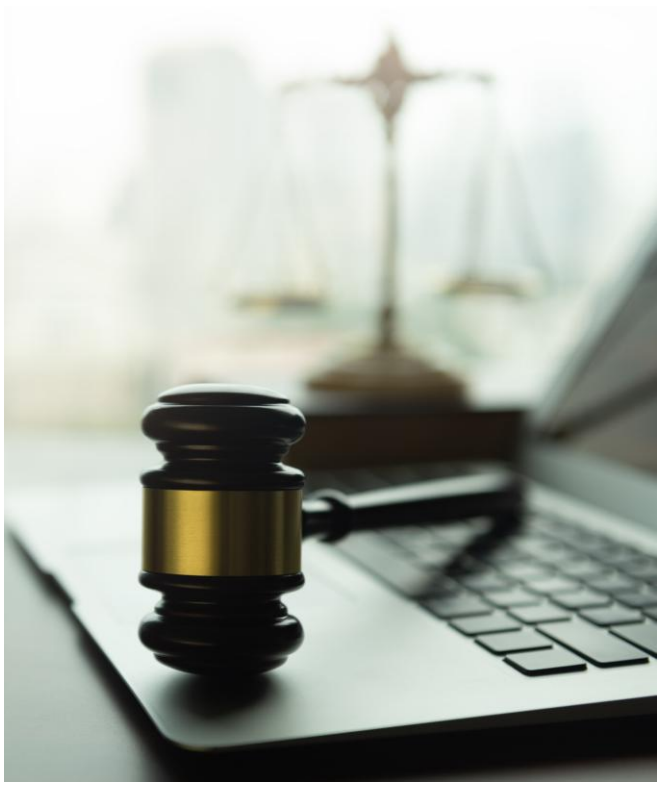
The taxpayers are investment companies of the Jindal Group holding shares in Jindal Ferro Alloys Limited (JFAL) and Jindal Strips Limited (JSL) as part of promoter shareholding, representing a controlling interest. Pursuant to the amalgamation of JFAL with JSL, taxpayers were allotted shares of JSL in lieu of JFAL shares, and while filing the return for FY 1996–97, the taxpayers claimed exemption under section 47(vii) of the Act. During the course of assessment proceedings, the tax officer treated the shares of JFAL as stock-in-trade, denied the exemption and taxed the value of JSL shares as business income based on market value.

The first appellate authority upheld the order of the tax officer. On the taxpayer's further appeal, the Delhi Tax Tribunal pronounced that since there was no transfer of shares, no taxable profit would arise. On the tax authorities' appeal before the Delhi High Court (HC), it was concluded that if shares are held as a capital asset, exemption under section 47(vii) of the Act is eligible. However, if the same are held as stock-in-trade, receipt of shares reflects realisation of trading profits taxable under section 28 of the Act. While the matter was remanded by the HC to the Tax Tribunal for determination of the nature of holdings, the taxpayer filed an appeal before the SC.

The SC, while holding that shares received on amalgamation in substitution of stock-in-trade give rise to taxable business income under section 28 of the Act, made the following key observations:

- Section 28 of the Act is concerned with real commercial profits arising from business activity, independent of the concept of "transfer" under the Act. Further, the business profits may accrue even in the absence of a conventional sale, exchange, or transfer. Sections 28 and 45[2] of the Act operate in distinct and independent fields.
- Substitution of shares in amalgamation amounts to a receipt in kind for the purpose of section 28 of the Act. Taxability arises only upon the receipt of the substituted shares, when the statutory substitution translates into a concrete, realisable commercial advantage.
- In line with the doctrine of real income, substituted shares must be capable of definite valuation and must represent a real, crystallised gain since mere substitution of shares on amalgamation does not satisfy this test unless the new holding can be quantified in money's worth.
- Under the Act, there is an express exception for amalgamation of capital assets; however, no such exception is contemplated in the case of business assets. In this regard, reliance is placed on decision of the High Court in Grace Collis[3] wherein it was held that amalgamation involves a "transfer" under section 2(47) of the Act and since the exemption under section 47(vii) of the Act is confined to capital assets, the substitution of shares held as stock-in-trade entails a cession of trading assets and their replacement by substituted shares of ascertainable market value, giving rise to taxable business income under section 28 of the Act.

[M/S Nalwa Investments Ltd. V. CIT; CIVIL APPEAL NO. 153 OF 2026 (SC)]



[2] Section 45 of the Act governs the taxation of capital gains and provides that profits or gains arising from the transfer of a capital asset shall be chargeable to income-tax under the head "Capital gains".
[3] CIT v. Grace Collis and others, (2001) 248 ITR 323 (SC)

Chennai Tax Tribunal holds that profits on the sale of investments earned by Insurance Companies cannot be denied exemption under Section 10(38) of the Act

Insurance companies are governed by a special tax regime under which profits and gains of insurance business are computed primarily based on financial statements prepared in accordance with the Insurance Act, 1938 and regulations issued by the Insurance Regulatory and Development Authority of India ('IRDAI'), subject to adjustments as specified in the First Schedule to the Act.

Under the special tax regime for insurance companies, Rule 5(b)(i) of the First Schedule of the Act provides that no adjustment is required for gains or losses on the sale of investments where these are already reflected in the profit and loss account prepared under the insurance regulatory framework. In such cases, profits on sale of investments shall also be excluded while computing total income to the extent eligible for exemption under Section 10(38) of the Act, which provides exemption for long-term capital gains on listed equity shares and units of equity-oriented mutual funds, subject to payment of Securities Transaction Tax.

