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RSM India Publication: India's IT–ITeS GCC Landscape

Industry, Tax, Regulatory and Governance Perspectives

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1.1 Background and Indian Economy

1.1.1 India's Exceptional Growth: Leading the Global Economic Expansion

IMF estimates that the global GDP is projected to grow at a steady rate over the next few years, with world output moderating to 3.1% in 2026 and 3.2% in 2027.

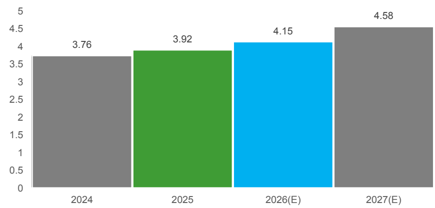
Advanced economies such as the United States (US) are expected to grow by 2.3% in 2026, slowing down to 2.1% by 2027. Europe & Japan show modest growth rates in 2026 and 2027.

Real GDP, Annual percentage change	Actuals	Projections	
	2025	2026	2027
World Output	3.4	3.1	3.2
Advanced economies	1.9	1.8	1.7
United states	2.1	2.3	2.1
Europe Area	1.4	1.1	1.2
Japan	1.2	0.7	0.6
Other Advanced Economies	3.0	2.6	2.2
Emerging Market and Developing Economies	4.4	3.9	4.2
China	5.0	4.4	4.0
India	7.6	6.5	6.5
Brazil	2.3	1.9	2.0
Middle East & Central Asia	3.6	1.9	4.6
Sub- Saharan Africa	4.5	4.3	4.5

Source: IMF

Emerging markets and developing economies exhibit stronger growth prospects. However, India stands out with the highest GDP growth among major economies, with actual growth of 7.6% in 2025 and further projected to grow by 6.5% in 2026 and 2027. This consistent growth rate considering the overall global economy, highlights India as a major driver of global economic expansion, surpassing both advanced economies and other emerging markets.

India's GDP in Trillions



Source: www.imf.org

India is currently the 6th largest economy in terms of real GDP at US current prices. However, based on the IMF projections, India is expected to overtake the UK by 2027 and Japan by 2028.

1.2 GCCs In India

Nearly three in four employers worldwide in 2025 report difficulty finding the skilled talent they need, with the global talent shortage projected to reach over 85 million people by 2030, risking up to $8.5 trillion in unrealised annual revenue.[1]

India is actively bridging its talent gap by leveraging the rapid growth and strategic evolution of Global Capability Centres (GCCs).

India continues to strengthen its position as a leading Global Capability Centre (GCC) hub, driven by its skilled talent pool and cost advantages. Increasing investments by multinational corporations highlight India's strategic role in global operations and innovation.

India's Global Capability Centres (GCCs) are rapidly transforming the corporate landscape and shaping global business strategies. India is home to over 2,117 GCCs, employing approximately 2.36 million professionals and generating revenues of nearly US$ 98.4 billion as of FY 2026. Aligned with the Hon'ble Prime Minister's vision of Viksit Bharat @2047 and a projected US$ 30 trillion economy, the sector is expected to expand to around USD 105 billion by 2030, with nearly 2,400 GCCs employing over 2.8 million professionals, playing a crucial role in fostering prosperity, modern infrastructure, and inclusive growth. Based on the current no. of GCCs, the earlier projection of 2,400 seems highly realistic to be achieved by 2030.

1.2.1 Unprecedented Scale and Growth

India's GCC sector has demonstrated exceptional and sustained growth, evolving from nearly 700 centres in 2010 to more than 2,117 GCCs by FY 2026. The sector's revenue trajectory has accelerated sharply over the past decade, expanding from approximately US$11.5 billion in 2010 to nearly US$ 98.4 billion in FY2026.

The employment impact of the GCC ecosystem has also expanded substantially.

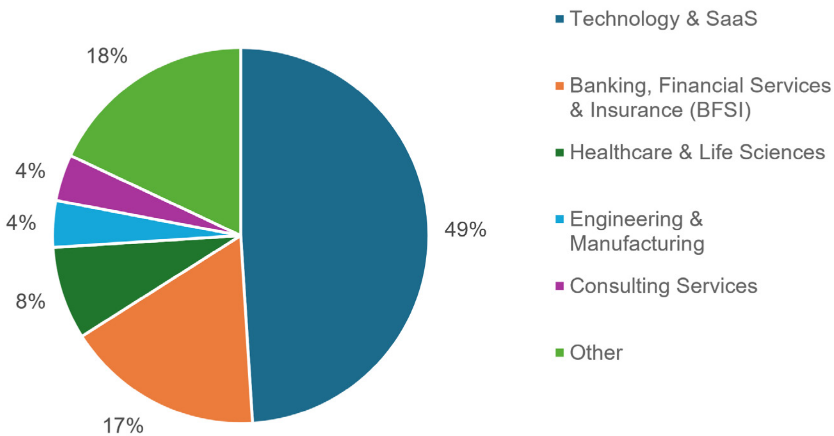
[1] https://manpowergroup.co.in/talent-shortage/talent-shortage-files/MPG-Talent-Shortage-2025-Findings.pdf

India's GCCs currently employ around 2.36 million professionals directly, compared to approximately 1.9 million in FY 2024. The sector additionally supports millions of indirect and induced jobs across real estate, infrastructure, staffing, logistics, hospitality, and allied services, reinforcing its broader economic multiplier effect on the Indian economy.

1.2.2 Sectoral Composition and Specialisation

The IT-BPM sector's dominance within the GCC ecosystem is reflected in its 49% share of total GCC employment, followed by BFSI/Fintech at 17%, Healthcare and Lifesciences at 8%, Manufacturing & Engineering at 4% and Consultancy Services at 4%. This distribution highlights the sector's central role in India's digital economy while also demonstrating the diversification of GCC operations across multiple industries.

GCC Sector Breakdown India 2025



Source: Vestian Global Capability Centre 2025

1.2.3 Geographic Distribution and Expansion

While metropolitan areas continue to dominate GCC locations, accounting for 91% of all GCC jobs, there is a notable shift toward geographic diversification. Bengaluru remains the undisputed leader with 487 GCCs, followed by Hyderabad with 273 centres and the NCR region with 272 centres. However, Tier-2 cities are experiencing accelerated growth at 21% year-over-year, compared to 11% growth in metropolitan areas.[2]

1.2.4 Research & Development Excellence – Innovation Leadership and Patent Creation

India's GCCs have rapidly evolved into global hubs for research, innovation, and intellectual property creation, moving well beyond traditional back-office operations. India-based GCCs are increasingly driving global innovation mandates in areas such as Artificial Intelligence ("AI"), Generative AI ("GenAI"), semiconductors, cloud engineering, cybersecurity, and life sciences.

India's GCC sector has established itself as a global R&D powerhouse, with the annual value of R&D work conducted estimated at $40 billion. The innovation intensity of India's GCC ecosystem is also reflected in the country's growing patent landscape. India witnessed more than 1,10,000 patent filings in FY25 (up nearly 20% year-on-year), continuing an unbroken multi-year growth trajectory, while more than 86,000 AI-related patents were filed in India between 2010 and 2025, accounting for over 25% of all technology patents filed in the country.

1.2.5 Value Creation and Economic Contribution

The productivity levels achieved by GCC professionals are remarkable, with per capita GVA of approximately $32,500, significantly more than India's national GVA per capita. This exceptional productivity stems from the high-skill, high-value nature of GCC roles and their focus on strategic rather than transactional activities.[3]

1.2.6 Global Integration and Strategic Alignment

Modern IT-BPM GCCs function as integral extensions of global headquarters rather than peripheral support units. This integration is reflected in the increasing establishment of global roles and leadership positions based in India, with many GCCs now influencing enterprise-wide AI adoption, digital transformation strategies, and data-led decision-making.

The strategic importance of these centres is further evidenced by the fact that 24

[2] https://www.business-standard.com/content/press-releases-ani/india-s-gcc-growth-holds-at-12-in-2025-tier-2-cities-and-freshers-drive-momentum-foundit-insights-tracker-125080701133_1.html

[3] https://www.dnb.co.in/files/reports/Economic-Impact-of-Global-Capability-Centers.pdf

GCCs in India crossed $1 billion in export revenue in FY 24 and total export revenue of Rs. 43.6 billion which further enhanced to Rs. 64.6 billion in FY 25. Further, India's GCC revenue projected to reach USD 98.4 billion by FY 26. This scale demonstrates the maturation of these centres beyond traditional cost-plus models toward revenue-generating strategic partners.[4]

1.2.7 Regulatory and Compliance Evolution

The regulatory landscape continues to evolve, with 23% of GCCs citing regulatory compliance as a significant challenge. Data localisation requirements and compliance with international regulations like GDPR present complexities for BFSI and healthcare sector GCCs. However, these challenges are being addressed through policy harmonisation initiatives and the establishment of dedicated compliance frameworks.

This Publication aims to enable the senior leaders managing GCCs to navigate through the audit, tax and regulatory requirements.

1.3 Key Statistics: India Cementing Its Position as a Key GCC Hub

1.3.1 Snapshot of Global Capability Centres (GCCs) of Multi-national Companies in India

2117 Total number of GCCs (FY25)	**3728** Total number of GCC Units (FY25)	**5.8%** CAGR growth (GCC Count – FY21-FY26)
2.36 Mn Total GCC Talent (FY25)	**82,000+** Growing GCC Talent in Tier-II and Tier III	**6.2%** Total Installed CAGR GCC Talent (FY 21-FY 26E)
$98.4 Bn GCC Market Size (FY26E)	**$60.96 Bn** GCC Market Size (ER&D) (2025)	**9.9%** Market Size CAGR Growth (FY19-FY26E)

Majorly, there are five types of GCC Centres:

- **Shared Services Centres:** Finance, HR, IT, and procurement are all in one place

[4] https://inductusgcc.com/wp-content/uploads/2024/08/GCC-%E2%80%93-Annual-Report-2024.pdf

- **R&D Centres:** Innovation hub for new products, technologies and processes
- **Knowledge Centres:** To help organisations remotely share information
- **Innovation Centres:** Companies can develop new ideas, conduct research and build prototypes
- **Customer Service Centres:** For managing customer inquiries, complaints, and feedback

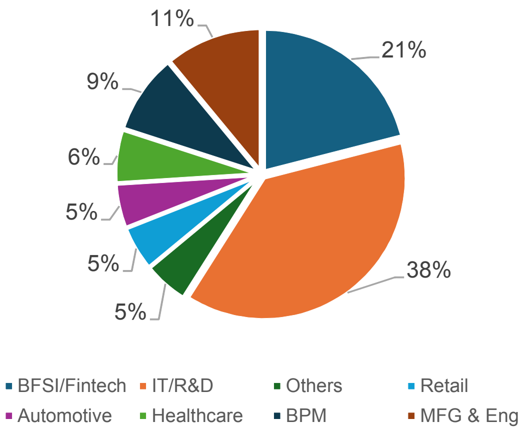
Bengaluru has the maximum number of GCCs, followed by Hyderabad, Delhi NCR, Pune, Chennai, and Mumbai.

According to industry estimates and the Economic Survey outlook, India's GCC ecosystem is projected to contribute between 3.5% and 5% of India's GDP by 2030. Amidst the global talent shortage, India holds a very unique position, the only country projected to have a talent surplus by 2030. A surplus of 1.3 million skilled workers in tech alone, driven by the growing working-age population.

1.3.2 GCC Job Distribution in India

From the review of the job distribution in GCCs, the majority of the GCCs in India operate in the IT/R&D, BFSI, Manufacturing & Engg. and BPM, i.e. 79% comprise of IT-BPM & related services. In this Publication, RSM would be focused on providing tax, audit and regulatory insights for GCCs operating in the IT-BPM sector.

GCC Jobs Distribution in India (2025)



Source - Press Trust of India

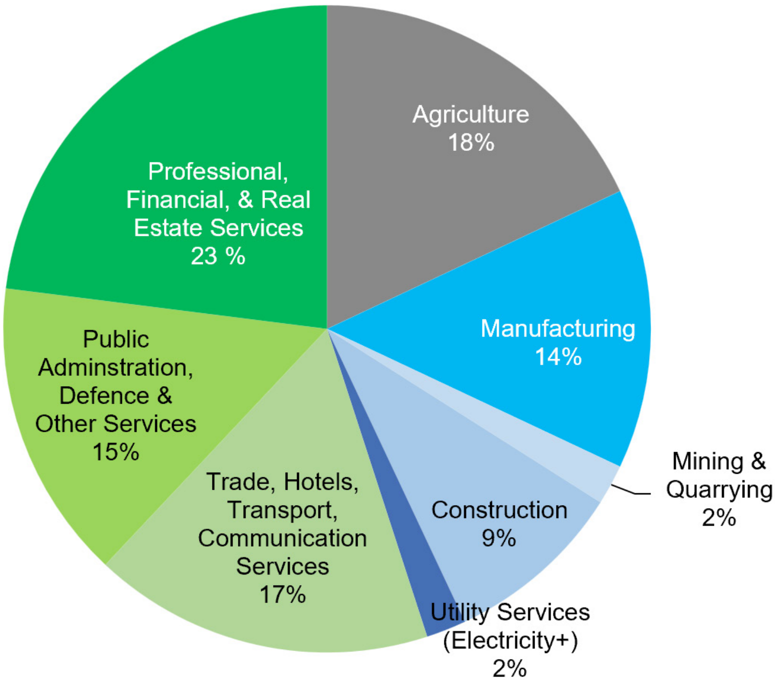
1.3.3 IT-BPM Sector: A Key Driver of India's Exceptional Growth

IT and Business Process Management (BPM) services will play a crucial role in accelerating organisational growth and success.

From review of India's gross value added for FY 2025-26, services comprise of 57% of the total gross value added to the India's economy.

As per IBEF, by 2026 it is expected that the Indian IT industry is likely to hit the USD 315 billion mark and would be significant contributor of India's GDP. To drive exceptional growth for the Indian economy, Information technology (IT) will be a key driver. IT will enable growth across various industries, revolutionising how businesses operate, innovate, and compete.

