

TAX MATTERS

Issue number: 04/2026

09 April 2026



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DID YOU KNOW?



The Corporate Laws (Amendment) Bill, 2026, introduced in the Lok Sabha on 23 March 2026, proposes wide-ranging amendments to the Companies Act, 2013 and the Limited Liability Partnership Act, 2008. The Bill has been referred to a Joint Parliamentary Committee ('JPC') for detailed examination and will be taken up for consideration after the JPC submits its report.

The team at JMP Advisors is pleased to bring to you a gist of some of the significant developments in the direct tax space during March 2026:

Income tax rulings

➤ **Group cross charges backed by business nexus are deductible**

- Regus South Mumbai Business Centre Private Limited v. DCIT¹

The taxpayer is engaged in providing workplace solutions such as executive suites, meeting rooms and related facilities. During the year under consideration, the taxpayer claimed deduction towards cost allocation charges paid to its group entity, Regus Business Centre Private Limited ('Regus Business Centre'). These charges represented centralised services for HR, finance, taxation, marketing and IT support, allocated on the basis of number of workstations.

The tax officer disallowed the aforementioned expenditure, holding that the costs were not directly incurred by the taxpayer but were merely apportioned on a group basis without establishing a clear nexus with its business. It was observed that certain components of the expenses were not verifiable and that allocation on estimated or proportionate basis does not satisfy the criterion of being 'wholly and exclusively' for business purposes under section 37(1) of the Income-tax Act, 1961 ('the Act').

Aggrieved with the disallowance, the taxpayer filed an appeal with the Mumbai Tribunal ('Tribunal').

Before the Tribunal, the taxpayer explained that Regus Business Centre incurred common expenses which were utilised by each group company, including the taxpayer. It was emphasised that the expenditure was

incurred wholly and exclusively for business purposes and that the benefit thereof directly accrued to the taxpayer.

The taxpayer further argued that non-allocation of such expenses between group entities would lead to distorted financial results for Regus Business Centre. It was emphasised that the allocation ensured proper matching of income and expenditure and reflected the true and correct profit of each entity. It was also submitted that the group had adopted a uniform and harmonised allocation methodology, supported by detailed workings and that the same had been consistently followed across entities.

The Tribunal noted that the tax officer's reasoning was based on broad generalisations rather than concrete evidence. It observed that the existence of the inter-company agreement and the genuineness of the payment were not in dispute. Once the arrangement is accepted, deductibility must be examined on ordinary commercial principles. The Tribunal emphasised that centralized support functions are a matter of commercial expediency and the tax officer cannot insist that each legal entity duplicate finance, HR or IT infrastructure separately.

The Tribunal further held that allocation based on workstations was rational in the taxpayer's line of business, as its receipts are functionally linked to workstation usage. The Tribunal concluded that the disallowance was founded on suspicion and generalised notions rather than factual rebuttal evidence and accordingly, allowed

the claim under section 37(1) of the Act.

JMP Insights - *This ruling reinforces that cost allocations from group entities are allowable under the Act when they are supported by inter-company agreements, rational allocation methodologies and proper accounting disclosures. The Tribunal emphasized that shared service arrangements covering functions such as finance, HR, taxation, marketing and IT support are a legitimate business practice in modern corporate structures.*

➤ **Taxability of offshore repair and overhaul receipts and eligibility of treaty benefits to single member LLC**

- GE Engine Services LLC. vs DCIT²

The taxpayer is a US-based single-member Limited Liability Corporation ('LLC'), a fiscally transparent entity, whereby its income is taxed in the hands of its member rather than at the entity level. During the relevant financial year, it rendered offshore repair and overhaul services to Indian airline customers. The services were performed entirely outside India at its overseas facilities, where engine components were shipped for inspection, repair and testing and were subsequently returned to India.

