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kcm Insight

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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.

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Coverage | Detailed Analysis

Mergers & Acquisitions

Private Credit as an Investment Asset Class in India

International Tax

Indian Rulings

Fees for broadcasting and ancillary rights not taxable as Royalty

Arbitral award treated as business income; not taxable in absence of PE in India under India-Japan DTAA

MLI provisions cannot be applied without separate notification – Treaty benefit allowed on aircraft leasing income

Income for Employment in China Not Taxable in India Even if Credited to Indian Bank Account

Assets/Equipment Received from AE on returnable basis and fees paid for general training do not Constitute FTS, not taxable in India

International Tax

Foreign Rulings

IPRs cannot be deemed embedded in raw material purchase price paid, not subject to royalty withholding or diverted profit taxes

UK Court of Appeal reaffirms substance over form approach for POEM Test

Foreign Updates

Vietnam proposes major overhaul to personal income tax (PIT) law

UAE issues guidance on depreciation adjustments for investment properties held at fair value

Google Drops 2.5% Ad Surcharge

UAE Issues First Comprehensive MAP Guidance Signifying Alignment with International Tax Norms (June 2025)

South Korea's 2025 tax proposals highlight AI incentives, pillar two, and investment reliefs

Transfer Pricing

Important Rulings

Time limit prescribed under section 144C of the Income-tax Act 1961 ('the Act') vis-à-vis time limits provided by section 153 of the Act

Important Updates

Australian transfer pricing – Draft guidance on inbound financing

Indirect Tax

Important Updates

Customs Portal

Customs & AIDC Exemption on Cotton Imports up to 30th September 2025

Other updates

Impact of U.S. Tariff Imposition:

Important Rulings

Delay of One day in filing appeal was condoned as last date was a Sunday

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Coverage | Detailed Analysis

Indirect Tax

Important Rulings

- Generation of Part B of E-way bill is mandatory to have a valid E-way bill
- The Hon'ble Supreme Court clarifies the prohibition u/s 6(2)(b) inapplicable to parallel search and seizure proceedings
- Supreme court upholds Delhi high court ruling on telecom towers classified as movable property, ITC denial under section 17(5)(d) unsustainable
- High Court clarifies the computation of limitation period in GST appeals after the effect of rectification order
- Fraudulent ITC availment, Delhi HC upholds validity of consolidated SCN; delay in uploading drc-07 does not affect limitation, writ dismissed with remedy under appeal
- Supreme Court rules renewal of provisional attachment under section 83 of CGST Act invalid
- Refund rejection on LUT timing set aside by HC; exporter's right to refund upheld

Corporate Laws

RBI / FEMA Notifications and Press Releases

- International Trade Settlement in Indian Rupees (INR)
- Reserve Bank of India (Non-Fund Based Credit Facilities) Directions, 2025
- Investment in Government Securities by Persons Resident Outside India through Special Rupee Vostro account
- Reserve Bank of India (Know Your Customer (KYC)) (2nd Amendment) Directions, 2025

Corporate Laws

MCA Notifications

- Companies (Indian Accounting Standards) Second Amendment Rules, 2025

Corporate Laws

SEBI Notifications

- Operational Efficiency in Monitoring of Non-Resident Indians (NRI) Position Limits in Exchange Traded Derivatives Contracts - Ease of Doing Investment
- Extension of timeline for implementation of Phase II & III of Nomination Circular dated January 10, 2025 read with Circular dated February 28, 2025
- Transaction charges paid to Mutual Fund Distributors
- Extension of timeline for implementation of SEBI Circular 'Margin obligations to be given by way of pledge/Re-pledge in the Depository System' dated June 03, 2025

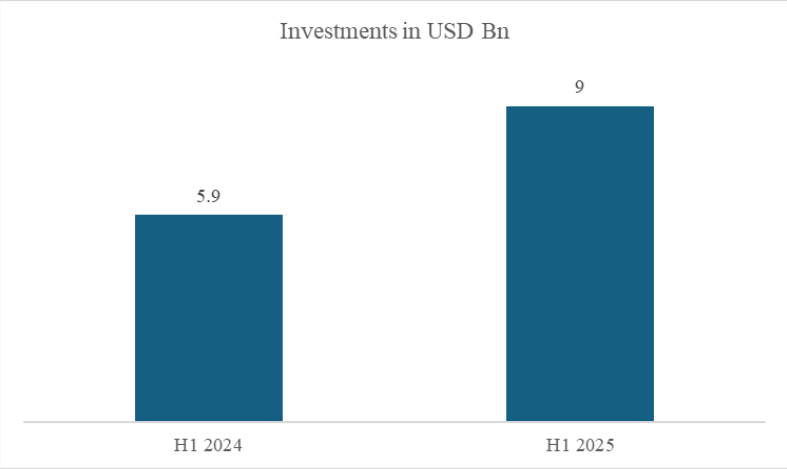
Private Credit as an Investment Asset Class in India

Introduction

Private Credit i.e., non-bank lending via Alternative Investment Funds (AIFs) is reshaping India's financial landscape. Offering bespoke financing for growth capital, refinancing, and special situations, Private Credit has become one of the fastest-growing alternative asset classes in India.

Growth Trajectory

Private Credit AUM nearly tripled from **USD 7.75 bn in 2021 to USD 22.8 bn by mid-2025**, at a CAGR of 25-30%. Deal volumes also surged **with USD 9 bn deployed in H1 2025**, up 53% annually. A landmark transaction was **Shapoorji Pallonji's USD 3.1–3.5 bn raise at ~19.75% yield**, showcasing market depth.

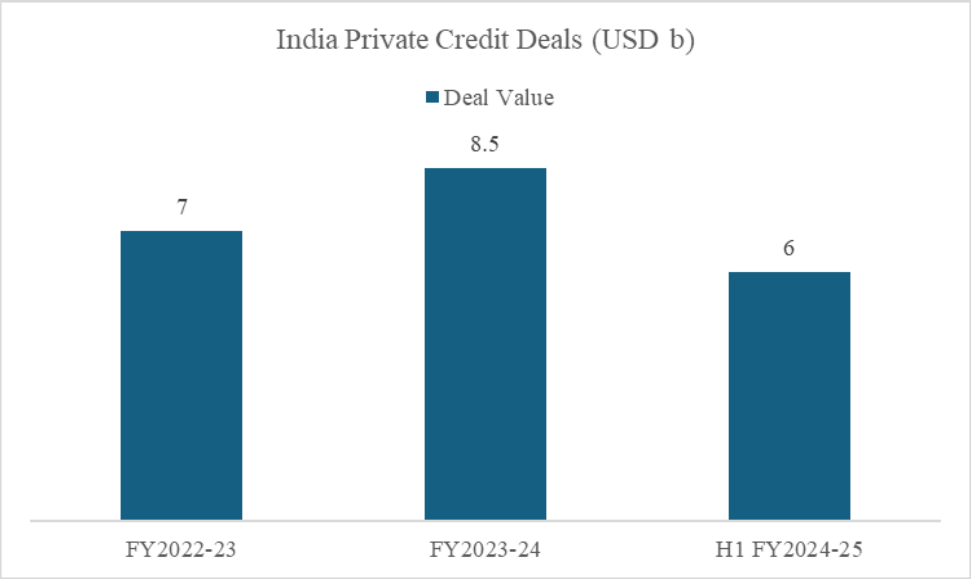


Year	AUM (USD Billion)	Key Notes
2021	~7.75	Early doubling from prior levels; focus on distressed assets.
2022	15.5	Surpassed $15Bn mark; doubled from 2021 amid post-COVID recovery.
2023	~18-20	Continued momentum with H1 investments adding significantly.
2024	19.88	Steady growth; estimated market size around $25Bn overall.
2025 (H1)	22.79	14.5% increase from Dec 2024; projected to hit $25-30Bn by year-end.

Private Credit as an Investment Asset Class in India

Enhanced Returns: The Yield Advantage

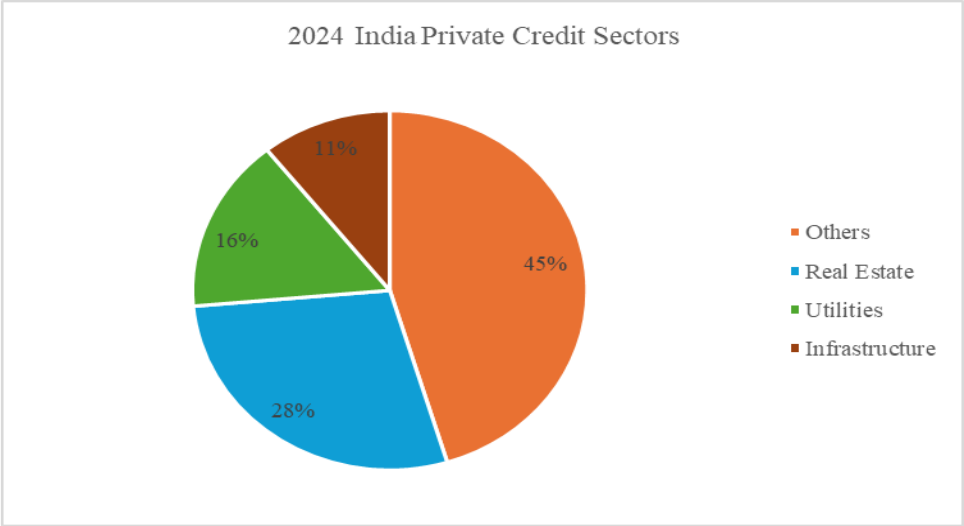
Private Credit funds typically deliver **15-20% returns** with lower volatility than equities. This outperformance comes from illiquidity premiums, covenant protections, and negotiated deal terms.



