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CHARTERED ACCOUNTANTS

Corporate Update

March | 2026

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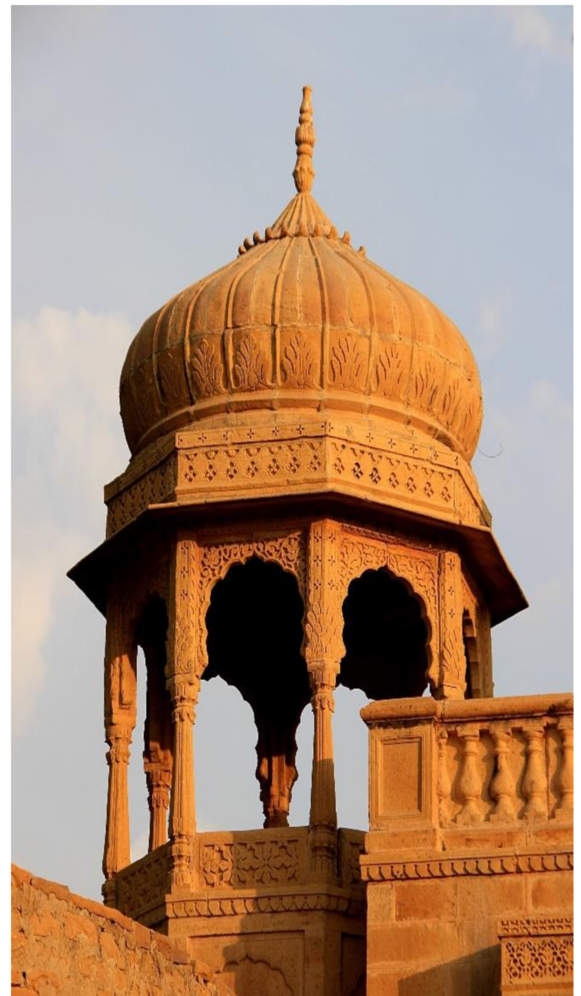

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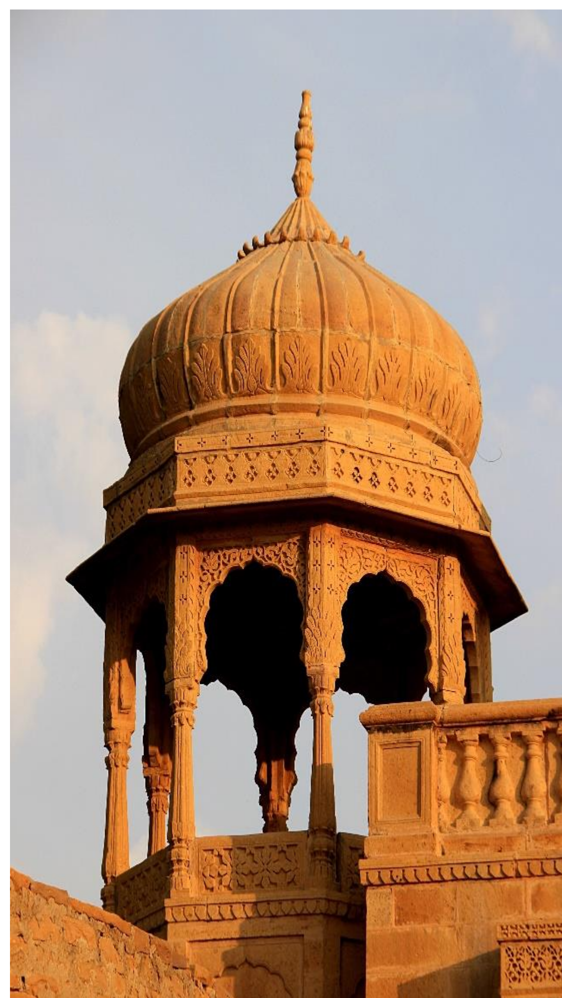

FOREWORD

Dear Reader,

This update contains a brief note on the amendment to the Finance Act 2026 as passed by the Indian Parliament in March 2026.

In addition, report on Regulatory changes in Foreign Exchange Management Act (FEMA), Indian Companies Act as well as notes on important tax cases relating to International Taxation are included.

C.S. Mathur
Partner

SPECIAL NOTE

BUDGET UPDATE

Finance Act, 2026 passed with amendments

The Finance Act, 2026 was passed by the Indian Parliament and received the assent of the President on March 30, 2026.

The Finance Bill, 2026 had undergone certain amendments prior to its enactment, covering both the Income-tax Act, 1961 and the Income-tax Act, 2025. Whilst most amendments relate to procedural aspects, certain other notable amendments were made which are as follows:

- It has been provided that additional buyback tax imposed on promotors shall apply only where the buyback is in accordance with the provisions of Section 68 of the Companies Act, 2013. Moreover, surcharge of 12% shall also be applicable in respect of such tax levied on promotors.

- Relevant provisions of set off of refunds with tax demands have been amended to permit cross set off of refunds under the both the old and new tax legislation with demands under the both such legislations.

- A minimum time period of 30 days shall be allowed for filing a return in pursuance of a notice issued under income escaping proceedings.

- Approvals granted by any income tax authority shall not be treated as invalid due to insufficiency in reasons or defects in authentication or communication (including absence of a digital signature).

  As regards the Income-tax Act, 1961, this amendment has been made with retrospective effect from April 1, 2021.

- The turnover based eligibility criteria for tax holidays in respect of start-ups has been enhanced from INR 100 crores (INR 1 Billion) to INR 300 crores (INR 3 Billion).

- Power of arrest as a mode of tax recovery has been done away with. Earlier, the Tax Recovery Officer was entrusted with such power for the purpose of recovery of tax.

We had earlier circulated a Special Edition of our Corporate Update covering the amendments originally proposed in Finance Bill, 2026. The Special Edition may be accessed at https://mpco.in/internal-corporate/113.

Anuj Mathur
Senior Director
Tax Advisory
☏ +91 11 4710 2200
✉ anuj@mpco.in

DIRECT TAX

INTERNATIONAL TAXATION

CBDT amends rule relating to grandfathering of GAAR provisions

The CBDT has recently amended the Income tax rules relating to grandfathering of GAAR provisions. In terms of Rule 10U of the Income-tax Rules, 1962, the provisions of Chapter X-A (GAAR) shall not apply to income arising from transfer of investments made before April 1, 2017. Under the Rules framed under the new Income-tax Rules,

2026, the corresponding provisions are contained in Rule 128.

The Supreme Court in the landmark decision of AAR v Tiger Global International II Holdings [2026] 182 taxmann.com 375 had earlier held that GAAR provisions shall apply to any impermissible avoidance "arrangement" in relation to tax benefit obtained on or after April 1, 2017, irrespective of the date on which such arrangement was entered into. It was concluded that arrangements that are characterized as 'impermissible' shall not be afforded grandfathering protection regardless of when the investments were made. The decision of the Supreme Court had resulted in uncertainty in the applicability of grandfathering provisions in case of income from transfer of investments.

In terms of the amendment of Rule 10U and its explanatory memorandum, GAAR provisions shall not be invoked on or after March 31, 2026 in a case where income arises from transfer of such investments which were made before April 1, 2017. The corresponding Rule 128 (which is effective from April 1, 2026) has also been similarly amended.

This amendment addresses the uncertainty surrounding the grandfathering of GAAR provisions in case of income from transfer of investments.

Ritu Theraja
Director
Tax Advisory
☏ +91 11 4710 2200
🖂 therajaritu@mpco.in

Protocol amending India-France tax treaty signed to align the same with international standards

The Ministry of Finance had issued a press release on February 23, 2026 providing insights into the recently signed protocol amending the India-France tax treaty. As per the press release, the amending protocol provides for the following changes:

- Full taxing rights in respect of capital gains arising from sale of shares of a company to the source country, i.e. the country where such company (whose shares are sold) is a resident. Currently, such taxing rights to the source country are limited to cases where the alienator holds at least 10% participating interest in the said company.

- Deletion of Most-Favoured-Nation (MFN) clause from the existing protocol to the treaty.

- Replacing 10% tax rate in source country on dividend income with two rates, 5% for those recipients of dividend who hold at least 10% capital and 15% in all other cases.

- Modification of the definition of 'Fees for Technical Services' by aligning it with the definition in India-US tax treaty. As such, source country will get the taxation right only where 'make available' condition is satisfied.

- Introduction of Service PE in Article 5 of the treaty.

