

# Monthly tax bulletin

December 2024



Welcome to this edition of the Tax Bulletin, your go-to resource for the most significant developments shaping India's tax ecosystem. Packed with updates on legislative reforms, landmark judgements, and regulatory initiatives; this issue spans direct taxes, FEMA, GST, and other indirect tax domains. Here's a quick look at what's in store:

In a significant development, the Supreme Court has allowed telecom companies to claim CENVAT credit on towers and prefabricated buildings, recognising them as essential goods for service delivery.

On the GST front, the Patna High Court has validated notifications extending assessment timelines for FY 2017-18 to FY 2019-20.

Meanwhile, new GSTN advisories aim to simplify invoice management, making compliance more seamless for taxpayers.

The CBIC has addressed the stakeholder queries on the interplay of IGCR rules and MOOWR scheme benefits, enhancing clarity and confidence in compliance.

On the direct tax front, PAN 2.0, a cornerstone of the government's "Digital India" initiative, is here! It introduces a unified identifier for specified government platforms, with FAQs shedding light on its transformative potential.

In the FEMA domain, the definition of a 'start-up' has been updated to align with the DPIIT norms, streamlining rules for maintaining foreign currency accounts abroad.

Under the transfer pricing space, the ITAT reinforces procedural fairness by nullifying unwarranted revisions by tax authorities.

We hope this edition empowers you with actionable insights to navigate the dynamic tax landscape. Happy reading!



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# A

## Key developments under direct tax laws

### Legislative/other developments

- **PAN 2.0 project: Prime Minister grants approval, and Ministry of Finance (MoF) releases FAQs :** Recently, the Prime Minister granted approval<sup>1</sup> for the PAN 2.0 project, which is in line with the government's vision of 'Digital India.' This project will enable the use of PAN as a "common Identifier for all digital systems of specified government agencies."

This project would enable technology-driven transformation of taxpayer registration services and have significant benefits, including:

- Ease of access and speedy service delivery with improved quality;
- Single source of truth and data consistency;
- Eco-friendly processes and cost optimisation;
- Security and optimisation of infrastructure for greater agility.

Further, this project will also update the existing PAN/TAN system and consolidate the core and non-core PAN/TAN activities and PAN validation service.

The MoF also released FAQs<sup>2</sup> regarding the PAN 2.0 project, which provide further insights on the project, namely whether there is a need for obtaining a new PAN, the meaning of a 'unified portal' and the significance of a common business identifier, how would QR code help, etc.

- **CBDT prescribes procedure for disposal of condonation of delay application in filing income-tax return (ITR) for certain cooperative societies for Assessment Year (AY) 2023-24:** The CBDT had earlier received various applications from cooperative societies claiming deductions under Section 80P of the Income-tax Act, 1961 (the IT Act), for the condonation of delay in furnishing the ITR due to a delay in getting the accounts audited under the respective state laws.

In this regard, the CBDT had directed<sup>3</sup> the Chief Commissioners of Income-tax (CCIT) / Directors General of income tax (DGIT) to deal with the condonation applications for AY 2018-19 to 2022-23. It further specified the procedure for the disposal of the said applications.

The CBDT received applications for the condonation of a delay in filing the ROI for such cases in relation to AY 2023-24 as well, and hence, it has extended<sup>4</sup> the applicability of the earlier circular to AY 2023-24 as well, subject to conditions specified therein.

- **CBDT prescribes monetary limits for waiver/reduction of interest levied under Section 220(2) of the IT Act<sup>5</sup>:** Section 220(2A) of the IT Act empowers the PCCIT, CCIT, PCIT, and CIT to waive or reduce interest (levied at the rate of 1% per month or part of a month) for a delay in the payment of demand as per the notice issued under Section 156 of the IT Act. The CBDT had directed that such waiver/reduction of interest would be subject to the fulfillment of the following conditions:
  - Payment of interest has caused/would cause genuine hardship to the taxpayer; and
  - The delay in payment was due to circumstances beyond the taxpayer's control; and
  - The taxpayer fully cooperated with tax authorities during inquiries related to assessment or recovery proceedings