The tax officer treated services provided by taxpayer as Fees for Technical Services ('FTS') under the Act as well as Fees for Included Services ('FIS') under Article 12 of the India-USA Double Tax Avoidance Agreement ('DTAA'). The tax officer held that the services rendered were technical in nature and accordingly, taxable as FTS/FIS. It was further contended that such services involved specialised technical expertise in aircraft engine maintenance and effectively resulted in making available technical knowledge to the Indian customers.

The tax officer further held that since the taxpayer was an LLC fiscally transparent under US law and not itself liable to tax in USA, it did not qualify as a resident of USA under Article 4 of the India-USA DTAA and therefore, treaty benefit was unavailable.

On appeal before the Delhi Tribunal ('Tribunal'), the taxpayer submitted that all services were performed outside India and there was no PE in India. It was emphasised that mere rendering of technical services does not amount to 'making available' technical knowledge, unless the recipient is enabled to independently apply such knowledge in future. In the present case, the Indian customers merely received repaired engines and did not acquire any enduring technical capability.

The Tribunal, after hearing both parties and examining the record, noted that the taxpayer was a single-member LLC incorporated in Delaware, USA, whose sole member was General Electric Company, a US tax resident. The taxpayer contended that, being fiscally transparent, its income was taxable in the hands of its sole member. Reliance was placed on the Tax Residency Certificate issued by US authorities, which certified that the assessee LLC was a branch or business unit of a US-resident corporation and had been allotted a Tax Identification Number.

The Tribunal relying on the co-ordinate Bench of the Tribunal in the case of Go Daddy. Com LLC³ wherein it was held that the term, 'liability to taxation' has to be distinguished from actual payment of taxation. 'Liability to taxation' indicates the powers of taxing an income though the incidence of taxation and actual payment may be different and had allowed the benefit of the India-USA DTAA to the assessee being an LLC. Relying on the facts, the

² [2026]184 taxmann.com 238 (Delhi Tribunal)

³ IT Appeal No. 8085 (Delhi) of 2018, dated 23-9-2022

tribunal accepted the taxpayer's contention that while the tax on its income was paid by the US parent company, the taxpayer was nonetheless liable to tax, satisfying treaty requirements.

The Tribunal held that the services rendered by the taxpayer do not satisfy the 'make available' condition under Article 12 of the India-USA DTAA. It observed that although the services may involve technical expertise, there was no transfer of technical knowledge, skill or know-how to the Indian customers in a manner that would enable them to independently perform such functions in future.

JMP Insights – This ruling reinforces an important principle that mere rendering of technical services does not qualify as FTS/FIS unless the 'make available' condition is satisfied, i.e., there must be a transfer of technical knowledge enabling the recipient to independently apply such knowledge in future. Further it also reinforces that fiscally transparent single-member US LLC can claim treaty benefits if its income is 'liable to tax' in the hands of a US tax resident (its sole member), even if the LLC itself does not pay US tax. The ruling provides important guidance on the interpretation of 'liable to tax' and 'actual payment' of tax under tax treaties.

➤ **Consideration for outright transfer of design and drawings would not be taxable as Royalty under the provisions of DTAA**

- International Bridge Technologies Middle East DMCC vs DCIT⁴

The taxpayer, a UAE tax resident company is engaged in designing of bridges. The

taxpayer entered into a Sub-Consultancy Agreement with an Indian entity for providing consultancy services in relation to the Versova-Bandra Sea Link Project. The scope of services included preparation of Design Support Services, specifically the preparation of tender designs, including concept plans, general arrangement drawings and complex marine engineering. In consideration for these services, the taxpayer received professional fees from the Indian entity. The taxpayer claimed that the income was not chargeable to tax in India in absence of Permanent Establishment ('PE') in India.

During the proceedings, the Tax Officer concluded that the professional fee received by the taxpayer in lieu of Design Support Services is in the nature of 'Royalty', and hence, taxable in India under section 9(1)(vi) of the Act as well as under the provisions of the India-UAE DTAA. The taxpayer preferred an appeal before the Delhi Tribunal ('Tribunal').

