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India TaxHour

Quarterly India tax updates

October-December 2025
13 January 2026

Subject matter experts

We will discuss...

APA Updates

Direct tax updates

- Niti Aayog's working paper on PE and profit attribution
- 2025 Update to the OECD Model Convention

Indirect tax updates

- The Simplified GST Registration Scheme
- Updates in the Invoice Management System, or IMS
- Waiver of certification for post-supply discounts
- Provisional refund processing
- E-filing of appeals with CESTAT

Labour Codes – Time for Action

Recent judicial pronouncements

APA Updates

Updates on Advance Pricing Agreement ('APA') Program

Record Signings

- **174 APAs concluded in FY 2024-25**, including unilateral, bilateral, and multilateral APA

Increasing trend of BAPAs

- **65 Bilateral APAs (≈37%)**, including one multilateral APA, underscoring a growing taxpayer preference for BAPAs. This trend reflects the **increasing reliance on bilateral mechanisms** for greater certainty and effective dispute prevention

APA Team

- To enhance capacity and operational efficiency, **five APA teams across India have been augmented** by induction of ten additional officers - two CIT/Addl. CIT officers assigned to each team

Sector Coverage

- Majority of UAPAs pertain to **IT, ITES, banking & insurance, and engineering sectors**

Reduced Timeline

- Timeline for concluding UAPAs / BAPAs **significantly reduced.** 40% of the UAPA cases were resolved within 2 years. Average time to conclude BAPA from 65 months to 50 months.

Updates on APA Program

Global Collaboration

- Indian CAs have held multiple meetings with key treaty partners such as **USA, UK, Japan, Canada, France, Germany, Finland, South Korea and Denmark**. Further, meetings scheduled with USA, UK, Australia, France, Germany and Indonesia, among others.
- CBDT is focused on expanding dialogue with additional treaty partners and on scheduling regular CA meetings to **ensure timely dispute resolution and enhance tax certainty**

OECD Tax Certainty Day – held in October 2025

India and Japan were awarded the **co-operation award** for transfer pricing cases, with an impressive 80 cases having been successfully resolved.

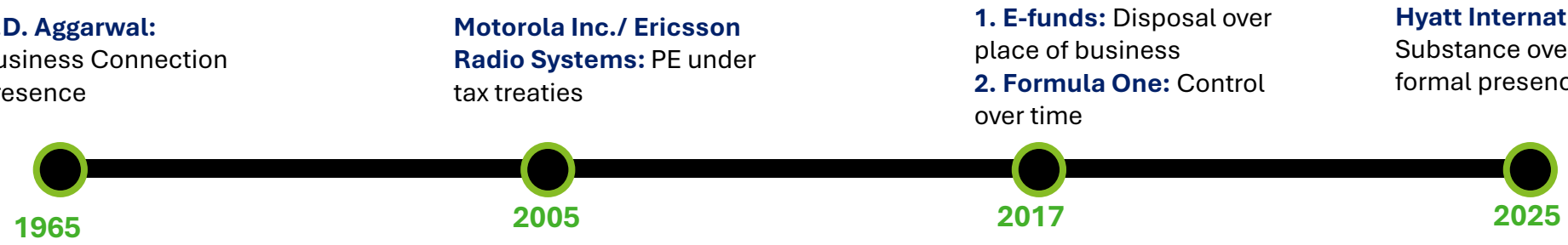
Direct tax updates

NITI Aayog paper on PE and profit attribution (1/2)

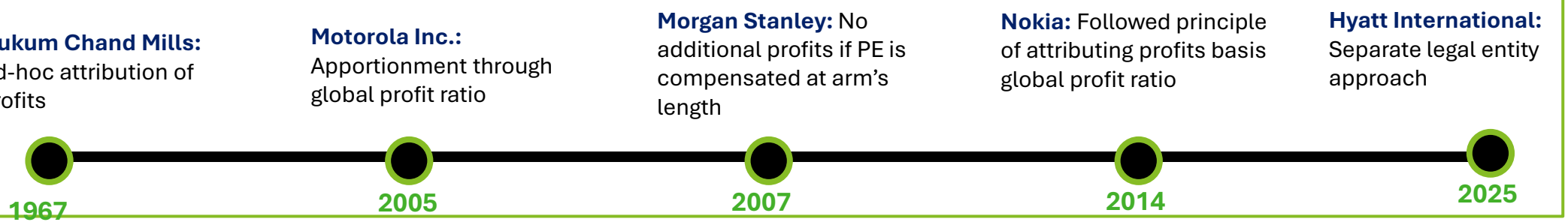
- Niti Aayog's Consultative Group on Tax Policy (**CGTP**) has presented a working paper recommending proposals on permanent establishment (**PE**) and profit attribution
- Titled - *'Enhancing Certainty, Transparency, and Uniformity in Permanent Establishment and Profit Attribution for Foreign Investors in India'*
- Objective: usher in clear, consistent and predictable tax policy rules around PE and profit attribution rules

Timeline

- PE:



- Attribution of profits



NITI Aayog paper on PE and profit attribution (2/2)

