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TAX MATTERS

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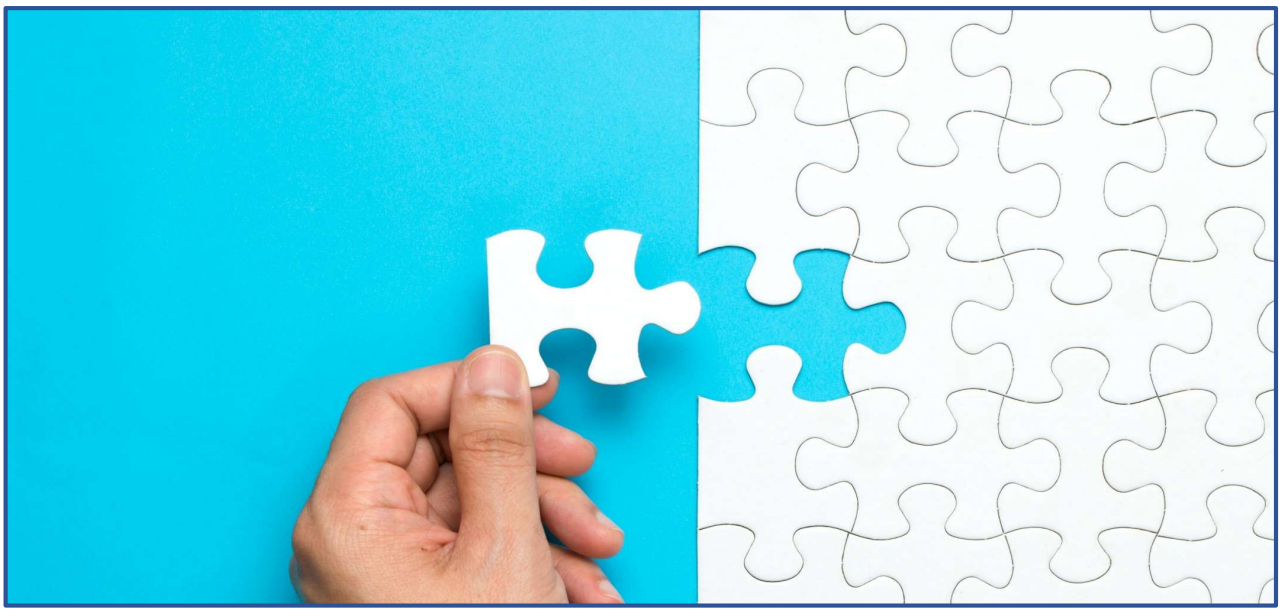

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DID YOU KNOW?

The Government of India has notified four consolidated Labour Codes w.e.f 21 November 2025: Wages, Industrial Relations, Social Security and Occupational Safety, Health and Working Conditions. These Codes replace 29 laws with a unified framework. The Codes introduce regulations relating to uniform minimum-wage standards, timely wage payment, mandatory appointment letters, broader social-security coverage including for gig workers and stronger safety and welfare measures, with a view to simplify compliance and enhance worker protection.

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 November 2025:

Income tax rulings

➢ Provisions relating to indirect transfer cannot override treaty provisions

- Cognizant Technology Solutions India Private Limited vs Commissioner of Income Tax (CIT)[1]

  (Madras High Court)

Cognizant Technology Solutions India Private Limited ('the taxpayer') is a company engaged in the business of software development and export. The matter pertains to Financial Year ('FY') 2002-03 and FY 2003-04. The taxpayer had made payments for an International Private Leased Line Connection ('IPLC') to M/s Sprint, USA without withholding any tax thereon. Pursuant to scrutiny proceedings, the tax officer held that these payments to be in the nature of royalty and subject to withholding tax in India. In absence of any tax withholding, the tax officer made a disallowance under section 40(a)(i) of the Income-tax Act, 1961 ('the Act'). On appeal, both the CIT(A) and the Chennai Tribunal decided the appeal against the taxpayer.