The Amending Protocol also incorporates within the tax treaty, the applicable provisions of Multilateral Instrument (MLI), which are already in force pursuant to the

signing and ratification of MLI by both India and France.

The Amending Protocol shall enter into effect subsequent to the completion of internal procedures under the laws of both the countries and subject to the terms agreed between the two countries.

The text of Amending Protocol is not yet available on the official portal of the Indian Government.

Ritu Theraja
Director
Tax Advisory
☏ +91 11 4710 2200
✉ therajaritu@mpco.in

Amending Protocol to India-Brazil tax treaty notified

The Ministry of Finance has notified the Protocol amending the Double Taxation Avoidance Agreement between India and Brazil ('the DTAA'), originally signed in April 1998. The Protocol entered into force on October 18, 2025 and shall be effective in India from April 01, 2026 (FY 2026-27).

The DTAA between India and Brazil is not covered under the Multilateral Convention framework (MLI). As such, the key provisions of the MLI have been incorporated under the DTAA at a bilateral level.

Key amendments made by the Protocol include changes to the preamble, modification to provision relating to dual residency, introduction of service permanent establishment (PE), introduction to anti-fragmentation rules, reduction in tax rates on dividend, interest and royalties, insertion of Article relating to fee for technical services (FTS), introduction of Principal Purpose test, etc.

The key amendments made by the Protocol are briefly summarized as under:

1. The preamble of the existing tax treaty stated that the objective of entering of the tax treaty was for avoidance of double taxation and prevention of fiscal evasion. The scope of the Preamble has now been expanded to emphasize that the purpose of entering into the treaty is to avoid creation of opportunities for 'non-taxation' or 'reduced taxation'.

2. Under the Amended treaty, the term "resident of a Contracting State" includes any person who is liable to tax therein by reason of legal head office or place of incorporation in addition to already existing criteria of domicile, residence, place of management or any other criterion of a similar nature. It has also been provided that the above term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

3. Under the erstwhile Article 4 of the DTAA, dual residency of taxpayers (other than an individual) was resolved by ascertaining the state where place of effective management ('POEM') is situated. In terms of the amending Protocol, where POEM cannot be determined, the Competent Authorities shall decide the issue through Mutual Agreement.

4. In the absence of such mutual agreement determining the tax residency, the taxpayer shall not be entitled to any treaty relief or tax

exemption, except to the extent and in the manner as agreed by both the Competent Authorities.

5. A new clause relating to service PE has been introduced in Article 5 with the threshold of 183 days in 12 months period.

   Further, with respect of installation PE, it has been provided that where connected activities carried out on the same project/ site by one or more closely related enterprises exceed 30 days each, the time spent on those activities must be aggregated for the purpose of determining the 183-day threshold for determination of PE.

   Anti-fragmentation rules have been introduced in Article 5 to avoid artificial avoidance of PE.

   Further, agency PE provisions have been amended to provide that where a person acting in a country on behalf of an enterprise habitually concludes contracts or plays principal role in the conclusion of contracts, then that enterprise shall be deemed to have a PE in that country in respect of such activities, subject to certain conditions.

6. Tax rate on dividend in the source country has been reduced from 15% to 10% in cases where beneficial owner of such dividend income is a company which holds directly at least 20% of the capital of the company paying the dividends throughout a 365-day period, subject to certain conditions as provided.

7. The tax rate on interest income in the source country has been reduced from 15% to 10% if the beneficial owner is a bank and the loan has been granted for at least 5 years for the financing of the purchase of equipment or of investment projects

8. The tax rate on royalties in the source country has been reduced from 25% to 15% in case of use or the right to use trademarks and from 15% to 10% in all other cases.

9. A new Article 12-A 'Fees for Technical Services' has been inserted providing for tax rate of 10% in the source country.

10. Income derived from professional services may also be taxed in the source country where the professional has fixed base in that country or his stay exceeds 183 days in any 12 months period.

11. For the purposes of limiting taxation of salary income only in the resident country, the threshold for stay in the source country has been changed from 'not exceeding 183 days in the fiscal year concerned' to 'not exceeding 183 days in any 12 months period'.

12. Article 24 'Non-Discrimination' has been amended to provide the source country shall not be prevented from charging the profits of a PE which a company of the other country has in the source country at a rate of tax which is higher than that imposed on the profits of a resident company in the source country.

13. A comprehensive article, 'Article 26A-Entitlement of Benefits' has been introduced on limitation of benefits and anti-abuse provisions including criterion such as qualified persons, active

conduct of business, shareholding, beneficial ownership, etc.

Further, Principal Purpose test ('PPT') has been introduced in the said article in terms of which, tax administrations can deny benefits of the tax treaty if one of the principal purposes of the arrangement / transaction was to obtain benefit under the treaty. However, treaty benefits shall not be denied where it is established that granting benefit would be in accordance with the object and purpose of the tax treaty. PPT rules will ensure that treaty benefits are granted only to transactions entered into with a *bonafide* purpose.

14. It has also been provided that the provisions of the amended tax treaty shall not prevent a country from the application of its domestic tax laws and measures concerning tax avoidance or evasion.

Ritu Theraja
Director
Tax Advisory
☏ +91 11 4710 2200
✉ therajaritu@mpco.in

Section 94B (Thin Capitalization Rules) of the Income-tax Act, 1961 held to be discriminatory under India – Denmark Treaty

[TS-377-ITAT-2026 (CHNY)]

Recently, the Vestas Wind Technology India Private limited Chennai Bench of the Tribunal has held that Section 94B (thin capitalization disallowance for interest expense paid to non-resident AE) of the Act violated the non-discriminatory clause under Article 24A of the India – Denmark DTAA.

Broadly, under section 94B of the Act, a thin capitalization mechanism is provided wherein the interest deduction (for the interest paid to foreign AE) is capped at 30% of EBITDA. The formula for determining the quantum of inadmissible interest is also prescribed under section 94B of the Act. This section was introduced to align domestic tax laws in India with the anti-abuse provisions under BEPS (Base Erosion and Profit Shifting) Action Plan with respect to limiting interest deductions. However, the non-discriminatory provision under Article 24(4) of the tax treaty between India and Denmark provides, *inter alia*, that interest paid by a resident of India to a resident of Denmark shall, for the purposes of computing the taxable profits of such Indian resident, be allowed as a deduction on the same conditions as would apply had such interest been paid to a resident of India.

In the facts of the case, the taxpayer voluntarily disallowed a sum of interest paid to its foreign parent under section 94B of the Act. During course of assessment proceedings certain computational errors were alleged in the quantum of disallowance. The said issue of computational errors travelled to the Chennai Bench of Tribunal.

Before the Tribunal, the taxpayer took an additional plea that in terms of Article 24(4) of the India-Denmark tax treaty, no disallowance was warranted at all. In this regard, the tax payer relied on the OECD commentary on Article 24 of the model convention which recognises that any thin capitalisation provisions which applies only to non-resident creditors would fall foul of the non-discrimination mandate in Article 24(4) of the model tax convention.

The tax payer also highlighted that section 94B is specifically an exception for India - Denmark tax treaty unlike treaties such as

the India - Australia tax treaty, which expressly exclude thin capitalisation rules from their non-discrimination provisions. As such the applicability of non-discriminatory provision under Article 24(4) of the India – Denmark treaty would render section 94B of the Act inoperative.

On the other hand, the tax authorities contended that Article 24(4) of the DTAA expressly excludes Article 12(7) from the scope of its non-discrimination provisions. It may be mentioned that in terms of Article 12(7) interest paid by an Indian resident to a Danish person, in excess of the ALP is taxable under Indian domestic law. Also, Article 24(4) of the tax treaty carves out a specific exception for Article 12(7).

The ITAT upheld the tax payer's contention that Section 94B of the Act shall be hit by the non-discrimination clause under Article 24(4) of the India–Denmark treaty. It was also held that Article 12(7) of the treaty is attracted only in circumstances where the transaction between the AEs is not at ALP and in the instant case ALP of the transaction was never under dispute, and therefore Article 12(7) was held to be inapplicable.

Accordingly, the ITAT held that no disallowance under section 94B of the Act was warranted under the instant case.

Purnima Bajaj
Director
Tax Advisory
☏ +91 11 4710 2200
✉ purnima@mpco.in

HC: Upholds application of aggregation approach under TNMM

Tetra Pak India Pvt Ltd [TS-264-HC-2026(BOM)-TP]

In a recent judgement the Hon'ble High Court of Mumbai upheld the decision of ITAT accepting aggregation approach under Transaction Net Margin Method (TNMM) for the various international transactions relating to manufacturing and related trading activities undertaken by the assessee.