Key proposals:

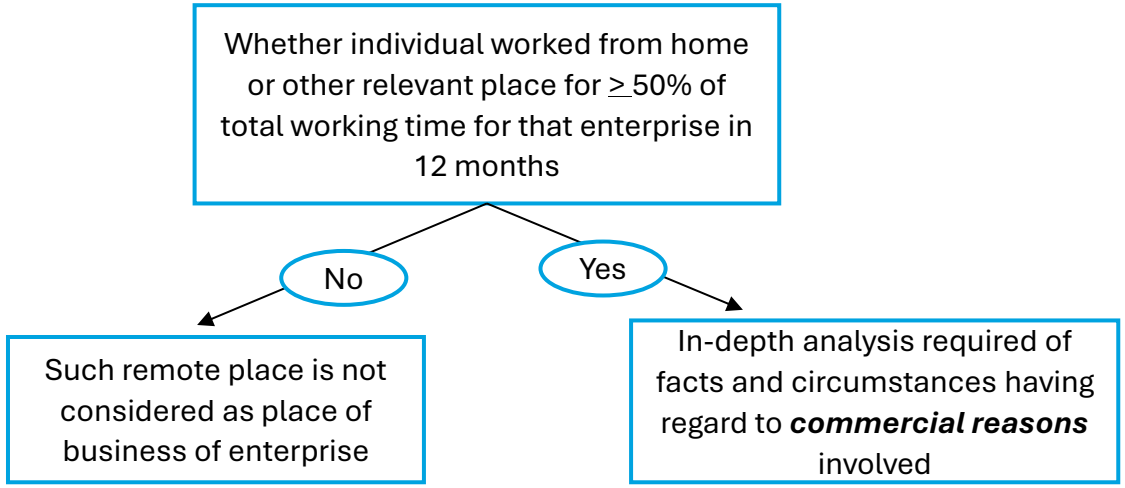
- Industry-Specific Presumptive Profit Rates
- Optional Regime (Rebuttable Presumption)
- No Separate PE Determination Needed (Safe Harbour)
- Safe Harbour for PE Attribution
- Advanced Pricing Agreement (APA) for PE Attribution
- Administrative Simplicity and Audit

What's next :

- MoF reviews the recommendations, possibly constitute a working group to draft the legal provisions, consult with stakeholders (industry bodies, tax professionals, treaty partners), and include the final proposals in an upcoming Finance Bill

The 2025 Update to the OECD Model Convention (1/2)

- OECD published updates to the OECD Model Tax Convention on 19 November 2025 to reflect latest developments in international taxation
- These changes will be incorporated into the forthcoming revised edition of the OECD Model, to be published in 2026
- Amongst few changes, one key update pertains changes in the OECD model tax treaty's commentary on "fixed place of business" PE particularly in situations of cross-border remote working
- Key principles:
  - Actual conduct matters over contractual arrangements
  - Guidance is illustrative to be applied having regard to wider facts and circumstances of each case
- Flow chart on remote working guidance



The 2025 Update to the OECD Model Convention (2/2)

- A commercial reason requires a ***link*** between the individual's physical presence at home or other relevant place and carrying on of the business of the foreign enterprise. It requires evaluation of how the specific activities of the individual relate to the business of the enterprise
- ***Examples of what does not constitute commercial reasons***
  - Short occasional visits to premises of customer, or engagement that is minor in the context of overall business relationship with the customer;
  - Enterprise permitting work from home or other relevant place solely to reduce cost, retain or obtain services of the individual;
  - Mere presence of customers or suppliers of the enterprise or of an associated enterprise where the home or other relevant place is located;
  - Mere fact that the home or other relevant place is located in a different time zone to that of the state in which the enterprise is located;
- ***Examples of what constitutes commercial reasons***
  - Where individual directly engages with customers, suppliers, associated enterprises or other persons on behalf of the enterprise and that engagement is facilitated by the individual being located in the other state
  - performance of services for customers or clients located in that other state where such services require the physical presence of employees or other personnel of the enterprise in that other State

Note: India does not agree with above OECD guidance. It considers that individual's home can be considered as being at the disposal of the enterprise and it constitutes a place of business for the purpose of application of Article 5.

Indirect tax updates

Simplified GST registration scheme (Rules 9A & 14A)

- **Quick Approval:** GST registration to be granted within 3 working days.
- **Who Can Opt?:** Taxpayers with monthly output tax liability ≤ ₹2.5 lakh.
- **Restriction:** Cannot obtain another registration in the same State/UT under the same PAN.
- **Withdrawal Guidelines:**
  - No pending returns or applications.
  - Minimum filing: 3 months (before Apr 1, 2026) or 1 tax period (after Apr 1, 2026).
  - No cancellation proceedings pending.

IMS updates (Effective Oct 2025)

IMS is currently optional; however, following new features have been introduced:

- **Credit Note Handling – New Flexibility:** Credit notes can now be kept **"Pending" for one tax period** and **modify ITC reversal upon acceptance**.
- **New 'Import of Goods' Section in IMS:** Taxpayers can view and accept or keep pending – but not Reject- a **Bills of Entry (including SEZ imports)**.

