



## India TaxHour

### Quarterly India tax updates

October – December 2024

16 January 2025

# Subject matter experts

## **Economy and tax overview**

### **Direct tax updates**

- Tax Treaty Between India and Switzerland – Suspension of MFN Clause on Dividends
- Updates on Direct Tax Vivad se Vishwas Scheme, 2024

### **Indirect tax updates**

- Key recommendations arising from the 55th GST Council Meeting
- Invoice Management System (IMS) in GST
- Other Key Updates

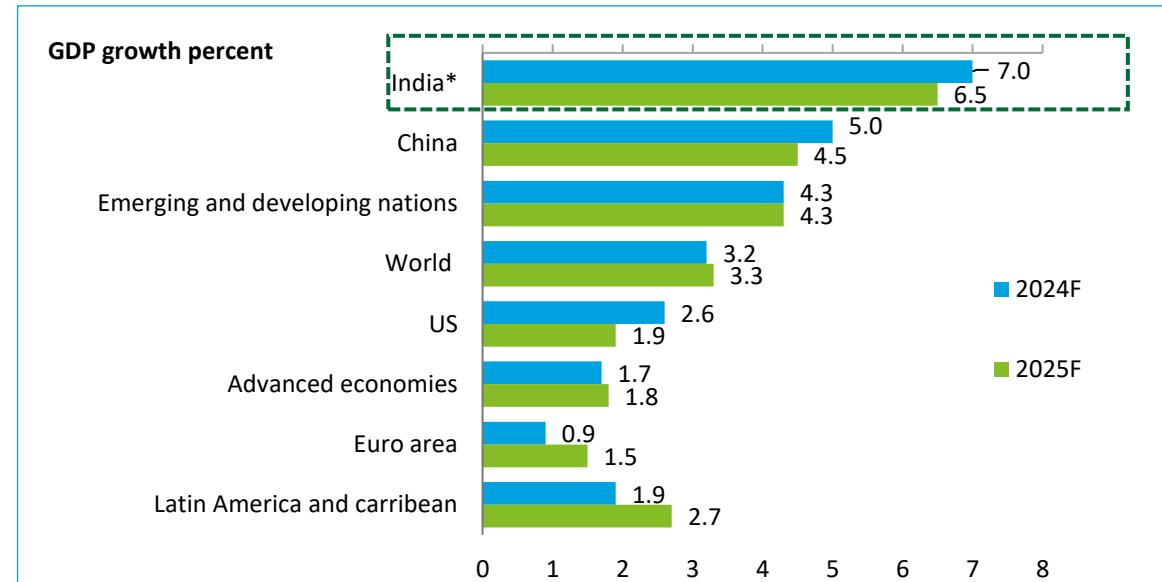
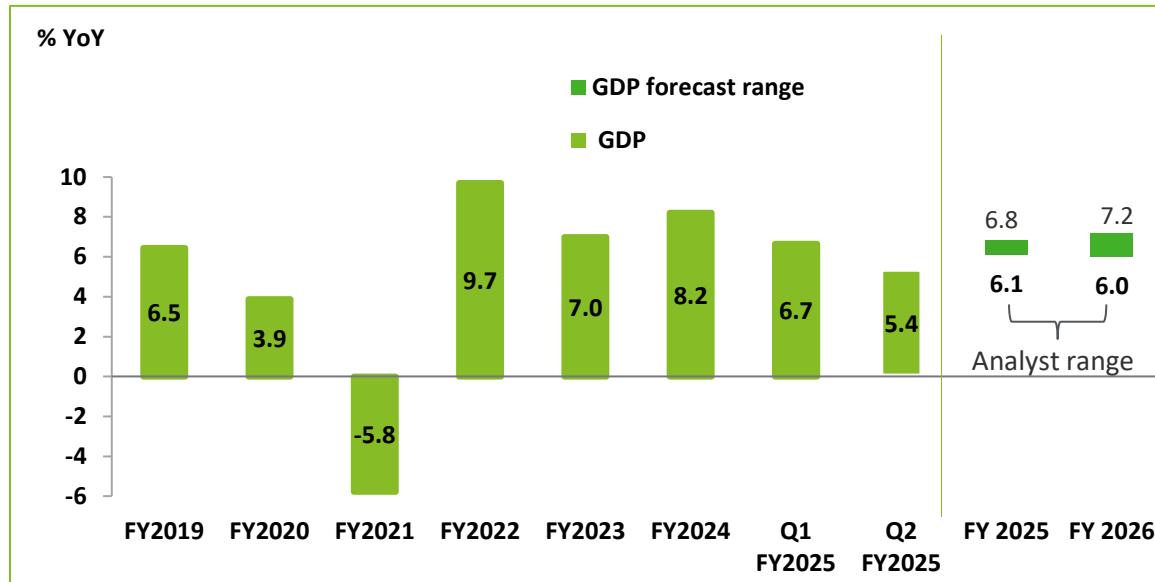
### **Recent judicial pronouncements**