On further appeal to the Madras High Court ('the HC'), the taxpayer argued that the payments to Sprint, USA were purely for connectivity services, essentially bandwidth or telecommunication services and not for the use of any equipment. It emphasized that no part of the infrastructure (including undersea cables) of Sprint, USA was placed under its possession or control. Sprint, USA merely provided a standard telecommunication service outside India, thus the revenue-generating activity occurred outside India and could not be taxed as 'royalty'. The taxpayer further argued that even if under the domestic law the payments were considered as royalty, under the DTAA, the definition of royalty is narrower. Reliance was placed on the decisions in the case of New Skies Satellite[2] and Engineering Analysis[3], where it was held that unilateral amendments to Section 9 through Explanations 4, 5 and 6 cannot widen the scope of royalty under a treaty unless the treaty itself is renegotiated.

Additionally, relying on Article 26 of the DTAA on Non-Discrimination, the taxpayer argued that Section 40(a)(i) of the Act creates discrimination since royalty payments to a resident are allowed as deducible expenditure without any tax withholding, whereas identical payments to a non-resident are not allowed unless taxes are withheld. Under Article 26(3) of the DTAA, royalty payments made by an Indian resident to a US resident are deductible under the same conditions as if the payments are made to an Indian resident.

The HC reversed the Tribunal's judgement and held that payments made by the taxpayer to Sprint, USA for IPLC services do not constitute royalty. Based on OECD guidance and the decisions in the case of New Skies Satellite and the Engineering Analysis (supra), the HC held that access to bandwidth or a communication channel is not in the nature of use or right to use equipment. The taxpayer or control over the network infrastructure of had no possession Sprint, USA and the service was a standard connectivity arrangement. The HC also held that the amendments to Section 9 of the Act

[1][TS-1577-HC-2025(MAD)]
[2] 2016) 68 Taxmann.com 9 (Del) : (2016) 285 CTR 1 (Del)
[3](2021) 432 ITR 471 (SC)

in 2012 cannot expand the meaning of royalty under the DTAA. Therefore, IPLC payments are not in the nature of royalty as per Article 12 of the DTAA.

The HC further held that as per Section 90(2) of the Act, the DTAA prevails over the domestic law to the extent it is beneficial to the taxpayer. Thus, even if the payments constitute royalty under the domestic law, the definition as per the treaty would override. Applying Article 26(3) on non-discrimination, the HC found that Section 40(a)(i) places more stringent conditions for deduction of the expense only in case of payments to non-residents, which is prohibited under the DTAA. Relying on the Delhi High Court decision in the case of Herbalife[4], the HC concluded that no disallowance could be made even on an 'arguendo' basis. As a result, the disallowance of the royalty payment was deleted.

JMP Insights – This ruling is a major win for the IT industry, primarily establishing that payments made to foreign entities for IPLC services do not constitute 'Royalty' under the India-US DTAA, thereby eliminating the requirement for tax withholding on such payments. This ruling further confirms that the treaty overrides domestic amendments which attempt to widen the scope of royalty retrospectively. Dual relief is also provided by ruling that the Non-Discrimination Clause in the DTAA prevents disallowance of expenses under Section 40(a)(i) of the Act in the relevant years where the provisions for allowability of royalty payments to non-residents were different from those for royalty payments to residents.

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➢ Digital streaming distribution services by Netflix India characterised as activities of a Limited-Risk Distributor

- Netflix Entertainment Services India LLP v. Deputy Commissioner of Income-tax[5]

  (Mumbai Tribunal)

Netflix Entertainment Services India LLP ('the taxpayer') was incorporated in India to facilitate the Indian presence of the global Netflix Group. The Netflix Group operates a subscription-based digital streaming model enabling users across the world to watch movies, documentaries and television series on internet-enabled devices.

The taxpayer entered into a Distribution Agreement with its Associated Enterprises ('AEs'), initially with Netflix International B.V., Netherlands and subsequently with Netflix US. Under these agreements, the taxpayer was appointed as a non-exclusive distributor of access to the 'Netflix Service' to end-users in India. All content, technology and trademarks remained owned by the AEs and the taxpayer did not acquire any proprietary rights.

