Tax Hotline

February 01, 2025

BUDGET 2025: BUILDING FOUNDATION FOR A SELF-RELIANT INDIA

As global economic dynamics evolve from globalization and multilateral cooperation, towards unilateralism; the growth of Indian economy display signs of resilience in the midst of changing international status-quo.

India has been actively reshaping its fiscal framework around the philosophy of self-reliance, the cornerstone of this government's 'Atma-Nirbhar Bharat' vision. This recalibration comes amidst global slowdowns and rising geopolitical tensions, positioning India as a beacon of resilience and proactive economic stewardship.

The Union Budget 2025 ("**Budget**"), the third under the current NDA government and the eighth presented by the Finance Minister, reflects a clear, strategic vision of a 'Vikasit Bharat' (being a developed India), underpinned by fiscal prudence and growth-oriented policies. With the fiscal deficit managed at 4.8% for the current financial year and a target to reduce it to 4.4% next year, the Budget emphasizes fiscal consolidation while carefully balancing the need to fuel economic growth.

This Budget outlines an inclusive growth agenda (premised on the following key domains of growth – power, urban development, mining, financial sector, along with taxation and regulatory reforms), driven by four pivotal engines of agricultural resilience, MSME empowerment, reviving investment momentum, and global export competitiveness. As part of these initiatives, the Government plans to set up a substantial Fund of funds exceeding INR 10,000 crore (~USD 11.5 billion) to boost start-ups, with a particular focus on deep tech innovations, put strategic emphasis on artificial intelligence as a key growth driver for both jobs in industries and overhaul its Bilateral Investment Treaty models to make India more attractive destination for global investors. The Budget positions India as a future-ready export powerhouse, emphasizing sustainable and high-quality manufacturing. Investments in green technologies—like electric vehicles, wind energy, and solar infrastructure—align with global climate commitments while opening new economic frontiers. This will aim to provide domestic value addition and build our clean tech manufacturing ecosystem (for example, grid scale batteries, PV cells, motors and controller, etc).

With the aim of encouraging this growth, SWAMIH Fund 2 will be established as a blended finance facility with contribution from the Government, banks and private investors. This year's Budget for GIFT City builds on previous reforms, continuing the Government's commitment to developing a robust financial services hub capable of competing on the global stage. Specifically, the amendments centre around rationalisation of incentives across financial products and services, promoting retail participation and extension of sunset provisions to ensure continued growth and global competitiveness of the International Financial Services Centre ("**IFSC**").

The Budget puts forth self-reliance as a structural shift. The Budget proposes a more streamlined, trust-based regulatory framework, with significant tax reforms aimed at simplifying compliance. The upcoming Income Tax Bill promises clearer language and fewer provisions, with the aim of making tax laws more accessible. Additionally, a high level committee has been suggested for an assessment of all regulatory frameworks for the non-financial sector with the mandate of making recommendations for simplification and change on an annual basis, with the hope that India's business environment remains dynamic and responsive. The Budget has also attempted at understanding pain points of businesses, with specific initiatives such as rationalizing the process for business reorganizations – by widening the fast-track merger process, and attempting to make the process simpler.

Ease of doing business receives a considerable boost through initiatives like decriminalizing over 100 statutory provisions, rationalizing customs tariffs, and modernizing the Central KYC registry. The introduction of Bharat Trade Net aims to streamline international trade processes, further enhancing India's competitiveness on the global stage.

For the middle class, often the unsung hero of India's economic resilience, the Budget brings meaningful relief. A major revamp of personal income tax slabs effectively eliminates taxes for individuals earning up to ₹12 lakh annually (~USD 13.8k). This move is expected to boost disposable incomes, spur domestic consumption, and invigorate sectors reliant on middle-class spending. The government's shift towards a "Trust First, Scrutinize Later" taxation philosophy reflects a more mature, citizen-centric approach, promoting voluntary compliance and reducing the adversarial nature of tax administration. Rationalization of the TDS provisions is another step towards the commitment towards simplification.

Small and medium enterprises, which account for 45% of India's exports, receive targeted support. The decision to allow 100% Foreign Direct Investment in the insurance sector (with conditions ensuring domestic reinvestment) is a bold step towards unlocking capital, fostering innovation, and catering to the evolving needs of a growing middle class and vibrant SME sector.

In sum, the Budget reflects the government's awareness of both domestic imperatives and global realities. Through a blend of fiscal discipline, regulatory reforms, and strategic investments, this Budget aims to fortify India's economic foundations while charting a path towards a more self-reliant, robust, and inclusive future.

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India 2025: The Emerging

1. TAX RATES

1.1. Companies

- **No Change in Tax Rates for Domestic Companies; No Extension for Section 115BAB:** Domestic companies opting for the concessional tax regimes under Section 115BAA and Section 115BAB, will continue to be taxed at 22% and 15%, respectively, with a surcharge of 10% in both cases. Despite the expectations of the manufacturing industry, the deadline for new companies to commence manufacturing or production under Section 115BAB still remains March 31, 2024. Consequently, the concessional regime will not apply to new companies starting manufacturing after March 31, 2024.

