

# Monthly tax bulletin

October 2024



The tax and regulatory environment continues to evolve rapidly, with significant developments on both judicial and legislative fronts. To keep you ahead of these developments, we are excited to present the October edition of the Grant Thornton Bharat Monthly Tax Bulletin. This edition provides a concise summary of key developments in direct taxes, transfer pricing, indirect taxes, and FEMA for September 2024.

On the direct tax front, the Delhi High Court has overturned the Authority for Advance Ruling's decision, reaffirming the validity of the Tax Residency Certificate (TRC). The CBDT has also introduced the Direct Tax Vivad Se Vishwas Rules, 2024, along with relevant forms and revised thresholds for departmental appeals at tribunals, high courts, and the Supreme Court.

In the FEMA domain, new rules for Compounding Proceedings have been issued, replacing the older regulations from 2000. These updates are critical for businesses operating in the foreign exchange space.

In transfer pricing, the Supreme Court has quashed a penalty of INR 64.43 crore, citing the Transfer Pricing Officer's lack of jurisdiction at the time of the alleged infraction.

Turning to indirect taxes, the Supreme Court has clarified the eligibility of buildings as 'plant' for ITC claims, contingent on the functionality test, while upholding the blocked ITC on immovable property. Additionally, the CBIC has released several circulars to ensure smooth GST compliance across sectors.

In customs, the Supreme Court is reviewing the DRI officer's authority to issue show cause notices under the Customs Act, with a judgment expected soon.

We trust you will find this edition both informative and useful.



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# A

## Key developments under direct tax laws

### Legislative/other developments

- Central Board of Direct Taxes (CBDT) constitutes Dispute Resolution Committee (DRCs) for e-Dispute Resolution Scheme, 2022<sup>1</sup>:** The Finance Act, 2021, provided that a DRC would be formed to provide tax certainty to small and medium taxpayers and thereby reduce litigation. In April 2022, the CBDT notified<sup>2</sup> the e-Dispute Resolution Scheme, 2022, and provided the scope of the scheme, procedure for dispute resolution, powers of the DRC, etc. Related rules were also notified<sup>3</sup>. The CBDT has provided the constitution of DRCs in 18 jurisdictions and has also prescribed the following time limits for filing an appeal before the DRC:
  - In case of pending appeals before CIT(A) or where the time limit for filing an appeal before the CIT(A) has not lapsed:** An application must be filed on or before 30 September 2024.
  - For any other case:** An application must be filed within one month from the date of receipt of the specified order.
- CBDT revises monetary limits for filing of income tax appeal by the department before tribunal, high courts (HCs), and Supreme Court (SC):** The CBDT, in light of the Finance Minister's Budget speech, prescribed<sup>4</sup> the revised monetary limits (w.e.f. 17 September 2024), which will be applicable for all income-tax appeals / SLPs filed by the department before the tribunal, HC and SC as under:

Sr. No.	Appeals / SLPs in Income-tax matters	Earlier monetary limit (INR)	Revised monetary limit (INR)
1	Before Appellate Tribunal	50 Lakhs	<b>60 Lakhs</b>
2	Before HC	1 Crore	<b>2 Crore</b>
3	Before SC	2 Crore	<b>5 Crore</b>

It has been clarified that the aforesaid revised monetary limits will apply to all cases, including TDS/TCS matters where decisions are based on merits, regardless of the tax effect, subject to exceptions prescribed earlier<sup>5</sup>. It is also clarified that appeals must not be filed solely because the tax effect exceeds monetary limits; they must be decided on the case's merits. Further, as per the Ministry of Finance<sup>6</sup>, around 4,300 direct tax cases will be withdrawn due to the revised thresholds (i.e., ITAT: 700 cases, HC: 2,800 cases, SC: 800 cases).