In its recent ruling, the Chennai Tax Tribunal has affirmed that profits on the sale of investments earned by Insurance Companies shall be eligible for exemption under Section 10(38) of the Act for the relevant Fiscal Years ('FY'). To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-chennai-tax-tribunal-holds-profits-on-sale-of-investments-earned-by-insurance

[United India Insurance Co. Ltd. V. PCIT; I.T.A. Nos.1759/Chny/2019, 182 & 183/Chny/2021, 430/Chny/2022 and 683/Chny/2023)]

Bangalore Tax Tribunal, in relation to residency test, holds that only non-resident individuals are entitled to relaxation in the period of stay from 60 days to 182 days

Section 6(1)(c) of the Act provides that an individual shall be considered resident in India if he has been in India for 60 days or more in the current year and 365 days or more in the preceding 4 years. Explanation to section 6 grants 'non-resident' status to individuals leaving India for employment, as well as to individuals who are outside India but coming to India for visit(s). Further, if an individual is considered resident in 2 or more countries simultaneously, the tie-breaker test under the relevant Double Taxation Avoidance Agreement ("tax treaty") shall be applied to determine their residential status. In a landmark decision, the Bangalore Tax Tribunal rejected the 'non-resident' status claimed by the taxpayer, a citizen/person of Indian origin, who had visited India for less than 182 days and held that the taxpayer is 'resident' in the year under consideration. In this case, the taxpayer was staying and working in Singapore and came on a brief visit to India. The benefit of an extended time limit of 182 days, as against 60 days, applies only for persons leaving India and not visiting India. Accordingly, his global income would be taxable in India. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-residency-test-only-non-resident-individuals-entitled-to-relaxation-in-period

[Shri Binny Bansal v. DCIT; IT(IT)A No.571/Bang/2023 (Bangalore Tribunal)]

Delhi Tax Tribunal restricts disallowance under section 40(a)(i) of the Act at 30% on foreign remittances, basis non-discrimination clause under the India-US tax treaty

The taxpayer company was engaged in the business of providing marketing and customer support services and contract research and development services to its subsidiary companies at a predetermined markup fee. During the course of assessment proceedings, it was found that the taxpayer had made certain foreign remittances without withholding tax at source. Accordingly, the tax officer passed the re-assessment order, making an addition of 30% of the total remittance.

The Principal Commissioner of Income-tax held the order passed by the tax officer as erroneous on the basis that 100% of the foreign remittance should be disallowed under section 40(a)(i) of the Act. Aggrieved by the same, the taxpayer preferred an appeal before the Delhi Tax Tribunal. The issue under consideration was whether the difference in quantum of disallowance, i.e., 30% for residents and 100% for non-residents on the same transaction, would fall within the scope of the non-discrimination clause of Article 26(3) of the India-USA tax treaty. The Delhi Tax Tribunal, while holding in favour of the taxpayer, made following observations:

- Section 40(a)(i) of the Act, in its present form, is violative of the non-discrimination Article 26(3) of the India-US tax treaty as far as the quantum of disallowance is concerned.
- The 100% disallowance on non-resident payments leads to less favourable treatment as compared to a similar payment to a resident under the same conditions, having 30% disallowance.
- Reliance in this regard is placed on the Delhi High Court's decision in the case of Herbalife India P Ltd[4] wherein it was held that application of 100% disallowance under section 40(a)(i) is discriminatory in nature and violates the non-discrimination article 26(3) of the tax treaty.
- Such disparity triggers a non-discriminatory clause in tax treaties, and the excess 70% is considered discriminatory. Hence, disallowance should be restricted to 30% on the foreign remittances made by the taxpayer.

[LinkedIn Technology Information Pvt Ltd v. PCIT, ITA No. 2492/DEL/2024 (Delhi ITAT)]

[4] Herbalife India P Ltd (2016) 69 taxmann.com 205(Delhi)

Hyderabad Tax Tribunal holds that mere uploading of the notice on the IT portal is not sufficient; the date and time of issuance of the notice on email counts

For the FY 2012-13 and 2014-15, the taxpayer received notice under section 148 of the Act. Such notice was issued through the income tax portal on 31 March 2021. However, the email sent to the taxpayer reflected the date and timing as 1 April 2021 3.53 AM. The tax authorities contended that the notice was already generated and dispatched via the income tax portal on 31 March 2021. However, due to congestion and technical constraints, the email was delivered only on 1 April 2021.

The taxpayer filed an appeal before the first appellate authority challenging the validity of the order passed by the tax officer under section 147 of the Act. The First Appellate Authority confirmed the order passed by tax officer. Aggrieved by the same, a further appeal was filed before the Hyderabad Tax Tribunal. The Hyderabad Tax Tribunal, while ruling in favour of the taxpayer, made following observations:

- The time of sending the email is clearly mentioned as 03:53:49 AM on 1 April 2021, and the time of delivery is mentioned as 03:53:52 AM on 1 April 2021. This electronic trail constitutes a contemporaneous record of the actual communication of the notice to the taxpayer.
- Reliance is placed on the decision of the Telangana HC in the case of Kalyan Chillara[5] and the Delhi HC's decision in case of Suman Jeet Agarwal[6], wherein the court held that the date and time mentioned in the email by which the notice is communicated to the taxpayer shall be treated as the date of issuance of the notice for the purposes of section 148 of the Act.
- Mere uploading or generation of the notice on the Income-tax portal does not amount to 'issuance' unless the same is actually communicated to the taxpayer, and the electronic evidence reflecting the date and time of email communication is determinative for this purpose.
- Accordingly, it is held that in the given case, the notice shall be treated as having been issued on 1 April 2021, being the date and time reflected in the email communication.

[Desu Enterprises Ongole v. ITO /ITA Nos.549 & 589/Hyd/2024 (Hyderabad ITAT)]

Mumbai Tax Tribunal holds that payment towards transponder services is not 'royalty', not liable to deduct TDS under India-UK DTAA

The taxpayer, an Indian company, is engaged in providing media publishing services in India and South Asia. It entered into an agreement with Intelsat Global Sales and Marketing Limited (Intelsat UK) for up-linking and down-linking of satellite signals for broadcasting television channels in India and paid the transponder service fee for the same.

The taxpayer, while making the remittance to Intelsat UK, withheld the taxes on a grossed-up basis. The taxpayer contended that the transponder service fees paid to Intelsat UK are neither chargeable to tax in India under the Act nor under the provisions of the India-UK tax treaty; therefore, the taxpayer filed an appeal under 248 of the Act before the First Appellate Authority, after payment of such withholding taxes. The First Appellate authority ordered in favour of the taxpayer and held that transponder services do not constitute royalty and no taxability shall arise.

Aggrieved by the same, the revenue filed an appeal before the Mumbai Tax Tribunal. The Mumbai Tax Tribunal, while holding that payment towards transponder services does not constitute 'royalty', made following observations:

- Under the identical facts involving the India-Netherlands tax treaty, the Delhi HC in the case of DIT vs. New Skies Satellite BV[7] has held that no secret process is involved in the provision of transponder services by the taxpayer since the mechanism of providing satellite transmission services is available in the public domain. They do not constitute any secret information or process. Reliance is also placed on the Chennai Tax Tribunal's decision in the case of Intelsat UK[8] wherein it was held that the provision of transponder services cannot be taxed as a process royalty.
- Hence, transponder services by the taxpayer to Intelsat UK do not fall within the definition of royalty, hence the taxpayer is not liable to withhold taxes under section 195 of the Act.

