# TAX MATTERS

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## Contents



**DID YOU KNOW?**

With a view to promote exports of Indian products through e-commerce, the Government has permitted e-commerce entities having FDI to undertake inventory-based operations exclusively for export of goods manufactured or produced in India. This relaxation removes existing FDI restrictions on inventory-based e-commerce models for exports where FDI was not permitted, thereby facilitating easier access to international markets for eligible export transactions.


We would like to take this opportunity to announce that JMP Advisors has recently been awarded **'Tax Expert of the Year – India' at the 'Advisory Excellence Annual 2026 Awards'** for its outstanding services. We are proud to receive this accolade and endeavour to continue providing high-quality services to our clients!

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 August 2026:

- **Indian subsidiary distributing products on a principal-to-principal basis does not constitute a PE of a foreign enterprise**

  - Bloomberg LP v. Addl. DIT (International Taxation)[1]

Bloomberg LP ('the taxpayer') is a US-based enterprise engaged in the business of providing financial information, news, market data, analytics and media content through its web portal and web network-based product, Bloomberg Professional Services ('BPS'). The taxpayer had an Indian subsidiary, which functioned as a distributor of Bloomberg products and services in India.

The Indian subsidiary entered into separate agreements with Indian customers and sold Bloomberg products to such customers in its own name. During the relevant years, the taxpayer received licence fees from the Indian subsidiary towards the distribution of BPS and offered such receipts to tax in India as royalty under the domestic tax law.

Pursuant to scrutiny proceedings, the tax officer held that the Indian subsidiary constituted a Dependent Agent Permanent Establishment ('DAPE') of the taxpayer as per Article 5 of the India-US Double Taxation Avoidance Agreement ('DTAA') since the Indian subsidiary was exclusively engaged in distributing Bloomberg products, was economically dependent on the taxpayer and operated under contractual restrictions imposed by the taxpayer.

Without prejudice to the DAPE allegation, the tax officer further contended that various employees of the taxpayer visited India and participated in activities such as training, product support, gathering news and assisting Indian operations, resulting in the creation of a Service PE under the DTAA. Having concluded that a PE existed, the tax officer attributed a substantial portion of the taxpayer's receipts to the alleged PE and brought the same to tax in India.

On appeal, the first appellate authority upheld the tax officer's conclusions, following which the taxpayer filed an appeal before the Mumbai Income Tax Appellate Tribunal ('Tribunal').

Before the Tribunal, the taxpayer submitted that the Indian subsidiary functioned as an independent distributor and not as an agent acting on behalf of the taxpayer. The taxpayer further contended that the Indian subsidiary had no authority to conclude contracts on behalf of the taxpayer, did not maintain any stock on behalf of the taxpayer and did not habitually secure orders for the taxpayer within the meaning of Article 5(4) of the India-US DTAA.

In relation to the Service PE allegation, the taxpayer argued that the visits of its employees to India were limited to stewardship, oversight, training, administrative support and other preparatory and auxiliary activities. Hence, the taxpayer submitted that the said activities did not result in a Service PE under Article 5 of the DTAA.

The Mumbai Tribunal analysed the Distribution Agreement, sample contracts and relevant provisions of the India-US DTAA and made the following observations:

i. The Distribution Agreement and customer contracts demonstrated that the Indian subsidiary sold Bloomberg products and services to Indian customers on a principal-to-principal basis.

ii. The Indian subsidiary neither had the authority to conclude contracts on behalf of the taxpayer, nor maintained stock for delivery, nor habitually

[1] ITA Nos.5529/MUM/2014 & 5530/MUM/2014

secured orders wholly or almost wholly for the taxpayer. Therefore, the conditions for a DAPE under Article 5(4) were not satisfied.

iii. The tax authorities failed to establish that services by the taxpayer to the Indian subsidiary were anything more than stewardship or auxiliary functions, or that they fell outside the exclusions available under the India-US DTAA for Service PE purposes.

Accordingly, the Tribunal held that taxpayer had neither a DAPE nor a Service PE in India. Therefore, no profits could be attributed to a non-existent PE. The Tribunal further noted that even otherwise, arm's length remuneration of the Indian subsidiary would limit any further profit attribution.