In this regard, the CBDT has empowered the following designated authority based on the thresholds as under: the following conditions are being fulfilled:

Designated authority	Threshold for reduction/waiver of interest
PCIT / CIT	Up to INR 50 lakhs
CCIT / DGIT	Above INR 50 lakhs to INR 1.5 crore
PCCIT	Above INR 1.5 crore

1. Press release dated 25 November 2024

2. Press release dated 26 November 2024

3. Circular No. 13 of 2023 dated 26 July 2023

4. Circular No. 14 of 2024 dated 30 October 2024

5. Circular No. 15 of 2024 dated 4 November 2024

- **Condonation of delay in filing Form 10-IC or Form 10-ID for AY 2020-21, 2021-22 and 2022-23:** The CBDT had issued circulars<sup>6</sup> for condoning the delay in filing the Form No. 10-IC [for availing the benefit of Section 115BAA of the IT Act] for AY 2020-21 and 2021-22, subject to the fulfillment of certain prescribed conditions.

The CBDT received representations for condoning the delay in filing Form 10-IC and Form No. 10-ID (for availing the benefit of Section 115BAB of the IT Act). Accordingly, the CBDT has issued a circular<sup>7</sup> to authorise the following officers to dispose of the applications for the condonation of a delay in filing the aforesaid forms for AY 2020-21, 2021-22, and 2022-23.

Designated authority	Threshold for reduction/waiver of interest
PCIT / CIT	Up to 365 days
PCCIT / CCIT / DGIT	More than 365 days

\*This delegation of power is applicable for all such pending applications under Section 119(2)(b) of the IT Act. inquiries related to assessment or recovery proceedings.

#### Conditions for condonation of delay:

While disposing of the application for the condonation of delay, the aforesaid designated authority must ensure that the following conditions are being fulfilled:

- The ROI for the relevant AY is furnished within the due date prescribed in Section 139(1) of the IT Act.
- The eligible domestic company has opted for taxation under Section 115BAA (for Form 10-IC) or 115BAB (for Form 10-ID) in the "Filing Status" in "Part A-GEN" of Form ITR-6.
- The taxpayer was prevented by reasonable cause from filing the respective form within the stipulated timeline.

#### Time limit for filing and disposal:

- The application is to be filed within three years of the relevant AY's end. This time limit will apply to applications filed on or after 18 November 2024.
- The said applications are required to be disposed of within 6 months from the end of the month in which the competent authority receives such application.

- **CBDT issues directions for disposal of application for condonation of delay in filing Form No. 9A/10/10B/10BB:** The CBDT, in the past, issued various circulars<sup>8</sup> for the condonation of delay in applications in relation to Form No. 9A / 10 / 10B / 10BB for AY 2018-19 and subsequent AYs.

The CBDT has now issued a circular<sup>9</sup> in super session of the earlier circulars and prescribed the following:

- **Delegation of power:** The CBDT has authorised the following officers to dispose of the application for the condonation of delay:

Designated authority	Threshold for reduction/waiver of interest
PCIT / CIT	Up to 365 days
PCCIT / CCIT	More than 365 days

The aforementioned delegation of power would also apply to pending applications as of 18 November 2024.

- **Conditions for condonation of delay:** While disposing of the application, the designated authority must ensure that the following conditions are fulfilled:
  - The applicant was prevented by reasonable cause from filing such forms within the prescribed time.
  - The amount accumulated/set apart has been invested/deposited in any one or more of the forms or modes specified in Section 11(5) of the IT Act.
- **Time limit for filing application:** Within 3 years from the end of the relevant AY (applicable for applications filed on or after 18 November 2024).
- **Time limit for disposal of application:** Within 6 months from the end of the month in which the competent authority receives such application.



