KATALYST
ADVISORS

Katalyst Kaleidoscope

August 2026: Tax and Regulatory Insights

SUMMARY OF CONTENTS

A. Income Tax Highlights

1. ITAT Chandigarh[1]: Advances by subsidiary company to its holding company for commercial purposes, not deemed dividend

The assessee, a holding company, received funds from its subsidiary during the relevant year, which were subsequently utilised towards funding the commercial real estate project of another group company. The Assessing Officer treated the advances as deemed dividend under Section 2(22)(e) of the Income-tax Act, 1961, on the basis of the assessee's substantial shareholding in the subsidiary; the CIT(A), however, deleted the addition, holding that the funds were advanced as an inter-corporate deposit for commercial expediency, carried interest and did not result in any personal benefit to the assessee.

Before the ITAT, the Revenue contended that the advances to the shareholder attracted Section 2(22)(e), while the assessee relied on the exclusion under Section 2(22)(e)(ii) for loans or advances made in the ordinary course of business where lending of money is a substantial part of the lender's business. The Chandigarh ITAT upheld the CIT(A)'s order, noting that the subsidiary was engaged in providing funds to group companies, interest was charged on the advances and the funds were ultimately deployed for the group's commercial projects. The Tribunal accordingly held that the transaction was a business transaction falling within the statutory exclusion under Section 2(22)(e)(ii) and dismissed the Revenue's appeal.

2. ITAT Ahmedabad[2]: Revenue cannot disturb accepted depreciation and interest claims without change in facts

The assessee acquired business undertakings as going concerns through slump sale, including intangible assets and existing borrowings. Depreciation on the intangible assets and interest on the borrowings had been examined and allowed in the preceding year. In the subsequent year, the Revenue disallowed depreciation alleging a colourable device and disallowed interest for want of nexus with the assets and on account of the payment being made to a related party; the issue was whether these claims could be disturbed in the absence of any change in facts or law.

The Ahmedabad ITAT held that the Revenue could not depart from the position accepted in the preceding year without a change in facts or law. Depreciation on the opening WDV could not be denied in the absence of any sale, discard or demolition, particularly when the assets had been put to use and no evidence of manipulation was established. Similarly, interest on borrowings assumed with the going-concern undertaking could not be selectively re-examined in the

[1] ITO v. Jujhar Construction & Travels Pvt. Ltd., 6 October 2025, ITA No. 536/CHD/2022.

[2] Jio Platforms Ltd. v. DCIT, ITA Nos. 1727 & 1770/Ahd/2024, ITAT Ahmedabad, order dated 22 July 2026

subsequent year, and a related-party payment could not be disallowed without establishing that the expenditure was excessive or unreasonable.

3. ITAT Mumbai[3]: Allotment date constitutes acquisition for Section 54F exemption despite delayed conveyance

The assessee surrendered rights in an immovable property and received consideration, which was adjusted towards the purchase of a residential flat allotted under a construction scheme. Although the allotment letter was issued within the prescribed period for claiming exemption under Section 54F and recorded the adjustment of the consideration towards the purchase price, the conveyance/sale agreement was executed several years later due to regulatory issues, amendments to sanctioned plans and RERA-related requirements. The AO and CIT(A) denied the exemption on the ground that the residential property was not acquired within the prescribed period. The issue before the ITAT was whether the date of allotment could be treated as the date of acquisition for purposes of Section 54F despite the subsequent execution of the conveyance deed.

The ITAT held that the assessee was entitled to exemption under Section 54F. Relying on CBDT Circular No. 471 dated 15 October 1986, the Tribunal held that where a flat is allotted under a construction scheme, the date of allotment is to be treated as the relevant date of acquisition. Since the allotment was not cancelled and the consideration had been adjusted towards the purchase price, the subsequent delay in execution of the conveyance deed could not disentitle the assessee from claiming the exemption.

4. Bombay HC[4]: Provision for future contractual liability allowable if liability has accrued and is reliably estimated

The assessee, engaged in road construction and toll collection under a Build-Operate-Transfer (BOT) arrangement, was contractually required to undertake major repairs and maintenance of the road at specified intervals. It made a provision for such future repair expenditure based on the terms of the concession agreement and a scientific and realistic estimation of the expected cost. The Assessing Officer disallowed the provision on the ground that the expenditure had not been actually incurred during the relevant year. The CIT(A) allowed the deduction, which was upheld by the ITAT.

The issue before the HC was whether a provision for future repair expenditure, arising from a contractual obligation and estimated on a reasonable and scientific basis, could be allowed as a

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[3] Ashwin Chhotalal Paurana v. ITO, ITA No. 9066/Mum/2025, ITAT Mumbai, order dated 27 July 2026.
[4] ECA Infrastructure India [TS-1291-HC-2026(BOM)] order dated 31st July 2026.

deduction under Section 37(1) of the Income-tax Act, 1961, even though the expenditure was actually incurred in a subsequent assessment year.

