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#GTBharat SHAPING VIBRANT INDIA

# Monthly Tax Bulletin

## February 2026

Grant Thornton Bharat is pleased to present the February 2026 edition of the Tax Bulletin, reflecting the reform-centric vision of the Union Budget 2026–27 of building a Viksit Bharat, where the evolving jurisprudence and regulatory changes across direct taxes, FEMA, GST and customs, as covered in this edition, work in tandem to strengthen tax certainty, reinforce compliance, enable seamless cross-border trade and capital flows, and modernise India's indirect tax and border administration to support competitiveness, resilience and sustained economic growth.

On the direct tax front, the Supreme Court's landmark ruling in the Tiger Global case decisively recalibrates treaty jurisprudence. The court has held that a Tax Residency Certificate is merely an eligibility requirement, not conclusive proof of treaty entitlement. Emphasising substance over form, the ruling affirms that absolute control, commercial substance, and the timing of tax benefits are critical, and that both GAAR and judicial anti-avoidance principles may operate even in respect of grandfathered investments.

In addition, the RBI has overhauled the regulatory architecture under FEMA by notifying the Foreign Exchange Management (Guarantees) Regulations, 2026, and the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026, introducing more precise definitions, a structured reporting regime with late-fee framework, rationalised guarantee permissions, extended export realisation timelines, flexibility for third-party receipts and contract-based import payments, while consolidating compliance to support ease of doing business and trade facilitation.

Under GST, the Supreme Court has clarified that the refund of the mandatory appellate pre-deposit flows exclusively from the appellate framework and cannot be subject to limitation under the general refund provisions. The ruling reinforces the certainty of cash flow and confirms the entitlement to interest on such refunds.

Lastly, on the Customs front, the Supreme Court has reaffirmed that only goods that functionally participate in the operation of a machine can qualify as its "parts", rejecting the classification of mere supporting structures as machinery components.

We trust this edition will assist you in navigating these developments with clarity and confidence, as India continues to strengthen its legal and regulatory foundations for sustainable growth and global integration.

**Riaz Thingna**
**Partner, Tax**
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# A.
# Key developments under direct tax laws

## Central Board of Direct Taxes (CBDT) Circular/Notification:

- **Organisation for Economic Co-operation and Development (OECD) - Side by Side Package under Pillar Two[1]:**

  The OECD /G20 Inclusive Framework has released the **Side-by-Side (SbS) Package.** The key points are as follows:

  **SbS system:**

  - **SbS system safe harbour:** The same has been introduced. It is a safe harbour for multinational enterprise (MNE) groups headquartered in jurisdictions with qualifying domestic and worldwide minimum tax regimes (e.g., the U.S.), exempting them from the Income Inclusion Rule and the Undertaxed Profits Rule in other implementing jurisdictions.

  **Simplification measures:**

  - **Simplified Effective Tax Rate (ETR) Safe Harbour:** This includes a permanent safe harbour designed to reduce compliance burden for MNEs in low-risk jurisdictions. It allows MNEs to use simplified calculations based on their existing financial accounting data to determine if a top-up tax liability exists, rather than performing complete global anti-base erosion computations.
  - **Extension of transitional Country-by-Country Reporting (CbCR) safe harbour:** Existing transitional CbCR Safe Harbour rules have been extended for one year to facilitate a smooth transition to the simplified ETR Safe Harbour.

  **Substance-based tax incentive safe harbour:**

  - Certain Qualified Tax Incentives (QTI) linked to real economic substance, i.e., expenditure-based or production-based (e.g., payroll, tangible assets), are allowed to be included in the adjusted covered taxes for the computation of ETR.
  - QTIs shall have a capping based on the level of substance in the jurisdiction, i.e., equal to the greater of 5.5% of payroll costs or depreciation of tangible assets, or 1% of the carrying value of tangible assets.

  **Applicability dates:**

  - **SbS Safe Harbour:** Effective **1 January 2026.**
  - **Simplified ETR Safe Harbour:** Fiscal years commencing on or after 31 December 2026 (optional early adoption for fiscal years commencing on or after 31 December 2025 under certain conditions).

- **CBDT released time series data[2]:**

  The CBDT has released time series data covering the Financial Years (FYs) 2000-01 to 2024-25. Actual figures are based on internal reporting/management information system of the Income Tax Department, or figures reported by the Controller General of Accounts, or data published by other government agencies. The key highlights from the data are as follows:

  **Direct tax collection:**

  - The total direct tax collection for FY 2024-25 stood at INR 22.26 lakh cr (provisional), compared with INR 9.47 lakh cr in FY 2020-21.
  - This marks a significant increase of around 135% from 2020-21.

  **Direct tax revenue to total tax revenue:**

  - Out of the total tax revenue of INR 37.85 lakh cr (provisional) in FY 2024-25, the direct tax collection accounted for 58.81%, indicating a substantial contribution to overall revenue.
  - This is a sharp rise from 46.84% in FY 2020-21, when direct taxes were INR 9.47 lakh cr out of total taxes of INR 20.21 lakh cr.

  **Direct tax to Gross Domestic Product (GDP) ratio:**

  - The ratio improved to 6.73% in FY 2024-25, compared to 4.78% in FY 2020-21.