Under the Distribution Agreement, the taxpayer was required to remit a distribution fee to Netflix US. The distribution fee was computed based on the total subscription revenue collected from Indian customers, after deducting local costs incurred and included a fixed return on Indian sales. The taxpayer's functions were limited to invoicing, collecting subscription fees, marketing and promoting subscriptions as per global strategies, customer support, entering into 'Terms of Use' with Indian subscribers, local compliance, liaising with telecom operators and Internet Service Providers ('ISPs').

[4] (2016) 384 ITR 276 (Delhi)
[5] ITA No. 6857/Mum/2024

The taxpayer operated as a Limited Risk Distributor ('LRD') on a fully cost-insulated basis, earning a fixed Return on Sales ('ROS') of 1.36%. For benchmarking the international transaction of the payment of distribution fees to Netflix US, the taxpayer applied the Transactional Net Margin Method ('TNMM').

During the scrutiny proceedings, the Transfer Pricing Officer ('TPO') rejected the taxpayer's LRD characterization and held that it functioned as an independent entrepreneurial operator. The TPO observed that the taxpayer was providing services on its own account, deciding pricing, providing customer support, entering into agreements on its own account and procuring licenses and infrastructure. The TPO rejected the TNMM and applied the Other Method under Rule 10AB, using six agreements available on the RoyaltyStat database. Based on these, the TPO computed a notional royalty of 57.12% of the taxpayer's total revenue which is payable by the taxpayer to its AEs and proposed a Transfer Pricing adjustment.

The Dispute Resolution Panel ('DRP') concurred with the rejection of TNMM and relying on the royalty-based 'Other Method', suggested an ad-hoc attribution of approximate margins to various functions margins. The DRP concluded that 43% of total revenue should be retained by the taxpayer. Aggrieved by this, the taxpayer filed an appeal to the Mumbai Tribunal.

Decision of the Mumbai Tribunal

Re-characterization issue

The Mumbai Tribunal held that the TP adjustment rested upon an impermissible re-characterisation of the taxpayer from a LRD to an entrepreneurial content and technology provider. Based on the examination of the Distribution Agreement, it was observed that the taxpayer never obtained any licence to use, reproduce, alter or sub-license content or technology. The 'Terms of Use' confirmed that customers received only a limited, non-exclusive right to access content and all ownership rights remained with the AEs.

Regarding Open Connect Appliances ('OCAs'), the Tribunal observed that these are merely cache devices to locally store frequently streamed content and reduce network congestion. These neither process any data nor contain customer data and are not used to reproduce or modify content. Further, the Tribunal held that OCAs serve only as logistical tools for bandwidth optimisation and do not constitute technological assets implying entrepreneurial risk.

Functional analysis

The Tribunal confirmed that the taxpayer's functions were limited to promotion, marketing, invoicing, local customer support, regulatory compliance and consistent with a limited-risk distributor profile. It was noted that the taxpayer neither owns nor controls any content, intellectual property, or technology. Its employees are not involved in content acquisition, technology design, or platform development, performing only routine marketing and operations coordination functions. Thus, based on Functions, Assets and Risk ('FAR') analysis, the Tribunal accepted that the taxpayer performed only routine distributor functions, owned no intangible assets and undertook no Development, Enhancement, Maintenance, Protection, Exploitation ('DEMPE') functions. The taxpayer was fully cost-insulated and earned a fixed return of 1.36% on sales, consistent with a LRD profile.

Appropriateness of TNMM

The Tribunal held that the rejection of TNMM was incorrect. It observed that the taxpayer had undertaken an exhaustive search. In the absence of any direct comparables, the taxpayer resorted to distributors of software and related products that were valid functional comparables, for media-content distributors. It noted that the margins of comparables, after adjustments, placed the taxpayer squarely within the arm's-length band, reaffirming TNMM as the Most Appropriate Method.