Asset Class	Average Annual Return (2023-2025)	Volatility (Standard Deviation)	Notes
Private Credit	15-20%	Low (5-8%)	High yield deals due to higher Credit risk; consistent amid market swings.
Equities (Nifty 50)	12-15%	High (15-20%)	Volatile; equity market corrections impact returns.
Government Bonds	6-8%	Low (3-5%)	Safe but lower yields; influenced by RBI rates.
Corporate Bonds	8-10%	Moderate (6-10%)	Credit risk varies; lower than Private Credit.

Diversification Benefits and Sectoral Spread

Private Credit diversifies portfolios with low correlation to public markets. An allocation of 10-20% can reduce overall risk by 2-5%. While real estate dominates (~28%), other sectors such as utilities, infrastructure, renewables are also gaining market share.



Private Credit as an Investment Asset Class in India

Coverage

Expanding Retail Access

Traditionally limited to institutions and HNIs (₹1 Crore minimum investment for AIFs), access is widening via:

- **Non-Convertible Debentures:** 9–12% yields, low entry sizes
- **Debt Mutual Funds:** Professional management, daily liquidity
- **Digital Bond Platforms:** Marketplace access at ₹10k+

Recent SEBI and RBI reforms including valuation tightening, CDS permissions, investor accreditation are supporting transparency and access.

Risks and Challenges

1. **Sector concentration in real estate**: Heavy exposure to a cyclical sector increases vulnerability to downturns.
2. **Liquidity lock-ins (2 to 5 years)**: Investors cannot easily exit before maturity due to long holding periods.
3. **Regulatory uncertainty**: Frequent SEBI and RBI updates can alter fund structures and investor eligibility.
4. **Complex documentation**: Detailed covenants and legal terms require expert review to understand hidden risks.

Outlook and Conclusion

India's Private Credit market is expected to reach USD 25–30 bn by end-2025 and USD 50 bn by 2030. With high returns, diversification benefits, and broader access, Private Credit is set to become a mainstream portfolio allocation especially for HNIs and Accredited Investors. However, investors must balance the higher return potential with illiquidity, credit and concentration risks.

Sources of information: EY and PWC Reports

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Indian Rulings

Fees for broadcasting and ancillary rights not taxable as Royalty

Sri Lanka Cricket [ITA No. 1603 (Delhi) of 2025 – Order dated 28 July 2025]

The taxpayer, a National Association for the sport of cricket in Sri Lanka, had granted broadcasting and ancillary rights to Lex Sportel, an Indian company, for the live telecast of a cricket tournament held in Sri Lanka in March 2018. In the relevant assessment year, the taxpayer earned license fees from Lex Sportel in connection with these rights.

The AO treated the income received as taxable "royalty" under Section 9(1)(vi) of the ITA. In evaluating this issue, reliance was placed on the decision in CIT v. Fox Network Group Singapore Pte. Ltd. [2024] 473 ITR 528 (Delhi), which examined the scope of Section 9 in the context of broadcasting rights.

Key findings from the Fox Network case included:

- A "live telecast" does not fall within the definition of "work" within clause (v) of Explanation 2 to Section 9(1)(vi) of the Act.
- It also does not qualify as a "process" within clause (i) of under Explanation 2 to Section 9(1)(vi) of the Act.
- In order to contend that revenue earned from "live feed" would qualify as "process", explanation 6 to Section 9(1)(vi) was relied wherein it is clarified that "process" includes transmission activities via satellite, cable, optic fibre, or similar technologies. However, it was observed that activity of transmission by satellite shall only be covered under the term "process". In facts of the case, actual transmission of content was not undertaken by the taxpayer.

Based on these multifaceted arguments and judicial precedent, it was concluded that mere granting of broadcasting rights does not amount to engaging in transmission activity. Therefore, such licensing fees does not fall within the ambit of Section 9(1)(vi) of the Act.

This ruling emphasizes that granting licensing rights alone is insufficient for income to be classified as royalty. Passive licensing of live broadcasting rights without involvement in transmission does not trigger royalty taxation under Indian law. It sets a precedent for distinguishing between content ownership and technical dissemination when assessing cross-border media transactions.

Arbitral award treated as business income; not taxable in absence of PE in India under India-Japan DTAA

Fujitsu Ltd. [ITA No. 207 of 2025 (Delhi HC) – Order dated 08 July 2025]

The taxpayer, a tax resident of Japan, was engaged in providing IT support, maintenance and software licensing services to group entities including its Indian AEs. During the relevant Assessment year, it received arbitral award from its Indian AEs relating to non-payment of dues for offshore supplies. The taxpayer treated the receipts as business income and claimed as not taxable under Article 7 of the DTAA since it did not have a PE in India. The AO held that the arbitral award could not be classified as business income and accordingly brought the receipts to tax as "income from other sources", arguing that the arbitral award did not exhibit the characteristics of business such as regularity, continuity, and frequency, and therefore did not constitute business carried on in India.

On appeal, the Hon'ble bench of Delhi ITAT observed that the arbitral award arose from the taxpayer's contractual claims in respect of offshore supplies and was inextricably linked to its business. It held that both the principal compensation as well as interest thereon were in

the nature of business income, relying on the Supreme Court's decision in **CIT v. Govinda Choudhary & Sons (203 ITR 881)**. Since the taxpayer had no PE in India, the ITAT concluded that the receipts were not taxable in India under Article 7 of the India–Japan DTAA.

The Delhi High Court affirmed the ITAT's ruling, noting that the arbitral award represented acceptance of the taxpayer's claims for supply-related payments and was directly attributable to its business activities. The Court held that the issue was squarely covered by Article 7 of the DTAA and found no infirmity in the Tribunal's decision.

This ruling reiterates the principle that income inextricably linked to core business activities are to be characterised as business income. Further, where the foreign entity does not have a PE in India, such income would not be taxable in India under the Article 7-Business Profits of the applicable DTAA.

Income for Employment in China Not Taxable in India Even if Credited to Indian Bank Account

Sivakarthick Raman [ITA No. 281 (CHY) of 2025 – Order dated 7 July 2025]

The taxpayer was employed with BMW India Pvt. Ltd. and was seconded to BMW Brilliance Automotive Ltd., China ("BMW China"). He was physically present in China and performed his duties exclusively there. However, his payroll continued to be maintained in India and his salary was credited to his Indian bank account. The secondment agreement and employment records indicated that the full cost of his salary and related benefits was cross-charged to BMW China. He was liable to tax in China on this income and duly filed his Chinese tax return. In his Indian income tax return for, he declared a total salary income and claimed exemption under Article 15(1) of the India-China DTAA, and sought for a refund, which had been deducted as TDS in India.

While processing the Indian income tax return and the refund of tax deducted in India, the AO brought the salary to tax in India on the grounds that it was paid by an Indian employer, credited to an Indian bank account, and therefore fell within the ambit of Section 5(2) of the ITA. The AO also invoked Article 23 of the India–China DTAA, contending that although credit for taxes paid in China could be claimed, the income remained taxable in India. This position was upheld by the CIT(A).

The taxpayer filed an appeal before the Hon'ble bench of Chennai ITAT wherein the bench observed that under Article 15(1) of the DTAA, salary earned by a resident of one country is taxable only in that country, unless the employment is carried out in the other country. If the work is performed in the other country, then that country can also tax the income. Since the taxpayer was a tax resident of China under Article 4 of the DTAA and had carried out his employment entirely in China during the relevant financial year, India did not have the right to tax the income under Article 15. As per the OECD Commentary on Article 15, which states that the location of employment is based on where the person is physically present while doing the work for which the salary is paid. ITAT rejected the Revenue's argument based on Section 5(2) of the ITA stating that DTAA provisions override domestic law under Section 90(2) of the ITA. The fact that the salary was credited to an Indian bank account was considered merely a matter of convenience and not relevant for deciding where the income should be taxed.

The ITAT also found that Article 23 of the DTAA, which deals with avoiding double taxation, did not apply in this case because the key issue was whether India had any right to tax the income at all which it did not under Article 15. Accordingly, the Hon'ble bench of Chennai ITAT ruled that the salary was taxable only in China, ordered the deletion of the addition made by the AO, and

allowed the refund with applicable interest under Section 244A of the ITA.

This ruling reinforces that under the Double Taxation Avoidance Agreement (DTAA), salary should be taxed based on where the employee actually works. How or where the salary is paid, such as from an Indian employer or into an Indian bank account does not matter more than where the person works and resident for tax purposes. It gives clear guidance and protection to employees working in another country but getting paid from India.

MLI provisions cannot be applied without separate notification – Treaty benefit allowed on aircraft leasing income

Sky High Appeal XLIII Leasing Company Limited [Order dated 13 August 2025]]

In a significant decision, the Mumbai Bench of the ITAT has ruled in favour of a group of Irish aircraft lessors, holding that the PPT provisions introduced by the MLI cannot be enforced to deny treaty benefits under India–Ireland DTAA unless such modifications have been specifically notified u/s 90(1) of the ITA.