  **Compliance and taxpayer base:**

  - A total of 9.18 cr income-tax returns (ITR) were filed in FY 2024-25, up from 7.38 cr ITRs in FY 2020-21.
  - The number of people filing returns reached 8.56 cr in FY 2024-25, compared to 6.72 cr in FY 2020-21.
  - Individual filers grew from 6.31 cr to 8.08 cr during this period.
  - The total taxpayer base in Assessment Year (AY) 2024-25 stood at 12.13 cr, up from 8.22 cr in AY 2020-21, an increase of nearly 47% over four years.

[1] Released on 5 January 2026
[2] Released on 21 November 2025

- **Department releases tax collection data for FY 2025-26[3]:**

  The Income Tax Department has released data on direct tax collections (Corporate tax, non-corporate tax, securities transaction tax, and other taxes) and advance tax collections (Corporate tax and non-corporate tax) for FY 2025-26, as on 17 December 2025. Key highlights are as follows:

  - The gross direct tax collection stood at approximately. INR 20.01 lakh cr with growth of 4.16%.
  - Decline in tax refunds by 13.52% compared to last year, and the amount of refunds issued was approximately INR 2.97 lakh cr.
  - The net collections stood at around INR 17.04 lakh cr with a growth of 8%.
  - The advance tax collection stood at approximately. INR 7.88 lakh cr with a growth of 4.27%.

- **CBDT requests identified taxpayers to voluntarily rectify errors under its non-intrusive usage of data to Guide and Enable (NUDGE) initiative[4]:**

  The CBDT has initiated an effort to encourage taxpayers to voluntarily review deduction/exemption claims identified as potentially ineligible through risk analytics. This comes against the backdrop of the observation that certain taxpayers have claimed ineligible refunds by availing deductions/ exemptions to which they were not entitled, resulting in an understatement of income.

**Key highlights of the press release are as follows:**

- Under the risk management framework and advanced data analytics, cases for AY 2025-26 have been identified, including instances of bogus donations to registered unrecognised political parties and other ineligible deductions/exemptions claimed in ITRs. It is also observed that incorrect or invalid PANs of donees and errors in the extent of deductions/exemptions have been quoted.
- Taxpayers identified under the NUDGE campaign are being requested via SMS/email to correct such errors, in view of the due date for filing revised ITRs by 31 December 2025, reflecting a trust-first approach. The campaign leverages data analytics to provide a transparent, non-intrusive, and taxpayer-centric compliance environment, with an emphasis on guidance and voluntary compliance.
- During FY 2025-26, more than 21 lakh taxpayers have updated their ITRs for AYs 2021 - 22 to 2024-25, paying over INR 2,500 cr. In addition, more than 15 lakh ITRs have been revised for AY 2025-26.
- Concerned taxpayers are advised to review ITRs, verify the correctness of deduction/exemption claims, and revise returns by 31 December 2025 to avoid further enquiries.
- Taxpayers whose deduction or exemption claims are genuine and correctly made in accordance with the law are not required to take further action.
- Taxpayers who do not avail this opportunity may still file an updated return from 1 January 2026, subject to the payment of additional tax liability.


[3] Released on 17 December 2025
[4] Press Release dated 23 December 2025

- **FAQs released under Section 80G of the Income-tax Act, 1961 (IT Act) as part of the NUDGE campaign[5]:**

  The Income Tax Department has released FAQs on Section 80G of the IT Act as part of its NUDGE campaign. The document briefly covers the structure of Section 80G, the categories and limits of eligible donations, the conditions applicable to institutions, donor-donatee requirements, and ITR filing-related compliances for claiming a deduction under this section.

  The key aspects covered by the FAQs are as follows:

  **FAQs related to Section 80G:**

  - Provide a broad structure of Section 80G of the IT Act.
  - Cover the differences between key terms, such as donations vs. deductions and donor vs. donee.
  - Eligibility of the taxpayer to claim a deduction.
  - Types of donations allowed under the section fall into four categories, with examples of donations falling under each.
  - A donor can know the deduction category of their donation under Section 80G of the IT Act.
  - Eligibility for cash donations and the deduction claimed once under Section 80G are not allowed under any other provisions of the IT Act.
  - Verification of deduction claim in ITR.
  - No deduction under the new tax regime can be claimed.

  **FAQs related to filing of Schedule 80G in ITR:**

  - Include the information and documents required for claiming the deduction in the ITR.
  - Carry-forward the unclaimed deduction amount to next year.
  - The donor must confirm and verify the donee's details to claim the deduction.
  - Meaning and computation of the adjusted gross total income.
  - Detailed steps to calculate deduction under Section 80G of the IT Act.