- Interplay of TOLA and Income-tax Act in relation to reopening – Rajeev Bansal [2024] 301 Taxman 238 (SC)
- Applicability of transfer pricing between HO and PO - TBEA Shenyang Transformer Group Co Ltd. [TS-508-ITAT-2024(Ahd)-TP]
- TMF Holdings Ltd. [TS-801-ITAT-2024 (Mum)] - Perpetual debentures with call & step-up option, is borrowing, allows interest u/s 36(1).
- L&T IHI Consortium (Bombay High Court)

# Economy and tax overview

India's growth sees an unexpected slowdown in Q2 FY2025; expected to be the fastest-growing till 2025  
Domestic growth drivers shield India from global risks; technology is a double-edged sword

Growth in the next two years is likely to be in the range of 6.0-7.2%



### Drivers of the economy

- Massive consumer base and workforce
- Largest millennials and Gen X of the world
- Diversified foreign investments
- Huge infrastructure spending
  - Physical: Roads, urban, power, and railways leading to improved logistics
- Digital-led economy (0.79% increase in GDP with 1% increase in level of digital economy<sup>1</sup>)
- Rapid rising contribution of services to GDP and exports

### Risks for the economy

- Global economic slowdown
- Regional conflicts and geopolitical uncertainties
  - Volatile crude oil prices (1% rise in oil price leads to -0.26% growth in economy<sup>3</sup>)
  - Rising tariffs
  - Supply chain disruptions
- Trade slowdown and regulations
- Rapid changes in technology and its impact on employment, skills
- Impact of climate change on the economy
  - Climate change (USD35 trillion loss by 2070<sup>2</sup>)

Sources: CMIE, Consensus Economics, World Bank, IMF, ADB, Economic Survey, RBI; 1<sup>https://www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2022.856142/full; 2 India's turning point, Deloitte; 3<sup>https://www.ipssacademy.org/unnayan/13.pdf</sup></sup>

\* This is basis October 2024 data by IMF, and is not updated after the Q2 growth numbers

# Key takeaways from the survey on expectations from income tax act revamp (1/2)

## Future expectations and reforms: An insight into suggestions for the future of tax law in India

- Withholding tax regime - Key recommendations emphasize the need for eliminating redundant documentation, instituting a better tracking mechanism through enhanced automated reporting and clarity for ambiguities related to year-end provisions.
- Income tax returns (ITR)- Automated reconciliations and simplification through consolidation of ancillary Forms are the top preferences for revamping the ITR filing process.
- Faceless assessments – For more comprehensive and qualitative assessments it is suggested to enhance communication between the tax department and taxpayers, provide taxpayers with an option to seek independent reviews and access to expert support for assessment units.
- Business restructuring – Clear SOPs for certainty on transfer/ continuity of credits, incentives and deductions between transferor and transferee entities and allowance of carry-forward and set-off of losses in service industry restructuring are priorities to aid restructuring efforts.
- Incentives – Clarity on availing the patent regime, simplifying the conditions for new hirings incentive and a clear framework for existing tax incentives are the key priorities to improve their effectiveness.
- New-age value creators – Strong industry support for tax laws that promote manufacturing in India, advance ESG aspects and foster an innovation/ R&D culture.
- New personal tax regime – Respondents advocate for increased deductions, and further rationalisation and simplification of law to make the new regime more attractive and appealing.

