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India Tax Konnect

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Decisions

Exempt capital gains need not be set off against non-exempt capital loss: Mumbai Tribunal[1]

Facts of the case

During the year under consideration, the taxpayer, a tax resident of Mauritius, had earned long-term capital gains from the transfer of the shares in Indian companies. The gains were claimed as exempt under the India-Mauritius tax treaty.

The taxpayer also reported a long-term capital loss incurred during the same year. The loss was carried forward (i.e., without setting it off against the abovementioned gains) to the subsequent year as per the provisions of the Income-tax Act, 1961 (the Act).

The Revenue proposed to set off the loss against the gains and compute the amount exempt under the treaty on an aggregate (net) basis, rather than as per the transaction-wise approach as claimed by the taxpayer.

Taxpayer's contentions

The provisions of the Act apply to the extent they are more beneficial to the taxpayer. The expression 'to the extent' signifies that the provisions of the Act or the tax treaty, whichever is beneficial for each source, are to be considered. In other words, the provisions of the Act and of the treaty are to be compared in respect of each source of income.

The concept of source of income is also well recognised in the provisions of the Act wherein the loss from one source is eligible for set off against the other source within the same head of income.

Various provisions of the Act, such as sections 111A, 112A, 112, and 115BB, encapsulate the levy of tax on different sources of income and support the computation of tax separately for income earned from different streams.

In view of the above, capital gains/ losses arising from the sale of shares, each scrip and tranche should be treated as a separate source of income and the applicability of the Act or of the treaty should be determined independently for each source of income.

Decision

The loss does not need to be offset against the gains exempt under the treaty and can be carried forward to the following year, as claimed by the taxpayer.

Although the treaty does not explicitly address losses incurred by the taxpayer, it remains unclear whether losses should be interpreted as being included with gains. The nature of the treaty is crucial, and therefore, what is not explicitly granted is not permitted.

The taxpayer's approach does not contradict the treaty's objectives. The taxpayer has chosen a beneficial position available to them. The treaty should not disadvantage the taxpayer, nor should the taxpayer be denied the taxation scheme provided under the Act. Additionally, the treaty should not be imposed on the taxpayer if they wish to benefit from the advantageous provisions under the Act for a particular source of income.

[1] *Matrix Partners India Investment Holdings LLC v*. DCIT (ITA No. 3097/Mum/2023)

Direct Tax...

In this case, the capital gain and capital loss from the sale of shares are considered different sources of income, even if the shares in both transactions are of the same company. The exempt capital gains would not be included in the total income calculation. Therefore, offsetting the capital loss against the exempt capital gains would effectively tax those capital gains in India, violating the treaty provisions.

Regarding the carry forward of losses, the Tribunal referred to CBDT Circular No. 22 dated 29 July 1944, which states that if the total income results in a loss, it must be carried forward and cannot be offset against any income that does not form part of the total income.

Tax paid in foreign country not allowable as tax deduction: Chennai Tribunal[2]

Facts of the Case

The taxpayer, an Indian company, claimed a portion of taxes paid in the foreign country against its tax liability in India (foreign tax credit) in accordance with the provisions of the Act (Sections 90 and 91 of the Act).

The remaining portion was claimed as deduction in the form of business expenditure.

The deduction was disallowed by the tax officer arguing that any form of tax is not allowable as deduction as per section 40(a)(ii) of the Act.

Section 40(a)(ii) provides that taxes levied on the profits or gains of any business or profession is not allowable while computing the taxable business profit. It also includes the taxes eligible for relief as per sections 90 and 91 of the Act.

Taxpayer's Contentions

Section 40(a)(ii) covers the domestic income tax calculated as per the Act or the foreign tax eligible for relief as per sections 90 and 91 of the Act. The disallowance under section 40(a)(ii) does not cover the taxes not eligible for relief as per sections 90 and 91 of the Act.

Decision

The legislative intent of section 40(a)(ii) is to disallow any deduction for sums paid by a taxpayer as taxes levied on the profits or gains of a business or profession.

Though section 40(a)(ii) excludes taxes eligible for relief under sections 90 and 91 of the Act, what cannot be claimed under those sections does not becomes automatically allowable u/s 40(a)(ii). Allowing deductions for taxes not claimable under sections 90 and 91 would undermine the purpose of these sections.

In view of the above, the Tribunal upheld the disallowance of taxes claimed by the taxpayer.