## Judicial developments:

- **The Bombay High Court (HC) grants an interim stay against the directions issued by the General Anti-Avoidance Rules (GAAR) approving panel in the case of Hinduja Global Solutions[6]:**

  **Brief facts of the case:**

  - The taxpayer (a listed company) divested its healthcare vertical, generating capital gains, before undertaking the subsequent group restructuring.
  - Thereafter, as part of a group restructuring, the taxpayer acquired the digital, media, and communication business of its group entity, Nxt Digital Limited (a related party), which was hived off to the taxpayer pursuant to a scheme sanctioned by the National Company Law Tribunal (NCLT).
  - The related party had brought forward losses and unabsorbed depreciation, which, upon implementation of the scheme, were claimed to be transferred with the digital, media, and communication undertaking and set off against the taxpayer's income (including capital gains), resulting in a reduced tax liability.
  - During assessment proceedings, the tax officer proposed invoking Chapter X-A (GAAR) of the IT Act, alleging that the restructuring constituted an Impermissible Avoidance Arrangement (IAA) aimed at obtaining a tax benefit and lacked commercial substance.
  - The matter was referred to the approving panel under Section 144BA of the IT Act. The taxpayer contended that the restructuring was commercially driven, within the demerger provisions, and duly sanctioned/approved by the NCLT and other regulators after notice to the Income Tax department, which did not find any objection to the scheme.
  - Thereafter, the approving panel issued directions treating the arrangement as an IAA under Chapter X-A of the IT Act and directed the tax officer to disregard the set-off of the transferred losses/unabsorbed depreciation while completing the assessment for the relevant years.
  - Aggrieved, the taxpayer filed a writ petition before the Bombay HC, challenging the impugned reference under Section 144BA and the approving panel's directions and sought consequential reliefs (including interim protection) in relation to the assessment proceedings for relevant AYs.

[5] Released on 18 December 2025
[6] Hinduja Global Solutions Limited vs. PCIT (W.P. No. 4867 of 2025)

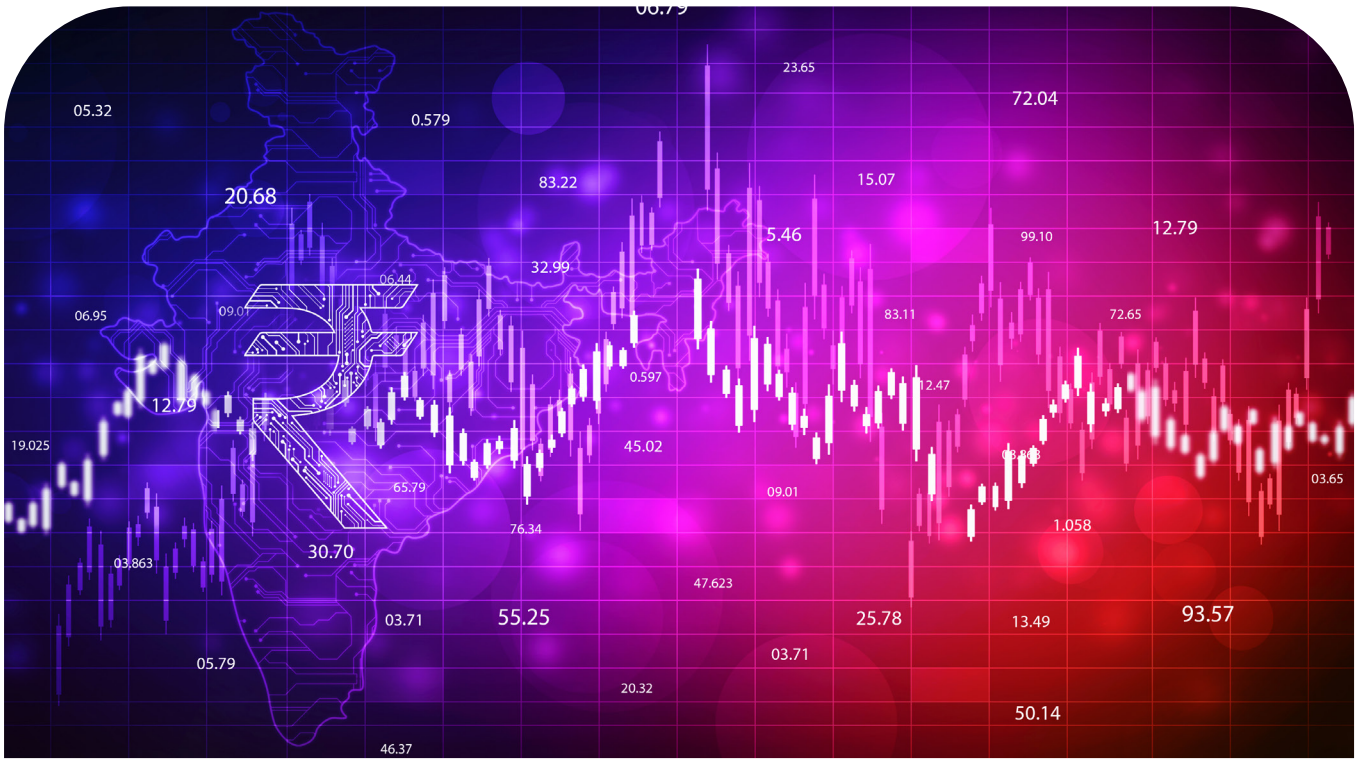
**Before the Bombay HC:**

- The writ petition was considered to raise arguable questions requiring further consideration. In addition, the statute provides no appellate remedy to challenge either the reference made by the tax officer or the directions issued by the approving panel invoking Chapter X-A (GAAR) of the IT Act.
- A prima facie case for interim protection was made out in the context of an NCLT-sanctioned demerger, in which the digital, media, and communication undertaking of the related party was hived off to the taxpayer. The HC also recorded that the NCLT had issued a notice to the income-tax authorities before sanction and had not raised any objection to the demerger.
- The HC considered the taxpayer's reliance on Section 72A(4) of the IT Act, which permits the transfer of accumulated loss and unabsorbed depreciation of the demerged undertaking, while considering the interim relief request.
- Interim relief was granted by staying the operation and implementation of the impugned reference and approving panel directions and staying the assessment proceedings for AYs 2022-23 and 2023-24 pending disposal of the writ petition. Further hearing of the petition is pending.