Gross Value Added - Sector Wise 2024-25 Current Prices



1.3.4 History & Evolution of IT Sector

1985 to 1990s

The Pioneers (The "Captive" Era)

- Texas Instruments set up first GCC in Bengaluru in 1985
- Followed by other early movers like Microsoft, GE and American Express in the late 90s
- Focus was on cost-effective back office and IT support

2000 to 2010s

Scaling and Diversification

- Major surge was seen during the Y2K boom
- Global firms recognised India's technical talent and not just low costs
- By 2010, the number of GCCs grew to over 1,400
- Focus shifted to complex areas like R&D and product engineering

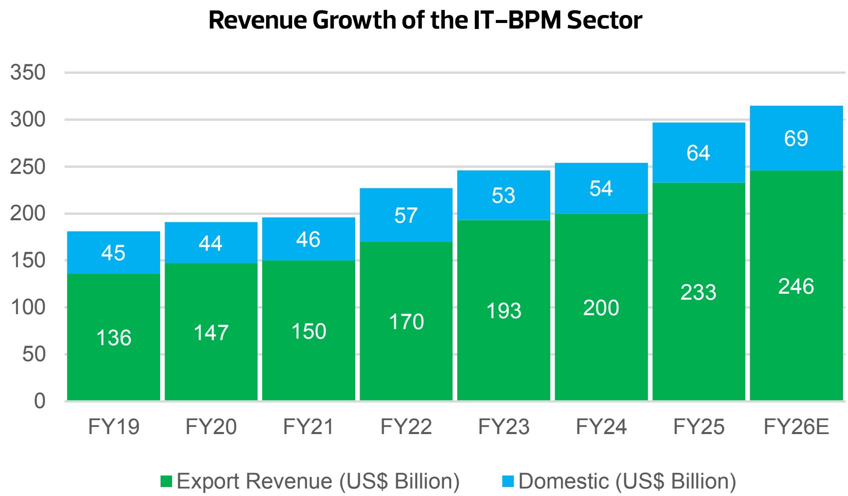
2015 to Present

Strategic Transformation (The "Innovation" Era)

- Current "hypergrowth" phase began around 2015
- GCCs evolved from being "delivery centers" to Global Centers of Excellence
- GCCs now own global product roadmaps and leading high-end work in AI, Machine Learning, & Cybersecurity

1.4 Industry Statistics

1.4.1 Revenue Growth of the IT-BPM Sector in India



Source – IBEF

From FY19 to FY25, revenue increased at a CAGR of 7.7%. The exports grew at a CAGR of 8.7% as against 4.4% for domestic revenue.

1.4.2 Global Overall IT Spend Forecast

Gartner has forecasted the following IT spend globally. Worldwide IT spending is expected to reach $6.31 trillion in 2026, up 13.5% from 2025. Key drivers include strong double-digit growth in **Data Centre Systems and Software**, while **Devices** and **IT Services** show moderate gains, and **Communications Services** remains the slowest-growing segment.

In USD Billions

	2025 Spending	2025 Growth	2026 Spending	2026 Growth
Overall IT Spend	**5,563**	**10.5%**	**6,316**	**13.5%**
Data Centre Systems	505	51.6%	788	55.8%
Devices	792	9.7%	856	8.2%
Software	1254	12.8%	1444	15.1%
IT Services	1716	6.2%	1870	9%
Communications Services	1296	3.3%	1358	4.8%

1.4.3 Key Statistics of IT-BPM Sector

$ 6.31Tn Global IT Spending	**$ 1.87 Tn** Global Spend on IT Services	**$315 Bn** Indian IT-BPM Industry (FY26)
5.95 Mn Employment-India	**Key Statistics**	**36%** Women in IT (FY24-25)
$ 121.4 Bn FDI in Computer Software & Hardware (Apr'00 - Dec'25)	**16%** % of total FDI in IT (Apr'00 - Dec'25)	**31,250** IT Companies in India

- **Market Size:** The global IT spending accounted for USD 6.31 Tn. The market size for the Indian IT-BPM industry accounted for $315 billion.
- **Employment:** In the fiscal year 2025-26, the IT sector employed 5.95 million people. Women make up 36% of the IT workforce.
- **Investments:** From April 2000 to December 2025, foreign direct investment (FDI) in computer software and hardware reached $110.7 billion, representing 16% of the total FDI in IT.

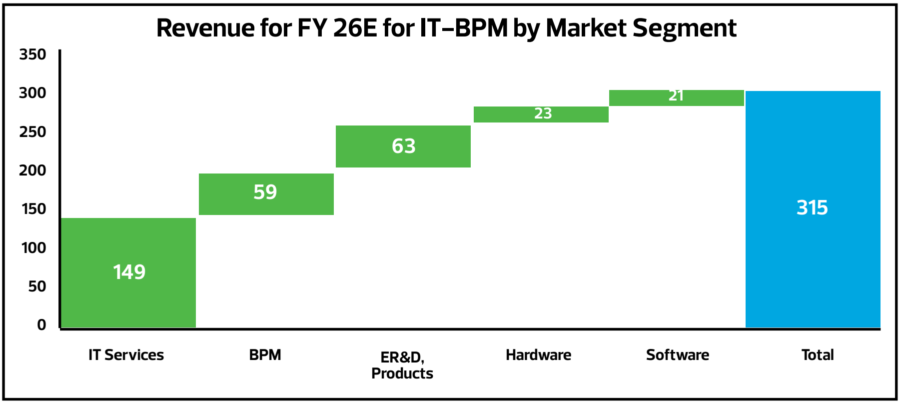
1.5 Market Segmentation

1.5.1 IT-BPM Sector Segmentation by Service Type

The IT-BPM Sector is segmented into a) IT Services, b) BPM services that typically include KPO/BPO services, c) Software products and Engineering Services, d) Computer Hardware.

IT Services	**Business Process Management**	**Software Products & Engineering**	**Computer Hardware**

The majority of the revenue comes from IT, BPM and ER&D Services. Hardware contributes to a smaller portion of the IT market.



(i) IT Services

IT services involve a full range of engagement types that includes consulting, systems integration, IT outsourcing/managed services/hosting services, training, and support/ maintenance. Key trends and drivers of IT Services growth are:

- **Embracing Automation and Artificial Intelligence (AI):** Automation & AI have become integral to the IT services. Generative AI technologies are being utilised to enhance data analytics, customer support, and decision-making processes.

- **Shift Towards Cloud Computing:** More businesses are migrating their infrastructure and applications to the cloud to leverage its scalability, flexibility, and cost-effectiveness. Indian IT companies are providing a range of cloud services, including infrastructure as a service (IaaS), platform as a service (PaaS), and software as a service (SaaS), enabling businesses to optimise their operations and drive innovation.

- **Focus on Cybersecurity:** With the increasing frequency and sophistication of cyber threats, cybersecurity has become a top priority for businesses globally. Indian IT service companies are investing heavily in cybersecurity solutions and services to protect sensitive data and ensure compliance with regulations. This includes providing threat detection and prevention, data encryption, identity and access management, and security consulting services.

- **Expansion into Digital Transformation Services:** Digital transformation has become a strategic imperative for businesses across industries. Indian IT service providers are offering a wide range of digital transformation services to help organisations navigate their digital journeys.

(ii) BPM Services

Business Process Management (BPM) is a discipline involving optimisation of business activity flows, in support of enterprise goals, spanning systems, employees, customers, and partners within and beyond the enterprise boundaries. From the Indian perspective, BPM is particularly significant in addressing the diverse challenges and opportunities present in the rapidly growing and competitive business environment. **Key trends noted in BPM Services in India are:**

- **Beyond the back-office:** BPM Industry in India has transformed itself from back-office voice services to intelligent operations and data-driven services, adding value to its customers.
- **Digitisation and Data-driven:** Becoming Digital-first by empowering the employees with digital tools and solutions has contributed to the growth of the BPM sector.
- **Definition of BPM Services as per Income Tax Act:**

a. Business Process Outsourcing: As per Rule 86 (h) of IT Rules 2026 (**Rule 10TA(e)** of the **IT Rules,** 1962) information technology-enabled services means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:	**a. Knowledge Process Outsourcing:** As per Rule 86(j) of IT Rules 2026 (Rule 10TA(g) of the IT Rules 1962), "knowledge process outsourcing services" means the following business process outsourcing services provided mainly with the assistance or use of information technology,

(i) back office operations; *(ii) call centres or contact centre services;* *(iii) data processing and data mining;* *(iv) insurance claim processing;* *(v) legal databases;* *(vi) creation and maintenance of medical transcription excluding medical advice;* *(vii) translation services;* *(viii) payroll;* *(ix) remote maintenance;* *(x) revenue accounting;* *(xi) support centres;* *(xii) website services;* *(xiii) data search integration and analysis;* *(xiv) remote education, excluding education content development; or* *(xv) clinical database management services excluding clinical trials,*	requiring application of knowledge and advanced analytical and technical skills, namely:— *(i) geographic information system;* *(ii) human resources services;* *(iii) engineering and design services;* *(iv) animation or content development and management;* *(v) business analytics;* *(vi) financial analytics; or* *(vii) market research,* *but does not include any research and development services, whether or not in the nature of contract research and development services;*

(iii) Software Products & Engineering Services

- **Software Products:** Outsourced development of the customer's product, thereby taking responsibility for all aspects of the product lifecycle, such as R&D, prototyping, development, testing, maintenance, support and development of the next generation of the products. The development can be outsourced to either a GCC (Global Capability Centre) or to a third-party vendor. This segment is clubbed with ER&D and referred to as Product Engineering Services

(PES).

- **Engineering Services and Research & Development (ER&D):** Engineering services are those that augment or manage processes that are associated with the creation of a product or service, as well as those associated with maximising the life span and optimising the yield associated with a product or asset. This not only includes design elements of the product or service itself, but also encompasses the infrastructure, equipment and processes engaged in manufacturing/delivering them.

  R&D services involve providing research and development for hardware and software technologies, as well as the development of software running on embedded systems. This includes computer-aided design (CAD).

  As per Rule 86(b) of the Income Tax Rules, 2026 [corresponding to Rule 10TA(aa) of the Income Tax Rules, 1962] **"contract research and development services"** means the following:–

  - research and development producing new theorems and algorithms in the field of theoretical computer science
  - development of information technology at the level of operating systems, programming languages, data management, communications software and software development tools
  - development of Internet Technology
  - research into methods of designing, developing, deploying or maintaining software
  - software development that produces advances in generic approaches for capturing, transmitting, storing, retrieving, manipulating or displaying information
  - experimental development aimed at filling technology knowledge gaps as necessary to develop a software program

or system

- research and development on software tools or technologies in specialised areas of computing (image processing, geographic data presentation, character recognition, artificial intelligence and such other areas) or
- upgradation of existing products where source code has been made available by the principal, except where the source code has been made available to carry out routine functions like debugging of the software

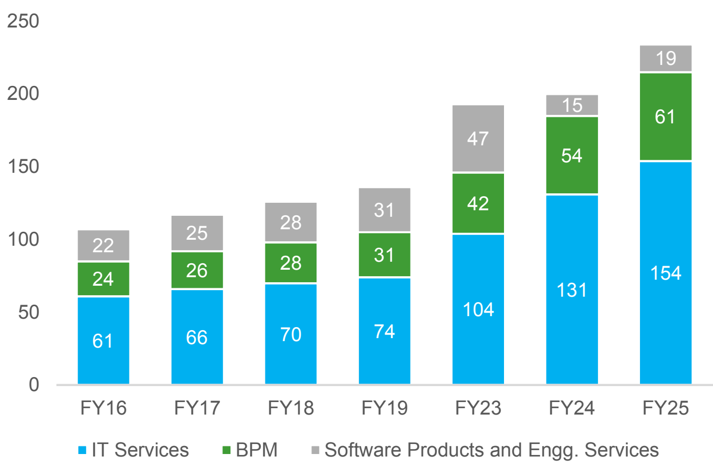
(iv) Computer Hardware

To promote the manufacturing of computer hardware, The Ministry of Electronics and Information and Technology (MeitY) had approved 14 eligible applicants under the production-linked incentive scheme (PLI) for IT hardware.

1.5.2 Export Revenue by Market Segment

In the last decade, both Software Products and Engg. Services and BPM services showed a significant increase in export revenue, reflecting strong demand and expansion in software products and engineering services as per the below graph:

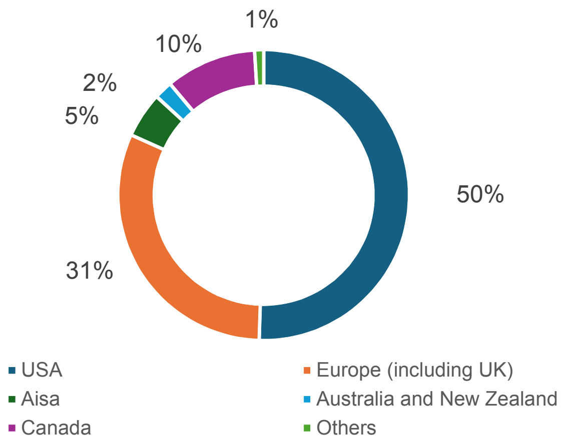
Growth in Export revenue (US$ billion) by Sector



1.5.3 IT-BPM Sector Segmentation by Region

The United States of America is the major source of export revenue for Indian IT-BPM services, contributing to 50.33% of revenue, followed by the UK and Europe at 15.9% and 15.5% respectively.