The Bombay High Court upheld the deduction and dismissed the Revenue's appeal. Relying on the principles laid down by the Supreme Court in ***Bharat Earth Movers v. CIT[5] and Rotork Controls India (P.) Ltd. v. CIT[6]***, the Court held that where a business liability has definitely arisen in the relevant accounting year and can be estimated with reasonable certainty, it constitutes a liability in praesenti and does not become contingent merely because its quantification or actual discharge occurs in the future. Since the contractual obligation to undertake road repairs had a direct nexus with the assessee's toll-collection business and the provision was based on realistic and scientific estimates, it was allowable as a deduction under Section 37(1).

5. SC[7]: Amount received by member of AOP pursuant to overriding title over sale proceeds is taxable as business receipt.

The substantive issue before the Supreme Court was that the assessee (SSPL) was a member of an AOP, which was for development of a residential housing project. All sales receipt were to be collected by AOP and the assessee was entitled to withdraw 35% from the gross sale receipts, with the balance 65% (net of project expenses) constituting the share of other member. The assessee claimed that the amount received from the AOP represented exempt share of profit.

The Supreme Court held that what the assessee got from the AOP was a result of overriding title on the sale proceeds, and relying on the decision of the *Supreme Court in CIT v/s Sitaldas Tirathdas[8]*, it is a case of a pre-existing and enforceable right created by the overriding title, and therefore, was taxable in the hands of SPPL itself (and not the AOP); for the AOP, it is a diversion of income before it even reached the AOP in a legal sense.

B. Corporate Law highlights

1. ROC Gwalior[9] : Same individual cannot hold positions of CFO and Whole-time Director

EKI Energy Services Limited had appointed an individual as its Chief Financial Officer (CFO) as well as Additional Director designated as Whole-time Director, pursuant to a Board Resolution filed in Form MGT-14. During an inspection under Section 206(5) of the Companies Act, 2013, it was observed that no separate individual had been appointed to discharge the functions of CFO. The

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[5]Bharat Earth Movers Vs. CIT,245 ITR 428 (SC), dated 9th August 2000.
[6]Rotork Controls India Pvt.Ltd. Vs. CIT, Civil Appeal Nos. 3506-3510 of 2009 (SC), dated 12th May 2009
[7] Sanand Properties (P.) Ltd. v. JCIT [(2026), 186 taxmann.com 535 (SC), dated 12th May 2026.
[8] *CIT v/s Sitaldas Tirathdas[8] (1961) 41 ITR 367, order dated 20th November 1960.*
[9]Eki Energy Services Limited vs ROC Gwalior, Order ID: PO/ADJ/06-2026/GL/02450 dated 29th June 2026

Company contended that the Companies Act, 2013 does not expressly prohibit the same individual from simultaneously holding the positions of CFO and Whole-time Director.

The ROC, Gwalior rejected the contention and held that Section 203(1) requires distinct KMPs for separate statutory responsibilities and that combining the roles of CFO and Whole-time Director, without appointing a separate CFO, defeats the legislative intent of the provision. Accordingly, the ROC imposed a penalty of ₹5 lakh on the Company and ₹50,000 on its Managing Director, and directed rectification of the default within 90 days.

Katalyst comment:

This appears to be a very narrow interpretation; there are several companies which have a CFO on the Board and obviously, he would be a whole-time director; this can therefore create issues for existing companies and it seems that this will require reconsideration and should hopefully be reconsidered anyway at other forums.

2. NCLT Kolkata[10]: Fast-track merger requires 90% approval of total shareholding

In the present case, Mallcom (India) Limited, the Transferee Company, proposed a Scheme of Amalgamation of its wholly owned subsidiary, Mallcom VSFT Gloves Private Limited, under the fast-track merger mechanism under Section 233 of the Companies Act, 2013. The Scheme was approved by the shareholders of the Transferee Company at its AGM held on 30 August 2025. While 51,28,711 votes were cast in favour and 93 against, resulting in approximately 99.99% approval of the votes cast by members present and voting, the affirmative votes represented only 82.19% of the Transferee Company's total paid up share capital. The Regional Director accordingly took the view that the Scheme did not satisfy the requirement under Section 233(1)(b), which requires approval by members holding at least 90% of the total number of shares.

The issue before the NCLT was whether the 90% threshold under Section 233(1)(b) is to be calculated with reference to the total issued shareholding or only the shares held by members present and voting. The NCLT held that "total number of shares" refers to the entire issued shareholding and, therefore, 99.99% approval of votes cast was insufficient. As the Scheme was not duly approved under Section 233(1), it could not be considered under Section 232 pursuant to Section 233(5). Accordingly, the NCLT quashed the proceedings pending before the Regional Director.

