India Tax Konnect

August 2025

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a. Decisions – International tax

Derivatives not akin to shares; Gains from transfer of derivatives not taxable in India under India-Mauritius tax treaty: Mumbai Tribunal[1]

Facts of the case

The taxpayer, a tax resident of Mauritius[2], earned capital gains from transfer of derivatives and claimed such gains as not taxable in India under the India-Mauritius tax treaty (the Treaty)[3].

However, the Revenue rejected the claim and alleged that the derivatives and shares are closely related and therefore capital gains arising from transfer of derivatives are taxable in India under the Treaty[4].

Relevant provisions under the Treaty

Article 13(3A) of the Treaty allows India to tax capital gains arising in the hands of Mauritius tax resident from alienation of shares acquired in an Indian company on or after 1 April 2017.

The residual clause, i.e. Article 13(4) of the Treaty stipulates that capital gains arising from alienation of property not specifically mentioned in the article[5] shall be taxable only in Mauritius.

Taxpayer's contentions

Capital gains arising from transfer of derivatives cannot be taxed in India, merely because the underlying asset is in the form of shares[6].

The Treaty does not define the terms 'share' or 'derivative'.

Under the Companies Act, 2013 a restrictive definition of 'share' is provided to mean a share in the share capital of a company and includes stock[7].

Further, the Securities Contracts (Regulation) Act, 1956 defines 'securities' to include shares, debentures, derivatives, etc.[8] Derivatives are distinct financial instruments from shares.

The Revenue Secretary clarified in the media during the 2016 Treaty amendment that non-share securities such as derivatives and debentures would remain taxable only in Mauritius.

Tribunal's decision

Accepting the taxpayer's arguments, the Tribunal held that gains from transfer of derivatives were not taxable in India as per the residual clause of the capital gains article under the Treaty. Key observations include:

Derivatives are financial contracts whose value is derived from underlying assets (i.e., shares in the instant case), but they are distinct from those assets.

Investors in derivatives need not own the underlying asset, and derivatives can be traded independently.

[1] *3 Sigma Global Fund* v. *ACIT* (ITA No. 1130/ Mum/ 2025)
[2] Tax Residency Certificate (TRC) issued by Mauritius Revenue Authority and Global Business License issued by Financial Service Commission in Mauritius.
[3] Article 13(4) applicable in financial year 2021-22
[4] Article 13(3A)
[5] Immovable property, business property, ships and aircrafts and shares acquired on or after 1 April 2017, as mentioned in Paragraph 1, 2, 3 and 3A of the Article 13
[6] *Vanguard Emerging Markets Stock Index Fund* v. *ACIT* [2025] 172 taxmann.com 515 (Mumbai Tribunal); *DCIT(IT)* v. *K.E. Faizal* [2019] 178 ITD 383 (Cochin Tribunal)
[7] Section 2(84) of the Companies Act, 2013
[8] Section 2(h) of the Securities Contracts (Regulations) Act, 1956

Contd….

Inland haulage charges inextricably linked to shipping business, not taxable in India under the India-UAE tax treaty: Mumbai Tribunal[9]

Facts of the case

The taxpayer, a UAE-based company, derived income from shipping operations in international traffic, including Inland Haulage Charges (IHC).

No separate agreement for IHC was executed between the taxpayer and its customers; instead, a single consolidated bill of lading was issued to the customers for carriage of goods.

The taxpayer contended that IHC was incidental to the shipping operations in international traffic and thus, IHC was taxable only in UAE (and not in India) under the India-UAE tax treaty (the Treaty)[10].

However, the Revenue rejected the taxpayer's claim asserting that IHC was not income derived from the operation of ships in international traffic and was therefore, taxable in India.

Relevant provisions under the Treaty

Profits derived by a UAE enterprise from the operation of ships in international traffic are taxable only in UAE[11].

Further, the profits from the operation of ships in international traffic means profits derived from transportation by sea of passengers, mail, livestock or goods and includes the rental of containers and related equipment used in connection with the operation of ships in international traffic[12].

Tribunal's decision

The Tribunal ruled in favour of the taxpayer holding that IHC was not taxable in India as per the Treaty.

Considering the nature of activity and the services provided to the customers vide a composite bill of lading, the Tribunal observed that the activity of inland haulage is directly connected with transportation of goods in international traffic and falls within the purview of the term "operation of ships"[13].

The activity of shipping container from inland to the Port for further shipping it to international traffic is an integral part of operation of ships. Hence, IHC cannot be disintegrated from profit derived from shipping business as envisaged under the Treaty.

