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kcm Insight

Dec'24 - Jan'25

Dear Reader,

We are happy to present kcmInsight, comprising of important legislative changes in finance & market, direct & indirect tax laws, corporate & other regulatory laws, as well as recent important decisions on direct & indirect taxes.

We hope that we are able to provide you an insight on various updates and that you will find the same informative and useful.

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Beyond the Tangible - Valuing Intangibles

Coverage

Introduction

In today's knowledge-driven economy, intangible assets have emerged as vital drivers of business value, far surpassing the significance of traditional physical assets. Defined by accounting standards, an intangible asset is an identifiable non-monetary asset without physical substance, utilized in the production and supply of goods, services, or for administrative purposes.

As organizations increasingly rely on intellectual property, brand equity, and innovative technologies, valuation of these intangible assets becomes essential. Accurately assessing their worth not only enhances financial reporting and compliance but also assist in strategic decision-making and investment opportunities. Recognition and valuation of intangibles are critical for maintaining competitive advantage and driving sustainable growth in contemporary marketplace.

Following are the various purposes and uses of valuation of Intangibles:

When and why is Intangibles' valuation relevant	
Strategic Planning	Basis for decision making, capital allocation, profit sharing, purchase price allocation
Strategic Alliances	
Financial Reporting	Required under International Financing Reporting Standards (IFRS) and Generally Accepted Accounting Principles (GAAP)
Transaction Support	Valuation of Intangibles often drive negotiations in dealings of sale, licensing or exchange of Intellectual Properties
Infringement Damages	For assessing damage claims in a dispute, infringement or breach of rights, and for quantification of damages
Collateral-based Financing	For fund raising and securing financing, collateral, liquidation, mergers, spinoffs or bankruptcy
Equity Restructuring	
Transfer Pricing	Relevant in cross border transactions between associated enterprises

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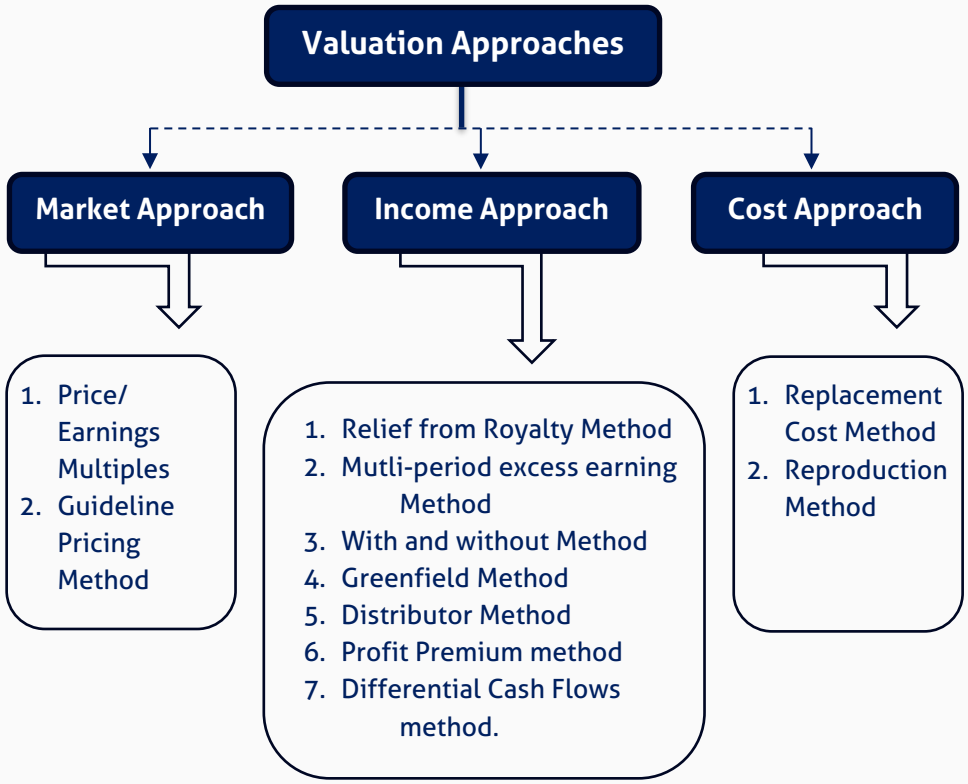
Intangible Assets: Valuation Approaches and Methods



Generally, any one or combination of the aforesaid valuation approaches are adopted to measure value of intangible assets. Various methods that incorporate principles and elements of these approaches are used to compute the value of intangibles.

A particular intangible asset can be valued using more than one approach or methodology, as this provides the valuer multiple value indications thus setting a range of value for the intangible asset to be valued. Factors like availability of data, quality of data available, consideration of actual transaction in the industry, characteristics of the intangible, etc. should also be considered.

1. Market Approach

Market approach uses prevailing prices and other relevant information generated by market transactions involving identical or comparable assets, liabilities or a group of assets and liabilities, such as a business. This method is relevant only if adequate information is available about the comparable intangible asset from a recent transaction and there are instances of orderly transactions that can be compared with the intangible asset to be valued. Methods that can be adopted to value intangibles using market approach are Price / Earnings Multiples and Guideline Pricing Method.

2. Income Approach

Income approach converts future maintainable amounts (e.g., cash flows or income and expenses) to a single current (i.e. discounted or capitalised) amount. Fair value measurement is determined based on the value indicated by current market expectations about those future amounts. Commonly used for valuation of intangible assets like customer relationships and contracts, technology, non-compete agreements, leasehold rights, trademarks, brands, etc. Some of the common valuation methods under the income approach are:

Beyond the Tangible - Valuing Intangibles

a) **Relief from Royalty Method (RRM)**

- The RRM calculates value based on hypothetical royalty payments that would be saved by owning the intangible asset rather than licensing it.
- Rationale behind this is fairly intuitive - Ownership of an intangible means that the business doesn't have to pay for the use of the asset.
- The RRM is often used to value brands, licenses and technical know-how, where transacted royalty rates for similar assets are often available. These rates are then adjusted for asset specific risks and returns such as geographical use restrictions, brand recall, etc. to arrive at a suitable and comparable royalty rate.
- It incorporates elements of both the market (royalty rates for comparable assets) and income (estimates of revenue, growth, and tax rates) approaches.

Illustration

Particulars (INR in Lakhs)		2025	2026	2027	2028	2029	Term-inal
Net Sales		400	520	624	686	755	770
Projected Royalty before Tax	9%	36	47	56	62	68	69
Income Tax	30%	11	14	17	19	20	21
Projected after Tax Royalty		25	33	39	43	48	49
Discounting Factor	12%	0.89	0.80	0.71	0.64	0.57	0.51
Growth Rate	2%						
Present value (PV) of cashflows		**23**	**26**	**28**	**27**	**27**	**485**
Sum of PV of Cashflows	131						
Terminal Value	485						
Fair Value of Intangible Asset	**616**						

b) **With and Without Method (WWM)**

- Using the WWM, the intangible asset's value is taken as the present value of the difference between the projected cash flows over the remaining useful life of the asset under the following two scenarios:
- (i) business with all assets in place including the intangible asset to be valued; and
- (ii) business with all assets in place except the intangible asset to be valued
- This method is commonly used for valuation of non-compete agreements.

Beyond the Tangible - Valuing Intangibles

Particulars (INR in Lakhs)		2025	2026	2027	2028	2029
Cash Flows (with Non-compete)		20	25	35	40	40
Cash Flows (without Non-compete)		5	10	20	25	30
Difference in Cashflows		15	15	15	15	10
Discounting Factor	17.50%	0.85	0.72	0.62	0.52	0.45
Present value (PV) of differential cashflows		**12.77**	**10.86**	**9.25**	**7.87**	**4.46**
Sum of PV of differential cashflows	45.21					
Probability of competing	50%					
Fair Value of Non-compete	**22.61**					

c) **Multi-Period Excess Earnings Method (MPEEM)**

- It is most often applied when a single asset is the primary basis of a company's value and cash flows associated with the asset can be isolated from overall cash flows. For example, for valuation of two intangible assets, say customer contracts and intellectual property rights, MPEEM should be considered for valuation of one of the intangible assets while the other intangible asset should be valued using another method, unless both intangible assets are significant for the business.
- Under this method, the value of an intangible asset is equal to the present value of the incremental after-tax cash flows ('excess earnings') attributable to the intangible asset to be valued over its remaining useful life.
- Early-stage enterprises and technology firms are prime candidates for this approach. Computer software and customer relationships are examples of assets that may be valued using the MPEEM.