Katalyst comment:

[10] Mallcom (India) Limited v. RD (ER), C.P. No. 172/KB/2025, NCLT Kolkata Bench, order dated 9th July 2026

This appears to be a very narrow interpretation and unfortunately restricts the scope of fast-track mergers, whereas the whole purpose was to make it easier, especially in the context of private limited companies (as opposed to going through the long and tortuous process of NCLT).

3. NCLT Mumbai[11]: Merger of IBC-acquired listed company sanctioned despite Stock Exchanges and SEBI objecting to Scheme

The NCLT Mumbai considered a Scheme for amalgamation involving GB Global Limited ("GB Global"), a listed company acquired by Dev Land & Housing Private Limited ("DLH"), an unlisted company, pursuant to a resolution plan approved under the Corporate Insolvency Resolution Process. Despite repeated applications, the shares allotted pursuant to the resolution plan could not obtain listing and trading approvals, resulting in continuing MPS-related issues. BSE, NSE and SEBI objected to the Scheme, inter alia, for non-obtaining of the Stock Exchange NOC under Regulation 37 of the SEBI (LODR) Regulations, 2015. NSE contended that the Scheme was contrary to the approved Resolution Plan as it sought to merge the listed transferor with an unlisted transferee, while BSE and SEBI raised concerns regarding bypassing the SEBI (Delisting of Equity Shares) Regulations, 2021 and MPS non-compliance. BSE further contended that MPS compliance was a condition precedent to the Scheme and delisting.

The NCLT held that refusal by the Stock Exchanges to grant the NOC did not, by itself, bar the Tribunal from considering the Scheme under Sections 230–232 of the Companies Act, 2013. It noted that the 5% MPS requirement introduced after approval of the resolution plan did not apply to GB Global, although applicable MPS requirements continued to apply. The Tribunal further observed that the NOC refusal stemmed from MPS non-compliance and concerns regarding bypassing the Delisting Regulations, which should be applied purposively to protect public shareholders and ensure fair value. The Scheme addressed these concerns by providing public shareholders an exit at ₹120 per share, subject to the applicable floor price and delisting process, including reverse book building. The Tribunal also noted that the Stock Exchanges had neither permitted trading nor exercised their power to delist GB Global, leaving public shareholders without an effective exit mechanism. Existing MPS and other regulatory violations would, however, survive the merger and remain actionable against the successor company. Accordingly, the Scheme was sanctioned despite the Stock Exchanges declining to grant the NOC.

4. NCLT Mumbai[12]:Scheme for bonus issue of preference shares out of surplus reserves sanctioned

The Scheme proposed the issuance of fully paid-up preference shares by way of bonus to the equity shareholders out of the company's surplus general reserves. The company stated that its

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[11] GB Global Limited v. Dev Land & Housing Private Limited, CP (CAA) No. 6/MB/2026 in CA (CAA) No. 219/MB/2025, NCLT Mumbai Bench-I, order dated 12 August 2026

[12] Siyaram Silk Mills Limited, NCLT Mumbai, Order dated 21st July 2026, C.P.(CAA)/13/MB/2026 c/w C.A.(CAA)/203/MB/2025.

reserves were substantially in excess of its present and foreseeable business requirements and that the Scheme would enable it to utilise such surplus for the benefit of shareholders while retaining sufficient resources to meet its liabilities and business requirements. The Scheme was approved by the equity shareholders and unsecured creditors with the requisite majority, while the meeting of secured creditors was dispensed with based on their consent affidavits. As the company was listed, it had also received the requisite observation letters from the Stock Exchanges.

The Regional Director raised observations concerning protection of creditors and employees, accounting and tax compliances, and compliance with the provisions governing issue of preference shares and allotment. The company provided the necessary clarifications and undertakings, including compliance with Sections 55 and 63 of the Companies Act, 2013 and filing of the applicable return of allotment.

The NCLT found the Scheme to be fair and reasonable, and not contrary to law or public policy. Accordingly, noting that the requisite statutory compliances had been fulfilled, the NCLT sanctioned the Scheme. It further clarified that sanction of the Scheme would not prevent the Income Tax Department from examining any tax liability arising from the Scheme or taking appropriate action if the Scheme ultimately resulted in tax avoidance.

C. SEBI and FEMA highlights

1. SC[13]: Possession of UPSI and trading sufficient to establish Insider Trading

In the present case, the promoters of Tara Jewels Limited traded in the Company's shares while in possession of UPSI relating to the Company's adverse financial performance. The promoters sold substantial portions of their shareholding before the information was disclosed to the market. While the SEBI Whole Time Member found them guilty of insider trading, the SAT set aside the finding, accepting their explanation that the sale proceeds were used for financial restructuring and that there was no significant difference in the share price before and after disclosure of the UPSI.