On the facts of the case, the assessee is engaged in the business of manufacturing and selling packaging machines and system. The company also deals in packaging material and spare parts. During the relevant year the assessee had entered into various international transactions with its Associated Enterprises, which were benchmarked under TNMM by following aggregation approach.

The Transfer Pricing Officer did not accept the aggregation approach adopted by the assessee and determined the margins of trading of packing machinery/equipment and sale of straws as separate transactions, thereby proposing transfer pricing adjustment. The Assessing Officer passed the draft assessment order *inter alia* considering the transfer pricing adjustment.

Aggrieved, the assessee filed objections before Dispute Resolution Panel (DRP). The DRP on the facts of the case held that the assessee's approach of aggregation of transaction is correct as the assessee sells machinery at low prices to create demand for packaging material and earn profits from selling packaging material on continuous basis. As such, despite losses on packaging machinery it maintains a profit margin of 28%, similarly it sold straws alongwith packaging material at reduced price in order to provide incentive to purchaser for using its packaging material.

The Hon'ble ITAT also upheld the aggregation approach adopted by the

assessee and the appeal of the revenue was rejected.
Upon appeal by the Revenue department, the Hon'ble HC agreed with the aggregation approach as held by DRP and ITAT. The Hon'ble HC referred to its decision of **M/s Cummins India Ltd. vs. ACIT [TS-489-HC-2023(BOM)-TP and M/s Magneti Marelli Powertrain India (P) Ltd. vs. DCIT [TS-869-HC-2016(DEL)-TP]**, wherein TNMM was considered acceptable on aggregation basis for royalty and other international transactions which were inextricably linked.

In view of the above, the Hon'ble HC held that no substantial question of law arises and accordingly, dismissed the appeal of the revenue.

Shweta Kapoor
Director
Tax Advisory
☏ +91 11 4710 2200
✉ shwetakapoor@mpco.in

HC: Penalty for misreporting not leviable where assessee disclosed all material facts and maintained prescribed documents; rejection of immunity u/s 270AA in such case unsustainable

Verizon Data Services India (P) Ltd. V. DCIT {[2026] 184 taxmann.com 60 (Madras)}

In a recent judgement, the High Court of Madras held that in case the adjustment under Transfer Pricing (TP) is due to the variance in estimation and determination of arm's length price and not due to misreporting or non-maintenance of required documents under TP regulations, it would be excluded from under-reporting in terms of section 270(6)(d) and eligible for immunity u/s 270AA of the Act.

On the facts of the case, the matter of the assessee was selected for TP assessment wherein certain adjustment was proposed by the TPO in respect of transfer price of the transaction under TNMM. The TPO rejected certain comparable companies selected by the assessee and added certain additional companies to the comparable set leading to variance in the arm's length determined by the assessee, leading to addition under TP.

The AO considered such addition in the final assessment order and also initiated penalty proceedings under section 270A of the Act for 'misreporting' of the income.The assessee filed an application under section 270AA for the grant of immunity against such penalty; however, the application was rejected stating that the same is not applicable in case of penalty for misreporting.

Aggrieved, the assessee filed writ petition before Hon'ble High Court. The Hon'ble High Court observed that the entire basis for initiation of penalty proceedings is the transfer pricing adjustment which by its very nature involves estimation and determination of arm's length price and cannot, in law, be equated with either concealment or misrepresentation, so as to attract section 270A(9)(a) of the Act.

Since, the assessee had maintained information and documents as prescribed under Section 92D, and complied with all statutory requirements under Chapter X of the Act, the case squarely falls within the exception carved out under Clause (*d*) to Sub Section (6) to Section 270A, which expressly excludes such cases from the ambit of under-reporting. Therefore, it cannot be held that there was "under reporting of income" as a consequence to "misreporting

of income" to impose penalty under section 270A(8) of the Act.
Accordingly, the assessee was entitled for immunity under Section 270AA of the Act.

In view of the above, the Writ Petition of the assessee was allowed.

Shweta Kapoor
Director
Tax Advisory
☏ +91 11 4710 2200
✉ shwetakapoor@mpco.in

Despite the applicability of Significant Economic Presence, Income is not taxable in the absence of Permanent Establishment or fixed base

Vijay Mariappan Austin Prakash [TS-1744-ITAT-2025(VIZ)]

On the facts of the case, assessee, a citizen of Singapore, was engaged with Zerodha Broking Limited ('ZBL') on employment basis, for business planning and business development. From 01.10.2020 assessee was appointed on a consultancy agreement with ZBL though the nature of service remained the same.

In the tax return, assessee claimed that income received from ZBL for rendering of consultancy services as exempt being not taxable in view of Article 14 of the India–UAE Double Taxation Avoidance Agreement ("the DTAA").

The case was selected for tax scrutiny, wherein the AO denied the benefit of Article 14 of the DTAA by holding that consultancy services did not qualify as "professional services" under the DTAA. The AO observed that assessee has changed the source of income from salary to business income to avoid taxability in India.
The AO also observed that receipts from ZBL exceed the threshold limit of two crores (Twenty million) hence assessee has business connection in India on account of "Significant Economic Presence" in India.

The assessee filed objection before DRP which were rejected as it was filed beyond the limitation period.

Thereafter, the assessee filed an appeal before the Hon'ble ITAT.

The Hon'ble ITAT noted that although Explanation 2A to Section 9(1)(i) deems certain income to accrue in India but such domestic law expansion cannot override DTAA benefits and protection.

The Hon'ble ITAT further examined the scope of services under Article 14 of DTAA and held that the definition of professional services as per Article 14 is an inclusive definition and management consultancy services are covered within the ambit of professional services.

Accordingly, income earned by the assessee was held to be not liable to tax in India under Article 14 of the DTAA in the absence of a Permanent Establishment or fixed base in India.

Richa Agarwal
Deputy Director
Tax Advisory
☏ +91 11 4710 2200
✉ richaagarwal@mpco.in

Full disallowance of payment made to a non-resident without withholding tax under section 40(a)(i), instead of 30% disallowance as applicable in case of payment to a resident, is violative of non-discrimination clause under Article 26(3) of the India–USA DTAA

In a recent case of LinkedIn Technology Information (P) Ltd. the Delhi Bench of the Income-tax Appellate Tribunal (ITAT) has held that where the disallowance under section 40(a)(i) in respect of payments made to non-residents without deduction of tax at source is restricted to 30%, being the rate of disallowance applicable in case of payment to a resident without withholding tax, the same would not make the assessment order erroneous and prejudicial to the interests of the revenue in terms of Non-discrimination clause under Article 26(3) of the India–USA DTAA ("the DTAA"). Thus, the assessment order would not be amendable to the revisionary jurisdiction of the Commissioner for amendment of the order.

The assessee, LinkedIn Technology Information (P) Ltd., is an Indian company engaged in providing marketing and customer support services to LinkedIn Singapore Pte. Ltd. and contract research and development services to LinkedIn Ireland. For Assessment Year 2018–19, the assessee filed its return of income which was initially processed. Subsequently, the case was reopened under section 147 on the premise that the assessee had made foreign remittances characterized as Fees for Technical Services (FTS) to non-resident entities, namely LinkedIn Corporation (USA) and HireRight LLC (USA), without deducting tax at source under section 195.

In the reassessment proceedings, the Assessing Officer concluded that tax was required to be deducted at source on such remittances and that the failure to do so attracted disallowance under section 40(a)(i). However, the Assessing Officer restricted the disallowance to 30 per cent of the payments made to the non-residents. The reassessment order was accordingly passed by making a 30 per cent disallowance of the impugned payments.

The Principal Commissioner, exercising revisional jurisdiction under section 263, formed the view that the reassessment order was erroneous in so far as it was prejudicial to the interests of the revenue. According to the Principal Commissioner, section 40(a)(i) mandated disallowance of the entire amount of expenditure where tax had not been deducted at source on payments made to non-residents. The restriction of disallowance to 30% was considered to be legally unsustainable, and the Assessing Officer was directed to disallow 100 per cent of the expenditure.

Aggrieved by the revisional order, the assessee preferred an appeal before the ITAT. The principal contention of the assessee was that the restriction of disallowance to 30% was justified, particularly when viewed in the context of the scheme of section 40(a)(ia), which governs payments to residents and limits disallowance to 30%. It was argued that subjecting payments to non-residents to 100% disallowance, while payments to residents attracted only 30% disallowance, would result in discriminatory treatment and thus violative of Article 26(3) of the DTAA. The assessee further submitted that once the Assessing Officer had adopted a plausible and legally sustainable view, the order could not be treated as erroneous merely because the Principal Commissioner held a different opinion.