Illustration

For Company XYZ ltd, net operating asset value is Rs. 10 Lakhs while net average earning is Rs. 2 lakhs. The required rate of return on net Assets is 10% and capitalization rate for excess earning is 20%.

Calculations

Net operating asset value = 10 Lakhs
Expected return on assets = 10 Lakhs * 10% = 1 Lakh
Net average earnings = 2 Lakhs
Excess earnings attributable to intangibles = 2 Lakhs *minus* 1 Lakh = 1 Lakh
Value of excess earnings at capitalisation rate = 1 Lakh / 20% = 5 Lakhs
Value of Company = 10 lakhs + 5 Lakhs = 15 Lakhs

Other than the methods explained above, there are other methods that can be adopted to value intangibles, like Greenfield method, Distributor method, Profit Premium method and Differential Cash Flows method.

Beyond the Tangible - Valuing Intangibles

Coverage

3. Cost Approach

Cost approach is a valuation approach that reflects the amount that would be required currently to replace the service capacity of an asset (often referred to as current replacement cost). Valuation of an intangible asset using the cost approach is based on the principle rule of substitution, i.e. the amount that will be required to create a new similar intangible asset (as adjusted for any depreciation) becomes the value of the intangible asset.

Cost method is commonly used to value acquired or internally generated intangible assets like software, technology, assembled workforce, etc. It is generally adopted when market and income approaches cannot be applied. Following are the methods under the Cost Approach:

a) Replacement Cost Method less Obsolescence:

- This method involves valuing an asset based on the cost that a market participant will have to incur to recreate an asset with substantially the same utility (comparable utility) as that of the asset being valued, adjusted for obsolescence (depreciation).
- The value of an intangible asset is the total cost (based on current prices) to produce an asset **similar to the intangible asset** to be valued.

b) Reproduction Cost Method

- This method involves valuing an asset based on the cost that a market participant will have to incur to recreate a replica of the asset to be valued, adjusted for obsolescence (depreciation).
- The value of an intangible asset is the total cost (based on current prices) to produce **replica of the intangible asset** to be valued.

Conclusion

As the value of Intangible assets is inherently subjective and can vary significantly depending on the approach used, it is vital to select the appropriate valuation method for assessing the true worth of the asset. Thorough understanding of the value of intangibles not only aids in informed financial reporting but also plays a pivotal role in maximizing returns during potential sales or licensing opportunities. Therefore, businesses, investors, and financial analysts must carefully consider factors such as the intangible's lifecycle, income generation potential, and market conditions while applying a valuation method to ensure appropriateness, compliance, and provide strategic insight in their financial assessments. As such, appropriately valuing intangibles is the key to unlocking business potential.

Source: ICAI Valuation Standards - Educational material, AS 26 and IND AS 38

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Important Rulings

'Disputed Tax' Restricted to Declared Issues and Pending Appeals

Rose Wood Buildwell (P.) Ltd (writ petition no 6097 of 2021)

The taxpayer is a private company engaged in the business of real estate. For AY 2011-12, the AO has made three additions/disallowance (i) payment for stamp duty (ii) loss on the derivative segments (future/option) and (iii) unexplained credit u/s 68 while finalising the assessment proceedings. Aggrieved, the taxpayer appealed to the CIT(A), who partly allowed the appeal but confirmed the disallowance of the derivative loss.

Before Tribunal, both taxpayer and revenue preferred their respective appeals. The tribunal rejected the revenue's appeal and set aside the issue of disallowance of loss for fresh examination by the AO. Subsequently, the taxpayer opted for the Direct Tax Vivad Se Vishwas Scheme 2020 (the Scheme), to settle the dispute regarding the disallowance of the derivative loss. The taxpayer filed a declaration in Form 1 under Section 3 of the DTVSV Act.

However, the CIT acting as designated authority, issued a certificate in Form 5 as per section 5 of the DTVSV Act with modification. This certificate included disputes not covered in the taxpayer's declaration. Aggrieved by this modification, the taxpayer filed a petition challenging the certificate.

The Revenue contended that since the ITAT had already decided the taxpayer's appeal, no appeal was pending as of the specified date. Consequently, the declaration must cover all disputes, including those raised by the Revenue in its appeal before the ITAT. On contrary, the taxpayer argued that the time limit for filing an appeal against the ITAT order had not expired on the specified date. Thus, the taxpayer qualified as an "appellant" under Section 2(1)(a) of the DTVSV Act, 2020. The taxpayer asserted that the "disputed tax" should only pertain to issues decided against it, specifically the derivative loss disallowance.

The Delhi High Court ruled in favor of the taxpayer, relying on the CBDT Circular No. 9/2020 dated 22.04.2020, which provides guidance on the DTVSV Scheme. The court observed that 'disputed tax' is the tax and other levy which is the subject matter of the pending appeal, writ petition or special leave petition. In this case, the "disputed tax" was confined to the derivative loss disallowance, which the ITAT had set aside for reconsideration. Thus, the court has directed the designated authority to revise certificate in Form 3 to align with the taxpayer's declaration, excluding disputes not declared by the taxpayer.

This judgement emphasizes the importance of adhering to the statutory framework and principles outlined under the DTVSV Act, 2020. It reaffirms that the scope of "disputed tax" must be confined to the issues explicitly declared by the taxpayer and pending appeal as of the specified date. By directing the designated authority to modify the certificate in accordance with the taxpayer's declaration, the court has upheld the taxpayer's right to selectively settle disputes under the scheme. This ruling serves as a guiding precedent for similar cases under the Direct Tax Vivad Se Vishwas Scheme, 2024, ensuring that the designated authorities respect the boundaries of declarations filed by taxpayers and refrain from unilaterally expanding their scope.

Important Rulings

Indexation benefit u/s 48 applied to sale of foreign company shares

Aarav Fragrances and Flavors Pvt Ltd. ITA No. 546/MUM/2024 dated 27.11.2024

The taxpayer, a private limited company, has one wholly-owned subsidiary in India and another subsidiary outside of India. During the current year, the taxpayer sold shares in the foreign subsidiary under a buyback scheme. Accordingly, the taxpayer computed capital gains on the sale of the foreign shares after applying the benefit of indexation as per the provisions of section 48 of the ITA. However, the AO disallowed the benefit of indexation in respect of sale of shares of foreign company

Aggrieved by the AO's decision, the taxpayer appealed to the CIT(A) who ruled in favour of the taxpayer, allowing the benefit of indexation. The revenue then appealed to the ITAT against the CIT(A)'s decision.

Before the ITAT, the revenue contended that the benefit of indexation is not permissible for the sale of foreign assets, citing the decision of ICICI Bank Ltd [ITA No. 738 (Mum) of 2021]. Whereas the taxpayer argued that the capital gain should be computed as per the methodology specified in section 48 of the ITA, which includes the benefit of indexation as stated in the second proviso to section 48.

The Tribunal examined section 48 of the ITA and noted that the first proviso to section 48 pertains to the computation of capital gains on the sale of shares or debentures of an Indian company by a non-resident. As the taxpayer is a resident, the Tribunal found the reference made for first proviso by the revenue incorrect. Furthermore, the Tribunal observed that the second proviso to section 48, which grants the benefit of indexation, does not differentiate between assets held in India and those held outside India. Consequently, the Tribunal ruled that the benefit of indexation on the sale of shares in a foreign company is allowable.

In conclusion, the Tribunal's decision reaffirms the taxpayer's right to benefit from indexation under section 48 of the ITA for assets held outside India. By emphasizing the clear language of the statute and rejecting the revenue's incorrect interpretation, the Tribunal upholds the principle that tax provisions must be applied as written, without unwarranted distinctions. This decision serves as a reminder that clarity in legislative language is paramount, and when such clarity exists, it precludes the need for additional interpretative aids.

CSR Expenditures for donations to institutions/funds eligible u/s 80G is deemed 'business expenditure'

Mahyco Monsanto Biotech (India) Private Limited (ITA No 3325/M/2024)

The taxpayer, a private limited company, has incurred certain expenses on Corporate Social Responsibility (CSR) activities during the year under consideration, as required by section 135 of the Companies Act, 2013. For the amount spent on charitable activities, the taxpayer claimed a deduction under section 80G of the ITA, after meeting the conditions specified in the said section. However, the AO disallowed the deduction u/s 80G of the ITA for expenses made from CSR funds, arguing that CSR expenses are not allowable as a deduction under the provisions of section 37 of the ITA.

CIT(A) upheld the AO's contention, stating that amounts spent on CSR cannot be considered voluntary donations for the purposes of section

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80G of the ITA. Aggrieved by the decision, the taxpayer challenged the AO and CIT(A)'s rulings before the ITAT.