The taxpayer, an Irish leasing company, had entered into operating lease agreements with Aircraft operators in India. The taxpayer claimed the payments were excluded from the definition of "royalty" and hence Article 12 of the India-Ireland DTAA does not apply. Moreover, they had no PE in India, and that the income qualified as business profits taxable only in Ireland. The Revenue, however, denied treaty relief on several grounds. The AO argued that the arrangements constituted finance leases taxable as royalty under domestic law, that the leased aircraft in India gave rise to a fixed place PE, and that Article 8 of the DTAA (operation of aircraft in international traffic) was not applicable to independent lessors. Most significantly, the AO claimed that the taxpayer's structure was primarily designed to obtain treaty benefits and applied the PPT under Articles 6 and 7 of the MLI, contending that since both India and Ireland had ratified the MLI and designated their bilateral DTAA as a "covered tax agreement," the PPT automatically became applicable without further notification.

The taxpayer countered that these arguments by emphasising the commercial rationale of establishing their operations in Ireland and pointed out that Ireland is the global hub for aircraft leasing, with 19 of the 20 largest lessors located there, and that the choice of jurisdiction was dictated by industry practice, rather than tax considerations. The taxpayer also highlighted that it has entered in similar leasing agreements with Airlines in China and Korea, thereby negating the allegation of India-centric treaty shopping. The taxpayer relied heavily on the Supreme Court's decision in **Nestlé SA v. Assessing Officer (2023) 458 ITR 756**, where it was held that any modification of an existing DTAA through a subsequent treaty or protocol is enforceable in India only if separately notified u/s 90(1) of the ITA. Since there is no specific notification to incorporate MLI amendments in the India–Ireland DTAA, the provisions of Articles 6 and 7 of the MLI cannot be enforced.

The ITAT observed that the synthesised text of the India–Ireland DTAA and the MLI was merely an explanatory document without legal sanctity, since it had not been notified in the Official Gazette. It noted that the Revenue's own explanatory note acknowledges that MLI is "not an amending protocol", and the "synthesised text" is not in itself a legally binding document. Drawing parallels with the Supreme Court's ruling in Nestlé SA, the ITAT reaffirmed that treaty modifications are not self-executing in India and require a specific notification to be legally effective. In the absence of such notification, Articles 6 and 7 of the MLI could not be applied to deny treaty benefits.

Indian Rulings

On the factual matrix, the ITAT further rejected the Revenue's contention that the lessors had a PE in India, holding that mere ownership of aircraft located in India does not amount to a fixed place of business, especially where operational control lies entirely with the lessee airlines. It also reiterated that payments for use of aircraft are expressly excluded from "royalty" under Article 12 of the DTAA, and that the lease arrangements were in substance operating leases rather than finance leases. The ITAT allowed the appeals, confirming that the lease rentals received by Irish lessors were not taxable in India.

The ruling sets an important precedent that the MLI provisions are not self-executing in India, which may affect other treaties where the Revenue seeks to invoke PPT or anti-abuse clauses. The Tribunal has denied invocation of MLI (to deny Tax Treaty benefits) in absence of a separate notification and has allowed Tax Treaty benefit. At the same time, the judgment underscores the importance of maintaining robust commercial substance to defend against treaty abuse allegations. Considering the magnitude of the issue, this matter has an extremely high chance of traveling to the Supreme Court and it would be interesting to see that how higher court deal with the issue.

Income for Employment in China Not Taxable in India Even if Credited to Indian Bank Account -

Sivakarthick Raman [ITA No. 281 (CHY) of 2025 – Order dated 7 July 2025]

The taxpayer was employed with BMW India Pvt. Ltd. and was seconded to BMW Brilliance Automotive Ltd., China ("BMW China"). He was physically present in China and performed his duties exclusively there. However, his payroll continued to be maintained in India and his salary was credited to his Indian bank account. The secondment agreement and employment records indicated that the full cost of his salary and related benefits was cross-charged to BMW China. He was liable to tax in China on this income and duly filed his Chinese tax return. In his Indian income tax return for, he declared a total salary income and claimed exemption under Article 15(1) of the India-China DTAA, and sought for a refund, which had been deducted as TDS in India.

While processing the Indian income tax return and the refund of tax deducted in India, the AO brought the salary to tax in India on the grounds that it was paid by an Indian employer, credited to an Indian bank account, and therefore fell within the ambit of Section 5(2) of the ITA. The AO also invoked Article 23 of the India–China DTAA, contending that although credit for taxes paid in China could be claimed, the income remained taxable in India. This position was upheld by the CIT(A).

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The ITAT also found that Article 23 of the DTAA, which deals with avoiding double taxation, did not

apply in this case because the key issue was whether India had any right to tax the income at all which it did not under Article 15. Accordingly, the Hon'ble bench of Chennai ITAT ruled that the salary was taxable only in China, ordered the deletion of the addition made by the AO, and allowed the refund with applicable interest under Section 244A of the ITA.

This ruling reinforces that under the Double Taxation Avoidance Agreement (DTAA), salary should be taxed based on where the employee actually works. How or where the salary is paid, such as from an Indian employer or into an Indian bank account does not matter more than where the person works and resident for tax purposes. It gives clear guidance and protection to employees working in another country but getting paid from India.

Assets/Equipment Received from AE on returnable basis and fees paid for general training do not Constitute FTS, not taxable in India

Sony India Software Centre (P.) Ltd. [ITA No. 129 of 2025 (Karnataka HC) – Order dated 28 July 2025]

The case of the taxpayer is selected for scrutiny assessment and the AO has made additions in relation to computer and data processing equipment provided free of cost by the taxpayer's overseas (AEs), which the AO treated as a taxable benefit, considering it as income in the hands of the Assessee and the second addition was made under Section 40(a)(i) of the ITA, disallowing expenses related to training charges paid to a Singapore based non-resident consultant, on which the Assessee had failed to deduct tax at source (TDS).

In response, the taxpayer contended that the free-of-cost assets received from its overseas AEs were provided on a returnable basis. These assets, comprising testing equipment and prototypes, were supplied to ensure that the software development services met the required parameters. The assets were either returned to the AEs or destroyed upon completion of the respective projects. Furthermore, the APA was in place, which had already factored in depreciation on these assets in the cost base for determining transfer pricing. Further with respect to the training services, the taxpayer argued that these could not be classified as technical, managerial, or consultancy services. Instead, they fell under Article 14 (Independent Personal Services) of the India-Singapore DTAA and were therefore not taxable under the treaty, as the consultant neither maintained a fixed base or PE in India, nor exceeded the 90-day presence threshold stipulated in the treaty for taxation of such service. Despite these detailed explanations and reliance on relevant legal provisions, the AO rejected both claims and upheld the additions.

Aggrieved by the order of AO, the taxpayer filed an appeal before CIT(A). The CIT(A) deleted the addition related to the free-of-cost assets, relying on the APA that covered depreciation on such assets, and also placed reliance on the Tribunal's decision in the case of Tesco Bengaluru (P.) Ltd. (ITA No. 2387 (Bang.) of 2019] with respect to the training charges, the CIT(A), referring to the case of Lloyds Register Industrial Services (India) (P.) Ltd. v. ACIT ([2010] 36 SOT 293) held that such fees did not qualify as "fees for technical services" under the applicable tax laws and were therefore not taxable.

The Revenue filed an appeal to Hon'ble bench of Bangalore ITAT, contending that reimbursements to overseas companies and employees amounted to taxable FTS and should attract TDS under Section 195 of the ITA. The taxpayer cross-objected, asserting that free assets were provided only for testing and that payments to the Singapore consultant were for independent

personal services exempt under the DTAA. The Hon'ble bench of Bangalore ITAT accepted both arguments & upheld the CIT(A)'s order.

Appeal filed by revenue before HC was rejected noting that there was no dispute regarding the return of the free-of-cost assets and that the workshops were general training sessions aimed at employee development, which did not involve the transfer of technical knowledge or expertise. Consequently, the HC upheld the earlier orders and dismissed the appeal. Further, training workshop for performance management, and career management for employees are general training programs that cannot be considered as technical services. There is no transfer of technical knowledge, technical knowhow, experience, skill or process.

It is often presumed by the tax authorities that training programs qualify as technical services. However, this assumption does not hold universally. Not all training programs fall within the scope of technical services. Judicial precedents have clarified that general training sessions and programs involving returnable assets do not constitute taxable income or qualify as technical services under prevailing tax laws.

Foreign Rulings

IPRs cannot be deemed embedded in raw material purchase price paid, not subject to royalty withholding or diverted profit taxes

PepsiCo Inc. & Stokely-Van Camp Inc. [[2025] HCA 30 – order dated 13 August 2025]

The taxpayers were companies incorporated in the USA, owning world-wide portfolio of trademarks, designs and other rights and assets relating to the Pepsi & Mountain Dew brands. PepsiCo and SVC entered into Exclusive Bottling Agreements (EBAs) with Schweppes Australia Pty Ltd (SAPL), an Australian company, appointing SAPL as the sole and exclusive licensee to bottle, sell and distribute trademarked PepsiCo Group carbonated soft drinks and SVC's non-carbonated beverages.