  Domestic companies not availing the concessional tax regimes will continue be taxed at 30% or 25%, depending on their turnover for the previous year 2023-24. Specifically, a 25% tax rate applies if the turnover is up to INR 400 crores, and a 30% tax rate applies otherwise. The surcharge rates for these companies remain at 7% for total income exceeding INR 1 crore but up to INR 10 crore, and 12% for total income exceeding INR 10 crores.

- **Unchanged Tax Rates for Foreign Companies:** In order to achieve greater parity, the tax rate for foreign companies was reduced from 40% to 35% for Assessment Year (“**AY**”) 2025-26. The tax rate remains 35% for the AY 2026-27. The surcharge rates remain unchanged: 2% on total income exceeding INR 1 crore but up to INR 10 crore, and 5% on total income exceeding INR 10 crore.

1.2. Individuals

Under Section 87A, an individual resident in India with an income below INR 5 lakhs is eligible for a 100% tax rebate. This threshold was raised to INR 7 lakhs through the Finance Act of 2023. For Assessment Year 2026-27 onwards, the Bill proposes to further increase the income limit for which no tax is payable, from INR 7 lakhs to INR 12 lakhs, while also raising the rebate limit from INR 25,000 to INR 60,000. These changes are designed to create a more equitable tax system and ease the financial burden on middle-income groups.

Old Regime		**New Regime** *(AY 2025-26)*		**New Regime** *(AY 2026-27)*	
Taxable income	***Tax rate***	***Taxable income***	***Tax rate***	***Taxable income***	***Tax rate***
Up to INR 2.5 lacs	Nil	Up to INR 3 lacs	Nil	Up to INR 4 lacs	Nil
INR 2.5 lacs to 5 lacs	5%	INR 3 lacs to 6 lacs	5%	INR 4 lacs to 8 lacs	5%
INR 5 lacs to 10 lacs	20%	INR 6 lacs to 9 lacs	10%	INR 8 lacs to 12 lacs	10%
Above INR 10 lacs	30%	INR 9 lacs to 12 lacs	15%	INR 12 lacs to 16 lacs	15%
		INR 12 lacs to 15 lacs	20%	INR 16 lacs to 20 lacs	20%
		Above INR 15 lacs	30%	INR 20 lacs to 24 lacs	25%
				Above 24 lacs	30%

1.3. Co-operative Societies, Firms, and Local Authorities

For the AY 2026-27, the tax rates and surcharges for co-operative societies, firms, and local authorities remain same as those specified for FY 2024-25.

2. HARMONIZATION OF “SIGNIFICANT ECONOMIC PRESENCE”

Section 9 of the Income-tax Act, 1961 (“**ITA**”) is a deeming provision that outlines specific circumstances under which a non-resident’s income is *deemed to accrue or arise in India*, thereby making it taxable in India. Section 9 contains the concept of ‘business connection’ which stipulates that income earned by a non-resident through or from a business connection in India will be deemed to accrue or arise in India, and will therefore be taxable in India.

Section 9 further elaborates what constitutes business connection and what is carved out from its meaning. One of the carve outs states that a non-resident shall not constitute business connection in India if the operations of the non-resident are limited to the purchase of goods in India for the purpose of exporting (“**Export Carve-out**”).[1] Thus, non-residents simply purchasing goods in India for the purpose of export are not considered as having ’business connection’ in India.

*Introduction of significant economic presence (“**SEP**”)*

The genesis of SEP can be traced back to the Organization for Economic Co-operation and Development (“**OECD**”) Action Plan 1 (Addressing the tax challenges of digital economy) under its Base Erosion and Profit Shifting (“**BEPS**”) project. The Action Plan 1 discussed several options to tackle the direct tax challenges arising in digital business, including introduction of a new nexus rule based on SEP.[2] In furtherance of the same, through Finance Act, 2018, the concept of ‘business connection’ was expanded by introducing the concept of SEP. While introducing the SEP provisions, the Memorandum to Finance Bill, 2018 noted as follows:

“The scope of existing provisions of clause (i) of sub-section (1) of section 9 is restrictive as it essentially provides for physical presence based nexus rule for taxation of business income of the non-resident in India. Explanation 2 to the said section which defines ‘business connection’ is also narrow in its scope since it limits the taxability of certain activities or transactions of non-resident to those carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of clause (i) of sub-section (1) of section 9 of the Act..

In view of the above, it is proposed to amend clause (i) of sub-section (1) of section 9 of the Act to provide that significant economic presence' in India shall also constitute 'business connection'.” (Emphasis supplied)

The concept of SEP, *inter-alia,* includes within its ambit transaction in respect of any goods, services, or property carried out by a non-resident with any person in India, including the download of data or software in India, if the total payments from such transactions during the previous year exceed a prescribed amount. In case where a non-resident has SEP in India, such SEP shall constitute ‘business connection’ in India.