The taxpayer argued that section 80G does not intend to deny deductions for payments to charitable institutions that qualify for the deduction under section 80G of the ITA. The taxpayer further contended that if the legislative intention was to deny deductions under section 80G for CSR funds, a corresponding amendment should have been made to section 80G following the insertion of Explanation 2 to section 37 of the ITA. Additionally, the taxpayer referred to the Explanatory Memorandum to the Finance Bill 2014 and the CBDT Circular No. 1/2015 dated January 21, 2015, arguing that CSR expenditure and donations are generally considered an 'application of income'.

Conversely, the revenue acknowledged that the amount was spent on CSR but argued that since it is not business-related expenditure, it is disallowable. The revenue relied on the decision of Hon'ble Supreme Court in the case of Ramnath & Co. (Civil Appeal Nos. 2506 of 2020), in which it is held that exemption statutes must be interpreted strictly, and any ambiguity must be resolved in favor of the revenue.

The Tribunal held that any donation given to an eligible institution or fund under section 80G(2)(a)(iv) is allowable as a deduction, even if it includes CSR expenditure. The Tribunal explained that there is no prohibition in the Act against donations being part of CSR expenditure. The Tribunal further held that disallowing donations under section 80G would result in double disallowance under both section 37 and section 80G, which would defeat the legislative intent. The court relied on various rulings from different courts, including a decision by the coordinate bench of the ITAT Bangalore in the case of Allegis Services (India) (P.) Ltd. [ITA No. 1693 (Bang.) of 2019], and allowed the deduction for donations made from CSR expenditure u/s 80G of the ITA.

This decision addresses the long-standing issue of the allowability of deductions under section 80G against CSR expenses. By affirming that donations to eligible institutions or funds under section 80G(2)(a)(iv) are allowable deductions, even if they constitute CSR expenses, the Tribunal ensures that the legislative intent is upheld. The decision serves as a significant precedent, emphasizing that compliance with CSR obligations does not negate the taxpayer's entitlement to deductions u/s 80G of the ITA.

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Liaison office performing "preparatory or auxiliary" services, not a Fixed Place PE or DAPE

Western Union Financial Services Inc. [ITA No. 1288/2006 – Order dated 18 December 2024 (Delhi HC)]

The taxpayer is a company incorporated, and tax resident of the USA engaged in the business of funds transfer services where the taxpayer transferred money from individuals in the USA to recipients in India through a network of agents such as banks, non-banking financial companies and tour operators. The taxpayer has entered into agreements with these agents, paying a commission based on the amount transferred. The taxpayer had also established a Liaison Office ('LO') in India to act as a communication channel between Head Office and parties in India.

Considering the activities performed by the LO such as installation of software in the office of the Indian agents the AO concluded that the taxpayer is having Fixed Place PE as well as DAPE in India. On appeal, CIT(A) also concurred the view of the AO considering the activities performed by the LO which included training agents, interacting with local agents, providing software and supporting promotional activities for core business activities of the taxpayer.

Hon'ble bench of ITAT held that the taxpayer did not constitute fixed place PE or DAPE as activities performed by the LO was merely "preparatory or auxiliary" in nature and did not constitute DAPE and that installation of software in the premises of agents did not constitute fixed place PE.

The Hon'ble Delhi HC has pronounced this issue in favor the taxpayer holding that:

- The gamut of activities which LO undertook cannot be descried as undertaking of an essential part of the principal business activity of the taxpayer as it was only engaged in activities relating to liaising with governmental authorities, training of personnel and undertaking various other peripheral functions.
- The Appellants have woefully failed to establish and prove that the LO was in fact undertaking trading activity or pursuing commercial interests as an arm or an adjunct of the taxpayer.
- The activities undertaken were far remoted from the core business of the taxpayer, it is the tests of "preparatory" and "auxiliary" as embodied in Article 5(3)(e) of India-USA DTAA which stand satisfied. As it is by now well settled that activities such as market research, promotional activities, training or deployment of software would clearly not breach the threshold of auxiliary functions as are envisaged in the DTAA.
- The Appellants failed to justify conditions for creation of DAPE as provided in Article 5(4)(a)/(b)/(c) of India-USA DTAA.
- The arguments of the premises of the Indian agents constituting a PE are clearly misconceived since these agents were independent third parties having their own business portfolio.

The judgement is a detailed judgement, pronounced taking into consideration minute facts of the case and nature of activities performed by LO.

Indexation benefit u/s 48 to be allowed on sale of shares of foreign companies

The taxpayer, Aarav Fragrances Pvt Ltd., was involved in manufacturing and selling fragrance

compounds and flavors. It owned two subsidiaries, one of which was a foreign entity, M/s Aarav Suisse SA. The company sold the shares of this subsidiary as part of a buyback scheme. The taxpayer calculated the long-term capital gain by deducting the indexed cost of acquisition, resulting in a loss of INR 22.93 crores.

The Ld. AO rejected indexation benefit on the grounds that it applies solely to the sale of shares located in India, and not to those sold outside the country. Consequently, the long-term capital loss was recalculated to INR 11.53 crores without factoring the indexation benefit.

The taxpayer appealed to the CIT(A), and the ruling was held in favor of the taxpayer. Aggrieved by the said order, the Revenue preferred an appeal before the Hon'ble bench of Mumbai ITAT. The hon'ble ITAT determined that when interpreting section 48 of the Act, the first proviso applies exclusively to non-residents and not to the taxpayer. Additionally, the second proviso of Section 48 does not differentiate between assets that are held within India and those held outside. The ITAT concluded that the provisions of the act must be enforced fully according to the section's intentions. The ITAT further added that when the language of the section is clear, there is no scope for referring to internal or external aids for the interpretation of the language of law. Ultimately, the hon'ble Mumbai ITAT held in favor of the taxpayer, allowing the indexation benefit for the sale of shares in a foreign company.

This ruling underline that the indexation benefit under section 48 is applicable to the sale of shares including shares of foreign companies, provided the terms of the section are met, thus offering a significant tax advantage to taxpayers dealing in foreign assets.

Substantive Rights Over Procedural Delays: ITAT Allows Foreign Tax Credit

The Kolkata Income Tax Appellate Tribunal (ITAT) allowed Rahul Anand's claim for Foreign Tax Credit (FTC) despite his belated filing of Form 67. The case stemmed from the denial of FTC for ₹73,658 in Rahul Anand's return for AY 2019-20, filed on August 27, 2019. The FTC was initially rejected because Form 67 was submitted late, on April 8, 2021, after the return's processing under Section 143(1).

The Tribunal held that while Rule 128 of the Income Tax Rules requires Form 67 to be submitted by the due date of filing the income tax return, this requirement is procedural, not mandatory. As such, the delay in filing Form 67 should not disqualify the taxpayer from claiming FTC, which is a vested right under the law. The ITAT relied on its prior ruling in Sukhdev Sen and referenced multiple judicial precedents affirming that procedural delays in filing Form 67 do not extinguish the taxpayer's substantive right to FTC. The Tribunal emphasized that the provisions of Article 23 of the India-Thailand Double Taxation Avoidance Agreement (DTAA), which override domestic tax laws when more beneficial to the taxpayer, supported granting the credit.

The Tribunal's decision reinforced the principle that procedural compliance should not undermine substantive tax benefits, aligning with judicial interpretations that prioritize fairness and relief from double taxation.

No Requirement of Tax Deduction on Payment for Warehousing Services under Section 195.

The assessee entered into a contract with a USA-based entity, for warehousing facilities to store

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goods between 2007 and 2012, paying Rs. 99.88 Lacs without deducting tax at source under Section 195. The Revenue disallowed the payment, arguing that it was for "managerial/technical services," and thus deemed it as Fees for Technical Services ('FTS'), liable for TDS.

Upon review, the ITAT analysed Section 195, emphasizing that tax must be deducted only when the payment is chargeable under Sections 4, 5, or 9 of the Income-tax Act, and taking into account provisions under the India-USA DTAA. The ITAT examined the nature of the contract, noting that US entity had no business operations in India and that the warehousing services were part of the assessee's overseas operations. It referenced Section 9(1)(vii)(b), which exempts FTS in relation to services utilized for earning income outside India.

The ITAT also reviewed Article 12 of the India-USA DTAA, which provides a restrictive definition of FTS and the term 'managerial services' do not form part of such definition. Further, it also noted that the "make available" condition for FTS under the DTAA was not met, as no technology was transferred to the Assessee. Citing the Supreme Court judgment in Bio-Rad Lab (Singapore), the ITAT concluded that the payments were not FTS, and hence, no tax was required to be deducted under Section 195.