As per the EBA, SAPL was to purchase concentrates required to manufacture the beverages from PepsiCo & SVC or their associates. A Singapore based company (CMSPL) manufactured concentrates, supplied the same to a PepsiCo group's subsidiary (PBS) in Australia who distributed concentrates to SAPL. SAPL was granted rights to use trademarks and other intellectual property rights such as artwork, proprietary package, technical, commercial or industrial information, etc. to manufacture, bottle, sell and distribute the finished beverages in Australia.

Tax authorities contended that amounts paid by SAPL to PBS for purchase of concentrates had an embedded element of royalty for use of trademarks and other IPRs owned by PepsiCo & SVC and that the same was royalty and liable to withholding of tax. Alternatively, the revenue authorities were of the view that PepsiCo and SVC should be liable to Australian diverted profits tax. PepsiCo & SVC contended that they did not derive any income from SAPL and that there was no element of royalty for use of IPRs embedded in price paid by SAPL to PBS.

Federal Court of Australia in end of 2023 had decided the matter in favour of revenue authorities, holding that the purchase price of concentrates had an element of royalty which should have been subject to withholding tax in Australia. Australian HC on the other hand, has ruled by 4:3 majority, in favour of PepsiCo & SVC holding that the right to use trademark and other IPRs was not the central property disposition or transaction which they contemplated, and instead, the central bargain under the EBA was exclusive arrangement to distribute beverages in Australia. The HC held that what SAPL wanted to acquire was right to distribute the famous beverages in

Foreign Rulings

Australia and that licensing of IPR was only a consequence and an indivisible part of the arrangement. In light of the same, the HC held that there is no royalty element since payments to PBS are not in the nature of payments for use of IPR but are towards purchase of raw materials. Tax Commissioner's alternative argument under Diverted Profits Tax (DPT) was also rejected, holding that the structure was a commercial arrangement, not a tax avoidance scheme.

The ruling reemphasis importance of 'substance' in a transaction and the reason for payments as an important factor in determination of character or nature of the transaction and taxability thereof.

UK Court of Appeal reaffirms substance over form approach for POEM Test

Geoffrey Richard Haworth, Ian Francis Lenagan, SG Kleinwort Hambros Trust Company (UK) Limited [2024] UKUT 00058 (TCC) – Order dated 01 July 2025]

A trust held shares in a company called TeleWare plc ("TeleWare") and WorkPlace Group Limited ("Workplace"). The trustees of such trusts were all resident of Jersey. The above two companies were planned to be merged and to be listed on the London Stock Exchange.

To avoid UK capital gains tax (CGT) on share disposals, the legal advisers devised a scheme where such CGT can be avoided by: (a) appointing Mauritian trustees at the time of realising the gains and (b) UK trustees were appointed within same tax year. The scheme was carried out accordingly after changing the actual administration of trusts at the disposal event. However, the UK tax authorities and HMRC sought to impose CGT on such disposal transaction. The taxpayer contended that the POEM at the time of sale was in Mauritius, as they held the legal control of trusts. Under Article 13(4) of UK-Mauritius DTAA, the CG arising from alienation of shares were taxable only in the state of which alienator is resident i.e. Mauritius (which does not charge tax on such gains). The HMRC argued that the scheme was designed to switch residency at the time of disposal to achieve treaty relief and the trusts' POEM remained in the UK despite of the appointment of Mauritian trustees. The tax planning known as "Round the World" scheme, aimed to avoid the tax, was effectively controlled from the UK the entire time.

On appeal, it was argued that "central management and control" approach should be followed for determining residence. The higher authorities have made detailed evaluation of term POEM and upheld the decision of HMRC on the grounds that the real POEM remained in the UK at all the material times. The orchestrated and superintended scheme was entirely controlled from the UK and the appointment of Mauritian trustees was incidental to such plan. Thus, the court decided against the taxpayer and CG was held taxable in the UK.

The court has reinforced the international position in treaties as well as commentaries on determining POEM to be based on substance-over-form approach by analysing real top-level management rather than narrow approach to construe a place where formal decisions were implemented or merely authorised without substantial modification. POEM should trigger on exercise of substantive control rather than mere routine decisions by overlooking beyond artificially devised arrangements.

Foreign Updates

Vietnam proposes major overhaul to personal income tax (PIT) law

Vietnam's MoF is in the final stages of drafting a comprehensive overhaul of PIT law, with approval expected by October 2025. One of the key reforms includes reducing the number of tax brackets from seven to five, with rates ranging from 5% to 35%. The proposal also raises the basic monthly personal deduction by VND 4 million, while setting the dependent deduction at VND 5 million.

A major change involves the introduction of a 20% capital gains tax on real estate transactions, calculated on actual gains after deducting reasonable expenses. If gains or expenses cannot be determined, a flat rate of up to 10% will apply based on the duration of ownership, replacing the current flat 2% tax on total transaction value. Similar reforms are proposed for gains from securities and equity transfers, a 20% tax will apply to net gains, while flat rates of 0.1% for securities & 2% for equity transfers will apply when cost basis is unclear, replacing the existing uniform 0.1% rate on transaction value.

The revised law will also expand the scope of taxable income to include categories previously under-addressed, such as cryptocurrency and digital assets, e-commerce and gig economy earnings, and income from intellectual property transfers, with new rules proposed for each category.

UAE issues guidance on depreciation adjustments for investment properties held at fair value

The UAE Ministry of Finance has issued Ministerial Decision No. 173 of 2025 which takes effect for tax periods beginning on or after January 2025, detailing depreciation adjustments for investment properties held at fair value under Federal Decree-Law No. 47 on Corporate Tax. Under this decision, taxable persons holding such properties may elect to claim an annual depreciation deduction for corporate tax purposes, calculated as the lower of:

- 4% of the original cost of the property for each 12-month tax period (prorated if the tax period is shorter or longer than 12 months, or if the property is held for only part of the period).
- The tax written down value at the beginning of the relevant tax period.

This election is irrevocable and must be applied consistently to all investment properties held at fair value. It must be made in the tax return for the first tax period in which such a property is held.

Google Drops 2.5% Ad Surcharge

Beginning from 1 October 2024, Google implemented a 2.5% Canada DST (Digital Service Tax) Fee on Google Ads and YouTube reservations, regardless of the advertiser's location. The fee was meant to cover Google's compliance costs with Canada's DST, enacted in Bill C-69 on 20 June 2024. The tax targeted large digital companies earning at least EUR 750 million worldwide and CAD 20 million in Canadian digital services revenue from online marketplaces, social media, user data sales, and digital ads.

From 30 June 2025, collection of the DST will be halted and that legislation will soon be brought forward to rescind the Digital Services Tax Act (DSTA), following Trump Ultimatum, clearing path for renewed the US trade deal. Google has dropped its 2.5% "Canada DST Fee" on advertisements in response to Canada's repeal of DST. In an email to IBFD on 21 July 2025, a Google spokesperson stated that they welcome the Government of Canada's commitment to rescinding their DST. As a result, they are no longer charging a DST Fee on ads served in Canada and will refund any previously collected fees once the legislation has been officially repealed.

Foreign Updates

Coverage

UAE Issues First Comprehensive MAP Guidance Signifying Alignment with International Tax Norms (June 2025)

The UAE has issued its first comprehensive MAP guidance, reinforcing its position as a transparent and cooperative tax jurisdiction. The MAP process follows a structured five-stage approach beginning with eligibility assessment and submission, bilateral resolution and implementation, and resolution with implementation targeting a resolution timeframe of 24 months. The MAP is applicable in cases involving transfer pricing adjustments not matched by corresponding adjustments in the counterparty jurisdiction, dual residency conflicts, profit attribution disputes in relation to permanent establishments and multilateral transfer pricing issues involving more than two jurisdictions.

This inclusive approach reflects a flexible and pragmatic interpretation of treaty provisions and is in line with international dispute resolution trends. Further, in cases where MAP fails to yield resolution, certain UAE DTAs provide for binding arbitration as a final recourse. This aligns with the post BEPS emphasis on timely and effective dispute resolution and offers an additional safeguard against unresolved tax conflicts.

South Korea's 2025 tax proposals highlight AI incentives, pillar two, and investment reliefs

The Ministry of Economy & Finance (MOEF) released the draft 2025 Tax Law Amendments on 31 July 2025. The draft outlines several significant measures for multinational companies, some of which are as under:

- Corporate income tax brackets will revert to the 2022 levels, ranging from 10% to 25% (currently 9% to 24%), effectively reversing the 2023 rate cuts.
- The securities transaction tax on KOSPI/KOSDAQ trades will be restored to 0.20% (including surtax), aligning with the 2023 rate.
- Introduction of QDMTT (Qualified Domestic Minimum Top-Up Tax) to implement the Pillar Two Global Anti-Base Erosion Rules in South Korea.
- R&D tax credits for AI will be increased to 50%, while investment tax credits will rise to 25%.
- Data centres supporting qualifying AI services will also be eligible for the investment credit.
- Capital gains deferral will be permitted when a Korean company contributes shares of a foreign subsidiary to another foreign entity in exchange for shares.
- The scope of the exit tax will expand to include foreign-company shares held by emigrating residents.
- Additional tax holidays and customs duty exemptions will be provided for overseas businesses that relocate manufacturing operations to Korea.
- Refund claims for double taxation must now be accompanied by supporting evidence. The time limit for tax authorities to examine such claims will be extended from two months to six months.