Interplay of SEP and the Export Carve-Out

Given that the scope of SEP is broad, it could inadvertently negate the Export Carve-out, creating a contradiction. To harmonize the provisions and maintain consistency, The Finance Bill, 2025 (“**Bill**”) has proposed an amendment to the definition of SEP. The amendment clarifies that the transactions or activities of a non-resident in India, which are confined to the purchase of goods in India for export, will not be considered as creating an SEP in India. This will align the provision with the existing Export Carve-out, ensuring that such transactions remain outside the scope of Indian taxation. While this is a welcome move, it is important to note that SEP provisions are subject to provisions under relevant tax treaties (which are generally narrower in scope than the ITA). Therefore, non-residents transacting in India through treaty jurisdictions can claim relief under the tax treaty. The proposed amendment is to be effective from April 1, 2026, leaving room for ambiguity for prior periods.

Other issues

While the amendment is welcome, SEP provisions continue to be broad and vague. This poses further problems even from a compliance perspective considering non-residents are mandatorily required to disclose in their income-tax return whether they have SEP in India or not. This could have also been an opportunity for the Government to rationalize the SEP provisions to align it with the intent of its introduction.

3. SOVEREIGN WEALTH FUNDS (“SWFS”)

Clarifications for sovereign wealth funds and pension funds: In order to attract long-term stable capital from Sovereign Wealth Funds (“**SWFs**”) and pension funds (“**PFs**”), Finance Act, 2020 exempted certain income in nature of dividend, interest, long-term capital gains (“**LTCG**”) arising from specified investments from tax. The exemption is provided in case where such investments were made before on or before March 31, 2025.

In a welcome move, the Bill has proposed to extend this sunset by 5 years until March 31, 2030. A one-time extension for 5 years should provide certainty and clarity to SWFs and PFs for their Indian investments and help boost the infrastructure sector in India.

Last year, the Finance (No.2) Act, 2024 re-classified all capital gains arising from transfer of unlisted debt securities as short-term capital gains, irrespective of the holding period. This resulted in an anomaly considering the exemption under section 10(23FE) to recognized SWFs and PFs was limited to LTCG. The Bill now proposes to correct this anomaly. Pursuant to the amendment, LTCG on transfer of unlisted bonds or debentures will be exempt in hands of recognized SWFs and PFs. Gains on transfer of unlisted bonds or debentures will qualify as LTCG if such securities are transferred after 2 years from their date of acquisition.

4. ALTERNATIVE INVESTMENT FUNDS (AIF) TAXATION

Taxation of certain alternative investment funds: Section 115UB of the ITA, 1961 **(“ITA”)** has accorded pass-through status to Category-I / Category-II alternative investment funds regulated under the SEBI (Alternative Investment Fund) Regulations, 2012 or under the IFSCA (Fund Management) Regulations, 2022 (“**Investment Fund**”). As per section 115UB, any income (other than income in nature of profits and gains from business or profession) is exempt from tax in hands of an Investment Fund and taxable directly in hands of its investor. Further, section 115UB provides that any income accruing or arising to, or received by, a unit-holder of an Investment Fund out of investments made in the Investment Fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by such person, had the investments made by the Investment Fund been made directly by the unit-holder. Accordingly, the income of a unit holder in the Investment Fund will take the character of the income that accrues or arises to, or is received by the Investment Fund.

Historically, the issue of characterization of income from transfer of securities (whether taxable as business income or capital gains) has been a subject matter of litigation. There have been judicial pronouncements on whether gains from transfer of securities should be taxed as ‘business income’ or as ‘capital gains’. In order to reduce litigation and maintain consistency in approach in assessments, the Central Board of Direct Taxes ("**CBDT**") issued a circular instructing that income arising from transfer of listed shares and securities, which are held for more than twelve months should be taxed under the head 'Capital Gains' unless the tax-payer itself treats these as its stock-in-trade and transfer thereof as its business income.[3] However, this circular covered only listed shares and securities.

Later, the CBDT issued another clarification stating that income arising from transfer of unlisted shares should be considered under the head 'Capital Gains' irrespective of the period of holding ("**General Rule**") with a view to avoid dispute/ litigation and to maintain uniform approach.[4] However, certain exceptions were provided to the General Rule by CBDT. One such exception was where transfer of unlisted shares is made along with control and management of underlying business. However, considering that Investment Funds may exercise some form of control and management in underlying business, based on industry representations, the CBDT clarified that the aforesaid exception would not be applicable to Investment Funds. Accordingly, gains earned by the Investment Funds on transfer of unlisted shares, even where the transfer is made along with the control and management of the underlying business would be characterized as capital gains.

The Bill now proposes to specifically include any security held by an Investment Fund within the ambit of 'capital asset'. Accordingly, any gains arising from transfer of any security by an Investment Fund will be in nature of 'capital gains'. While a holistic reading of the aforementioned circular and General Rule leaves little room for doubt that income arising from transfer of unlisted shares by an Investment Fund should be regarded as capital gain income, nonetheless this is a welcome change. Further while the circular covered only unlisted shares, now income arising from listed as well as unlisted shares and any other security held by an Investment Fund would be regarded as capital gain income. Category - III Alternate Investment Funds would nonetheless have to deal with the issue of characterization of income since these funds are not covered within the above proposed change.