[Bennett Coleman & Co. Ltd. V. ITO; ITA No.5246-51/MUM/2025 (Mumbai ITAT)]

[5] Kalyan Chillara v. DCIT (167 taxmann.com 500)
[6] Suman Jeet Agarwal v. ITO (449 ITR 517)
[7] New Skies Satellite BV [(2016) 382 ITR 114 (Del)]
[8] Intelsat Global Sales and Marketing Ltd. vs. DCIT, in IT(TP)A No.49/Chny/2018

Mumbai Tax Tribunal holds conversion of Optionally Convertible Cumulative Redeemable Preference Shares (OCCRPS) to equity shares, a tax-neutral event not taxable as Income from Other Sources

The taxpayer, a non-resident private limited company, is an investment company incorporated under Mauritian Laws. It holds a Category I Global Business License issued by the Financial Services Commission of Mauritius. During FY 2021-22, the taxpayer was allotted 4.35 crore OCCRPS of Thomos Cook India Ltd (TCIL), an Indian Listed Company, via private placement at INR 10 per share. The Fair Market Value (FMV) of equity shares at that time was INR 47.30 per share. The terms of issuance of OCCRPS provided that they shall be converted into equity shares at the same price, i.e., INR 47.30, within 18 months from the date of allotment. Subsequently, on approval of conversion, the taxpayer was allotted 6.4 crore equity shares of TCIL. In the course of the assessment proceedings, the tax officer computed the FMV of shares in terms of Rule 11UA of the Income Tax Rules, 1962, at INR 66.15 per share. The draft order proposed to tax the difference between value as per rule 11UA and FMV under the head income from other sources under section 56(2)(x) of the Act. The DRP upheld the tax officer's order. Aggrieved by the order, the taxpayer filed an appeal to the Tax Tribunal.

The Mumbai Tax Tribunal, while holding that conversion of OCCRPS to equity shares is a tax-neutral transfer not attracting taxability, made the following observations:

- Section 56(2)(x) of the Act provides for taxation of deemed income as Income from Other Sources. It is not a general provision but an anti-abuse and deeming provision, and inserted to tax receipts having a clear element of gratuitous enrichment or colourable value shifting.
- Further, as per the provision, the difference in aggregate FMV of shares and consideration received is taxable.
- Under a conversion transaction, consideration for the receipt of equity shares is represented by the value of the preference shares surrendered at the point of conversion, and not by a conversion price fixed at a prior point in time for regulatory or compliance purposes. The taxpayer does not discharge any monetary consideration in the event of such conversion.
- What is brought to tax by the tax authorities is nothing but the capital appreciation of the value of shares between the date of issuance and conversion, which partakes the character of a capital receipt and not income from other sources.
- Further, valuation rules are machinery provisions and they neither charge nor expand the scope of charging provisions. Hence, the addition made u/s 56(2)(x) of the Act is not sustainable.

[Fairbridge Capital (Mauritius) Limited. V. ACIT; ITA No.1626/MUM/2025 (Mumbai ITAT)]

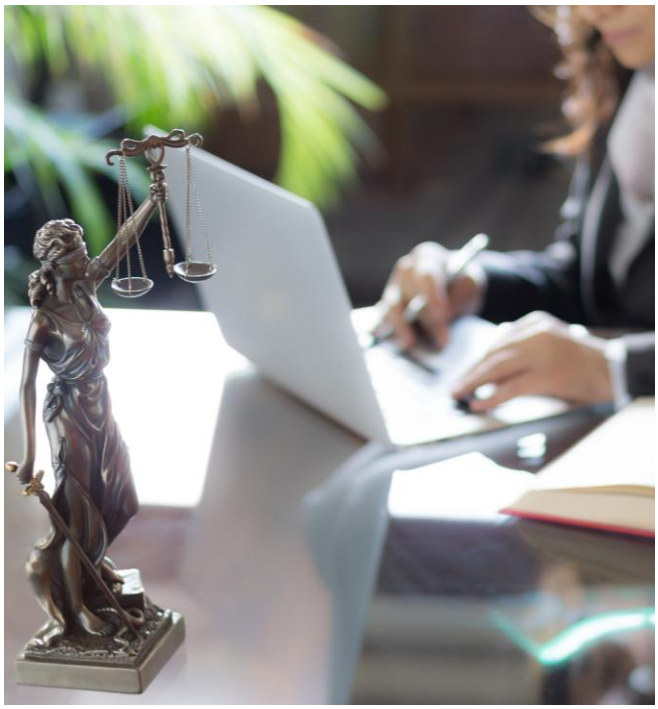
Delhi Tax Tribunal holds that a charging provision is necessary to bring income to tax; mere inclusion in definition is not enough