6. Circular no. 6 of 2022 dated 17 March 2022, Circular no. 19 of 2023 dated 23 October 2023

7. Circular no. 17 of 2024 dated 18 November 2024

8. Circular No. 15 of 2022 dated 19 July 2022, Circular No. 17 of 2022 dated 19 July 2022, Order dated 7 October 2024

9. Circular No. 16 of 2024 dated 18 November 2024

## Judicial developments

- **Delhi ITAT: LLC eligible for India-USA tax treaty benefits since it was a US tax resident<sup>10</sup>:**

### Background

- The taxpayer was an LLC incorporated in the US. For AY 2014-15 and 2015-16, the taxpayer filed an ROI as a 'company' and offered fees for technical services (FTS) to tax at the rate of 15% as per the India-US tax treaty (the treaty).
- The AO sought to tax the FTS at 25% as per Section 115A of the IT Act on the premise that the taxpayer would not qualify as a 'resident' of the US in terms of Article 4 of the treaty. In this regard, the AO also observed that:
  - The taxpayer is an LLC that is a flow-through entity (FTE) as per the US tax laws.
  - LLCs are not liable to tax in the US in the context of the phrase "liable to tax under the laws of that state" (Article 4 of the treaty).
  - Article 4(1)(b) of the treaty states that "In the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that state as the income of a resident, either in its hands or in the hands of its partners or beneficiaries." However, LLC does not fall under the special clauses for partnerships and trusts as per Article 4 of the treaty.

- In the case of an LLC, even if the shareholders are residents of the US, the treaty benefits are not available.

### Delhi ITAT ruling

- The Delhi ITAT observed that:
  - As per the US federal income tax law, an LLC with a single owner is disregarded as separate from its owner unless it elects to be treated as a 'corporation' for US tax purposes. Further, the view that LLC is liable to tax is supported by the fact that LLC can elect its tax classification under US tax laws.
  - An LLC is 'liable to tax'. However, owners pay the tax on their share of income from such LLC (i.e., they merely discharge the tax that is assessable in the case of the LLC).
  - A TRC was issued to the taxpayer by the US tax authorities as per US laws. Further, an LLC is regarded as a corporate body, as it fulfills all the prescribed requirements.
- Accordingly, the Delhi ITAT held that by virtue of incorporation and its separate existence from its members (i.e., body corporate), the taxpayer LLC should be regarded as a resident under Article 4 of the treaty.



10. General Motors Company USA vs. ACIT [TS-659-ITAT-2024 (Delhi Tribunal)]

# B

## Key developments under FEMA

### Legislative/other developments

- **Definition of start-up:** The definition of a start-up has been modified in the regulation for 'Opening, holding and maintaining a foreign currency account outside India' to align the same with that of the Department for Promotion of Industry and Internal Trade ('DPIIT') guidance<sup>11</sup>. Now, any company recognised as a 'start-up' by the DPIIT shall also qualify as a start-up for this regulation's purposes.
- **Framework for reclassifying FPI to FDI:** As per Schedule II of the NDI Rules, 2019<sup>12</sup>, Foreign Portfolio Investors (FPI) cannot own more than 10% of a company's total paid-up equity capital.

If an FPI exceeds this limit, it must either divest its holdings or reclassify them as Foreign Direct Investment (FDI) within five trading days. The RBI has issued a circular outlining the operational framework for this reclassification.

Key points from the circular include:

- Reclassification is not permitted in the sectors prohibited for the FDI.
- FPIs must obtain necessary approvals from the government and the Indian investee company.
- FPIs must notify their intention to reclassify investments to the FDI and provide necessary approvals to their custodian. Failure to obtain approvals will result in compulsory divestment of excess investment within the prescribed time.
- FPIs must report their reclassified investments within the specified timelines prescribed under the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019.
- Once reclassified, the FPI must request its custodian to transfer the reclassified equity instruments from its FPI demat account to its FDI demat account. Upon transfer, the entire investment will be treated as FDI, regardless if it falls below 10% subsequently. Further, Schedule I to the NDI rules shall govern the said investment.

The Securities and Exchange Board of India (SEBI) has also updated its procedure for reclassifying FPI investments to FDI. This RBI circular is issued to complement the update made by SEBI.