## Key takeaways from the survey on expectations from income tax act revamp (2/2)

**Future expectations  
and reforms:  
An insight into  
suggestions for the  
future of tax law  
in India**



- Transfer pricing (TP) – Respondents emphasize clarity in rules, procedures and documentation; defining AE relationship for new structures, and adoption of best global practices to rationalise TP regulations.
- Dispute resolution - Timely disposal of appeals, avoiding litigation efforts for repetitive issues and a taxpayer-only right to appeal against the First Appellate Authority [CIT(A)] order are among the most preferred suggestions.
- Optimising Advance Pricing Agreements (APA) by keeping transfer pricing assessments for covered years in abeyance; allowing corresponding adjustments in taxable income of associated enterprises (AEs) and allowing term reviews under APA for cyclical businesses are the top priorities to reduce litigation and boost APA.

# Income tax digitisation survey (1/2)

## Industry outlook on income tax digitalisation

- Respondents across sectors and scales have given **positive feedback on the tax administrators' overall digital initiatives**, especially the key initiatives such as online tax payment and the speed of processing returns and refunds.
- The **key ask** of taxpayers is to **streamline TDS/TCS compliances** and **increase the use of technology** for closing cases on the grievance portal, automated reconciliation, tracking the progress of appeals and rectification applications and issuance of refunds/deletion of demands, etc.
- Taxpayers **expect the government to adopt SAF-T** to enable near real-time reporting and compliance monitoring, **introduce tax e-wallet** to promptly credit taxpayers' refunds on passing orders and **adopt new-age concepts such as the use of blockchain** for secure tax transactions and **AI/analytics** for data validation and error correction.
- Most respondents have found notices from tax authorities using data analytics to be generally accurate (49 percent) or somewhat accurate (37 percent), suggesting **trust in the administration's data-driven approach**.

## Impact and benefits of digital tax initiatives

- The **tax administration has been ahead of taxpayers in adopting technology in tax**, which has acted as a **catalyst for taxpayers to adopt tax technology**.
- Digital initiatives of the tax administration have led to **ease of doing business**, which encompasses ease in operations and better cashflows, reduced time spent on compliance and data accessibility and availability on tax portals.
- Taxpayers have derived **efficiency from the e-initiatives** of the income tax department in relation to reduced manual communication with the department and no requirement/significantly reduced requirement to visit the income tax office.
- The **revamped tax portals offer several tools and materials** available in a user-friendly manner, which has created a **positive impression** in taxpayers' minds.
- **Refunds are generally credited to the taxpayer's bank account quickly through automated refund processing**. Taxpayers have appreciated this across the board.

## Income tax digitisation survey (2/2)

### Technology use in income tax compliances

- Nearly **two-thirds of taxpayers rate the use of technology and automation in their tax function as significantly high or high**, demonstrating a strong inclination towards using tools and solutions to enhance efficiency and accuracy
- Majority of organisations prefer to **use data from ERP, including customisations thereto, for tax compliance** – this ensures that data comes directly from source systems and ensures a greater level of comfort for taxpayers
- The **use of third-party software/solutions is steadily increasing**, with 69 percent of respondents (up from 57 percent in the 2023 survey) confirming the use of such solutions
- The prioritisation for technology use is in processes involving data – extraction, wrangling, processing, reconciliation and reporting – clearly, **large datasets are driving the adoption of automation and use of technology**
- TDS is a tedious process, and a majority of tax teams generally do a manual review of the TDS report or deposit TDS without any further checks, highlighting a clear **gap in the use of technology in monthly review of TDS**

### Future vision and transformation of tax function

- **About 92 percent of organisations** have already **transitioned to having a technology-driven tax function or plan to do so within the next five years**; in the 2023 survey, 21 percent of organisations believed that it would take more than five years to have a technology-driven **tax function**. This number has dwindled to 8 percent
- **More than three-fourths of organisations are increasing their budgets for tax transformation and automation**, as against two-thirds reported in the 2023 survey
- The **key roadblocks** in the tax transformation journey and **integration issues with current systems and “people” issues** (unavailability of tax technology professionals, bandwidth issues and mindset)
- Taxpayers are getting comfortable with and are **open to explore implementation of AI / ML and generative AI** in their Tax function
- While organisations have preferences to insource or outsource tax compliance, the common denominator is the **use of technology in tax compliance**

# Direct tax updates

# Tax Treaty between India and Switzerland – Suspension of MFN Clause

1

- Switzerland suspends the application of the most-favoured-nation (MFN) clause under the protocol to the tax treaty between Switzerland and India.