Seconded employees do not constitute a Permanent Establishment in the absence of foreign company's control: Delhi Tribunal[14]

Facts of the case

The taxpayer, a Japanese company, had seconded certain employees to its Indian subsidiary (I Co.) during the year under consideration.

[9] *DCIT* v. *Avana Global FZCO Albatross Shipping Ltd.* (ITA No. 2214/ MUM/ 2025)
[10] Article 8
[11] Article 8(1)
[12] Article 8(2)
[13] *CIT* v. *Balaji Shipping (UK) Ltd*. [2O12] 253 CTR 460 (Bombay); *DIT* v. *KLM Royal Dutch Airlines* [2009] 178 Taxman 291 (Delhi); *DIT(IT)* v. *Safmarine Container Line NV* [2014] 367 ITR 209 (Bombay)
[14] *Mitsui Mining and Smelting Company Limited* v. *ACIT* (ITA No. 1407/ DEL/ 2025)

Contd….

While a part of their salary was paid directly by I Co., the remaining portion was paid by the taxpayer in Japan and subsequently reimbursed by I Co.

The Revenue alleged that I Co. constituted a fixed place PE of the taxpayer in India under the India-Japan tax treaty (the treaty) as the taxpayer, through the seconded employees, exercised complete control over I Co.'s premises and carried out sales operations in India.

Revenue's contentions

The seconded employees operated from the office premises of I Co. and exercised complete control over such premises.

The taxpayer was the *de-facto* controller and actual employer of the seconded employees. It exercised significant economic control over them and there was no employer-employee relationship between I Co. and the seconded employees.

Holding top management positions at I Co., the seconded employees exercised a significant control and dominance over I Co.'s affairs, on behalf of the taxpayer.

Taxpayer's contentions

The seconded employees were employees of I Co. and not of the taxpayer.

I Co. issued appointment letters to them, exercised control over their work and paid salary to them after deducting tax at source. The taxpayer had released them from its employment before deputation to India.

The Revenue had previously accepted the payment of salary made to the seconded employees and has not disputed the deduction of tax at source on the salaries so paid during the assessment proceedings of I Co. Therefore, the allegation of the Revenue that the seconded employees were under the control of the taxpayer was not tenable.

Mere control of a subsidiary by a parent does not constitute a PE. Establishing subsidiaries worldwide is a standard commercial practice and does not *ipso facto* create a PE.

Tribunal's decision

The taxpayer did not have a fixed place PE in India by virtue of the secondment of employees to I Co. It neither had any control over such employees nor had any control over the assets/ structures of the Indian subsidiary.

Having perused the relevant clauses of the secondment agreement, the Tribunal made the following key observations:

- The seconded employees were integrated into the business of I Co. as its own employees to facilitate its business operations in India.
- The seconded employees worked solely under the control, directions, and supervision of I Co. They worked in their personal capacity and not for, and on behalf of, the taxpayer.

Contd….

- There was no employer-employee relationship between the taxpayer and the seconded employees, and I Co. was the sole controlling authority, and determined their (seconded employees) service terms.
- The taxpayer was not responsible for the losses, if any, suffered by I Co. due to the action of the seconded employees.
- The taxpayer did not have at its disposal any structure or asset of I Co. or any right over any employee of the Indian subsidiary.

The twin conditions for establishing a fixed place PE, i.e. presence of fixed place at disposal and carrying of business activities through that place, were not met in the instant case.

b. Decisions – Domestic tax

Refund due to the transferor to be effectuated in favour of transferee post amalgamation: Calcutta High Court[15]

Facts of the case

An Indian company (the transferor company) amalgamated with the taxpayer (the transferee company) pursuant to a scheme sanctioned by the National Company Law Tribunal (NCLT).

The scheme specified that on and from the appointed date (i.e., 1 April 2018), any tax refunds due to the transferor company consequent to the assessments made thereon would belong to the transferee company provided no credit was taken in the accounts as on the date immediately preceding the appointed date.

Subsequently, an assessment order was passed under the Vivad Se Vishwas Act, wherein certain amount of refund became due to the transferor.

The taxpayer informed the relevant tax authorities about the amalgamation and requested that the tax refund due to the transferor company be credited in the favour of taxpayer, upon amalgamation.

Due to inaction from the Revenue, the taxpayer filed writ petition before the High Court seeking the refund.

[15] *Rainbow Ventures (P.) Ltd.* v. ITO (WPO No. 204 of 2025)

Contd….