The ITAT also addressed other issues like allocation of expenses between units, disallowance of prior period expenses, foreign travel expenditures and irrecoverable taxes, ruling in favour of the Taxpayer in most cases. Additionally, the ITAT deleted the penalty imposed under Section 271(1)(c), stating that as the underlying assessment had been overturned, the penalty could not stand.

This judgment is significant for businesses dealing with cross-border transactions for warehousing or similar services, as it clarifies on services not falling under the definition of FTS in the relevant DTAA and tax need not be deducted on payments made to non-residents for such services.

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Suspension of application of the MFN clause of protocol to the India-Switzerland DTAA.

India-Switzerland DTAA signed on 2 November 1994 was revised by protocols in 2000 and 2010. The 2010 protocol included an MFN clause, which stipulated that if India agreed to lower tax rates on dividends, interest, royalties, or fees for technical services with any OECD member state after August 30, 2010, the same lower rates would apply to DTAA with Switzerland.

India signed DTAAs with Lithuania and Colombia, both of which later joined the OECD. These agreements provided lower tax rates on dividends, which, according to the MFN clause, should have applied to Switzerland treaty as well. The Swiss competent authority stated that Lithuania's and Colombia's accession to the OECD retroactively lowered the tax rates on dividends from 10% to 5% for Swiss residents, effective from the dates these countries joined the OECD.

In 2023, the Indian Supreme Court ruled that the MFN clause was not directly applicable without a notification under Section 90 of the Income Tax Act and that the clause only applied to OECD member states at the time the protocol was signed. This ruling meant that the lower tax rates from the DTAs with Lithuania and Colombia did not automatically apply to dividend payments by Indian companies to Swiss shareholders. Thereby, Switzerland decided to suspend the unilateral application of the MFN clause from 1 January 2025. Consequently, from January 1, 2025, dividends by Swiss Companies to Indian shareholders will be subject to tax at 10%. The Swiss competent authority's position of applying lower 5% tax withholding on dividend payments by Swiss companies to Indian resident shareholders (and not vice versa) from August 13, 2021, remains applicable for income accruing during the 2018-2024 tax years.

Central bank increases limits for currency exchanges involving NTD remittances

To promote Taiwan as an asset management centre in Asia, the Central Bank has raised the remittance and foreign exchange conversion limits to or from New Taiwanese Dollar (NTD) effective November 1, 2024. The new annual limits are now increased to USD 100 million per annum for companies and firms, and USD 10 million per annum for individuals and associations from previous limit of USD 50 million and USD 5 million, respectively.

Further, once foreign institutional investors (FINIs) or foreign individual investors (FIDIs) register with the Taiwan Stock Exchange Corporation, they are not subject to any restrictions on the total amount of their investments. Moreover, capital flows associated with foreign portfolio investments in Taiwan are fully liberalized.

New Restrictions on Knowledge Migrants in Netherlands

Under Dutch law, entities can hire knowledge migrants only if registered with immigration authorities as recognized sponsors. Non-recognized sponsors may employ such workers through payroll or employment agencies that hold recognized sponsor status.

In a letter to parliament on November 8, 2024, the Dutch Minister of Asylum and Migration proposed restricting these agencies from assigning knowledge migrants to other Dutch entities, except when the hiring company is

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seeking recognized sponsor status or is a startup/scale-up. The proposals also reduce residence permits from two years to one year, require agencies to disclose assignment details, report loss of contact with workers, and inform employees of their rights.

To address risks of unwanted knowledge and technology transfer, especially in sensitive sectors, the Ministry of Economic Affairs is creating a framework to assess national security risks posed by companies in these fields. The proposed changes may prompt companies to seek recognized sponsor status to avoid disruptions, with the EU Blue Card emerging as an alternative. However, future limits on non-EU nationals obtaining Blue Cards are under consideration.

Italy's Corporate Tax Reform: Key Changes and Implications

Italy's Parliament recently issued a favourable opinion on a Draft Legislative Decree aimed at reforming the corporate income tax (CIT) framework, signalling significant changes to simplify tax compliance, address mismatches between accounting and tax values, and curb tax arbitrage. The reforms introduce a unified regime for aligning tax and accounting values with standardized substitute taxes of 18% for CIT and 3% for local tax, applied retroactively from 1 January 2024. The legislation also revises rules on tax-free reorganizations, including intra-group share exchanges and asset contributions, while simplifying the carry forward of tax losses in change-of-control and merger transactions.

Key updates include adjustments to the Economic Vitality and Net Equity Tests, which will now set new criteria for preserving tax attributes, emphasizing equity-based thresholds. Additionally, the draft introduces a new framework for downstream demergers, expanding the scope of tax-free reorganizations under specific conditions. Business transfer rules have also been revised, maintaining tax neutrality for "hive-down" transactions, and expanding discretionary capital gain regimes. These reforms are designed to streamline the tax system, encourage cross-border corporate activities, and address tax planning concerns, marking a pivotal shift in Italy’s approach to corporate taxation.

Simplified Transfer Pricing: OECD Introduces Amount B Framework Under BEPS 2.0

The OECD/G20 Inclusive Framework on BEPS has launched the Amount B Framework to standardize the arm's length principle for routine marketing and distribution activities. Part of the Two-Pillar Solution, it addresses tax challenges from the digital economy while simplifying transfer pricing for baseline activities. This framework ensures consistent implementation, easing compliance for both taxpayers and authorities, and is particularly beneficial for jurisdictions with limited administrative capacity.

To support its implementation, the OECD has provided tools to facilitate compliance, including fact sheets that detail the mechanics of Amount B and a Pricing Automation Tool. This tool is designed to minimize the data inputs required and automate the calculation of returns, making the process more accessible and efficient.

The framework will take effect for fiscal years beginning on or after January 1, 2025. While its adoption is optional, jurisdictions are

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encouraged to notify taxpayers in advance to ensure a smooth transition. To further assist stakeholders, the OECD is to host a Technical Webinar on February 11, 2025, to present the latest developments related to the Amount B Framework and provide a demonstration of the Pricing Automation Tool.

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Important Rulings

Product state and Functions performed affect the application of Resale Price Method

Burberry India Pvt Ltd [TS-505-HC-2024(DEL)-TP]

The taxpayer was engaged in the distribution of imported luxury goods sold under the trademark namely 'Burberry'. For the purpose of selling such luxury goods in the Indian market, the taxpayer used to import the finished goods from its AEs. The case of the taxpayer was referred to the Transfer Pricing Officer ('TPO') for the purpose of determination of the arm's length price in respect of the international transaction of import of finished goods.

The taxpayer had benchmarked the import of finished goods using the resale price method ('RPM') as the goods were procured from the AE and further sold to Non-AE (Indian customers). The TPO rejected the RPM and applied the Transactional Net Margin method and accordingly, made an adjustment since the taxpayer was incurring losses at the net margin level. The adjustment made by the TPO was upheld by the DRP.

Aggrieved by the TPO's and DRP's stand, the taxpayer made an appeal before the Hon'ble Delhi Tribunal which upheld the application of the RPM and thereby deleted the entire adjustment made by the TPO. Aggrieved by the Delhi Tribunal' s decision, the tax authorities appealed before the Delhi High Court which negated the TNM method applied by the TPO and upheld the RPM applied by the taxpayer.

The Delhi HC noted the arguments of the tax authorities wherein the TPO stated that the taxpayer was incurring substantial expenditure in the form of advertisement and marketing activities. The tax authorities had contended that the functional profile of the taxpayer was different from the routine distributors engaged in distribution function and therefore, RPM should not be applied for benchmarking the import of finished goods. Further, the Delhi HC noted that the application of RPM is dependent on the fact that whether any further value addition is carried out by the reseller which substantially changes the value chain of the product.

Reader's Focus

The benchmarking through RPM requires the comparison of the gross profit margin earned by the taxpayer vis-à-vis that earned by the comparable entities. Further, RPM is applicable only in those cases wherein there is no substantial value addition by the reseller to the imported goods.

(i) Product State: Principle of no value addition to the imported traded goods

The application of RPM firstly provides that there should be no value addition by the reseller in the finished goods subsequent to purchase from the AE. The principle of no value addition flows from the fact that the taxpayer is trying to determine the ALP i.e., the price of the imported goods and accordingly, any substantial change to the original imported goods would also require change in its final value which would defeat the correct computation of gross profit, which is a prerequisite for application of RPM.