The Tribunal observed that the taxpayer's role was to develop the design and drawings of the bridge/structure. The Tribunal further analysed the Sub-Consultancy Agreement, which explicitly stated that all documents, reports, data or deliverables prepared by the taxpayer would be owned by the Indian entity. The Tribunal remarked that it is a case of outright sale of design and not a case of consideration received for the use of or the right to use of any design.

The Tribunal referred to the definition of 'Royalty' under Article 12(3) of the India-UAE DTAA and opined that there is a subtle difference in the consideration received for sale of design and drawings and consideration received for the use of or right to use design.

The Tribunal observed that the former is a case where ownership in the drawings and design specific to the project is transferred, whereas in the latter case, the ownership remains with the creator and it only authorizes the use of design or right to use of design.

The Tribunal relied on the Delhi High Court ruling in case of CIT vs DCM Ltd⁵, wherein it was held that the consideration for the transfer of title in designs and drawings cannot be construed as Royalty.

The Tribunal concluded that the payment did not constitute consideration for the 'use or right to use' a design, rather, it was an outright sale involving the full transfer of ownership in the project-specific drawings and deliverables. The Tribunal further held that since the taxpayer opted for India-UAE DTAA provisions, the wider definition of Royalty under the Act would not apply.

JMP Insights – This ruling underscores the important distinction between payments made for the outright transfer of intellectual property and those made for the use or right to use such property. The Tribunal clarified that where designs and drawings are created for a specific project and the ownership of those deliverables is fully transferred, the transaction constitutes a sale of designs rather than a licensing arrangement which is characterised as Royalty.

➤ Intra-group share buy-back eligible for benefit under the tax treaty

- Huntsman Investment [Netherlands] BV v. ADIT, International Taxation⁶

The taxpayer is a Netherland based company holding 99.98% equity shares in

Huntsman International (India) Private Limited ('HIPL'). During the Financial Year ('FY') 2008-09, the taxpayer sold 24% of its shareholding in HIPL pursuant to a buy-back offer. The taxpayer offered the consideration received as long term capital gains in its return of income.

The tax officer passed a draft assessment order after considering the upward adjustment in the sales consideration proposed by the Transfer Pricing Officer. The taxpayer filed its objections with the Dispute Resolution Panel ('DRP') and raised additional grounds claiming

- the buy-back transaction to be tax neutral under Section 47(iv) of the Act and
- under Article 13(5) of India-Netherlands DTAA capital gains were taxable only in Netherlands.

The DRP rejected both the contentions of the taxpayer claiming that conditions prescribed for availing benefit of Section 47(iv) were not fulfilled and Article 13(5) did not cover buy-back arrangement. Aggrieved with the order of the DRP, the taxpayer filed an appeal with the Tribunal.

Contradictory observations of the Accountant member and the Judicial member

The Judicial member rejected the taxpayer's additional ground for tax neutrality under the Act on the grounds that conditions prescribed for claiming the benefit under Section 47 were not fulfilled. Further, it was held that Section 46A of the Act explicitly governed taxability on buyback as capital gains in the hands of the shareholders, thus overriding general exemptions under Section 47 of the Act.

⁵ITA no.87-89/1992

⁶[2026] 184 taxmann.com 602 (Delhi - Trib.)

The Judicial Member held that the provisions of Article 13(5) of the India-Netherlands DTAA could not be stretched to include every buy-back arrangement, particularly where there was no evidence of any broader restructuring scheme or no court-sanctioned arrangement.

He also emphasized that the treaty terms had to be construed consistently with the Act. Since Indian law separately regulates buy-backs under section 46A of the Act and section 77A of the Companies Act, the treaty could not be interpreted in a manner that would override those provisions in the absence of a real reorganisation.

However, the Accountant member ruled in favour of the taxpayer concluding that a buy-back arrangement was a form of corporate reorganisation and thus, capital gains arising on buyback were not taxable in India as per the beneficial provisions of the India-Netherlands DTAA.

