

Monthly tax bulletin

January 2025



Happy New Year!

Grant Thornton Bharat presents the January 2025 edition of the Tax Bulletin — a guide to the impactful changes shaping India's tax landscape. This edition contains updates on legislative reforms, landmark judicial rulings, and regulatory initiatives across direct taxes, FEMA, GST, and other indirect tax domains. Here's a sneak peek at what's inside:

In a welcome development, the Gujarat High Court has held that the assignment of leasehold rights does not constitute a 'supply of service' under the GST framework. The decision offers significant relief to taxpayers by eliminating double taxation, ensuring that transactions already subject to stamp duty are not further taxed under GST.

The 55th GST Council meeting also brought some noteworthy developments. Key highlights include excluding vouchers from GST, the refined treatment of goods warehoused in Special Economic Zone (SEZ)/Free Trade Warehousing Zone (FTWZ) before clearance, and reduced pre-deposit requirements, simplifying compliance and easing financial burdens for businesses.

On the customs front, the Central Board of Indirect Taxes and Customs (CBIC) has clarified that solar power project imports are ineligible for MOOWR scheme benefits, emphasising the government's policy stance. Moreover, the permission for SEZ units to enable employees to work from locations outside the SEZ has been extended till December 2027, offering continued flexibility.

In direct tax, the Central Board of Direct Taxes (CBDT) has notified FAQs and provided an extension to determine the amount payable under the scheme. Additionally, the Swiss Competent Authority (SCA) has announced the suspension of the MFN clause pursuant to which foreign tax credit can be claimed in Switzerland for withholding tax at the rate of 10%, and withholding tax on dividends earned by Indian residents from Switzerland would be 10%.

Lastly, under the transfer pricing space, the Income Tax Appellate Tribunal (ITAT) Special Bench has ruled that the transactions between an Indian PO and its foreign HO qualify as international transactions, requiring ALP determination — a significant clarification in the transfer pricing arena.

We hope this edition provides valuable insights and actionable knowledge to navigate the ever-evolving tax landscape. Here's to a year of success and prosperity — happy reading!



Riaz Thingna

Partner, Tax

Grant Thornton Bharat

A

Key developments under direct tax laws

Legislative/other developments:

- **CBDT extends the due date of filing belated/revised income-tax return (ITR) for assessment year (AY) 2024-25 in the case of resident individuals:** Recently, the CBDT has extended the due date of furnishing belated/revised ITR by the resident individuals for AY 2024-25 to **15 January 2025** (earlier due date was 31 December 2024).
- **This project would enable technology-driven transformation of taxpayer registration services and have significant benefits, including²:** Section 194N of the Income-tax Act, 1961 (IT Act) inter alia provides that the following persons are required to deduct tax at the rate of 2% (higher rate prescribed for non-filers of ITR) on withdrawal of cash exceeding INR 1 crore during a financial year to a recipient from one or more accounts maintained by it with:
 - A banking company³;
 - A co-operative society engaged in carrying on the business of banking; or
 - A post office.

The Ministry of Finance has specified that the provisions of Section 194N of the IT Act will not apply (w.e.f. 1 December 2024) to the sum received by certain persons, namely, foreign representations (duly approved by the Ministry of External Affairs), including diplomatic missions, agencies of the United Nations, international organisations, consulates and the offices of honorary consuls, which are exempt from paying taxes in India as per the Diplomatic Relations (Vienna Convention) Act, 1972, and the United Nations (Privileges and Immunities) Act, 1947. The MoF also released FAQs² 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.

Direct Tax Vivad se Vishwas Scheme, 2024 (VsV Scheme, 2024): The CBDT notifies further guidance in the form of frequently asked questions (FAQs) and provides an extension for determining the amount payable under the scheme: In the Union Budget (No.2) 2024, the VsV Scheme, 2024, was announced to settle disputes pending as on 22 July 2024. Taxpayers opting for the scheme would get

immunity from the imposition of penalty, interest on the tax in arrears, and initiating proceedings under the IT Act regarding any offence.