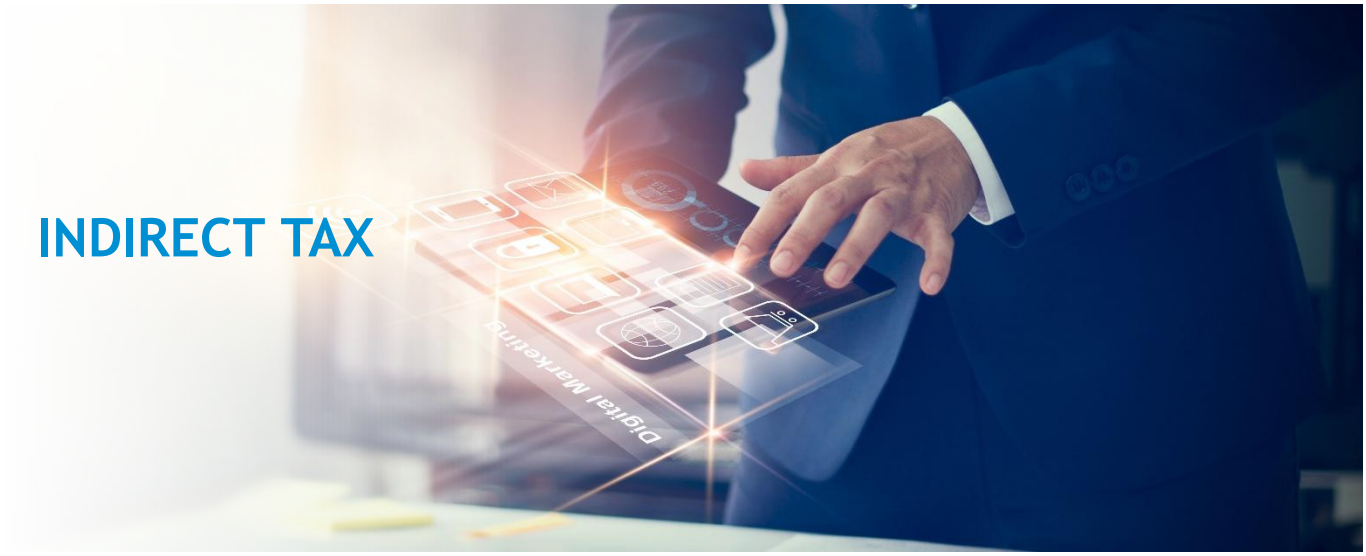
The taxpayer is one of the directors of Mohan India Group of companies. A search and seizure was conducted in the case of Mohan India Group during which the bank account of the taxpayer was searched. Basis the same, for FY 2014-15, an addition of INR 473.71 crores was proposed under section 2(24)(iv) of the Act on the grounds that the taxpayer had siphoned money received from National Spot Exchange Limited and the same was used for personal purposes. The taxpayer contended that the order was passed under the wrong provisions of the Act, hence not sustainable. However, the First Appellate Authority upheld the tax authority's order by passing a reference under section 28(i) of the Act, stating that receipts were in the nature of business receipts. Aggrieved by the same, the taxpayer filed an appeal to the Tax Tribunal.

The Delhi Tax Tribunal, while ruling in favour of the taxpayer, held that a charging provision is necessary to bring to tax any income and made the following observations:

- The fundamental principle of taxation laws is that the liability to tax is based on the charging section and not on a definition section.
- The definitions given under section 2 of the Act explain terms and do not create liability to pay tax. The charging section determines the taxable entity, total income and timing of taxation. Whereas the machinery section provides the mechanism for computing the tax.
- Hence, mere inclusion in the definition of income does not create a charge on the income. Therefore, the addition made by the tax authority is invalid.

[Jag Mohan v. DCIT, ITA No.7055/DEL/2017 (Delhi ITAT)]





NOTIFICATIONS AND CIRCULARS

GOODS AND SERVICES TAX

GSTAT Registry to raise only defects affecting the merits of a matter in appeals filed before GSTAT

The President of the Goods and Services Tax Appellate Tribunal ('GSTAT') has directed that since Taxpayers are facing difficulties in filing appeals on the GSTAT Portal, the Registry of each bench of GSTAT shall adopt a lenient view during scrutiny of the appeal documents and only raise a defect of substance (and not a defect of form, i.e. the defects not affecting the merits of the case shall not be raised) for an initial period of six months till 20 July 2026.

It has further been clarified that the documents generated digitally through GSTN are not required to be certified. However, scanned copies of the physical documents attached with the appeal shall be signed.

[GSTAT Office Order No. 2711-15 dated 20 January 2026]

GSTAT Appeal e-filing

A snapshot for the entire appeal filing process has been issued for the GSTAT E-Filing Portal.

[Source: User Advisory for the GSTAT E-Filing Portal]

Enhancements in Form GSTR-3B

The following enhancements have been introduced in Form GSTR-3B from January 2026 tax period onwards:

- **Interest computation**
  - Interest will be calculated after providing the benefit of minimum cash balance available in the Electronic Cash Ledger ('ECL') of the taxpayer from the due date of filing the return to the actual date of tax payment.
  - The interest computation shall be auto-populated in Table 5.1 of Form GSTR-3B and shall be non-editable except for an upward revision (as the auto populated number is minimum interest).
- The Tax Liability Breakup Table shall be auto-populated on the basis of the date of documents, related to supplies reported in Form GSTR-1 / GSTR-1A / invoice furnishing facility, pertaining to any previous tax period, where the corresponding tax liability has been discharged in the current period. The values are suggestive in nature and the taxpayers may modify upwards these values on the basis of their records.
- Once the available Integrated Goods and Services Tax ('IGST') Input Tax Credit ('ITC') has been fully exhausted, the GST Portal will allow payment of IGST liability in Table 6.1 of Form GSTR-3B by using the available Central Goods and Services Tax ('CGST') and State Goods and Services Tax ('SGST') ITC in any sequence.
- In case of taxpayers whose GST Registration has been cancelled, if the last applicable Form GSTR-3B return has been filed after the due date, then the applicable interest on such delayed filing shall be levied and collected through the Final Return in Form GSTR-10.

[Source: GSTN Advisory dated 30 January 2026]

Proper officers assigned under Himachal Pradesh GST Act

The following officers in Enforcement, Audit, Taxpayer Services and other officers of GST Wing of the Department of State Taxes and Excise, Himachal Pradesh, have been notified as proper officers under Sub-sections (1), (2), (3), (6), (7), (8), (9) and (10) of Section 74A and Sub-sections (2), (5), (6) and (8) of Section 75 of the Himachal Pradesh Goods and Services Tax Act, 2017:

- Joint Commissioner of State Taxes and Excise and Above;
- Deputy Commissioner of State Taxes and Excise; and

- Assistant Commissioner of State Taxes and Excise.

[Source: File No. 12-4/78-EXN-Tax-Part-278/22(a)-91-96 dated 2 January 2026]

Proper officer assigned under section 151 of Haryana SGST

The Commissioner of State Tax has appointed the Deputy Commissioner of State Tax and Excise and Taxation Officer of State Tax as the proper officers under section 151 of the Haryana Goods and Services Tax Act, 2017, for their jurisdiction, unless specific jurisdiction is notified.

[Order No. 01/2026/GST-II dated 13 January 2026]

CUSTOMS

ADD on import of 'Normal Butanol or N-Butyl Alcohol' extended till 12 July 2026

Vide Notification No. 21/2021-Customs (ADD), Anti-dumping duty ('ADD') was imposed on import of '*Normal Butanol or N-Butyl Alcohol*', classified under HSN 2905 1300, originating in or exported from European Union, Malaysia, Singapore, South Africa and United States of America.