The Supreme Court held that under the 2015 PIT Regulations, once possession of UPSI and trading during the relevant period are established, the trades are presumed to have been motivated by such information. The purpose for which the sale proceeds are used or whether the trader actually made a profit is irrelevant, unless the transaction falls within the specified defences under the Regulations. Accordingly, the Court restored SEBI's finding of insider trading and the direction for disgorgement of the loss avoided, while reducing the penalty imposed on the principal promoter

[13] Tara Jewels Limited v. SEBI, Civil Appeal No. 4905 of 2022, Supreme Court, judgment dated 11th August 2026

2. SEBI[14] : Family trust transfer for succession planning exempt from mandatory open offer

A promoter proposed to transfer his direct shareholding and interest in a promoter-group company to an irrevocable family trust, without consideration, for succession planning. The trust's trustees and beneficiaries were his immediate family and lineal descendants, with no change in aggregate promoter/promoter group or public shareholding or ultimate control. While the exemption framework required the transferor to have been disclosed as promoter for at least three years, this condition was not technically met as the company was listed only in October 2024. However, the transferor had been disclosed as promoter group in the pre-listing DRHPs and subsequently as promoter/promoter group. The proposed direct and indirect acquisitions attracted Regulations 3, 4 and 5 of the SAST Regulations, 2011, necessitating an open offer unless exempted by SEBI.

SEBI granted the exemption, holding that the transfer was an internal promoter-family reorganisation resulting only in a de jure change in ownership, without altering ultimate control or beneficial ownership or prejudicing public shareholders. The three-year disclosure condition was held to be satisfied in substance based on the pre-listing DRHP disclosures and subsequent promoter/promoter group disclosures. For the indirect acquisition through the promoter-group company, SEBI relied on its *MPS Limited* precedent, where it had accepted that the three-year promoter disclosure condition could be satisfied by the immediate holding company being disclosed as a promoter of the target company for the requisite period. Accordingly, SEBI granted the exemption from the open offer requirement, subject to prescribed conditions, while clarifying that the exemption was limited to the open offer obligation and did not extend to other applicable SEBI requirements.

Katalyst comment:

Based on the November 2023 SEBI circular, transfer of shares to a trust are usually approved by SEBI as a matter of process, assuming the conditions are satisfied. However, this exemption is helpful, in the sense that SEBI has taken a practical view that the three-year promoter condition is considered as satisfied, based on pre-listing DRHP disclosures.

3. SEBI[15] : Unlisted NCDs transferred to listed entity attract Regulation 62A of SEBI LODR

A wholly owned subsidiary transferred its business, including outstanding unlisted NCDs issued after 1 January 2024, to its listed holding company under a Business Transfer Agreement. The listed entity assumed the obligations under these NCDs, while the existing NCDs continued unchanged, with no fresh debentures, certificates or ISINs being issued. Regulation 62A of the LODR

[14] SEBI Exemption Order in the matter of Waaree Energies Limited (C.T. Doshi Family Trust), dated 3 July 2026.
[15] SEBI Informal Guidance Letter in Ananya Finance for Inclusive Growth Private Limited, dated 20th July 2026

Regulations requires a listed entity whose non-convertible debt securities are listed to list all non-convertible debt securities proposed to be issued on or after 1 January 2024 on a recognised stock exchange. The issue was whether this requirement would apply where the listed entity assumed existing unlisted NCDs pursuant to a business transfer, without issuing any new NCDs.

SEBI clarified that Regulation 62A cannot be avoided merely because the NCDs were transferred pursuant to a business transfer and no fresh securities were issued. Once the listed entity assumes and continues the obligations under outstanding unlisted NCDs issued on or after 1 January 2024, it must comply with Regulation 62A and bring such NCDs within the applicable listing framework, including the relevant listing and operational requirements.

4. SEBI[16] : Annual Report 2025-26 – Key call outs for listed companies, promoters and market participants

SEBI's Annual Report 2025-26 sets out inter alia the year's changes to the listing framework and the regulator's enforcement posture. Key developments vis-à-vis acquisitions, open offers, RPTs, buy-backs and Schemes of Arrangement are summarized below:

Sr.	Area	Particulars
1	**Open offers & change of control**	Open offers closed nearly doubled to 122 (FY25: 71), aggregating ₹35,185 crore, of which 118 were change-of-control driven—a strong uptick in control transactions and promoter exits.
2	**RPT materiality re-based**	The flat ₹1,000 crore materiality threshold is replaced by a scale-based cap of up to ₹5,000 crore linked to consolidated turnover (SMEs: ₹50 crore or 10%), effective 1 April 2025. Deal structuring and intra-group flows should be re-tested against the new turnover-linked test.
3	**Buybacks – tender route only**	Open-market buybacks are fully phased out from 1 April 2025; all 17 buybacks in FY26 took the tender route (offer size ₹19,238 crore). Relevant to exit and capital-return structuring.
4	**SAST Reg. 11 exemptions**	47 exemption applications filed and 33 granted (FY25: 43 / 19) under the Takeover Regulations—useful precedent for promoter reorganizations and inter-se transfers.
5	**Schemes of arrangement**	Observation letters issued on 92 schemes (FY25: 65). Merger/demerger activity before SEBI is rising; important to build the SEBI observation step into deal timelines.
7	**Informal guidance – now a pre-deal tool**	The SEBI (Informal Guidance) Scheme, 2025 (effective 1 December 2025) extends eligibility to prospective acquirers under the