Rejection of 'Other Method' and adoption of Royalty Model

The Tribunal rejected the Tax Officer's 'hybrid royalty construct' under the 'Other Method'. The Tribunal noted that the taxpayer neither acquired nor licensed content or technology, so no royalty transaction existed. The agreements from the RoyaltyStat database which were relied upon by the TPO were non-contemporaneous, unsigned and economically dissimilar. The Tribunal cited the Delhi High Court ruling in case of Maruti Suzuki India Ltd.[6], where it was held that the re-characterisation of a transaction is impermissible unless the arrangement is shown to be a sham or colourable device. Further, it observed that the agreements between the taxpayer and its AEs are genuine and approved by regulatory authorities. Thus, the ad-hoc attribution assigning percentages to various functional clusters was dismissed as unsupported by comparables or the methodology as per Rule 10B.

Symmetry between Functions, Assets and Risks

The Tribunal emphasized that attributing 43% of global subscription revenue to an entity that neither owns nor develops the underlying content or technology violates the Function-Asset-Risk symmetry, which defines economic ownership. Additionally, relying on the Supreme Court judgment in the case of Engineering Analysis Centre of Excellence Pvt. Ltd.[3], the Tribunal held that no copyright was transferred or licensed to the taxpayer. Therefore, the consideration paid by the taxpayer to its AE for distribution access could not be treated as royalty under the Income-tax Act, 1961('Act').

Conclusion

The Tribunal concluded that the taxpayer operates as a LRD in India and not as an entrepreneurial service provider. Accordingly, the entire transfer pricing adjustment was deleted.

***JMP Insights** – This ruling reinforces the primacy of contractual reality and functional characterisation in transfer pricing for digital-business. It confirms that routine distribution activities do not constitute royalty, a finding critical for OTT and digital commerce companies. The Tribunal, by reaffirming the appropriateness of the TNMM for LRDs also provides guidance that the 'Other Method' under Rule 10AB cannot be arbitrarily invoked to override a economically justifiable and well-documented methodology.*

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[6] 381 ITR 117, Del. HC

- **ITAT holds No PE constituted as liaison office performs only preparatory and auxiliary functions**

  - Fullerton Financial Holdings Pte. Ltd vs ACIT (International Taxation)[7] (Mumbai Tribunal)

Fullerton Financial Holdings Pte. Ltd ('the taxpayer') is a non-resident investment holding company incorporated and domiciled in Singapore. The taxpayer is wholly owned by Temasek Holdings Private Limited, which in turn is wholly owned by the Government of Singapore. In FY 2008-09, the taxpayer made a long-term strategic investment in Fullerton India Credit Co. Ltd. (FICCL), a Non-Banking Financial Company ('NBFC') engaged in the SME and Micro Finance sector. The taxpayer subsequently sold its entire stake in FICCL to a third party, Sumitomo Mitsui Financial Group, resulting in long-term capital gains. The taxpayer furnished its return of income in India claiming that the capital gains on the said transfer were not taxable in India as per Article 13(4A) of the India-Singapore DTAA ('DTAA'), read with the 2016 Protocol, since the investment had been made before 1 April 2017.

Pursuant to scrutiny proceedings, the Tax Officer denied the DTAA relief noting that the taxpayer had no employees in Singapore and the directors were appointed by the group entities. The Tax Officer concluded that the expenses of Directors cannot be attributed to the operational expenses. Therefore, the Tax officer held that the taxpayer failed to satisfy the Principal Purpose Test ('PPT') provided under Article 24A of the DTAA and denied the relief under Article 13(4) of the DTAA. The Tax Officer's findings were confirmed by the DRP.

On appeal by the taxpayer, the Mumbai Tribunal noted that the investment in shares was made by the taxpayer prior to 1 April 2017 i.e. before the amendment introduced by the 2016 Protocol to the DTAA. Under this Protocol, the capital gains arising to a resident of Singapore from alienation of shares of an Indian company are taxable only in Singapore, subject to the Limitation of Benefits ('LOB') clause. Therefore, the gains from the sale of these pre-2017 investments were not taxable in India as per Article 13(4A) of the DTAA, as amended by the Protocol.