5. FOREIGN PORTFOLIO INVESTORS

Taxation of foreign portfolio investors ("FPIs"): Finance (No, 2) Act, 2024 made substantial changes to the capital gains tax regime in India. The tax rate on LTCG arising from transfers made on or after July 23, 2024 was changed to 12.5% (plus applicable surcharge and cess), irrespective of whether the transferor is a resident or non-resident.

The tax rates for FPIs are provided in section 115AD (not section 112). While Finance (No, 2) Act, 2024 amended section 115AD to provide that LTCG arising on transfer of listed equity shares will be taxable at 12.5% (plus applicable surcharge and cess), LTCG arising on all other assets continued to be taxed at rate of 10%. This anomaly is proposed to be corrected by the Bill. Going forward, any LTCG arising to an FPI will be subject to tax at rate of 12.5% (plus applicable surcharge and cess)

6. VDA TAXATION AND ENHANCED REPORTING

Tax regime for virtual digital assets ("**VDAs**") was introduced by the Finance Act, 2022 under the ITA. The VDA tax regime was not seen favourably by the industry resulting in a massive 92% decline in trading volumes of crypto assets in domestic markets and migration of users to offshore platforms.[5] Reports also estimated that the government potentially lost INR 2,489 crores (~ USD 287 Millions) in tax revenue since February 2022 to January last year due to reduced volumes on Indian exchanges.[6] The crypto industry had requested for several changes in the VDA tax regime inter-alia including reduction of withholding tax rate on VDA, allowance for set-off and carry forward of VDA losses etc. However, these requests have gone unheard by the government. The amendments proposed under the Bill are likely to tighten oversight over crypto-assets.

Information sharing and due diligence requirements

In 2023, anti-money laundering provisions were extended to various service providers in the virtual digital asset ecosystem. The anti-money laundering provisions were amended to add several compliance obligations like verification of identity, enhanced due diligence, maintenance of records by reporting entities.[7] While Finance Act, 2022 had introduced the tax regime for VDAs, there were no reporting requirements prescribed for VDA under the ITA. The Bill proposes to introduce obligation on 'reporting entities' to furnish information on transactions of crypto-asset (not VDAs). The persons covered within reporting entities, nature and manner of maintenance of information by such reporting entities will be prescribed by the Government by way of rules. This proposed amendment seems to be geared towards intermediaries like crypto-exchanges which are likely to be included within the ambit of 'reporting entities'. Rules will also be prescribed for the due diligence to be carried out by the reporting entities for purpose of identification of any crypto-user or owner. This is likely to increase compliance burden on such 'reporting entities' and they will have to put in place arrangements to ensure that data is collected properly for reporting to government. Further, what liability / penalties may apply in case of non-compliance is not clear currently.

For the purposes of the aforesaid information reporting, the Bill proposes to add another limb to the definition of VDA. The proposed definition includes within its ambit any crypto-asset being a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions, whether or not such asset is included in the earlier limbs of VDA or not. Unlike the earlier limbs of VDA definition, this new limb includes crypto-assets that rely on blockchain technology (or similar technology) to validate and secure transactions only. Therefore, reporting obligations would be limited to such crypto-assets. This change seems to be in line with the global movement on crypto-asset reporting framework proposed by OECD which allows for automatic exchange of tax relevant information on crypto-assets.

Search provisions amended to include VDA within ambit of 'undisclosed income'

The Bill has proposed to add VDA within the ambit of 'undisclosed income' under Chapter XIV-B (Special procedure for assessment of search cases) of the ITA. The provisions empower tax authorities to conduct block assessments in cases where search is conducted. Income determined under such block assessment is taxed at rate of 60%. The time-limit for completion of block assessment is proposed to be made as twelve months from end of the quarter in which the last of the authorisations for search or requisition has been executed. This amended is likely to significantly impact crypto traders specifically in cases where income from crypto transactions has been undisclosed. A positive impact (and intended impact) of this change may be to bring the crypto-transactions on regulated platforms such that the transactions do not go undetected.

On an overall basis, while to substantive changes have been made to VDA tax regime, the proposed changes clearly indicate government's intent to keep a close eye and monitor crypto transactions in the country.

7. GIFT CITY INCENTIVES

7.1 Extension of Sunset Clauses

The Government has introduced several tax concessions to encourage the establishment and growth of businesses set up in the IFSC at GIFT City. These concessions are currently available under various provisions of the ITA and are aimed at making the IFSC a global financial hub. However, these benefits are subject to sunset dates, after which they would no longer apply. Currently, the deadline for many of these concessions is March 31, 2025.

To further promote the development of the IFSC and attract international financial activities, the Bill proposes to extend the sunset dates for these concessions to March 31, 2030. The revised sunset dates apply to the following sections of the ITA:

Section	Exemption
80LA (2)(d)	Income arising from transfer of an aircraft or a ship leased by a unit in IFSC to a person, provided that the unit should have commenced operations on or before March 31, 2030.
10(4D)	Income from a securitisation trust (which is chargeable under the head "Profits and Gains of Business or Profession") to the extent such income is attributable to the investment division of offshore banking unit which has commenced its operations in the IFSC on or before March 31, 2030.
10(4F)	Royalty or Interest income in the hands of non-residents from leasing aircrafts or ships to a unit which has commenced operations in the IFSC on or before March 31, 2030.
10(4H)	Capital gains income in the hands of non-residents engaged in aircraft leasing or aircraft leasing units in the IFSC, from the transfer of equity shares of an aircraft leasing unit which has commenced operations in the IFSC on or before March 31, 2030.
47(viiac) 47(viiad)	Capital gains income the relocation of an offshore to the IFSC, where the relocation takes place on or before March 31, 2030.
9A(8A)	Government's power under Section 9A(8A) to modify eligibility conditions in relation to offshore funds managed by IFSC-based managers which have commenced operations on or before March 31, 2030.

