

Decoding Budget 2026

Sudin Sabnis



Agenda

- Amendments for Attracting Global Business and Investment
- Resolving disputes: Retrospective/ Clarificatory amendments
- Transfer Pricing Amendments



Attracting Global Business and Investment

Foreign Companies availing Data Centre Services from India

EXISTING ISSUES

- PE issues for overseas entity using data centres in India
 - Indian company sets up data centres in India
 - Non-residents procures data centre services from Indian company
 - Income earned from non-resident customers alleged to be attributed to Indian data centre

PROPOSED AMENDMENT

- To attract investment in data center and promote AI data centre framework in India, following exemption provided to non-residents:

INCOME EXEMPT	ELIGIBLE PERSON	CONDITIONS
Income accruing by way of procuring data centre services from a specified data center	Foreign company	<ol style="list-style-type: none">Foreign company to be notified by Central Govt.Foreign company does not own or operate any physical infrastructure or any resources of specified data centreAll sales to Indian users are made through an Indian reseller companyForeign company furnishes information in prescribed form and mannerExemption available till tax year ending on 31 March 2047

Foreign Companies availing Data Centre Services from India

PROPOSED AMENDMENT [CONTD.]

- “Data Centre” means a dedicated secure space within a building or centralised location where computing and networking equipment is concentrated for the purpose of collecting, storing, processing, distributing or allowing access to large amounts of data.
- “Data Centre Services” means services provided by a data centre through the use of physical infrastructure in India.
- “Specified Data Centre” means a data centre set up under approved scheme and is notified by the CG, and is owned and operated by an Indian company.
- Proposed insertion of safe harbour margin of 15% w.r.t. provision of data centre services by Indian company to AE

POINTS TO PONDER

- Nature of services income covered by exemption? For instance, income from streaming services, SAAS, AI services?
- PE exposure in cases not covered by exemption?

Electronics Manufacturing in India

(1/2)

FOREIGN COMPANIES PROVIDING CAPITAL EQUIPMENT TO ELECTRONIC GOODS MANUFACTURER

EXISTING ISSUES

- For carrying out manufacturing through Indian contract manufacturer, non-resident sends equipment to India
- Ownership of equipment remains with non-resident and contract manufacturer granted right to use equipment
- Right of access to equipment with non-resident- Tax uncertainty because of PE risk

PROPOSED AMENDMENT

Following exemption provided to foreign companies engaged in electronics sector:

INCOME EXEMPT	ELIGIBLE PERSON	CONDITIONS
Any income from provision of capital goods, equipment or tooling to a contract manufacturer, being a company resident in India	Foreign company providing capital goods	<ol style="list-style-type: none">Ownership of capital goods/ equipment to be with Foreign Co.<u>Control and Direction with CM</u>CM located in custom bonded area;<u>Electronic Goods manufactured on behalf of Foreign Co. for a consideration.</u><u>Exemption for a period upto the tax year 2030-2031.</u>

Electronics Manufacturing in India

(2/2)

FOREIGN COMPANIES STORING GOODS IN BONDED WAREHOUSES IN INDIA

PROPOSED AMENDMENT

- Safe harbour proposed for non-residents for component warehousing in a bonded warehouse:
 - Profit margin of 2 percent of the invoice value.
 - The resultant tax of about 0.7 percent will be much lower than in competing jurisdictions.

POINTS TO PONDER

- What happens after TY 2030-31?
- Need for exemption when control and direction w.r.t. equipment is with CM?
- Position for cases not covered by exemption?
- Interplay with position under customs laws
- What if contract manufacturer sells to Indian AE instead of non-resident supplying capital equipment?
- 2% safe harbour for warehousing – what triggers the need?