High court's decision

Having regard to the terms of the scheme, the Court held that if the refund has already not been effected in favour of the transferor company, appropriate steps should be taken by the Revenue to process and effectuate the refund in favour of the taxpayer.

The Court directed the Revenue to grant the refund to the taxpayer preferably within four weeks from the date of communication of its order.

Depreciation on goodwill from amalgamation disallowed where intra-group transactions are not genuine: Hyderabad Tribunal[16]

Facts of the case[17]

The taxpayer, an Indian private limited company, had a wholly-owned-subsidiary in India (I Co.).

In May 2017, I Co. amalgamated with the taxpayer under a scheme of amalgamation (the Scheme) approved by the National Company Law Tribunal (NCLT). The appointed date for the amalgamation was 1 April 2016.

As per the Scheme, the net asset value (NAV) of I Co. as on 1 April 2016 was determined to be INR 81,635 per share.

Prior to the amalgamation, the taxpayer had acquired shares of I Co. from a group company (a Mauritius-based company) at INR 1,93,723 per share, representing the fair value of I Co.'s shares as on 31 March 2016. This valuation was based on the Discounted Cash Flow (DCF) method.

Pursuant to the amalgamation, the taxpayer's investment in I Co. was cancelled. The excess of the investment value (based on DCF) over the NAV (used for amalgamation purposes) was recognised as 'goodwill' in the taxpayer's books of account.

Relying on the Supreme Court ruling *in Smifs Securities Limited* and other judicial precedents[18], the taxpayer claimed depreciation on the aforesaid goodwill under the Income-tax Act, 1961 (the Act)[19].

However, the Revenue disallowed the depreciation claim, asserting that the amalgamation was a sham transaction devoid of commercial or business purpose. The Revenue contended that the goodwill recognised by the taxpayer was not genuine and was created only for the purpose of reducing taxable profits of the taxpayer.

Tribunal's decision

The Tribunal disallowed taxpayer's depreciation claim on goodwill and concluded that the intra-group transactions (acquisition of shares followed by amalgamation) were structured to create an artificial intangible asset in the form of goodwill, with the intent of claiming depreciation and thereby reducing the taxpayer's tax liability.

[16] *Invesco (India) Private Limited v. DCIT (ITA No. 111/ Hyd/ 2022)*
[17] Other grounds of appeal have not been covered in this note

[18] *CIT* v. *Smifs Securities Ltd.* [2012] 348 ITR 302 (SC); *PCIT* v. *Zydus Wellness Ltd.* [2020] 113 taxmann.com 154 (SC)*; Urmin Marketing (P.) Limited* v. *DCIT [2020]* 122 taxmann.com 40 (Ahmedabad Tribunal)*; DCIT* v. *East India Petroleum Ltd [2025] 11 taxmann.com 692 (Hyderabad Tribunal); S & P Capital IQ (India) (P.) Ltd.* v. *ACIT [*2024] 205 ITD 217 (Hyderabad Tribunal)
[19] Section 32(1)(ii)

Contd….

The taxpayer failed to justify use of two different enterprise values for the same date – one based on DCF method, and another based on NAV method – for two distinct intra-group transactions. Whether the taxpayer follows DCF method or NAV method, an enterprise value of any entity cannot be so much different.

The taxpayer acquired shares of I Co. from the group company on 1 August 2016 and the Board of Directors adopted resolution for acquisition of I Co. on 2 August 2016. This fact clearly shows that, affairs of amalgamation were created with a view to create goodwill by adopting different valuation methods for investment and recording the value of assets for amalgamation.

Merely because the Scheme has been approved by the NCLT, it does not take away the right of the Revenue to examine the said transactions considering the relevant provisions of the Act.

Given that the group company was a tax resident of Mauritius and thus, was not liable to pay capital gains tax in India under the India-Mauritius tax treaty, the taxpayer transferred the funds to the parent company through the structured transactions via a Mauritius based company.

The taxpayer failed to prove the business rationale for the amalgamation and the benefit derived by creating goodwill in the books of accounts on account of such amalgamation. No goodwill existed in I Co.'s books of account and no know-how, patent, copyright, trademark or franchise was acquired pursuant to the amalgamation. Hence, the value of goodwill in the form of intangible asset, should have been taken as 'Nil'.

Since in the instant case, goodwill recognised by the taxpayer was not real or genuine, the ratio laid down in Smifs Securities Limited and other judicial precedents cannot be applied.