The ITAT noted that in respect of payments to residents where tax is not deducted at source, section 40(a)(ia) restricts the disallowance to 30 per cent of the expenditure. If payments to non-residents were to be subjected to 100 per cent disallowance under section 40(a)(i), the consequence would be that non-resident enterprises would be treated less favourably than resident enterprises in similar circumstances. Such treatment would not be in accordance with Article 26(3) of the India–USA DTAA, which prohibits a Contracting State from subjecting enterprises of the other Contracting State to more burdensome taxation or connected requirements than those applicable to its own enterprises in similar situations.

By virtue of section 90(2) of the Income-tax Act, where the provisions of a DTAA are more beneficial to the assessee, they override the corresponding provisions of domestic law. Therefore, in the present case, the treaty protection would prevail to ensure that the disallowance does not exceed the extent applicable to similar payments made to residents.

The ITAT relied upon the reasoning adopted in *Herbalife International India (P.) Ltd. v. ACIT* (Delhi High Court), where the Court examined the scope of Article 26(3) of the India–USA DTAA in relation to disallowance under section 40(a)(i) and held that Article 26 is intended to prevent discrimination based solely on nationality or residence and that domestic provisions must yield where treaty protection ensures parity.

The ITAT examined the scope of section 263 and reiterated the settled principle that for assumption of revisional jurisdiction, two conditions must be cumulatively satisfied: the order of the Assessing Officer must be erroneous, and it must also be prejudicial to the interests of the revenue. If either of these conditions is absent, invocation of section 263 is unsustainable in law.

On the question of prejudice to the interests of the revenue, the ITAT observed that the Assessing Officer had already disallowed 30 per cent of the expenditure which is similar to the rate of disallowance under Non-discriminatory Clause of Article 26(3) of the DTAA.

The ITAT, therefore, held that the assumption of jurisdiction under section 263 was unjustified. The revisional order was accordingly quashed.

Nikhil Agarwal
Director
Tax Advisory
☏ +91 11 4710 3313
✉ nikhilagarwal@mpco.in

DTAA Tie-Breaker Rule Overrides Domestic Residency Rules

Pradeep Narasimhan [2026] 184 taxmann.com 442 (Bangalore Tribunal)

ITAT Bangalore highlights the importance of DTAA provisions in resolving dual residency conflicts and reinforces that treaty provisions override domestic law where they are more beneficial to the taxpayer.

On the facts of the case, the assessee, a New Zealand national, had been working in India from August 1, 2007 to August 6, 2017, after which he was assigned to Kazakhstan from August 7, 2017.

For financial year ('FY') 2017-18, being resident of India, global income was shown in the return of Income as filed for the year.

Later on, assessee filed revised return of Income disclosing only the income pertaining to the period April 1, 2017 to December 31, 2017.

Income for the period January 1, 2018 to March 31, 2018 i.e. "overlapping period", was offered to tax in Kazakhstan, claiming to be a tax resident of Kazakhstan as per Article 4(2) of the India–Kazakhstan, ('DTAA').

AO has rejected the claim of the assessee and taxed his global income, treating him to be a resident of India as per section 6 of the Income Tax Act.

On appeal, CIT(A) set aside the matter to AO for the determination of residential status under as per the provisions of Article 4(2) of the DTAA.

The assessee filed an appeal before the Hon'ble ITAT.

The Hon'ble ITAT by examining the interplay between domestic tax law and treaty provisions observed that under the Income-tax Act, residential status applies to the entire previous year and there is no concept of split residency. However, for the purposes of a DTAA, residential status is relevant only for allocating taxing rights between countries, and where a person is resident in both countries, the tie-breaker rules under Article 4(2) must be applied.

The Hon'ble ITAT also noted that after moving to Kazakhstan, assessee no longer had a permanent home in India, his employment and payroll were shifted to Kazakhstan, and his personal and economic ties were closer to Kazakhstan. Therefore, applying the tie-breaker rule, assessee is to be regarded as a resident of Kazakhstan for the overlapping period of three months for DTAA purposes.

Based on this determination, Hon'ble ITAT held that salary earned during the overlapping period is taxable only in Kazakhstan as per Article 15 of the DTAA, as the employment was exercised there only.

Regarding rental income from the property located in the United Kingdom, Hon'ble ITAT held that even if the assessee is considered to a resident of India income from immovable property is taxable in the country where the property is situated applying Article 6 of the India–UK DTAA.

Further regarding dividend income from Netherlands, Hon'ble ITAT clarified that income is taxable as per India–Netherlands treaty, being the source country and the issues was remanded back to AO.

In respect of interest income arising in India, Hon'ble ITAT held assessee is entitled to the beneficial tax rate of 10% under Article 11 of the India–Kazakhstan DTAA, being the resident of Kazakhstan.

Hence appeal of the assessee was partly allowed.

Richa Agarwal
Deputy Director
Tax Advisory
☏ +91 11 4710 2200
✉ richaagarwal@mpco.in

Charges for provision of flight and navigational data is not 'royalty' in the absence of transfer of industrial, commercial or scientific experience

Jeppesen GmbH [TS-1761-ITAT-2025(Mum)]

The Mumbai bench of Income-tax Appellate Tribunal ('Tax Tribunal') has recently held that the consideration for providing flight information/ data cannot be regarded as 'Royalty' under the India-Germany DTAA ('DTAA').

In the present case, the assessee - a tax resident in Germany, is engaged in delivering aeronautical information solutions and software products for customers worldwide. During the Financial Year 2021-22, the assessee received consideration towards provision of flight information/ data, granting of license for software and other ancillary services provided to the Indian customers. The assessee claimed such consideration as business income, not liable to tax in India in the absence of Permanent Establishment of the Assessee in India. However, the Assessing Officer ('AO'), as well as Dispute Resolution Panel, treated such receipts as 'Royalty' under Article 12 of the DTAA holding that the developing or compiling of the specialised aviation data is in the nature of application of commercial and scientific experience. Aggrieved by the order of the AO, the assessee filed an appeal before the Tax Tribunal.

The Tax Tribunal observed that flight and navigational data is collated from various civil aviation authorities and public sources, which is thereafter analysed, validated and verified by the assessee. Post verification and validation, collated data is entered into a database and processed into usable form. Thereafter, such final output is delivered to the end customers in an agreed format. It was further noted that the terms of supply restricted commercial exploitation of the final output by the end customers by way of prohibiting duplication, resale or onward supply of data to third parties without consent of the assessee. The assessee also provides licences for Electronic Flight Bay Software and ground tools used for accessing flight information, electronic charts, etc. The assessee retains all rights, title and interest in the software.

The Tax Tribunal stated that mere possession of experience or expertise by the provider is not sufficient to construe such consideration as payment for 'information concerning industrial, commercial or scientific experience', instead the relevant test is that such experience in the nature of know-how is transferred or imparted to the payer, enabling its independent use.

Relying on the OECD commentary and the judgement of High Court of Bombay in Diamond Services International (P) Ltd v UOI, the Tax Tribunal expounded that where the provider retains the know-how, applies it himself to render a service or to deliver an output, and the recipient merely receives the product or result without being enabled to replicate the underlying process, the payment would not be considered for knowhow but for services or for supply, and would fall for consideration under Article 7.

In this backdrop, the Tax Tribunal held that the assessee's value addition lies in curation, verification and structured delivery, which undoubtedly requires experience, but that experience remains embedded within the assessee's enterprise. The assessee is paid for access to an end product aviation data compilation rather than a transfer of its industrial, commercial or scientific

experience. Similarly, with respect to software, the assessee retains all rights, title and interest in software and customer is granted only a restricted license to use the software for its operations, prohibiting any modification, merging, translation, decoding, decompilation, disassembly or reverse engineering of the same. Therefore, there is no factual or legal basis to hold that any industrial, commercial or scientific experience in developing the software has been transferred to the customer.

Regarding the ancillary services of training implementation and support, the Tax Tribunal observed that these services are ancillary, incidental and inextricably linked to the principal supply of data and software and are provided remotely from outside India. Such services involve the application of knowledge by the assessee to ensure effective use and functioning of the supplied product; they do not involve transfer of technical experience or making available any know-how enabling independent reproduction by the customer. Therefore, these ancillary receipts also cannot be considered as royalty for information concerning industrial, commercial or scientific experience. Furthermore, the Tax Tribunal observed that the receipt for sale of paper charts is merely consideration for sale of tangible goods, not Royalty.