Geographic breakup of export revenue in FY25 (%)

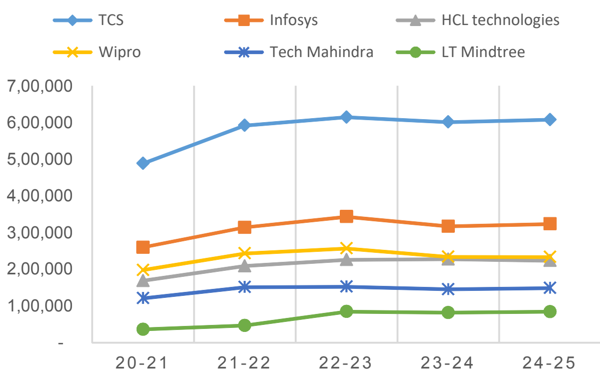


1.6 Key Statistics of Industry Players in the IT-BPM Sector

1.6.1 Headcount growth in major Indian IT Companies

Head Count Growth: Below is the data for the period FY 21 to FY 25 reflecting the head count growth of certain Top IT companies in India:

Employee Head Count growth of Top IT Companies



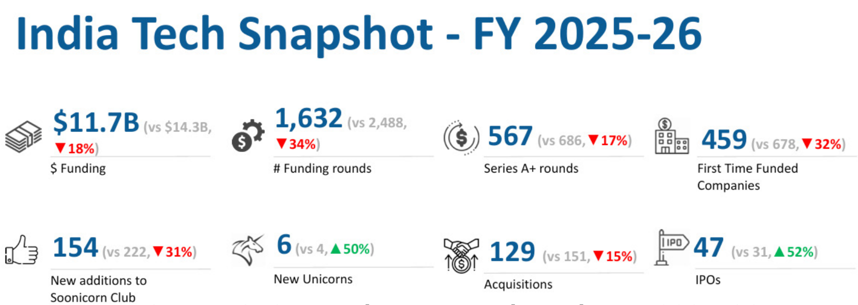
1.7 Indian IT Companies and Indian IT Talent as a Trusted Outsourcing Solutions Provider to the World

1.7.1 Comparison of Global GCCs and their Indian Talent

Company Name	Revenue	Revenue for the year ending	Indian Employees	Total Employees	% of Indian Employees
TCS	INR 2,553 Bn	Mar 2025	4,86,383	6,07,979	80%
Infosys Limited	INR 1,630 Bn	Mar 2025	2,75,000	3,23,578	85%
Accenture PLC	$ 64.90 Bn	Aug 2024	3,00,000	7,33,000	41%
DXC Tech-nologies	$ 12.87 Bn	Mar 2025	43,000	1,20,000	33%
IBM Corp-oration	$ 62.8 Bn	Dec 2024	1,00,000	2,70,300	43%
Capgemini	€ 22.10 Bn	Dec 2024	1,94,400	3,41,118	57%
Cognizant	$ 19.74 Bn	Dec 2024	2,86,280	3,36,800	85%
NTT Data Corpora-tion	¥ 4,638 Bn	Mar 2025	40,000	1,93,513	21%
Oracle	$ 52.96 Bn	May 2024	49,000	1,59,000	31%
Total			**1.77 Mn**	**3.09 Mn**	**54%**

From a review of operations of top global IT-BPM companies, more than half of the talent is working from India.

1.8 Indian Tech Startups as Innovator for the World



Source: GEO Annual Report — India Tech — FY 2025-26

- Global economic uncertainty and tighter funding conditions continued to impact the start-up ecosystem in 2025.

- In 2026, the Indian start-up ecosystem is witnessing renewed momentum driven by artificial intelligence, deeptech, enterprise innovation etc. Investor sentiment has become more selective and quality-focused, with emphasis on scalable business models, operational efficiency, and long-term value creation.
- Government support under initiatives such as Startup India and India AI Mission, coupled with growing domestic and global investor participation, is expected to further strengthen the ecosystem.

1.9 Indian Tech Patent Trends

1.9.1 Overview

India's technology patent landscape has been rapidly evolving, with significant growth in patent filings, particularly in the Deep Tech sector. The Indian government, educational institutions, and start-ups are playing a crucial role in fostering innovation and building a robust IP-led economy.

1.9.2 Key Trends:

- **Patent Filing Growth:** In India, patent filings increased to approx. **1,43,000 applications in FY 2025—26**, reflecting a growth of about 30% over the previous year.
- **Deep Tech Start-ups:** Indian deep tech startups have collectively filed 922 patents since ecosystem tracking began. Out of this total pool, 676 patents were filed domestically within India, while the remaining 246 applications were first routed to international offices (primarily the US) to target foreign venture capital and advanced global markets.
- Since 2008, Indian Deep Tech start-ups have filed 900+ patents. These start-ups are primarily concentrated in AI, healthcare, and advanced materials.
- **Resident Filers:** For the first time, resident patent filers in India (primarily educational institutions) crossed the 50% mark in the year 2022 and continues through 2023 and 2024, indicating growing IP awareness and innovation focus within the country.

Patent applications for the Top 10 Applications by offices in 2024	
Origin	**No. of Patents filed in 2024**
China	18,28,054
US	6,03,194
Japan	3,06,855
Republic of Korea	2,46,245
European Patent Office	1,99,402
India	**1,05,157**
Germany	59,262
Canada	35,374
Australia	30,487
Others	1,72,391
Total	**35,86,421**

1.9.3 Regional Focus:

Tamil Nadu state emerged as the top patent filer in FY 25, driven by strong government policies, a robust R&D ecosystem, and a high number of PhD holders.

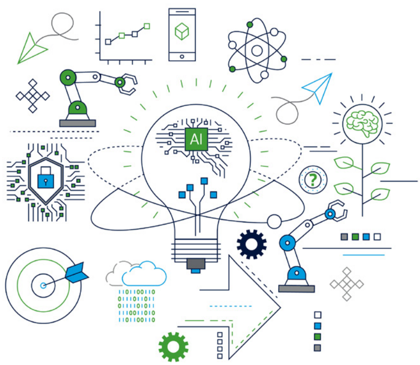
1.9.4 Challenges:

Timelines: Despite improvements, the patent approval process in India remains slower compared to global counterparts, partly due to a lack of sufficient examiners.

1.10 Industry Trends & Innovation

1.10.1 Generative AI as a Catalyst

Generative AI (GenAI) is rapidly transforming the IT-BPM industry. The global AI market is expected to reach $320-380 billion by 2027, with GenAI expected to dominate 33% of this market.



The adoption of GenAI is being driven by its ability to enhance productivity, creativity, and innovation across various sectors. Major companies are investing heavily in GenAI.

Indian tech firms are increasingly integrating GenAI into their operations, focusing on new product launches and partnerships. India's GenAI startup landscape has witnessed 3.7X growth in cumulative startups, reaching 890+ by H1 CY2025. GenAI application startups alone have grown 4X to cross 740, contributing ~83% of the total.

1.10.2 Deep Tech and Cloud Integration

Deep tech, particularly in AI and cloud computing, is central to the industry's future. The synergy between cloud computing and GenAI is shaping the next wave of innovation. This integration is facilitating scalable AI solutions, enabling faster deployment, and enhancing data sovereignty. Companies are rapidly expanding cloud infrastructure, with significant investments being made in new data centres and AI infrastructure globally. This trend is particularly prominent in hyperscaler investments, where cloud and AI capabilities are being expanded to meet growing demand.

1.10.3 Sustainability and Ethical AI

The IT-BPM industry is increasingly focusing on sustainability and the ethical deployment of AI. Companies are adopting sustainable practices in their operations and are emphasising the development of AI solutions that align with ethical standards. This includes addressing biases in AI systems, ensuring transparency, and prioritising data privacy. The industry is also witnessing increased collaboration between tech companies and governments to establish regulatory frameworks for responsible AI development. These efforts are aimed at harmonising global AI policies to foster innovation while safeguarding societal interests.

1.10.4 Future Outlook

The IT-BPM industry is poised for significant growth, driven by advancements in AI, cloud computing, and deep tech. The focus on sustainability and ethical AI will continue to shape the industry's evolution. As companies continue to invest in AI and cloud infrastructure, the industry is expected to see accelerated innovation and the emergence of new business models. Additionally, the push towards greater diversity and inclusion in tech will play a crucial role in driving the industry's future success.

1.11 SEZs & STPIs: Growth engine for GCCs and IT-BPM Industry

1.11.1 Special Economic Zones (SEZ) in India: Background & Benefits

With a view to attracting larger foreign investments in India and improve ease of doing business, the Special Economic Zones (SEZs) Policy was announced in April 2000.

SEZ is a demarcated region inside India, approved and administered by the SEZ Act 2005 provides various benefits and motivates the companies to register as SEZ. More details about SEZ rules and regulations are given in the upcoming sections.

1.11.2 SEZ in India: Statistics

SEZ FACT SHEET AS OF 31 December 2025

276 Operational SEZs as of 31st Dec 2025	**6,695** Units approved in SEZs (31st March 2025)	**3.18 Mn** Total Employment in SEZ (31st March 2025)
$ 133.45 Bn Exports in FY 25-26 (upto 31st Dec 2025)	**INR 7,821 Bn** Investment in SEZs as of 31st March 2025	

1.11.3 Current Challenges for SEZ Units in India & recent reforms (DESH Bill)

The interest of the business community in SEZ has slowed down over the years, owing to the introduction of a sunset clause for withdrawal of direct tax benefits. The Covid-19 pandemic further led to a further reduction in SEZ activities as most of the companies allowed for work from home. While the Government tried to address such situations by bringing restrictions on work from home policies & other facilitation measures, still the demand for SEZs is low.

To reduce burden on SEZ units and SEZ developers, SEZ authorities on 6th December 2023 notified amendments to Rule 11A of the Special Economic Zones Rules, 2006 for IT and IT enabled service (ITeS) Companies summarised as follows:

- **Creation of Non-Processing Areas:** SEZ authority may allow developers of IT/ITES SEZs to demarcate a portion of the built-up area as a non-processing area. This area can be used for businesses engaged in IT/ITES.
- **Conditions for Non-Processing Areas:** The non-processing area must consist of a complete floor (no partial floors allowed). There must be appropriate access controls to ensure proper screening of people and goods entering or leaving these areas.
- **Repayment of Tax Benefits:** Developers must repay tax benefits, without interest, attributed to the non-processing area, proportionate to its built-up area compared to the processing area. Tax benefits already availed for infrastructure that will be shared between processing and non-processing areas must also be repaid.

- **Certification Requirement:** The amount to be repaid by the developer must be certified by a Chartered Engineer.
- **No SEZ Benefits for Non-Processing Areas:** Businesses in the non-processing area will not receive SEZ benefits or tax incentives and will be treated as entities in the domestic tariff area.

This move has been welcomed by developers who are now converting the SEZ areas into non-SEZ areas. However, IT/ITeS companies are not finding SEZ units attractive owing to the limited benefits SEZs currently enjoy vis-à-vis the stringent compliance requirements for an SEZ.

Therefore, the Commerce Department was working on revising the proposed Development of Enterprise and Service Hubs (DESH Bill) following inter-ministerial discussions, which intended to replace the SEZ Act, 2005, to make the SEZ policy more attractive for investors.

However, the proposed Development of Enterprise and Service Hubs (DESH) Bill, which was intended to replace the SEZ Act, 2005, has not been enacted and remains under consideration. In the interim, the Government has adopted a phased reform approach through the 'SEZ 2.0' framework, including the constitution of a committee in 2026 to recommend comprehensive amendments to the existing SEZ regime, with a view to enhancing its competitiveness and investment attractiveness.

1.11.4 Software Technology Parks India (STPI), STP Scheme and Statistics

Software Technology Parks of India (STPI) was established and registered as an autonomous society under the Societies Registration Act 1860, under the then Department of Electronics (the present Ministry of Electronics & Information Technology), Government of India on 5th June 1991 with an objective to implement Software Technology Park (STP) and Electronics Hardware Technology Park (EHTP) schemes, set up and manage infrastructure facilities and provide other services like technology assessment and professional training.

The **Software Technology Park (STP) Scheme** is an export-oriented initiative designed to facilitate the development and export of computer software and related services from India. It specifically targets the IT sector, focusing on software products and professional services provided through various communication channels, whether physical or digital.

STPI units also must comply to similar regulations as mentioned for SEZ. Additionally, they must file Quarterly performance reports and SOFTEX forms for exports.

1.11.5 STPI in India: Statistics

STPI FACT SHEET: FY 24-25 ANNUAL REPORT

67
STPI Centres

5921
STPI registered units

1.12 Government Initiatives for attracting GCCs in India

India has emerged as the global epicentre for Global Capability Centres (GCCs), with both the central government and various state governments implementing comprehensive policies and initiatives to attract and retain these strategic business units.

The coordinated approach between federal and state-level interventions has created a robust ecosystem that positions India as the preferred destination for multinational corporations establishing their captive centres.

1.12.1 National Framework and Policy Development

The Finance Act 2025 marked a watershed moment for India's GCC sector with the announcement of a National Framework for Global Capability Centres. This framework, designed to guide states in promoting GCCs, particularly in emerging Tier-2 cities, represents the central government's recognition of the strategic importance of this sector.

The Ministry of Electronics and Information Technology (MeitY) has formed an industry-led committee comprising NASSCOM, Zinnov Consulting, ANSR, KPMG, and Invest India to develop this comprehensive framework.

The committee, with a one-year term, is tasked with creating mechanisms for enhancing talent availability and infrastructure, building regulatory reforms, and establishing collaboration platforms between industry players and the startup ecosystem. This initiative transitions the government's approach from a purely incentive-based framework to an innovation-centric model that catalyses technology transfer, enables local intellectual property creation, and drives cross-border industry-academia collaboration.

Recently, States such as **Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu,** and **Uttar Pradesh** have notified exclusive GCC policies or schemes, signalling a structural shift in India's sub-national industrial strategy i.e., from generic IT/ITeS promotion to targeted attraction of high-value global capability functions.

