

Navigating Tax Disputes & Related Developments in India

JUNE 2026

Tax Rulings

Colorcon Relief on DDT Refunds Hangs in the Balance – SC to Examine

The Hon'ble Bombay High Court in *Colorcon Asia (P.) Ltd* held that the erstwhile dividend distribution tax (DDT), despite being levied on the distributing Indian company, was fundamentally a tax on the shareholder's income and accordingly, the non-resident shareholders were entitled to concessional tax rate available under the Tax Treaties concerning dividend income. This interpretation unlocked substantial refund opportunities for non-resident shareholders that had historically suffered excess DDT (in excess of the rate on dividend income provided under the relevant tax treaty).

However, a coordinate bench of the Hon'ble Bombay High Court itself in *Foseco India Ltd*, expressed reservations about the correctness of the *Colorcon* rationale, referring the entire controversy to a larger bench for reconsideration.

Furthermore, the tax department has also challenged the validity of *Colorcon* ruling before the Hon'ble Supreme Court, and the Supreme Court is now actively seized of the dispute, listing it on 12 August 2026 and directing that the High Courts may consider staying the further proceedings of any matter involving similar issues.

With the Apex Court scheduling final hearings, the ultimate availability of treaty benefits for historical DDT hangs in the balance.

The final ruling of the Hon'ble Supreme Court will address the broader issues concerning the interplay between the provisions of the domestic tax laws and the allocation rules prescribed under a tax treaty, as well as the applicability of substance over form principle in the interpretation of tax treaties.

Cross-Border Professional Services: Tax Tribunal Reaffirms High Thresholds for FTS and Permanent Establishment

The Income Tax Appellate Tribunal, Mumbai (Tax Tribunal), in *Linklaters Singapore Pte. Ltd.* reaffirmed that legal and advisory fees earned by non-resident firms do not qualify as 'fees for technical services' (FTS) under the India-Singapore Tax Treaty unless they satisfy the 'make available' criteria.

Furthermore, the Tax Tribunal strictly interpreted the threshold for constituting a service permanent establishment, noting that the physical presence of the firm's personnel in India for 21 (twenty-one) days fell well short of the tax treaty's minimum requirement.

This ruling reaffirms the interpretation of 'make available' criteria and provides welcome clarity for multinational professional service firms (ie law firms, consulting firms, etc) that are providing advisory services across borders. The ruling reaffirms that mere provision of professional / consultancy services does not qualify as FTS merely on the ground that specialised expertise is involved, unless the recipient is able to apply such knowledge / skill on its own without any recourse to the service provider.

Interplay Between 'Thin Capitalisation' and Tax Treaties'

In a recent interesting ruling in the case of Vestas Wind Technology India Private Limited , the Tax Tribunal, Chennai ruled that provisions of section 94B ['thin capitalization' rules which caps deductibility of interest paid / payable to non-resident associated enterprise (AE)] of the Income-tax Act, 1961 (IT Act) cannot override the non-discrimination clause under Article 24(4) of the India-Denmark Tax Treaty (Tax Treaty).

In this case, the tax officer had disallowed interest on External Commercial Borrowings (ECBs) paid by the taxpayer to its foreign AE (ie related party) under section 94B. The Tax Tribunal held that since similar payments to a resident AE does not attract section 94B, the provision results in residence-based discrimination prohibited under the Tax Treaty. Relying on Section 90(2), it was held that Tax Treaty protection prevails over domestic law. It was also clarified that Article 12(7) of Tax Treaty relating to arm's length interest was not applicable, as the interest payment had already been accepted as arm's length by the transfer pricing authorities. Accordingly, the entire disallowance under Section 94B was deleted.

The ruling sets an important precedent that non-discrimination clauses provided under a Tax Treaty can override domestic thin capitalization rules to the extent such provisions provide a discriminatory treatment. It is, however, pertinent to note that not all tax treaties entered into by India provides for a non-discriminatory clause in relation to deductibility of expenditures.

Tax Tribunal Upholds Tax-Neutrality of Share Transfer Between Group Entities

The Tax Tribunal, Chennai validated a tax-neutral share transfer by the taxpayer to its wholly owned subsidiary. In this case, Valeo Bayen (a French parent company) had held a 60% stake in an Indian entity (held as a joint venture since 2012) (Company A). Following the collapse of the joint venture in 2018, the taxpayer acquired the remaining 40% stake in Company A from its partner. Shortly thereafter, in 2019, the taxpayer sold 100% stake in Company A to its wholly-owned Indian subsidiary (Company B), subsequently merging the two Indian entities under a fast-track corporate process.