2

- Dividend distributions from Switzerland to India - benefit from the MFN clause until December 31, 2024.

3

- The suspension follows the 19 October 2023 ruling by the Supreme Court of India in case of Nestle SA:
  - MFN clause not directly applicable without formal notification under section 90 of the Indian Income Tax Act.
  - The MFN clause applies only to OECD member states as of the protocol's signing date (30 August 2010).
  - Exclusion of Colombia and Lithuania from MFN benefits, as they joined the OECD on 28 April 2020 and 5 July 2018, respectively.

4

- The reduced 5% dividend rate remains applicable for dividends earned during the 2018-2024 tax years, as per the Swiss statement of 13 August 2021, based on Lithuania and Colombia's OECD membership dates.

## Key features of Direct Tax Vivad se Vishwas Scheme, 2024

Forms, procedures, and standards were issued on 20 September 2024; Scheme is effective from 1 October 2024

1

Four step process for settlement was introduced

2

Due date extended from 31 December 2024 to 31 January 2025

3

VsV covers cases pending before specified forums on 22 July 2024

4

On settlement of quantum appeal, immunity from interest and penalty

5

Amount paid pursuant to VsV declaration is not refundable

6

CBDT has issued guidance in the form of FAQs via Circular No. 12/2024 dated 15 October 2024 and 19/2024 dated 16 December 2024

## Key updates on Direct Tax Vivad se Vishwas Scheme, 2024 (Circular 12/2024 and 19/2024)

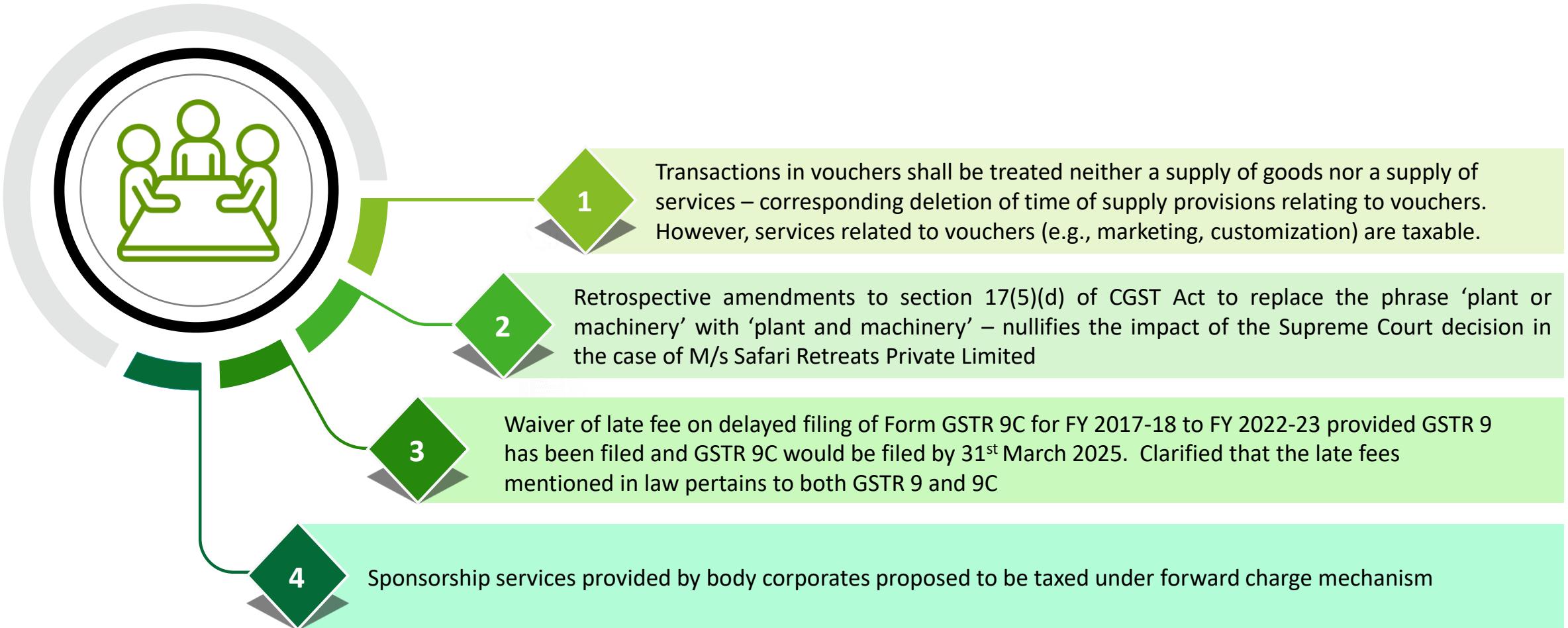
- 1 Appeal is pending as on 22 July 2024, but subsequently disposed off before making declaration, is eligible for the Scheme
- 2 Appeal is not filed by 22 July 2024, including where due date to file appeal not yet expired (except where DRP orders are issued), is not eligible for the Scheme
- 3 Dispute has to be settled in full. Where there are non-qualifying tax arrears, such disputes are not eligible to be covered under the Scheme
- 4 The taxpayer cannot settle penalty appeal in VSV, when the appeal against disputed tax on which penalty is applied is pending
- 5 Payment of the amount determined under the Scheme cannot be made through adjustment of any refund expected from the Department
- 6 If deductor settles TDS/TCS cases, then consequential relief will be provided to deductee and vice versa