Once enacted, these amendments will generally apply to fiscal years beginning on or after 1 January 2026.

Contributed by *Mr. Dhaval Trivedi, Ms. Dhwani Shah, Ms. Pooja Shah, Mr. Vishal Sangtani, Mr. Prasanna Kumar and Mr. Krupal Shukla*

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Important Rulings

Time limit prescribed under section 144C of the Income-tax Act 1961 ('the Act') vis-à-vis time limits provided by section 153 of the Act

Shelf Drilling Ron Tappmeyer Limited [TS-456-SC-2025-TP]

The taxpayer, being a non-resident, was engaged in the business of providing facilities or services in connection with prospecting for or extraction or production of mineral oils. The taxpayer's case corresponds to AY 2014-15.

The timeline of the case is as follows:

Sr. No.	Particulars	Date
	First round of Appeals	
1	Draft AO Order issued	26.12.2016
2	DRP Directions issued	28.09.2017
3	Final AO order issued	30.10.2017
4	ITAT order issued for remand back for fresh adjudication	04.10.2019
	Second round of appeals	
5	Draft AO order issued (Basis 12 months from end of the financial year in which ITAT order was issued further extended up to 30.09.2021 in view of extension provided due to Corona epidemic)	28.09.2021

With respect to the remand proceedings draft assessment order, the taxpayer filed its objections vide letter dated 27.10.2021 and simultaneously filed writ petitions before the jurisdictional High Court contending that the time limit for passing final assessment order under section 153(3) of the Act had elapsed.

The jurisdictional High Court upheld the contentions of the taxpayer and provided that the time limits under section 153(3) had indeed expired which provided that the final assessment order should have been passed by 30.09.2021 [which is the time limit in accordance with the section 153 read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020].

Split Decision by Supreme Court

Aggrieved by the High Court's judgement, the tax authorities appealed before the Apex Court. The Apex Court pronounced a split decision in terms of Hon'ble Justice B.V. Nagarathna which upheld that the time limits prescribed under section 144C of the Act shall be subsumed under the time limits prescribed under section 153 of the Act.

On the contrary, Hon'ble Justice Satish C Sharma held that the non-obstante clauses of section 144C expressly over-rides section 153 of the Act, thereby allowing that the time limits under section 144C to prevail over and above the time limits of section 153 of the Act.

Accordingly, a split ruling was pronounced by the Apex court and hence the case was referred to the Hon'ble Chief Justice of India for constituting an appropriate bench to consider the issues afresh.

Important Rulings

Reader's focus:

The main issue under contention is interpretation under two sections – Section 153 and Section 144C.

Section 153(3) says that in case Hon'ble Tribunal has remanded back any case for fresh adjudication, **the order of fresh assessment** should be passed within period of 12 months from the end of the financial year in which the order u/s 254 of Hon'ble ITAT is received by the PCIT / PCCIT / CCIT.

For taxpayers falling under the category of non-resident assesses or assesses in whose case TP adjustment has been made by the tax authorities, an option of resolving the dispute faster through Dispute resolution panel ('DRP') is available. In such cases, the Assessing Officer has to first issue Draft AO order and the taxpayer has the option to go to DRP against the Draft AO order for faster resolution. As per Section 144C(12), the Dispute resolution panel can issue directions against the Draft AO order within 9 months from the end of the month in which the draft order is forwarded to the taxpayer.

The issue under contention is that whether the **12 months** provided u/s 153(3) is including the timeline of **9 months** provided to DRP for passing directions or not. This issue mainly arose due to the fact that in section 153(3) it is not specifically mentioned whether order of fresh assessment means draft order or final order.

In case it is interpreted that timeline of passing directions by DRP u/s 144C(12) is included under the time line of Section 153(3), then it would mean that the entire process of passing of the Draft order by Assessing Officer, filing of objections by tax payer to DRP, issuing of directions by DRP against Draft order and passing of Final Assessment order by Assessing Officer should be completed in 12 months from the end of the financial year in which the Hon'ble Tribunal order for fresh adjudication was received by PCIT / PCCIT / CCIT.

While establishing whether the time limits prescribed under section 144C shall be subsumed within the time limits of section 153 or not, the Apex Court held as under:

In favour of the taxpayer – Comments by Justice B.V. Nagarathna

(i) It is generally provided that if a specific provision has to be read within the mandate of a general provision, then the same has to be accordingly construed so as to give effect to the mandate of the general provision. *However, if a situation arises where two Sections of the Act cannot be reconciled, as there is an absolute contradiction between them, it is often said that the* ***latter (i.e., the general one) must prevail.***

(ii) Non-obstante clause of 144C(1) deals with procedure to be adopted for eligible assesses under Dispute resolution panel route and not with respect to limitation period under section 153. Non-obstante clauses of 144C(4) and (13) deals with only the period of limitation in making an assessment order and not the manner of passing an assessment order

(iii) The words "an order of fresh assessment" means the entire process of assessment starting from issuance of notice under section 142(1) till the making of an assessment order whereby the total income of the taxpayer is assessed and tax payable by him is determined.

iv) The fact that the assessing officer has adequate or negligible time to deliver the statutory obligations under section 144C cannot have a bearing on the interpretation of the Act.

Important Rulings

(v) The intent of Legislature by way of introduction of section 144C was towards expeditious disposal of the pending cases involving inward foreign exchange which generally included foreign companies or cases involving transfer pricing audits.

In favour of the revenue – Comments by Justice S.C. Sharma

(i) The time limits prescribed under section 153 of the Act are applicable strictly to only sub-section (1) of section 144C of the Act which provides for **forwarding a draft order** by the Assessing Officer.

(ii) If the time limits prescribed under section 144C(4) and (13) were to be subsumed within the time limits prescribed under section 153, then the Assessing Officer would have to work the time line in backward on the premises that the taxpayer would always file objections to the Draft Order and therefore, the time period of 9 months granted to Dispute Resolution Panel has to be taken into account by the Assessing Officer each and every time which seems absurd from the options available under the Income Tax Act.

(iii) The non-obstante clauses contained in sub-section (4) and (13) of section 144C extend the time limit for passing the Final Assessment Order and not the Draft Order under section 144C(1) of the Act.

(iv) If in a scenario, the assessing officer does not accommodate for the entire nine-month period for DRP to issue directions, it would result in the assessing officer eating to the time available for the DRP to issue directions which would effectively result in amending the timeline of months available u/s 144C(12).

(v) Even though the provisions of section 144C refer to a draft order under sub-section (1), the Assessing Officer is incapacitated to conduct further enquiries or raise fresh issues in the Final Assessment Order. Therefore, the Assessing Officer has to either pass an order in conformity of the directions of the Dispute Resolution Panel if any objections are filed by the taxpayer or reproduce the draft assessment order as Final Order, which provides a finality even to the draft order as no changes suo moto by Assessing Officer can be carried out.

(vi) Due to the applicability of time limits in accordance with the section 153, if there is lack of availability of time to taxpayer or if Dispute Resolution Panel is forced to decide the objections in a hastily manner, then it would lead to violation of principles of natural justice.

While the above split decision pronounced by the Apex court is mainly with respect to remand back proceedings, however the same would have far reaching impact on the normal cases as well where Dispute resolution panel path is chosen by the taxpayer. In the entire scenario, the primary interpretation of the words used in Section 153(3) – "an order of fresh assessment" – wherein whether the same can be interpreted to be a draft order or final order can be the key for the larger bench of the Apex court to decide upon the issue. In either of the cases, the issue will surely have the largest tax impact in the entire history of Indian transfer pricing landscape!!

Important Updates

Australian transfer pricing – Draft guidance on inbound financing

The Australian Tax office ('ATO') have issued draft guidance with respect to the inbound financing arrangements entered into by Australian taxpayer. Till now the primary importance was given to benchmarking the interest rate of the inbound loans taken by the taxpayer and thin capitalisation rules used to take care of the extensive interest expense as compared to the EBIDTA. The new guidance now seeks to provide clarity regarding **how much debt can be construed to be at arm's length price when the taxpayer borrows from a related party offshore entity.**

The ATO has introduced a four-zone risk framework to help taxpayer assess the likely risk and compliance requirement which it would be required to be followed depending on the characteristic and nature of the arrangement:

Zones	Applicability	Remarks of ATO
White Zone	Arrangements that have already been reviewed or concluded via an agreed outcome (e.g. via settlement agreement, APA or litigation outcome)	No need to self-assess the inbound financing arrangement and ATO will not apply compliance resources in relation to such amount of transaction
Green Zone	Low-risk arrangements, including those aligning with the ATO's illustrative examples i.e. where interest on related party inbound financing is getting disallowed in view of thin capitalisation rules or where leverage and interest coverage ratios are better than those of the taxpayer's global group or independent comparables	ATO will apply compliance resources to verify taxpayer's self-assessment
Blue Zone	Not covered by a low-risk or high-risk example in the guideline or the white zone criteria.	ATO will actively monitor arrangements using available data and may review the arrangement to understand any compliance risk
Red Zone	High-risk arrangements per the PCG i.e. entities not having regard to the options realistically available in view of significant cash reserves, those involving guarantees to obtain an amount of debt greater than it could have borrowed without the guarantee, excess cash reserves, or on-lending at below-market return, etc.	ATO will prioritize resources to review the arrangement. This may involve commencing a review or audit. The red zone is a reflection of the features that ATO consider greater risk;

The ATO has also issued extensive documentation requirements like internal decision-making papers, board minutes, working showing evaluation of returns to shareholders, funding proposals to analyze option available to the taxpayer, market testing and third party comparable, etc.