Certification waived for post-supply discounts

- Procedure for CA/CMA certificates or recipient undertakings is no longer mandatory as circular has been withdrawn.
- **Statutory condition remains:** Recipients must continue to reverse proportionate ITC on post-supply discounts
- **Expected legislative amendment:** Relaxation in requirement of establishing discount in terms of an agreement and invoice linking requirements

GST Provisional Refund Processing

Key Change

90% of refund amount sanctioned provisionally based on risk-based assessment

Applicable To

- ✓ Zero-rated supplies (exports)
- ✓ Inverted Duty Structure (IDS) claims

Processing Mechanism

- System evaluates risk score for each application
- **Low-risk cases:** 90% sanctioned provisionally without detailed scrutiny
- **Non-low-risk:** Detailed examination required

Important Notes

- Proper officer may deny provisional refund for recorded reasons (case-by-case)
- Excluded: Notified categories under Section 54(6)
- Not applicable if pending appeals or SCN issued on previous refunds
- Recovery through SCN if provisional exceeds final admissible amount

Effective Date: Applications filed on or after 1 October 2025

CESTAT update

Particulars	Remarks
CESTAT Notification on E-Filing of Appeals dated 01 Oct 2025	**New Appeals:** • All appeals/applications must be filed **online in PDF format**, signed by the appellant. • Filing to be done via **https://efiling.cestat.gov.in**. • Each appellant must register and will get a dashboard to track appeal status. • Respondents must also file applications/memorandum of cross-objections online. • Users must register with their email ID; if missing, contact the registry to update details. • Online appeals complete in all respects will be considered filed on the date of **diary number generation**. • Payment of Appeal Fees through **Bharatkosh payment gateway** (online or offline). **Pending Appeals:** • All previously filed appeals must be uploaded to the portal. • All earlier filed documents must be uploaded; only uploaded documents will be available during hearings. New documents can be added with bench approval. • **Deadline for Uploading Old Appeals**: Complete uploading **at least one week before the final hearing**. **Effective Date of Notification:** 15 November 2025. • Physical filing discontinued from 31 December 2025.

Judicial Pronouncements – Direct Tax

Netflix Entertainment Services India LLP [TS-636-ITAT-2025(Mum)-TP]

Appellant's Approach

- Netflix India performed **limited functions** including entering into **terms of use with customers; issuing invoices and collecting subscriptions; marketing and promoting subscriptions as per global strategies**; liaising with telecom operators and Internet Service Providers ('ISPs') for business development; arranging, though not providing, customer service; and procuring and transferring Open Connect Appliances ('OCAs') specialized cache devices used to reduce network congestion for ISPs.
- Netflix India neither owned nor developed any intangible assets. **All intellectual property rights, content, service architecture, and trademarks were owned and controlled by Netflix US.**
- **Netflix India was risk-insulated. Its entire cost base was reimbursed by the Associated Enterprises, along with a fixed mark-up on sales.** It bore only limited operational risks such as minor market or regulatory risks incidental to its distribution activity, while all critical entrepreneurial, service liability, and investment risks were assumed by Netflix US.
- For benchmarking the international transaction of payment of distribution fee to its Associated Enterprises, **Netflix India selected Transactional Net Margin Method ('TNMM') as the Most Appropriate Method ('MAM') using Operating Profit / Operating Revenue as the Profit Level Indicator ('PLI').**
- Netflix India arrived at a **set of 17 software distribution comparable companies** with range of 1.88% to 2.23% and range of 0.77% to 1.47% **post working-capital adjustment.** Since, Netflix India's margin of 1.36% was within the range of 0.77% to 1.47%, the international transaction was concluded to be at arm's length.

TPO / DRP Contentions

- The **TPO departed** from Netflix India's declared functional characterization as a limited-risk distributor of access to Netflix Service and embarked on a **re-characterization** exercise asserting that Netflix India bore significant entrepreneurial, regulatory, and operational risks, and was in effect not a mere distributor but **principal service provider of the Netflix (content and platform in India).**
- The **TPO**, therefore, **rejected the TNMM** selected as MAM by Netflix India. The TPO was of the opinion that comparable companies selected by Netflix India were largely **software and hardware distributors** which **were inappropriate** since Netflix India was not trading in goods but was providing complex, integrated services in the media and entertainment industry
- The TPO thus invoked the provisions of Rule 10AB of the Income-tax Rules, 1962 ('Other Method') and sourced **6 allegedly uncontrolled royalty agreements from RoyaltyStat database:** 3 concerning licenses for content distribution rights and 3 for technology platform rights and **computed the royalty rate for content rights at 48.75%** of revenue and for **technology platform rights at 8.37%** of revenue (**57.12% of revenue**) and proposed a staggering TP adjustment of 444.93 crores.
- Further, the **DRP characterized Netflix India as a full-scale entrepreneurial entity** possessing substantial assets, contractual obligations, marketing resources, customer-service infrastructure, and hosting capabilities, thereby rejecting the notion of a routine distributor.
- Moreover, the **DRP on a without prejudice basis** corroborated the ALP determined by the TPO, replaced the royalty model and assigned certain percentages to various functions performed by Netflix India to **conclude that 43% of total revenue should be attributed to Netflix India.**