For a better explanation, in case the character or the form of the goods is subject to any change post importing the same then the pricing of the

resold goods (to the 3rd party customers) would not only take into account the import cost but would include other costs such as cost of any other input material, processing costs, overheads, and other similar costs. Accordingly, if there is substantial value addition to the imported goods, then the gross margin which might be computed on the merely on the imported material cost base derived would lead to absurd or incomparable results as the cost base should have been denoted by the functionally significant costs which in case of value addition activities such as manufacturing activities would also include costs other than material cost.

Going a leg further, even if the gross profit is computed in the case of manufacturing activities, then the computation of gross profit would depend upon a plethora of other expenses such as processing costs, other input material, repair costs, maintenance costs, etc which may vary from entity to entity even within the same industry due to difference in skilled personnel, upgradation of technologies, technical know-how, patented formulae, etc.

Therefore, to avoid the above complexities involved in case where the imported product undergoes substantial change, the applicability of RPM has been restricted to the finished goods which are resold on as is basis.

(ii) Functions performed: Ironing out differences in different traders or distributors

The prima facie requirement for applying the RPM is the no value addition rule to the traded goods but the second leg of the ALP determination is the computation of the gross margin. The general practice in the Indian context is that the cost of the imported goods is deducted from the final resale price and the profit so arrived is compared with similar profit earned by comparable companies. In this regard, it is important to appreciate the factors affecting or would rather say driving the final resale price which might vary from one player to another operating in the same industry.

For an entity which is engaged in trading or distribution activities, the major cost components generally include but are not limited to the following:

a. Cost of material including freight and inward shipping costs
b. Inventory costs incurred for holding the inventory
c. Selling and distribution costs required to drive the sales including pricing and volume
d. Other operational costs

The gross profit is derived by deducting the material cost from the resale price and accordingly, it is important to consider the effects of the other costs incurred by trading entities on the resale price derived. In this regard, the difference in the inventory level in case of an entity which procures from AE based on confirmed orders from the customers vis-à-vis another entity which maintains huge silos of inventory to meet the customer demand would also affect the sales price which these entities would derive from their customers.

Similarly, entities incurring huge marketing expenditure in the form of higher sales commission to those driving higher per unit sales price would lead to inflating the sales price. In this regard, it is important to either (i) capture these costs at the gross profit level to provide a level playing field while computing

Important Rulings

the gross profit margins or (ii) reject such companies at the qualitative analysis so that no need for making such adjustments is required.

In a nutshell, while applying the RPM for the purpose of benchmarking the import of goods, it is prerequisite to the consider the state of the product at the time of import vis-à-vis resale to the customer and to also take into account any substantial differences between the functions performed by the trading entities when compared with the trading tested party. If those differences can be eliminated then such modifications should be carried out, otherwise it is in the best interest to eliminate such companies from further comparison.

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Important Updates

GST Council Meeting updates

The 55th GST Council meeting held on December 21, 2024, proposed several recommendations addressing GST tax rates, compliance relief, trade facilitation, and streamlining procedural efficiencies. Key decisions from the meeting are summarized below.

The Council proposed changes in the rate of tax for the below mentioned goods

Item/ Service	Revised Rate	Remarks
Fortified Rice Kernel (FRK)	5%	Applies to FRK classifiable under HSN 1904.
Gene Therapy	Exempt	Complete GST exemption for gene therapy.
Components for LRSAM System	Exempt	Exemption extended under Notification 19/2019-Customs for specific assemblies and parts.
Compensation Cess for Merchant Exporters	0.1%	Aligns cess rate with GST rate on such supplies.
Imports by IAEA Inspection Team	Exempt	Exemption for equipment and consumables imported under specific conditions.
Inputs for Government Food Preparations	5%	Concessional rate for inputs intended for distribution to economically weaker sections.
Sale of Old and Used Vehicles	18%	Applies to old vehicles not exempted under specific conditions; GST applies only to margin.
Autoclaved Aerated Concrete (ACC) Blocks	12%	Applies when ACC blocks contain more than 50% fly ash content.
Pepper and Raisins by Agriculturists	Exempt	GST exemption for agriculturist-supplied items.
Ready-to-Eat Popcorn	5%-18%	Based on classification: Pre-packaged & labeled attracts higher rate.

Important Updates

Changes proposed for the services as below:

Service	Previous Mechanism	Revised Mechanism	Remarks
Sponsorship services by body corporates	Reverse Charge	Forward Charge	Shift to Forward Charge Mechanism.
Contributions to Motor Vehicle Accident Fund	Taxable	Exempt	Exemption for contributions from third-party motor insurance for accident compensation funds.
Hotel and Restaurant Services	Linked to tariff	Linked to value	New rate structure based on actual accommodation value; options for 18% with ITC available.

Other Changes proposed

Sl. No.	Particular	Details	Effective Date
1	Amendment in Schedule III of CGST Act, 2017	It is proposed to insert clause (aa) in paragraph 8 to treat supply of goods warehoused in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) to any person before clearance of such goods for exports or to the Domestic Tariff Area, shall be treated neither as supply of goods nor as supply of services.	July 1, 2017
2	Insertion of new provision for Track and Trace Mechanism	Proposed to insert the Section 148A for Track and Trace for evasion-prone commodities with Unique Identification Marking	
3	Amendment in section 17(5)(d) of CGST Act, 2017	The phrase "plant or machinery" is proposed to be replaced with "plant and machinery," with retrospective effect from July 1, 2017	July 1, 2017

Important Updates

Sl. No.	Particular	Details	Effective Date
4	Amendment in sections 107 and 112 of CGST Act, 2017	Reduced pre-deposit for appeals involving only penalty to 10% in the case involving sub-section (3) of section 129	
5	Amendment in section 2(69) of CGST Act, 2017	Insert an Explanation under the same to provide for definitions of the terms 'Local Fund' and 'Municipal Fund' used in the said clause	As per amendment date
6	Amendment in ISD mechanism provisions of Section 2(61) and Section 20(1) of the CGST Act, 2017	Include inter-state RCM transactions under ISD	April 01,2025
7	Provision for Temporary Identification Number	Proposed to insert New Rule 16A for temporary IDs for non-liable persons but still required to make a payment under Rule 87(4) of the CGST Rules, 2017	As per rule insertion date
8	Amendment in category of registered person for composition levy	Allow modification through FORM GST REG-14.	As per amendment date
9	Amendment in IMS functionality	Amendment proposed to the various provisions under Section of the CGST Act, 2017, and the corresponding rules under the CGST Rules, 2017, to establish a legal framework for filing GST returns based on the Invoice Management System (IMS)	As per amendment notification
10	Clarification on Sl. No. 52B of Notification No. 1/2017-Compensation Cess	Explanation applicable with effect from 26.07.2023	July 26,2023

Important Rulings

Sl. No.	Particular	Details	Effective Date
11	Eligibility of RBI regulated Payment Aggregators for exemption	Clarified as 'acquiring banks' under Sl. No. 34 of Notification No. 12/2017-CT(R); Further states that, exemption doesn't cover payment gateways and other fintech services without fund settlement	As per clarification date
12	Exemption from GST on penal charges by banks and NBFCs	Clarified that no GST is payable on penal charges levied for non-compliance with loan terms	As per clarification date

Circulars

Clarification on requirement of proportionate reversal of ITC by E-Commerce Operators (ECOs) where services u/s 9(5) of CGST Act

[Circular No. 240/34/2024-GST Dated December 31, 2024]

The CBIC issued the circular providing clarification on the ITC availed by electronic commerce operators (ECOs) in relation to services specified under Section 9(5) of the CGST Act, 2017. It clarifies that ECOs, who are liable to pay tax under Section 9(5) for specified services, are not required to reverse ITC on their inputs and input services proportionately to the extent of such supplies. Further, it is clarified that, this clarification extends to all services specified under Section 9(5), not just restaurant services, as previously clarified in Circular No. 167/23/2021.

The circular further specifies that the tax liability under Section 9(5) must be paid entirely through the electronic cash ledger, and the ITC availed by ECOs for inputs and input services related to these supplies cannot be used to discharge this tax liability. However, such ITC can be utilized for paying taxes on the ECO's own services.

Clarification on ITC for Goods Delivered Under Ex-Works Contracts

[Circular No. 241/35/2024-GST Dated December 31, 2024]

The CBIC has issued a circular to clarify the availability of ITC under clause (b) of sub-section (2) of Section 16 of the CGST Act, 2017. This clarification is particularly relevant to the automobile sector and addresses whether ITC can be availed in cases where goods are delivered under Ex-Works (EXW) contracts. In such contracts, the ownership of goods transfers to the recipient, such as a dealer, at the supplier's location—commonly the factory gate of the Original Equipment Manufacturer (OEM). This transfer of ownership occurs when the goods are handed over to a transporter acting on behalf of the recipient, even though the physical receipt of the goods at the recipient's premises may occur at a later stage.