The CBDT had, in October 2024, issued the first set of guidance in the form of FAQs in order to provide further clarity regarding the VsV Scheme, 2024.

Recently, the CBDT issued further⁴ guidance on the VsV Scheme, 2024, which provides clarifications regarding certain aspects (such as eligibility of cases, set-aside appeal, prosecution, computation of amount payable, disputed penalty, advance pricing agreement/mutual agreement procedure cases, taxes paid before filing declaration, TDS-related queries, and miscellaneous cases).

Further, the CBDT has extended⁵ the due date for determining the amount payable as per Column (3) of the table mentioned in Section 90 of the VsV Scheme 2024 to **31 January 2025** (earlier date: 31 December 2024).



1. Circular No. 21 of 2024 dated 31 December 2024

2. Notification no. 123 of 2024 dated 28 November 2024

3. to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)

4. Circular No. 19 of 2024 dated 16 December 2024

Section 90 of the scheme provides that the amount is payable under the scheme as per the table below:

Nature of tax arrear	Pendency of disputes	Amount payable on or before 31 December 2024	Amount payable on or after 1 January 2025 but before the last date*
Tax/interest/penalty	Eligible disputes wherein the declarant is an appellant after 31 January 2020 but on or before 22 July 2024	100% of disputed tax	110% of disputed tax
	Eligible disputes wherein the declarant is an appellant on or before 31 January 2020 at the same appellate forum**	110% of disputed tax	120% of disputed tax
Interest/ penalty/fees	Eligible disputes wherein the declarant is an appellant after 31 January 2020 but on or before 22 July 2024	25% of disputed interest/penalty/fees	30% of disputed interest/penalty/fees
	Eligible disputes wherein the declarant is an appellant on or before 31 January 2020 at the same appellate forum*	30% of disputed interest/penalty/fees	35% of disputed interest/penalty/fees

* which is yet to be notified

** Appellate forum means Supreme Court (SC) or the High Court(HC) or the Tribunal or Commissioner of Income Tax(Appeal) (CIT(A)) or Joint Commissioner of Income Tax(Appeal) (JCIT(A))

The amount described above will be reduced by 50% in some instances, i.e., if the department has filed a writ petition/ appeal/SLP before the appellate forum or if there is a favourable decision of the Tribunal or the HC on the issue on which the appeal is filed.

Accordingly, in case the application is made on or before **31 January 2025**, the amount payable would be as per Column (3) of the table above. However, if the application is filed on or after **1 February 2025**, the amount payable would be determined as per Column (4).

- **India-Switzerland tax treaty: Swiss competent authority (SCA) announces suspension of MFN⁵ clause⁷** : The MFN clause in tax treaties enables the taxpayer of a treaty country to import the beneficial provisions of

India's treaty with a third country that is a member of the Organisation for Economic Co-operation and Development (OECD), if:

- The treaty with the third country contains a restrictive scope or a beneficial rate (i.e. a lower rate), and
- A treaty with the third country is entered into, subsequent to the treaty country.

In 2023, the SC settled the controversy regarding the applicability of the MFN clause in the Indian tax treaties vide its decision in the case of **Nestle SA**.⁸

The SC, in the aforesaid ruling, had held that the provisions of the MFN clause will not get triggered automatically, and a separate notification is required to operationalise the same. Further, it was also held that to import the benefit from India's treaty with a third country, such a third country must be a member of the OECD when entering into a treaty with India.

Subsequently, in 2024, the SC dismissed the taxpayer's review petition against the aforesaid ruling, and the matter attained finality.