Netflix Entertainment Services India LLP [TS-636-ITAT-2025(Mum)-TP] - Hon'ble Income-tax Appellate Tribunal's Decision

1

The **ITAT held** that the Distribution Agreement and Terms of Use clearly establish **Netflix India**'s limited role in marketing, distribution of access, invoicing, and customer support justifying its functional characterization as **limited-risk distributor.**

2

The Distribution agreement does not confer any license to use, reproduce, alter, or sublicense content or technology to Netflix India. In other words, Netflix India **does not own / exploit content and technology platform.**

3

OCAs are cache devices placed at ISP nodes to store temporary copies of data for bandwidth optimization. The OCAs therefore serve purely as **logistical enablers** akin to a distributor's warehouse and **not critical technological assets**.

4

TNMM (ROS Model) is suitable for a limited risk distributor. The residuary 'Other Method' under Rule 10AB may only be invoked where none of the prescribed methods can apply and where 'Other Method' can provide a reliable outcome.

5

Software Distributors are valid analogues for media-content distributors where product or market comparables are not available.

6

Genuine contracts cannot be rewritten by the tax authorities unless proven to be sham, and that transfer pricing must reflect functional reality rather than hypothetical constructs.

7

Royalty agreements relied upon **by the TPO** are largely outdated, unsigned, or incomplete, and primarily concerned licenses of films, music, catalogues, or software codes, all of which **are economically distinct** to a mere distribution of access.

8

Distribution of access to software, even where downloads occur **is not a transfer of copyright** in view of Apex Court's decision in the case of Engineering Analysis.

9

Rule 10AB is not a license for arbitrary attribution. The method must still rely on 'comparable uncontrolled transactions' or reasonable quantitative adjustments.

10

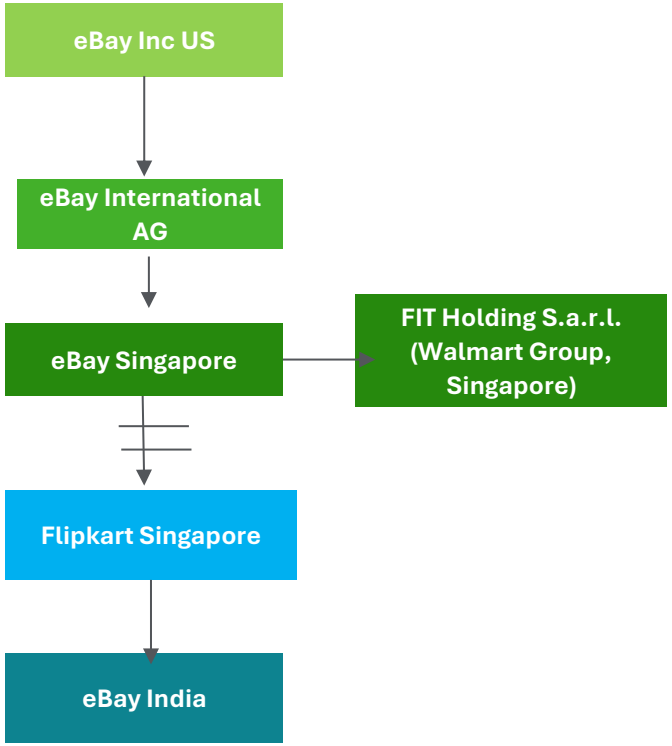
Technological presence should not be conflated with economic ownership. The mere existence of servers, caches, or support personnel in a jurisdiction cannot by itself confer value-creation status.

Mumbai Tribunal | Indirect transfer taxability under India-Singapore tax treaty (1/2)

eBay Singapore Services Private Limited

Facts of the case

- eBay SGP sold its shares in Flipkart SGP to FIT Holding S.a.r.l. (a Walmart group company in SGP).
- AO denied India-SGP treaty benefits, alleging that the 'control and management' of eBay SGP was effectively exercised by eBay Inc. and hence India–U.S. tax treaty should apply.



Issue

- Whether capital gain arising from sale of shares of Flipkart SGP is taxable in India under India–Singapore tax treaty?

Decision of the Court

- Directors of eBay Singapore were based in SGP and HK. They were not employees or nominees of eBay Inc. All board resolutions regarding investments and divestments were approved and executed in SGP. Revenue produced no evidence to show US-based management and control or that eBay Inc. was the ultimate beneficiary of the gains. Hence, India-US treaty ought not to apply.
- Article 13(4B) of India-SGP treaty will apply only where the alienator of the shares and the company whose shares are being transferred are residents of two different contracting states.
- Transaction is covered by Article 13(5) of India-SGP treaty and therefore gains shall be taxable only in Singapore. Unlike certain other treaties that expressly confer source-state taxing rights on shares deriving value from immovable property or local assets, the India–SGP tax treaty does not contain such 'look-through clause'.