The circular clarifies that under Section 16(2)(b), ITC is available to a registered person only upon the receipt of goods. However, the Explanation to this provision deems receipt of goods in scenarios where the supplier delivers them to another party (e.g., an agent or transporter)

on the recipient's instructions, either before or during the movement of goods. Applying this principle, the circular states that in cases of EXW contracts, the handing over of goods to a transporter at the factory gate constitutes "receipt" for the purpose of ITC eligibility. This deemed receipt aligns with the transfer of ownership of goods, even if their physical arrival at the recipient's premises is delayed.

The circular further highlights that ITC eligibility remains subject to the conditions set out in Sections 16 and 17 of the CGST Act. Goods must be used in the course or furtherance of business, and any diversion for non-business purposes, or loss, theft, or destruction, will render ITC ineligible. Similarly, if goods are disposed of as gifts or free samples, ITC is disallowed.

This clarification is particularly significant for the automobile sector and other industries operating under EXW contracts. It resolves disputes where tax authorities have previously denied ITC on the grounds that goods were not physically received at the dealer's premises.

Clarification on Place of Supply for Online Services to Unregistered Recipients

[Circular No. 242/36/2024-GST Dated December 31, 2024]

The CBIC has issued a circular to clarify the determination of the place of supply for online services provided to unregistered recipients. The circular addresses misinterpretations of Section 12(2)(b) of the IGST Act, 2017, and Rule 46 of the CGST Rules, 2017, which have led to widespread non-compliance. It emphasizes that the place of supply should be based on the recipient's location if their address is on record. If no address is available, the supplier's location will be considered. For taxable online supplies, including Online Information Database Access or Retrieval (OIDAR) services, registered suppliers must declare the recipient's state on invoices, regardless of the supply value, to ensure proper revenue distribution among states.

The circular further clarifies that for supplies made to unregistered recipients, including those through electronic commerce operators, online money gaming platforms, and OIDAR services, the supplier must record the recipient's state on the tax invoice as per Rule 46(f) of the CGST Rules. This requirement applies to all online services, such as subscriptions to digital services (OTT platforms, e-newspapers) and online telecom services. The place of supply will be determined based on the recipient's location, as declared on the invoice, ensuring that taxes are allocated to the recipient's state.

Suppliers are mandated to implement mechanisms to collect the recipient's state details before providing services and to report the place of supply accurately in their GSTR-1/1A returns. Non-compliance with these requirements could expose suppliers to penal action under Section 122(3)(e) of the CGST Act.

Clarification on various issues pertaining to GST treatment of vouchers

[Circular No. 243/37/2024-GST Dated December 31, 2024]

The CBIC has issued clarifications on various issues relating to the GST treatment of vouchers, including whether transactions involving vouchers constitute a supply of goods or services, the applicability of GST on trading of

Important Rulings

vouchers, and the tax treatment of unredeemed vouchers (breakage).

The circular clarifies that, Vouchers are defined under Section 2(118) of the CGST Act, 2017 as instruments creating an obligation on the supplier to accept them as consideration or part consideration for the supply of goods or services. Where vouchers are recognized as prepaid instruments by the RBI, they fall under the definition of "money" under Section 2(75) of the CGST Act and are excluded from the scope of goods and services under Sections 2(52) and 2(102), respectively. Consequently, transactions involving such vouchers are not taxable under GST.

In cases where vouchers are not classified as prepaid instruments, they are treated as actionable claims under Section 2(1) of the CGST Act, read with the Transfer of Property Act, 1882. Actionable claims, other than those specified (e.g., betting, gambling), are exempt under Schedule III of the CGST Act. However, GST is applicable to the underlying supply of goods or services when the vouchers are redeemed.

Further, The circular addresses two primary voucher distribution models:

- **Principal-to-Principal (P2P) Model**: Under this model, distributors purchase vouchers at a discount from the issuer and sell them to sub-distributors or customers, earning a margin. As transactions in vouchers do not constitute a supply of goods or services, trading margins in this model are not subject to GST.
- **Agency/Commission Model**: In this arrangement, distributors act on behalf of voucher issuers, earning a commission or fee for marketing and distributing vouchers. Such commissions are treated as a supply of services and attract GST at the applicable rate.

Additional services provided alongside voucher distribution, such as advertising, co-branding, or customer support, are taxable as independent supplies of services, based on their nature and contractual terms.

Further, circular also clarifies that, unredeemed vouchers, referred to as "breakage," are clarified as non-taxable under GST. When vouchers remain unused post-expiry, the amounts retained by issuers do not constitute consideration for a taxable supply, as no underlying supply of goods or services occurs.

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Important Updates - RBI

Inoperative Accounts / Unclaimed Deposits in banks

RBI/2024-25/91 DoS. CO. PPG. SEC. 12 / 11.01.005 / 2024-25 dated December 02, 2024

Banks are required to undertake an annual review of accounts / deposits where no customer transactions have been undertaken for more than a year, including segregation in Core Banking Solution ("CBS") of accounts opened for credit of scholarship amount and / or Direct Benefit Transfer (DBT) / Electronic Benefit Transfer (EBT) under Government Schemes.

The rationale for the exercise is to ensure that process of activation of such inoperative accounts cause inconvenience to customers as a result of frozen accounts and updation of Know Your Client ("KYC") as well as inability to receive credits under various Government incentive schemes.

The Banks have been instructed to make the process of activation of such inoperative / frozen accounts smoother and hassle free, including enabling seamless updation of KYC through mobile / internet banking, non-home branches, Video Customer Identification Process etc.

The banks are further instructed to report the status of updation of frozen / inoperative accounts on a quarterly basis to the respective Senior Supervisory Manager (SSM) through DAKSH portal.

Effective date: Quarter ending December 31, 2024

Amendment to Framework for Facilitating Small Value Digital Payments in Offline Mode

RBI/2024-25/93 CO. DPSS. POLC. No. S908/02-14-003/2024-25 dated December 04, 2024

With the objective to make digital payments more convenient and customer friendly, Reserve Bank of India ("RBI") had provided guidelines enabling small value digital payments in offline mode[1]. This was primarily to ensure that smaller transactions could be undertaken without the need for continuous internet availability which at places is not available or limited. The limits for such transactions were notified in August 2023 and due to its success and utility, the said transaction limits are now being enhanced. Details of the same are provided in table below:

[1] An offline payment means a transaction which does not require internet or telecom connectivity to take effect.

Sr. No.	Previous Mechanism	Existing limits	Enhanced limits
1	Upper limit of an offline payment transaction	500	1,000
2	Total limit for offline transactions on a payment instrument like cards, wallets, mobile devices, etc.	1,000	5,000

Effective date: Immediate effect

Interest Rates on Foreign Currency (Non-resident) Accounts (Banks) [FCNR(B)] Deposits

RBI/2024-25/94 DoR. SPE. REC. No. 51 / 13.03.00 / 2024-2025 dated December 06, 2024

To attract more Non-Resident Indian (NRI) / Persons of Indian Origin (PIO) funds to India, the Reserve Bank of India has enhanced the limits on FCNR(B) deposits as provided in the table below:

Important Updates - RBI

Sr. No.	Period of Deposit	Existing Ceiling Rate	Revised Ceiling Rate
1	1 year to less than 3 years	Overnight Alternative Reference Rate for the respective currency/ Swap plus 250 basis points	Overnight Alternative Reference Rate for the respective currency/ Swap plus 400 basis points
2	3 years and above upto and including 5 years	Overnight Alternative Reference Rate for the respective currency/ Swap plus 350 basis points	Overnight Alternative Reference Rate for the respective currency/ Swap plus 500 basis points

Effective date: December 06, 2024 – March 31, 2025

Maintenance of Cash Reserve Ratio (CRR)

RBI/2024-25/95 DoR.RET.REC.52/12.01.001/2024-25 dated December 06, 2024

Cash Reserve Ratio ("CRR") is a primary monetary tool with the Central Bank to control the flow of money (i.e.) liquidity in the economy and to maintain stability in the financial system.

In India during period of relative stability, prior to COVID – 19, the CRR was maintained at a steady rate of 4 percent. This rate was brought done to 3 percent during COVID – 19 to provide impetus to the economy reeling from the effects of slowdown. Post COVID – 19, the bounce-back in economy was sudden and v shaped and to cool the effect of this sudden spurt in lending by banks on account of enhanced borrowings, the CRR was raised to 4.50 percent over a period of one year from April 2021 to May 2022.

To address the current slow-down in the economy on account of higher inflation (primarily food inflation), lack of private investments and production slow down on reduced consumer spending, the RBI has decided to infuse more liquidity in the system to kick start the economy.