- CBDT notifies Direct Tax Vivad se Vishwas Rules, 2024 and related forms:** The Union Budget 2024 introduced the Vivad se Vishwas, 2024 (VsV Scheme, 2024) to settle disputes pending as of 22 July 2024. Taxpayers opting for the scheme would get immunity from penalties/interest on tax in arrears. Also, the scheme provides for immunity from any proceedings under the Income-tax Act, 1961 (IT Act) in respect of any offence.

The Ministry of Finance has specified that the VsV Scheme 2024 would come into force on **1 October 2024**<sup>7</sup>. Further, the government has notified the VsV Rules, 2024<sup>8</sup>. It has also provided the manner of computation of disputed tax in case of reduction in loss or unabsorbed depreciation or MAT credit. The following forms are also prescribed for the VsV Scheme, 2024:

Form No.	Description
Form 1	Declaration of a dispute to the designated authority for tax arrears and an undertaking for waiver of the right to seek/pursue any remedy/claim
Form 2	Issuance of a certificate by the designated authority for the amount payable for full and final settlement
Form 3	Intimation of payment of disputed tax, along with proof of withdrawal of appeal, objection, application, writ petition, SLP, etc
Form 4	Order by the designated authority for full and final settlement of tax arrears

- Press release dated 30 August 2024
- Notification no. 26 of 2022 dated 5 April 2022
- Notification no. 27 of 2022 dated 5 April 2022
- Circular No. 9 of 2024 dated 17 September 2024
- Vide Circular No. 5 of 2024 dated 15 March 2024
- Press release dated 24 September 2024
- Notification No. 103 of 2024 dated 19 September 2024
- Applicable w.e.f. 20 September 2024 (Notification No. 104 of 2024 dated 20 September 2024)

## Judicial developments

- **Delhi High Court (HC) quashes the Authority for Advance Ruling's (AAR) decision and confirms the validity of the Tax Residency Certificate (TRC):** The taxpayers (Tiger Global International II, III, and IV Holdings), incorporated in Mauritius were engaged in investment activities. Prior to 1 April 2017, they had acquired shares in Flipkart Singapore, which was the holding company of Flipkart India. In August 2018, taxpayers sold Flipkart Singapore's shareholding to a Luxembourg entity and approached AAR, seeking its opinion on the transaction's taxability. The AAR denied the benefits of the India-Mauritius tax treaty and concluded that the transaction was primarily designed to avoid tax for taking such benefits. Accordingly, the AAR rejected the admission of taxpayers' applications. Thereafter, the taxpayers filed a writ petition before the Delhi HC, wherein it was held that the transaction was not for tax avoidance and the capital gains arising from this transaction would not be taxable as per the India-Mauritius tax treaty.

## Key observations of the HC

- **Management and control of taxpayers and economic substance:** The Delhi HC emphasised that a parent company has the legitimate right to oversee its subsidiaries, such as by appointing board members, among other things. Accordingly, two Tiger Global Group members on the taxpayers' Board of Directors do not imply that other board members lack independence. Based on the perusal of the board resolutions, the Delhi HC observed that the decisions were undertaken collectively by the taxpayers' BoD. The taxpayers operated as investment pooling vehicles, aggregating funds from more than 500 investors worldwide. Further, the taxpayers incurred expenditures exceeding the threshold prescribed under the limitation of the benefit clause of the India-Mauritius tax treaty. Accordingly, the Delhi HC held that taxpayers do not lack economic substance.
- **Position on investments made via Mauritius route:** The Delhi HC placed reliance on the SC's decisions in the case of **Azadi Bachao Andolan**<sup>10</sup> and **Vodafone International Holdings B.V.**<sup>11</sup> and held that it would be erroneous to assume that Mauritius investments are inherently suspicious, as offshore companies can be established for bonafide commercial purposes. Further, the HC held that the legitimate business activities undertaken by entities should not be characterised as treaty shopping merely because it was situated in a favourable tax jurisdiction. The HC noted that the tax authorities could only pierce the corporate veil in limited circumstances, such as fraud, sham transactions, or the complete absence of economic substance.