Mumbai Tribunal | Indirect transfer taxability under India-Singapore tax treaty (2/2)

eBay Singapore Services Private Limited

ARTICLE 13: CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the **alienation of immovable property**, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the **alienation of movable property forming part of the business property of a permanent establishment** which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the **alienation of ships or aircraft** operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4A. Gains from the **alienation of shares acquired before 1 April 2017** in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.

4B. Gains from the **alienation of shares acquired on or after 1 April 2017** in a company which is a resident of a Contracting State may be taxed in that State.

4C. However, **the gains referred to in paragraph 4B of this Article** which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 may be taxed in the State of which the company whose shares are being alienated is a resident at a tax rate that shall not exceed 50% of the tax rate applicable on such gains in that State.

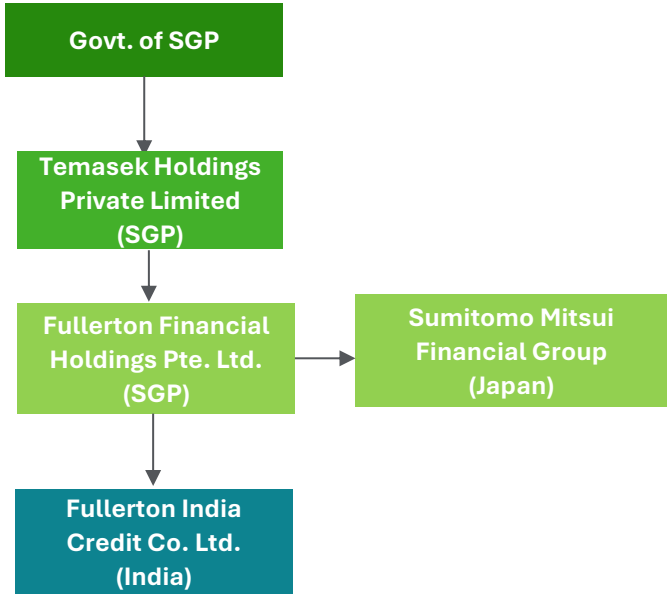
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Mumbai Tribunal | Direct transfer taxability under India-Singapore tax treaty

Fullerton Financial Holdings Pte. Ltd.

Facts of the case

- Fullerton SGP made investment in Fullerton India during FY 2008-09 with long term investment objective.
- During FY 2021-22, Fullerton SGP sold its entire stake in Fullerton India and claimed LTCG arising on such sale to as exempt in India under Article 13(4A) of India-SGP tax treaty considering shares were acquired prior to 1 April 2017.
- Tax officer invoked limitation of benefits [**LOB**] clause under Article 24A to disallow no-tax claim.



Issue

- Whether taxpayer satisfied LOB tests under Article 24A of India–SGP tax treaty?

Decision of the Court

- Application of LOB requires examination of **commercial rationale**, **governance framework**, **economic substance** and **functional control in relation to transaction**.
- Relevant factors include carrying genuine investment and management activities from SGP, BoD exercised effective decision making in SGP, investment in Indian company formed part of long-term strategic portfolio rather than mere conduit to channel gains through low tax jurisdiction.
- Taxpayer had furnished a confirmation from IRAS as well as statutory auditor that it satisfied prescribed expenditure test under the tax treaty.
- The ultimate beneficial owner of the investment was the SGP Govt (if at all any entity were to be regarded as earning income) which is not subject to tax under Indian laws by virtue of principle of sovereign immunity.
- Accordingly, it was held that Fullerton SGP satisfied LOB test and hence, eligible to no-tax position under Article 13(4A) of the treaty.

Bombay High Court | Whether rate of DDT can be limited to lower treaty rate

M/s. Colorcon Asia Pvt. Ltd.

Facts of the case

- Colorcon Asia Pvt Limited (an Indian company) had paid dividends to its parent company - Colorcon Limited UK across years.
- It paid dividend distribution tax (**DDT**) under section 115-O of the income tax law
- Thereafter, it filed application before the Board for Advance Ruling (**BFAR**), which held that dividend tax rate under Article 11 of India-UK DTAA shall not restrict the tax rate of DDT, following decision of the Mumbai Special Bench in Total Oil Private Limited.

Issue

- Whether rate of DDT can be restricted to lower tax rate under the India-UK tax treaty?

Decision of the Court

- DDT paid by Indian company is not income tax on profits of the Indian company, but tax on dividends which is income of the shareholder
- If taxpayer fulfils all the conditions under Article 11 (Dividends) of India-UK tax treaty, applicable rate of DDT should be restricted to rate prescribed under Article 11 (Dividends) of the treaty.

Supreme Court | Deductibility of head office expenditure

American Express Bank Ltd.

Facts of the case

- The assessee was a non-resident banking company operating via branch offices in India. It claimed deduction of expenses **incurred at HO directly in relation to the Indian branches** under section 37(1) of the income tax law.
- Assessing officer limited said deduction to 5% of the adjusted total income applying section 44C of the income tax law.