Payment for advertisement charges, cloud computing does not constitute royalty: Karnataka High Court[3]

Facts of the case

During the year under consideration, an Indian company made following payments:

- Facebook Ireland: Advertisement charges for displaying ads on Facebook's platform.

[2] *Zoho Corporation Prviate Limited* v. *DCIT* (ITA No. 2957/Chny/2018)

[3] *CIT* v. *Urban Ladder Home Décor Solutions Private Limited* (ITA No. 11 of 2022)

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- Rocket Science Group (Mailchimp): Charges for bulk email marketing services.
- Amazon Web Services (AWS): Cloud computing services for hosting and IT infrastructure.

During the assessment proceedings, the tax officer treated the payments as 'royalty' and held the Indian company as an assessee-in-default for not deducting tax from such payments. The Revenue relied on the Karnataka High Court's decision in *Samsung Electronics*[4].

Taxpayer's contentions

The payments were for availing services or for using the infrastructure facility, and not for using or acquiring rights over intellectual property. Thus, the payment did not qualify as royalty.

With regard to the payment to Facebook and Rocket Science Group, the taxpayer relied on the decision of the Kolkata Bench of the Tribunal in the case of *Right Florists*[5] wherein it was held that the receipt in respect of online advertising on Google and Yahoo cannot be brought to tax in India as per the Act as well as India-Ireland tax treaty unless the recipient has a permanent establishment (PE) in India.

For the taxability of web hosting charges paid to AWS, the taxpayer relied on the decision of the Pune Bench of Tribunal in the case of *EPRSS Prepaid Recharge Services India*[6] wherein it was held that as the payor does not have control over the server being deployed by AWS, the payment cannot be regarded as royalty as per the applicable treaty.

Decision

The Karnataka High Court ruled in favour of the taxpayer, holding that the payments they did not qualify as royalty.

The court relied on the Supreme Court decision in the case of *Engineering Analysis Centre*[7], emphasising that the Supreme Court had expressly overruled the Karnataka High Court's decision in *Samsung Electronics*.

Denied the agency PE in the absence of evidence that Indian subsidiary has authority to conclude contract: Delhi High Court[8]

Facts of the case

The taxpayer, a tax resident of Ireland, was engaged in providing cloud-based software services. It operated in India through a reseller agreement with the Indian subsidiary. The agreement allowed the Indian subsidiary to resell the taxpayer's products.

The primary issue was whether the Indian subsidiary constituted a dependent agent PE (DAPE) for the taxpayer in India as per Article 5 of the India-Ireland tax treaty.

Revenue's contentions

The Indian subsidiary played a significant role in concluding contracts and was the sole reseller of the taxpayer's products in India, indicating economic dependence.

[4] *CIT* v. *Samsung Electronics Co. Ltd*. [2012] 345 ITR 494 (Kar)
[5] *ITO* v. *Right Florists (P.) Ltd.* [2013] 25 ITR(T) 639 (Kolkata - Trib.)
[6] *EPRSS Prepaid Recharge Services India P Ltd* (ITA No. 828/Pun/2016)
[7] *Engineering Analysis Centre of Excellence (P.) Ltd.* v. *CIT* [2021] 432 ITR 471 (SC)
[8] *SFDC Ireland Ltd* v. *CIT* (W.P.(C) 12847/2024)

Direct Tax...

The pricing model ensured that the Indian subsidiary earned a 2.75% margin which means the Indian subsidiary's costs were covered, indicating a close economic nexus.

The taxpayer's agreement to indemnify the Indian subsidiary against third-party claims demonstrated control and dependence.

The Indian subsidiary had a role in determining the price of products. The price is finalised based on discussion with the customer and internal approvals, further indicating the subsidiary’s dependent status.

Taxpayer's contentions

The taxpayer provided standardised products. The Indian subsidiary acted as a non-exclusive reseller. Indian customers interested in these products enter into contracts with the Indian subsidiary. These products are accessible online through a lump sum subscription payment, depending on the specific product. The taxpayer's service is comparable to an online store, offering access to a standard automated facility without human intervention.

The reseller agreement explicitly prohibited the Indian subsidiary from concluding contracts or binding the taxpayer in any manner. The Indian subsidiary acted in its own capacity and did not habitually conclude contracts on behalf of the taxpayer.

The pricing model between the taxpayer and the Indian subsidiary was based on an arm's-length principle.