The Tribunal observed that all key managerial and administrative functions of the taxpayer, including Board and sub-committee meetings, strategic decision-making and oversight of its investee entities are undertaken in Singapore.

The Tribunal noted that the investment structure and the subsequent transfer were driven by bona fide commercial considerations, consistent with taxpayer's legitimate business objectives and are not undertaken principally to secure a tax advantage under the DTAA. Thus, the sale represented a genuine commercial realisation of investment, undertaken as part of an arm's length transaction and was not a tax-motivated arrangement.

The Tribunal ruled that the investment formed part of the long-term strategic portfolio of the taxpayer and cannot be regarded as conduit arrangement intended to channel gains through a low-tax jurisdiction. The incorporation and overall affairs of the company was not with the primary purpose of taking advantage of Article 13(4A) of the DTAA.

[7] ITA No. 1137/Mum/2025

The Tribunal further affirmed that the taxpayer met the expenditure test under the DTAA, noting that duly certified statements showed annual operational expenditure in Singapore exceeding SGD 200,000 for each of the two consecutive 12-month periods immediately preceding the disposal of shares.

The above facts demonstrate commercial substance and an independent economic presence in Singapore. Thus, Tribunal held that the taxpayer satisfies the PPT under Article 24A(1) and (2) of the DTAA.

The Tribunal accepted that the taxpayer received substantive management and operational support from its management company ('FFHI'). It accepted that FFHI employed personnel to support the operations of the taxpayer and that the expenses are reimbursed to FHHI on an arm's length basis.

The Tribunal also highlighted that as the ultimate beneficial owner of the taxpayer's investments is the Government of Singapore, sovereign immunity principle generally exempt sovereign entities from Indian domestic tax.

On these facts, the Tribunal concluded that the taxpayer was not a shell or conduit, but a substantive, policy-driven investment vehicle of the Singapore Sovereign Group. It had not entered into the arrangement for the principal purpose of obtaining treaty benefits. Accordingly, the Tribunal held that the taxpayer is eligible to claim a relief as per Article 13(4) of the India-Singapore DTAA for the capital gains on the sale of shares.

***JMP Insights** – The ruling underscores that substance must be evaluated on the basis of holistic factual analysis rather than isolated indicators such as employee count or director appointment patterns. The Tribunal has reaffirmed that expenditure thresholds, control, strategic decision-making and commercial purpose remain central to the PPT evaluation.*

Importantly, the decision highlights that long-term investments made prior to the 2017 amendment continue to enjoy protection under Article 13(4) when the PPT is met. The ruling strengthens clarity for sovereign and institutional investment platforms operating through Singapore by affirming that genuine commercial structures with real economic presence are entitled to treaty relief.

➢ ITAT holds No PE constituted as liaison office performs only preparatory and auxiliary functions

- Oxbow Energy Solutions B.V. vs DCIT[8] (Mumbai Tribunal)

Oxbow Energy Solutions B.V. ('the taxpayer'), a Dutch company, operated a Liaison Office ('LO') in India approved by the Reserve Bank of India ('RBI'). The taxpayer is a part of the Oxbow Group, which is engaged internationally in trading in petroleum coke and occasionally also in coal and metallurgical coke. The Indian LO's role was restricted to gathering and disseminating information to its overseas group entities, as relevant for the Group's business.

During scrutiny, the tax officer held that the LO created a Permanent Establishment ('PE') under Article 5 of the India–Netherlands Double Taxation Avoidance

[8]TS-1465-ITAT-2025(Mum

Agreement ('DTAA') on the basis that the employees of the LO were highly qualified and hence, the nature of information gathered was 'core' to the taxpayer's international business. Accordingly, the said activities were beyond the carve-out for preparatory and auxiliary activities. The tax officer therefore attributed income of ~ INR 15 million to India. The addition was confirmed in principle by the Dispute Resolution Panel ('DRP') which merely reduced the quantum of the addition.