- **Sanctity of TRC and grandfathering of shares acquired before 1 April 2017 under India-Mauritius tax treaty:** The HC held that tax authorities would not be justified in doubting the validity of a TRC since the TRC is sacrosanct, which must be considered as valid evidence of residency and beneficial ownership. The HC also referred to a clarification provided by the CBDT<sup>12</sup>, which stated that a TRC issued by the Mauritius authorities is sufficient proof of residency and application of beneficial ownership principles to claim treaty benefits. The HC held that the taxpayer's transaction would not be subject to capital gains tax as per the grandfathering clause in the India-Mauritius tax treaty.

## B

## Key developments under FEMA

### Legislative/other developments

- **Government notifies new compounding rules under FEMA, specifies the list of non-compoundable offences, expands monetary limits**<sup>13</sup>: The government has issued new rules for compounding proceedings under FEMA, superseding the existing Foreign Exchange (Compounding Proceedings) Rules issued in 2000. A few key changes introduced are as under:
  - The monetary limit of various compounding authorities has been revised upwards.
  - The compounding fee has been increased from the existing INR 5,000 to INR 10,000 plus GST, as applicable.
  - Compounding fees can now be paid via NEFT, RTGS, and other permissible electronic modes in addition to the demand draft.
  - A list of instances where contraventions cannot be compounded has been specified.



9. Tiger Global International III Holdings vs. AAR [TS-624-HC-2024[DEL]], order dated 28 August 2024

10. Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1]

11. Vodafone International Holdings B.V. v. Union of India & Anr. [(2012) 6 SCC 613]

12. vide Circular No 789 / 2000 dated 13 April 2000

13. Notification G.S.R.566 (E) - dated 12 September 2024



## Key developments under Transfer Pricing law

### Judicial developments

- **SC dismisses penalty due to lack of jurisdiction at the time of default**<sup>14</sup>: The SC upheld the Delhi HC's decision, setting aside a penalty amounting to INR 64.43 crore imposed under Section 271G of the Income Tax Act. The penalty was deemed unlawful, as the Transfer Pricing Officer lacked jurisdiction at the time of the alleged default before the Finance Act of 2014 conferring such authority.
- **HC sets aside assessment order, pending rectification application before Dispute Resolution Panel (DRP)**<sup>15</sup>: The Karnataka HC has quashed the assessment order and demanded notice for the pending rectification application before the DRP. The court observed that the revenue authorities should have waited for the disposal of the rectification application before passing the final assessment order. The failure to do so rendered the assessment order illegal and arbitrary, as it was passed in violation of the principles of natural justice. The HC directed the DRP to dispose of the assessee's rectification application, allowing the assessing officer to proceed further.
- **Delhi HC dismisses the Revenue's appeal for imposition of penalty, holds mere unsustainable claims do not constitute inaccurate particulars**<sup>16</sup>: The Delhi HC has ruled in favour of the assessee, dismissing the revenue authority's appeal to impose penalties under Section 271(1)(c) of the Income Tax Act. The court held that merely making a claim that is not sustainable in law does not amount to furnishing inaccurate particulars of income.



<sup>14</sup>. Ericsson India Pvt Ltd [TS-404-SC-2024-TP]

<sup>15</sup>. Mavenir Systems Pvt Ltd [TS-421-HC-2024(KAR)-TP]

<sup>16</sup>. Yum Restaurant Marketing Pvt Ltd [TS-414-HC-2024(DEL)-TP]

# D

## Key developments under GST law

### Legislative/other developments

- **CBIC issues clarifications pursuant to 54th GST Council meeting recommendations:** In line with the recommendations of the 54th GST Council Meeting, the CBIC has issued a series of circulars to clarify key issues, ensuring consistency in GST implementation and ease of compliance across sectors. These clarifications address the availability of the ITC on demo vehicles, the refund of IGST on exports, and the place of supply issues with respect to advertising and data hosting services provided by Indian companies to foreign clients.