A Comparative Overview of State GCC Policies is as follows:

State	Policy Period	Vision and Objectives	Key Incentives
Andhra Pradesh (AP)	**2024 to 2029**	• Build a global hub for talent with employment creation • Enhance human capital output, with	Capital Subsidy on Fixed Capital Investment, Job Creation Incentive, Employee Incentive, Rental Subsidy, Power

State	Policy Period	Vision and Objectives	Key Incentives
		continuous learning and skilling ● Prioritise advanced technologies with a priority on deep-tech ● Technology enabled ease of living and working	Incentives, Land Allotment, Tailor-Made Incentives for creating employment of more than 2,000 employees, Skill Upgradation Incentives
Gujarat	**2025 to 2030**	● Establish Gujarat as a preferred GCC hub ● Promote high-value employment and skill development ● Foster innovation and digital transformation ● Provide world-class physical and digital infrastructure for GCC operations ● Sustain economic growth and global competitiveness ● Strengthen Gujarat's role in global value chains by supporting R&D-led multinational and large enterprise operations	● **Fiscal Incentives** – CAPEX / OPEX Support, Employment Generation Incentive (EGI), Interest Assistance, Atmanirbhar Gujarat Rojgar Sahay (EPF Reimbursement), Electricity Duty Incentive (EDI), Quality Certification Incentive, Skilling Incentive (Direct Benefit Transfer for Courses) ● **Non-Fiscal Incentives** – Skilling of Local Talent, Quality Certification, Incentives under Gujarat IT/ITeS Policy (2022–27) for Incubators, Accelerators, Startups
Karnataka	**2024 to 2029**	● Enable seamless collaboration between GCCs and Karnataka's local innovation ecosystem ● Foster an R&D-	● Specified Rental assistance & Support for co-working spaces ● EPF contribution reimbursement ● Strengthening R&D

State	Policy Period	Vision and Objectives	Key Incentives
		driven environment focused on emerging technologies and deep-tech ● Create an investor-friendly ecosystem for GCC establishment, expansion, and scaling ● Position Karnataka as a global leader in AI with a comprehensive AI R&D ecosystem for GCCs	infrastructure ● Telecom infrastructure support ● Power-related incentives ● Property tax reimbursement ● Quality certification, financial assistance ● Intellectual property incentive ● Fast-track regulatory approvals for connectivity
Madhya Pradesh (MP)	**2025 to 2029**	● Position MP as a leading destination for GCCs ● Leverage the state's skilled talent pool, rapidly improving infrastructure, and strong focus on research and innovation ● Attract GCCs to complement the growing IT/ITeS ecosystem ● Promote economic growth through job creation, increased investment, and innovation ● Strengthen focus sectors such as IT & ITeS, Electronics System Design &	● **Fiscal incentives** – Rebate on Land, Interest Assistance, Stamp Duty & Registration Charges Reimbursement, Rental / Co-working Rental Assistance, Quality Certification / Marketing Assistance, CAPEX Subsidy, Payroll Subsidy, Patent Assistance, Hosting / Co-hosting Events Assistance, R&D Development Support, Skilling Reimbursement, Internship Support. ● **Non – Fiscal incentives** Exemptions under the Shops and Establishments Act,

State	Policy Period	Vision and Objectives	Key Incentives
		Manufacturing (ESDM), Manufacturing, Automobile, Pharmaceuticals ● Create high-quality employment opportunities requiring specialised and advanced skill sets ● Foster skill development among local professionals through training and upskilling programs, industry—academia collaboration, and knowledge transfer initiatives	Permission for women employees to work night shifts, Independent employer status under the Minimum Wages Act, 1948, Unified register and return under labour laws, Specified Exemption from inspections and approvals for establishment and operations
Maharashtra	**2025 to 2030**	● Position Maharashtra as a global GCC hub with 400 new GCCs ● Generate 4 lakh high-skilled jobs ● Promote GCC-led R&D and high-value investments ● Build world-class districts and a Digital Databank ● Develop Tier-2/3 cities as new GCC hubs ● Leverage the state's strong industrial base, financial leadership, and technological expertise	● **Fiscal incentives:** Capital/rental assistance, payroll and interest subsidies, incremental investment incentives, patent and green certification support, power tariff subsidy, electricity duty, stamp duty and property tax exemptions, R&D grants, CMYKPY internship support ● **Non-fiscal incentives:** GCC industry status, additional FSI, mixed-use permissions, open access and right of

State	Policy Period	Vision and Objectives	Key Incentives
			way, zoning relaxations, reserved MIDC land with priority allotment, EoDB facilitation, digital data repository, assured power and water supply, 24×7 operations, flexible employment conditions
Tamil Nadu (TN)	**2024 to 2027**	• To position TN as the prime destination for GCCs in India • To facilitate the setting up of GCCs beyond Chennai, including cities such as Coimbatore & Madurai, for regional economic development	• Payroll Subsidy
Uttar Pradesh (UP)	**2025 to 2029**	• Position UP as a leading global destination for GCCs • Build a strong ecosystem for innovation, entrepreneurship, and global competitiveness • Promote emerging technologies such as AI, ML, data analytics, cloud computing, cyber-security • Encourage Centres of Excellence (CoEs) in advanced manufacturing, digital	• **Fiscal incentives** – Front End Land Subsidy, Stamp Duty Exemption / Reimbursement, Capital Subsidy, Interest Subsidy, Operational Expenditure (Opex) Subsidy, Payroll Subsidy, Recruitment Subsidy, Refund of Employer's Contribution to EPF, Talent Development and Skilling Incentives, Incentives for Promoting R&D and

State	Policy Period	Vision and Objectives	Key Incentives
		engineering, AI, and blockchain ● Support industry through quality infrastructure, policy incentives, and regulatory facilitation ● Aim to double the technology talent pool and enhance global GCC recognition ● Enhance urban infrastructure and civic amenities in identified GCC cities	Innovation ● **Non-fiscal incentives** – Technical Support Group (TSG) for GCCs, Linkage Support (Commercial Space & Technical Partnerships), Regulatory Support (including inspections exemptions, 24×7 operations, FAR benefits)

1.13 Other Government Initiatives for the IT-BPM Sector

The Information Technology (IT) and Business Process Management (BPM) industry in India has been pivotal in driving the nation's economic growth and establishing its position as a global digital leader.

To support and enhance this sector, the Indian government has introduced a variety of initiatives and policies. The following section explores a few noteworthy government initiatives and policies that are shaping the future of the IT and BPM industry in India.

1.13.1 Key Initiatives and Policies by The Government of India

- National Policy of Software Products
- Digital India Initiative
- Startup India
- Make in India
- Information Technology Investment Regions (ITIRs)
- Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors (SPECS)

- Atal Innovation Mission (AIM)
- National Strategy on Blockchain
- GIFT City (Gujarat International Finance Tec-City)

1.13.2 National Policy of Software Products:

The National Policy on Software Products, 2019, was approved by the Union Cabinet on February 28, 2019, with a vision to develop India as a global software product hub. This policy focuses on fostering innovation, improving commercialisation, and promoting sustainable Intellectual Property (IP).

Key initiatives under this policy include:

- Indian Software Product Registry (ISPR): A platform to analyse and bring together Indian software products
- Innovation Challenge for Development of Indian Video Conferencing Solution
- ICT Grand Challenge (ICTGC) under National Policy on Software Products
- Start-up Accelerator Programme of MeitY for Product Innovation, Development and Growth (SAMRIDH)

1.13.3 Digital India Initiative:

The Digital India program is a flagship program of the government of India with a vision to transform India into a digitally empowered society and knowledge economy. Under the Union Budget 2026–27, the specific allocation for the Digital India Programme stood at about Rs. 4,741 crore (up from Rs. 4,344 crore in FY 25-26).

The Digital India initiative has had a profound impact on the IT and BPM industry in India, driving significant growth and transformation due to the impact it has created, such as Enhanced Digital Infrastructure, Promotion of Startups and Innovation, Skill Development and increased focus on data protection and cybersecurity.

Key programs under Digital India to support IT and BPM:

- India BPO Promotion Scheme (IBPS)
- Northeast BPO Promotion Scheme (NEBPS)

- Common Services Centres (CSCs)

1.13.4 Startup India Initiative

Startup India is a Government of India flagship initiative to build Startups and nurture innovation. Through this initiative, the Government plans to empower Startup ventures to boost entrepreneurship, economic growth and employment across India.

The Startup India Seed Fund Scheme provides financial assistance to startups for proof of concept, prototype development, product trials, market entry and commercialisation through eligible incubators. Under the Startup India Seed Fund Scheme, 219 incubators have been selected and the entire corpus of Rs. 945 crore has been committed. These incubators have approved funding of over Rs. 605 crore to more than 3,400 startups.

The Startup India initiative supports IT and BPM industries through the Fund of Funds for Startups (FFS) and Startup India Seed Fund Scheme (SISFS), providing crucial financial assistance and funding opportunities. Additionally, it offers tax benefits, easier compliance, and fast-tracking of IPR applications to foster innovation and growth.

1.13.5 Make in India Initiative

The Make in India initiative was launched by Prime Minister in September 2014 as part of a wider set of nation-building initiatives. Devised to transform India into a global design and manufacturing hub. The Make in India initiative has significantly impacted the IT and BPM (Business Process Management) sectors by promoting investment, innovation, and skill development.

Key aspects of FDI received w.r.t IT and BPM sectors:

- IT and BPM sector received USD 121.4 Billion in FDI between April 2000 and December 2025.
- The broader services sector, which includes business services, IT-enabled services, consulting, fintech support, and BPM operations attracted approximately USD 9 billion in FY 2025, becoming the largest FDI recipient sector with nearly 19% share of total inflows.

- Approximately 4.5 million jobs created in manufacturing and IT sectors.

1.13.6 GIFT city (Gujarat International Finance Tech-City)

Gujarat International Finance Tec-City (GIFT City) is a modern business district in Gujarat, India. It aims to be a global financial and IT services hub, offering state-of-the-art infrastructure and facilities. The city includes an International Financial Services Centre (IFSC), a Special Economic Zone (SEZ), and various commercial and residential complexes.

GIFT hosts India's first and only IFSC which is eligible for special tax benefits apart from regular SEZ benefits like

- 100% tax exemption for 20 consecutive years out of 25 years.
- MAT / AMT 9% of book profits applies to Company / others setup as a unit in IFSC
- MAT not applicable to companies in IFSC opting for new tax regime.
- Exemption from STT, CTT, stamp duty in respect of transactions carried out on IFSC exchanges

GIFT City benefits the IT and BPM industry by providing state-of-the-art infrastructure, high-speed internet, and reliable power supply, ensuring seamless operations. Additionally, it offers tax incentives and a business-friendly regulatory framework, reducing operational costs and simplifying compliance.

Chapter 2 Regulatory Compliance Overview and Calendar

The Indian IT-BPM sector operates in a complex regulatory environment, driven by domestic laws, international client requirements, and emerging global standards. Compliance is not just a legal mandate, it is central to sustaining trust, business continuity, and market access. The sector is governed by a combination of sector-specific, financial, labour, cyber, and data protection laws.

2.1 Sector-Specific Laws

Law	Purpose	Key Provisions	Compliance Actions
Digital Personal Data Protection Act, 2023 (DPDP Act)	Introduces comprehensive personal data protection obligations.	• Consent-based data processing • Data fiduciary obligations, including transparency, purpose limitation, and data security	• Appointment of Data Protection Officer (DPO) for significant data fiduciaries • Consent management framework • Data breach reporting protocols
Information Technology Act, 2000	India's primary legislation governing digital contracts, cybercrime, electronic commerce, and digital signatures.	• Legal recognition of electronic documents and signatures • Offences and penalties for cybercrimes (Sections 43, 66) • Intermediary guidelines (Section 79)	• Maintain robust cybersecurity measures • Notify cyber incidents under CERT-In rules • Appoint a grievance officer (especially for intermediaries and platforms)
e-Waste (Management and Handling) Rules, 2011	Regulate the management, disposal, and recycling of electronic waste	Defines responsibilities for producers, consumers, dismantlers, and recyclers; promotes Extended Producer Responsibility (EPR)	Obtain EPR authorisation, maintain records, file annual returns, ensure safe disposal and recycling

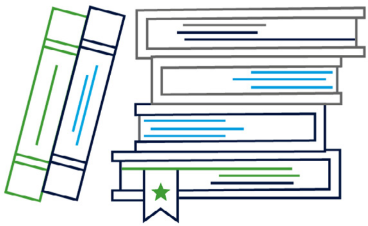
Law	Purpose	Key Provisions	Compliance Actions
Environment Protection Act, 1986 and Batteries (Management and Handling) Rules, 2001	Provide a framework for environmental protection and pollution control	Empowers the central government to set standards, regulate emissions, manage hazardous substances, and conduct inspection	Obtain necessary environmental clearances, adhere to emission/waste norms, maintain records, and report as required

2.2 Corporate, Financial and Tax Regulations

Law	Purpose	Key Provisions	Compliance Actions
Companies Act, 2013	Regulate company formation, governance, and compliance	Covers incorporation, board structure, financial reporting, CSR, meetings, audits, and penalties for non-compliance	File statutory forms (AOC-4, MGT-7), maintain registers, hold meetings, ensure disclosures and timely compliance
Foreign Exchange Management Act,1999	Regulate foreign exchange transactions and maintain forex stability	Governs capital/current account transactions, FDI, external borrowings, and overseas investments	File returns (FC-GPR, FLA, ECB), obtain approvals if required, comply with RBI directions and time limits
SEBI Act, 1992	Regulate the securities market and protect investor interests	Regulates stock exchanges, intermediaries, insider trading, takeovers, and disclosure norms for listed entities	Submit periodic filings (e.g., LODR), ensure disclosures, and adhere to insider trading and takeover regulations
ITA 1961 *(replaced by ITA 2025)*	Governs the levy, administration, collection, and recovery of income tax in India	Regulates levy, computation, and payment of income tax; covers income heads, corporate tax	Income tax returns, tax audit, TDS returns, transfer pricing documentation, and foreign remittance certificates (Form 15CA/15CB now replaced by Form 145/146)

Law	Purpose	Key Provisions	Compliance Actions
Goods and Services Tax (GST), 2017	To subsume and unify multiple indirect taxes (VAT, Service Tax, Excise, etc.) into a **single tax regime** across India	Governs indirect taxation on supply of goods and services in India	Monthly/quarterly returns, E-invoicing, Proper classification of services/products, Reverse charge mechanism (RCM)

2.3 Labour Law Regulations



The introduction of the **Four Labour Codes** marked a decisive shift towards a consolidated and contemporary regulatory regime. By unifying multiple legislations into a coherent framework, the codes aim for **simplification, standardisation, and administrative efficiency.** Additionally, they strengthen worker protections through national wage floors, broader social security, and formal recognition of gig and platform workers, reflecting an intent to modernise India's labour ecosystem without undermining competitiveness.