[16]SEBI Annual Report 2025-26, published August 2026, available at sebi.gov.in

Sr.	Area	Particulars
		Takeover Regulations, with a 60-day outer limit and ₹50,000 fee. A workable route for open-offer trigger/exemption and scheme-structuring questions, though non-binding and fact-disclosure intensive.
8	**Disclosure timing (Reliance/Jio)**	SAT, affirmed by the Supreme Court, held that for a significant cross-border investment information becomes generally available only on company authentication—not a media leak—and the PIT disclosure standard is higher than LODR. Tighten media-leak and Reg. 30(11) protocols in live deals.
10	**Promoter demat freeze**	SAT, as affirmed by the Supreme Court, held that where a company faces a media report about a significant cross-border investment, the information is treated as "generally available" only once the company itself authenticates it — a newspaper leak does not start the clock. The company therefore carries the burden to promptly confirm or deny the reported event to the exchanges under Regulation 30(11) of the LODR. The judgment also clarified that the disclosure standard under the PIT Regulations is higher than under the LODR: what is price-sensitive is material, but not all material information is automatically UPSI. In live deals, tighten media-leak response protocols and the Regulation 30(11) confirm/deny process.

Katalyst comment:

The SEBI's annual report 2025-2026 gives some idea of the regulator's thinking and to that extent, it is important to take cognizance of these issues.

5. SEBI[17] proposes to simplify the Settlement regulations framework with faster and more predictable resolution

SEBI has proposed replacing the existing SEBI (Settlement Proceedings) Regulations, 2018 with a new settlement framework aimed at simplifying the computation of settlement amounts and making the settlement process faster and more predictable.

The key changes proposed under the draft SEBI (Settlement of Proceedings) Regulations, 2026 are set out below. SEBI has invited comments and suggestions on the draft Regulations by September 4, 2026.

[17] SEBI, Consultation Paper on Review of the Settlement Framework, proposing the SEBI (Settlement of Proceedings) Regulations, 2026, dated 14th August 2026

Key change	Existing provision (2018 Regulations)	Proposed provision (2026 Regulations)
Settlement amount formula	Settlement amount is determined using the existing Penalty Computation Formula (PCF) and Regulatory Action Factor (RAF), applied to the relevant Base Value and Base Amount.	Introduces a simpler formula: Settlement Amount = Base Amount × (S + R + G + A − M), where S = Stage of proceedings, R = Prior regulatory action, G = Gravity of violation, A = Aggravating factors and M = Mitigating factors.
Base amount	Base amounts are prescribed under Schedule II, with wrongful gains/investor losses considered in specified cases.	Base Amount will be linked to the minimum statutory penalty under the applicable securities laws, with different multipliers based on the category of applicant.
Wrongful gains / investor loss	May form part of the settlement amount computation, in addition to disgorgement.	Excluded from the Base Amount and dealt with separately through disgorgement, avoiding double counting.
Counts of default	Computation may be based on each count of alleged default.	Settlement liability will be based on the underlying act/default, with specified related acts capable of being treated as a single count.
Aggravating / mitigating factors	Up to 7 aggravating and 3 mitigating factors.	Maximum 5 aggravating and 5 mitigating factors, each carrying a value of 0.20.
Settlement before SCN	No separate settlement notice before issuance of an SCN.	SEBI may issue a settlement notice before an SCN, except where prosecution is contemplated, giving the noticee 60 days to apply for settlement.
Fast-track settlement	No separate fast-track mechanism.	Introduces fast-track settlement for specified violations and cases involving settlement amounts up to ₹10 lakh.
Time for filing application	60 days from service of SCN.	Proposed to be increased to 90 days.
Withdrawal / re-filing	Re-filing after withdrawal attracts an additional 50% settlement amount.	Additional amount proposed to be reduced to 20%.
Settlement at appellate stage	Existing framework does not expressly provide for settlement at	Expressly permits settlement at the SAT and Supreme Court stages,

	the SAT/Supreme Court stage in the proposed manner.	subject to the proposed computation methodology.
Transitional provisions	No comparable transition mechanism under the 2018 framework.	Provides a mechanism for certain pending, rejected, withdrawn or returned applications to be dealt with under the proposed framework, subject to specified additional settlement amounts.

Katalyst comment:

The SEBI Settlement framework was introduced in 2007 by way of a circular; there were no Settlement Regulations. SEBI Settlement Regulations came in 2014 and laid down a straight-jacketed formula for settlement, and even within that straight-jacketed framework, there was complexity and subjectivity. Now, in this context, the revised framework is intended to address this issue.