The reduction in CRR has been two phased, with instructions to banks to maintain 4.25 percent of their Net demand and time liabilities ("NDTL") effective from the reporting fortnight beginning December 14, 2024, and 4.00 per cent of their NDTL effective from fortnight beginning December 28, 2024.

Effective date: Immediate effect

Credit Flow to Agriculture – Collateral free agricultural loans

RBI / 2024 -2025 / 96FIDD. CO. FSD. BC. No. 10 / 05.05.010/2024-25 dated December 6, 2024

Agricultural produce is the key to the sustained economic growth and development of a country. There has been an overall increase in inflation leading to a sustained rise in agriculture input costs over the years. To provide relief to small and marginal farmers the RBI has decided to raise the limit for collateral free agricultural loans, including loans for allied activities from the existing level of INR 1.6 lakh to INR 2 lakh per borrower.

Banks have thus been advised to waive collateral security and margin requirements for agricultural loans including loans for allied activities for limit upto INR 2 lakh per borrower.

Effective date: January 01, 2025.

Important Updates - SEBI

Valuation of repurchase (repo) transactions by Mutual Funds for Money Market and Debt Instruments

SEBI / HO / IMD / IMD - I PoD-1 / P / CIR / 2024 / 163 dated November 26, 2024

Securities and Exchange Board of India ("SEBI") has prescribed valuation methodology to be adopted by Mutual Funds for investment in securities, namely money market and debt securities ("securities") with residual maturity of over 30 days. However, for investments in short-term deposits with banks (pending deployment) and repurchase (repo) transactions (including tri-party repo i.e. TREPS) with tenor of upto 30 days, cost plus accrual basis is the prescribed methodology. This implies that securities of tenor of maturity of upto 30 days are valued by a different methodology that the investment in securities with residual maturity over 30 days.

To avoid unintended regulatory arbitrage that may arise due to different valuation methodologies adopted by the Asset Management Companies ("AMCs"), SEBI has mandated that the valuation of repurchase (repo) transactions including TREPS with tenor of upto 30 days will also be valued at mark to market basis.

Applicability: January 01, 2025.

Business Continuity for Interoperable Segments of Stock Exchanges

SEBI / HO / MRD / TPD / P / CIR / 2024 / 167 dated November 28, 2024

With the rapid growth in digitalization and the ever-increasing dependence on information technology ("IT") for business related activities and operations, the threat from any outage or shutdown in the system is very much a reality and has the capability to bring havoc in the financial markets. SEBI being well aware of the threats by such outages has issued guidelines for Business Continuity Planning ("BCP") and Disaster Recovery Site ("DRS") for Market Infrastructure Institutions ("MIIs") vide its Master Circular in October 2023.

In the first phase, Software as a Service ("SaaS") Model was stipulated for Risk Management Systems in Clearing Corporations to strengthen their Business Continuity framework.

In the second phase being introduced now, discussions were held with exchanges / Clearing Corporations ("CCs") to put in place systems to address possible outage at stock exchanges. To address the risk of such outage, a working group of stock exchanges, CCs and representative qualified stockbrokers ("QSBs") was created to deliberate the matter, the outcome of which is as follows:

1. Introduction of interoperable segments between stock exchanges for open positions in Cash Market / Equity Derivatives / Currency Derivatives / Interest Rate Derivatives etc.
2. For (a) common scrips, (b) derivatives on single stocks or correlated indices, (c) currency derivatives segment and (d) interest rate derivatives, market participants can hedge their open positions by taking offsetting positions.
3. Creation of reserve contracts for scrips (i.e. exclusively listed scrips on other exchange) and single stock derivatives not traded on their exchange (but available on other exchange) which may be invoked at the time of outage in on exchange.
4. Creating an index and introducing derivatives contracts on the Exchange

Important Updates - SEBI

which does not have a such derivatives products as the one available on other exchange with the objective to provide hedge positions.

5. To develop Standard Operating Procedures ("SOPs") and prescribe guidelines for handling technical glitch / outage and intimation about the invocation of the instant business continuity mechanism to the alternative trading venue and SEBI.
6. To take necessary steps to put in place requisite infrastructure and systems for implementation of guidelines as prescribed and to bring about the necessary amendments to the relevant bye-laws, rules and regulations.

Applicability: April 01, 2025.

SMS and E-mail alerts to investors by stock exchanges

SEBI / HO / MIRSD / MIRSD - PoD1 / P / CIR / 2024 / 169 dated December 03, 2024

As per the current guidelines, Stockbrokers are mandated to upload separate mobile number/email address of each client with unique client ID.

However, as an exception, the stockbroker may, at the specific request of a client (written only), upload the same mobile number / email address for more than one client ID provided such clients belong to one family. "Family" for this purpose included self, spouse, dependent children and dependent parents.

The definition has now been extended to include the following:

- Karta or any of the Co-parceners as per prior approval of Karta in case of HUF.
- Any of the partners as per prior approval of all / authorised partners in a Partnership firm.
- Any of the trustees or beneficiaries as per resolution passed by the Trust in case of a Trust.
- The Authorised person operating the trading account as per the Board Resolution passed by the Corporate in case of Corporates.

Applicability: Immediate effect.

Repository of documents relied upon by Merchant Bankers during due diligence process in Public issues

SEBI / HO / CFD / CFD – TPD – 1 / P / CIR / 2024 / 170 dated December 05, 2024

As per SEBI (Merchant Bankers) Regulations, 1992, Merchant bankers are required to maintain and preserve records and documents pertaining to due diligence ("DD") exercised in both pre-issue and post-issue activities of issue management for a minimum period of five years.

For more efficient maintenance of records and documents that merchant bankers rely upon while conducting their due diligence in public issues, stock exchanges have set up an **online Document Repository platform** set up by the Stock Exchanges**,** where the Merchant bankers can upload and maintain DD documents electronically.

Merchant bankers are required to adhere to the following timelines for uploading documents in the Document Repository platform of the Stock Exchanges:

Important Updates - SEBI

From January 01, 2025: Within 20 days of filing draft offer document and listing

From April 01, 2025, onwards: Within 10 days of filing draft offer document and listing

Applicability: Applicable for the draft offer documents filed on or after January 01, 2025.

Enhancement in the scope of optional T+0 rolling settlement cycle in addition to the existing T+1 settlement cycle in Equity Cash Markets

SEBI / HO / MRD / MRD – PoD – 3 / P / CIR / 2024 / 172 dated December 10, 2024

In March 2024, SEBI had introduced the beta version of T+0 rolling settlement cycle on optional basis for a limited set of 25 scrips and with a limited number of brokers.

Based on the feedback received from various stakeholders to increase the efficiency of optional T+0 settlement cycle and approval of the Board, the facility of optional T+0 settlement cycle is now being extended to top 500 scrips (which is in addition to the 25 scrips already notified in the beta version) in terms of market capitalization as on December 31, 2024.

Furthermore, the facility has been extended to all stockbrokers who now are permitted to participate in the optional T+0 settlement cycle.

Guidelines have been given to the Stock Exchanges, Clearing Corporations and Depositories (collectively referred as Market Infrastructure Institutions (MIIs)); and Custodians to put in place necessary systems and processes for the T+0 settlement cycle.

Applicability: Starting from January 31, 2025 in a phased manner and extended up to May 01, 2025.

Pro-rata and pari-passu rights of investors of AIFs

SEBI / HO / AFD / AFD – POD – 1 / P / CIR / 2024 / 175 dated December 13, 2024

The Securities and Exchange Board of India (SEBI) has introduced significant changes in respect of maintaining pro-rata and pari-passu rights of investors in Alternative Investment Funds (AIFs).

Key provisions and their implications for AIFs and investors

The investors of a scheme of an Alternative Investment Fund will have rights, pro-rata to their commitment to the scheme, in each investment of the scheme and in the distribution of proceeds of such investment.

However, the requirement of maintaining investors' rights pro-rata to their commitment to the scheme, shall not be applicable in an investment of a scheme and distribution of proceeds of the investment.

Furthermore, pro-rata rights of investors will not be applicable in distribution of proceeds of investments of a scheme to the extent returns or profit on the investments is shared by an investor with the manager or sponsor of the AIF as per the terms of contribution agreement executed between them.

Large Value Fund for Accredited Investors (LVFs), whose Private Placement Memorandums ("PPMs") are filed with SEBI for launch of scheme post notification of the Circular, may seek exemption from the requirement of maintaining pari-passu rights.