While the extensions are a step in the right direction, the do not fully resolve the uncertainty regarding the long-term availability of these exemptions. The limited duration of the concessions may hinder long-term tax planning and affect stakeholder's willingness to make substantial investments in GIFT City.

7.2 No more premium caps for IFSC life insurance policies

Under Section 10(10D) of the ITA, the sum received under a life insurance policy, including any bonuses, is exempt from tax, subject to certain conditions. However, the exemption does not apply to unit-linked insurance policies ("**ULIPs**") where the annual premium exceeds INR 2.5 lakhs, nor to life insurance policies where the annual premium exceeds INR 5 lakhs, excluding ULIPs. These provisions currently apply to policies issued by Insurance Offices in the IFSC.

This creates a disadvantage for non-residents purchasing life insurance from IFSC Insurance Offices compared to policies from foreign jurisdictions, where no such premium caps exist. To address this disparity and encourage non-residents to avail life insurance services from IFSC Insurance Offices, the Bill proposes to remove the premium cap restrictions for policies issued by IFSC Insurance Offices. This change is also in line with the Government's general push to further expand the retail insurance market in the IFSC.

7.3 Exemption on income from Specified Derivatives entered into with FPIs in GIFT City

Section 10(4E) of the ITA provides for an exemption on any income accrued, arisen or received by a non-resident as a result of (i) the transfer of; or (ii) distributions from, non-deliverable forward contracts, offshore derivative instruments, or over-the-counter derivatives (**"Specified Derivatives"**) entered into with a banking units set up in the IFSC.

The Bill proposes to amend clause 10(4E) to extend the same tax exemption to income earned by a non-resident in relation to Specified Derivatives entered into with Foreign Portfolio Investors (**"FPIs"**) set up in the IFSC.

This amendment follows a SEBI circular issued on June 27, 2024 whereby the cap permitted for participation by NRI/ OCI/RIs in a single FPI was increased from less than 50% to up to 100% of the FPI's corpus.

These changes are clearly intended to further promote the set-up of FPIs in IFSC as opposed to other jurisdictions like Mauritius and Singapore, which is in line with the Government's objective of providing a tax and regulatory framework in GIFT City which is on par with or better than other global jurisdictions.

The change is expected to take effect from April 1, 2026.

7.4. Capital gains and dividend exemptions for ship leasing in the IFSC:

The Bill proposes to provide an exemption for capital gains income in the hands of (i) non-residents and (ii) IFSC units, engaged in ship leasing from the transfer of equity shares of a ship leasing company in the IFSC. The Bill further proposes to provide an exemption on dividends paid by one ship leasing company in the IFSC to another.

These changes are intended to align the tax treatment of ship leasing with that of aircraft leasing, given the similarities in their business structures and investor protection mechanisms, such as the use of special purpose vehicles (**"SPVs"**) for individual vessels.

Rationalisation of definition of 'dividend' for treasury centres in the IFSC

Under Section 2(22)(e) of the ITA, the definition of "dividend" includes certain advances or loans made by a company to its shareholders or affiliated concerns. Specifically, amounts paid to a shareholder holding at least 10% of the voting power in a private company or substantial interest in a concern are deemed to fall within the meaning of dividend.

The Bill has proposed to exclude payments in the nature of loans or advances between two group entities from the definition of dividend under the ITA, provided that (i) one of the group entities is a Finance Company or Finance Unit registered with the IFSCA for undertaking activities or services as a global or regional corporate treasury centre, and (ii) the parent entity or principal entity of such group is listed on an offshore stock exchange.

This amendment is designed to promote economic growth, improve global business operations, and attract foreign investment into the IFSC, aligning with the broader objective of enhancing India's financial services ecosystem.

7.5. Expansion of Tax-Neutral Relocations to Retail Schemes and Exchange Traded Funds ("ETFs") in IFSC

Certain provision of the ITA provides a tax neutral relocation of an offshore fund to the IFSC provided that the resultant fund in the IFSC is granted registration as a Category I, II or III AIF under the IFSCA (Fund Management) Regulations, 2022 ("**FM Regulations**"). This exemption is now proposed to be extended to relocations wherein the resultant fund is registered as a retail scheme or exchange traded fund registered under the FM Regulations.

As on May 31, 2024, 12 funds had relocated from various jurisdictions to GIFT IFSC with a targeted commitment of approximately USD 5 Billions. The proposed amendment has been introduced to further catalyse such relocations and boost retail participation in the IFSC. However, only time will tell whether such exemption will actually be enough to incentivize the relocation of funds already well established in foreign jurisdiction. The exemption is expected to take effect from April 1, 2026.