Buyback of shares does not result in taxability as income from other sources: Mumbai Tribunal[20]

Facts of the case[21]

The taxpayer, an Indian private limited company, undertook buyback of its shares in the financial year 2015-16.

The Revenue alleged that the fair market value (FMV) of the shares was significantly higher as compared to the price at which the shares were bought back. Accordingly, the difference between FMV and buyback price is taxable as income from other sources as per the provisions of section 56(2)(viia) of the Act.

Section 56(2)(viia) of the Act provides that where a company (not being a company in which the public are substantially interested), receives any property, being shares of another company (not being a company in which the public are substantially interested) without consideration or for a consideration which is less than the FMV of the shares, the excess amount is taxable as income from other sources.

Tribunal's decision

The Tribunal ruled in favour of the taxpayer and concluded that buyback of shares does not results in taxation under section 56(2)(viia).

[20] ITA No. 4635/ Mum/ 2024
[21] Other grounds of appeal not covered in this note

Contd….

Section 56(2)(viia) applies in cases where shares become property in the hands of recipient company, and this condition is fulfilled only if they are shares of another company. The said provision is not applicable to buyback of shares as the tests of 'becoming property' and 'shares of another company' fails[22].

In the instant case, these tests fail as the taxpayer had purchased its own shares under the buyback scheme, and the shares had been extinguished by reducing the capital.

c. Circular/ Notification/ Order

Relaxation of time limit for processing electronically filed ITRs which were incorrectly invalidated by CPC

The Centralized Processing Centre (CPC), Bengaluru received grievances regarding erroneous invalidation of electronically filed income tax returns (ITRs) for various financial years. The statutory time limit for processing these returns under the Act[23] has expired, with the latest being 31 December 2024 for financial year 2022-23.

The Central Board of Direct Taxes has issued a Circular[24] whereby the ITRs filed electronically up to 31 March 2024 which have been erroneously invalidated by CPC due to technical reasons shall now be processed. The intimation under the Act in respect of processing of such ITRs shall be sent to the concerned taxpayers by 31 March 2026.

All consequential actions under the Act, including issue of refund, along with applicable interest, shall follow.

No refunds shall be issued in cases where PAN-Aadhaar linkage is not found[25].

[22] *Vora Financial Services (P.) Ltd*. v. *ACIT* [2018] 171 ITD 646 (Mumbai); *VITP (P.) Ltd.* v. *ACIT* [2022] 143 taxmann.com 304 (Hyderabad Tribunal); *DCIT* v. *Venture Lighting India Ltd.* [2023] 150 taxmann. Com 523 (Chennai Tribunal); *DCIT* v. *Globe Capital Market Ltd.* [2023] 156 taxmann.com 620 (Delhi Tribunal); *DCIT* v. *TPS Infrastructure Ltd.* (ITA No. 6433/ Delhi/ 2018)

[23] Second proviso to section 143(1) provides that an ITR needs to be processed, and an intimation thereof has to be sent within nine months from the end of the financial year in which the ITR is filed

[24] Circular No. 10/ 2025 dated 28 July 2025

[25] Circular No. 03/ 2023 dated 28 March 2023

a. High Court decisions

Secondment non-taxable under Schedule III; Demand also fails as no invoice was issued, thereby treating the value as nil[26]

Expatriate employees were seconded to the petitioner by foreign group entities but operated under the full administrative and functional control of the petitioner. Separate employment agreements were executed with the petitioner, and the secondees were placed on petitioner's payroll. Salaries were paid directly by the petitioner, after deduction of tax at source under the Act.

While the expatriate employees were on petitioner's payroll, the foreign group entities continued to provide social security and related benefits available in their respective home countries and recovered the same from the petitioner. From November 2020, IGST was voluntarily discharged under reverse charge on reimbursements for social security contributions paid by the foreign group entities. A show cause notice (SCN) was issued alleging demand of IGST on secondment of expatriate employees amounting to INR 59.94 crore, and the demand was confirmed. Aggrieved by this, the petitioner filed writ petition before the Karnataka High Court.

The petitioner submitted that the arrangement is one of employer-employee, falling within Schedule III to the CGST Act, 2017, and hence not a taxable supply under GST. No invoices were raised by the petitioner and hence, under Para 3.7 of Circular No. 210/4/2024-GST dated 26 June 2024 (Circular), the deemed open market value of the service was Nil. Reliance was placed on Delhi High Court judgement in the case of *Metal One Corporation India Pvt. Ltd*.[27] , which quashed similar demands in view of the Circular.