Based on the above findings, the Tax Tribunal proceeded to conclude that the payment received by the assessee cannot be treated as 'Royalty' under Article 12 of the DTAA.

Prabhjot Singh
Manager
Tax Advisory
☏ +91 11 4710 2200
✉ prabhjot@mpco.in

Referencing of Document Identification Number (DIN)

The Central Board of Direct Taxes (CBDT) issued Circular No. 4/2026 dated 31 March 2026 stating that the requirement of a computer-generated DIN by any income tax authority, referred to in clause (aa) to (h) of Section 116 of the Income-tax Act, 1961, should be in the manned laid down in the circular. This Circular supersedes the Circular No. 19/2019 dated 14.08.2019 issued on this subject, with effect from March 31, 2020.

The key provisions as per this circular are as under:

1. **Referencing by Document Identification Number (DIN) - Regarding:** All communications issued by income-tax authorities (including notices, orders, summons, and letters) to taxpayers shall be required to bear a computer-generated DIN, which shall include attaching a separate document mentioning DIN with such communication or mentioning DIN in email correspondence or otherwise.

   However, every page comprising in that communication shall not be required to be referenced by DIN.

2. A public communication shall not be required to be referenced by DIN.

3. **Exceptional Circumstances:** Communications may be issued without DIN only in specified exceptional cases, such as:

   - Technical difficulties in referencing DIN/ issuance of communication

electronically are technically not possible.

- For discharging official duties in a situation where access to electronic means for referencing DIN is not possible.
- PAN-related issues (non-availability of PAN/delay in PAN migration)
- Non-availability of system functionality

However, communications issued without DIN must explicitly state that they are issued without DIN due to exceptional circumstances. Approval must be obtained within 15 days from the competent authority and the communication must be uploaded on the system with DIN within 15 working days by the issuing income tax authority.

4. **Competent authority for post-facto approval:**

   If the communication is issued by an income tax authority below the rank of Joint/ Additional Commissioner or Director of income tax- approval by Joint/Additional Commissioner or Director shall be required.

   In any other case not covered above- approval by Chief Commissioner/ Director General of income tax shall be required.

This Circular No. 4/2026 is an important compliance measure mandating DIN for all tax communications, issued by the Income-tax authorities.

Ankita Mehra
Deputy Director
Tax Advisory
☏ +91 11 4710 3300
✉ ankitamehra@mpco.in

REGULATORY

FOREIGN EXCHANGE MANAGEMENT ACT

Foreign Exchange Management (Borrowing and Lending) (First Amendment) Regulations, 2026

The Reserve Bank of India **('RBI')** has notified Foreign Exchange Management (Borrowing and Lending) (First Amendment) Regulations, 2026 **('Amended Regulations')** to amend the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 **('Principal Regulations'),** which shall come into effect from the date of publication in the Official Gazette i.e. February 9, 2026.

The provisions relating to External Commercial Borrowings **('ECBs')** that were earlier set out in the Master Direction have now been deleted and the revised provisions have been incorporated into the Principal Regulations via the Amended Regulations in order to rationalize regulations pertaining to ECBs.

The key amendments to the Principal Regulations via the Amended Regulations are as follows:

1. **Continuation of existing ECBs**

   ECBs for which a Loan Registration Number (LRN) has been obtained before the Amended Regulations coming into effect shall continue to be in compliance with the then applicable regulations, except reporting which shall be undertaken as per the Amended Regulations.

2. Eligible Borrowers

Under the Amended Regulations, any person resident in India (other than an individual) that is incorporated, established, or registered under a Central or State Act is an eligible borrower, subject to the condition that such person is permitted for ECB in terms of applicable Act.

Under the Principal Regulations, the eligible borrowers included all entities that were eligible to receive foreign direct investment. Further, the following entities were also eligible to raise Foreign Currency (FCY) denominated ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India. The following entities were also eligible to raise INR denominated ECB - registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/ trusts/ cooperatives and Non-Government Organisations.

3. Recognised Lenders

Under the Amended Regulations, an eligible borrower may raise ECB from (a) a person resident outside India; (b) a branch outside India of an entity whose lending business is regulated by RBI; and (c) a financial institution or a branch of a financial institution set up in IFSC.

Under the Principal Regulations, the lender was required to be a resident of FATF or IOSCO compliant country. Also, Multilateral and Regional Financial Institutions where India was a member country were also considered as recognised lenders. Further, individual lenders were permitted if they were foreign equity holders[1] or for subscription to bonds/ debentures listed abroad.

4. Increase in borrowing limits

Under the Amended Regulations, an eligible borrower may raise ECB up to the higher of (a) outstanding ECB up to USD 1 billion; or (b) total outstanding borrowing (external and domestic) up to 300 per cent of net worth[2] as per the last audited standalone balance sheet of the borrower. Provided that the outstanding borrowing shall not include non-fund-based credit and funds raised through issuance of securities which are mandatorily convertible to equity. Such borrowing limit shall not be applicable on eligible borrowers that are regulated by financial sector regulators.

Under the Principal Regulations, all eligible borrowers could raise ECB of up to USD 750 million or equivalent per financial year (USD 3 million or equivalent per financial year for startups) under the automatic route. Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio for ECB raised under the automatic route could not exceed 7:1. However, this ratio was not applicable if the outstanding amount of all ECB, including the proposed one,

[1] 'Foreign Equity Holder' was defined to mean (a) direct foreign equity holder with minimum 25% direct equity holding in the borrowing entity, (b) indirect equity holder with minimum indirect equity holding of 51%, or (c) group company with common overseas parent

[2] "Net worth" – (i) In case of companies, net worth shall have the same meaning as assigned to it in the Companies Act, 2013; and (ii) In case of other entities, net worth shall be the sum of the funds recorded in the balance sheet under capital and undistributed profits after deducting therefrom the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the last audited balance sheet.

was up to USD 5 million or its equivalent.

5. Minimum Average Maturity Period ('MAMP')

Under the Amended Regulations, an eligible borrower shall raise ECB with a MAMP of three years. Further, an eligible borrower engaged in manufacturing sector may also raise ECB with MAMP between one year and three years, subject to the condition that outstanding amount of such ECBs shall not exceed USD 150 million. Call and put options, if any, shall not be exercisable prior to completion of MAMP. The MAMP for an ECB shall be computed in a manner illustrated in the Principal Regulations. Further, MAMP compliance is not required for conversion of ECB to non-debt instruments, repayment using non-debt proceeds, refinancing, lender's debt waiver and various corporate actions (e.g. merger, liquidation, etc.).

Under the Principal Regulations, there were multiple category-specific MAMP requirements such as for working capital purposes, general corporate purposes or for repayment of rupee loans across various borrower types and end uses.

6. Cost of borrowing

Under the Amended Regulations, the cost of borrowing[3] shall be in line with prevailing market conditions. Further, in case of eligible ECBs with MAMP of less than three years, the cost of borrowing shall be in compliance with cost ceiling specified for Trade Credit. In the case of fixed rate loans, the floating rate plus spread of the corresponding swap shall not be more than the ceiling. Also, the prepayment charges or penal interest, if any, for default or breach of covenants shall be in line with prevailing market conditions.

The Principal Regulations provided a per annum all in cost ceiling based on specified benchmark rates. Further, the prepayment charge/ Penal interest, if any, for default or breach of covenants, could not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and was outside the all-in-cost ceiling.

7. End use of borrowed funds

In terms of the Amended Regulations, following exceptions are added to the negative list for ECB end use:

- In line with the updated definition of 'real estate business'[4], if ECB is

[3] "Cost of borrowing" means rate of interest, other fees, expenses, charges, guarantee fees and export credit agency charges, whether paid in FCY or INR, but shall not include commitment fees and statutory taxes payable in India;

[4] "real estate business" means purchase, sale or lease of land or immovable property with a view to earning profit from there and does not include purchase, sale and lease (not amounting to transfer) of land or immovable property for the following purposes:
(i) construction and development of industrial parks, integrated townships and SEZ;
(ii) development of new industrial project, modernisation and expansion of existing units;
(iii) any activity under 'infrastructure sector';
(iv) construction-development project;
(v) commercial or residential properties for own use of the borrower;
(vi) real estate broking services.
Explanation:
(a) Construction-development projects include development of townships, construction of residential /commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships;
(b) Transfer, in relation to real estate business includes-
(i) the sale, exchange or relinquishment of the asset; or

raised for construction or development loans, plots can be sold only after completing trunk infrastructure. For industrial park loans, the park must have at least ten units, no unit can use more than 50% of the usable area, and at least 66% of the usable area must be for industrial use.