8. LOSS ON MERGER

Carry forward of losses in certain cases: Section 72A of the ITA provides for the carry-forward and set-off of accumulated losses and unabsorbed depreciation allowance in case of amalgamation, demerger, business reorganisation etc. Section 72A(1) provides that the accumulated loss and unabsorbed depreciation of the amalgamating company are deemed to be loss or the unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected. Section 72A(6) provides a similar provision in the case of business reorganisation whereby a company succeeds a firm or proprietary concern. Further, Section 72A(6A) provides a similar provision in the case of business reorganisation whereby a Limited Liability Partnership succeeds a private company or unlimited public company. While generally, as per business losses cannot be carried forward for more than 8 AYs from the AY in which the loss was first computed, in situations like amalgamations/ business reorganisation, the loss of predecessor entity gets a fresh life in hands of the successor entity. This provided the opportunity for the evergreening of losses of the predecessor entity by undertaking amalgamation, business reorganization, or demerger.

The Bill proposes an end this by amending section 72A of the ITA to provide for no carry forward and set off of accumulated loss after eight AYs from the immediately succeeding AY for which such loss was first computed for original predecessor entity. The amended provision applies to amalgamation or business reorganisation effected on or after April 1, 2025.

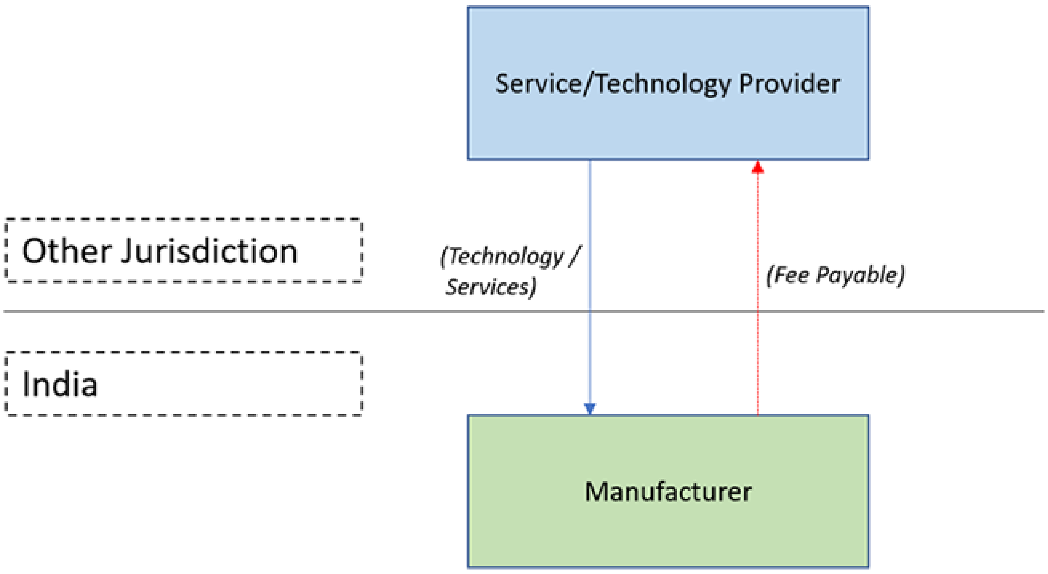
This is likely to have an impact on existing amalgamation schemes pending approval from Court. Importantly for mergers, the amended provision will apply from the effective date i.e. date of approval from court irrespective of the appointed date[8] in the scheme.

9. PRESUMPTIVE TAX

Presumptive Tax Scheme for Non-Resident providing Technology and Services to Electronic Manufacturing in India

To advance the Aatmanirbhar Bharat vision, and establish India as a global Electronics System Design and Manufacturing ("ESDM") hub (in line with the National Policy on Electronics), the Indian Government launched a >USD 10 billion program for developing the semiconductor and display manufacturing ecosystem in India, with targeted schemes to attract investments and provide incentives for manufacturing in India.[9] This initiative aims to strengthen India's electronics manufacturing ecosystem and boost foreign and domestic participation.

Typically, business models involve a non-India entity which develops, owns, and licenses the intellectual properties with respect to the semiconductors – to group entities, or third-party manufacturers or distributors across the world (including a manufacturing entities in India). Such non-India entities (or other group entities with experience in development and design of semi-conductors) may also provide other services to the Indian manufacturers (for example, product and chip-layout designs; engineering or technical advisory with respect to the manufacturing process; or provide any other technical know-how for the semiconductors).



Subject to a case by case determination of facts - the license fee payable for the transfer of rights in respect of relevant patents, inventions, models, designs, secret processes (or the imparting of information in their respect); or the imparting of any other information concerning the technical, industrial, commercial or scientific knowledge, experience or skill - may qualify as 'royalty' as per the Income Tax Act (which attracts a withholding tax in India at the rate of 20%). Similarly, service fee payable by the Indian manufacturers to such non-Indian entities for rendering any managerial, technical, or other consulting services – may qualify as 'fee for technical services' as per the Income Tax Act, based on the specific facts of the case (which also attracts a withholding tax in India at the rate of 20%).