Strategically, these reforms are aligned with the vision of **Aatmanirbhar Bharat**, seeking to promote formalisation, reduce regulatory complexity, and enhance India's attractiveness as an investment destination. The real test, however, lies in effective implementation across states and in achieving the right equilibrium between **flexibility for employers and security for workers**.

2.3.1 The Four Labour Codes (Effective 21 November 2025)

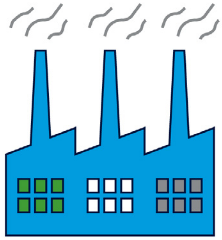
(i) Code on Wages, 2019

- **Universal Application of Minimum Wages** – Ensures that minimum wages apply to all employees across organised and unorganised sectors, removing the previous schedule-based coverage.

- **Standardisation of Wage Components** – Clearly defines "wages" to include *basic pay, dearness allowance (DA), and retaining allowance,* bringing uniformity and reducing the scope for disputes.
- **Timely Payment of Wages** – Mandates prompt wage payments and empowers the government to fix different wage periods (daily/weekly/fortnightly/monthly) to prevent delays.
- **National Floor Wage** – Introduces the concept of a *statutory national floor wage,* below which no state can fix its minimum wage, helping to reduce inter-state discrepancies.
- **Simplification of Laws** – Consolidates and replaces four earlier labour laws, i.e. Payment of Wages Act (1936), Minimum Wages Act (1948), Payment of Bonus Act (1965), and Equal Remuneration Act (1976) for easier compliance.
- **Digital and Transparent Compliance** – Encourages electronic payment of wages and digital record-keeping to enhance transparency and prevent exploitation.
- **Equal Remuneration Provisions** – Reinforces the principle of *no gender-based discrimination* in wages and recruitment for similar work.
- **Stronger Inspection and Enforcement** – Introduces a technology-enabled, risk-based inspection system to improve enforcement and reduce arbitrary inspections.
- **Dispute Resolution Mechanism** – Establishes an efficient grievance redressal system, allowing employees to file claims related to wage payments, bonuses, or discrimination.
- **Clarity on Bonus Payments** – Sets uniform criteria for bonus eligibility, calculation, and disbursement across sectors.
- **Flexibility for States** – Allows state governments to fix minimum wages above the national floor wage, based on local economic conditions and cost of living.

- **Protection for Contract and Gig Workers** – Extends wage security provisions to contract workers, outsourced employees, and other vulnerable categories.

(ii) Industrial Relations Code, 2020



- **Streamlines Rules on Strikes, Lockouts, and Dispute Resolution** – Introduces uniform procedures and mandatory notice periods to ensure orderly industrial relations.
- **Higher Threshold for Retrenchment/ Closure Approval** – Requires establishments with **300+ workers** to seek prior government permission for retrenchment, layoffs, or closure (raised from 100 earlier).
- **Simplifies Union Recognition** – Introduces the concept of a **sole negotiating union** (with 51% membership) or a negotiation council, which critics say may make unionisation more difficult.
- **Facilitates Fixed-Term Employment** – Allows fixed-term contracts across sectors, giving employers flexibility while ensuring pro-rata benefits to workers.
- **Promotes Ease of Doing Business** – Aims to reduce compliance burden and encourage investment through more predictable industrial relations.
- **Grievance Redressal Mechanism** – Mandates an internal grievance redressal committee for establishments with 20 or more workers.

(iii) Code on Social Security, 2020

- **Wider Social Security Coverage** – Expands EPF, ESI, EDLI, maternity benefits, and gratuity to a larger share of the workforce, including unorganised-sector employees.
- **Recognition of Gig and Platform Workers** – Formally recognises gig and platform workers for the first time and enables the creation of social security schemes funded by government, employers, and

aggregators.

- **Gratuity for Fixed-Term Employees** – Allows fixed-term employees to receive gratuity after **1 year** of service instead of 5, ensuring greater protection for short-term workers.
- **Universal Account Number (UAN) Based Portability** – Facilitates easy portability of social security benefits when workers change jobs or migrate across states.
- **Social Security Fund for Unorganised Workers** – Creates a dedicated fund to finance welfare schemes for unorganised, gig, and platform workers.
- **Expanded ESIC Coverage** – Allows voluntary ESIC enrolment in areas where ESIC is not yet notified, increasing access to health benefits.
- **Simplified and Unified Definitions** – Harmonises definitions of wages, employees, and establishments across various social security schemes to reduce disputes and ensure consistency.

(iv) Occupational Safety, Health and Working Conditions (OSH) Code, 2020

- **Consolidates 13 Labour Laws** – Merges various safety, health, and welfare legislations into a single, simplified code for easier compliance.
- **Mandatory Appointment Letters** – Requires employers to issue formal appointment letters to all employees, improving transparency in employment terms.
- **Regulation of Working Hours and Conditions** – Standardises working hours, overtime norms, and daily/weekly limits while ensuring adequate rest intervals.
- **Work-from-Home Provisions** – Empowers the government to frame rules related to work from-home arrangements, reflecting modern workplace needs.

- **Stronger Safety and Welfare Measures** – Enhances welfare provisions such as creche facilities, canteens, and first-aid requirements in establishments.
- **Improved Safety Standards for Hazardous Work** – Introduces stricter norms for hazardous industries and mandates real-time monitoring of workplace safety in certain sectors.
- **Alignment with Global Best Practices** – Aims to bring Indian occupational safety standards in line with international norms, promoting safer and healthier workplaces.

2.4 Analytical Overview

2.4.1 Broader Impact

- **Formalisation Push** – By mandating appointment letters and wage transparency, informal employment may shrink.
- **Gig Economy Recognition** – India becomes one of the few countries to legally acknowledge gig workers' rights.
- **Employer-Friendly Tilt** – Labour groups may argue that relaxed thresholds and stricter strike rules may weaken collective bargaining and worker protections.
- **Balance of Power** – While workers gain protections, employers gain flexibility, thus creating a delicate equilibrium that will depend on enforcement.

2.4.2 Impact Overview – At a Glance

Labour Code	Replaces	Key Focus
Code on Wages	4 laws incl. Minimum Wages Act	Wage standardisation, equal pay, timely payment
Industrial Relations Code	3 laws incl. ID Act	Strikes, layoffs, dispute resolution
Social Security Code	9 laws incl. EPF/ESI	Universal social security, gig worker coverage
OSH & Working Conditions Code	13 laws incl. Factories Act	Safety, working hours, employer obligations

Each code consolidates multiple laws into a single, coherent framework. The above table shows what each code covers.

2.4.3 Key Comparisons

Theme	Earlier Framework	New Labour Codes
Wage Structure	Sector-specific, inconsistent	Unified and standardised
Worker Definition	Multiple, conflicting definitions	Single comprehensive definition
Compliance	Multiple registrations/ inspections	Single registration, digital filings
Social Security	Mostly the formal sector	Includes gig & unorganised workers
Industrial Relations	Complex & fragmented	Simplified procedures & thresholds
Safety Standards	Varied by industry	Uniform standards across sectors

This comparison highlights how the new codes simplify and expand coverage, making compliance easier and more inclusive.

2.4.4 Compliance Impact on Employers

- Single registration across multiple codes
- Digital maintenance of records and filings
- Higher coverage and expanded obligations
- Greater transparency and structured accountability
- Reduced paperwork with increased monitoring expectations

The new system reduces paperwork and improves transparency but also increases employer responsibility.

2.4.5 Strategic Implications for Organisations

- Improved ease of doing business
- Better workforce management and modernisation
- Enhanced risk mitigation through clearer compliance

- Stronger employee trust and retention

> Beyond compliance, these reforms offer strategic advantages, especially for organisations focused on growth and talent retention.

2.4.6 Old Laws that would not be effective

- Contract Labour (Regulation and Abolition) Act, 1970
- The Payment of Gratuity Act, 1972
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
- The Payment of Bonus Act, 1965
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- The Minimum Wages Act, 1948, R/w the State Minimum Wages Rules, 1958.
- The Maternity Benefit Act, 1961 read with maternity Benefit Amended Act, 2017.
- Employees Provident Fund and Miscellaneous Provisions Act
- State Labour Welfare Fund Act, 1965 r/w State Labour Welfare Fund Rules, 1968
- Employees' State Insurance
- Equal Remuneration Act 1976 and Equal Remuneration Rules 1976
- State Industrial Establishments (National and Festival Holidays) Act, 1963
- The State Tax on Professions, Trades, Callings and Employments Act, 1976 and Rules, 1976
- State Shops and Commercial Establishments Act, 1961 read with Rules, 1963
- Apprentices Act, 1961 and Apprenticeship Rules, 1992
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act,1979
- The state Industrial Employment (Standing Orders) Act, 1946
- Employees Compensation Act, 1923

2.5 Compliance Calendar

2.5.1 Corporate Secretarial

Compliance Area	Compliance description	Frequency	Due Date
Annual General Meeting (AGM)	Shareholders meeting to approve financial statements, auditor's appointment and dividend declaration	Yearly	In case of first AGM, 9 months from the closure of financial year, i.e., before 31 December of the succeeding FY, and for subsequent AGM within 15 months from the last AGM or 6 months from the closure of financial year, whichever is earlier.
Board meetings	Meeting of the Board of Directors to approve regular business	Quarterly	4 meetings in a calendar year with a maximum gap of 120 days between two consecutive meetings
Financial statements	Filing of financial statements with Registrar of Companies (RoC)	Yearly	Within 30 days from the date of AGM. It can be prepared for months less than 12 months period, in case the WOS is established before December. If the WOS is established on or after January, 15 months financial statement can be prepared in next year.
Company Annual Return	Filing of annual return with RoC	Yearly	Within 60 days of AGM
Annual Return on Foreign Assets & Liabilities (FLA)	Annual return on Foreign Assets and Liabilities to be submitted with the Reserve Bank of India	Yearly	15-July of the succeeding FY

Compliance Area	Compliance description	Frequency	Due Date
Annual declaration	Annual declaration from the existing directors in Form DIR-8 and Form MBP-1	Yearly	In the first board meeting of the company and thereafter before the first board meeting in the financial year
MSME return	Half-yearly return for informing outstanding payment to micro and small scale vendors	Half-yearly	For April to September return – due date of return is 31 October. For October to March return – due date of return is 30 April
DPT-3	Annual return to be submitted to ROC stating the money taken by company not in the form of deposits	Yearly	30-June of the succeeding FY
DIR-3 KYC	KYC form for all directors	Yearly	30-Sep of the succeeding FY
Ben 2	Beneficial ownership by an individual that is not registered with the company	30 days of receipt of declaration from the beneficial owner	-
XBRL	Required if the company adopts IndAS accounting, or either the capital or turnover are above the thresholds	Yearly	Within 30 days of AGM

2.5.2 Direct Tax and Transfer Pricing

Compliance Area	Compliance description	Frequency	Due Date
Corporate income tax – Advance Tax	Advance tax payment	Quarterly	On or before 15th day of 1st Instalment = June (15%) 2nd Instalment = September (45%), 3rd Instalment = December (75%) Last Instalment = March (100%) of every tax year
Corporate income tax	Return of income	Yearly	31st October (30th November in case transfer pricing is applicable) of succeeding TY
Withholding taxes	Withholding tax payments (Salary and Non-Salary)	Monthly	7th of the subsequent month except for March which is due by 30th April
	Withholding tax returns (Salary and Non-Salary)	Quarterly	31st July – first quarter 31st October – second quarter 31st January – third quarter 31st May – fourth quarter
	Withholding tax certificate (Form-16A non-Salary) ***(Form No. 131 under new tax rules)***	Quarterly	15th August – first quarter 15th November – second quarter 15th February – third quarter 15th June - fourth quarter
	Withholding tax certificate (Form-16 Salary) ***(Form No. 130 under new tax rules)***	Yearly	15th June of the following TY
	Certification for withholding taxes on foreign remittances (Form 15CA/15CB) ***(Form***	Per foreign remitta-nce	At the time of foreign remittance

Compliance Area	Compliance description	Frequency	Due Date
	No. 145 and 146 under new tax rules)		
Tax audit (if applicable)	Filing of prescribed information in Form No 3CD, accompanied by tax auditor's certificate in Form No 3CA ***(Form No. 26 under new tax rules)***	Yearly	30th September of the succeeding TY
Transfer pricing Audit (applicable in case of foreign related party transactions)	Submission of accountant's certificate in Form No. 3CEB (Form No. 48 under new tax rules) for all transactions with associated enterprises	Yearly	31st October of the succeeding TY
Local File / Transfer Pricing Study Report	Preparation of transfer pricing study report	Yearly	31st October of the succeeding TY
Master File	**Form 3CEAA:-** ***(Form No. 56 under new tax rules)*** **Part-A –** Mandatory for all Indian affiliates. **Part-B –** Applicable if – (i) Consolidated global turnover exceeds INR 5 billion **AND**	Yearly	30th November of the succeeding TY

Compliance Area	Compliance description	Frequency	Due Date
	(ii) Aggregate value of international transaction exceeds INR 500 million; or Aggregate value of international transactions involving intangibles exceeds INR 100 million		
Master File Intimation	**Form 3CEAB *(Form No. 57 under new tax rules):-*** Master file intimation applicable to MNEs that exceed the prescribed Master File thresholds and have multiple entities operating in India.	Yearly	30 days before the due date of filing Form 3CEAA ***(Form No. 56)***
Country by Country Report (CbCR)	**Form 3CEAD *(Form No. 59 under new tax rules)*** Applicable when the total consolidated group revenue for the MNE in the preceding accounting year exceeds INR 64,000 million	Yearly	12 months from the end of the accounting year

Compliance Area	Compliance description	Frequency	Due Date
Country by Country Report (CbCR) Intimation	**Form 3CEAC – *(Form No. 58 under new tax rules)*** CbCR notification is required when the parent entity files the report in its home jurisdiction and an automatic exchange of CbCR is active between the parent's jurisdiction and India's jurisdiction.	Yearly	2 months prior to the due date for filing the CbCR
Safe Harbour	**Form 3CEFA, Form 3CEFB and Form 3CEFC – *(Form No. 49 under new tax rules)*** ***Application for opting SHR in case of following transactions:-*** • Eligible International Transaction • Eligible Specified Domestic Transaction • Eligible Business	For 5 block years (for IT Sector) & Yearly for others	30 November of the succeeding TY and return of income of the relevant year must be furnished before furnishing the form for opting SHR
Specified financial transactions	**Filing of Form 61A *(Form No. 165 under new tax rules)***	Yearly	31st May of the succeeding TY

2.5.3 Goods and Service Tax

Form Name	Compliance description	Who needs to file	Frequency	Due date
GSTR-1	Details of outward supplies	All GST registered taxpayers	Monthly	11th day of the succeeding month
GSTR-3B	Monthly Return	All GST registered taxpayers	Monthly	20th day of the succeeding month
GSTR-9	Annual Return	All GST registered taxpayers whose aggregate annual turnover exceeds INR 20 million in FY	Annual	31st December of succeeding FY

2.5.4 SEZ and STPI

Form Name	Compliance description	Who needs to file	Frequency	Due date
MPR	Monthly Performance Report	To be filed monthly by STP unit/ STPI unit.	Monthly	5th day of the succeeding month
APR	Annual Performance Report	To be filed annually by STPI units.	Annual	30th September of the succeeding FY
SERF	Software Exports Reporting Form	To be filed monthly by STP unit/ IT or ITeS units dealing with service exports	Monthly	10th of the succeeding month
SOFTEX Form	Software Export Declaration Form	STP unit/non-STP unit and SEZ under IT/ITeS sector	Monthly	within 30 days from the date of last invoice raised in that month.