- Floriculture, horticulture, cultivation of vegetables, production of seeds, breeding of dogs, aquaculture, etc.;
- Tea, coffee, rubber, cardamom, palm oil tree, olive oil tree plantation;
- Transactions undertaken by an Indian entity for corporate actions such as merger, demerger, amalgamation, arrangement, or acquisition of control[5] in accordance with the Act under which the entity is incorporated/established, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Insolvency and Bankruptcy Code, 2016, as applicable.

Also, ECB proceeds cannot be used for repayment of only that domestic INR loan (i) which was availed for an end-use restricted under this regulation; or (ii) which is classified as a non-performing asset (NPA) as per the applicable prudential norms.

8. Receipt of ECB proceeds

a. For ECB proceeds denominated in INR

Timeline for repatriation and Parking of ECB proceeds

Under the Amended Regulations, the ECB proceeds meant to be utilized for permitted INR expenditure in India, shall be credited to an INR account held in India with the AD Bank by the end of the succeeding month from the date of receipt. Further, pending utilisation, the funds may be invested in an unencumbered fixed deposit of tenor up to one year with the AD Bank.

Under the Principal Regulations, the ECB proceeds meant for Rupee expenditure were required to be repatriated immediately for credit to their Rupee accounts with AD Bank in India. Further, ECB borrowers were allowed to park ECB proceeds in unencumbered term deposits with AD Bank in India for a maximum period of 12 months cumulatively.

b. For ECB proceeds denominated in FCY

Parking of ECB proceeds

(ii) the extinguishment of any rights therein; or
(iii) the compulsory acquisition thereof under any law; or
(iv) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or
(v) any transaction, by acquiring capital instruments in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.

[5] "Control" – (i) in case of companies, control shall have the same meaning as assigned to it in the Companies Act, 2013; and (ii) in case of LLPs, control means the right to appoint majority of the designated partners, where such partners, with specific exclusion to others have control over all the policies of the LLP

Under the Amended Regulations, the ECB proceeds meant to be utilized for a permitted foreign currency expenditure may be credited to an FCY account held in India with the AD Bank or an FCY account held outside India, in terms of the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulation, 2015. Pending utilisation, the funds may be invested outside India in an unencumbered fixed deposit of tenor up to one year or an unencumbered debt instrument with original maturity up to one year.

Under Principal Regulations, the ECB proceeds meant only for foreign currency expenditure could be parked abroad pending utilisation. Till utilisation, these funds could be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

9. Security

Under the Amended Regulations, ECBs are permitted to be secured through a charge on intangible assets (including intellectual property rights) in addition to immovable assets, movable assets and financial assets in favour of the non-resident lender or security trustee.

Under the Principal Regulations, the ECBs were permitted to be secured by way of charge on immovable assets, movable assets, financial assets in favour of the non-resident lender and on intangible assets (only in the case of startups).

10. Refinancing

Under the Amended Regulations, an eligible borrower may refinance an existing ECB, in part or full, by a fresh ECB, subject to the condition that refinancing doesn't result in failure to meet MAMP requirement applicable on the original borrowing (weighted outstanding maturity in case of multiple borrowings).

Under the Principal Regulations, refinancing of existing ECB by fresh ECB was permitted provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB.

Accordingly, full or part refinancing of ECB by a fresh ECB can now be raised with the cost of borrowing not restricted by the all-in-cost ceiling of existing ECB subject to meeting the MAMP requirement.

11. Conversion of ECB into non-debt instrument

Under the Amended Regulations, the conversion of ECB into non debt instruments (in addition to equity) has been permitted. The conversion of ECB

has been aligned with the FEMA NDI Rules to allow conversion into all instruments permitted under the FEMA NDI Rules.

Under the Principal Regulations, the conversion of ECB was permitted to equity only.

12. Currency of borrowing

As per the Amended Regulations, an eligible borrower may raise ECB denominated in foreign currency (FCY) or Indian Rupee (INR). Further, the currency of ECB may be changed from one FCY to another FCY, an FCY to INR and INR to an FCY. The change of currency shall be at the exchange rate prevailing on the date of the agreement for such change or at an exchange rate which does not result in a liability higher than that arrived at by using the exchange rate prevailing on the date of the agreement.

Under the Principal Regulations, ECBs were permitted to be raised in either FCY or INR. However, there were no specific provisions allowing conversion of currency in which the ECB was availed.

13. Reporting Requirements

In terms of the Amended Regulations, the eligible borrowers shall submit the following application/return through AD Bank in the format provided by RBI to AD Bank:

a. 'Form ECB 1' for providing details of the ECB and obtaining LRN;

b. 'Revised Form ECB 1' for reporting any change in previously reported ECB parameters in 'Form ECB 1', within seven calendar days from the end of the month in which such change was given effect. 'Revised Form ECB 1' may also be submitted to intimate any change in any other information previously reported in 'Form ECB 1'.

c. 'Form ECB 2' for reporting receipt of ECB proceeds and debt servicing, within seven calendar days from the end of the month in which the proceeds were received or debt servicing was undertaken. It has been clarified vide an explanation that any event or transaction that alters the outstanding borrowing under an LRN shall be reported in 'Form ECB 2.

Further, if the borrower informs the AD Bank in Form ECB 1 of a pending investigation or legal action, the AD Bank will provide complete borrowing details to the concerned agencies.

Also, in case a borrower qualifies as untraceable borrower[6] after occurrence of a drawdown, the AD Bank shall inform the same to both, RBI and the Directorate of Enforcement.

Under the Principal Regulations, details of the ECB for obtaining LRN and any further changes in terms of ECB were

[6] Any borrower with an active LRN shall be treated as an untraceable borrower - (a) in case such borrower fails to submit any of the specified return(s) for four consecutive quarters or more after the quarter in which a drawdown or debt servicing was scheduled to be made as per the last reported 'Form ECB 1'; and (b) AD Bank, after completion of such period of four quarters, is satisfied that: (i) neither the borrower nor its auditor(s)/director(s)/ promoter(s) were reachable or responsive despite multiple attempts of communication undertaken and documented by the bank; and (ii) borrower was not found to be operative at the registered office address as per the records available with the bank

reported in Form ECB and a monthly reporting of actual transactions were reported in Form ECB-2 within seven working days from the close of month to which it related. Further, if there were no transaction during a particular period, a Nil Return in ECB-2 was required to be submitted and such Findiorm ECB-2 was not an event-based filing.

(Source: Foreign Exchange Management (Borrowing and Lending) (First Amendment) Regulations, 2026 issued vide RBI Notification No. FEMA 3(R)(5)/2026-RB February 09, 2026 read with A.P. (DIR Series) Circular No. 22 dated February 16, 2026)

Divya Ashta
Senior Consultant
MP Law Offices
☏ +91 11 4710 2200
✉divya.ashta@mplawoffices.in

Issuance of press note regarding amendment of FDI policy on investments from countries sharing land border with India

The Department for Promotion of Industry & Internal Trade, Ministry of Commerce and Industry, Government of India (‘**DPIIT**’) issued Press Note 2 (2026 Series) dated March 15, 2026 **(‘PN 2 of 2026’)**, wherein the FDI Policy on Investments from Countries Sharing Land Border with India **(‘LBCs’)** has been reviewed.

The Government of India has reviewed Para 3.1.1 of the Consolidated FDI Policy Circular of 2020 dated October 15, 2020, as amended from time to time **(‘FDI Policy’)** on investments from countries sharing land border with India as notified vide Press Note 3 (2020) dated April 17, 2020 **(‘PN 3 of 2020’)**. The amendments proposed vide PN 2 of 2026 will take effect from the date of the corresponding notification amending the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, which is yet to be issued.