Deciding observations of the Third member

The Third member concurred with the observations of the Accountant member for extending the benefit of the India-Netherlands DTAA to the taxpayer.

The Third member relied on the broader meaning of 'reorganisation' from external sources to include substantial change in the capital structure or corporate restructuring. He observed that the DRP and the Judicial member interpreted the provisions of Article 13(5) of the India-Netherlands DTAA too narrowly by insisting for a formal Court approved scheme.

He also referred to protocol under the Nigeria-Netherlands DTAA which clarified corporate organisation and reorganisation to always include transfer of shares within a

group of associated enterprises.

Based on the majority of votes, the Tribunal accepted that the buy-back formed part of a corporate reorganisation within the meaning of the treaty. Therefore, the capital gains from that transaction could not be taxed in India under the treaty provisions.

JMP Insights - This ruling underscores that a cross-border share buy-back may receive treaty protection where it forms part of a bona fide corporate reorganization, rather than serving merely as a shareholder exit. The Tribunal treated Article 13(5) of the India-Netherlands DTAA as capable of applying to intra-group transaction that reflect genuine capital restructuring within the same corporate group. However, the availability of treaty benefits cannot be presumed. Taxpayers must be able to substantiate a clear commercial and restructuring rationale, supported by contemporaneous documentation such as board resolutions, group-level restructuring plans and other relevant corporate records.

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➤ **Changes in FDI policy relating to investments from countries sharing land border with India**

The Foreign Direct Investment ('FDI') regime in India underwent a significant shift in 2020, when the Government introduced additional safeguards for investments originating from countries sharing a land border with India ('Specified Countries'). Such investments were brought under the Government approval route to curb opportunistic takeovers during the COVID-19 pandemic.

A Press Release was issued prior to this Press Note which proposed that investors from Specified Countries with a non-controlling beneficial ownership ('BO') of up to ten percent would be allowed under the automatic route, subject to applicable sectoral caps, entry routes and related conditions.

It was also proposed that investment proposals from the Specified Countries in certain sectors such as capital goods manufacturing, electronic capital goods, electronic components, polysilicon and ingot-wafer shall be processed and decided within 60 days. In such cases, majority shareholding and control of the investee entity shall always remain with resident Indian citizen(s) and/or resident Indian entity(ies) that are owned and controlled by resident Indian citizen(s).

In this context, the Department for Promotion of Industry and Internal Trade ('DPIIT') has issued Press Note 2 (2026 Series), introducing amendments aimed at clarifying and streamlining the existing FDI policy.

A key amendment addresses the long-standing ambiguity surrounding the determination of BO. The Press Note

proposes to align the definition of BO with the framework prescribed under the Prevention of Money laundering Act, 2002 and the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 ('PMLA Rules').

The amendment also removes the earlier reference to a beneficial owner being 'situated in' a specified country and narrows the test to cases where the beneficial owner is a citizen of such specified country.

The Press Note further clarifies that BO will be considered to be vested in specified countries where a citizen or entity incorporated/registered in such country:

- holds beneficial ownership beyond the prescribed thresholds under the PMLA Rules; or
- exercises control over the investor entity; or
- has ultimate effective control over the investee entity in any manner

Additionally, the Press Note introduces a compliance layer in the format to be laid down by DPIIT for investments that do not otherwise require prior Government approval. These will operate alongside existing conditions relating to sectoral caps, entry routes, and other applicable regulatory requirements under the FDI policy.

Further, it is clarified that the above amendments will come into effect from the date of notification under the Foreign Exchange Management Act, 1999. Until such notification is issued, the existing framework will continue to apply.

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

JMP Advisors Private Limited

12, Jolly Maker Chambers II, Nariman Point, Mumbai 400 021, India

E: info@jmpadvisors.in, W: www.jmpadvisors.com

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