6. SAT Mumbai[18] : Settlement with SEBI does not bar Stock Exchange from imposing fine for the same LODR violation

A listed company was non-compliant with the Board composition requirements under Regulation 17(1)(b) of the SEBI (LODR) Regulations, 2015; but it subsequently settled the violation with SEBI. The Stock Exchange nevertheless imposed a separate fine for the same violation under its SOP framework and the issue arose as to whether settlement of the violation with SEBI precludes the Stock Exchange from separately imposing a fine for the same violation.

The SAT held that settlement with SEBI does not bar the Stock Exchange from taking action under Regulation 98 of the LODR Regulations, which operates in addition to liability under securities laws. The Tribunal noted that SEBI and Stock Exchange compliance operate in different spheres and that the settlement order itself preserved the Stock Exchange's power to take action. Accordingly, the pleas of res judicata and double jeopardy were rejected.

7. RBI[19]: Draft Foreign Investment Rules, 2026 propose a revamped foreign investment regime

On 21 July 2026, the RBI released the draft Foreign Exchange Management (Foreign Investment) Rules, 2026, proposing to replace the NDI Rules, 2019. Key changes include consolidation of the framework, separation of policy and procedure between DPIIT and RBI, expansion of eligible investee entities, a principle-based definition of “equity”, express coverage of direct and indirect

[18] Hindustan Foods Limited v. BSE Limited & Anr., Appeal No. 178 of 2024, SAT Mumbai, order dated 13 August 2026

[19] *Draft Foreign Exchange Management (Foreign Investment) Rules, 2026, RBI, 21 July 2026*

foreign investment, a uniform 10% FDI/FPI threshold for companies and LLPs, replacement of FOCC with the "Foreign Controlled Entity" (FCE) concept, and simplified rules on gifting, pledging and pricing of securities. Comments are invited until 31 August 2026.

A comparative analysis of the key changes proposed under the Draft Rules, 2026 vis-à-vis the NDI Rules, 2019 is set out below:

Sr.	Topic	NDI Rules, 2019	Draft Rules, 2026
1	**Structure of Rules**	10 chapters and 11 schedules, covering multiple investor classes, investment vehicles, transfers and downstream investment across separate schedules.	Consolidated into 4 chapters and 3 annexures; policy and procedural aspects shifted to the Foreign Investment Policy and RBI regulations for easier navigation and amendment.
2	**Eligible investee entity**	No single umbrella term — 'Indian company/entity', 'LLP' and 'investment vehicle' defined separately under different provisions.	One consolidated definition covering companies/body corporates, LLPs, SEBI-registered investment vehicles (REITs, InvITs, AIFs, VCFs, and mutual funds/ETFs investing >50% in equity), and — newly — partnership firms and proprietary concerns.
3	**Scope of foreign investment**	Investment in equity instruments of an Indian company or capital contribution to an LLP.	Investment in the equity of an eligible investee entity — now spanning companies, LLPs, investment vehicles, partnership firms and proprietary concerns; expressly covers both direct and indirect investment.
4	**Equity**	'Equity instruments' — equity shares, compulsorily convertible preference shares (CCPS), compulsorily convertible debentures (CCDs) and share warrants.	Broader concept of 'equity' — instruments classified as equity per applicable accounting standards, units of investment vehicles, and participating interest/right in oil fields or mines.
5	**FDI definition**	Any investment in an unlisted company = FDI; in a listed company, 10% or more (fully diluted) = FDI. FDI status retained even if holding later falls below 10%.	FDI means foreign investment of 10% or more in the equity of a company or LLP; FPI means below 10%. Listed/unlisted distinction and the 'retention' rule are not reproduced.
6	**Control**	Meaning assigned under the Companies Act, 2013; for an LLP, the right to appoint a	Right to appoint a majority of directors or to control management/policy decisions — via shareholding,

Sr.	Topic	NDI Rules, 2019	Draft Rules, 2026
		majority of designated partners.	management rights, shareholders' or voting agreements conferring 10%+ voting rights, or any other manner.
7	**Downstream / FOCC**	Rule 23 — comprehensive downstream-investment framework with ownership and control tests, funding-source restrictions, approval and disclosure obligations.	Replaced by the 'Foreign Controlled Entity' (FCE) concept; FCE investments treated as foreign investment, with sectoral conditions applying only where specifically prescribed under Annexure-II.
8	**RBI vis-à-vis DPIIT**	Rule 2A — RBI administers the Rules and issues directions/clarifications; DPIIT's policy role not expressly provided.	RBI administers the Rules generally, but DPIIT expressly owns interpretation of the Foreign Investment Policy and issuance of related directions.
9	**Bonus / rights issues**	Governed under separate provisions with detailed conditions.	Compliance with entry routes, sectoral caps and sectoral conditions is not required for bonus or rights issues where the existing shareholding pattern remains unchanged.
10	**Pricing guidelines**	Rule 21 — detailed provisions covering issue price, resident/non-resident transfers, swaps, MOA subscriptions and warrants.	Consolidated into three categories: SEBI-regulated listed companies and investment vehicles; companies listed on an international exchange (Annexure-I); and all other cases on arm's-length valuation certified by a CA, Merchant Banker or Cost Accountant.
11	**FPI to FDI reclassification**	Schedule II — breach of threshold requires divestment within 5 trading days, failing which auto-reclassified as FDI, with reporting.	Retains only the general principle that an FPI crossing 10% may be reclassified as FDI (subject to Annexure-II and RBI/SEBI directions); operational timelines omitted.
12	**Gift & pledge**	Gift needs prior RBI approval, ≤5% of paid-up capital, ≤USD 50,000, donor/donee to be relatives; pledge governed via entry routes, caps and pricing.	Gift — no RBI approval, value within LRS limits, donor a close relative under the Companies Act, 2013; pledge expressly recognised as a mode of transfer, invocation subject to Rule 8.
13	**Non-repatriation**	Schedule IV — detailed provisions for NRI/OCI investments (equity, LLPs,	Rule 8(3) — investments on a non-repatriation basis generally exempt from Rule 8 conditions, except in