- **Supreme Court (SC) holds that a Tax Residency Certificate (TRC) is not a sufficient condition to claim tax treaty benefits; substance over form being the key deciding factor:**

**Brief facts of the case:**

- The taxpayers (Tiger Global International II Holdings, Tiger Global International III Holdings, and Tiger Global International IV Holdings) were private companies limited by shares, incorporated under the laws of Mauritius. They were set up to undertake investment activities with the intention of earning long-term capital appreciation and investment income.
- They were regulated by the Financial Services Commission (FSC) in Mauritius and held a Category I Global Business License under Section 72(6) of the Financial Services Act, 2007, enacted by the Parliament of Mauritius.
- The taxpayers' business was wholly controlled and managed by their Board of Directors (BOD) in Mauritius. They claim to have satisfied all the FSC compliance requirements laid down in the Guide to Global Business for establishing commercial substance. Their BOD comprised two Mauritian Directors and one U.S. resident Director. The principal bank account, accounting records, and audited financials were maintained in Mauritius.




[7] AAR vs. Tiger Global International II & Ors, Civil Appeal No. 262 OF 2026 (Arising out of SLP (C) No. 2640 OF 2025

- The taxpayers held a valid TRC issued by the Mauritius Revenue Authority.
- The taxpayers engaged Tiger Global Management LLC USA (TGM) for investment-related services. All such services were subject to review and final approval by the BOD of taxpayers. TGM had no right to contract on behalf of, or bind the taxpayers, or take any decisions on their behalf, without the approval of the BOD of the taxpayers. They also held valid PANs issued by the Indian income-tax authorities.
- The taxpayers acquired shares in Flipkart Private Limited, a Singapore-incorporated company (Flipkart Singapore). These acquisitions were made between October 2011 and April 2015. Flipkart Singapore derived substantial value from assets located in India. The taxpayers transferred their shareholdings in Flipkart Singapore to Fit Holdings S.A.R.L., a Luxembourg entity, as part of Walmart Inc.'s broader acquisition of Flipkart.
- The taxpayers approached the Indian tax authorities to grant a 'nil' withholding tax certificate under Section 197 of the IT Act claiming tax treaty exemption/grandfathering on the basis that the shares were acquired before 1 April 2017, supported by their TRCs and the Double Taxation Avoidance Agreement (DTAA) under Article 13 of the amended India-Mauritius DTAA (wherein shares acquired before 1 April 2017 were provided to be grandfathered, and hence, the gains arising on transfer of such shares will be exempt from tax).
- The tax authorities rejected the aforesaid application, inter alia, on the basis that the taxpayers did not have independent decision-making power to purchase and sell the said shares and, therefore, were not entitled to claim the DTAA benefits.
- Accordingly, withholding certificates were issued prescribing withholding rates of 6.05% (Tiger Global International II Holdings, Mauritius), 6.92% (Tiger Global International III Holdings, Mauritius), and 8.47% (Tiger Global International IV Holdings, Mauritius) in respect of the sale of shares by the taxpayers.
- The taxpayers then filed applications before the Authority for Advance Rulings (AAR) under Section 245Q(1) of the IT Act. They sought a ruling on whether the gains arising from the sale of Flipkart Singapore's shares to Fit Holdings S.A.R.L. were taxable in India under the IT Act, read with the India-Mauritius DTAA.
- The AAR, after considering the material gathered by the assessing officer, concluded that the transaction was prima facie designed to avoid income tax. Accordingly, the application was rejected as being hit by the threshold jurisdictional bar to maintainability under proviso (iii) to Section 245R(2) of the IT Act.
- The AAR had also recorded a prima facie view on "effective control and management" being outside Mauritius (in the U.S.), which formed part of the Revenue's case on tax treaty entitlement and avoidance.
- Thereafter, the taxpayers approached the HC by filing writ petitions challenging the AAR's order. The HC allowed the writ petitions. It quashed the AAR's order and held that the taxpayers were entitled to the benefits of the DTAA and that the gains would not be chargeable to tax in India. Aggrieved by this decision, the Revenue filed appeals before the SC.