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

- **CBIC notifies effective date for applicability of amendments brought in the GST Act<sup>17</sup>:** The CBIC has notified the effective dates for the amendments proposed in Union Budget 2024.
  - Amendments effective from 27 September 2024 -
    - Extension of ITC timeline<sup>18</sup>
    - Appearance in summons proceedings<sup>19</sup>
    - Anti-profiteering provisions\*
      - Principal Bench of Appellate Tribunal is empowered from 1 October 2024<sup>20</sup> to assess the impact of the ITC or tax rate reductions on prices.
      - No new anti-profiteering applications will be accepted after **1 April 2025**<sup>21</sup>.
  - Amendments effective from **1 November 2024** -
    - Amnesty scheme<sup>22</sup>
    - Introduction of Section 74A of the Central Goods and Services Tax Act, 2017 (CGST Act) for common adjudication timelines
    - Refund restrictions
    - Reduced pre-deposit requirements

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

- **GSTN issues draft manual and FAQs on Invoice Management System:** The GSTN has issued a draft manual and FAQs on the Invoice Management System (IMS), effective 14 October 2024. It enables taxpayers to accept or reject invoices in the IMS dashboard to avail the ITC in GSTR-3B, streamlining reconciliation and improving GST compliance.

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

- **GSTN data archival policy on GST portal:** GSTN introduced a return data archival policy on a monthly basis. However, in response to requests received from the trade highlighting the difficulties faced in accessing the historical data, the GSTN has temporarily restored archived return data on the portal, advising taxpayers to secure the necessary records.

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

- **GSTN clarifies validity of GST documents issued without physical signatures:** GSTN issued an advisory confirming that documents such as SCNs, assessment orders, and refund orders issued on the portal are valid without physical signatures, as they are digitally authenticated. Taxpayers can verify these documents using the 'Verify RFN' option on the GST portal (pre-login or post-login), ensuring authenticity through the officer's digital signature.

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

### Judicial developments

- **SC, while affirming the validity of blocked ITC on immovable property, allows buildings to qualify as 'plant' for ITC availment, subject to functionality test:** The SC has upheld the constitutional validity of Section 17(5)(c) and (d) of the CGST Act (impugned provisions), which restricts the availability of the ITC on goods and services used in the construction of an immovable property, even if the property is intended for leasing or renting. Distinguishing between the terms 'plant or machinery' and 'plant and machinery,' the SC clarified that these expressions could not be given the same interpretation. It emphasised that whether a building or structure qualifies as a 'plant' depends on its functionality and role in business operations, and it must be evaluated on a case-by-case basis.

The SC noted that structures actively involved in business activities, such as malls or warehouses, may be considered 'plants' if they serve as essential business tools rather than merely functioning as passive locations. Consequently, the case has been remanded to the Orissa HC to determine whether a shopping mall is a 'plant' and falls under this exception, potentially allowing the ITC if it satisfies the functional test.

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

17. Notification No. 17/2024-Central Tax dated 27 September 2024

18. Sections 16(5) and 16(6) of the CGST Act

19. Section 70 of the the CGST Act

20. Notification No. 18/2024-CT dated 30 September 2024

21. Notification No. 19/2024-CT dated 30 September 2024

22. Section 128A of the CGST Act

- **Gauhati HC quashes notification<sup>23</sup> extending adjudication timeline for FY 18-19 and FY 19-20<sup>24</sup>:** The Gauhati HC has struck down the impugned notification, which extended the time limit for issuing the demand order for FY 2018-19 and FY 2019-20. The HC observed that the extension was invalid, as it did not meet the essential conditions under Section 168A of the CGST Act, namely the existence of a ‘force majeure’ situation and a valid recommendation from the GST Council. Consequently, the HC set aside the orders passed beyond the statutory time limits, deeming them to be issued without jurisdiction.