Chapter 3 Corporate Governance & Risk Management

3.1 Rising Importance

As the sector scales in complexity and global interdependence, the importance of strong corporate governance and robust risk management frameworks has become more important than ever.

With increasing stakeholder scrutiny, evolving regulatory requirements, and exposure to cyber, operational, and geopolitical risks, IT-BPM companies must embrace governance mechanisms that promote transparency, accountability, ethical behaviour, and strategic risk mitigation.

3.2 Corporate Governance in the IT-BPM Industry

3.2.1 Key Principles

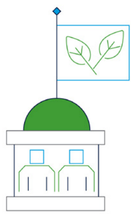
Corporate governance in should emphasise on:

- **Accountability:** Clear definition of roles and responsibilities for board and management.
- **Transparency:** Timely and accurate disclosure of financial and operational performance.
- **Fairness:** Protection of stakeholder rights including minority shareholders, customers, and employees.
- **Responsibility:** Ethical conduct and compliance with legal and regulatory frameworks.

3.2.2 Structure and Oversight

Most large and listed IT-BPM companies follow governance models in line with SEBI's LODR Regulations and Companies Act, 2013. **Key structural components include:**

- **Board of Directors:** Independent directors, diversity in skills and background, and technology governance expertise.
- **Audit Committee:** Oversees internal controls, financial reporting, and statutory audits.



- **Risk Management Committee:** Monitors enterprise risk exposures and mitigation strategies.
- **ESG & CSR Committees:** Align governance with environmental, social, and ethical responsibilities.

3.2.3 Corporate Governance Policies that communicate the tone of the governance to the various stakeholders

Companies define various policies that set the tone at the top and through out the organisation on matters relating to corporate governance. **Some of the commonly observed policies and their objectives are outlined below:**

Board Diversity Policy	To ensure a diverse mix of skills, experiences, and perspectives on the Board, enhancing decision-making and reflecting a commitment to inclusivity
Capital Allocation Policy	To provide a framework for deploying capital efficiently, balancing growth initiatives with shareholder returns
Code of Conduct and Ethics	To establish a set of guiding principles that promote integrity, transparency, and ethical behaviour among all employees
Corporate Social Responsibility Policy	To outline the company's commitment to social initiatives, aligning business operations with societal development
Dividend Distribution Policy	To inform shareholders about the company's approach to distributing profits, ensuring transparency and consistency
Document Retention and Archival Policy	To manage the preservation and disposal of company documents, ensuring compliance with legal and regulatory requirements
Enterprise Risk Management Policy	To identify, assess, and mitigate risks that could impact the company's objectives and operations
Nomination and Remuneration Policy	To guide the appointment and compensation of directors and senior management, promoting fairness and meritocracy

Supplier Code of Conduct	To set expectations for suppliers regarding ethical conduct, labour practices, and compliance with laws
Whistleblower Policy	To provide a secure channel for reporting unethical or illegal activities, ensuring protection against retaliation

3.2.4 Emerging Themes in Governance

- **Tech-Driven Oversight:** Use of dashboards, analytics, and AI for real-time compliance and monitoring.
- **Cyber Governance:** Board-level attention to cybersecurity threats and data privacy.
- **Ethical AI:** Policies around the responsible use of emerging technologies like generative AI.
- **Whistleblower Protection:** Strengthened channels for reporting ethical concerns with confidentiality. Whistleblowers are acting as one of the most important mechanisms to identify frauds and corporate governance lapses in the organisation.

3.3 Review of Risk Management Report of key IT players in India

We reviewed the latest Risk Management report available as a part of the annual report (FY 24-25 or FY 23-24) of key players in IT Industry **(Indian outbound companies)** and summarize the following risks highlighted by them.

Risk	Reporting of the Risk	Additional Remarks
Disruptive Technologies: Cost-effective new and emerging AI models with their innovative capabilities that reduce the amount of programming and related services. Not using gen-AI to enhance productivity, that could affect the win rates and pricing, reduce the market share and	**7** out of 10 key IT Companies reported this as a key risk.	Additionally, the advancement of quantum computing, Agentic AI were mentioned as key risks that could impact the businesses. Traditional **'Software-as-a-Service'**/IT products applications evolve into more AI-native solutions, necessitating a re-evaluation of the role of system integrators to transition to

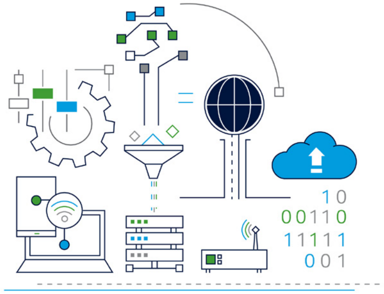
Risk	Reporting of the Risk	Additional Remarks
decrease the revenue and profits.		a 'Service-as-a-Software' model.
Customer / Revenue Concentration: Revenues are concentrated in a few geographies and client industries, and a large part of revenue is dependent on a limited number of clients.	**7** out of 10 key IT Companies reported this as a key risk.	Additionally, Customers looking inwards by insourcing or establishing or expanding Global Capability Centres (GCC) for various services provided by IT companies may result in loss of addressable market share, thus impacting overall growth and profitability.
Work Permits: Evolving work permit regulations influencing workforce strategy and cross-border talent deployment, i.e. Restrictions on global mobility, location strategies.	**6** out of 10 key IT Companies reported this as a key risk.	
Talent Management: Ability to attract and retain top talent; short supply of emerging technical skills.	**8** out of 10 key IT Companies reported this as a key risk.	Additionally, addressing the aspirations of GenZ was one of the key highlights of talent management-related risks. Also, providing a healthy and safe working environment to improve employee productivity, retention and avoid any reputation impact was mentioned as key to talent management.
Competition: New emerging players with cutting-edge innovative solutions.	**5** out of 10 key IT Companies reported this as a key risk.	
Financial- Currency volatility: Volatility in functional currency (INR) against major currencies.	**8** out of 10 key IT Companies reported this as a key risk.	

Risk	Reporting of the Risk	Additional Remarks
Financial– Cost inflation: If IT companies are unable to run operations effectively and with sustainable cost levers, the long-term profitability may be adversely affected.	**5** out of 10 key IT Companies reported this as a key risk.	
Financial– Credit risk: Credit risk is concentrated in cash and bank balances, inter-corporate deposits, customer receivables, finance lease receivables, investment securities and derivative instruments. All financial instruments mentioned above carry a risk of non-performance by counterparties.	**3** out of 10 key IT Companies reported this as a key risk.	
Data Privacy: IT companies' global nature of operations requires them to be compliant with various privacy legislations like GDPR, DPDPA etc., carrying severe consequences for violations and data breaches. Privacy risks have increased with AI adoption getting democratised with the latest tools. Any violations or data breaches can have an impact on the Company's business operations and its brand with material liabilities.	**8** out of 10 key IT Companies reported this as a key risk.	Additionally, unauthorised use or disclosure of employee or company or customer data may lead to either breach of customer contract or fines / penalties from regulators and / or damage to the company's reputation.
Cyber Attacks: Risks of cyber-attacks are on a constant rise and evolving quickly with far-reaching consequences.	**9** out of 10 key IT Companies reported this as a key risk.	

Risk	Reporting of the Risk	Additional Remarks
Attacks may emerge due to geo-political events, pandemic themed cyber threats etc. Security breaches could result in reputational damage, penalties, and legal and financial liabilities along with impact on business operations.		
Complex and changing global regulations: IT Companies global nature of operations requires them to comply with ever-evolving, complex regulatory requirements across multiple jurisdictions & compliance areas. Failure to comply can result in penalties, reputational damage, and criminal prosecution.	**9** out of 10 key IT Companies reported this as a key risk.	
Intellectual Property (IP) infringement and leakage: Risk of infringement of IP of customers, suppliers, partners and alliance organisations by associates may lead to potential liabilities, increased litigation and reputation impact. Also, inadequate protection of IP may lead to potential loss of ownership rights, revenue and value.	**7** out of 10 key IT Companies reported this as a key risk.	Additionally, litigation risks might arise from commercial disputes, alleged violation of IPR, personal data/ information breach incidents/ claims and employment related matters. The Company's rising profile and scale also makes it an attractive target for meritless lawsuits. These lead to reputation risk, legal expenses and adverse rulings can result in substantive damage.
Sustainability Risks – Climate change and Environmental Aspects: Due to extreme weather events; transition risks resulting from disruptions	**10** out of 10 key IT Companies reported this as a key risk.	

Risk	Reporting of the Risk	Additional Remarks
in the market and emerging regulations; disruptions to operations due to water scarcity.		
Delivery Capability/ Capacity Risk: The Company's ability to meet project deadlines, stay within budget, and fulfil customer requirements is vital. Addressing these challenges is essential to avoid penalties, retain business, and safeguard the Company's reputation.	**7** out of 10 key IT Companies reported this as a key risk.	Additionally, IT Companies faces fundamental risk if it is not operationally agile. This means it may not be able to respond and adapt to changing market conditions or meet various stakeholder preferences, including clients, employees and the community. This lack of agility could result in significant financial losses and negatively impact the company's brand.

4.1 FDI in IT/ ITeS sector



India, one of the most lucrative destinations for Foreign Direct Investment (FDI), has risen as one of the fastest growing economies at the global fora. Foreign investment is the driving factor that has played an indispensable role in changing the Indian business environment.

It is noteworthy to observe that amongst various sectors, the Information Technology (IT), Information Technology enabled Service Sector (ITeS) along with the Business Process Outsourcing (BPO) industry, has been able to attract significant investments from major countries globally.

The computer hardware and software sector in India received the highest share in FDI amounting to over USD 7.8 billion in fiscal year 2025[5]. FDI in IT sector is one of the biggest in India, with many global companies establishing their Global Capability Centres and R&D offices in India.

In India, the IT sector has a majority presence within Special Economic Zones ('SEZs'). SEZs are designated geographical regions within a country that offer more liberal economic laws compared to the rest of the country. They are designed in a manner to foster economic growth and offer various tax and regulatory incentives to promote exports and investments. Further, Software Technology Parks of India (STPI), which is a government backed organisation promotes IT/ITeS industry in India and also focuses on promoting software exports thereby, creating a strong ecosystem for various IT companies in India.

Entities engaged in IT/ITeS sector operating in SEZs or registered as STPI units are permitted to receive 100% FDI under the automatic route. These combined benefits under the FDI policy and FEMA regulations together make India a global hub for technology services, backed by a strong legal framework and pro-investment environment.

[5] https://dpiit.gov.in/publications/fdi-statistics

Foreign Investment Regulations prescribe certain requirements in respect of the entry route, mode of funding, pricing, reporting requirements, documentation, etc. In this chapter, we have consolidated certain relevant aspects for foreign investment in the IT / ITeS sector.

4.2 FDI Regulations

- Foreign investment in India is regulated by the Foreign Exchange Management (Non- debt Instruments) Rules, 2019 ('NDI Rules') issued by the Ministry of Finance on 17 October 2019. In addition to the NDI Rules, Foreign investment in India is governed by the Consolidated Foreign Direct Investment Policy 2020, by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry and various press notes issued from time to time.
- A person resident outside India ('PROI') or an entity incorporated outside India (other than citizen / entity of Pakistan or Bangladesh or a country sharing land border with India) can invest in equity instruments of an Indian company or in the capital of an LLP, on a repatriable basis. Also, NRIs / OCIs (including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs) are allowed to invest in India.
- FDI means investment through equity instruments by a PROI in an unlisted Indian company; or 10% or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company. In case an existing investment by a PROI in capital instruments of a listed Indian company falls to a level below 10% of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI.

4.2.1 Foreign investment can be summarised as below:

Nature of investment	Who can make investment?	Basis of investment	Form of Investment
• Investment in equity instruments of an Indian	• Investment can be made by a PROI • Certain	• Investment can be made on repatriation basis.	• A PROI may hold foreign investment either as FDI or FPI

Nature of investment	Who can make investment?	Basis of investment	Form of Investment
company • Investment in capital of an LLP.	exceptions have been provided for entities coming from countries sharing land border with India		

4.3 Entry routes for foreign investment in India

Entry Routes for investment in India

Foreign Direct Investment

FDI can be described as investment through equity instruments by a PROI:

a) in an unlisted Indian company; or

b) in 10% or more of the post issued paid up equity capital on fully diluted basis of a listed Indian company. If an existing investment by a PROI in capital instruments of a listed Indian company falls to a level below 10% of the post issue paid up equity capital on a fully diluted basis, the investment will continue to be treated as FDI.