***JMP Insights –*** *The ruling reaffirms that an Indian subsidiary acting as an independent distributor on a principal-to-principal basis does not create a PE merely because it exclusively distributes products of its foreign parent. It also clarifies that stewardship, training and support activities undertaken by the foreign enterprise do not automatically result in a Service PE. The decision provides useful guidance for multinational groups by observing that PE exposure must be determined based on the actual conduct of the parties.*

## ➢ Admitted supervisory PE does not extend taxability to unrelated offshore supply income

- Paul Wurth Italia SPA vs DCIT[2]

The taxpayer, an Italian tax resident, supplied equipment and designs to Indian customers. It also provided onshore supervisory services to Indian customers for iron production projects. Separate contracts were entered into for equipment and integrated designs, indigenous equipment designs, civil works designs and supervisory services, each with independent consideration. The equipment and spare parts were manufactured in Italy and supplied on an FOB basis, with title and risk passing to the Indian customers outside India. The payment was also received offshore in foreign currency.

The taxpayer claimed the offshore supply receipts as not taxable in India. As the taxpayer provided onshore supervisory services and the activities exceeded the six-month threshold under Article 5(2)(j), it admitted a supervisory PE in India and offered the supervisory service fees to tax as business profits under Article 7, on a net basis.

The tax officer rejected the taxpayer’s claim on offshore supply receipts and held that the taxpayer had a fixed place PE in India through its Indian subsidiary (IC). Applying the Force of Attraction (FOA) rule, the officer treated the entire offshore supply receipts, including equipment and designs for indigenous equipment and civil works, as taxable business income attributable to the PE. The fees for supervisory services were accepted as business profits.

The Commissioner of Income-tax (Appeals) ['CIT(A)'] granted relief to the taxpayer, holding that the taxpayer did not have a fixed place PE in India and deleting the addition on offshore supply of equipment and integrated designs. However, the CIT(A) held that no supervisory PE existed and re-characterised the supervisory receipts as fees for technical services ('FTS'). Aggrieved, both the taxpayer and the Revenue filed cross-appeals before the Delhi Bench of Income-tax Appellate Tribunal ('Tribunal').

Based on the facts available on the case, the Tribunal made the following observations:

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[2] DCIT v. Paul Wurth Italia SPA, ITA No.5254/Del/2017 and others

(i) No fixed place PE in India

The Tribunal held that mere signing of the supply contract by IC's representative as a witness could not lead to an inference that IC had any role in the signing or securing of the contract or that it constituted a fixed place PE. No evidence was brought on record by the Revenue to demonstrate that the taxpayer's employees had any control over the premises of IC or the Indian customers. The Tribunal also noted that IC was only an associate of the taxpayer. The mere existence of a group entity in India does not by itself lead to the creation of a PE.

(ii) Title in goods transferred outside India

Relying on the Delhi High Court's decision in Linde AG[3], the Tribunal held that the FOB terms, together with payment through an irrevocable letter of credit naming the Indian customer as consignee, showed that ownership of the equipment passed outside India. The Tribunal further held, relying on DIT v. LG Cables[4], that the 'Acceptance Test' clause and the customer's right to reject the goods were conditions relating to successful installation and did not shift the situs of sale to India.

(iii) FOA rule cannot be invoked in absence of a fixed place PE or nexus with the supervisory PE

The Tribunal held that the FOA rule under Article 7(1) of the India-Italy Double Taxation Avoidance Agreement ('DTAA') could be invoked only where the taxpayer carried on business in India through a PE. The Tribunal held that no fixed-place PE existed in India and found no evidence to establish that the admitted supervisory PE had any role in the offshore supply of goods. The Tribunal further noted that the supply activity was carried on entirely outside India and, in any event, had preceded the coming into existence of the supervisory PE. Accordingly, the Tribunal held that attribution of profits arising from the offshore supply to the supervisory PE by invoking the Force of Attraction (FOA) rule was unwarranted.

(iv) Supply of designs for indigenous equipment and civil works not royalty/FTS

The Tribunal noted that the designs were tailor-made to the specifications of the equipment installed and were inextricably linked to the offshore supply of equipment. The Indian customers received no right to commercially exploit the underlying intellectual property and could use the designs only for self-consumption. Relying on the Supreme Court's decision in Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT[5], the Tribunal held that the consideration represented income from sale of a copyrighted article and not consideration for use of copyright and was accordingly business income, not royalty. On the FTS characterisation, the Tribunal held, relying on CIT v. Neyveli Lignite Corporation Ltd.[6], that since the designs were essential and incidental to the supply and installation of the equipment itself, their sale did not amount to the rendering of a managerial, technical or consultancy service under Article 13(4) of the DTAA, and the consideration could not be characterised as FTS.