Against this, the Revenue contended that the secondment was treated as a manpower supply service by the foreign affiliates, liable to GST under reverse charge. Reliance was placed on Notification No. 10/2017- Integrated Tax (Rate) dated 28 June 2017 and Section 5(3) of the IGST Act, 2017.

The Court noted that the expatriate employees were functionally and contractually under the control of the petitioner, with all employment obligations, including salary payment and statutory compliance, discharged by the petitioner. The Court observed that the Supreme Court in the matter of *Northern Operating Systems Pvt. Ltd.*[28] clarified that its ruling was based on specific facts and should not be treated as a blanket precedent for all secondment arrangements. The Court further observed that businesses are now required to evaluate secondment cases individually, considering factors such as economic burden, control over employment, salary payment method, duration of posting, and post-assignment absorption.

The Court held that the secondment arrangement in the present case does not amount to a taxable supply, as it is covered under Entry 1 of Schedule III to the CGST Act, 2017. Further, even assuming the arrangement to be a supply, since no invoice was raised and full input tax credit (ITC) was available, the value of service shall be deemed Nil in terms of Para 3.7 of the Circular read with the second proviso to Rule 28(1) of the CGST Rules, 2017.

The Court aligned with the Delhi High Court's decision in *Metal One Corporation India Pvt. Ltd*. *(supra)* and confirmed that the Circular is binding on the Revenue. Accordingly, the impugned IGST demand of INR 57.94 crore was quashed, and the writ petition was allowed.

[26] *Alstom Transport India Limited* [TS-647-HC(KAR)-2025-GST]
[27] TS-697-HC(DEL)-2024-GST
[28] 2022 (61) G.S.T.L. 129 (S.C.)

Contd….

Order passed without considering taxpayer's reply is *void ab-initio*[29]

The petitioner received a SCN to which it filed a reply. The Revenue passed an order which was a mere reproduction of the allegations in the SCN, without considering the contentions of the petitioner mentioned in the reply. Aggrieved by the order, the petitioner filed a writ before the Bombay High Court.

The petitioner submitted that the order is passed without application of mind and consideration of the detailed submission in the reply to the SCN. It is merely a verbatim copy of the allegations from the SCN.

Against this, the Revenue contended that the entire reply of the petitioner has been reproduced and considered in the order. Therefore, this is not a case of non-application of mind or passing of an unreasoned order.

The High Court observed that in the case of *Piramal Enterprises Limited*[30], the VAT authorities had passed an order which was verbatim copied from a notice issued under service tax. The Bombay High Court, in that case, ruled that the order is bad in law because there is non-application of mind by the authorities. In the instant case, the adjudicating authority, without independent application of mind or considering the judgements / circular quoted by the petitioner in his reply, chose to reproduce verbatim the allegations in the SCN to pass them of as reasons supporting the order.

The adjudicating authority should issue an order after thoroughly considering all arguments of the petitioner and stating the reasons supporting its decision. Any decision made without doing so indicates lack of application of mind and violates the principles of natural justice.

Section 73(9) of the CGST Act, 2017 requires the proper officer to determine the amount of tax, interest, etc. after considering the representations made by the taxpayer. The phrase 'consider' does not mean that the contents of the representation are transcribed in the order and that a conclusion is reached without any discussion on the contentions raised. Various dictionary definitions and judicial precedents provide that the term 'consider' involves careful thought, review and weighing of factors.

Further, section 75(6) of the CGST Act, 2017 requires the proper officer to set out the relevant facts and the basis of his decision. Thus, the emphasis is on the reasons that support the decision. Merely reproducing the allegations from the SCN does not amount to giving any independent reasons after due consideration of the petitioner's contentions.

Accordingly, the order was set aside and remanded back to the adjudicating authority.

Inter-state transfer of ITC on account of sale, transfer of business, etc. is permissible[31]

Umicore Anandeya India Private Limited (transferor company) was amalgamated with the petitioner in accordance with National Company Law Tribunal (NCLT) order dated May 2020. The manufacturing plant of transferor company is in Goa, while the petitioner's plant is situated in Maharashtra. The transferor company attempted to transfer its unutilized ITC to the petitioner by filing ITC-02 on GSTN portal. However, the same was rejected by the GSTN portal with an error message 'Transferee and Transferor should be of the same State/UT'. Aggrieved by this, the petitioner filed a writ petition before the Bombay High Court.