**Before the SC:**

**Indirect transfer and Articles 13:**

- The court examined Article 13 of the DTAA and explained how taxing rights over capital gains are allocated under its various clauses. It noted that Article 13(3A), inserted in 2016, provides source-based taxation in specified cases for shares acquired on or after 1 April 2017, while transactions not falling within Article 13(1)–(3A) are tested under the residuary rule under Article 13(4).
- The SC observed that for a taxpayer to claim the benefit of Article 13(4), it must not only establish residence under Article 4 but also show that the resident of the other contracting state directly holds the movable property forming the subject-matter of the gain. It emphasised that an indirect sale of shares would not, at the threshold, fall within the treaty protection contemplated under Article 13(4) of the tax treaty.
- The court also observed that the CBDT's circulars cannot override later statutory amendments. It specifically noted that Circular 789 / earlier circular regime would not aid taxpayers in the post-amendment context, and that tax treaty relief cannot be claimed solely on the basis of a TRC.

**AAR's threshold jurisdictional bar:**

- Regarding the AAR's rejection of the applications, the court observed that the AAR is empowered to refuse admission where an arrangement appears prima facie designed to avoid income tax. It stated that this jurisdictional bar under proviso (iii) to Section 245R(2) of the IT Act is substantive, and once attracted, the AAR is not required to determine the merits of the issue.
- The court was of the view that the Revenue is entitled to examine where real control and management lie before extending tax treaty protection. Having explained these principles, the court concluded that the AAR had correctly formed a prima facie view that the arrangement was designed to avoid tax and had rightly refused to admit the applications.

**TRC and substance requirement:**

- The court clarified that a TRC only performs a limited evidentiary function. While it is necessary for seeking tax treaty relief, it does not, by itself, conclusively establish tax treaty entitlement. It treated TRC as an 'eligibility condition' under Section 90(4) of the IT Act, and not as conclusive/binding proof of residence for purposes of treaty protection.
- In addition to TRC, Section 90(5) of the IT Act requires the non-resident to furnish other prescribed particulars.

**Anti-avoidance rules:**

- The court noted that there was no dispute that GAAR applies to the AY in which the transaction occurred. It held that GAAR may apply where the arrangement is an IAA, including where the tax benefit arises in GAAR's operative period.
- The court stressed that the relevant enquiry is not merely the date of acquisition, but the timing of the tax benefit or arrangement that results in it. Investments made before the cut-off date of 1 April 2017 are grandfathered only in respect of income from their transfer, but this protection does not extend to any tax benefit obtained on or after 1 April 2017.
- The SC's reasoning recognises that, in addition to GAAR, judicial anti-avoidance principles may also be invoked where arrangements lack real substance, and treaty protection cannot be used to shield a prima facie tax-avoidance arrangement. The court reaffirmed that Indian jurisprudence permits the disregard of structures that lack real commercial substance.

**SC's verdict:**

- The court held that once it is found as a fact that the unlisted equity shares (on the sale of which the taxpayers derived capital gains) were transferred pursuant to an arrangement impermissible under law, the taxpayers are not entitled to claim exemption under the DTAA.
- The SC set aside the Delhi HC's judgement and held that the capital gains arising from transfers effected after the cut-off date, i.e., 1 April 2017, are taxable in India under the IT Act read with the DTAA.

# B.
# Key developments under transfer pricing law

## Judicial developments:

- **ITAT holds that resident AE cannot be treated as a third party under Section 92B(2)[8]:** The assessee, engaged in providing back-office support services to its holding company, had transferred its Indian technical management support business to a resident AE. The DRP treated this divestment as a deemed international transaction on the premise that non-resident group companies ultimately controlled both entities and that the transfer formed part of a larger group-level restructuring. The Tribunal noted that the business transfer agreement was executed solely between two resident entities, and the Revenue had not shown that the assessee transacted with any non-AE third party, a foundational requirement under Section 92B(1) and the deeming rule in Section 92B(2). The ITAT rejected the DRP's attempt to treat the resident AE as a "person other than an AE" in substance, reiterating that statutory language cannot be rewritten to expand jurisdiction. It further held that neither group-level strategy nor Form 3CEB disclosure can override the clear statutory condition that a deemed international transaction must involve a non-AE counterparty.
- **ITAT invalidates adjustment recommended by TPO, having no jurisdiction over the assessee before passing of the order u/s.127[9]:** The assessee, engaged in providing engineering design and related services, was initially assessed in Bangalore and later sought transfer of jurisdiction to Chennai upon shifting its registered office. Although jurisdiction was formally transferred only by a transfer order passed under Section 127, the TP adjustment in the assessment order dated subsequent to that transfer order was based on the TPO order issued earlier by the Chennai TPO (prior to the change of jurisdiction). The Tribunal held that the Chennai AO acquired jurisdiction only upon the Section 127 transfer. Until then, the Chennai TPO had no authority to act, as a TPO's mandate flows solely from a valid reference by the jurisdictional AO. It rejected the Revenue's contention that the assessee's relocation or request for transfer could vest jurisdiction, reiterating that an order under Section 127 is a mandatory pre-condition. As the TPO's recommendations lacked legal sanctity, the consequent TP adjustment was unsustainable.
- **ITAT deletes TP-adjustment w.r.t interest on debentures, considers assessee's suo-moto disallowance u/s.94B[10]:** The assessee, engaged in renting and operating industrial park premises, had suo-moto disallowed interest on its non-convertible debentures under Section 94B while computing business income. Despite this, the AO made a TP adjustment by disallowing the same interest again. The Tribunal noted that the assessee had already added back the interest and paid tax on it, and any further disallowance would amount to impermissible double taxation. It rejected the Revenue's contention that the assessee might have carried forward the amount under Section 94B(4), observing from the audit report and return that no such deduction or carry forward had been claimed. Holding the TP adjustment was unsustainable, the ITAT directed its deletion.