In both these scenarios, if the non-resident is eligible to avail the benefit of a narrower definition of 'royalties' or 'fee for technical services' (or a 'make available' clause in the treaty which requires the technical service be made available to the resident) – they may be able to escape the Indian withholding tax net. However, given the business models, if such fees payable by the Indian manufacturers also qualify as 'royalties' or 'fee for technical services' under the relevant treaties – they may nonetheless be able to avail a beneficial lower withholding tax rate of 10% to 15%, depending on the treaty. Further, provision of technology or services (by non-residents) may at times also create the risk of a potential permanent establishment of such non-resident being constituted in India. While the risk would be based on the specific facts of each case – income attributable to such a permanent establishment is taxable at the applicable rate for non-residents (i.e., 35% plus applicable surcharge and cess).

The introduction of Section 44BBD by the Bill is a significant and beneficial step toward bolstering India's position as a global hub for Electronics System Design and Manufacturing (ESDM).

Section 44BBD proposed to be introduced by the Bill, sets out a presumptive taxation regime for non-resident entities engaged in providing technology or services in India, for (a) setting up or operating electronics manufacturing facilities; or (b) in connection with manufacturing or producing electronic goods, article or things in India. This is subject to two mandatory conditions required to be met by the Indian companies receiving the technology or services –

- The Indian company should be establishing or operating electronic manufacturing facilities, or connected facilities (under a scheme notified by the Central Government and MEITy); and
- The Indian company should satisfy such other conditions as may be prescribed.

By way of the presumptive tax regime - 25% of the aggregate receipts of such non-residents are deemed to be profits and gains from business of the non-resident. Given the corporate tax rate of 35% (plus applicable surcharge and cess) for foreign companies in India, this implies an effective tax payable of less than 10% on gross receipts. The taxable receipts shall include amounts paid / payable to the non-resident (or any person on their behalf) for the technology or services; and also includes amounts received (or deemed to be received) by or on behalf of such non-residents.

The newly introduced provision is expected to take effect from April 01, 2026, prospectively. However, for those non-residents who are eligible to claim treaty benefits (as set out above) – this provision should not now imply any additional tax implications in India. Even for those with claiming reduced withholding rates under relevant treaty treaties, the presumptive tax regime may nonetheless serve as a more certain and plausible option (with the exception of scenarios where the non-resident is able to claim a complete exemption from the withholding tax as per the treaty).

The introduction of the provision thus serves as a beneficial step to bolster India's commitment towards positioning itself as a global hub for Electronics System Design and Manufacturing (ESDM); and is aligned with the government's broader objective of making India a global leader in high-tech manufacturing. The simplified taxation framework not only reduces administrative burdens but also encourages greater foreign participation in India's semiconductor and electronics manufacturing ecosystem.

10. TCS RATIONALISATION

TCS on Sale of Goods

The provisions of Tax Deduction at Source ("**TDS**") under Section 194Q and Tax Collection at Source ("**TCS**") under Section 206C of the ITA have been key mechanisms to ensure tax compliance in commercial transactions.

Section 194Q requires buyers to deduct TDS at 0.1% on payments exceeding INR 50 lakh for the purchase of goods, while Section 206C(1H) requires sellers to collect TCS at the same rate on similar transactions. Section 206C(1H) includes a proviso, stating that the provision shall not apply to transactions already subject to TDS. However, given the similarity in the provisions, sellers faced difficulty in ensuring that buyers comply with the TDS provisions under Section 194Q. This has led to the unintended consequence of both TDS and TCS being applicable on the same transaction, which complicates the compliance process and increases the administrative burden on taxpayers.

To address these concerns, it is proposed that the provisions of Section 206C(1H) will no longer apply from April 1, 2025.

This change brings much-needed relief by reducing excessive compliance requirements. Both TDS and TCS were introduced to ensure taxes are deducted or collected at the point of transaction, minimizing the risk of non-payment or underreporting. However, since both provisions served the same purpose, having them in parallel only added to the taxpayer's compliance burden. Additionally, while TDS is deducted by the buyer with the seller claiming credit, TCS requires the seller to collect tax from the buyer, even when the buyer has no taxable income on the purchase transaction.

Furthermore, the rationalization provides clarity from a transactional perspective. The ITA does not define the term 'goods,' as outlined in both Section 206C(1H) and Section 194Q. In this context, reference was made to the Sale of Goods Act, which includes items such as shares and securities within the definition of goods. Consequently, both the provisions were interpreted to apply to these financial instruments. As a result, TDS and TCS on such transactions are currently as follows:

Sr. No.	Scenario	TDS Implication	TCS Implication	Rate
1	Non-Resident Seller Resident Buyer	TDS u/s. 195 [If Capital Gains are taxable]	NA [Second proviso to Section 206C]	Depends on the nature of the gains
2	Non-Resident Seller Non-Resident Buyer			
3	Resident Seller Resident Buyer	TDS u/s. 194Q		0.1%
4	Resident Seller Non-Resident Buyer	No TDS. [Exclusion u/s. 194Q]	TCS u/s. 206C	0.1%

Following the Bill, the rationalization will eliminate the requirement for TDS or TCS in transactions involving a Resident Seller and a Non-resident Buyer, potentially providing relief to taxpayers engaged in such transactions.