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Important Updates

Customs Portal

Customs & AIDC Exemption on Cotton Imports up to 30th September 2025

[Notification No. 35/2025-Customs Dated 18th August, 2025]

The CBIC, through Notification No. 35/2025-Customs dated 18th August 2025, has exempted

imports of raw cotton falling under Customs Tariff Heading 5201 from the levy of customs duty and Agriculture Infrastructure Development Cess (AIDC).

This exemption is effective from 19th August 2025 and shall remain valid up to 30th September 2025. The measure has been introduced in public interest to provide relief to the textile sector and to ensure adequate availability of raw cotton at competitive prices.

The short-term exemption offers immediate cost benefits for textile manufacturers and traders dependent on imported cotton. Importers should plan procurement within this window to optimize savings. However, since the exemption is time-bound, businesses need to closely monitor the expiry date and align their sourcing strategy accordingly.

Other Updates

Impact of U.S. Tariff Imposition

The United States has announced the imposition of reciprocal tariffs, including a steep increase of up to 50% on imports from India, marking a major shift towards bilateral trade protectionism. These tariffs cover a wide range of Indian exports such as seafood, steel, and other industrial goods, with limited exemptions under Annex II of the executive order. The exemptions, however, may be withdrawn on a case-by-case basis.

For India, the immediate impact is reduced competitiveness of its exports in the US market and potential decline in consumer demand. Strategically, these tariffs strengthen the US's bargaining position in the ongoing bilateral trade negotiations. India, however, retains a relative advantage through its lower tariff regime compared to many peers, while actively exploring alternative markets and strengthening industry support.

The reciprocal tariffs represent both an economic challenge and a geopolitical signal. Indian businesses should closely monitor the exemption list, diversify export destinations, and prepare for cost pressures. Policymakers must balance immediate mitigation with long-term reforms to enhance global competitiveness.

Important Rulings

Delay of One day in filing appeal was condoned as last date was a Sunday:

Star Cones V/S Deputy Commissioner (Ct) GST-Appeal, Salem

[W.P. No. 23221 of 2025 and W.M.P. Nos. 26065 & 26066 of 2025]

The petitioner challenged the rejection of its appeal by the Revenue authorities under Section 107 of the CGST/TNGST Act, 2017. An assessment order dated 28.04.2024 was appealable within three months, making the last date of filing 28.07.2024. Since that day fell on a Sunday, the petitioner filed the appeal on the immediate next working day, i.e., 29.07.2024, along with the mandatory 10% pre-deposit. However, the Appellate Authority rejected the appeal on 24.03.2025, holding it to be barred by limitation.

The petitioner contended that the appeal could not have been filed on 28.07.2024 due to it being a public holiday and that filing on the next working day was valid in law. Conversely, the Revenue argued that the delay was solely attributable to the petitioner's inaction, and hence the rejection was justified.

The High Court held that the reason for the delay was genuine and that the right to appeal is a substantive right that should not be defeated by technicalities. The Court emphasized that procedural timelines must be interpreted pragmatically, particularly when the last date falls on a public holiday. Accordingly, the rejection order was set aside, and the delay of one day was condoned. The Appellate Authority was directed to admit the appeal and decide it on merits in accordance with law

This judgment reinforces the principle that justice cannot be sacrificed at the altar of technicalities. By condoning the delay, the Court has highlighted that procedural rules serve the cause of justice and not the reverse. For taxpayers, this decision provides reassurance that genuine hardships, such as deadlines coinciding with public holidays, will be judicially protected. From a compliance standpoint, however, businesses should remain vigilant in observing statutory timelines to avoid unnecessary litigation.

Generation of Part B of E-way bill is mandatory to have a valid E-way bill:

Manish Packaging Private Limited Through Director Manish Kanaiyalal Patel Versus The State Of Madhya Pradesh And Others

[W.P. No. 20797 of 2022 - Madhya Pradesh High Court]

The taxpayer was engaged in the export of goods outside India. During transit, the vehicle carrying the export consignment was intercepted by the authorities. The driver produced Part A of the e-way bill along with a copy of the Letter of Credit issued by the foreign importer. However, he failed to furnish Part B of the e-way bill, which records vehicle details. The adjudicating authority treated the absence of Part B as a violation, imposed IGST on the consignment, and levied an equivalent penalty

The taxpayer contended that since Part A of the e-way bill and all relevant export documents were available, the detention was unjustified. It was argued that the goods were clearly meant for export and there was no intent to evade tax. Conversely, the Department maintained that Part B of the e-way bill is mandatory for validating the movement of goods. Without Part B, even Part A loses its validity, and therefore the transport was

Important Rulings

in contravention of law, justifying imposition of tax and penalty.

The Hon'ble Madhya Pradesh High Court held that Part B of the e-way bill is not a mere procedural formality but an essential statutory requirement under GST law. The generation of Part B ensures traceability of vehicle details and confirms lawful movement of goods. In its absence, the e-way bill cannot be considered valid. Consequently, the High Court upheld the orders of the lower authorities imposing IGST and penalty on the taxpayer.

This judgment reinforces the importance of strict compliance with e-way bill provisions, even in cases of export consignments where tax liability may not ultimately arise. The ruling clarifies that procedural lapses, such as failure to generate Part B, cannot be condoned on the ground that export intent is otherwise established. Taxpayers should ensure meticulous compliance with both Parts A and B of the e-way bill to avoid penal consequences.

The Hon'ble Supreme Court clarifies the prohibition u/s 6(2)(b) inapplicable to parallel search and seizure proceedings:

M/S ARMOUR SECURITY (INDIA) LTD. V/s. COMMISSIONER, CGST, DELHI EAST COMMISSIONERATE & ANR. [TS-711-SC-2025-GST]

The petitioner registered under the Delhi GST authorities and engaged in providing security services, was issued a Show Cause Notice under Section 73 of the CGST Act, 2017 by the State GST authorities for alleged under-declared turnover and excess ITC claims. Subsequently, the Central GST authority (Delhi East Commissionerate) conducted a search under Section 67(2) and issued summons under Section 70 to the company's directors.

The petitioner challenged the jurisdiction of the Central authority before the Delhi High Court, contending that since the State authority had already initiated proceedings, a parallel investigation was barred under Section 6(2)(b) of the CGST Act.

The High Court rejected the plea, holding that summons and investigation do not amount to "proceedings" under Section 6(2)(b). The matter was then taken before the Supreme Court.

The petitioner argued that "any proceedings" in Section 6(2)(b) covers all forms of action, including summons and inquiry, and hence the Central GST authority was precluded from conducting a parallel investigation on the same subject matter. Reliance was placed on CBIC's Circular dated 05.10.2018, which emphasized coordinated action between State and Central authorities.

The Department, however, contended that summons and searches are merely investigatory measures, not adjudicatory proceedings, and that cross-empowerment under GST permits both Central and State authorities to initiate intelligence-based enforcement.

The Supreme Court upheld the Delhi High Court's view, ruling that issuance of summons and conduct of search operations do not constitute initiation of "proceedings" within the meaning of Section 6(2)(b). Proceedings begin only upon the issuance of a show cause notice under Sections 73 or 74. Further, the Court clarified that the term "same subject matter" must be understood narrowly restricted to cases involving identical tax liabilities or contraventions arising from the same set of facts, rather than covering all inquiries relating to similar issues. The Court also highlighted the twin principles of "single interface" and "cross-empowerment" in the GST framework, designed to balance taxpayer protection with effective enforcement.

Important Rulings

This judgment is significant as it conclusively settles the conflicting High Court views on whether summons and investigations fall within "proceedings" barred under Section 6(2)(b). The Supreme Court's interpretation ensures that taxpayers cannot resist summons merely on the ground of prior proceedings by another authority. At the same time, by clarifying the scope of "same subject matter," the Court provides a safeguard against overlapping adjudicatory actions on identical issues. Practically, taxpayers should be prepared to cooperate with both State and Central authorities at the investigative stage, while monitoring for potential duplication at the adjudication stage.

Supreme court upholds Delhi high court ruling on telecom towers classified as movable property, ITC denial under section 17(5)(d) unsustainable:

COMMISSIONER, CGST APPEAL-1, DELHI ETC.V/S. M/S BHARTI AIRTEL LIMITED ETC (IA No. 180588/2025 – SC)

The Delhi High Court examined whether telecommunication towers constitute immovable property and thus fall within the ITC restrictions under Section 17(5)(d) of the CGST Act. The Department had denied ITC, contending that towers were immovable and specifically excluded from "plant and machinery."