## Key updates on Direct Tax Vivad se Vishwas Scheme, 2024 (Circular 12/2024 and 19/2024)

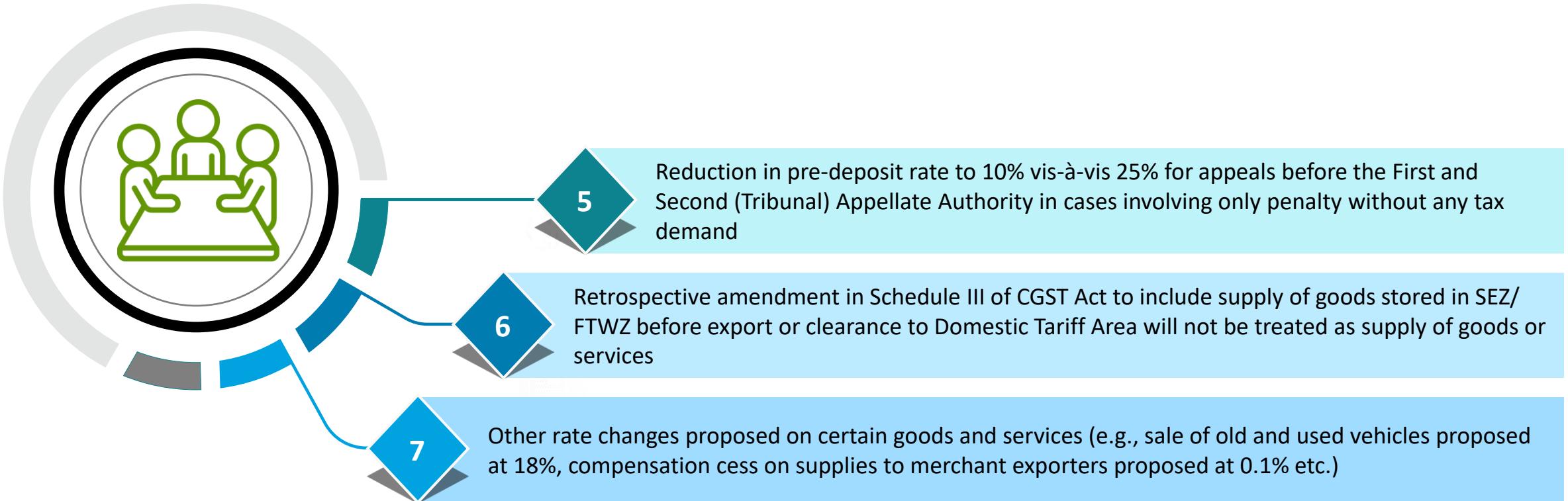
- 7** Writ petition filed against notices issued under section 148/148A are not eligible for the Scheme as disputed tax is not ascertainable.
- 8** Cross objections and additional grounds are covered but Miscellaneous Applications and Review Petition are not covered.
- 9** Once dispute is settled, the immunity from prosecution with respect to that dispute shall also extend to the director/partner of company/firm.
- 10** Where an appeal has been set-aside fully or partly to ITAT/CIT(A)/DRP, such appeals will be eligible for the Scheme.
- 11** Penalty appeal that are not related to quantum assessment like penalty under section 271B, 271BA, etc. are not waived upon settlement of appeal relating to disputed tax but needs to be settled separately
- 12** If the taxpayer avails the Scheme for Transfer Pricing adjustment, secondary adjustment under section 92CE will be applicable