Exemption for Non-Resident Individuals Rendering Services in India

EXISTING ISSUE

- If non-resident individual visits India to render service and qualifies as Indian tax resident, global income taxable in India
- Tax paid overseas on foreign sourced income allowable as credit
- Where no tax in source country, foreign income gets taxed in India

PROPOSED AMENDMENT

INCOME EXEMPT	ELIGIBLE PERSON	CONDITIONS
Any income which accrues or arises outside India, and is not deemed to accrue or arise in India	Individual who is : <ul style="list-style-type: none">• NR for immediately preceding 5 consecutive TY• Comes to India for rendering services in connection with scheme to be notified	<ol style="list-style-type: none">a. Renders any service in connection with the scheme notified by CGb. <u>Exemption for 5 consecutive tax years beginning from the first TY of visit</u>c. Compliance with other conditions to be prescribed

Resolving Disputes: Retrospective/Clarificatory Amendments

Jurisdiction to issue Reassessment Notices (JAO vs. FAO)

PRESENT POSITION & ISSUE:

- S. 148A and S. 148 (1961 Act) - Notices to be issued in reassessment proceedings for pre-reassessment enquiry and initiating reassessment respectively (*2025 Act – S. 281 and S. 280*)
- Faceless Assessment Scheme: 148A proceedings and 148 notice to be issued by FAO
- Practically, 148A proceedings and 148 notices by JAO instead of NFAC
- Divergent HC rulings:
 - TKS Builders Pvt. Ltd (Delhi HC) → *favour of revenue*
 - Hexaware Technologies Ltd. (Bombay HC) → *favour of assessee*
- Batch of more than 1000 SLPs pending before SC

PROPOSED AMENDMENT

- Retrospective amendment with effect from 01.04.2021
 - “Notwithstanding anything contained in any judgement/ order/ decree of any court”
 - Only JAO has jurisdiction to issue above notices

POINTS TO PONDER

- Impact on proceedings before SC?
- Disputes already decided in favour of taxpayers by HC/ITAT- Notices validated by proposed amendment?

Validation of Tax Demands (Sample from Finance Act 2012)

- This provision was introduced to retrospectively validate all tax notices, demands, assessments, impositions, and collections made under the Income-tax Act, 1961, notwithstanding any contrary judgment, decree, or order of any court or tribunal.
- *119. Notwithstanding anything contained in any judgement, decree or order of any Court or Tribunal or any authority, all notices sent or purporting to have been sent, or taxed levied, demanded, assessed, imposed, collected or recovered or purporting to have been levied, demanded, assessed, imposed, collected or recovered under the provisions of Income-tax Act, 1961, in respect of income accruing or arising through or from the transfer of a capital asset situate in India in consequence of the transfer of a share or shares of a company registered or incorporated outside India or in consequence of an agreement, or otherwise, outside India, shall be deemed to have been validly made, and the notice, levy, demand, assessment, imposition, collection or recovery of tax shall be valid and shall be deemed always to have been valid and shall not be called in question on the ground that the tax was not chargeable or any ground including that it is a tax on capital gains arising out of transactions which have been taken place outside India, and accordingly, any tax levied, demanded, assessed, imposed or deposited before the commencement of this Act and chargeable for a period prior to such commencement but not collected or recovered before such commencement, may be collected or recovered and appropriated in accordance with the provisions of the Income-tax Act, 1961 as amended by this Act, and the rules made thereunder and there shall be no liability or obligation to make and refund whatsoever,*

Absence of Document Identification Number - Curable Defect

PRESENT POSITION:

- CBDT Circular 19/2019 dt. 14.08.2019
 - Computer-generated DIN mandatory to be quoted on any communication issued by Department
 - Any order, notice or communication without DIN will be *non est*
- Assessments set aside by various HCs due to absence of a computer-generated DIN on notices and assessment orders
 - Order w/o DIN invalid → Brandix Mauritius Holdings Ltd (Delhi HC)
 - Notice w/o DIN invalid → Hexaware Technologies Ltd (Bombay HC)

PROPOSED AMENDMENT:

- Any mistake/ defect/ omission in quoting DIN not to invalidate assessment
- If assessment order referenced by DIN in any manner → Assessment valid
- Amendment in 1961 Act – Prospective as per FB w.e.f 1.4.2026 → Retrospective as per memorandum (w.e.f 1.10.2019)

POINTS TO PONDER

- Status of communication, notices or orders other than assessment orders- penalty, orders for change of jurisdiction or for cancellation of registration of charitable entities?
- Fate of decided and pending cases?