Therefore, if investment by a non-resident / PROI in a listed company is more than 10%, it is considered as a 'FDI'.

Foreign Portfolio Investment

FPI is an investment made by a PROI in capital instruments where such investment is:

a) less than 10% of the post issue paid up equity capital on a fully diluted basis of a listed Indian company; or

b) less than 10% of the paid-up value of each series of capital instruments of a listed Indian company.

Therefore, if investment by a non-resident / PROI in a listed company is less than 10%, it is considered as a 'FPI'.

4.4 FDI Limits and Route

Investment in India can come through either of the two routes available for investment which are as under:

4.4.1 Automatic Route

Investment by a PROI does not require approval of RBI or the Government. Only Post facto intimation to RBI.

4.4.2 Approval Route

Investment by PROI requires prior approval of the Government.

- Where the sector falls under the government route as specified in consolidated FDI policy.
- Where the investment attracts conditions requiring government approval (example: sectoral caps or investments from countries sharing land borders with India).

A PROI making an investment in India must look into the sector in which the investment is intended to be made. The Government has implemented an investor friendly FDI policy under which FDI up to 100% is permitted through the automatic route in most of the sectors except for certain sectors like defence space atomic energy; lottery/ gambling; chit funds; real estate business etc.

Foreign investment in the sectors given in the FDI policy are permitted up to the limit indicated against each sector/ activity, thereby putting a statutory/ sectoral cap on the total foreign investment. However, in sectors/ activities not listed in the FDI policy, FDI is permitted up to 100% under the automatic route, subject to applicable laws/ regulations, security and other conditionalities.

With respect to the IT/ ITeS sector, such sector has neither been specifically mentioned in the list of 'permitted' sectors nor in the list of 'prohibited' sectors. Accordingly, FDI in IT/ ITeS sector is generally permitted up to 100% under the automatic route. It is pertinent to note that irrespective of the sector to which the industry belongs, any investment by the entity of country which shares the border with India or where the beneficial owner of the investment into India is situated in or citizen of any such country, can invest only under the Government route.

4.5 Investment through equity shares

4.5.1 Establishing a new company (as subscribers to the memorandum)

Foreign investment can be made in IT/ ITeS sector by incorporating a company and subscribing to the shares of the new company, subject to the prescribed pricing guidelines*.

4.5.2 Purchase of shares from existing shareholders

A PROI may purchase shares of an Indian company, subject to adherence to entry routes, pricing guidelines* and other conditions as applicable.

4.5.3 Allotment of shares by an existing company

An existing company may issue new shares to existing shareholders. Companies may also issue Rights/ Bonus shares to existing non-resident shareholders, subject to adherence to pricing guidelines*, reporting requirements, etc.

Indian companies may also issue Employee Stock Option Plan and/ or sweat equity shares either to its employees / directors or to employees/ directors of its holding company or joint venture or wholly owned overseas subsidiary/ subsidiaries who are resident outside India, subject to certain conditions and compliances.

**Price of equity instruments of an Indian company issued to persons resident outside India shall not be less than the Valuation of equity instruments to be done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a SEBI registered Merchant Banker or a Chartered Accountant or a practicing Cost Accountant in case of an unlisted Indian company and the price worked out in accordance with relevant SEBI guidelines in case of listed Indian companies.*

4.5.4 Indirect investment

Indirect Investment received by an Indian entity from another Indian entity which has received foreign investment is regarded as Downstream Investment and is subject to FDI guidelines.

4.6 Investment through non-convertible, optionally convertible and partially convertible preference shares or debentures

A PROI can invest in non-convertible, optionally convertible and partially convertible preference shares or debentures. However, the same shall be considered as debt and shall conform to External Commercial Borrowings ('ECB') guidelines regulated under Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 and as amended by Foreign Exchange Management (Borrowing and Lending) (First Amendment) Regulations, 2026 (applicable from 10 February 2026) for eligible borrowers, recognised lender, amount, maturity, end-uses, etc.

4.6.1 Eligible Lender

An eligible borrower may raise ECB from:

(i) A person resident outside India;

(ii) A branch outside India of an entity whose lending business is regulated by the Reserve Bank; and

(iii) A financial institution or a branch of a financial institution set up in IFSC.

Explanation: For the purpose of this paragraph, financial institution shall have the same meaning as assigned to it under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015.

4.6.2 Borrowing Limit–

(i) An eligible borrower may raise ECB up to the higher of (a) outstanding ECB up to USD 1 billion; or (b) total outstanding borrowing (external and domestic) up to 300 per cent of net worth as per the last audited standalone balance sheet of the borrower.

Explanation: Outstanding borrowing shall not include non-fund based credit and funds raised through issuance of securities which are mandatorily convertible to equity.

(ii) The proposed ECB (other than ECB for refinancing) shall be taken into consideration while checking for compliance with the borrowing limit.

(iii) The borrowing limit specified in the sub-paragraph (1) shall not be applicable on eligible borrowers that are regulated by financial sector regulators.

4.6.3 Eligible borrower

(i) Any person resident in India (other than an individual) that is incorporated, established or registered under a Central or State Act is an eligible borrower, subject to the condition that such person is permitted for ECB in terms of applicable Act(s).

(ii) An eligible borrower that is under a restructuring scheme or corporate insolvency resolution process may raise ECB only if specifically permitted under the restructuring or resolution plan.

(iii) An eligible borrower against whom any investigation, adjudication or appeal by a law enforcement agency for contravention of any rule, regulation or direction issued under the Act is pending, may raise ECB notwithstanding the pending investigation or adjudication or appeal and without prejudice to the outcome of such investigation or adjudication or appeal. The borrower shall, however, disclose information about the pending investigation, adjudication or appeal under 'Form ECB 1' (or 'Revised Form ECB 1' in case there is existing ECB).

4.6.4 End-use

Funds borrowed in terms of these Regulations shall not be utilised for the following purposes in India:

(i) Chit funds;

(ii) Nidhi Company;

(iii) Real estate business and construction of farmhouses, provided that:

- ➢ In case of a borrowing for construction-development project, the borrower shall sell plots only after ensuring development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage.
- ➢ In case of borrowing for industrial parks, such parks shall comprise of a minimum of 10 units with no single unit occupying more than 50 percent of the allocable area and the minimum percentage of the

area to be allocated for industrial activity shall not be less than 66 percent of the total allocable area.

(iv) Agricultural and animal husbandry, except –

- ➢ Floriculture, horticulture and cultivation of vegetables and mushrooms under controlled conditions;
- ➢ Development and production of seeds and planting material;
- ➢ Animal husbandry (including breeding of dogs), pisciculture, aquaculture and apiculture; and
- ➢ Services related to agro and allied sectors

(v) Plantation except tea, coffee, rubber, cardamom, palm oil tree, olive oil tree plantation

(vi) Trading in Transferrable Development Rights (TDR);

(vii) Transacting in listed/unlisted securities, except for transactions undertaken by an Indian entity for corporate actions such as merger, demerger, amalgamation, arrangement, or acquisition of control in accordance with the Act under which the entity is incorporated/established, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Insolvency and Bankruptcy Code, 2016, as applicable;

(viii) Repayment of a domestic INR loan (i) which was availed for an end-use restricted under this regulation; or (ii) which is classified as a non-performing asset (NPA) as per the applicable prudential norms.

- ➢ On-lending for any of the purposes for which funds cannot be borrowed and utilised in this regulation.

4.6.5 Minimum average maturity period (MAMP)

(i) An eligible borrower shall raise ECB with a minimum average maturity period (MAMP) of three years.

(ii) An eligible borrower engaged in the manufacturing sector may also raise

ECB with an average maturity period between one year and three years, subject to the condition that outstanding amount of such ECBs shall not exceed USD 150 million.

4.6.6 Cost of borrowing

(i) The cost of borrowing shall be in line with prevailing market conditions.

(ii) In case of eligible ECBs with an average maturity period of less than three years, the cost of borrowing shall be in compliance with the cost ceiling specified for Trade Credit under these regulations. In the case of fixed-rate loans, the floating rate plus spread of the corresponding swap shall not be more than the ceiling.

4.6.7 Benchmark Rate

Means any widely accepted interbank rate or Alternative Reference Rate (ARR) of 6-month tenor, applicable to the currency of borrowing, in case of foreign currency (FCY) external commercial borrowing (ECB) / trade credit (TC). Further, it means the prevailing yield of the Government of India security of corresponding maturity in case of Indian Rupees (INR) denominated ECB / TC.

4.6.8 Other costs

(i) Prepayment charges or penal interest, if any.

(ii) **Arm's length principle :** ECB from a related party shall be carried out on an arm's length basis.

4.6.9 Compliances

(i) Eligible borrowers shall submit the following application/ return through the designated AD Category I bank in the format provided by the Reserve Bank to the designated AD Category I bank:

- 'Form ECB 1' for providing details of the ECB and obtaining LRN;
- 'Revised Form ECB 1' for reporting any change in previously reported ECB parameters in 'Form ECB 1', within seven calendar days from the end of the month in which such change was given effect; and

Explanation: A 'Revised Form ECB 1' may also be submitted to intimate any change in any other information previously reported in 'Form ECB 1'.

- 'Form ECB 2' for reporting receipt of ECB proceeds and debt servicing, within seven calendar days from the end of the month in which the proceeds were received, or debt servicing was undertaken.

  Explanation: Any event or transaction that alters the outstanding borrowing under an LRN shall be reported in 'Form ECB 2.'

(ii) In case of non-adherence with reporting timelines, the borrower may pay a late submission fee as per the guidelines issued by the Reserve Bank in this regard after completing the reporting.

4.7 Repatriation of Profits

Profits earned by foreign investors can be freely repatriated, subject to compliance with Indian Income tax laws. **Various ways in which profits can be repatriated are as follows:**

4.7.1 Dividend– Paid to shareholders and are freely repatriable (net of applicable taxes).

4.7.2 Interest– Interest on fully, mandatorily & compulsorily convertible debenture is freely repatriable without any restrictions (net of applicable taxes).

4.7.3 Management Fee/Royalty– Management fees or royalty may be paid, subject to certain conditions and taxation.

4.8 Exit Options

A few exit mechanisms considered by investors are as follows:

4.8.1 Transfer of shares – Transfer of shares is one of the most common exit mechanisms wherein a bona fide third – party buyer may be identified who may consider purchasing the shares at a price acceptable to the shareholders or pre-decided between the shareholders and promoters, and hence, enable an exit from a company.

4.8.2 Buy Back— Companies have an option to purchase their own shares from current shareholders through buy back, which is governed by the provisions of the ITA 1961 and the rules thereunder, and all other applicable laws.

A company can buy back its own shares only using the proceeds from either– free reserves, securities premium account or proceeds of any securities. However, buy back cannot be made out of proceeds of an earlier issue of the same kind of securities and cannot exceed 25% of the free reserves and paid-up capital of the company.

4.8.3 Capital reduction– It refers to the process of decreasing a company's share capital through share cancellations, share repurchases or adjusting the capital structure. In India, capital reduction is dealt with as per the provisions laid under the Companies Act, 2013. Also, where the process of capital reduction involves any cross-border transactions, the same may fall under the realm of the FEMA as well.

4.8.4 Liquidation and voluntary winding up of operations – A company may, subject to fulfilment of certain conditions, voluntarily consider to liquidate operations in India as per the provisions of the Insolvency and Bankruptcy Code, 2016. In case a company wants to wind up its operations in India, it may need to follow the regulations and procedures laid down under the Companies Act, 2013.

All the above exit options may have different tax implications that may need further analysis. Also, there are other exit options like Initial Public Offering, merger etc. which may be fact specific and need detailed analysis.

4.9 Necessary compliance requirements

Form	Description	Due Date
Form FC-GPR	Issue of equity instruments	Within 30 days of allotment
Form FC-TRS	Transfer of equity instruments	60 days of transfer of equity instrument or receipt / remittance of funds, whichever is earlier
Form FLA	Annual Return on Foreign Liabilities and Assets	On or before July 15 every year
Form ESOP	Issue of employee stock options by an Indian company to an employee resident outside India.	Within 30 days from the date of issue of ESOPs
Form DI	Reporting of downstream investment	Within 30 days from the date of allotment of capital instruments.

Form	Description	Due Date
Form ECB 1/ revised form ECB 1	Obtaining LRN for ECB or change in the parameters of ECB	Before drawing ECBs or within 7 days from the end of the month in which ECB parameters have been changed
Form ECB 2	Monthly ECB returns	7 days from the close of the month
MPR	To be filed monthly by the STP unit/ STPI unit.	5th day of the succeeding month
APR	To be filed annually by STPI units.	30th September of the succeeding FY
SERF	To be filed monthly by the STP unit/ IT or ITeS units dealing with service exports	10th of the succeeding month
Form SOFTEX	Companies engaged in the export of software or IT enabled services are required to fill the online SOFTEX form on the STPI website. Once filed the information is transmitted to RBI.	Within 30 days of the invoice date or the date of last invoice raised in the month

5.1 Background

The IT and ITeS sector remains a pivotal driver of India's economic growth, underpinned by relentless innovation, global service delivery models, and rapid digital transformation. As the sector matures, it faces a highly dynamic tax environment shaped by increased regulatory scrutiny and significant shifts in both domestic policy and international tax frameworks.

Historically, the industry has benefited from a range of fiscal incentives, most notably under the SEZ Act, STPI schemes, and other export-oriented frameworks. However, with the gradual phasing out of these concessions and India's alignment with global tax initiatives such as the OECD's BEPS framework and Pillar One proposals, the sector now operates under heightened compliance expectations and tighter scrutiny of cross-border structures and digital operations.