Vide Notification No. 02/2026-Customs (ADD), the aforesaid levy has been extended till 12 July 2026.

[Source: Notification No. 02/2026-Customs (ADD) dated 8 January 2026]

Commercial Postal Exports and export benefits to be processed through ICEGATE

The Postal Bill of Export Automated system and the Indian Customs EDI System ('ICES') have been integrated to enable electronic processing of commercial postal exports and provision of export benefits. The Postal Export (Electronic Declaration and Processing) Amendment Regulations, 2026 have been notified for the same. Further, various notifications and circulars have been amended to give export benefits to goods exported by posts.

[Source: Notification No. 03, 04, 05 & 07/2026-Customs (N.T.) dated 15 January 2026 and Circular No. 01/2026-Customs dated 15 January 2026]

One-time exemption provided to Cross Recessed Screws from Quality Control Order for specified consignments

The Ministry of Steel has informed, *vide* Order bearing F. No. S-20011/15/2024-TECH-Part(2), that consignments of 'Cross Recessed Screws' (HSN Chapter 72 and 73) having inward entry date between 1 November 2025 and 12 January 2026, are exempted from Cross Recessed Screws (Quality Control) Order, 2025 issued by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry.

[Source: Instruction No. 01/2026-Customs dated 17 January 2026]

DGFT

Interest Subvention for Pre and Post-Shipment Export Credit for MSMEs launched

Interest Subvention for Pre and Post-Shipment Export Credit intervention under the Export Promotion Mission – Niryat Prothsahan has been launched to facilitate improved access to pre and post-shipment rupee export credit for Micro, Small and Medium Enterprises ('MSME') exporters by reducing the cost of such credit and providing a rule-based and transparent interest-relief mechanism aimed at enhancing liquidity for MSME exporters and enabling them to meet working-capital requirements efficiently.

[*Trade Notice No. 20 /2025-26 dated 2 January 2026 and Trade Notice No. 22/2025-26 dated 16 January 2026*]

Collateral support for export credit under export promotion mission launched

The Collateral Support for Export Credit component under the Export Promotion Mission (EPM) – NIRYATPROTSAHAN is launched with immediate effect. The intervention aims to improve access to formal export credit for Micro, Small and Medium Enterprises (MSMEs), particularly exporters facing constraints in providing collateral security. Under this component, eligible MSME exporters may avail credit guarantee support for export-related working capital loans extended by member lending institutions, in accordance with the notified ceilings and coverage parameters.

[*Trade Notice No. 21/2025-26 dated 2 January 2026*]

Format of E-BRC amended

Effective 13 January 2026, the Electronic Bank Realisation Certificate format provided in Appendix 2U of the Handbook of Procedures, 2023 has been amended to add fields for GSTIN, GST Invoice Number and GST Invoice Date.

[Source: Public Notice No. 42/2025-26 dated 9 January 2026]

IACCIA authorised to issue Certificates of Origin (Non-Preferential)

The India and Arab Countries Chamber of Commerce, Industry and Agriculture (IACCIA) has been enlisted under Appendix 2E of Foreign Trade Policy, 2023 ('FTP') for issuing Certificates of Origin (Non- Preferential).

[Source: Public Notice No. 43/2025-26 dated 9 January 2026]

Second round of allocation of Gold TRQ under India-UAE CEPA for FY 2025-26

The procedure and guidelines for the second round of Allocation of Tariff Rate Quota for import of Gold (HSN 7108) under India-UAE Comprehensive Economic Partnership Agreement for FY 2025-26 have been notified to *inter alia* provide for a total quantity allocation of 80 Metric Tonnes with maximum eligible quantity for allocation to bidders of Micro, Small, Medium Enterprises and other units being limited to 50Kg, 100Kg, 250Kg and 500Kg respectively.

[Source: Public Notice No. 45/2025-26 dated 23 January 2026]

Minimum Import Price notified for import of certain goods under HSN 2941 10

Minimum Import Price condition has been prescribed for import of:

- Penicillin G-potassium (PEN-G) - CIF value of INR 2,216 per Kilogram (HSN 2941 1010);
- Amoxicillin Trihydrate - CIF value of INR 2,733 per Kilogram (HSN 2941 1030); and
- 6-APA - CIF value of INR 3,405 per Kilogram (HSN 2941 1050).

However, the restriction shall not be applicable for import by 100% Export Oriented Units, units in Special Economic Zones and imports under the Advance Authorisation Scheme, subject to the condition that the imported inputs are not sold into Domestic Tariff Area.

[Source: Notification No. 56/2025-26 dated 29 January 2026]

VALUE ADDED TAX

Time limit to complete assessments for FY 2022-23 under the Goa VAT extended

The period of limitation prescribed under section 29(3) of the Goa Value Added Tax Act, 2005, for completion of all assessments pertaining to the financial year 2022-23 has been extended to 31 July 2026 (Earlier 31 March 2026).

[Source: Notification No. CCT/12-2/2025-26/4863 dated 30 January 2026]

JUDGMENTS

Sahil Enterprises Vs. Union of India and Ors. [TS-02-HC(TRI)-2026-GST]

Sahil Enterprises ('Taxpayer') is *inter alia* engaged in trading rubber products and had purchased goods from M/s. Sentu Dey ('Supplier') between July 2017 and January 2019. The Taxpayer also paid GST of INR 11.16mn to Supplier.

On investigation, the GST Authorities observed that while the Supplier had reported its outward supplies in Form GSTR-1, it had not deposited applicable GST to the Government treasury. Consequently, a show cause notice ('SCN') was issued by GST authorities to the Taxpayer under section 73 of the Central Goods and Services Tax Act, 2017 ('CGST Act'), alleging incorrect availment of ITC on procurements made from the Supplier and seeking its reversal along with interest and penalty.