Limitation Period in case of DRP Proceedings

PRESENT POSITION & ISSUE

- S. 144C of 1961 Act - Procedure and limitation period for assessment of non-residents and TP matters through DRP
- S. 153/ S. 153B of 1961 Act - Limitation period for completion of assessment / re-assessment / Search proceedings
- Corresponding provisions in 2025 Act – S. 275 and S. 286
- Dispute: Whether proceedings u/s. 144C are subject to the limitation period u/s. 153?
- HC judgments in favour of taxpayers, Split verdict of SC in ***Shelf Drilling***

PROPOSED AMENDMENTS

- Retrospective amendments proposed from with effect from 1.04.09 to clarify:
 - Timeline for passing Final Assessment order governed by time limitation provided under S. 144C
 - S. 153 provides timeline for passing draft order under S. 144C(1)

POINTS TO PONDER

- Ambiguous language of amendment may still raise issues
- Fate of ongoing and decided cases before ITAT, HC and SC?

Time limit for passing of TP Order

- TPO is mandated to pass an order at least 60 days prior to/before the expiry of the limitation period prescribed under section 153 of the 1961 Act or 286/296 of the 2025 Act
- Courts have taken a view that the aforesaid period of 60 days is to be computed by excluding the last date of limitation (*Madras HC in Saint Gobain India (P.) Ltd. ([2022] 137 taxmann.com 215 (Madras)*)

PROPOSED AMENDMENT

- Amendment proposed in 1961 Act (w.e.f. 01.06.2007) and 2025 Act (w.e.f. 01.04.2026) to overcome the effect of Court ruling and bring clarity
- Proposed timeline to pass order by TPO is tabulated below:

Limitation as per 153	LIMITATION TO PASS ORDER BY TPO (IT Act, 1961)	LIMITATION TO PASS ORDER BY TPO (IT Act, 2025)
31st March (not a leap year)	30th January	31st January
31st March (leap year)	31st January	31st January
31st December	1st November	31st October

A stack of Indian Rupee banknotes is shown, slightly out of focus, with the text 'BANK OF INDIA' and 'RESERVE BANK OF INDIA' visible on the notes. The background is a dark blue gradient.

Transfer Pricing Amendments

Safe Harbour for IT Services

PRESENT POSITION

- Current safe harbour margin for IT, ITeS, KPOs and Contract R&D → 17% to 24% on operating cost
- Threshold for availing → service value of INR 300 Crores (~USD 33 million)
- Interface involved with tax officer for approval

PROPOSED AMENDMENT- AS PER FM'S SPEECH

- IT, ITES, KPOs and Contract R&D to be clubbed as IT services subject to safe harbour margin of 15.5%
- Threshold for safe harbour increased to INR 2,000 Crores (~218 million)
- Approval by automated rule-driven process without AO intervention
- Once applied – Benefit available for 5 years at the choice of taxpayer
- Unilateral APA for IT services to be completed within 2 years (+ 6 months at assessee's request)
- Rule yet to be notified

IMPACT OF AMENDMENT

- Amendment shall provide certainty and reduce ongoing litigation in transfer pricing significantly
- Reasonable rate of 15.5% will motivate taxpayers to opt into safe harbour
- Taxpayers having related party transaction value exceeding INR 2000 crores can opt into unilateral APA

Modified Return – Giving Effect to Advance Pricing Agreements

PRESENT POSITION

- To give effect to APA, law provides for filing modified return by person entering into APA (S. 168(1) of 2025 Act)
- Provision absent for AE to modify its return

PROPOSED AMENDMENT

- AE of the APA Applicant may also furnish a *'return'* or *'modified return'* for years covered by APA
- *'Return'* or *'modified return'* can be filed within 3 months from the end of the month in which the APA is entered.
- Applicable w.e.f. 1st April 2026 (Tax Year 2026-27 & thereafter).

IMPACT OF AMENDMENT

- Modified return
 - Non-resident AE will now be able to claim refunds if APA results in decrease in taxable income for resident AE
 - Where AE did not file return due to exemption provided in S. 115A, return can be filed pursuant to APA to claim refund

THANK YOU!