[8] Maersk Tankers India Private Limited [ITA No. 8376/Mum/2025]
[9] Andritz Technologies Private Limited [IT(TP)A No.119/Chny/2024]
[10] Noida Towers Private Limited [ITA No.4199/Del/2024]

# C.
# Key developments under FEMA

## Legislative developments:

- **RBI notifies Foreign Exchange Management (Guarantees) Regulations, 2026:**

  The Reserve Bank of India (RBI) has issued the Foreign Exchange Management (Guarantees) Regulations, 2026 (New regulations), in supersession of Foreign Exchange Management (Guarantees) Regulations, 2000 ('Erstwhile regulations') vide **Notification No. FEMA 8(R)/2026-RB** dated 6 January 2026, published on 12 January 2026. In addition, the RBI, vide **A.P. (DIR Series) Circular No. 19** ('Circular') dated 12 January 2026, has directed all authorised Dealer Category-I banks to follow the new regulations while facilitating such guarantees and to ensure compliance with regulatory guidelines issued by the Department of Regulation. The key highlights of the new regulations are discussed below–

  **Definitions introduced:**

  The new regulations define the term creditor, guarantee (including counter-guarantee), principal debtor, surety, and the International Financial Services Centre (IFSC).

  **Exemptions:**

  The new regulations prohibit persons resident in India from being parties to guarantees involving non-residents, except in cases of:

  - Guarantees issued by a branch of an AD bank outside India or in an IFSC.
  - Irrevocable Payment Commitment (IPC) by custodian banks for foreign portfolio investors
  - Guarantees issued under the Overseas Investment Regulations, 2022.

  **Acting as surety or principal debtor:**

  Residents may act as surety or principal debtor, subject to conditions that the underlying transaction is permitted and borrowing and lending eligibility norms are met, with defined exceptions.

  **Permission to obtain guarantee as creditor:**

  A resident creditor can obtain a guarantee from non-residents if the underlying transaction is permitted.

  **Reporting requirements:**

  The new regulations mandate the reporting of a guarantee by the responsible party: the surety (if resident in India), the principal debtor (if the surety is a non-resident), or the creditor (if both surety and debtor are non-residents or if the creditor arranged the guarantee).

  The reporting of guarantees (issued, modified, or invoked) must be done quarterly to the AD bank in Form GRN within 15 days of quarter-end. The AD bank will have to submit the same to the RBI within 30 days from the end of the quarter.

  **Late submission fee:**

  Introduction of late submission fees for delayed or inaccurate reporting.

  **Discontinuance:**

  - Quarterly reporting of trade credit guarantees is discontinued from the quarter ending March 2026.
  - Multiple A.P. (DIR Series) circulars are superseded, except for actions taken before the date of supersession.
  - Amendments applied to guarantee-related provisions in several FEMA Master Directions, such as external commercial borrowings, trade credits, export/import of goods and services, other remittances, and FEMA reporting.

  The New Regulations are effective from the date of its publication in the Official Gazette, i.e., 6 January 2026

- **RBI issues Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026:**
  - The RBI has issued the Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2026 (New Regulations) vide **Notification No. FEMA 23(R)/2026-RB** dated 13 January 2026, which replaces the erstwhile regulations and consolidates the regulatory framework governing exports and imports of goods and services. Effective 1 October 2026, the new regulations set out comprehensive requirements for declarations, mechanisms for receipt and payment, timelines for realisation and repatriation of export proceeds, and payment obligations for imports.
  - The new regulations seek to improve the ease of doing business while reinforcing monitoring mechanisms, simplifying operational and reporting requirements, and enhancing accountability in cross-border trade. The key proposed changes are as follows:
  - The new regulations formally define the import and export of services, which were not previously defined.
  - The export realisation period is extended to 15 months for goods and services, and, as per the contract, to 15 months for project exports.
  - AD banks may allow value reductions for valid reasons, and the earlier requirement for post-facto Board approval (for reductions beyond 25%) has been removed.
  - AD banks may permit third-party receipts or payments for exports/imports, provided the reasons are satisfactorily explained.
  - Exporters must submit an EDF for the full export value; service exporters may use a single EDF for monthly invoices up to INR 1 lakh, and AD banks may accept delayed submissions when justified.
  - The time period for making import payments is now based on the terms of the contract, whereas under the old regulations, the time limit was 6 months from the date of shipment.

# D.
# Key developments under GST law

## Legislative developments:

- **Decoding indirect tax announcements – Union Budget 2026:**

  (Please click here to refer to the booklet)
- **GSTAT grants temporary procedural relaxation in the scrutiny of appeals during the initial phase of portal operations:** To facilitate a smooth transition during the initial operational phase of the GSTAT portal, the Tribunal has issued an order directing the Registries of all benches to adopt a liberal and facilitative approach while scrutinising appeals during the initial six months.