# Indirect tax updates

# 55 GST Council Meeting (21 December 2024) : Key recommendations



# 55 GST Council Meeting (21 December 2024) : Key recommendations



# Introduction of Invoice Management System (IMS) in GST



1

IMS is a tool introduced with an intention to reduce input tax credit (ITC) errors and improve reconciliation between taxpayers and their suppliers. Draft manual is rolled out on GSTN portal

2

Recipients can either accept, reject, or mark invoices as pending. Pending invoices are deferred until acted upon. No action taken - ITC shall flow into the recipient's GSTR 3B. Pending option not available for credit notes or amended invoices.

3

IMS is effective on GSTN portal from 1<sup>st</sup> October 2024 – as of now, it is optional. Imports, ISD, RCM invoices etc. will directly flow in GSTR-2B and not in IMS. Rejection of credit note, downward revision of B2B amendments by recipient to impact supplier's liability in next month

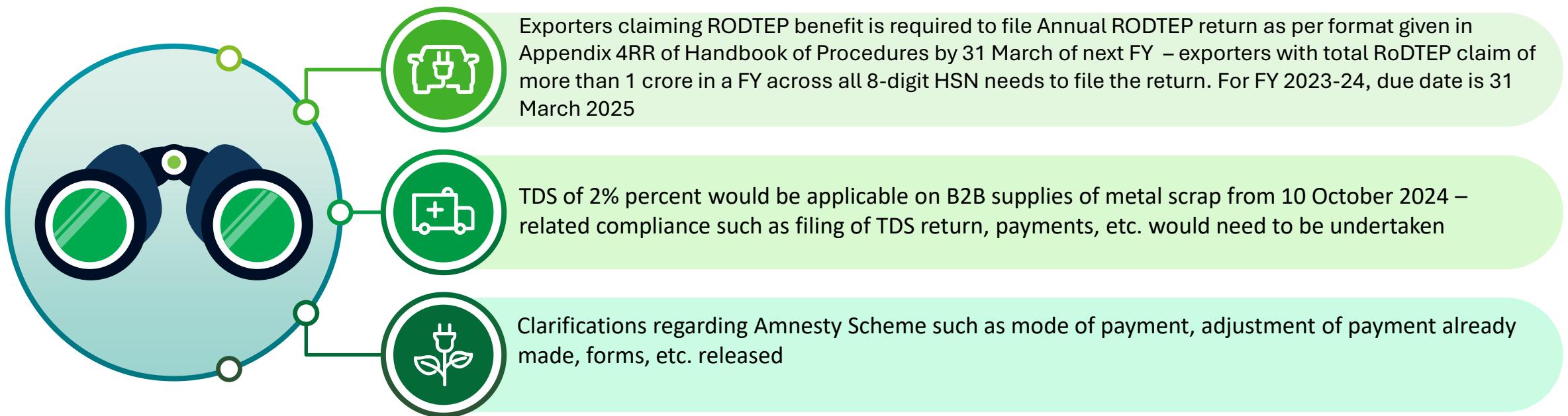
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55<sup>th</sup> GST council meeting provided following recommendations on IMS

- Providing legal framework in GST law for generation of Form GSTR-2B based on action taken by the taxpayers on IMS.
- Form GSTR-3B of a tax period shall be allowed to be filed only after generation of Form GSTR-2B of the said tax period.
- Provide for requirement of reversal of ITC as is attributable to a credit note, by the recipient, to enable the reduction of output tax liability of the supplier.

Once GSTR 3B is filed, action of Accept or Reject will be removed from IMS and cannot be reversed in the subsequent months.