To ensure compliance, AIFs will be required to report details of any differential rights offered to investors with suitable disclosures in the PPM. For existing AIFs that have issued

Important Updates - SEBI

differential rights that are not in line with the new standards, managers will have to report these to SEBI and discontinue any rights that may be adverse to other investors.

Applicability: Immediate effect.

Industry Standards on Reporting of BRSR Core

SEBI / HO / CFD / CFD – PoD – 1 / P / CIR / 2024 / 177 dated December 20, 2024

Industry Standards have been formulated by the Industry Standards Forum ("ISF") comprising of representatives from three industry associations, viz. ASSOCHAM, CII and FICCI, under the aegis of the Stock Exchanges for effective implementation of disclosures in Business Responsibility and Sustainability Report (BRSR) Core as prescribed under Regulation 34(2)(f) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations").

It has been decided that the industry associations, including ASSOCHAM, FICCI, and CII along with the stock exchanges will publish the industry standards on their websites.

Further it will be ensured by the Stock Exchanges that the listed entities shall follow the industry standards to ensure compliance on disclosures in BRSR Core.

Applicability: FY 2024-25 and onwards.

Policy for Sharing Data for the Purpose of Research / Analysis

SEBI / HO / DEPA – II / DEPA – II _ SRG / P / CIR / 2024 / 178 dated December 20, 2024

SEBI in an initiative launched in February 2022 had advised all market intermediaries and other data sources in Indian securities markets to freely disseminate various reports, data and information as required by the regulators in a downloadable format.

Given the fact that SEBI is not the originator of most of the market data, the scope of sharing data under the extant data sharing policy of SEBI was deliberated by the SEBI Market Data Advisory Committee (MDAC). One of the issues that came across in the discussions was the authenticity and adequacy of data, together with data privacy.

In light of the observations and recommendation, it has been decided to have a uniform policy for Stock Exchanges, Clearing Corporations and Depositories respectively, for sharing data separately for only research/ research publications undertaken by accredited academic institutions. Stock Exchanges, Depositories and Clearing Corporations have been advised to segregate data available, for each market segment into two baskets, namely:

- One basket - Data which is publicly available on respective website of each Stock Exchange, Depository and Clearing Corporation and the voluminous data which cannot be placed on the respective websites of the MIIs
- Second basket - information that cannot be shared with the public. This data would include, KYC information / trade logs / holding details of an entity/ individual, etc. with the identity of the entity/ individual.

Based on the above guidelines, Stock Exchanges, Depositories and Clearing Corporations have been advised to identify data in the abovementioned baskets and accordingly frame their data sharing policy.

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Applicability: Immediate Effect. Status of the implementation to be updated by MIIs to SEBI within three months from date of circular.

Upload of Draft Scheme Information Documents

SEBI / HO / IMD / IMD – RAC – 1 / P / CIR / 2024 / 179 dated December 20, 2024

As per extant provisions prescribed in the Master Circular No. SEBI/HO/IMD/IMD-PoD-1/P/CIR/2024/90 dated June 27, 2024 for Mutual Funds ("Master Circular") read along with Circular dated March 31, 1998, Asset Management Companies (AMCs) are required to submit soft copy of the Draft Scheme Information Documents ("SID") to be made available on SEBI's website for 21 working days from the date of such filing for public comments.

Over the years, the structure and content of SIDs has been standardized and with the view to streamline the dissemination of relevant information to investors, the timelines for uploading the SIDs has been reviewed. Based on review and public consultation SID shall now be uploaded on the SEBI website for at least 8 working days for receiving public comments and adequacy of disclosures.

The AMC may then proceed to file final offer documents (SID and KIM) in line with the guidelines provided in the Master Circular.

Applicability: Immediate Effect.

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Abbreviations

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Abbreviation	Meaning
AA	Advance Authorisation
AAR	Authority of Advance Ruling
AAAR	Appellate Authority of Advance Ruling
AAC	Annual Activity Certificate
AD Bank	Authorized Dealer Bank
AE	Associated Enterprise
AGM	Annual General Meeting
AIR	Annual Information Return
ALP	Arm's length price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Person
APA	Advance Pricing Arrangements
AS	Accounting Standards
ASBA	Applications Supported by Blocked Amount
AY	Assessment Year
BAR	Board of Advance Ruling
BEAT	Base Erosion and Anti-Avoidance Tax
CBDT	Central Board of Direct Tax
CBIC	Central Board of Indirect Taxes and Customs
CCA	Cost Contribution Arrangements
CCR	Cenvat Credit Rules, 2004
COO	Certificate of Origin

Abbreviation	Meaning
CESTAT	Central Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Service Tax Act, 2017
CIT(A)	Commissioner of Income Tax (Appeal)
Companies Act	The Companies Act, 2013
CPSE	Central Public Sector Enterprise
CSR	Corporate Social Responsibility
CTA	Covered Tax Agreement
CUP	Comparable Uncontrolled Price Method
Customs Act	The Customs Act, 1962
DFIA	Duty Free Import Authorization
DFTP	Duty Free Tariff Preference
DGFT	Directorate General of Foreign Trade
DPIIT	Department of Promotion of Investment and Internal Trade
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel
DTAA	Double Tax Avoidance Agreement
ECB	External Commercial Borrowing
ECL	Electronic Credit Ledger
EO	Export Obligation
EODC	Export Obligation Discharge Certificate

Abbreviation	Meaning
EPCG	Export Promotion Capital Goods
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIFP	Foreign Investment Facilitation Portal
FIRMS	Foreign Investment Reporting and Management System
FLAIR	Foreign Liabilities and Assets Information Reporting
FPI	Foreign Portfolio Investor
FOCC	Foreign Owned and Controlled Company
FTC	Foreign Tax Credit
FTP	Foreign Trade Policy 2015-20
FTS	Fees for Technical Service
FY	Financial Year
GAAR	General Anti-Avoidance Rules
GDR	Global Depository Receipts
GMT	Global Minimum Tax
GILTI	Global Intangible Low-Taxed Income
GSTN	Goods and Services Tax Network
GVAT Act	Gujarat VAT Act, 2006
HSN	Harmonized System of Nomenclature

Abbreviations

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Abbreviation	Meaning
IBC	Insolvency and Bankruptcy Code, 2016
ICDS	Income Computation and Disclosure Standards
ICDR	Issue of Capital and Disclosure Requirements
IEC	Import Export Code
IIR	Income Inclusion Rule
IMF	International Monetary Fund
IRP	Invoice Registration Portal
IRN	Invoice Reference Number
ITC	Input Tax Credit
ITR	Income Tax Return
IT Rules	Income Tax Rules, 1962
ITAT	Income Tax Appellate Tribunal
ITR	Income Tax Return
ITSC	Income Tax Settlement Commission
JV	Joint Venture
LEO	Let Export Order
LIBOR	London Inter Bank Offered Rate
LLP	Limited Liability Partnership
LOB	Limitation of Benefit
LODR	Listing Obligations and Disclosure Requirements
LTA	Leave Travel Allowance
LTC	Lower TDS Certificate

Abbreviation	Meaning
LTCG	Long term capital gain
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MeitY	Ministry of Electronics and Information Technology
MSF	Marginal Standing Facility
MSME	Micro, Small and Medium Enterprises
NCB	No claim Bonus
OECD	The Organization for Economic Co-operation and Development
OM	Other Methods prescribed by CBDT
PAN	Permanent Account Number
PE	Permanent establishment
PPT	Principle Purpose Test
PSM	Profit Split Method
PY	Previous Year
QDMTT	Qualified Domestic Minimum Top-up Tax
RA	Regional Authority
RMS	Risk Management System
ROR	Resident Ordinary Resident
ROSCTL	Rebate of State & Central Taxes and Levies
RoDTEP	Remission of Duties and Taxes on Exported Products

Abbreviation	Meaning
RPM	Resale Price Method
SC	Supreme Court of India
SCN	Show Cause Notice
SDS	Step Down Subsidiary
SE	Secondary adjustments
SEBI	Securities Exchange Board of India
SEP	Significant economic presence
SEZ	Special Economic Zone
SFT	Specified Financial statement
SION	Standard Input Output Norms
SOP	Standard Operating Procedure
ST	Securitization Trust
STCG	Short term capital gain
SVLDRS	Sabka Vishwas (Legacy Dispute Resolution Scheme) 2019
TCS	Tax collected at source
TDS	Tax Deducted at Source
TNMM	Transaction Net Margin Method
TP	Transfer pricing
TPO	Transfer Pricing Officer
TPR	Transfer Pricing Report
TRO	Tax Recovery Officer
UTPR	Undertaxed Profits Rules
u/s	Under Section
WOS	Wholly Owned Subsidiary