# C

## Key developments under transfer pricing law

### Judicial developments

- **ITAT examines the timing of DRP order receipt under faceless assessment, holds assessment order time-barred<sup>13</sup>:** The Delhi Bench of the ITAT set aside a time-barred assessment order by referring to a coordinate bench ruling and a Supreme Court ruling to note that the time and place of dispatch and receipt of electronic documents must be ascertained by Section 13 of the Information Technology Act, 2000, and Section 144B of the Income Tax Act. The bench concluded that the date of uploading the DRP order on the ITBA portal was correct. According to Section 144C(13), the assessment had to be completed within the prescribed timeframe from the upload date. In this case, the assessment was completed after the deadline, making it time-barred, null, and void.
- **ITAT quashes an order by Principal Commissioner of Income Tax (PCIT) due to lack of jurisdiction<sup>14</sup>:** The Delhi ITAT quashed an order passed by the PCIT under Section 263. The TPO had suggested an adjustment for marketing support services. However, the PCIT invoked revisionary jurisdiction and remanded the issue back to the TPO for considering other transactions/correctness of the method used. The assessee argued that only the PCIT(TP) had the jurisdiction to revise the TP order, and the PCIT could have revised the TP order only if it was passed after 1 April 2022, considering the amendment made vide Finance Act, 2022. The ITAT held that the PCIT had no jurisdiction to set aside the TPO order on the mentioned issues, thus quashing the PCIT's action. The ITAT also noted that the issue relating to the other payment transaction towards the novation of customer contracts was specifically examined by both the AO and TPO, and all relevant details were on record. The tribunal concluded that the PCIT could not exercise revisionary jurisdiction simply because of differing views on the inquiries or investigations, leading to quashing of the PCIT's order.



11. DPIIT Notification no G.S.R. 127 (E) dated 19 February 2019

12. Foreign Exchange Management (Non-debt Instruments) Rules, 2019

13. Hyundai Rotem Company Indian Project Offices [TS-492-ITAT-2024(DEL)-TP]

14. Amazon Web Services India Private Limited [TS-463-ITAT-2024(DEL)-TP]

# D

## Key developments under GST law

### Legislative/other developments

- **Ministry of Finance notifies territorial jurisdictions for GSTAT state benches:** The Ministry of Finance and Department of Revenue had previously notified<sup>15</sup> the constitution of the GSTAT, prescribing the Principal Bench, the number of state benches, and their locations. The government has amended<sup>16</sup> the earlier notification to define the districts forming the jurisdiction and the seating arrangements for GSTAT state benches across India.

(Please [click here](#) for the detailed alert)

### Goods and Services Tax Network (GSTN) advisories:

- **IMS implementation and new functionality:** To rectify the initial errors while managing invoices, the GSTN has advised the recipients to modify their actions on the invoice and recompute GSTR-2B until filing GSTR-3B. Further, a new functionality called 'suppliers view' is enabled, which allows the suppliers to view the recipients' actions on the reported invoices in GSTR-1/1A/IFF.

(Please [click here](#) for the detailed advisory)

- **Reporting TDS for metal scrap supplies:** Various concerns were raised by taxpayers regarding the notification<sup>17</sup> that mandates TDS deduction for metal scrap supplies. Taxpayers faced issues reporting TDS for October 2024 due to GST registrations approved in November 2024, making the October return period unavailable.

In this regard, the GSTN has advised consolidating TDS amounts deducted between 10 October 2024 and 30 November 2024 and reporting them in the GSTR-7 return for November 2024.