Issue

Whether section 44C applies to 'exclusive expenditure' incurred by HO for Indian branches?

Decision of the Court

- Section 44C specifies dual conditions: (i) assessee is a non-resident, and (ii) expense is a HO expenditure.
- Said section is a **non-obstante provision** and hence, overrides section 37.
- HO expense must satisfy these conditions: (i) incurred outside India; (b) is in nature of executive and general administration as specified in section 44C.
- The term 'attributable' in section 44C does not create statutory distinction between 'common' and 'exclusive' expenditure.
- Finally held that deductibility of all head office expenses (common or exclusive) shall be subject to ceiling limits under section 44C of tax law.

Judicial Pronouncements – Indirect Tax

Sikkim HC | Refund of Unutilised ITC on Business Closure denied – SICPA India Private Limited

Facts of the case

- Operations discontinued in Sikkim due to lack of orders from customers.
- All assets were sold and the taxpayer claimed refund of unutilized ITC under Section 49(6) of the CGST Act on the ground of closure of business
- Refund was rejected by the Assistant Commissioner and upheld by the Appellate Authority, stating that closure of business is not a valid ground under Section 54(3) for refund of unutilized ITC.
- SICPA challenged the rejection in the Writ Petition and Sikkim HC in single Judge decision allowed the refund holding that there is no express prohibition in the CGST Act against refund on business closure.
- Aggrieved by the order of single bench revenue challenged it against the Divisional bench of Sikkim HC.

Issue: Whether a registered person is entitled to encash unutilised ITC lying in the electronic credit ledger upon closure of business under Section 49(6) read with Section 54(3) of the CGST Act.

Observations by Division Bench of High Court

- The Division Bench of High Court held that Section 49(6) does not independently confer the right to claim a refund.
- Any refund under Section 49(6) must strictly follow the procedure laid down in Section 54.
- Section 54(3) allows refund of unutilized Input Tax Credit only in two specific cases: zero-rated supplies made without payment of tax, and inverted duty structure
- The Court clarified that closure or discontinuance of business does not fall in any of these two categories.
- Granting refund on account of business closure would amount to judicial rewriting of the statute, which is not permissible under law.
- The Court reaffirmed that refund is a statutory right and not a constitutional entitlement, and the legislature has full authority to define the circumstances under which refund may be granted.

Bombay HC | Blocking of Input Tax Credit in the Electronic Credit Ledger when no credit is available in the ledger on the date of the blocking order – Rawman Metal & Alloys

Whether Rule 86-A of the CGST Rules, 2017 permits the blocking of Input Tax Credit in the Electronic Credit Ledger when no credit is available in the ledger on the date of the blocking order.

Facts

- The authorities invoked Rule 86-A of the CGST Rules, 2017 to block ITC in the petitioner's E-Credit Ledger.
- At the time of the blocking order, the petitioner's Electronic Credit Ledger had a "Nil" balance.
- The petitioner argued that Rule 86-A could not be invoked to block ITC when no credit was available in the ledger on the date of the order.
- The Revenue contended that Rule 86-A should be interpreted to allow blocking of ITC even if the credit was not available at the time, to prevent fraudulent availment and utilisation of ITC.

Observations

- The Bombay High Court held that Rule 86-A can only be invoked to block ITC that is actually available in the Electronic Credit Ledger at the time of the blocking order.
- The Court rejected the concept of "negative blocking" (i.e., blocking future ITC not yet credited).
- It emphasized that taxing statutes must be strictly interpreted, and no presumed legislative intent can override the plain language of the rule.
- The Court followed the rulings of the Gujarat, Delhi, and Telangana High Courts, which had similarly held that Rule 86-A does not permit blocking of non-existent or future ITC.
- The impugned order was quashed, and the blocked ITC was directed to be restored within 15 days.

Punjab & Haryana HC | Computation of limitation period for filing an appeal under Section 107 – Arvind Fashions Limited

Issue in Hand: Whether the time spent by the petitioner in pursuing a rectification application under Section 161 of the HGST/CGST Act should be excluded while computing the limitation period for filing an appeal under Section 107.

Facts

- M/s Arvind Fashion Ltd., engaged in retail and warehousing of garments and accessories, was issued a show cause notice for discrepancies in ITC claims and tax on "other expenses" based on consolidated financials.
- The petitioner filed a rectification application under Section 161, citing errors in the original order.
- This rectification application was rejected without notice or hearing.
- The petitioner then filed an appeal.
- The AA dismissed the appeal on the ground of time barred. However, the time taken by authorities for processing the rectification application was not excluded

Observations

- The High Court held that the rectification application was filed within the prescribed time and the appeal was filed immediately after its rejection.
- It would be anomalous to require simultaneous filing of an appeal and a rectification application, as a successful rectification would render the appeal unnecessary.
- The appellate authority erred in not excluding the time spent on the rectification application while computing the limitation period.
- The Court set aside the appellate order and remitted the matter to the appellate authority for a decision on merits.