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

- **Gujarat HC clarified that notification<sup>25</sup> substituting Rule 96(10) of the CGST Rules will have a ‘prospective’ effect:** Initially, the Gujarat HC had held that a notification<sup>26</sup> which substituted Rule 96(10) of the CGST Rules, would be applicable retrospectively from 23 October 2017, despite specifying the effective date of 9 October 2018. In the review proceedings, the court has rectified the error, stating that the notification came into effect on 9 October 2018 and cannot be given the retrospective effect from 23 October 2017. Additionally, the HC deleted the erroneous observations that the impugned rule provides exemption to AA license holders and excluded references to the explanation to Rule 96(10) of the CGST Rules, which should not have been accounted for, considering it was issued after the conclusion of arguments.

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

## E

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

#### Legislative/other developments

- **DGFT extends validity period to apply for import authorisation for IT hardware till 31 December 2024<sup>27</sup>:** Earlier, the DGFT amended the import policy restricting the import of laptops, tablets, all-in-one personal computers, ultra-small computers, etc. It provided that the importers can apply for multiple authorisations, which shall be valid up to 30 September 2024. This validity period has been extended till **31 December 2024**. Further, importers would be required to apply for fresh authorisations for the period from **1 January 2025**.
- **DGFT extends RoDTEP scheme and notifies new rates<sup>28</sup>:** The DGFT has extended the RoDTEP scheme for DTA units until **30 September 2025**, and for AA holders, EOUs, and SEZs until **31 December 2024**. New RoDTEP rates in Appendices 4R and 4RE will be effective from 10 October 2024, with previous rates applicable for exports from 1 to 9 October 2024.



23. Notification No. 56/2023-CT dated 28 December 2023

24. Barkataki Print and Media Services [WP(C)/3585/2024 dated 19 September 2024]

25. Cosmo Films Limited [Misc. Civil Application (For Review) No. 1/2020 dated 19 September 2024]

26. Notification No. 54/2018-CT dated 9 October 2018

27. Policy Circular No.07/2024 dated 24 September 2024

28. Notification 32/2024 dated 30 September 2024

## Judicial developments

- **Supreme Court reviews jurisdiction of DRI officers in issuing show cause notices (SCNs) under the Customs Act<sup>29</sup>:** Earlier, the SC<sup>30</sup> had held that the DRI officers have no power to issue SCNs under the customs law. The Revenue filed a review petition against this judgement before the SC, wherein the hearing has been concluded. However, the judgement is reserved.