## Other Indirect Tax Updates



# Judicial pronouncements – Direct Tax



### Facts of the case

- The Central Government issued notification under section 3(1) of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA] on 31 March 2021 and 27 April 2021 stating that the provisions under the old regime shall apply to the reassessment proceedings initiated after 1 April 2021. The tax officers issued reassessment notices between 1 April 2021 and 30 June 2021 under old regime.
- High Courts quashed reassessment notices, ruling that from 1 April 2021, the new regime under section 148A must apply, as sections 147-151 were substituted by the Finance Act, 2021, and there was no saving clause for the old regime.
- Supreme Court in case of Ashish Agarwal agreed with the High Courts' view but allowed reassessment notices under the old regime (issued under Section 148) to be treated as valid under section 148A(b) of the new regime, in order to balance the interests of the Revenue.
- The CBDT issued an instruction on 11 May 2022 for the implementation of the SC decision in Ashish Agarwal to all cases whether challenged or not. The Instruction is based on the presumption that the notices issued under section 148 of the new regime will travel back in time to their original dates, i.e. the date when the section 148 notice under the old regime was issued and then new section 149 is to be applied.
- The tax officers passed orders under section 148A(d) of new regime. Subsequently, notices under section 148 of the new regime were issued between July and September 2022 for the assessment years 2013-2014 to 2017-2018.
- These notices were challenged before several High Courts. The High Courts held the notices to be invalid on the ground that they were:
  - (i) time-barred; and (ii) issued without the appropriate sanction of the specified authority.



### Issue

- Whether these reassessment notices issued are time barred



### Decision of Supreme Court

- After 1 April 2021, the Income-tax Act must be read alongside substituted provisions.
- The amendment or substitution of a provision under the Act will not affect the application of TOLA, so long as the action contemplated under the provision falls for completion during the period specified by TOLA, that is, 20 March 2020 to 31 March 2021.
- Section 3(1) of TOLA overrides section 149 only to the extent of relaxing the time limit for issuance of notice under section 148.
- TOLA extends the sanction time limit under section 151 of the new regime until 30 June 2021 if three year time limit falls between 20-3-2020 and 31-3-2021 as per new regime.
- In the case of section 151 of the old regime, if the time-limit of four years falls between 20 March 2020 and 31 March 2021, then the specified authority under section 151(2) has time till 31 March 2021 to grant approval.
- The SC directions in Ashish Agarwal case will extend to all the reassessment notices issued between 1 April 2021 and 30 June 2021 under the old regime
- The Assessing Officers were required to issue notice under section 148 of new regime within the time limit surviving under the Income-tax Act read with TOAL. Notices issued beyond the surviving time limit are time-barred and liable to be set aside.

# Special Bench – Ahmedabad Tribunal | Applicability of TP provisions to transaction between foreign HO and Indian PO.

TBEA Shenyang Transformer Group Company Limited [TS-508-ITAT-2024(Ahd)-TP]



## Facts of the case

- Appellant, an Indian project office ('PO'), was established by its head office, a Chinese non-resident company ('Foreign Company' or 'HO') in connection with a power project, to provide certain onshore services within India.
- As per the arrangement between HO and PO, the PO was responsible to provide onshore services to third-party customer in India. Further, the PO outsourced a portion of the services to independent sub-contractor(s). However, since the PO did not have any operational bank account in India, the HO directly made payments to such sub-contractors and collected money from customers on behalf of the PO.



## Issue

- TPO held that the contract is entered into by HO with third party but executed by the PO on behalf of HO. Hence, it is an 'international transaction' and subject to the provisions of TP.
- Alleging that the PO is not adequately compensated for the work, TPO made adjustment to the income of the PO.

# Special Bench – Ahmedabad Tribunal | Applicability of TP provisions to transaction between foreign HO and Indian PO contd..

TBEA Shenyang Transformer Group Company Limited [TS-508-ITAT-2024(Ahd)-TP]



## Decision of Special Bench

- Considering different facts, there is no conflict between the decision of Aithent and Fuji Corporation.
- In case of India branch of a foreign company, both branch and HO are non-resident entities, and a transaction between two non-residents is covered as an international transaction.
- On the facts of the case, the transaction is between a foreign HO and Indian PO and as per article 7(2) of the India -China treaty, when business is carried on through a PE, appropriate profits should be attributed to such PE for its activities as if it were a distinct and separate enterprise.
- The applicability of TP provisions and computation of ALP are linked to qualifying as an "enterprise" and not to being a "person".
- Sections 92A(1) and (2) are to be read together and cannot be read independently.
- In case PO's contract with third party is influenced by the terms and conditions agreed by the HO with third party, it may get covered under "deemed international transaction".