  (Please click here to read the order)

## Goods and Services Tax Network Advisory:

- **RSP-based valuation for notified tobacco products, including reporting guidance for e-invoice, e-way bill, and GSTR-1/1A:** To operationalise the RSP-based valuation mechanism notified for specified tobacco and tobacco-related goods with effect from 1 February 2026, the GSTN has issued an advisory prescribing the manner of reporting taxable value and tax in e-invoice, e-way bill, and GSTR-1/GSTR-1A, considering that the existing GST systems are designed on a transaction-value model.

  The advisory has clarified that the GST liability for the notified goods (classifiable under HSN 2106, 2401, 2402, 2403, and 2404) is required to be computed strictly with reference to the RSP using the prescribed statutory formula. Taxpayers are required to address system validations to report the net commercial sale value as the taxable value and manually report the tax computed on the basis of RSP, with the total invoice value reported as the sum of the net sale value and such RSP-based tax.

  (Please click here to refer to the advisory)

- **Revised system-based interest computation on delayed tax payment under Rule 88B of CGST Rules:** The GSTN has issued an advisory clarifying that, with effect from the January 2026 tax period, the interest on the delayed payment of tax under Rule 88B of the CGST Rules will be auto-computed on a system-driven basis in Table 5.1 of GSTR-3B. Such computation will be made after reducing the minimum cash balance available in the electronic cash ledger from the due date of the return till the date of actual payment. The auto-populated interest amount will not be editable downwards and may be edited only upwards based on the taxpayer's self-assessment.

  (Please click here to refer to the advisory)

## Judicial developments:

- **SC clarifies that the refund of appellate pre-deposit is governed under Section 107(6) and not by general refund provisions under Section 54[11]:**

  The SC has held that the refund of a mandatory pre-deposit made for filing an appeal under GST is governed by Section 107(6), read with Section 115 of the GST law, and not by the general refund provisions under Section 54. The court clarified that the statutory appellate framework itself provides an independent mechanism for the grant of a refund of such pre-deposit and, therefore, the limitation prescribed under Section 54 cannot be invoked to deny the refund.

  While affirming the assessee's entitlement to a refund along with interest, the court observed that the Jharkhand HC's interpretation of Section 54 was unnecessary, as the refund of pre-deposit flows directly from the appellate provisions. The Revenue has accordingly been directed to process and grant the refund, with applicable interest.

- **Same-month distribution of ISD credit is not mandatory – Telangana HC[12]:**

  Telangana HC has held that Rule 39(1)(a) of the CGST Rules, to the extent it mandates that the ITC available with an ISD must be distributed in the same month, is ultra vires Section 20 of the CGST Act as it stood before 1 April 2025. The court observed that Section 20 prescribes only the manner of distribution and does not permit the imposition of any time limit. Therefore, by introducing a mandatory same-month requirement, the rule extends beyond the scope of the parent statute.

  The HC further held that once ITC is lawfully availed, it crystallises into a vested statutory right that cannot be curtailed by delegated legislation in the absence of express statutory authority. Accordingly, Rule 39(1)(a) was struck down to the said extent, and the SCN and all consequential proceedings were quashed.

- **Bombay HC quashes GST demand on assignment of long-term leasehold rights, affirms Gujarat HC's judgement[13]:**

  The Bombay HC has held that the assignment of leasehold rights in an industrial plot allotted by the Maharashtra Industrial Development Corporation (MIDC), with prior approval and on payment of the prescribed premium, does not amount to a taxable supply under GST. The court observed that an assignment of leasehold rights is distinct from a lease or sub-lease and results in the extinguishment of the assignor's rights, with the assignee stepping into the shoes of the original lessee. In substance, the transaction constitutes a transfer of benefits arising out of immovable property and cannot be characterised as a supply of services.

  The HC further held that the statutory requirement that a transaction must be undertaken in the course or furtherance of business was not satisfied on the facts of the case. Relying upon the Gujarat HC's decision in the case of the Gujarat Chamber of Commerce and Industry[14], and in the absence of any contrary ruling, the court held that the said judgement would govern the issue in Maharashtra as well. Accordingly, the show cause notice (SCN) and all consequential proceedings were held to be without jurisdiction and bad in law.

[11] BLA Infrastructure Private Limited (Special Leave Petition (Civil) Diary No. 56452/2025)
[12] BirlaNu Limited ((W.P. No. 14564 of 2024)
[13] Aerocom Cushions Private Limited (Writ Petition No. 2145 OF 2025)
[14] (2025) 170 taxmann.com 251

# E.

# Key developments under erstwhile indirect tax laws, Customs, Foreign Trade Policy, FTA, Incentive schemes, SEZ laws, etc.

## Legislative/other developments:

- **CBIC operationalises revised deferred duty payment framework for AEO[15]:** In line with the Finance Bill, 2026, proposal to strengthen trust-based customs facilitation, the CBIC has notified amendments to the Deferred Payment of Import Duty Rules, 2016, to extend the deferred payment window for import duty from 15 days to 30 days for eligible importers, with effect from **1 March 2026.** The facility will now operate on a uniform monthly payment cycle, under which duty in respect of bills of entry returned for payment during a month (other than March) will be payable by the 1st day of the succeeding month, and for the bills of entry returned during March, by 31 March of the same financial year.