The key amendments introduced under PN 2 of 2026 are as follows:

1. **Incorporation of the definition and criteria for determination of ‘Beneficial Owner’ (‘BO’)**

   In terms of PN 3 of 2020, there was no clarity on the definition of the term ‘beneficial owner’. In terms of Para 3.1.1 (c) of PN 2 of 2026, it has been expressly clarified that ‘beneficial owner’ of an investment into India shall mean the BO of the investor entity incorporated or registered in a country other than a country which shares land border with India. The BO shall have the same meaning as defined under Section 2(1)(fa)[7] of the Prevention of Money-laundering Act, 2002 and shall be determined as per the criteria stipulated under Rule 9(3)[8] of the Prevention of

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[7] In terms of Section 2(1) (fa) of the Prevention of Money-laundering Act, 2002, "beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person

[8] In terms of Rule 9(3) of the PMLA Rules, the BO shall be determined as under—
(a)where the client is a company, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means. Explanation. — For the purpose of this sub-clause— 1. Controlling ownership interest" means ownership of or entitlement to more than ten per cent. of shares or capital or profits of the company; 2. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.
(b)where the client is a partnership firm, the BO is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of/entitlement to more than ten percent of capital or profits of the partnership or who exercises control through other means. Explanation - For the purpose of this clause, "Control" shall include the right to control the management or policy decision; (c) where the client is an unincorporated

Money-laundering (Maintenance of Records) Rules, 2005 **('the PMLA Rules')**.

Direct investment by citizens or entities from LBCs would continue to require prior government approval for investment, subject to meeting entry routes, sectoral caps and other attendant conditions.

2. Deeming provision for 'beneficial ownership' from LBC

Under PN 2 of 2026, the beneficial ownership of the investment shall be construed to be vested in a country sharing land border with India in the event that –

I citizen(s) of a country sharing land border with India, and/or

II entity(ies) incorporated or registered in a country sharing land border with India, has/have the ability to directly or indirectly, individually or cumulatively, independently or collectively, whether acting together or otherwise, hold rights / entitlements –

(i) in excess of the applicable thresholds prescribed under Rule 9(3) of the PML Rules over an investor entity which is incorporated or registered in a country other than a country sharing land border with India; or

(ii) which enable such citizen(s) and/or entity(ies) to exercise control over the investor entity referred above; or

(iii) which enable such citizen(s) and/or entity(ies) to exercise ultimate effective control over the Investee entity in any manner.

3. Reporting requirement to DPIIT

Para 3.1.1 (d) of PN 2 of 2026 has introduced a mandatory reporting requirement for investments into India from an investor entity not requiring prior Government approval under Para 3.1.1 of the FDI Policy [i.e. in the cases where the BO does not have a controlling ownership interest in the investor entity or does not exercise control in the investor entity in terms of Section 2(1) (fa) of the Prevention of Money-laundering Act, 2002 read with Rule 9(3) of the PMLA Rules].

[Source: Press Note No. 2 (2026 Series) dated March 15, 2026 issued by the Department for Promotion of Industry & Internal Trade, Government of India]

Divya Ashta
Senior Consultant
MP Law Offices
☏ +91 11 4710 2200
✉divya.ashta@mplawoffices.in

CORPORATE LAW

Companies' compliance facilitation scheme, 2026

The Ministry of Corporate Affairs [MCA], vide General Circular No. 01/2026 dated

association or body of individuals, the BO is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
(d) where no natural person is identified under (a) or (b) or (c) above, the BO is the relevant natural person who holds the position of senior managing official;
(e) where the client is a trust, the identification of BO(s) shall include identification of the author of the trust, the trustee, the beneficiaries with [ten] percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership; and
(f) where the client or the owner of the controlling interest is an entity listed on a stock exchange in India, or it is an entity resident in jurisdictions notified by the Central Government and listed on stock exchanges in such jurisdictions notified by the Central Government, or it is a subsidiary of such listed entities], it is not necessary to identify and verify the identity of any shareholder or BO of such entities.

February 24, 2026, has launched the ***Companies Compliance Facilitation Scheme, 2026 (CCFS-2026)***, in order to give a one-time opportunity to enable companies to regularise their pending annual filings.
As per the extant provisions, an additional fee of Rs. 100/- per day is applicable in respect of delay in filing annual return and financial statements by the companies, without any upper limit. Due to this, those companies who have not been able to complete their annual compliances in time, are subject to additional financial burden on account of additional fees payable due to delay.

The Central Government has decided to condone the delay in filing these forms with the Registrar through this Scheme, which provides a one-time opportunity to allow companies to pay reduced additional fees for filing of relevant e-forms on MCA website, related to Annual Return and Financial Statements. Additionally, it is aimed at facilitating inactive or defunct entities to opt for dormancy/ closure by paying lesser fees.

The Scheme aims to improve overall compliance levels, reduces financial burden on the companies, and also promotes ease of doing business.

The key features of the Scheme are as under:

1. The scheme shall come into force on **April 15, 2026** and shall remain in force till **July 15, 2026.**

2. On filing of pending annual filing forms [Form AOC-4, AOC-4 xbrl, MGT-7, MGT-7A etc.], along with normal fees, only 10% of applicable additional fees [which is Rs 100/- per day for each form] is payable. In addition to annual filing forms, the scheme also covers Form ADT-1 [form to be filed for intimating appointment of statutory auditor]

3. Annual filing forms notified under the Companies Act, 1956 [Form 23AC, Form 23ACA, Form 23AC-XBRL, Form 23ACA-XBRL, Form 66, Form 20B] can also be filed under the Scheme upon payment of only 10% of applicable additional fee, along with normal fees. Similar to clause (ii) above, Form 23B, pertaining to auditor’s appointment, is also included in the Scheme.

4. Not only Indian companies, the Scheme also covers annual filing forms, to be filed by Liaison offices, Branch offices and Project Offices established in India by a foreign company. These are Form FC-3 [form to be filed for filing of audited financial statements] and Form FC-4 [form to be filed for filing of annual return].

5. This Scheme also includes in its ambit Form MSC-1 [form to be filed by inactive companies to obtain **Dormant status].** Only half of the normal fees are payable on filing of form MSC-1, it may be noted that currently fees payable on Form MSC-1 varies as per the authorised

capital of the company and also its status [small / non-small].

6. This Scheme also covers Form STK-2 [form to be filed for filing an application to ROC for striking off of the name of Company]. Only 25% of the normal filing fees which is currently Rs 10,000 i.e. only Rs 2500/- is payable on filing of Form STK-2.

Immunity under the Scheme

The Scheme contains provisions regarding granting of immunity from penal action with respect to delayed filings of forms covered under the Scheme, provided that before the filing of said forms, either no adjudication proceedings have been initiated, or the filings have been made within 30 days of the issuance of the notice by the adjudicating officer [AO].

In case where the filings are made after expiry of 30 days from issuance of notice by the AO, or the adjudication order imposing the penalty for defaults, under section 92 and section 137 of the Act, has already been passed, the concerned company can only avail the benefit of reduced additional fees under the Scheme, and there would be no change in the penalties imposed on the company and/or its officers by the AO.

Exclusions under the Scheme

All companies are permitted to file relevant e-forms, as described above, **except for the following:**

a. companies against which action regarding final notice for striking-off under section 248 of the Act has already been initiated by the ROC;

b. companies that have already filed Form STK-2 with the ROC [application for striking-off their name];

c. companies that have already filed Form MSC-1 with ROC for obtaining dormant status under section 455 of the Act before the commencement of Scheme;

d. companies that have been dissolved pursuant to a scheme of amalgamation;

e. vanishing companies.

After the conclusion of the Scheme, the respective ROCs shall take necessary action under the Act against the companies who have not availed this Scheme, and are in default of filing the documents in a timely manner.

Shikha Nagpal
Deputy Director
Corporate Secretarial Services
☏ +91 11 4710 2200
✉ shikha@mpco.in

Key amendments to the Companies Act, 2013 proposed by the Corporate Laws (Amendment) Bill, 2026

The Corporate Laws (Amendment) Bill, 2026 (“Bill”) was introduced in the Lok Sabha on March 23, 2026 and has been referred to a Joint Parliamentary Committee (JPC) for detailed scrutiny. The Bill aims to facilitate "Ease of Doing Business" by decriminalising minor procedural lapses, modernising corporate processes, and rationalizing

compliance. Some of the key amendments to the Companies Act, 2013 (“Act”) proposed by the Bill are as under:

1. **Financial year [Section 2(41)]** – For those companies who have earlier been allowed to follow any period other than 01st April – 31st March as their Financial Year [F/Y], may be allowed, upon filing of prescribed application, to realign their F/Y as 01st April - 31st March.

2. **Small Company [Section 2(85)] -** The thresholds for a small company are proposed to be expanded by the Bill, as both the upper limits of paid-up capital and turnover are proposed to be increased from INR 10 to 20 crores and from INR 100 to 200 crores respectively.