### Facts of the case

- The assessee is a Non-Deposit Taking Non-Banking Financial Company (NBFC) and a wholly owned subsidiary of Tata Motors Limited. It functions as the captive financing arm of Tata Motors, primarily involved in financing vehicles manufactured by Tata Motors.
- During the financial year (FY) 2010-11, the assessee issued Non-Convertible Subordinate Perpetual Debentures (PDs) to raise capital, amounting to Rs. 375.30 crores. These debentures were disclosed as privately placed unsecured non-convertible subordinated perpetual debentures.
- The debenture terms included a call option enabling the issuer to redeem them after 10 years, with the option to redeem monthly thereafter. The debentures had a step-up feature, increasing the interest rate by 0.5% per annum if the call option was not exercised within the specified period.
- The assessee regularly paid interest on these debentures and claimed an interest expense deduction of Rs. 39.86 crores under Section 36(1)(iii) of the Income Tax Act, which permits deductions on interest paid for money borrowed for business purposes.
- The Assessing Officer (AO) disallowed the interest deduction, arguing that the perpetual debentures were hybrid instruments rather than borrowings. The AO cited their lack of a fixed maturity date and compared them to equity instruments, relying on the Pepsu Road Transport Corporation case (130 ITR 18).
- The Commissioner of Income Tax (Appeals) (CIT(A)) upheld the AO's decision to disallow the interest deduction on the debentures.



### Key principles emerging from ITAT decision

**Favorable**

- The ITAT emphasized that, despite the hybrid nature of the debentures, they were more akin to debt than equity. This was due to features such as the fixed interest rate, the redemption option after 10 years, and their listing on the debt segment of the stock exchange.
- The ITAT rejected the department's argument that the debentures should be treated as equity, highlighting that the debenture holders had no voting rights, no profit participation, and no rights to the company's management.
- The interest paid on the perpetual debentures was treated as a charge on the company's profits, not as an appropriation of profits like dividends. This supported the characterization of the debentures as debt.
- The ITAT noted that the company exercised the call option to redeem the debentures after 10 years, indicating that the company viewed the instrument as a debt requiring repayment.
- The issuance of the perpetual debentures was found to serve a legitimate business purpose, including raising funds for financing activities, repaying existing loans, and fulfilling working capital needs.
- The ITAT distinguished this case from the Pepsu Road Transport Corporation case, pointing out that in the present case, there was a written agreement for repayment and a clear commercial arrangement, unlike the earlier case where there was no obligation to repay.
- The ITAT ruled in favor of the assessee, allowing the deduction for interest paid on the perpetual debentures.
- It held that the debentures were a form of borrowing and that the interest paid was deductible under Section 36(1)(iii) of the Income Tax Act.

# Judicial Pronouncement - Indirect tax

# L&T IHI Consortium Vs Union of India (Bombay High Court)

[2024] Writ Petition No. 2980 of 2019



## Facts of the case

- Business Nature:** Petitioner got a contract from MMRDA for construction of bridge. Petitioner sub-contracted the said work to another vendor
- ITC Claim :** Advance payments were received by petitioner from MMRDA which were subsequently paid to sub-contractor. Whether said advance qualify as “supply” and whether ITC can be claimed on the same basis GST paid



## Issue

- Whether ITC is available to the recipient on the basis of a ‘receipt voucher’.

# L&T IHI Consortium Vs Union of India (Bombay High Court)

[2024] Writ Petition No. 2980 of 2019



## Decision of High Court

### Observation

- Section 7(1)(aa) has included “supply of goods or services agreed to be made for consideration or a deferred payment for other valuable consideration” in the ambit of supply.
- “Receipt voucher” is a tax paying document and accordingly, Rule 36 cannot control the operation of Section 31.

### Ruling

- It was held that the petitioner was entitled to the benefit of Input Tax Credit

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