Decision

The Delhi High Court held in favour of the taxpayer holding that the Indian subsidiary did not constitute a DAPE under Article 5 of the treaty.

The Reseller Agreement outlines that the Indian subsidiary acts as a reseller of the taxpayer’s products and related services, without acquiring any intellectual property rights in these products, which remain with the taxpayer. The relationship between the taxpayer and the Indian subsidiary is that of a seller and distributor, operating on a principal-to-principal basis as independent contractors. Neither party can bind the other, nor represent having such authority.

There was no evidence to suggest that the Indian subsidiary habitually concluded contracts on behalf of the taxpayer.

The argument that the Indian subsidiary played a role in setting the prices of the products seems to lack a solid basis. The products are standardised, and the Indian subsidiary did not set their prices. The taxpayer retained control over pricing, and the Indian subsidiary's involvement was limited to commercial discussions without binding authority. Even if the Indian subsidiary contributes input for pricing decisions, it does not make it a DAPE.

The revenue model was consistent with arm's-length principles. This arrangement did not indicate economic dependence or control.

The indemnification clause was a standard commercial term and did not establish a dependent relationship.

Indirect Tax

Circulars

1. **Circular No. 244/01/2025-GST dated 28 January 2025** – Clarification for regularising payment of GST on co-insurance premium and ceding /re-insurance commission.

   - The following activities or transactions were included in Schedule III of the CGST Act, 2017 as activities or transactions which shall be treated neither as a supply of goods nor as a supply of services w.e.f., 1 November 2024:

     - Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer subject to the condition that the lead insurer pays the GST on the premium paid by the insured.

     - Services by the insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from the reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the tax is paid by the reinsurer on the gross reinsurance premium inclusive of the said ceding commission or the reinsurance commission.

   The clarification regularises the payment of GST on the above activities or transactions for the period 01 July 2017 to 31 October 2024, on an 'as is where is' basis.

2. **Circular No. 245/02/2025-GST dated 28 January 2025** – Clarification regarding the applicability of GST on certain services as follows:

   - No GST is payable on the penal charges levied by regulated entities, in compliance with RBI directions dated 18 August 2023, for non-compliance with material terms and conditions of the loan contract by the borrower.

   - GST exemption is available to RBI-regulated Payment Aggregators (PAs) in relation to the settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services, as PAs fall within the definition of 'acquiring bank'. It has also been clarified that this exemption is limited to the payment settlement function only, which involves the handling of money and does not cover payment gateway services.

   - The payment of GST on the supply of research and development services by Government Entities against grants received from the Government Entities was exempted w.e.f. 10 October 2024 vide notification No. 08/2024-CT(Rate) dated 08 October 2024. The same has been regularized for the period 01 July 2017 to 09 October 2024, on an ' as is where is' basis.

   - The payment of GST on services provided by Training Partners approved by the National Skill Development Corporation, which were exempt prior to 10 October 2024, have been regularized for the period 10 October 2024 to 15 January 2025, on an 'as is where is' basis.

Indirect Tax

Circulars

- The services provided by the facility management agency to Municipal Corporation of Delhi (MCD), Headquarters for the upkeep of its headquarters building are taxable at applicable rates as these services are not covered under any exemption.
- An authority which is similar to the elected self-governing body such as a Municipal Committee and which is entrusted with the control and management of municipal or local funds can be termed as a local authority and that Delhi Development Authority (DDA) cannot be treated as a local authority under GST law.
- The payment of GST on the reverse charge basis on renting of immovable property other than residential dwelling (commercial property) by an unregistered person to a registered person was exempted w.e.f., 16 January 2025 vide notification no. 07/2025-CT(Rate) dated 16 January 2025. The same has been regularized for the period from 10 October 2024 to 15 January 2025 on an 'as is where is' basis.
- The payment of GST on certain incidental or ancillary services to the supply of transmission or distribution of electricity supplied by an electricity transmission or distribution utility was exempted vide notification no. 6/2025-CTR dated 16 January 2025. These services have been regularized for the period 10 October 2024 to 15 January 2025, on an 'as is where is' basis.