The Taxpayer furnished a reply contending that it could only verify the details reflected in Form GSTR-2A, and there was no mechanism on the GST portal to verify the details of Form GSTR-3B filed by the Supplier. Despite this, the SCN issued by GST authorities was confirmed *vide* the Impugned Order. Aggrieved by the above, the Taxpayer filed a Writ Petition before the Tripura High Court *inter alia* challenging the validity of the Impugned Order as well as the constitutional validity of Section 16(2)(c) of the CGST Act as being violative of Articles 14, 19(1)(g) and 300A of the Constitution of India. The Tripura High Court, while ruling in favour of the Taxpayer, held as under:

- **Section 16(2)(c) of the CGST Act puts an onerous burden on *bona fide* purchasers**
  - There is a failure by the Parliament in enacting Section 16(2)(c) of the CGST Act by omitting to make a distinction between bona fide purchasers who have taken all precautions as required under the CGST Act and other purchasers (non-*bona fide* purchasers).
  - Denial of ITC must be restricted only to non-*bona fide* purchasers and not to *bona fide* purchasers. A purchasing dealer cannot be asked to do the impossible task, i.e., to identify a supplier who will not deposit tax collected with the Government. Section 16(2)(c) of the CGST Act places an onerous burden on a *bona fide* purchaser and seeks to deny ITC.
  - Such disproportionate consequences would make section 16(2)(c) of the CGST Act vulnerable to invalidation under Article 14 of the Constitution. However, reading down a provision is an accepted method to save it from the vice of unconstitutionality. The same would be appropriate in the instant case as well.
  - The same principle that ITC cannot be denied if the genuineness of the transaction is not doubted was also upheld in various judicial precedents[1] by reading down the statutory conditions to claim ITC.

[1] M/s McLeod Russel India Ltd. Vs. Union of India and Ors. [2025 (3) TMI 59 - Gauhati High Court], National Plasto Moulding and Ors. Vs. The State of Assam and Ors. [2024 (8) TMI 836 - Gauhati High Court], M/s. Shanti Kiran India Pvt. Ltd. Vs. The Commissioner Trade and Tax, Delhi [2013 (2) TMI 80 - Delhi High Court], affirmed in The Commissioner Trade and Tax, Delhi Vs. M/s. Shanti Kiran India Pvt. Ltd. [2025 (10) TMI 607 - SC Order], Arise India Ltd., On Quest Merchandising India Pvt. Ltd. Vs. Commissioner of Trade and Taxes Delhi [2017 (10) TMI 1020 - Delhi High Court], affirmed in Commissioner of Trade and Taxes Delhi Vs. Arise India Ltd., On Quest Merchandising India Pvt. Ltd. [2018 (1) TMI 555 - SC Order].

- **Judgements upholding constitutional validity of section 16(2)(c) of CGST Act**
  - None of the High Court rulings[2] upholding the constitutional validity of section 16(2)(c) of the CGST Act without reading it down, has examined the practical impossibility of a purchaser to ensure that the seller pays the GST to the Government, particularly when he has no means to verify the same. On failure to consider this, these High Court rulings can be distinguished.
- There is nothing in the language of GST law expressly enabling an authority to tax a purchaser who has already paid tax to seller, a second time, by denying him ITC, in all situations. If that were the case, there would be no concept of ITC at all.
- The transaction between the Taxpayer and Supplier is a *bona fide* transaction and not a collusive transaction tainted by fraud, and the conduct of the Supplier is blameworthy. Accordingly, the Taxpayer cannot be penalised by invoking Section 16(2)(c) of the CGST Act to deny its claim of ITC.
- In view of the above, the Impugned Order was set aside, and the tax authorities were directed to allow the ITC to the Taxpayer. Section 16(2)(c) of the CGST Act is read down and is to be made applicable only in cases where the transaction is of non-*bona fide* purchases.

Bharti Airtel Ltd. Vs. Principal Commissioner of Customs [TS-10-CESTAT-2026-CUST]

Bharti Airtel Ltd. ('Importer') imported Modular Port Concentrator or Capacity Line Card, Modular Interface Cards or Daughter Card, Fixed Configuration MPC and Switch Fabric or Switch Control Board ('subject goods'), manufactured by Juniper Networks Inc. ('OEM'), as parts of Juniper Router. The Importer classified the subject goods under HSN 8517 7090 as parts of the Juniper Router.

The Customs Authorities rejected the aforesaid classification adopted by the Importer for 20 Bills of Entry ('BoE') filed during the period from 7 April 2017 to 9 March 2018, holding that the subject goods merit classification under HSN 8517 6290 as Network Interface Card ('NIC'), being a kind of reception apparatus for a communication network.

Aggrieved, the Importer approached CESTAT, New Delhi, who, while ruling in favour of the Importer, held as under:

- It laid down the following tests to determine whether an item is classifiable as parts/components:
  - Whether the item has a separate, identifiable/individual function of its own, when compared to the main machine; and
  - Whether the item is capable of operating independently of the main machine on its own.
  - If the answer to both the aforesaid questions is in the negative, the item would be classifiable as parts, and in that case, the item will not be classifiable as an apparatus falling under its own appropriate heading.
- As regards the invocation of an extended period of limitation on the ground of self-assessment undertaken by the importer, the CESTAT referred to the judgment in the case of ***Raydean Industries***[3], where it was observed that even in a case of self-assessment, the customs authority can always call upon the Importer and seek information, and it is the duty of the proper officer to scrutinise the correctness of the duty assessed by the Importer. Accordingly, merely because the instant case pertains to self-assessment by the Importer, it would not mean that the extended period of limitation can be invoked.

Viraj Impex Pvt. Ltd. Vs Union of India and Anr. [TS-9-SC-2026-FTP]

Viraj Impex Pvt. Ltd. ('Importer') was importing mild steel items such as Hot Rolled Coils, Cold Rolled Coils, Hot Rolled Steel Plates and Pre-Painted Steel Coils etc., ('subject goods') classifiable under Chapter 72 of the Indian Trade Clarification (Harmonised System), 2012, Schedule-I of the Foreign Trade Policy, 2015-2020 ('FTP').

The Importer entered into firm sale contracts with exporters from China and South Korea between 29 January and 4 February 2016 and opened irrevocable letters of credit ('LoC') in favour of foreign suppliers on 5 February 2016. Further, on 8 February 2016, the Importer applied for registration of these LoCs under the transitional protection provided under Para 1.05(b) of FTP.

Prior to February 2016, there was no restriction on the import of the subject goods into India. However, on 5 February 2016, the Directorate General of Foreign Trade uploaded Notification No. 38/2015-20 ('NN 38/2015-20') on its website, introducing Minimum Import Price ('MIP') condition for import of specified steel products classifiable under 173 HSN Codes of Chapter 72. The uploaded document contained an endorsement 'To be published in the Official Gazette of India' and was published in the Official Gazette on 11 February 2016.