Bombay at Goa HC | Transfer of unutilized ITC between companies located in different States pursuant to an amalgamation – Umicore Autocat India Pvt. Ltd.

Facts

- The petitioner was formed after amalgamation.
- The amalgamation was approved by the NCLT with effect from 01.04.2019.
- The Goa-based transferor company had unutilized Input Tax Credit (ITC) in its electronic credit ledger (IGST, CGST, and SGST).
- The petitioner attempted to transfer this ITC using Form GST ITC-02, but the GST portal rejected the request, citing that the transferor and transferee must be in the same State/Union Territory.
- The petitioner challenged this restriction, arguing that neither Section 18(3) of the CGST Act nor Rule 41 of the CGST Rules imposes such a condition.

Observations

- The Court held that:
  - Section 18(3) and Rule 41 do not impose any restriction on inter-State transfer of ITC.
  - The GST law permits transfer of unutilized ITC when there is a change in the constitution of a registered person due to amalgamation, regardless of State boundaries.
  - The GST portal's technical limitation cannot override statutory rights.
- However, the Court acknowledged that allowing SGST transfer from Goa to MH would result in a financial loss to Goa.
- The petitioner voluntarily gave up the claim for SGST transfer.
- The Court directed the authorities to allow the transfer of IGST and CGST amounts by physical mode for now and urged the GST Council and GSTN to update the system to accommodate such inter-State ITC transfers in future.

Gujarat HC | Refund of unutilized Input Tax Credit of Compensation Cess paid – Atul Limited

Facts

01

- The petitioner is engaged in supplies to Special Economic Zones (SEZs) and exports outside India.
- To generate electricity for manufacturing, the petitioner purchased coal (with payment of compensation cess) and used it in its captive power plant.
- The petitioner availed Input Tax Credit (ITC) on the cess paid on coal.
- The finished goods manufactured were exported as zero-rated supplies with payment of IGST but without payment of Compensation Cess.
- The petitioner filed a refund application, being the unutilized ITC of cess proportionate to the zero-rated supplies.
- The refund was rejected on the ground that refund of cess credit is not admissible when exports are made with payment of IGST.
- The appellate authority upheld the rejection

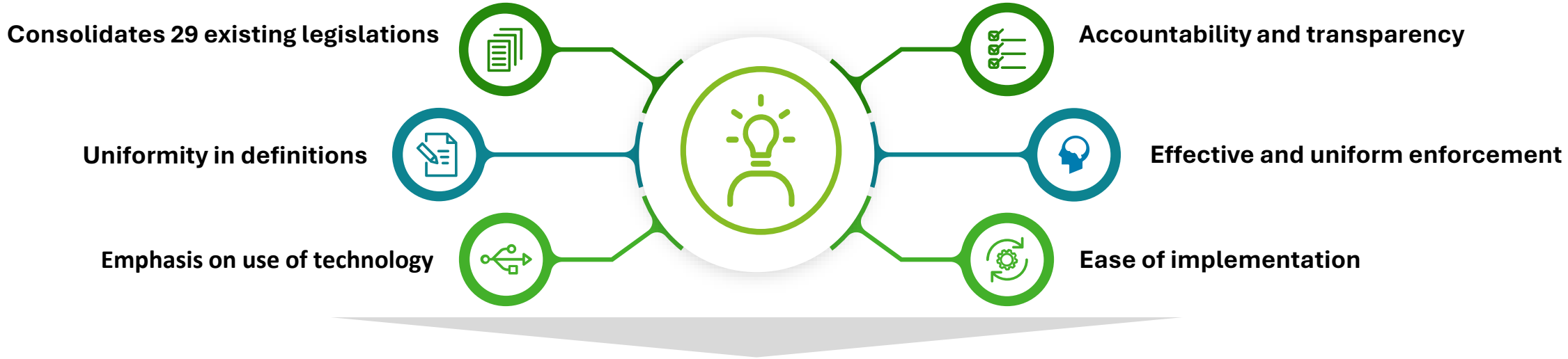
Observations

02

- The High Court held that the issue was no longer res integra in light of its earlier decision in the case of Patson Papers (P.) Ltd., where it was held that refund of unutilized ITC of Compensation Cess is permissible even when exports are made with payment of IGST.
- The Court found that the facts in the present case were identical to those in Patson Papers.
- It ruled that the petitioner was entitled to a refund of unutilized ITC of Compensation Cess paid on coal used in the manufacture of exported goods.
- The Court quashed the impugned orders and directed the department to process and sanction the refund claim

Labour Codes – Time for Action

Labour Codes – **An overview**



New Labour Codes

Code on Wages 2019 - 4 legislations subsumed	Occupational Safety, Health and working conditions Code 2020 -13 Legislation subsumed	Code on Social Security 2020 - 9 legislation subsumed	Industrial Relations Code 2020 - 3 Législations subsumed

*Please refer to Annexure for details of subsumed legislations

Codes
- Four codes were enacted, after receiving Presidential assent in 2019 and 2020
- Labour codes are made effective on 21 November 2025

Consultation
Rules under all four codes are pre published on 30 December 2025

Notification of rules
- Post the window of 30-45 days, after reviewing, consultation and making any changes if required, final rules will be notified
- States to follow similar process.