3. **Circular No. 246/03/2025-GST dated 30 January 2025** – Clarification on applicability of late fee for delay in furnishing of FORM GSTR-9C:
    - It has been clarified that the late fee under 47(2) of the CGST Act, 2017, is leviable for the delay in furnishing of complete annual return under section 44 of the CGST Act, 2017, i.e. both form GSTR-9 and form GSTR-9C and the late fee shall be payable for the period from the due date of furnishing of the said annual return up to the date of furnishing of the complete annual return i.e. form GSTR-9 and form GSTR-9C.
    - Late fee is not separately leviable for delayed furnishing of form GSTR-9 and delayed furnishing of form GSTR-9C but has to be calculated for the period from the due date of furnishing of annual return under section 44 of the CGST Act, 2017 till the date of furnishing of complete annual return, i.e., both form GSTR-9 and form GSTR-9C.
4. **Circular No. 247/04/2025-GST dated 14 February 2025** – Clarification on GST rates and classification (goods) as follows:
    - Pepper of genus Piper, whether green (fresh), white or black, is covered under HS 0904 and attracts 5% GST
    - Agriculturists supplying raisins are not liable to be registered under section 23(1) of the CGST Act, 2017.
    - Autoclaved aerated concrete (AAC) blocks containing more than 50% fly ash content fall under HS 6815 and attract 12% GST.
    - Popcorn mixed with sugar changes its character to sugar confectionary (e.g., caramel popcorn) and is classifiable under HS 1704 90 90 attracting 18% GST.

- Ready-to-eat popcorn which is mixed with salt and spices classifiable under HS 2106 90 99 and attracts GST rate as below:
  - ➢ Other than Pre-packaged and Labelled - 5%
  - ➢ Packaged and Labelled – 12%

High Court decisions

Clubbing of Order for multiple financial years (even where the limitation period has not expired for either of the years) is not permissible[9]

Lakshmi Mobile Accessories ('company' or 'assessee') received a consolidated SCN dated 29 July 2017 under section 74 of the CGST Act, 2017 for financial years 2017-18 to 2023-24. Assessee submitted that the department was proposing to issue a composite order for all years and was proceeding in haste to complete the determination (without granting a sufficient opportunity of being heard), given the time limit of passing the order for the earliest financial year covered in the SCN.

The company filed a writ petition before the Kerala High Court basis such apprehension seeking a direction to pass separate orders for the various financial years and also to grant sufficient time for furnishing a reply for financial years 2018-2019 to 2023-2024. The single-member bench of the Kerala High Court allowed the writ. It directed the department to grant reasonable opportunity for hearing in respect of FY 2018-19 onwards and to pass separate orders of determination for each financial year. The department filed a writ appeal against such an order before a division bench.

The department contended that there is no provision envisaged under the CGST Act, 2017 for issuing separate notices and orders for each financial year.

In this case, the division bench of Kerala High Court dismissed the appeal of the department and upheld the order of the single-member bench. The observations of the High Court were as follows:

- That the proximate expiry of the limitation period under section 74(10) of the CGST Act, 2017 is only in relation to one of the six financial/assessment years, the contentions of the assessee and the opportunity available to an assessee for adducing evidence in relation to the other years cannot be rendered illusory by forcing upon the assessee the period of limitation prescribed under section 74(1) of the CGST Act, 2017 for passing the final order in relation to the earliest financial/assessment year [2017-18].
- That the statutory period available for an assessee to put forth its contentions against the show cause notice in an effective manner cannot be curtailed by an unnecessary act on the part of the Department in issuing a consolidated show cause notice that includes therein a financial/assessment year in relation to which the period for passing a final order expires earlier.
- That a consolidated notice would also result in a consolidated adjudication order covering several financial/assessment years and in the event of it being adverse to the assessee, the fee/ pre deposit required to be paid by an assessee for preferring a statutory appeal would also be higher.

[9] *Lakshmi Mobile Accessories* [(2025) 27 Centax 101 (Ker.)]

- That the said practice was against the principle of fairness in taxation and referred to the judgment of the SC in the case of *CIT v. Simon Carves Ltd*[10]., which held that taxing authorities must act in a fair and not a partisan manner.

Limitation for claiming refund of tax on notice pay recovery arises from the date of circular[11]

Aculife Healthcare Private Limited ('petitioner' or 'company') is engaged in manufacturing chemicals and pharmaceuticals. The Petitioner deposited INR 45,14,300 as GST on notice pay recovery (July 2017 to July 2022), entirely borne by the Petitioner. CBIC Circular No. 178/10/2022-GST dated 3 August 2022 clarified such recoveries were not taxable. The Petitioner filed total refund claims of INR 45,14,300 as follows:

- INR 13,91,114 on 5 November 2022 (for July 2017 to August 2018).
- INR 31,23,186 on 7 November 2022 (for September 2018 to July 2022).