Relying on Supreme Court's ruling in Vodafone Mobile Services Ltd. and the Bharti Airtel Ltd. the Court held that the exclusion of telecom towers from "plant and machinery" does not make them immovable. Applying the permanency, functionality, and marketability tests, the Court ruled that telecom towers are movable property, and hence denial of ITC under Section 17(5)(d) was unsustainable. Accordingly, it quashed the adverse orders and show cause notices against the petitioners.

The Revenue challenged the High Court's ruling before the Supreme Court. However, the Apex Court, after hearing both sides, found no merit in the petitions and dismissed them, thereby affirming the Delhi High Court's interpretation that telecom towers are movable property and eligible for ITC.

This two-tier affirmation first by the Delhi High Court and then by the Supreme Court has settled the issue conclusively in favour of taxpayers. The ruling removes uncertainty for the telecom sector and confirms that ITC on telecom towers cannot be denied merely due to their exclusion from the definition of "plant and machinery." It reinforces the jurisprudential principle that business inputs which are movable and marketable should not be artificially treated as immovable for the purpose of restricting credit

High Court clarifies the computation of limitation period in GST appeals after the effect of rectification order

M/s. SPK and Co, V/s. The State Tax Officer

[W.P.(MD)Nos.27787 and 27788 of 2024 and W.M.P.(MD)Nos.23585 and 23586 of 2024 – Madras High Court]

The petitioner challenged the assessment orders dated 07.08.2024 and the subsequent rectification orders dated 12.11.2024 passed by the State Tax Officer, Ramanathapuram District. The petitioner argued that the show cause notice was vague, relying on a prior Madras High Court decision in MD Electric Co. v. State Tax Officer where a similar assessment was quashed. The department contended that since the petitioner had already filed a detailed reply to the notice and participated in proceedings, the challenge on the ground of vagueness was no longer sustainable.

Important Rulings

The petitioner argued that the assessment and rectification orders were invalid, and also raised apprehension that any appeal would be dismissed as time-barred, since the limitation would be reckoned from the date of the original assessment order. The Court observed that while the challenge on vagueness could not be sustained once the petitioner had replied and participated, the real issue was whether limitation for appeal should run from the original order or from the rectification order. It held that when a rectification application is disposed of, the limitation period for filing an appeal must be computed from the date of the rectification order, as the latter merges with the assessment order

The Court clarified that in the petitioner's case, the limitation period for appeal would commence from 12.11.2024 (the date of the rectification order) and not 07.08.2024 (the date of the original assessment). With this liberty, the writ petitions were disposed of, permitting the petitioner to pursue the statutory appellate remedy.

This judgment is significant as it provides much-needed clarity on the reckoning of limitation for filing appeals under GST law when a rectification application is filed and rejected. The Court has rightly protected the assessee's right to appeal by holding that limitation begins from the rectification order, thereby preventing denial of appellate remedy on technical grounds. Tax professionals may rely on this decision in cases where appeals risk rejection as time-barred due to interim rectification proceedings.

Fraudulent ITC availment, Delhi HC upholds validity of consolidated SCN; delay in uploading drc-07 does not affect limitation, writ dismissed with remedy under appeal

RISHI ENTERPRISES THROUGH ITS PROPRIETOR RAJEEV KUMAR GOEL V/s ADDITIONAL COMMISSIONER CENTRAL TAX DELHI NORTH & ANR.

[W.P.(C) 4374/2025 & CM APPL. 20152/2025 – Delhi High Court]

The petitioner, engaged in trading, challenged an order dated 11.02.2025 passed under Section 74 of the CGST Act pursuant to a consolidated SCN alleging wrongful availment of ITC. The proceedings arose from an investigation against M/s D.S. Enterprises, found to be non-existent and engaged in issuing goods-less invoices. The department alleged that petitioner had availed inadmissible ITC of ₹25.94 lakhs on purchases worth ₹1.44 crores from D.S. Enterprises. Penalty equal to tax was also imposed.

The petitioner argued that: (i) a consolidated SCN for multiple financial years was impermissible; (ii) the order and DRC-07 were uploaded beyond the five-year limitation under Section 74(10); (iii) service by email was invalid and not covered under deemed service; and (iv) the invocation of Section 74 was unjustified in the absence of fraud or suppression. Reliance was placed on various precedents.

The department contended that: (i) consolidated notices for multiple years are valid in cases of fraudulent ITC availment, as affirmed in Ambika Traders; (ii) belated uploading of DRC-07 does not render the order time-barred if the signed order was issued within limitation; and (iii) service through email constitutes valid service under Section 169 of the CGST Act.

Important Rulings

The Delhi High Court held that consolidated SCNs are permissible in cases of fraudulent ITC, given the statutory language and nature of such fraud spanning multiple years. The Court clarified that an order is "issued" once signed and communicated, irrespective of the subsequent DRC-07 upload, which is only a summary. Email service was held to be valid under Section 169. The Court found sufficient grounds for invoking Section 74, given the large-scale fraud unearthed. As factual disputes were involved, writ jurisdiction was not appropriate. Accordingly, the writ petition was dismissed, with liberty to file an appeal under Section 107 by 30.09.2025.

This ruling reinforces the judiciary's consistent stance that fraudulent ITC cases warrant strict interpretation in favour of revenue, including permitting consolidated SCNs covering multiple years. Importantly, the Court distinguished between the issuance of an order and uploading of DRC-07, holding that delay in the latter does not vitiate proceedings. For practitioners, the judgment underscores that limitation arguments on technical grounds are unlikely to succeed where fraud is alleged.

Supreme Court rules renewal of provisional attachment under section 83 of CGST Act invalid

KESARI NANDAN MOBILE V/s. OFFICE OF ASSISTANT COMMISSIONER OF STATE TAX (2), ENFORCEMENT DIVISION – 5

[CIVIL APPEAL NO 9543 OF 2025 – Supreme Court]

The petitioner challenged the provisional attachment of its bank accounts under Section 83 of the CGST Act, 2017. The company argued that earlier attachment orders issued in October 2023 had automatically lapsed after one year as per Section 83(2). Despite this, the department issued fresh attachment orders in November and December 2024, describing them as "renewals." The Gujarat High Court upheld the department's action, observing that there was no statutory bar against issuing fresh orders. The appellant approached the Supreme Court against this decision.

The appellant contended that provisional attachment under Section 83 is draconian in nature and cannot be extended or renewed without explicit statutory authority. Unlike the Excise and Customs Acts, which expressly provide for extension, the CGST Act does not permit renewal beyond one year. Reliance was placed on the Kerala High Court's contrary ruling in Ali K. and the Supreme Court's interim order in RHC Global Exports Pvt. Ltd., both holding that attachments lapse after one year. The department, on the other hand, argued that renewal was justified to safeguard revenue interests and prevent dissipation of assets, particularly in cases of fraud.

The Supreme Court held that provisional attachment under Section 83 ceases automatically after one year and cannot be renewed or reissued on the same grounds. Any such action would amount to rewriting the law and undermining the safeguards built into Section 83(2). The Court emphasized that provisional attachment is only a protective measure, not a tool for recovery, and allowing repeated renewals would render the statutory time limit meaningless. Consequently, the fresh attachment orders were quashed, and the appellant's bank accounts were ordered to be de-freezed. However, the Court clarified that the department may continue its investigation and take lawful steps for recovery once a final demand is raised.

Important Rulings

This ruling settles the conflicting interpretations among High Courts by affirming that provisional attachment orders under Section 83 of the CGST Act have a strict life span of one year with no scope for renewal. The judgment underscores the principle that draconian powers must be exercised strictly within statutory limits and cannot be extended by administrative interpretation. For taxpayers, this provides significant relief against prolonged freezing of bank accounts without due process.

Refund rejection on LUT timing set aside by HC; exporter's right to refund upheld

ALKESH TACKER HUF REPRESENTED BY ITS KARTA ALKESH TACKER V/S UNION OF INDIA & ORS.

[W.P.(C) 2486/2025 – Delhi High Court]

The petitioner exported goods between September and December 2021 after purchasing goods on payment of GST. A refund claim of unutilized ITC amounting to ₹10,05,341 was filed in August 2023. The Department issued a Show Cause Notice (SCN) seeking multiple documents, which the petitioner duly submitted. However, the refund was rejected by order dated 14th November 2024, on the ground that the Letter of Undertaking (LUT) was filed on 26th August 2021, while the refund claim covered the period July–December 2021

The petitioner contended that the exports commenced only from 13th September 2021, i.e., after filing of LUT, and thus the refund rejection was baseless. All required documents had been submitted and acknowledged by the department. Conversely, the department argued that the refund could not be granted due to the timing discrepancy of the LUT and suggested remand for fresh hearing.

The Delhi High Court held that exports are zero-rated supplies meant to incentivize exporters and refund claims should not be withheld on hyper-technical grounds. Since the LUT was valid before the date of the first export, rejection of the refund was unsustainable. The Court set aside the refund rejection order and directed that the refund, along with statutory interest, be credited within two weeks. It further ordered that, if delayed beyond 3rd September 2025, the petitioner would be entitled to 12% interest. The Court also directed the Commissioner to issue proper instructions to prevent such hardships to exporters.

This ruling reinforces the principle that refund mechanisms under GST should not be frustrated by procedural or technical objections when substantive compliance exists. The judgment will aid exporters facing arbitrary refund denials, particularly where LUTs are filed before actual exports. It emphasizes that authorities must process refunds in line with the spirit of zero-rated supply provisions rather than adopting restrictive interpretation.