Key Impact Areas and Updates

Gratuity

- Gratuity to be computed with respect to “Wages” as against “basic salary”
- Impact on past employment as well as ongoing annual impact.
- Provision requirements as per ICAI guidelines
- Clarifications from Ministry of Labour and Employment towards variable payment/contingent payment and allowances.
- Need for reviewing the gratuity deed.

Provident Fund & ESI

- Limited impact to specific workforce of the organization
- Impact of wage definition given recent corrigendum
- Possible expansion in the coverage of number of employees under ESI.
- Compliance required from 21 November 2025
- Special considerations during registrations and contributions

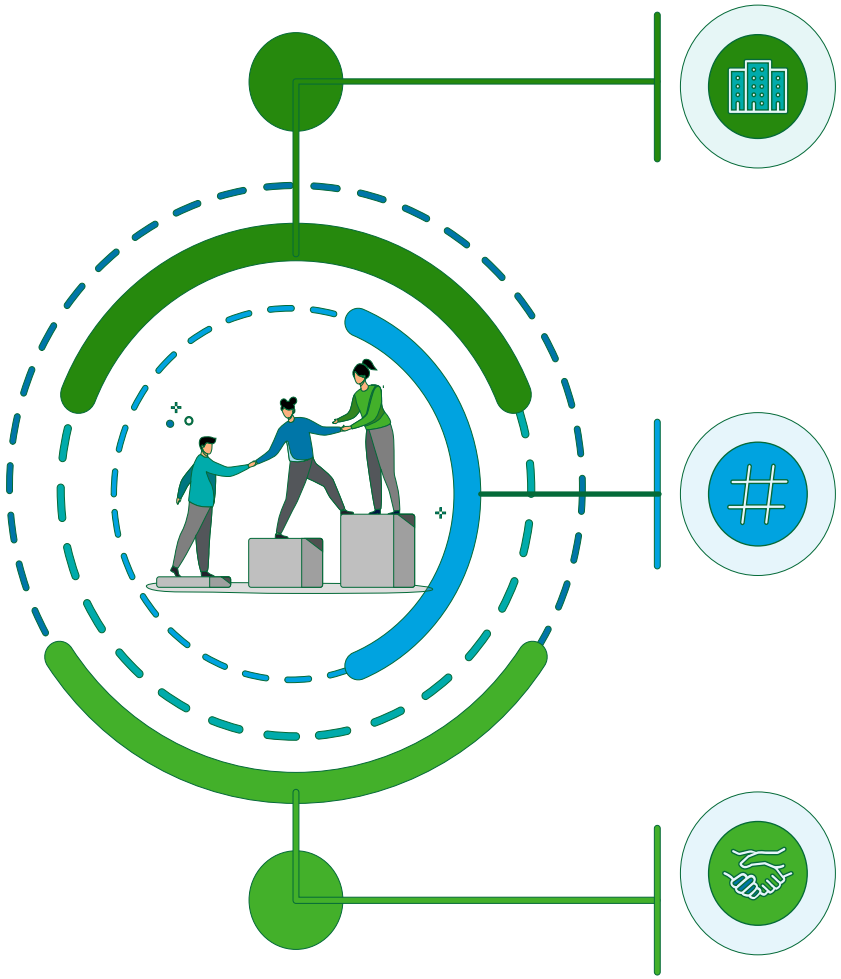
Leave provisions

- Shops & Establishments Act not subsumed
- Importance of worker classification
- Need for reviewing leave policies
- Restrictions on lapsing any leaves for workers
- Impact of ‘wages’ definition

Other Considerations

- Additional considerations for fixed term employees.
- Restrictions of contract workers for core activities.
- Change in timelines for Full and Final settlements.
- Updation of various formats, committees, other compliances

Key Focus Points



Wage and the impact

- Understand the impact of the definition of “Wages” across the Codes by analysing the salary structure, identify inclusions and exclusions to determine Wages; assess the financial impact.
- Realign salary structure based on the outcome of the financial impact analysis to ensure compliance with the labour codes.

Workforce

Understanding the workforce categorization – employees or workers? Defining the employees across different levels - on-roll regular employees; contracted/ third party employee, consultants/ retainers; women employees; Fixed Term Employees; other non-traditional employer-employee arrangements and identifying compliances relating to the same and discussing on core/non-core activities.

Policy and process

- Basis the amended compensation structure and requirements of the labour codes, align the impacted policies – e.g., Gratuity, PF, Maternity benefit etc. These would also impact working hours, leave policy, overtime policy, rest days and related HR policies, appointment letters, timelines for wage settlement, retrenchment policy, medical examination facility etc.
- Identify touch points triggering change in compliance requirements, timelines; map the current compliance processes; identify areas of changes and realign the internal processes to meet the compliance requirements under the Codes.

Thank you!

Kindly spare a minute to help us with your valuable feedback for today's session...
For any queries, please feel free to write to us at intax@deloitte.com

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