Authorities allowed a refund of Rs. 29,24,012, considering Notification No. 13/2022, which excluded 1 March 2020 to 28 February 2022 from the limitation period. Authorities rejected a refund of INR 15,90,288 as time-barred under section 54 of the CGST Act, 2017. The Appellate Commissioner upheld the rejection. The Petitioner filed a writ petition before the Gujarat High Court.

The petitioner contended that the collection and retention of monies under the guise of tax violate the mandate of Article 265 of the Constitution of India. It was only upon the issuance of Circular No. 178/10/2022-GST dated 3 August 2022 that the government clarified the correct position, making it evident to both the citizens and the State that the "tax" paid until then was not sanctioned under Article 265 of the Constitution. Accordingly, the limitation period for refund applications should be computed from the date of Circular viz. 3 August 2022.

The respondents contended that the petitioners were required to submit their refund claims within two years from the date of tax payment. Since the claims were filed beyond the prescribed period, they are time-barred under section 54 of the CGST Act, 2017.

The Gujrat High Court allowed the refund claim and observed as below:

- The CBIC Circular dated 3 August 2022 clarified that forfeiture of salary or bond payments due to early resignation is not taxable under the CGST Act, 2017, as no service is supplied by the employer. Consequently, the recovery of notice pay is also not taxable.
- As this clarification was issued on 3 August 2022, the two-year limitation under section 54 of the CGST Act, 2017 for refund claims should be computed from this date. Accordingly, the refund claims dated 5 November 2022, and 7 November 2022 cannot be considered time-barred.
- The State cannot unjustly enrich itself by retaining amounts collected from citizens that do not qualify as "tax" under Article 265 of the Constitution of India.
- Accordingly, the petitioner is entitled to a refund of the amount, along with interest.

[10] [(1976) 4 SCC 435]
[11] *Aculife Healthcare Private Limited* [2025-VIL-87-GUJ]

Indirect Tax

High Court quashes delayed SCN under section 73(2) of the CGST Act, 2017[12]

The Andhra Pradesh High Court quashed the SCN issued under section 73(1) of the Andhra Pradesh Goods and Services Tax Act, 2017 ('APGST Act'), on the ground that it was issued beyond the prescribed time limit.

The petitioner received the SCN on 30 November 2024, for the assessment year 2020-21. The petitioner challenged the notice, contending that it was issued beyond the statutory deadline under section 73(2) of the APGST Act, 2017.

The petitioner argued that as per section 73(2) of the APGST Act, 2017 an SCN must be issued at least three months before the expiry of the limitation period for passing an assessment order. Given that the due date for filing the annual return for FY 2020-21 was 28 February 2022, the limitation period for passing the assessment order was 28 February 2025. Consequently, the SCN should have been issued by 28 November 2024. Since the SCN was issued on 30 November 2024, it was beyond the permissible time limit and therefore void.

The department contended that a 'month' should be interpreted as a 'calendar month', arguing that the deadline for issuing the SCN should be extended to 1 December 2024, or at worst, 30 November 2024. The department further argued that the three-month period prescribed in section 73(2) of the CGST Act, 2017 is directory, not mandatory, and that a minor delay should not invalidate the SCN.

The Court held that the statutory timeline prescribed under section 73(2) of the CGST Act, 2017 is mandatory, not directory. Relying on Supreme Court judgments, the Court clarified that when the law specifies a period in months, it should be calculated based on the corresponding date in the relevant month. Since the SCN was issued after the deadline of 28 November 2024, it was time-barred and therefore invalid. The Court also emphasized that GST laws provide taxpayers with procedural safeguards, including a reasonable period to respond to SCNs, which cannot be disregarded by extending statutory timelines.

[12] *Cotton Corporation of India* [2025-VIL-124-AP]

Foreign Exchange Management Act

RBI Master Direction on Foreign Investment in India.

The Reserve Bank of India (RBI) recently issued updated Master Direction on Foreign Investment[13] in India to provide much-needed clarity on several key issues that stakeholders had been seeking guidance on. The Master Direction also serves to incorporate previously issued FEM(NDI) Rules[14] that had not yet been integrated into the Master Direction.