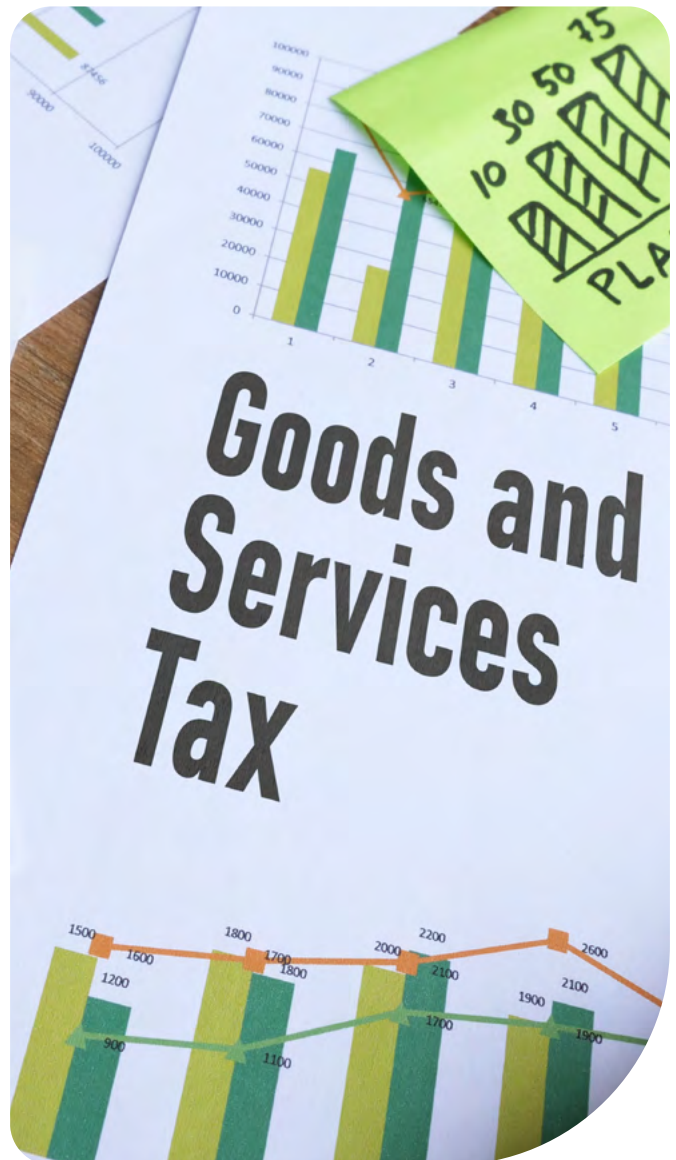
(Please [click here](#) for the detailed advisory)

### Judicial developments

- **Patna HC upholds validity of GST extension notifications<sup>18</sup>:** The Patna HC has upheld the validity of the notifications<sup>19</sup> extending the limitation period for passing assessment orders under Section 73(10) of the CGST Act for the financial years 2017-18, 2018-19, and 2019-20. Drawing reference on the SC's directions in its suo motu writ petition, which excluded the period from 15 March 2020 to 28 February 2022 due to pandemic-induced disruptions, the

HC affirmed that the impugned notifications were lawfully issued under Section 168A of the CGST Act. Highlighting the GST Council's acknowledgment of force majeure conditions, the HC reasoned that the extensions were a cautious response to the operational constraints faced by both taxpayers and authorities during the pandemic.

(Please [click here](#) for the detailed alert)



15. Notification S.O. 3048(E) dated 31 July 2024,

16. Notification S.O. 5063(E) dated 26 November 2024

17. Notification No. 25/2024-Central Tax dated 9 October 2024

18. Barhonia Engicon Private Limited (Civil Writ Jurisdiction No. 4180 of 2024)

19. Notification 13/2022 dated 5 July 2022, Notification 9/2023 dated 31 March 2023 and Notification 56/2023 dated 28 December 2023