The Importer filed a writ petition before the Delhi High Court challenging the validity of NN 38/2015-20 or, in the alternative, seeking a declaration that the Notification does not apply to LoCs opened by the Importer prior to publication of NN 38/2015-20 in the Official Gazette. The said petitions were dismissed by the Delhi High Court *vide*

[2] M/s. M. Trade Links and Ors. Vs. Union of India and Ors. [2024 (6) TMI 288 - Kerala High Court], Nahasshukoor and Anr. Vs. Assistant Commissioner of State Goods and Services Tax, Alappuzha and Ors. [2023 (11) TMI 1153 - Kerala High Court], Aastha Enterprises Vs. State of Bihar [2023 (8) TMI 1038 - Patna High Court], M/s. Shree Krishna Chemicals Vs. Union of India [2025 (2) TMI 1006 - Madhya Pradesh High Court], M/s. Baby Marine (Eastern) Exports Vs. Union of India and Ors. [2025 (8) TMI 791 - Madras High Court] and Thirumalakonda Plywoods Vs. Assistant Commissioner - State Tax, Anantapur Circle - 1 [2023 (7) TMI 1226 - Andhra Pradesh High Court]

[3] M/s. Raydean Industries Vs. Commissioner of CGST, Jaipur [Excise Appeal No. 52480 of 2019 decided on 19.12.2022]

said petitions were dismissed by the Delhi High Court *vide* Order dated 21 December 2018, holding that while NN 38/2015-20 would operate from 11 February 2016, the uploading of the Notification on 5 February 2016 constituted sufficient notice to bind importers whose LoCs were not opened before 5 February 2016. It was further held that NN 38/2015-20 is not an act of delegated legislation.

Aggrieved, the Importer approached the Supreme Court by way of the present Special Leave Petition. The Supreme Court, ruling in favour of the Importer, held as under:

- Law, to bind, must first exist, and to exist, it must be made known in the manner ordained by the legislature. Delegated legislation, unlike plenary legislation enacted by the Parliament, is framed in the executive chambers without open legislative debate.
- The requirement of publication in the Gazette serves a dual constitutional purpose of ensuring:
  - Accessibility and notice to those governed by the law; and
  - Accountability and solemnity in the exercise of delegated legislative power.
- The requirement of publication in the Gazette is not an empty formality but an act by which an executive decision is transformed into law. Further, for this precise reason, Courts have consistently insisted that strict compliance with publication requirements is a condition precedent for the enforceability of delegated legislation.
- The true test of the effective commencement of a statutory order or subordinate legislation is whether it has been published in a manner reasonably calculated to bring it to the notice of all persons who may be affected by it, namely, through a mode which is ordinarily and generally accepted for that purpose[4].
- Further, natural justice requires that before a law can become operative, it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with exercise of due and reasonable diligence[5].
- It is well settled that when the parent statute prescribes a particular mode of publication, that mode must be strictly followed[6]. In the instant case, the Foreign Trade (Regulation and Development) Act, 1992 ('FTDR Act') expressly mandates that any order regulating imports or exports shall be published in the Official Gazette.
- The legislature, in its wisdom, has not left the mode of promulgation to executive discretion. Delegated legislation, being an instrument to give effect to the policy and purpose of the parent statute, must be construed in a manner that advances the object of the FTDR Act, i.e. to regulate foreign trade through transparent, predictable and legally certain measures.
- Accordingly, NN 38/2015-20 could not have acquired the force of law prior to its publication in the Official Gazette on 11 February 2016. Further, the Notification itself acknowledges its incompleteness by declaring that it is 'to be published in the Gazette of India'. The acknowledgement is a confession that until such publication, the Notification had not crossed the threshold from intention to obligation.
- Once the legislature has prescribed the specified mode of promulgation, the executive cannot introduce an alternative mode and attribute legal consequences to it. A Notification cannot operate in a fragmented manner. In law, it is born only upon publication in the Official Gazette, and it is from that date alone that rights may be curtailed or obligations may be imposed. To hold otherwise would permit unpublished delegated legislation to burden citizens, a proposition expressly rejected by the Supreme Court.
- The benefit of transitional provisions contained in Para 1.05(b) of FTP cannot be denied to the Importer as the same would defeat the plain language of FTP and would undermine the object of the FTDR Act and introduce uncertainty to a field where certainty is indispensable. The imposition of fiscal or trade burdens on the basis of an unpublished Notification would erode commercial confidence and offend the Rule of Law, a result which must be steadfastly guarded against.
- Accordingly, the expression 'date of this Notification' occurring in para 2 of NN 38/2015-20 must necessarily be construed to mean the date of its publication in the Official Gazette and the Importer having opened irrevocable Letters of Credit prior to 11 February 2016 and having complied with procedural requirements under Para 1.05(b) of FTP, is clearly entitled to the benefit of transitional provision contained therein and cannot be subjected to the MIP condition.

[4] Johnson Vs. Sargant and Sons [1918 1 KB 101 : 87 LJ KB 122]
[5] Harla Vs. State of Rajasthan [1951 SCC 936]
[6] B.K. Srinivasan and Ors. Vs. State of Karnataka and Ors. [1987 (1) SCC 658], Gulf Goans Hotels Co. Ltd. Vs. Union of India and Ors. [2014 10 SCC 673], Union of India and Ors. Vs. G.S. Chatha Rice Mills and Anr. [2021 2 SCC 209] and Nabha Power Ltd. and Anr. Vs. Punjab State Power Corporation Ltd. and Anr. [2025 5 SCC 353]

TRANSFER PRICING

JUDICIAL UPDATES

Delhi Tax Tribunal holds that loss on foreign exchange translation relating to External Commercial Borrowings (ECBs) is non-operating income

For fiscal year 2019-20, the taxpayer had entered into international transactions and specific domestic transactions with its Associated Enterprises. During the year under consideration, the taxpayer had considered a loss arising due to foreign exchange translation with respect to the ECB as capital in nature and accordingly considered the said forex loss as non-operating in nature. During the course of assessment proceedings, the Transfer Pricing officer (TPO) considered loss on foreign exchange on ECBs as operating loss relating to the manufacturing segment, resulting in a lower operating margin for the taxpayer. This was upheld by the first appellate body, namely, the Dispute Resolution panel (DRP), pursuant to which a final order was passed by the Assessing Officer (AO). Aggrieved by the same, the taxpayer filed an appeal before the Delhi Tax Tribunal.