Key highlights

- Downstream Investment through equity swaps and deferred payment arrangements permitted subject to complying with the provisions governing such investments under the NDI Rules.
- An Indian company whose proposed activities are regulated by a financial sector regulator, permitted to receive foreign investment to comply with the criteria of minimum Net Owned Funds (NOF) prescribed by such regulator. However, such investment shall be used to comply with the minimum NOF / capitalization criteria and cannot be used for any other purpose. In case relevant registration / license is not granted by the respective regulator then the investment so received to be repatriated or be subject to the conditions applicable on an investment in an Indian company not housing any operations.
- Scope of banking channels to include any rupee vostro accounts, including Special Rupee Vostro Accounts, permitted to be held by a person resident outside India, in terms of Foreign Exchange Management (Deposit) Regulations, 2016 (‘Deposit Regulations’).
- A Multilateral Bank or Fund, of which India is a member, shall not be treated as an entity of a particular country nor shall any country be treated as the beneficial owner of the investments of such Bank or Fund in India, thereby excluded from the restrictions applicable under Press Note 3 (NDI Rules[15]).
- Unsubscribed equity instruments in a rights issue permitted to be issued by an Indian company to a person resident outside India (other than overseas corporate bodies (OCBs)). Such issuance shall be subject to adherence to entry routes, sectoral caps / investment limits, pricing guidelines and other attendant conditions under the NDI Rules.
- Tenor of fully and mandatorily convertible debentures and fully and mandatorily convertible preference shares can be amended subject to compliance with the Companies Act, 2013 and rules framed thereunder.
- Any requests for clarification pertaining to foreign investment framework to be made to the Authorized Dealer (AD) bank concerned. The AD bank may, if required, forward the request along with recommendation / observation to the concerned Regional Office of the RBI for guidance. The jurisdiction of a Regional Office of the RBI to whom reference is made shall be as per the registered office of the Indian entity.
- Foreign Venture Capital Investor can invest in equity or equity linked instrument or debt instrument issued by an Indian startup company irrespective of the sector in which the startup company is engaged.
- In case transfer of equity instrument is on deferred payment basis or under escrow arrangement, then such clauses should form part of share transfer agreement.
- Clarification incorporated on the definition of ‘Indian company’ to specifically exclude a society, trust or any entity, which is excluded as an eligible investee entity under the FDI Policy.

[13] FED Master Direction No.11/2017-18 - RBI/FED/2017-18/60 dated 20 January 2025
[14] Foreign Exchange Management (Non-debt Instruments) Rules, 2019 as amended from time to time
[15] Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2020

Foreign Exchange Management Act

- Terms such as ‘control’, ‘ESOP’,’ Sweat Equity Shares’, ‘Share Based Employee Benefits’ and their regulatory framework which have been notified under NDI Rules have now been incorporated in Master Direction.
- The percentage of foreign investment shall be calculated on fully diluted basis, upfront, at the time of issuance / grant of Employee Stock Options, sweat equity shares and Share Based Employee Benefits to persons resident outside India.
- The regulatory framework on Mode of Payment of Non-Debt Instruments which were notified through earlier notification[16] have been incorporated in this Master Direction.
- Previously notified provisions related to investment by permissible holder in Equity Shares of Public Companies Incorporated in India and Listed on International Exchanges have now been incorporated in the Master Direction. Further provisions related to mode of payment and remittance on sale / maturity proceeds have been incorporated.
- It has been now incorporated in Master Direction that aggregate limit of FPI under schedule II of NDI Rules, with respect to Indian Company engaged in prohibited sector shall be 24 percent.
- The reclassification of foreign portfolio investment of a foreign portfolio investor to FDI which was notified through earlier AP DIR Circular[17] has now been incorporated in this Master Direction.
- The term for conversion to equity shares / repayment of Convertible Note (CN) have now been updated to 10 years.
- The payment consideration for issue of CN can be received by inward remittance through banking channels or by debit to any repatriable foreign currency or Rupee account maintained in accordance with the Deposit Regulations.
- In case of transfer of equity instruments between a person resident in India and a person resident outside India, the amount of consideration to be received from abroad or remitted from India, as the case may be, through banking channels in India or paid out from or received in, as the case may be, any repatriable foreign currency or Rupee account maintained in accordance with the Deposit Regulations.

[16] Notification No. FEMA 395(3)/2025-RB
[17] A.P. (DIR Series) Circular No. 19 dated November 11, 2024.

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