  Further, a new category of eligible importers, namely "Eligible Manufacturer Importer", has been introduced for availing the deferred payment of import duty facility, in addition to AEO Tier-2, AEO Tier-3, and authorised public undertakings. This newly introduced category will be eligible to avail the deferred payment facility up to **31 March 2028,** thereby expanding the scope of the scheme to support manufacturing-led imports and supply chains.

- **U.S. and India announce interim trade agreement:** On 6 February 2026, India and the United States announced a framework for an interim trade agreement, marking a significant step towards a comprehensive Bilateral Trade Agreement (BTA). The framework is aimed at reciprocal, balanced trade, enhanced market access, and stronger alignment of supply chains with economic security.

  Key elements include tariff reductions and eliminations across a wide range of goods, commitments to address long-standing non-tariff barriers, preferential market access with defined rules of origin, and cooperation on standards, conformity assessment, and digital trade. The U.S. has also indicated phased tariff relief for select Indian exports, subject to the successful conclusion of the interim agreement.

  The announcement is accompanied by the withdrawal of the additional 25% penalty on imports from India, effective 7 February 2026, reinforcing the strategic and economic alignment between the two countries. This brings down the reciprocal tariffs on India to 25% as of date. This will be further reduced to 18%, subject to the successful conclusion of the agreement.

  Collectively, these measures signal a shift from episodic tariff actions to a more structured, medium- to long-term trade engagement framework, with potential implications for customs duty incidence, supply-chain planning, and market access strategies for businesses operating across both jurisdictions.

  (Please click here to refer to the detailed PoV)

- **India–EU Free Trade Agreement concluded at 16th India–EU Summit:** India and the European Union (EU) concluded a comprehensive and strategic Free Trade Agreement at the 16th India–EU Summit on 27 January 2026, creating one of the world's largest bilateral trade frameworks covering nearly 25% of global GDP.

  The agreement provides preferential EU market access for over 99.5% of Indian exports by value, with immediate or phased tariff elimination across key labour-intensive sectors, including textiles and apparel, leather and footwear, marine products, gems and jewellery, engineering goods, and automobiles. In comparison, India has offered tariff liberalisation on over 92% of its tariff lines covering about 97.5% of the EU exports, subject to calibrated phase-outs and limited tariff-rate quotas for sensitive products, including a carefully structured approach for the automobile sector.

  Beyond goods, the agreement delivers expanded, commercially meaningful market access for services, including IT and IT-enabled services, professional, education, financial, construction, R&D, and business services, supported by a facilitative mobility framework for skilled professionals and contractual service suppliers. It further establishes forward-looking cooperation on customs facilitation, regulatory transparency, SPS and TBT measures, carbon border measures, and emerging areas, such as clean technologies, semiconductors, and artificial intelligence. It is expected to materially enhance India's export competitiveness, strengthen MSME participation, deepen integration into European value chains, and provide a strategic hedge against rising global trade protectionism.

  (Please click here to refer to the detailed alert)

[15] vide Notification No. 13/2026-Customs (N.T.) Notification No. 12/2026-Customs (N.T.) and Circular 3/2026 dated 1 February 2026

## Judicial developments:

- **SC rules that functional participation in operation is essential for an item to qualify as a 'part' of a machine; mere support not adequate[16]:** The SC has allowed the Revenue's appeal, setting aside the CESTAT's order and holding that aluminium shelving imported for mushroom cultivation is classifiable as 'aluminium structures', and not as 'parts of agricultural machinery'. The court reaffirmed that tariff classification must be determined based on the goods' objective characteristics as imported, in accordance with the General Rules for Interpretation. It clarified that end-use or post-import integration is irrelevant unless the tariff heading is expressly use-based. As the aluminium shelves were static supporting structures without any mechanical function, they could not be regarded as machinery or parts thereof merely because they were used in an agricultural process. The court reaffirmed that functional participation in the operation of the machine is essential for an item to qualify as a "part"; supporting or structural elements, however necessary, fall outside this scope.

  (Please click here to refer to the detailed alert.)

- **SC admits Revenue's SLP against Bombay HC's ruling on levy of interest and penalty on IGST under Advance Authorisation[17]:** The SC has admitted the Revenue's SLP against the Bombay HC's[18] decision, which had read down *Circular No. 16/2023-Customs* to the extent it sought to levy interest, redemption fine and penalty on the IGST paid upon the re-assessment of BoE for breach of the pre-import condition under the advance authorisation scheme.

  The Bombay HC had held that for the period before the Finance Act, 2024 amendment, the Customs Act machinery provisions relating to interest and penalty could not be applied to the IGST levied under Section 3(7) of the Customs Tariff Act, in the absence of an express statutory mechanism, and that the 2024 amendment extending such provisions operates only prospectively[19]. The SC will examine the correctness of the Bombay HC's view for the pre-amendment period, and the matter is listed for further hearing on **7 April 2026.**

  (Please click here to refer to the order)


[16] M/s. Welkin Foods (W.P.(C) 17723/2025)
[17] A.R. Sulphonates Pvt. Ltd. (SLP(C) Diary No. 72829/ 2025)
[18] Writ Petition No.19366 of 2024
[19] from 16 August 2024

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