5. Circular No. 20 of 2024 dated 30 December 2024

6. Most Favoured Nation

7. Swiss Competent Authority statement dated 11 December 2024

8. Nestle SA and others [Civil Appeal No(s). 1420 of 2023]

Earlier statement released by SCA in August 2021 provided the benefit of the lower withholding tax rate on dividends (i.e., 5%) with a retrospective effect based on India's tax treaty with Lithuania and Columbia, respectively (subject to the fulfilment of prescribed conditions).

This enabled Indian tax residents receiving dividends from Switzerland due on or after 5 July 2018 and 28 April 2020 to claim a refund of additional tax (5%) withheld in Switzerland from the SCA. It also mentioned that for the Swiss tax residents receiving dividends from India, the foreign tax credit provided by Switzerland would be 5% instead of 10% for the dividends accrued on or after 1 January 2021.

Further, the SCA also stated that if the Indian tax authority does not reciprocate the interpretation, the SCA reserves the right to reverse this interpretation and to readjust the treaty rates applicable to income accruing as of 1 January 2023.

In light of the SC's decision in the case of **Nestle (supra)**, the SCA, as a reciprocal measure, has, vide its **statement issued in December 2024**, waived its unilateral application of the MFN clause and readjusted the India-Switzerland treaty rates with effect from 1 January 2025.

It has been clarified that the position adopted by the SCA in its statement issued in August 2021 would continue to be applicable for the income accruing during the financial years 2018-2024 (i.e., no retrospective impact).

On account of the suspension of the MFN clause, the impact on the dividends accrued on or after 1 January 2025 would be as follows:

- Foreign tax credits can be claimed in Switzerland for withholding tax at the rate of 10%, and
- Withholding tax on dividends earned by Indian residents from Switzerland would be 10%.



B

Key developments under transfer pricing law

Judicial developments:

- **ITAT Special Bench (SB) holds transactions between Indian PO and its foreign HO qualify as international transactions⁹:** The assessee, a project office (PO) of a Chinese company in India, was executing a contract for the Power Grid Corporation of India (PGCIL) and subcontracted some work to third parties. The PO incurred losses due to higher payments to subcontractors than the rate received from PGCIL. The TPO considered these transactions as international transactions. The SB ruled that the PO and head office (HO) are separate enterprises, and the division bench is expected to analyse if any clause of **Section 92A(2)** is satisfied in the instant case to establish the AE relationship. The SB also noted that the HO controls the PO's funds and revenue, leading to losses for the PO, which would, therefore, be subject to transfer pricing. The Division Bench is to analyse the applicability of deemed international transactions in this case, given that the PO rendered services to PGCIL on behalf of the HO under the terms agreed by the HO with PGCIL. SB also noted that under the treaty, the determination of profits under the hypothesis of the permanent establishment being a distinct enterprise dealing independently with the HO is nothing but adherence to arm's length principles. Given the above reasoning, the SB held that the transactions between PO and HO could be considered international transactions and subject to ALP determination.
- **Delhi High Court upholds resale price method (RPM) for distributor's international transactions¹⁰:** The Delhi HC rejected the Revenue's appeal to hold that the RPM was the most appropriate method for benchmarking the international transactions of a distributor importing branded goods from its AE and selling them without adding value. The HC relied on the UN TP Manual, OECD guidelines, and judicial precedents, which supported the selection of RPM for distributors engaged in reselling goods to third parties. The court rejected DRP's conclusion that the distributor was not a simple distributor due to AMP expenses, noting that these expenses were similar to those of comparable entities.

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

10. Burberry India Pvt Ltd [TS-505-HC-2024(DEL)-TP]

- **Mumbai Tribunal deletes TP adjustment on sale of goods to AE, notes reduced risks and costs in AE sales¹¹:** The TPO had held that the assessee realised a higher sale price when selling directly to a third party as against the bill-to-ship-to model of sale to the AE. The ITAT noted that when the assessee sold goods to a third party directly, it incurred bill discounting charges as the cost of capital and was also exposed to credit and market risk. For the sale of goods to the AE, there is a reduction in the credit period, directly reducing the assessee's interest charges, and the assessee is also not exposed to credit and market risks. Taking note of this, the Tribunal deleted the TP adjustment on the sale of goods to the AE.