[29] *Globeop Financial Services (India) Private Limited* [2025-VIL-695-BOM]

[30] 2024-VIL-568-BOM

[31] *Umicore Autocat India Private Limited* [2025-VIL-746-BOM]

Contd….

The petitioner's contention was that section 18(3) of the CGST Act, 2017 allows a registered person to transfer the unutilized ITC to the amalgamated entity. The section does not impose any restriction on the transfer of ITC to another state if the transferor and transferee companies are in different states.

The department contended that for transfer of ITC through ITC-02, the petitioner should obtain registration in the state where the transferor company is located i.e., Goa . They relied upon the Madras High Court judgement in the case of *MMD Heavy Machinery (India) Pvt. Ltd*[32] in support of their contention. The GSTN portal is designed in alignment with Circular No. 133/03/2020-GST, which mandates that ITC-02 can only be filed where both entities are registered in the same State.

The petitioner, in the rejoinder submitted that he has been fastened with the liabilities of the transferor company and therefore, he should be entitled for ITC benefit as well. In the case of the *MMD Heavy Machinery (India) Pvt. Ltd (supra)*, ITC was sought to be transferred from a factory which had shut down operations in one state and shifted those to another state. Thus, this case is clearly distinguishable.

The High Court observed that section 18(3) of the CGST Act, 2017 with rule 41 of the CGST Rules, 2017 does not impose any restriction on transfer of unutilized ITC when transferor and transferee companies are in different states. The legislature should have clearly specified if it had intended to impose a restriction that ITC cannot be transferred unless the transferee is registered in the state of transferor company. Since the petitioner has acquired the liabilities of the transferor company, it should be entitled to the ITC benefit as well.

The judgement in the case of *MMD Heavy Machinery (India) Pvt. Ltd (supra)* is distinguishable. In that case, the factory was not a going concern but it was shut down. Section 18(3) of the CGST Act, 2017 is applicable in case of sale, amalgamation, etc. i.e., whenever there is a change in the constitution of business. But, in that case, there was no change in the constitution of the company, instead it had shifted its unit from one state to another. Based on the above, the petitioner is entitled to take benefit of section 18(3) of the CGST Act, 2017.

The Court also observed that with regard to CGST and IGST, the Center has nothing to lose. But in case of SGST, permitting the SGST to be utilized in the State of Maharashtra would result in financial loss to the State of Goa. However, the petitioner is fine with giving up his claim for the transfer of SGST.

GSTN portal restricting such transfer cannot be a ground for denying the benefit to the petitioner when statute does not restrict such benefit. Accordingly, the balance of IGST and CGST is allowed to be transferred by physical mode for the time being. GST Council and GSTN network are requested to provide for mechanism for such transfer.

[32] 2021 (53) G.S.T.L. 3 (Mad.)

Foreign Exchange Management Act, 1999

The Reserve Bank of India permits opening of Special Rupee Vostro Accounts under automatic route

The Reserve Bank of India (RBI) *vide* A.P DIR circular[33] allowed the Authorized Dealer (AD) Banks to now open Special Rupee Vostro Accounts of overseas correspondent banks under automatic route to further promote settlement of international trade in INR.

The Reserve Bank of India permits investment of surplus in Special Rupee Vostro Accounts into Government Securities

The RBI vide A.P DIR circular[34] now permits person residents outside India, who maintains Special Rupee Vostro Accounts for international trade settlement in Indian rupees, to invest their INR surplus balance in the aforementioned account in Central Government Securities, including Treasury Bills.

The Reserve Bank of India releases draft Guarantee regulations under FEMA, 1999 for public comments

The RBI on 14 August 2025 placed the draft Guarantee regulations[35] under FEMA, 1999 for public comments to be provided on or before 4 September 2025. The salient features of proposed regulation are as under:

- Guarantees involving cross-border transactions will generally be permitted under the automatic route subject to the condition that both the underlying transaction and the resultant transaction in case of invocation of guarantee comply with FEMA provisions.
- To balance the relaxation, the RBI has proposed mandatory timely reporting requirements for all guarantees issued, modified and invoked.
- Delay in reporting shall be regularized through payment of Late Submission Fees (LSF) provided that facility of such delayed reporting with LSF is available only up to a period of three years from the due date of such reporting.

[33] A.P. (DIR Series) Circular No.08 - RBI/2025-2026/71 dated 5 August 2025
[34] A.P. (DIR Series) Circular No. 09- RBI/2025-26/72 dated 12 August 2025
[35] RBI Press release 2025-2026/916– Department of Communication dated 14 August 2025

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