Rationalisation of TCS on Remittances under RBI's Liberalized Remittance Scheme (LRS)

In a bid to enhance ease of transactions and provide relief to taxpayers, the Bill proposes to include significant changes to the TCS provisions concerning remittances under the Reserve Bank of India's (**"RBI"**) Liberalized Remittance Scheme (**"LRS"**).

Increase in TCS Threshold

The threshold for collecting tax at source on remittances under the LRS is set to rise from INR 7 lakh to INR 10 lakh. This increase is expected to benefit taxpayers making cross-border transactions, as it raises the limit before TCS becomes applicable.

Removal of TCS on Education-related Remittances

In a noteworthy move, the Bill also seeks to remove TCS on remittances made for educational purposes. This applies specifically when the remittance is financed through a loan obtained from a specified financial institution. The definition of a "specified financial institution" under Section 80E(3)(b) includes:

- A banking company regulated by the Banking Regulation Act, 1949
- Any other financial institution that the Central Government may specify via a notification in the Official Gazette.

These changes are designed to streamline the process and provide relief to taxpayers, particularly those remitting funds for educational purposes using loans from recognized financial institutions.

11. THREE-YEAR BLOCK APPROACH FOR DETERMINING ARMS' LENGTH PRICE

Transfer pricing provisions under the ITA require income arising from international transactions or specified domestic transactions ("**SDTs**") between associated enterprises to be computed having regard to the arm's length price ("**ALP**")[10]. The ITA also provides a detailed methodology for determining the ALP in such transactions[11]. The assessment proceedings of such taxpayers involve the Assessing Officer ("**AO**") referring the determination of ALP to the Transfer Pricing Officer ("**TPO**")[12]. Once the TPO determines the ALP, the AO adjusts the taxpayer's total income in accordance with the TPO's order[13].

Typically, entities engage in similar international transactions or SDTs on a yearly basis. Consequently, the process of referring these transactions to the TPO for ALP determination is repeated annually. Given the complexity and administrative burden of this process, the Bill proposes to introduce Section 92CA(3B), providing an option to taxpayers to apply the same ALP to "similar international transactions or SDTs" for a block of three years. Under the amendments:

- Taxpayers must file a prescribed form within the specified timeframe to exercise the option.
- The TPO will assess the validity of the option and issue an appropriate order within one month of its exercise, determining whether the transactions are similar and valid.
- Once confirmed, the ALP determined for an international transaction or SDT in the given year will be applied by the AO to similar transactions or SDTs for the two consecutive years immediately following that year.

This benefit, however, is not extended to search cases separately dealt with under Chapter XIV-B. Further, pertinent to note that the option seems to be available on a per-transaction basis.

This amendment marks a positive step in reducing compliance burdens and redundancy in transfer pricing proceedings by minimizing the need for multiple ALP determinations for the same or similar transactions across years. However, several practical aspects remain unclear.

Firstly, the time limit for filing the prescribed form is yet to be specified. While the option is set to be available starting April 1, 2026, allowing taxpayers to file the form from that date, its applicability to assessment years with open or pending proceedings will depend on the time limit eventually prescribed for the filing. Additionally, the amendment does not address the validity of this option in case there are changes in facts or the transactions in subsequent years.

Moreover, the term "similar international transaction" is not defined. This could lead to complications, as transactions that are similar but involve different parties or circumstances each year may raise questions about how to categorize them.

In addition to above, to reduce litigation and provide greater certainty in international taxation, the Finance Minister in the Budget Speech proposed to expand the scope of safe harbour rules. As a result, these rules may be subject to amendments.

- International Tax Team

You can direct your queries or comments to the authors.

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[1]Clause (b) of Explanation 1 to Section 9(1)(i)

[2]Memorandum to the Finance Act, 2018, page 8.

[3]Circular No. 6 of 2016 dated February 29, 2016

[4]Instruction No. F.No. 225/12/2016/ ITA.II dated May 2, 2016

[5]'Web3 growth hinges on taxation reforms: A Budget Wishlist' available at https://economictimes.indiatimes.com/markets/cryptocurrency/web3-growth-hinges-on-taxation-reforms-a-budget-wishlist/articleshow/117542929.cms?from=mdr

[6]'The impact of India's 1% TDS on Virtual Digital Assets: A call for reform' available at

https://economictimes.indiatimes.com/markets/cryptocurrency/the-impact-of-indias-1-tds-on-virtual-digital-assets-a-call-for-reform/articleshow/111599629.cms?from=mdr

[7]Prevention of Money Laundering Act, 2002

[8]Appointed date is the specific date designated within a scheme, from which the transactions of the merger are considered to have occurred

[9]https://www.meity.gov.in/esdm/Semiconductors-and-Display-Fab-Ecosystem

[10]Section 92 of the ITA

[11]Section 92C of the ITA

[12]Section 92CA(1)

[13]Section 92CA(4)