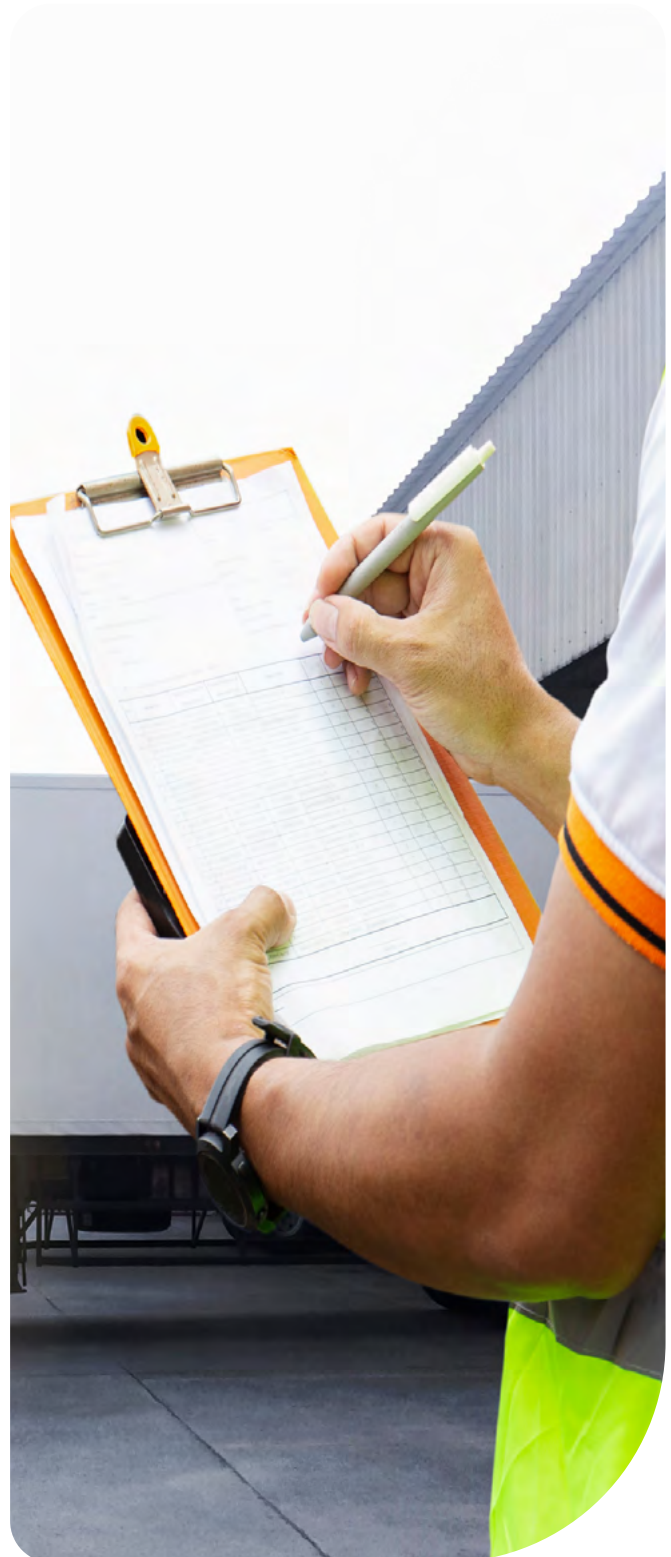
It was argued that the DRI's role is limited to intelligence gathering, and issuing SCNs under Section 28 of the Customs Act requires specific delegation. The respondent defended that only a designated 'proper officer' can issue SCNs, and involving multiple officers would create inconsistencies. The petitioner highlighted the impact on such pending cases and sought reconsideration.

- **Sikkim HC ruled that refund claims cannot be re-opened or recovered merely on The judgement's subsequent overruling<sup>31</sup>:** The Sikkim HC has dismissed the appeal filed by the department, holding that the subsequent change in the legal position does not permit the re-opening of refund claims validly granted under the earlier law. Further, the HC observed that overruling an earlier judgement of the SC by another judgement does not make the refund claims sanctioned earlier as erroneous because the refund was sanctioned under the law prevailing at the relevant time. The HC stated that allowing such recovery would lead to endless litigation, which goes against the principles of the finality of judicial decisions and public policy.

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

- **Telangana HC held that SCN cannot be issued to re-open a matter already settled under state government's amnesty scheme<sup>32</sup>:** The Telangana HC has set aside the SCN proposing to re-open the issue already settled by the petitioner under the Telangana state government's amnesty scheme (i.e., the One Time Settlement (OTS) scheme). The HC stated that the Revenue cannot issue an SCN after the entire exercise of determining tax and penalty was conducted by it under the OTS scheme, which the petitioner accepted. The HC further opined that since the object of the OTS scheme is to encourage taxpayers to settle their pending disputes, permitting the Revenue to issue an SCN even after entering into a settlement will eliminate the purpose.

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



29. M/s. Canon India Pvt. Ltd. [R.P.(C) No. 400/2021]

30. M/s. Canon India Pvt. Ltd. [Civil Appeal No.1827 of 2018]

31. M/s Alkem Laboratories Limited [TAX APP. No. 01 OF 2024, dated 5 September 2024]

32. ACME Cleantech Solutions Private Limited [Writ Petition No. 3194 of 2024, dated 28 August 2024]





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