C

Key developments under GST law

Legislative/other developments:

- **Key recommendations from 55th GST Council Meeting:** The GST Council, in its 55th meeting, inter alia recommended significant changes, including a retrospective amendment in the blocked credit provisions to replace 'plant or machinery' with 'plant and machinery,' an amendment in the Input Service Distributor (ISD) provisions to explicitly include inter-state Reverse Charge Mechanism (RCM) transactions, lowering the pre-deposit requirement for filing the appeal in penalty for the cases related to detention and seizure of goods or conveyance, along with clarifications on key issues.

Furthermore, amendments have been proposed to the GST law w.r.t. the IMS functionality, along with introducing a track and trace mechanism for evasion-prone commodities.

In addition, rate changes have also been recommended, including 18% GST on the margin value in case of the sale of old and used vehicles, including EVs by registered suppliers, full GST exemption on gene therapy, and moving sponsorship services provided by body corporates under forward charge.

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

- **CBIC issues clarifications pursuant to 55th GST Council Meeting recommendations:** In line with the recommendations of the 55th GST Council meeting, the CBIC has issued a series of circulars to address critical GST issues, including ITC eligibility in case of ex-works contracts, taxability of vouchers as neither supply of goods nor services, ITC eligibility to the ECO for supplies under Section 9(5) of the CGST Act and the determination of the place of supply for online services to unregistered persons.

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

Goods and Services Tax Network (GSTN) advisory:

- **Updates to E-way bill and E-invoice systems:** GSTN has announced updates to the E-Way Bill and E-Invoice Systems, effective 1 January 2025, to enhance security and compliance.
 - Multi-factor authentication (MFA) will be mandatory for taxpayers with AATO over INR 20 crores starting January

11. Rollis India Limited [TS-523-ITAT-2024(Mum)-TP]

2025, extending to smaller taxpayers by April 2025.

- E-way bill generation will be restricted to documents dated within 180 days of generation, and extensions will be limited to 360 days from the original generation date.

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

- **Filing of FORM GST SPL-02 for waiver of interest and penalties:** Earlier, the GSTN issued an advisory on 8 November 2024 regarding the Section 128A waiver scheme, requiring taxpayers to apply using FORM GST SPL-01 or SPL-02.

The GSTN has announced that FORM GST SPL-02 is now available on the GST portal. Taxpayers can apply for waivers of interest and penalties on demand orders using this form, while FORM GST SPL-01 will be made available soon.

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

Judicial developments:

- **Assignment of leasehold rights in land not liable to GST - Gujarat HC:** The Gujarat HC held that the assignment of leasehold rights does not constitute a 'supply of service' under the GST framework. The HC observed that leasehold rights are a form of immovable property, and their assignment is akin to a sale rather than a service. The court emphasised that such transactions are explicitly excluded from GST under Paragraph 5 of Schedule III of the CGST Act, aligning with the legislative intent under Article 246A of the Indian Constitution. The court further held that the transaction amounts to an assignment or sale of benefits arising from immovable property. Therefore, the question of utilising the input tax credit for GST liability on such transactions does not occur.

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

- **Delhi HC held that telecom towers are 'movable' in nature and eligible for credit under GST¹²:** The Delhi HC has allowed the ITC on telecommunication towers, ruling that these do not qualify as 'immovable property' under the GST law. The HC ruled that telecom towers are movable structures, as they can be dismantled at the site and relocated without damage. The HC relied on the SC's recent judgement¹³, which held that the telecom towers are intrinsically movable and qualify as 'capital goods,' entitling them to be viewed as 'inputs' under the CENVAT Credit Rules.