(v) Supervisory service fees taxable as business profits attributable to the supervisory PE, not FTS

The Tribunal held that since the duration of the onshore Supervisory activities exceeded the six-month threshold under Article 5(2)(j) of the DTAA, a supervisory PE was constituted, as also admitted by the taxpayer. Relying on the coordinate Bench decision in Andritz AG[7]

[3] Linde AG v. DDIT [2014] 268 CTR 274 (Delhi)
[4] DIT v. LG Cables [2011] 237 CTR 438 (Delhi)
[5] Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) 432 ITR 471 (SC)
[6] CIT v. Neyveli Lignite Corporation Ltd. [2002] 243 ITR 459 (Madras)
[7] Andritz AG v. DCIT [2024] 165 taxmann.com 76 (Delhi – Trib.)

(rendered under the India-Austria tax treaty), the Tribunal held that receipts for onshore supervisory services, being effectively connected with the supervisory PE, were taxable on a net basis as business profits under the DTAA and could not be re-characterised by the Revenue as FTS.

***JMP Insights*** *– The Tribunal has clarified that the Force of Attraction rule cannot be used as a backstop to tax offshore supply income merely because the taxpayer has an admitted PE of a different character in India for an unrelated activity. Invoking FOA requires a demonstrable nexus between the existing PE and the disputed income.*

*The ruling also reaffirms the distinction between a copyright and a copyrighted article for design and drawing consideration and confirms that incidental involvement of an Indian group entity will not, without evidence of actual control or a role in securing the contract, constitute a fixed place PE.*

*Further, the Tribunal has not made any observations relating to the Revenue's contention of artificial fragmentation of the contract. However, it may be interesting to note that whether the Tribunal would have rendered a different judgement in this connection if the India-Italy DTAA would have been covered by the MLI.*

➢ **Profit attribution to DAPE increased where Indian PE performed functions beyond those disclosed in Transfer Pricing documentation**

- BBC Global News Limited v. DCIT.[8]

BBC Global News Limited ('the taxpayer'), a tax resident of the United Kingdom, is engaged in operating the BBC World News Channel and the website BBC.com. The taxpayer had a DAPE in India through its Associated Enterprise, BBC Global News India Private Limited ('BGNIPL').

For Financial Years ('FYs') 2003-04 to 2013-14, the taxpayer had entered into a Mutual Agreement Procedure ('MAP') resolution under which profits attributable to its Indian PE were agreed at 8.75% of advertisement revenue. The same attribution rate was followed by the taxpayer for subsequent years.

During a survey conducted by the Revenue in February 2023, statements of one of the key personnel of the Indian entity were recorded. Based on the information gathered during the survey, the tax authorities concluded that the Indian DAPE was carrying out functions in addition to those disclosed in the Transfer Pricing Study Report ('TPSR'), including business development, market research, sales promotion, marketing support, customer engagement and revenue maximisation activities.

Relying on these findings, the tax officer concluded that the functional profile of the Indian DAPE had materially changed and enhanced the rate of profit attribution from 8.75% to 15% of advertisement revenue. On appeal to the Delhi Tribunal, the taxpayer contended that the profit attribution methodology accepted under the MAP should continue to apply in the absence of any significant change in business operations.

The Delhi Tribunal's observations were as under:

i. The MAP resolution prescribing profit attribution at 8.75% was applicable only to the years specifically covered under the agreement and could be extended to other years only if there is no change in facts and scope of activities carried out by the taxpayer or its PE.

ii. The survey proceedings revealed that the Indian DAPE was carrying out a wide range of functions, including business development, marketing, market research, customer

[8] ITITA 52 to 56/DEL/2025 and ITA 1847/DEL/2025

engagement and revenue-generation activities, which were not adequately reflected in the taxpayer's Transfer Pricing documentation. Therefore, the rate of profit attribution was required to be increased to compensate for the additional activities carried out by the Indian PE.

iii. However, the Tribunal noted that the tax officer had increased the attribution rate to 15% largely on an estimated basis and considered this rate to be on the higher side. Considering the overall facts and circumstances, the Tribunal restricted the attribution of profits to 12% of advertisement revenue, as against 15% adopted by the tax officer.