   Relaxations for small company –

   - In order to facilitate ease of compliance for small companies, a class of companies fulfilling prescribed conditions, shall not be required to appoint statutory auditor under the provisions of Section 139 of the Act.

   - The Board meeting requirement is further relaxed for a small, dormant company or One Person Company [OPC], these categories of companies may now be required to hold at least one Board meeting (presently two Board meetings) in a calendar year.

3. **Maintenance of website and email address [Section 12A] -** For certain class of listed and unlisted public companies meeting prescribed thresholds, maintenance of website and email address will be mandatory. The details of such website and email address, and changes therein shall be intimated to ROC.

4. **Buy back of shares [Section 68]** - The Bill proposes to set a different maximum limit of aggregate of paid-up share capital and free reserves, for certain class of companies, up to which they can buy back their shares. Currently the buy- back limit is 25% of the aggregate of paid up capital and free reserves for all companies.

   In addition to above, the Bill also allows certain prescribed class of companies which are debt free, to make up to two offers of buy back within a period of one year from the closure date of preceding buyback offer. However, the second buy back can be made only after expiry of six months from the earlier offer of buy back. The existing requirement of maintaining a gap of at least one year between two buy back offers is proposed to be removed.

5. **Charge registration [Section 77]** - As a part of ease of compliances, in charge registration provisions, for certain class of companies to be prescribed, instead of 120 days, the charge can be registered within 180 days after payment of Advalorem fees.

6. **AGM / EGM through VC [Section 96, 100 & 101] -** The Bill proposes to insert separate sub sections in the Act to provide for holding of Annual General Meeting [AGM] as well as Extraordinary General Meeting [EGM] through video conferencing or other audio-visual means, either wholly or partly, subject to prescribed terms and conditions. However, a new condition has been

provided in the Bill which mandates holding of AGM in physical mode at least once in every three years.

Further, in EGM to be held through video conferencing or other audio-visual means, instead of usual minimum notice period of twenty-one days, a minimum notice period of seven days has been prescribed in the Bill.

7. **Explanation in Board Report on auditor qualifications [Section 134]** - The Bill proposes to insert a new sub-clause so that the Board report to include Board's explanations, in prescribed form**,** on **every observation / comment** of the statutory auditor on financial transactions or matters, which have any adverse effect on the functioning of the company. Further, the Board's report also needs to include explanations on any qualification / adverse remark of the auditor, relating to maintenance of accounts and other connected matters.

8. **CSR [Section 135]** The Bill seeks to enhance the net profit threshold for applicability of Corporate Social Responsibility [CSR] provisions from existing INR five crores [5 crores] to INR ten crores [10 crores]. It may be noted that there is no change in other two thresholds of net worth and turnover. In addition to this, the time period is proposed to be increased from 30 days to 90 days from the end of F/Y, for transfer of unspent CSR amounts, related to ongoing projects, to a special bank account called as Unspent CSR Account. Further, companies having minimum CSR spend of upto Rs. 1 crore (presently Rs 50 lakh) may not be required to constitute a CSR Committee. CSR provisions will not apply on a certain prescribed class of companies fulfilling prescribed conditions.

9. **Restrictions on providing non-audit services by auditor [Section 144]** - For certain class of companies, a restriction is proposed to be placed on the auditor / audit firm not to provide, directly or indirectly, any non-audit services to the company or its holding / subsidiary company. Further, this restriction shall continue to apply for a period of 3 years after the said auditor / audit firm has completed its term of office.

10. **Continuity in holding of DIN [Section 152(3)]** - In order to provide clarity regarding the necessity of holding a valid DIN both at the time of appointment as well as during the entire tenure of a director, a new disqualification is proposed to be introduced that in case the DIN of a director gets deactivated / cancelled, he shall not function as a director, till the time the DIN gets reactivated. Further, if the DIN of a director is cancelled, the office of such director shall become vacant.

11. **Additional Director [Section 161(1) & 161(4)] -** The appointment of an additional director can now be regularized in AGM as well as EGM also, however, such general meeting needs to be convened and held with in a period of 3 months from the date of his appointment, otherwise his term will end. The same condition also applies for a director appointed to fill casual vacancy.

12. **Directors' disqualification [Section 164]** - New disqualifications introduced for holding the office of director, for a person who has been an auditor or

secretarial auditor or cost auditor or insolvency professional or registered valuer of the company or its holding / subsidiary / associate company either during the current F/Y or during immediately preceding three F/Ys. Further, if such services are provided by a firm / LLP, such partner / partners who conducted the audit or provided such valuation services etc. shall not be eligible for appointment as a director.

13. **Vacation in the office of director [Section 167] -** To make the companies more diligent in filing of annual accounts / annual return within prescribed time, the existing default period of three F/Ys for filing of audited financial statements and/or annual return, which used to disqualify the directors, is proposed to be reduced to two F/Ys. These defaults used to disqualify the directors of the defaulting company, for taking up appointments as a director in any other company for a period of five years. However, instead of immediate vacation, now the office of such directors shall become vacant after expiry of six months from the date of such disqualification, or expiry of their tenure as director, whichever is earlier. In addition to this, now the office of director shall become vacant in that company also, which has incurred disqualification u/s 164(2) of the Act after expiry of 6 months.

14. **Relaxation in yearly MBP-1 disclosure [Section 184]** - Now the directors will not be required to give yearly disclosure of their interest in other entities in Form MBP-1, such disclosures only need to be given in case of any change in the earlier disclosure tendered by the concerned director to the company.

15. **LLP included in Sec 185 [Section 185(1)] -** Limited Liability Partnership [LLP], in which a director or his relative is a partner, is also included in the list of parties / entities for which u/s Sec 185 of the Act giving of any loan, guarantee or security is prohibited by a company.

16. **Resignation of KMP [Section 203A] -** Similar to director's resignation, the Bill proposes to insert a new section for providing of resignation by a Key Managerial Personnel [KMP]. If the company fails to file Form DIR-12 within prescribed time with Registrar of Companies [ROC] for intimating resignation of KMP, alike directors, the KMP may also forward / intimate his resignation directly to ROC by way of e-filing of prescribed form.

17. **Striking off of name of company [Section 248] -** In order to rationalise the scope of grounds for removal of name of a company from the Register of Companies (ROC), the Bill proposes to insert new grounds / conditions, empowering the ROC for taking action for striking off of the name of a company. These grounds include not making any significant accounting transaction during preceding two F/Ys or default in filing of financial statements or annual return that were due to be filed for two consecutive F/Ys preceding the previous F/Y. Further, the Act will now provide for the manner in which the liabilities can be extinguished, for the purpose of *suo-moto* filing of an application by the company for striking off its name.

18. **Additional fees on delayed annual filing [Section 403(1)] -** The Bill proposes to change the existing amount of additional fees of INR 100 per day to

any other amount to be charged per day for prescribed class of companies. Further, the maximum amount of additional fees is proposed to be capped at INR two lakhs for certain class of companies.

19. **Obtaining status of dormant company [Section 455]-** As per the Bill, it shall be mandatory, rather than optional, for an inactive company or a company which has no significant accounting transaction to apply to ROC for obtaining the status of a dormant company. Further, it has been clarified in the Bill that any receipt / payment transaction, not related to the business / operations of the company, shall not be considered as a significant accounting transaction.

20. **Decriminalization of offences -** Various penal sections are proposed to be amended so as to decriminalize the offences by prescribing penalty instead of fine and provide for a fixed amount of penalty instead of existing varying amounts in order to bring more transparency in the levy of penalties.

Professional liability in company incorporation – Liability of practicing professionals like CA, CS, CWA, for incorporation will arise only in those cases where they are directly engaged by the company for company formation.

Shikha Nagpal
Deputy Director
Corporate Secretarial Services
☏ +91 11 4710 2200
✉ shikha@mpco.in

For further information, please contact:

C. S. Mathur
Partner
☏ +91 11 4710 2200
✉ csm@mpco.in

Vikas Vig
Partner
☏ +91 11 4710 3300
✉ vvig@mpco.in

Surbhi Vig Anand
Partner
☏ +91 11 4710 2250
✉ surbhivig@mpco.in

Mohinder Puri & Co.

New Delhi
1 A-D, Vandhna,
11, Tolstoy Marg,
New Delhi – 110 001

MPC & Co. LLP

New Delhi
Pune
Vadodara

Associates

Ahmedabad
Bangalore
Chennai
Hyderabad
Mumbai

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