The tax officer challenged the initial share sale (ie 40% stake sale) as a colourable device designed solely to extract tax-free cash from India and taxed the same as income from other sources. Rejecting the tax officer's contention, the Tax Tribunal noted that the transaction resulted in a genuine reorganisation of shareholding without any change in ultimate beneficial ownership. Crucially, it held that the mere existence of a tax advantage does not render an arrangement impermissible, provided it operates within the framework of the law and possesses commercial substance.

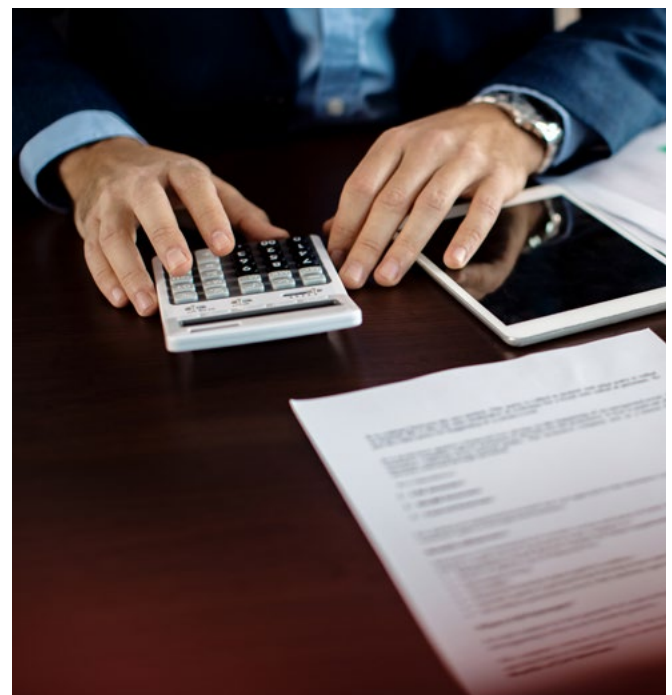
For corporates, this ruling is a strong endorsement of strategic tax planning. It provides critical comfort that legitimate, multi-step internal reorganisations that are driven by commercial expediency will remain protected under domestic tax exemptions.

In light of the new legislative framework, Hon'ble Supreme Court has remanded the matters concerning authority of jurisdictional assessing officers to issue reassessment notices to the High courts for fresh consideration and also evaluate the validity of retrospective amendments, if so, challenged by the taxpayers in their respective petitions . Various taxpayers have already amended their writ petitions before the High Courts to challenge the validity of such retrospective amendment and the same is pending for disposal as on date. In fact, the Hon'ble Delhi High Court granted an interim stay on a transfer pricing assessment order in writ challenging the retrospective Finance Act, 2026 amendments in respect of timelines under sections 153 and 144C . Hence, rather than settling the dust, these retrospective amendments have sparked a fresh wave of constitutional challenges across various High Courts.

Other Key Updates

Introduction of Retrospective Amendments

The Government vide Finance Act, 2026 introduced retrospective legislative amendments under the IT Act to nullify series of jurisdictional and procedural defences that were frequently relied upon by the taxpayers by relying on certain favourable judicial precedents. These amendments, inter-alia, validate the authority of jurisdictional assessing officers to issue reassessment notices, cure administrative omissions relating to the generation and quoting of Document Identification Number (DIN), and provide for clarity regarding timelines for passing draft assessment order and final assessment order.



Increased Invocation of GAAR Provisions

The provisions relating to General Anti-Avoidance Rules (GAAR) have been introduced under the domestic tax legislation to curb tax avoidance and promote a 'substance based' approach to taxation.

Effective from 1 April 2017, GAAR grants wide powers to tax authorities to treat an arrangement or a transaction as an 'impermissible avoidance arrangement' and re-compute the tax liability. While these provisions have been on the statute for almost a decade, lately, the Indian tax authorities have recently begun invoking GAAR more actively. Some orders passed by the GAAR Panel are currently under challenge before the High Courts pending adjudication .

These developments indicate that GAAR scrutiny is now a practical reality rather than merely a theoretical risk.



Rising Trend in Advance Pricing Agreement Signings

The Indian Advance Pricing Agreement (APA) programme continues to witness strong momentum, with a steady increase in the number of APA signings in recent years. This trend reflects the growing preference among multinational enterprises for obtaining certainty on their transfer pricing arrangements and mitigating the risk of prolonged tax disputes. The APA mechanism has emerged as an effective tool for fostering a collaborative relationship between taxpayers and the tax administration, enabling businesses to achieve predictability in their tax positions while reducing compliance burdens and litigation costs.