- **Bombay HC allows input tax credit on GST paid on advances<sup>20</sup>:** The Bombay HC has allowed the ITC of GST paid on advances without corresponding provision of services and deemed it inequitable to deny ITC when taxes were legitimately paid. It held receipt vouchers as valid tax documents for ITC availment and emphasised aligning GST provisions with business intent to prevent arbitrary outcomes. The HC upheld the validity of GST laws but urged careful evaluation in similar cases to balance equity.
- **Gujarat HC permits retrospective application of amended refund formula for inverted duty structure; quashes CBIC circular as contrary to legislative intent<sup>21</sup>:** The HC has quashed a circular<sup>22</sup>, holding that the amendment<sup>23</sup> to Rule 89(5) of the CGST Rules, 2017, is clarificatory and retrospective. The HC noted that the amendment rectifies the anomalies in the refund formula, aligning it with Section 54(3) of the CGST Act, 2017, and declared the circular discriminatory for limiting the revised formula's application to refund claims filed after 5 July 2022.
- **Kerala HC validates non-reversal of IGST credit availed as CGST and SGST credit<sup>24</sup>:** The Kerala HC held that the ITC on inter-state transactions mistakenly bifurcated as CGST and SGST instead of IGST does not constitute wrongful availment of credit. The HC noted that no excess or ineligible credit had been claimed or utilised, and such procedural errors do not attract proceedings under Section 73 of the CGST Act. Accordingly, the HC quashed the notice and demand for ITC reversal, deeming the error insignificant in substance.
- **Delhi HC admits petition challenging ITC restriction on leasing/sub-leasing of residential properties<sup>25</sup>:** The Delhi HC has allowed the petition challenging RCM on registered tenants for renting residential properties on account of discriminatory treatment and violation of Articles 14 and 19(1)(g) of the Constitution. The petitioners have contended that RCM provisions result in double taxation when corporate entities lease or sublease residential properties from unregistered landlords, with no eligibility for ITC since the supply of residential property is exempt. Further, the representation to the GST Council seeking clarification and amendments on this matter is still under deliberation.



20. L&T IHI Consortium (WP No. 2980/2019)

21. Ascent Meditech Ltd. ( R/Special Civil Application No. 18317 of 2023)

22. Circular No. 181/2022 dated 10 November 2022

23. vide Notification No.14/2022 dated 5 July 2022

24. Rejimon Padickapparambil Alex [WA No. 54 of 2024]

25. M/s. NRM International Pvt. Ltd. (W.P. (C) 15390/2024)



# E

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

### Legislative/other developments

- **CBIC mandates virtual hearings under all indirect tax laws<sup>26</sup>:** The judicial cell of the CBIC revised the guidelines for personal hearings under the GST, Customs, Central Excise, and erstwhile service tax laws, wherein personal hearings are to be conducted by all the departmental quasi-judicial and appellate authorities under the specified indirect tax laws, which shall mandatorily be through video conferencing, i.e., in the virtual mode. Personal hearing will only be permitted upon a specific request from the party involved, with reasons documented by the authorities.
- **CBIC issues clarifications on simultaneous availment of IGCR and MOOWR benefits<sup>27</sup>:** The CBIC has issued clarifications to address stakeholder concerns regarding the simultaneous use of benefits under the IGCR rules and the MOOWR scheme. It is now clarified that the MOOWR units can concurrently avail concessional duty under the IGCR rules and duty deferment under the MOOWR for warehoused goods cleared to DTA, SEZ, or other MOOWR units, provided compliance with all prescribed conditions, time limits, and procedural requirements of both schemes.

Additionally, MOOWR units importing components for value addition and supplying them to mobile phone manufacturers are eligible for IGCR benefits under the notification<sup>28</sup>, as amended, provided all compliance and documentation requirements are met. It has also been clarified that the phrase “for use in manufacture of cellular mobile phones” is interpreted to mean usage in the manufacturing process, irrespective of whether the importer is the final manufacturer.

### Judicial developments

- **TELCOS are eligible for CENVAT credit on towers and prefabricated buildings - SC<sup>29</sup>:** The SC has affirmed the Delhi HC’s ruling, holding that towers, their components, and the prefabricated buildings used by telecom service providers are classified as goods, not immovable property. Consequently, these towers and PFBs qualify as inputs for availing CENVAT credit.

The SC highlighted the functional role of these items in delivering telecom services and overturned the earlier judgement of the Bombay HC, which had categorised them as immovable property. It further clarified that the eligibility for the CENVAT credit is assessed when the goods are received at the service provider’s premises. The subsequent installation or fixation of these goods wouldn’t make them an immovable property, thereby maintaining their eligibility as ‘capital goods’ or ‘inputs.’

(Please [click here](#) for the detailed alert)



26. Instruction No. F.No. 390/Misc./3/2019-JC dated 5 November 2024

27. Circular No. 26/2024-Customs dated 21 November 2024

28. Notification No. 57/2017-Cus dated 30 September 2017

29. M/s. Bharti Airtel Ltd. (CA No. 10409 OF 2014)



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