The HC also clarified that excluding telecommunication towers from the expression 'plant and machinery' does not imply that they are immovable property. (Please [click here](#) for the detailed alert)

- **Telangana HC stays CBIC circular on taxability of corporate guarantee¹⁴:** The Telangana HC has stayed the circular¹⁵, which clarified the GST liability on corporate guarantees provided by holding companies to subsidiaries. The petitioners had challenged the circular, arguing that giving corporate guarantees without consideration does not constitute a 'supply' under Section 7 of the CGST Act, and the retrospective amendment to Rule 28(2), deeming the value of such guarantees as 1% per annum, is arbitrary and ultra vires.

Referring to prior rulings, the HC observed that the circulars bind departmental officers, rendering the appellate mechanism ineffective, and stayed the circular's effect. The matter is now scheduled for further hearing on **3 February 2025**.



12. M/s. Bharti Airtel Limited [WP (C) Nos. 13211/2024, 14710/2024, and 16477/2024]

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

14. M/s. Greenko Solar Power (Medak) Ltd. (WP No. 35338/2024)

15. Circular No. 204/16/2023-GST dated 27 October 2023

D

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

Legislative/other developments:

- **Import for solar-power generation projects not eligible for MOOWR scheme¹⁶:** The Delhi HC had earlier ruled¹⁷ that solar power-generating companies are eligible for MOOWR scheme benefits, allowing duty deferment on imported capital goods used in the manufacturing process. This decision quashed the CBIC's Instruction No. 13/2022 and related SCNs. However, the Finance Act (No. 2), 2024 amended Section 65 of the Customs Act, 1962, empowering the government to specify operations excluded from the MOOWR scheme.

The CBIC has now notified the restricted goods imported for solar power generation from availing MOOWR benefits. Effective 17 December 2024, such imports cannot undergo manufacturing or operations in a warehouse if electricity results from these processes.

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

- **Permission for a hybrid work model for SEZ employees extended up to 31 December 2027¹⁸:** The Ministry of Commerce has extended the hybrid work model for SEZ employees, initially introduced in November 2023 under Rule 43A of the SEZ Rules, 2006. This model allows employees to work from offices or locations outside the SEZ. The timeline, previously set to expire on 31 December 2024, has been extended to **31 December 2027**, providing continued flexibility for SEZ units and employees while maintaining compliance with the SEZ guidelines.

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



16. Notification No. 86/2024-Customs (N.T.) 16 December 2024

17. Aome Heergarh Powertech Private Limited (W.P.(C) 10537/2022 & CM APPL. 31692/2022)

18. Notification No. F. No. K-43013(12)/1/2021-SEZ dated 26 December 2024



We are Shaping Vibrant Bharat

A member of Grant Thornton International Ltd., Grant Thornton Bharat is at the forefront of helping reshape the values in the profession. We are helping shape various industry ecosystems through our work across Assurance, Tax, Risk, Transactions, Technology and Consulting, and are going beyond to shape a more #VibrantBharat.

Our offices in India

- Ahmedabad
- Bengaluru
- Chandigarh
- Chennai
- Dehradun
- Delhi
- Goa
- Gurgaon
- Hyderabad
- Indore
- Kochi
- Kolkata
- Mumbai
- Noida
- Pune



Scan QR code to see
our office addresses
www.grantthornton.in

Connect with us on



@Grant-Thornton-Bharat-LLP



@GrantThorntonBharat



@GrantThornton_Bharat



@GrantThorntonIN



@GrantThorntonBharatLLP



GTBharat@in.gt.com

© 2025 Grant Thornton Bharat LLP. All rights reserved.

Grant Thornton Bharat LLP is registered under the Indian Limited Liability Partnership Act (ID No. AAA-7677) with its registered office at L-41 Connaught Circus, New Delhi, 110001, India, and is a member firm of Grant Thornton International Ltd (GTIL), UK.

The member firms of GTIL are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered independently by the member firms. GTIL is a non-practicing entity and does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.