The Indian Government has been actively promoting APAs to enhance transfer pricing certainty, and the rising number of APA signings underscores its continued commitment to strengthening tax certainty and improving the ease of doing business.

Initiation of Reassessment Proceedings Against Non-Residents who have not Filed their Return of Income in India

We have seen increased instances of tax department issuing show cause notices to non-residents for initiating tax reassessment proceedings where such non-residents have not filed their income-tax returns in India despite undertaking financial transactions (such as purchase of shares, securities, etc) during the relevant financial year. In certain cases, reassessment proceedings have been initiated by the tax department wherever the responses by such non-resident taxpayers were not adequate and suggested escapement of income.

This development indicates a requirement of increased focus on tax compliance by non-residents and underscores the importance of evaluating Indian tax filing obligations particularly where taxes have been withheld at source or tax treaty exemptions have been claimed. Non-resident taxpayers receiving such notices should carefully review the factual and legal basis of the proposed reassessment proceedings and respond within the prescribed timelines.

Appeals Pending Before the Faceless Appellate Authority Likely to Gain Traction

The issue of long pending faceless income-tax appeals before the National Faceless Appeal Centre (NFAC) (ie first appellate authority under the IT Act) continues to be a significant concern for taxpayers. As of March 2026, about 4,95,000 appeals remained pending at the first appellate level (including legacy cases and high-demand disputes). The Central Board of Direct Taxes (apex authority for administration of direct taxes in India), through its Central Action Plan for financial year 2026-27, has adopted an aggressive litigation management strategy, targeting appeals involving high stakes and long-pending legacy appeals. In light of this development, the long-pending appellate backlog before the NFAC may begin to see meaningful progress, benefiting taxpayers awaiting disposal of their appeals.

Organisation for Economic Co-Operation & Development (OECD) Opens Consultation on Revisions to Transfer Pricing Guidelines for Intra-Group Services

Many tax disputes centre around transfer pricing related tax adjustments, and more particularly adjustments concerning intra-group services, etc. With a view to address this important aspect

of transfer pricing, on 1 June 2026, the OECD has issued a consultation paper on intra-group services. Some of the major areas covered in the consultation are as under:



Guidance on the support documentation required to satisfy the benefits test – specifically addressing ‘duplication of services’ and ‘on-call’ services.

Driving focus towards more tailored transfer pricing methods rather than cost-plus method as default.

Increased requirements for contemporaneous evidence, including explicit deliverables, allocation-key rationales, and cost-pool reconciliations that go beyond traditional local files.

Reconfirmation of the 5% mark-up safe harbour for qualifying services.

The proposed changes are intended to modernise and clarify the existing guidance, while maintaining the core principles governing intra-group service transactions. Stakeholders are invited to submit comments to the OECD by 22 July 2026. The OECD intends to hold a public consultation on this discussion draft in November 2026 at the OECD Conference Centre in Paris, France.

End Notes

Colorcon Asia (P.) Ltd. vs. JCIT [2026] 486 ITR 476 (Bombay)

Foseco India Ltd. Company vs. ACIT [2026] 185 taxmann.com 1015 (Bombay)

JCIT vs. Colorcon Asia (P.) Ltd. [2026] 186 taxmann.com 774 (SC)

Linklaters Singapore Pte. Ltd vs. ACIT [TS-476-ITAT-2026(Mum)]

Vestas Wind Technology India Private Limited vs. ITO (order dated 09 March 2026 passed in ITA No. 320/Chny/2025)

Valeo Bayen vs. DCIT [2026] 186 taxmann.com 471 (order dated 29 April 2026 in IT (TP) A no. 63/Chny/2023)

ITO vs. Tej Partap Singh [2026] 185 taxmann.com 1007 (SC)

Boang Technology Pvt. Ltd. vs. ACIT [order dated 12.05.2026 in W.P. (C) 6460 / 2026,]

Hinduja Global Solutions vs. PCIT Central-1 Mumbai & Ors. (WP(OS) - 4867/2025) (Bombay High Court); and Vedanta Holdings Mauritius II Limited vs. CIT (IT)-3, Delhi (W.P.(C)-18483/2025) (Delhi High Court)

Public consultation on taxation: Revisions to Chapter VII of the OECD Transfer Pricing Guidelines

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