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Important Updates – RBI / FEMA

International Trade Settlement in Indian Rupees (INR)

RBI/2025-2026/71 A.P. (DIR Series) Circular No.08 dated August 05, 2025

To promote growth of global trade with specific focus on exports along with catering to the increasing interest in INR as a currency for undertaking transactions, Reserve Bank of India ("RBI") had decided to initiate international trade settlement in Indian Rupees ('INR") in July 2022. However, before putting in place the additional arrangement / mechanism for invoicing, payment, and settlement of exports / imports in INR, the AD banks were required to obtain prior approval from the Foreign Exchange Department of Reserve Bank of India, Central Office at Mumbai.

On review of the existing system of prior approval, RBI has decided to permit AD banks to open Special Rupee Vostro Accounts ("SRVAs") of overseas correspondent banks without referring to the Reserve Bank for approval.

The step is in the right direction to delegate powers to AD Banks given that sufficient time has elapsed and the Banks are well versed in the mechanism and process of opening such Vostro accounts to facilitate trade in INR.

Effective date: August 05, 2025

Reserve Bank of India (Non-Fund Based Credit Facilities) Directions, 2025

RBI/DOR/2025-26/140 DOR.STR.REC.45/13.07.010/2025-26 dated August 06, 2025

Non-fund based ("NFB") facilities such as guarantees, letters of credit, co-acceptances act like the oil in the machine for commercial and financial requirements by facilitating effective credit intermediation and smooth business transactions. To this effect, the Reserve Bank had issued draft guidelines on NFB facilities for public comments on April 9, 2025 and based on the comments and recommendations, released the Reserve Bank of India (Non-Fund Based Credit Facilities) Directions, 2025 ("Directions").

Applicability:

These Directions are applicable to the Regulated Entities ("REs"), namely:

1) Commercial Banks (including Regional Rural Banks and Local Area Banks);
2) Primary (Urban) Co-operative Banks (UCBs)/ State Co-operative Banks (StCBs)/ Central Co-operative Banks (CCBs);
3) All India Financial Institutions (AIFIs);
4) Non-Banking Financial Companies (NBFCs) including Housing Finance Companies (HFCs) in Middle Layer and above.

The Directions covers various aspects of NFB facilities including definitions, general conditions for issuance of guarantees, letters of credits etc., partial credit enhancement ("PCE") along with guidance on issuance of Electronic Guarantees in terms of operational risk control such as policy and SOP, roles and responsibilities, control measures and other aspects Security Incident and Event Management ("SIEM"), business continuity measures etc.

Effective date: April 01, 2026

Reserve Bank of India (Know Your Customer (KYC)) (2nd Amendment) Directions, 2025

RBI/2025-26/75 DOR.AML.REC.46/14.01.001/2025-26 dated August 14, 2025

Important Updates – RBI / FEMA

Reserve Bank of India had issued Reserve Bank of India (Know Your Customer (KYC)) Directions, 2016 ("Master Direction") in compliance of the provisions of the PML Act, 2002 and the Rules made thereunder and has been amended from time to time. To ensure that the KYC norms are in line with the extant provisions of PML Act, 2002, FEMA, 1999, Payment and Settlement Systems Act, 2007, the RBI has been issuing various directives in form of Circulars and Notifications from time to time. In line of these, the RBI has recently issued the 2nd Amendment in Directions, the salient features of which are:

1) Master Direction has been amended to provide a link to Frequently Asked Questions (FAQs) on KYC.
2) Customer Acceptance Policy ("CAP") is an RBI mandated set of guidelines for onboarding new customers with the Bank. RBI has stated that the Bank developed CAP should not result in denial of banking / financial facility especially to those who are financially or socially disadvantaged. This RBI mandate has now been expanded to include Persons with Disabilities ("PwDs") and such policies should give fair treatment to persons with disabilities for opening bank accounts.
3) Customer due diligence undertaken by third party may be relied upon by REs for customers carrying out one off transaction of an amount equal to or exceeding rupees fifty thousand or any international money transfer operations.
4) Biometric based e-KYC authentication, including Aadhaar Face Authentication can now be done by bank official/business correspondents/business facilitators.
5) Person with special needs will not be excluded from the process of Video customer identification process ("V-CIP") while carrying out liveness check.

Effective date: Immediate effect

Important Updates - MCA

Companies (Indian Accounting Standards) Second Amendment Rules, 2025

Notification dated August 13, 2025

Ministry of Corporate Affairs ("MCA") has notified the Companies (Indian Accounting Standards) Second Amendment Rules, 2025, introducing several important changes across multiple Indian Accounting Standards ("Ind AS"). These amendments are aimed at aligning Indian accounting practices with global developments, improving transparency, and providing clarity in financial reporting.

Key Amendments have been made in (Ind AS) 101 [First-time Adoption of Indian Accounting Standards], (Ind AS) 107 [Financial Instruments], (Ind AS) 108 [Operating Segments], (Ind AS) 109 [Financial Instruments], (Ind AS) 1 [Presentation of Financial Statements], (Ind AS) 7 [Statement of Cash Flows], Revenue, Leases, and Transitional Reliefs across Ind AS 115 (Revenue from Contracts with Customers) and Ind AS 116 (Leases) with international practices, Pillar Two Tax Disclosures under Ind AS 12 (Income Taxes).

Detailed Note explaining the changes and the impact thereof will be shared by the relevant service line experts in due course.

Effective date: August 13, 2025

Important Updates - SEBI

Operational Efficiency in Monitoring of Non-Resident Indians (NRI) Position Limits in Exchange Traded Derivatives Contracts - Ease of Doing Investment

SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/109 dated July 29, 2025

Securities and Exchange Board of India ("SEBI") has brought about improvisations in the monitoring process for Non-Resident Indians ("NRIs") trading in exchange-traded derivatives. Earlier, NRIs were required to notify their Clearing Members and obtain a Custodial Participant ("CP") code from the Exchange, which was used to monitor their position limits. To enhance operational efficiency and ease of doing business, SEBI has now removed this mandatory requirement.

Stock Exchanges and Clearing Corporations have been directed to implement necessary changes, including amending byelaws, rules, SOPs, and FAQs, within the next 30 days from issuance of the Circular. These entities are also now mandated to provide the NRIs with the option to exit the CP code system through email requests within 90 days or later, if so desired.

Effective Date: Immediate

Extension of timeline for implementation of Phase II & III of Nomination Circular dated January 10, 2025 read with Circular dated February 28, 2025

SEBI/HO/OIAE/OIAE_IAD-3/P/CIR/2025/110 dated July 30, 2025

Guidelines pertaining to Nomination Facility were issued vide Circulars in January and February 2025 ("Nomination Circular"), implementation of which was scheduled in three phases. On representation from various stakeholders, certain provisions were deferred to Phase II and Phase III instead of all provisions being implemented from March 1, 2025.

The timelines for the 3-phase implementation, as scheduled and now revised, are being provided in the table below:

Particulars	Timeline as per Nomination Circular (Jan & Feb '25)	Revised Timeline (as per current Circular)
Phase I	March 01, 2025	Already implemented
Phase II	June 01, 2025	August 08, 2025
Phase III	September 01, 2025	December 15, 2025

Effective Date: As per dates provided in the Table above

Transaction charges paid to Mutual Fund Distributors

SEBI/HO/IMD/IMD-PoD-1/P/CIR/2025/115 dated August 08, 2025

SEBI has withdrawn the provisions relating to transaction charges payable by Asset Management Companies ("AMC") to mutual fund distributors. Earlier, under the Master Circular for Mutual Funds (June 27, 2024), Distributors were eligible to receive transaction charges from AMCs for bringing in a minimum subscription of INR 10,000. Based on public and industry consultations, SEBI has decided that these specific transaction/commission charges will no longer apply, as distributors are already entitled to remuneration by AMCs in their capacity as agents.

This change is intended to simplify the framework, avoid duplication of charges and safeguard investor from excessive charges as well as promote healthy development of the securities market.

Effective Date: Immediate

Important Updates - SEBI

Extension of timeline for implementation of SEBI Circular 'Margin obligations to be given by way of pledge/Re-pledge in the Depository System' dated June 03, 2025

SEBI/HO/MIRSD/MIRSD-PoD/P/CIR/2025/118 dated August 18, 2025

SEBI vide its Circular dated June 03, 2025, had introduced changes to the framework of margin obligations through pledge / re-pledge in the depository system. An interesting observation by SEBI was that after the brokers invoked client securities pledged as margin, these securities often remained unsold in brokers' accounts, defeating the very purpose of invocation. Furthermore, brokers faced operational challenges where the clients sold pledged securities, as they had to first un-pledge them before delivery and then deliver the same to Clearing Corporation by the broker.

To address these issues and improve efficiency, SEBI has decided to automate the process by enabling functionalities such as "pledge release for early pay-in" and "invocation cum redemption" for mutual fund units. This ensures automatic release, blocking for pay-in, and redemption without requiring physical or electronic instructions from clients or brokers.

The originally scheduled effective date for implementation of Margin obligations of September 05, 2025, stands deferred to October 10, 2025.

Effective Date: October 10, 2025

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Abbreviations

Back

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

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
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
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