***JMP Insights –*** *The ruling highlights that PE profit attribution is fundamentally linked to the actual functions performed by the Indian entity and not merely to historic attribution outcomes accepted under MAP proceedings. The Tribunal has clarified that a MAP resolution cannot be mechanically applied to subsequent years where evidence suggests an expansion in the functional profile of the PE. The decision also serves as a reminder that Transfer Pricing documentation must accurately capture the activities performed by Indian group entities, since any disconnect between documented and actual functions may have significant consequences on attribution of profits and taxation.*

### ➢ Indian resident’s failure to disclose foreign bank account and investment attracts tax under the Black Money Act

- Ashok Shankar vs ACIT[9]

The taxpayer, an individual tax resident of India, came under scrutiny of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (BMA) after a search conducted in the Sanjay Bhandari group and information received from UAE authorities under the Exchange of Information provisions of the India-UAE DTAA. The information revealed that the taxpayer held a bank account with Emirates NBD Bank, Dubai, containing deposits of AED 5,000 and had a 10% shareholding worth AED 3,000 in Santech International FZE, UAE (‘Santech UAE’). The aforesaid bank account was opened in 2010 and the shares were acquired in 2006. These foreign assets were neither disclosed in the Foreign Assets (FA) Schedule of the taxpayer's income tax returns nor declared under the compliance provisions of the BMA. Consequently, the Revenue treated the bank balance and investment as undisclosed foreign assets chargeable to tax under the BMA.

The Tax Officer relied on information received from UAE authorities, including bank records, Know Your Customer (‘KYC’) documents and company incorporation documents, which disclosed the aforesaid assets. Since the taxpayer failed to substantiate his claim that the bank deposit was made by a friend and could not disprove the investment in Santech UAE, the Tax Officer treated both as undisclosed foreign assets and taxed them under the BMA.

Aggrieved by the assessment order, the taxpayer filed an appeal before the CIT(A), who dismissed the appeal and upheld the additions made by the Tax Officer.

The taxpayer filed an appeal before the Delhi Tribunal. The Tribunal upheld the additions and made the following key observations:

i. The taxpayer was a tax resident of India and was therefore covered by the provisions of the BMA.

ii. Information obtained from UAE authorities established that the taxpayer was the authorised signatory of the foreign bank account and a signatory to the Memorandum and Articles of Association. He was a Director-Shareholder of Santech UAE.

[9] BMA No.12 & 13 /Del/2026

iii. The taxpayer's explanation that the AED 5,000 deposit was made by a friend for a proposed business venture was rejected as no supporting evidence, details of the friend, or documentary proof was furnished to substantiate the claim.

iv. With respect to Santech UAE, the ITAT held that the taxpayer's claim of not making any investment was not credible since he was a signatory to the Memorandum and Articles of Association and had admitted holding a 10% shareholding in the company.

v. The taxpayer failed to explain the source of acquisition of both - the foreign bank balance and the investment in the UAE entity, which were facts especially within his knowledge.

vi. Under the BMA, undisclosed foreign assets are taxable in the year in which they come to the notice of the Tax Officer, irrespective of the year in which the asset was originally acquired.

vii. Non-disclosure of the foreign assets in the income tax return and FA Schedule coupled with failure to avail the disclosure mechanism under the BMA supported the Revenue's case.

Accordingly, the Tribunal held that the taxpayer was liable to tax under Sections 3, 4 and 5 of the BMA in respect of the undisclosed foreign bank account and foreign investment and upheld the assessment order. The Tribunal also sustained the penalty levied under Section 41 of the BMA based on the facts of the case.

***JMP Insights –*** *This ruling highlights the stringent framework of the Black Money Act in relation to undisclosed foreign assets and foreign income The Tribunal emphasised that once credible information regarding overseas assets is obtained by the Revenue, the burden shifts to the taxpayer to satisfactorily explain the source and taxability of such assets or income. Mere denial or unsupported explanations are unlikely to discharge this burden. Importantly, the decision also affirms that foreign assets discovered subsequently can be taxed in the year they come to the notice of the Tax Officer, even if such assets were acquired much earlier.*

## ➢ One-time disclosure window for small taxpayers holding undisclosed foreign assets and income

- Foreign Assets of Small Taxpayers Disclosure Scheme, 2026 (FAST-DS)

The Indian Government has introduced the Foreign Assets of Small Taxpayers - Disclosure Scheme, 2026 (FAST-DS), a one-time voluntary disclosure scheme aimed at enabling taxpayers to regularise certain undisclosed foreign assets, undisclosed foreign income and non-reported foreign assets. The scheme was first announced in the Union Budget 2026-27 and incorporated through the Finance Bill, 2026 and came into effect on 16 August 2026 and is available until 31 December 2026.