The Delhi Tax Tribunal, while ruling in favour of the taxpayer, held that foreign exchange translation on ECBs shall be considered as non-operating income basis the following grounds-

- Forex Loss on ECB was considered as a non-operating loss for Fiscal Year (FY) 2015-16, and during FY 2016-17, the forex gain on ECB was considered as a non-operating gain.
- The same ECB continued in the relevant year (2019 – 20).
- In the previous year, the TPO had held the same transaction to be a capital account transaction, i.e. non-operating in nature.
- Following principles of consistency, loss on foreign exchange translation relating to ECBs deserved to be considered as non-operating for the purpose of calculation of operating profit margin relating to manufacturing.

[Idemitsu Lube India Pvt Ltd v. DCIT, ITA No. 3876/DEL/2024 (Delhi ITAT)]

Mumbai Tax Tribunal holds that once an Indian entity is remunerated at Arm's Length Price (ALP), no further profit shall be attributable to Permanent Establishment (PE)

The taxpayer, a non-resident company, engaged in the business of providing technology and service-related internet advertising, filed its return of income for the FY 2021-22, declaring NIL income. It had an Associated Enterprise (AE) in India with whom it had entered into a Master Service Agreement and Marketing Service Agreement. During the course of assessment proceedings, the tax officer observed that AE was focused on generating new leads and liaising with its existing clients and potential clients to promote the taxpayer's products, hence acting as a dependent agent to the taxpayer and constituted a PE of the taxpayer in India. The tax officer recorded that the Indian entity is devoted wholly on behalf of the taxpayer and is economically dependent on it. Hence, 25% of the revenue of the taxpayer from Indian operations was attributed to the PE in India with 20 % profit thereof (invoking Rule 10 of the Income-Tax Rules, 1962), effectively translating to 5 % of the revenue being included as income of the PE accruing and arising in India. On appeal, DRP upheld the order made by the tax officer. Aggrieved by the same, the taxpayer filed an appeal before the Mumbai tax Tribunal.

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

- The taxpayer has furnished its transfer pricing study report to show that the transactions with its AE are at arm's length.
- In a series of decisions, various benches of the Tribunal have held that where the assessee has a dependent agency permanent establishment and its Indian agent has been paid/ remunerated at arm's length, nothing further could be taxed in the hands of the non-resident entity.
- Supreme Court in the case of Honda Motors Co Ltd[1] had quashed the notice under section 147 of the IT Act on the basis that reassessment based only on the allegation that it had PE in India could not be sustained once the arm's length procedure has been followed.
- Supreme Court in the case of Morgan Stanley[2] has held that as long as PE in India is remunerated on arm's length basis, taking into account risk-taking functions of foreign enterprises, no profit would be attributable to PE in India.
- Hence, based on the above, the Tribunal concluded that since Indian PE was remunerated at ALP, no further profits would be attributable to it.

[The UK Trade Desk Ltd v. ACIT, ITA No. 2038/MUM/2025 (Mumbai Tax Tribunal)]

Mumbai Tax Tribunal holds that disallowance under section 37(1) of the IT Act is not tenable for the transactions covered by the Advance Pricing Agreement (APA).

The taxpayer is engaged in the design, supply, installation, commissioning and testing of elevators and escalators. A reference was made under section 92CA(1) of the IT Act for the determination of ALP in respect of international transactions reported in Form 3CEB filed by the taxpayer. The TPO passed an order under section 92CA(3) of the IT Act by proposing an adjustment of INR 1,078 million to the ALP with respect to payment of royalty, information technology (IT) support and SAP system charges and management charges by holding that rendition, need for such services and benefits received were not demonstrated adequately. The tax officer incorporated the transfer pricing adjustments proposed by TPO in the draft assessment order passed under section 144C(1) of the IT Act. Further, the tax officer opined that the transfer pricing adjustments ought to be disallowed under section 37 of the IT Act, though no such disallowance was made either in the draft or the final assessment order. The DRP upheld the TP adjustments and observed that the taxpayer failed to prove that the expenses were wholly and exclusively for business purposes.

Parallelly, the taxpayer had entered into a unilateral APA with the CBDT covering the relevant year for transactions involving royalty, IT/SAP support charges and management charges and involved a detailed examination of FAR analysis.

Out of caution, the taxpayer filed an appeal before the Mumbai Tax Tribunal, contending that in respect of those transactions for which transfer pricing adjustments were made and are also covered by the APA, no disallowance under section 37 of the IT Act can be made.

The Mumbai tax tribunal, while holding that disallowance under section 37(1) of the IT Act is not tenable for the transactions which are covered under APA and subject to transfer pricing adjustments, laid down the following observations:

- As per the provisions of section 92CC(5) of the IT Act, APA entered is binding on the department and the taxpayer. Making a disallowance under section 37(1) of the IT Act in respect of the transactions covered under APA, by holding that there was no need or benefit derived from the said transactions, would make the entire exercise of arriving at APA meaningless.
- On a perusal of the APA, it is found that 'need-rendition benefit' tests have been elaborately examined before concluding said APA.
- Reliance placed by the taxpayer on the decision of the Delhi tax tribunal in the case of YKK India (P) Ltd.[3] is valid as it was held that –
  - Once an international transaction is reported by the taxpayer and held to be at ALP by TPO, it cannot be open to the AO to make an ALP adjustment in the garb of disallowance under section 37(1) of the IT Act on the basis of the assumption that services are not rendered.
  - Once the reference is made to TPO to determine ALP, the tax officer is not entitled to deal with the same. It is elementary that what the tax officer cannot do directly, he cannot do indirectly either.
- Therefore, considering the factual matrix, position of law both in terms of statutory framework and judicial precedents, disallowance under section 37(1) of the IT Act in respect of the three impugned transactions for which transfer pricing adjustments were proposed and are covered by the APA, is not tenable.

[Schindler India Pvt Ltd v. DCIT, ITA No. 724/MUM/2022 (Mumbai Tax Tribunal)]

[1] Honda Motors Co. Ltd. vs ADIT (2018) 92 taxmann.com 353 (SC)
[2] DIT vs Morgan Stanley & Co. (292 ITR 416) (SC)
[3] YKK India (P) Ltd. vs DCIT [2016] 72 taxmann.com 201 (Delhi ITAT)

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