On appeal by the taxpayer, the Mumbai Tribunal noted that the LO was not carrying on any business activity in India. The Tribunal undertook a detailed examination of the type of activities that may be covered under 'preparatory and auxiliary activities' as per the DTAA as well as the anti-fragmentation provisions under the Multilateral Instrument. Relying on the OECD guidance, the Tribunal observed that the anti-fragmentation rule applies only where multiple related entities artificially fragment cohesive business activities in the source country by providing complementary business functions. Since the LO did not perform commercial functions and there was no evidence to suggest that the information gathered by the LO was used to conclude business with Indian parties, the Tribunal observed that the present case was not covered by the anti-fragmentation provisions.

The Tribunal further relied on the Supreme Court decision in the case of UOI v. UAE Exchange Centre[9], which held that activities which were strictly confined to the RBI permission for the LO are preparatory and auxiliary in nature and cannot constitute a PE. Accordingly, the Tribunal held that the LO did not constitute a PE in India under Article 5 of the India–Netherlands DTAA and deleted the addition of income.

***JMP Insights** – This ruling makes it clear that the activity of collection of data for business by a LO does not by itself, make the LO a PE as long as the RBI permission is followed and no commercial activities are carried out in India. It is important for multinational groups to segregate the functions of collation of business information from the entities which carry out commercial activities to avoid any unintended PE risk.*

Notifications and Circulars

➢ India notifies revised tax treaty with Qatar

The Central Board of Direct Taxes (CBDT) has issued Notification No. 154/2025 dated 24 October 2025, notifying the revised Double Taxation Avoidance Agreement ('DTAA') and Protocol between India and Qatar. The revised treaty protocol which has been signed on 18 February 2025 will replace the DTAA of 1999 and will apply in India from 1 April 2026.

Key changes introduced in the revised DTAA are discussed below:

- Permanent Establishment ('PE') (Article 5): The revised treaty broadens the scope of PE by adding installation PE with a threshold of 6 months and introduction of a service PE with a threshold of 90 days within any 12 month period. Maintenance of a stock of goods or merchandise for the purpose of delivery will no longer be a part of the exclusion provided by way of preparatory and auxiliary activities. Further, anti-fragmentation rules have been added to prevent splitting of cohesive operations. The dependent agent PE test is tightened through arm's-length dependency. Overall, the PE scope

[9][2020] 116 taxmann.com 379/273 Taxman 122/425 ITR 30 (SC)

shifts from a narrow, location-based test to a substantive, Base Erosion and Profit Shifting ('BEPS')-aligned regime.

- Business Profits (Article 7): The revised Article 7 now disallows deductions for internal payments (interest, royalties, service fees) and receipts between a PE and its head office, except for actual reimbursements.

- Capital Gains (Article 13): The revised Article 13 clarifies specifically that source-state taxation applies where shares derive more than 50% of their value directly or indirectly from immovable property in that state. This helps to remove the ambiguity that existed in the earlier provisions where source taxation applied to shares of companies holding directly or indirectly principally immovable property in the source state.

- Principal Purpose Test (Article 28): The revised treaty introduces a Principal Purpose Test ('PPT'), which allows India or Qatar to deny any treaty benefit if obtaining that benefit was one of the principal purposes of an arrangement, unless it is established that granting the benefit would be in accordance with the overall object and purpose of the treaty.

JMP Insights *– The revised India–Qatar DTAA introduces clear and updated provisions which reflect contemporary economic and business realities and are consistent with the objectives of the BEPS initiative.*

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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.

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JMP Advisors offers advice in international taxation, domestic taxation, transfer pricing, mergers and acquisitions, Goods and Services Tax (GST), business laws and exchange control regulations and foreign investment consulting. We specialize in fiscal strategy, policy foresight and advocacy matters and are trusted advisors to high net worth families. Our team at JMP Advisors takes pride in being the best at what matters most to clients - technical expertise, innovative solutions, consistent, high quality service, reliability and ease of doing business.

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