The Scheme seeks to provide an opportunity to taxpayers with relatively small offshore holdings to make a voluntary disclosure and obtain immunity from further proceedings under the Black Money Act, subject to payment of the specified tax, penalty or fee.

The Scheme is available not only to Resident taxpayers but also to Non-residents and Resident but not Ordinarily Resident ('RNOR') individuals who were resident in India in the year in which the undisclosed foreign income arose or the foreign assets were acquired. The Scheme broadly covers the following categories:

### 1. Undisclosed foreign assets / foreign income

This category covers foreign assets which have not been disclosed and foreign income which has not been offered to tax in India, where the aggregate value of such undisclosed assets and undisclosed income does not exceed INR 10 million. In this case, the taxpayer will need to make the following payments:

i. Tax at 30% of the value of undisclosed foreign assets/income; and

ii. An additional amount equal to 100% of such tax.

2. **Non-disclosure of foreign assets:**

This category covers foreign assets acquired from tax-paid income or during a period when a person was non-resident and the taxpayer merely failed to disclose such assets in Schedule FA after becoming resident in India. The aggregate value of eligible assets should not exceed INR 50 million.

In such cases, the taxpayer is required to pay only a flat fee of INR 0.1 million, irrespective of the value of the eligible assets.

**Key Valuation Principles under FAST-DS:**

i. All assets are required to be valued as on 31 March 2026.

ii. Fair Market Value ('FMV') will be the higher of the cost of acquisition and open market value on the valuation date, supported by a valuation report from a valuer recognised by the Government of the country where the asset is located. Where a market valuation is not obtained, the indexed cost of acquisition will be deemed to be the FMV.

iii. The value of a foreign bank account is computed based on the aggregate deposits made into the account, subject to specified exclusions to avoid double counting.

iv. To avoid duplication, any amount reinvested from one foreign asset or bank account into another asset is eligible for reduction while computing value.

v. Specific valuation methodologies have been provided for immovable property, shares and securities, jewellery, artistic works and interests in foreign entities.

The procedural framework of FAST-DS is administered through four prescribed forms, each serving a distinct purpose as summarised below:

| Form | Purpose |
|---|---|
| Form 1 | Declaration of eligible foreign assets/income under FAST-DS. |
| Form 2 | Order issued by the tax authority determining tax, penalty, or fee. |
| Form 3 | Intimation of payment along with proof of payment. |
| Form 4 | Certificate confirming validity of declaration and grant of immunity under the Scheme. |

Upon making a valid declaration and payment, the taxpayer is granted immunity from tax, penalty and prosecution under the Black Money Act and the income or amount of investment in the assets declared under this scheme shall not be included in the taxpayer's total income under the Income-tax Act, 1961.

However, the Scheme is not available for assets representing proceeds of crime in respect of which proceedings have been initiated or are pending under the Prevention of Money-laundering Act, 2002, or where scrutiny (audit) proceedings have already been completed under the Black Money Act.

***JMP Insights –*** *The FAST-DS provides a time-bound opportunity for taxpayers to regularise undisclosed foreign assets, foreign income and past reporting lapses in Schedule FA while obtaining immunity from further proceedings under the Black Money Act. The Scheme is particularly relevant for individuals holding overseas bank accounts, investments or properties and should prompt a review of foreign asset disclosures before the 31 December 2026 deadline.*

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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Jairaj Purandare, the Founder Chairman has over four decades of experience in tax and business advisory matters and is an authority on tax and regulation in India. Jairaj was Regional Managing Partner, Chairman - Tax and Country Leader - Markets & Industries of PricewaterhouseCoopers India. Earlier, Jairaj was Chairman of Ernst & Young India and Country Head of the Tax & Business Advisory practice of Andersen India.

*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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