Sr.	Topic	NDI Rules, 2019	Draft Rules, 2026
		firms and proprietary concerns) on a non-repatriation basis.	prohibited sectors; drafted generally and not limited to NRIs/OCIs.
14	**Immovable property**	Chapter IX (Rules 24–33) — comprehensive framework for acquisition and transfer of immovable property in India by NRIs, OCIs and other PROIs.	No provisions on immovable property; Rule 2(1) limits applicability to foreign investment in equity, thereby excluding immovable property from scope.
15	**FVCI / convertible notes / mergers**	Dedicated provisions — FVCI (Schedule VII), convertible notes by start-ups (Rule 18), and NCLT-approved mergers/amalgamations (Rule 19).	No corresponding provisions carried forward in the Draft Rules.
16	**Onus of compliance**	Responsibility implied across individual provisions rather than stated as a general rule.	Rule 9 — single provision expressly placing compliance on the foreign investor and eligible investee entity, or the transferor and transferee, as applicable.

Katalyst comment:

It would be seen that there are significant number of changes and one will have to wait for the draft rules to be legislated into final rules, but the above is unlikely to change materially and therefore important to take cognizance of this even at this stage

D. Stamp Duty and other Highlights

8. MP HC[20]: Registration under Chapter XII of Companies Act, 2013 of partnership firm into company does not attract stamp duty

Gopal Print Pack, a partnership firm, was registered (*see Katalyst comment below*) into a private limited company under Section 366 of the Companies Act, 2013, with the same partners becoming shareholders/directors and retaining the same profit-sharing ratio. Prior to the registration, the firm held leasehold rights over an industrial plot, for which the requisite stamp duty had already been paid. Upon registration, the firm's leasehold property and other assets vested in the company by operation of law under Section 368, without any consideration or separate instrument of transfer. The company thereafter executed an amended lease deed to reflect the registration and change in name; however, the stamp authorities treated the amended lease deed as a fresh conveyance and sought to levy deficit stamp duty.

The Court held that the vesting of the firm's property in the company was statutory and did not constitute a transfer or conveyance attracting stamp duty — a principle laid down under the erstwhile Companies Act, 1956 in ***Vali Pattabhirama Rao v. Sri Ramanuja Ginning & Rice Factory (P) Ltd***[21] and equally applicable to a registration under the corresponding Chapter XXI (Section 366 onwards) of the Companies Act, 2013. The amended lease deed merely reflected the registration and did not create or transfer any new right in the property. Further, even assuming that the instrument constituted a conveyance, the absence of consideration meant that the charging and computation provisions of the Stamp Act could not operate. The Court accordingly set aside the stamp duty demand and directed registration of the amended lease deed without insisting on payment of stamp duty.

<u>Katalyst comment:</u>

Although the High Court order talks of "conversion", it appears that what is meant is a "registration" under the relevant provisions of the Companies Act. Earlier these provisions were contained in section Part IX of the 1956 Act and now contained in Chapter XXI of the 2013 Act;

[20] Pacmor Flexible Limited Company v. State of Madhya Pradesh, 31st July 2026, W.P. No. 11806 of 2026.
[21] Vali Pattabhirama Rao v. Sri Ramanuja Ginning & Rice Factory (P) Ltd, AIR 1984 AP 176

Section 368 of the Companies Act talks of “vesting” of property on “registration”. Accordingly, the term used in the summary above is “registration” and not “conversion”.

9. DGFT[22]: Inventory-based cross-border e-commerce export framework introduced under FTP

The Directorate General of Foreign Trade (“DGFT”) has introduced an Inventory-based Cross-border E-Commerce Facilitation Framework under the Foreign Trade Policy 2023, permitting non-marketplace e-commerce entities to undertake export-only inventory operations through a registered Exporter-on-Record (“EOR”). The EOR, holding a valid IEC and GSTIN, may procure goods from Seller-on-Record (“SOR”)s against confirmed overseas export orders, hold such goods as export inventory and undertake the export process. Only goods of Indian origin are eligible, and title to the goods can pass from the SOR to the EOR only against a confirmed export order, with speculative inventory build-up prohibited.

The framework requires the EOR to maintain a digital repository for identification, segregation and traceability of export inventory and to pay the SOR within 7 days of acceptance of goods, irrespective of receipt of payment from the overseas buyer. The EOR may claim Export Rebates and Refunds (“ERR”), including Duty Drawback, RoDTEP and RoSCTL, and must apportion the seller-attributable benefits among SORs in proportion to their respective FOB value, after deducting permitted administrative charges. Returned or rejected consignments cannot be sold in the domestic market and reverse logistics costs are to be borne by the EOR.

Katalyst comment:

The framework is a welcome step towards facilitating cross-border e-commerce exports by creating a structured inventory-led model while providing greater payment certainty to Indian sellers and a defined mechanism for sharing export-linked benefits

E. Goods and Service Tax Related Highlights

1. Allahabad HC[23]: Clubbing the date for filing the reply with the date of personal hearing violates the principles of natural justice

The taxpayer was issued an SCN for F.Y. 2021-22 under Section 73 of the CGST Act, along with two reminder notices, which incorrectly fixed the same date for filing the reply and attending the personal hearing. No further notice was issued thereafter, and the department proceeded to pass the final order without fixing or communicating a fresh hearing date. The taxpayer contended that

[22] *DGFT Notification No. 27/2026-27, dated 5 August 2026.*
[23] Jai Santoshi Maa vs. State of U.P. [(TS-560-HC(ALL)-2026-GST) WRIT TAX No. 3201 of 2026) dated 23.07.2026]

he was illiterate and became aware of the proceedings only when recovery action was initiated against him. He also submitted that the GST portal was operated by his advocate and, accordingly, the mobile number and email address registered on the portal belonged to his advocate.

The Allahabad High Court held that the proceedings were vitiated on account of violation of the principles of natural justice, as the department could not prescribe a common date for filing the reply and attending the personal hearing and, thereafter, proceed to pass the final order without fixing or communicating a fresh hearing date. The Court accordingly set aside the impugned order and granted the taxpayer two weeks' time to file a fresh reply. The department was further directed to grant a personal hearing upon providing at least 15 days' advance notice.

2. Telangana HC[24]: GST registration cancellation quashed where based on a ground not mentioned in the original SCN

The department issued an SCN proposing cancellation of the taxpayer's GST registration on three grounds, namely, obtaining registration by fraud, issuing invoices without actual supply of goods, and not carrying on business from the declared place of business. However, the final cancellation order was passed on an entirely different ground, i.e., non-filing of six consecutive GST returns, which had neither been set out in the SCN nor communicated to the taxpayer at any stage.

The High Court held that a taxpayer must be made aware of the specific case against it and provided an effective opportunity to respond, and that an order cannot be based on a ground which was never part of the original notice. Since the taxpayer was never called upon to explain the alleged non-filing of returns and the same was made the basis for cancellation, the Court held that the order was in breach of the principles of natural justice and accordingly quashed the cancellation order as well as the underlying SCN, restored the taxpayer's GST registration, and permitted the department to issue a fresh notice, if it intended to pursue cancellation, setting out the grounds properly.

Katalyst comments:

This case is a useful reminder that an SCN sets the outer limit of the case the department can build against a taxpayer, and any final order relying on a fresh, undisclosed ground is liable to being struck down.

[24] A.P. Enterprises v. Superintendent of Central Tax [(2026 SCC OnLine TS 7156) dated June 25, 2026]

3. Calcutta HC[25]: GST order not time-barred where digitally signed within limitation period despite subsequent portal upload

For the relevant tax period, the statutory deadline for passing the final order under Section 73 expired on April 30, 2024. The proper officer digitally signed and authenticated the order on the last date of the limitation period, shortly before midnight, but the summary of the order was uploaded on the GST portal only on May 1, 2024. The taxpayer contended that the order was time-barred since it became available on the portal only after expiry of the limitation period. The High Court examined the distinction under Section 73 between "issue" and "serve" and observed that the limitation provisions are expressly linked to issuance of the order and not its service. Section 169 prescribes the manner of service and, therefore, uploading the summary of the order on the GST portal operates as a mode of service and does not determine whether the order was validly issued within the prescribed limitation period.

The High Court dismissed the writ petition and held that formal issuance of the order is complete upon its signing and authentication by the competent authority. Since the order was digitally signed on the last day of the limitation period, its subsequent upload on the GST portal did not render the order time-barred or invalid.

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[25] M.M. Motors & Anr. v. The Senior Joint Commissioner of Revenue |(TS-504-HC(CAL)-2026-GST) dated July 13, 2026]