Further signalling a paradigm shift, the Government of India has enacted the Income-tax Act, 2025 **("the ITA 2025")**, replacing the erstwhile Income-tax Act, 1961 **("the ITA 1961")** with effect from 1 April 2026. The Income-tax Rules, 2026, have also been notified on 20th March 2026. The new legislation consolidates and restructures the direct tax law into a simplified, modernised statute aimed at improving clarity, reducing litigation, and enhancing ease of compliance. While the underlying tax policy framework remains largely intact, the overhaul includes streamlined provisions, updated procedures, revised forms, and a re-cast legislative architecture tailored to a digital-first environment. Although initial indications suggest that the changes may not materially alter the tax landscape for this sector, the transition to the new Act warrants close monitoring for any substantive or sector-specific impacts upon implementation. For understanding purposes, we have mentioned corresponding sections of the ITA 2025 in the below part of this publication for reference. However, the relevant section of ITA 2025 requires detailed analysis.

This chapter provides a structured analysis of the key tax considerations impacting the IT/ ITES sector, covering corporate tax regimes, available tax incentives, sector-specific income-tax provisions and developments in areas such as cross-border taxation, digital economy rules and technology transfer. This is intended to equip the reader with clear, actionable insights for effective tax risk management in a rapidly evolving regulatory landscape.

5.2 Select Provisions of ITA 1961 relevant to IT and ITES Sector:

5.2.1 Scope of Income, Tax Rates for Domestic Companies & Limited Liability Partnership (LLP)

(i) For Domestic Companies

Section 2(22A) of the ITA 1961 (Section 2(42) of the ITA 2025) defines a domestic company as either a company incorporated in India or any other company that has made the prescribed arrangements for the declaration and payment of dividends within India.

Section 6(3) of the ITA 1961(Section 6(10)(a)(ii) of the ITA 2025) states that a company is said to be a resident in India in any previous year if it is an Indian company or its place of effective management ("POEM") in that year is in India.

Under section 5 of the ITA 1961 and ITA 2025, resident companies are subject to tax on their worldwide income.

The effective tax rates applicable to resident companies for the Financial Year 2025–26 are summarised below:

Level of total income	Effective Tax Rates (Turnover not exceeding Rs. 400 crores for FY 2023-24)	Effective Tax Rates (Turnover exceeding Rs. 400 crores for FY 2023-24)	Effective MAT Rates
Having total income exceeding Rs. 10,00,00,000	29.12% [(tax rate 25% plus surcharge 12% thereon) plus health and education cess 4% thereon]	34.944% [(tax rate 30% plus surcharge 12% thereon) plus health and education cess 4% thereon]	17.472% [(tax rate 15% plus surcharge 12% thereon) plus health and education cess 4% thereon]

Level of total income	Effective Tax Rates (Turnover not exceeding Rs. 400 crores for FY 2023-24)	Effective Tax Rates (Turnover exceeding Rs. 400 crores for FY 2023-24)	Effective MAT Rates
Having total income exceeding Rs. 1,00,00,000 but not exceeding Rs. 10,00,00,000	27.82% [(tax rate 25% plus surcharge 7% thereon) plus health and education cess 4% thereon]	33.384% [(tax rate 30% plus surcharge 7% thereon) plus health and education cess 4% thereon]	16.692% [(tax rate 15% plus surcharge 7% thereon) plus health and education cess 4% thereon]
Having total income upto Rs. 1,00,00,000	26.00% (tax rate 25% plus health and education cess 4% thereon)	31.20% (tax rate 30% plus health and education cess 4% thereon)	15.60% (tax rate 15% plus health and education cess 4% thereon)

The effective tax rates applicable to resident companies for the Financial Year 2026–27 and onwards are summarised below:

Particulars	Maximum Effective Tax Rate	Effective MAT Rates
Opting for the Concessional Tax Regime		
Domestic companies opting for concessional corporate tax regime – Tax under section 200 of ITA, 2025 (corresponding to section 115BAA of ITA, 1961) – Irrespective of the level of total income	25.168%	Not Applicable
New domestic companies with manufacturing activity opting for concessional corporate tax regime – Tax under section 201 of ITA, 2025 (corresponding to section 115BAB of ITA, 1961) – Irrespective of the level of total income	17.16%	

Particulars	Maximum Effective Tax Rate	Effective MAT Rates
(Applicable to new companies set-up after 1 October 2019 and commenced manufacturing on or before 31 March 2024)		
Not Opting for Concessional Tax Regime		
Having total turnover / gross receipts in FY 2024-25 upto Rs. 400 crores	29.12%	16.3072%
Having total turnover / gross receipts in FY 2024-25 exceeding Rs. 400 crores	34.944%	

Marginal relief is available to ensure that the additional income-tax payable, including surcharge of 7% / 12% on the excess of income over Rs.1,00,00,000 or Rs.10,00,00,000 as the case may be, is limited to the amount by which the income is more than Rs. 1,00,00,000 or Rs. 10,00,00,000 as the case may be. However, no marginal relief shall be available in respect of the health and education cess.

(ii) For LLP

According to section 2(23) the ITA 1961(Section 2(45) of the ITA 2025), "firm" shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008.

Section 6(2) of the ITA 1961(Section 6(9) of the ITA 2025) states that an LLP shall always be considered as resident in India except where during that year the control and management of its affairs is situated wholly outside India.

Under section 5 of the ITA 1961 and ITA 2025, resident LLPs are subject to tax on their worldwide income.

The effective tax rates applicable to resident LLP for the Financial Year 2025—26 are summarised below:

Level of total income	Effective Tax Rates
Having total income	34.944% [(tax rate 30% plus surcharge

Level of total income	Effective Tax Rates
exceeding Rs. 1,00,00,000	12% thereon) plus health and education cess 4% thereon]
Having total income upto Rs. 1,00,00,000	31.20% (tax rate 30% plus health and education cess 4% thereon)

5.2.2 New tax Regime under section 115BAA of the ITA 1961 (Section 200 read with section 205 of the ITA 2025)

Section 115BAA of the ITA 1961 (Section 200 read with section 205 of the ITA 2025), effective from FY 2019–20, offers domestic companies an option to be taxed at a concessional effective rate of 25.17% (22% plus 10% surcharge + 4% health and education cess).

Domestic companies opting for taxation under Section 115BAA of the ITA 1961(Section 200 read with section 205 of the ITA 2025) are required to compute their total income without claiming certain specified deductions, including the following:

- Deduction for exports by SEZ units
- Additional Depreciation allowance
- Deduction for investment in new plant and machinery in notified backward states
- Tea/ Coffee/ Rubber Development allowance
- Site restoration fund
- Deduction in respect of specified business
- Deduction in relation to certain scientific research expenditure
- Expenditure on agricultural extension project
- Expenditure on skill development project
- Deduction under Chapter VIA of ITA 1961(Chapter VIII of ITA 2025) other than section 80JJAA of the ITA 1961(Section 146 of the ITA 2025) (deduction in respect of employment of new employees) and section 80M of the ITA 1961(Section 148 of the ITA 2025) (deduction in respect of the inter-corporate dividends).

Domestic companies opting for the concessional tax regime under Section 115BAA of the ITA 1961(Section 200 read with section 205 of the ITA 2025) shall not be allowed to set off any carried forward loss if such loss pertains to deductions disallowed under the said section. These losses shall be deemed to have been fully absorbed, and no further set-off shall be permitted in any subsequent year. This restriction also applies to losses taken over through amalgamation or demerger under Section 72A of the ITA 1961(Section 116 of the ITA 2025).

Units established in an International Financial Services Centre (**"IFSC"**) that opt for the concessional tax regime under Section 115BAA of the ITA 1961(Section 200 read with section 205 of the Act 2025) shall continue to be eligible to claim deduction under Section 80LA of the ITA 1961(Section 147 of the ITA 2025), subject to fulfilment of all other conditions prescribed under that section.

Companies opting for the concessional tax regime under Section 115BAA of the ITA 1961 (Section 200 read with section 205 of the ITA 2025) are exempt from the applicability of Minimum Alternate Tax (**"MAT"**). However, a critical implication of this transition is that any MAT credit brought forward from earlier years will lapse and cannot be adjusted against future tax liabilities once the option under Section 115BAA of the ITA 1961 (Section 200 read with section 205 of the ITA 2025) is exercised. However, in the Finance Act 2026, there are certain changes in the MAT Regime which are discussed here under.

5.2.3 Finance Act 2026 Amendment: Rationalisation of MAT provisions

In order to allow companies to make a smooth transition from the old tax regime (with deductions and exemptions) to the new tax regime, the following amendments are made in the MAT provisions:

(i) Domestic Company opting for concessional tax rate for TY 2026-27 & onwards:

Set-off of MAT credit available as on 31 March 2026 to the extent of 25% of tax payable of the respective year. The remaining tax credit shall be allowed to be carried forward to subsequent tax years and shall be eligible for set-off up to 15 tax years from the tax year immediately succeeding the tax year in which the credit became allowable.

(ii) Domestic Company not opting for concessional tax rate for TY 2026-27 & onwards:

Reduction in MAT rate from 15% to 14% (excl. surcharge and cess). Tax paid under MAT provisions shall be considered final tax, and no new MAT credit shall be accumulated. MAT credit available as on 31 March 2026 is not allowed to be carried forward and set-off for tax years starting from 1 April 2026.

This amendment has been made effective 1 April 2026 and will accordingly apply to tax year 2026-27 and subsequent tax years.

Any company evaluating a transition to the 115BAA of the ITA 1961(Section 200 read with section 205 of the ITA 2025) regime must undertake a detailed comparative analysis of its tax position under both regimes. **Key considerations include:**

- Availability and expiry timeline of MAT credit
- Projected regular tax liability over the near term
- Impact of operational income patterns and sector-specific deductions
- Presence of brought forward losses, particularly those arising from additional depreciation under the existing regime

Given that the option, once exercised, is irrevocable and binding for all subsequent years, it is essential for companies to assess their position proactively and strategically.

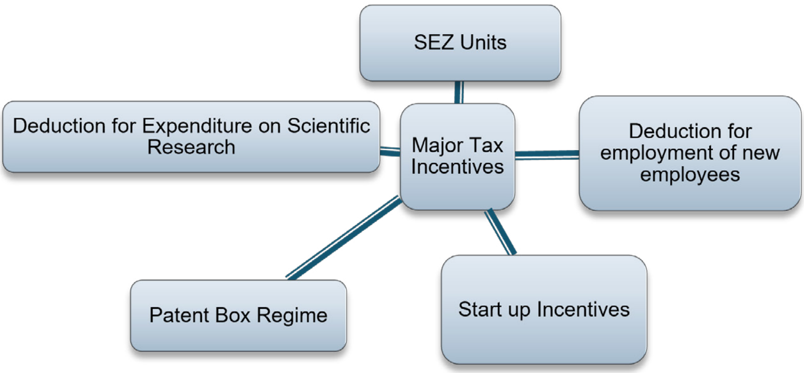
Set-off of MAT credit available as on 31 March 2026 in different scenarios

Sr. No.	Scenario	Whether MAT credit available
1	Company already opted for concessional tax regime in earlier years i.e. up to FY 2025-26	**No** – MAT Credit already lapsed
2	Company opting for concessional tax regime in the TY 2026-27	**Yes** – The MAT credit available as on 31 March 2026 is eligible for set-off up to 25% of tax liability,

Sr. No.	Scenario	Whether MAT credit available
		remaining can be c/f for the unexpired period
3	Company never opting for concessional tax regime	**No** – MAT Credit cannot be accumulated nor the available MAT credit can be set-off
4	Company opting for concessional tax rate in subsequent year other than TY 2026-27	**Yes** - The MAT credit available as on 31 March 2026 is eligible for set-off up to 25% of tax liability

5.2.4 Tax incentives

The key tax incentives available to companies operating in the IT/ITES sector are outlined below and discussed in further detail in the subsequent sections:



5.2.5 Deduction for Profits of Eligible Startups under section 80-IAC of the ITA 1961 (section 140 of the ITA 2025)

Section 80-IAC of the ITA 1961(section 140 of the ITA 2025), offers a 100% tax deduction on profits to eligible startups, serving as a significant incentive for innovation-led enterprises, particularly in the IT and ITES sector. **Key Features of the incentive are as follows:**

- Eligible startups can claim 100% deduction of profits for any three consecutive assessment years out of ten years from the year of incorporation.

- The startup must be incorporated between April 1, 2016, and March 31, 2030 as either a private limited company or limited liability partnership.
- The entity must be recognised by the Department for Promotion of Industry and Internal Trade ("DPIIT").
- Turnover must not exceed INR 100 crore in any financial year for which the deduction is claimed.
- The entity must be engaged in the business of innovation, development or improvement of products, processes, or services, or have a scalable business model with high employment or wealth generation potential.

Further, the startup must not be formed by splitting up or reconstructing an existing business and it must not be formed through the transfer of previously used machinery or plant. However, used assets can constitute up to 20% of the total value of plant and machinery.

In addition to the profit deduction, eligible startups enjoy a relaxation under section 79 of the ITA 1961(section 119 of the ITA 2025) with respect to the carry forward and set-off of losses wherein a recognised startups can carry forward and set off losses despite such shareholding changes, provided:

- All shareholders holding shares in the year the loss was incurred continue to hold those shares in the year of set-off.
- Such loss has been incurred during the period of 10 years beginning from the year in which such company is incorporated.
- The return declaring such loss is filed within the due date under Section 139(1) of the ITA 1961 (section 263(1) of the ITA 2025).

This provision is particularly valuable for tech startups undergoing multiple funding rounds, where equity dilution is common. It ensures tax continuity despite capital restructuring.

5.2.6 Deduction in respect of established units in special economic zones under section 10AA of the ITA 1961 (section 144 of the ITA 2025) (This deduction is available for units set-up in SEZ before 1 April 2021)

Section 10AA of the ITA 1961 (section 144 of the ITA 2025) provides a deduction in respect of profits derived by newly established units located in notified Special Economic Zones ("**SEZ**"). This incentive is designed to promote export-led growth and investment in designated SEZ regions.

A qualifying unit is eligible for a 15-year phased tax holiday commencing from the year of commencement of operations, as follows:

- 100% of profits earned from the export of goods or services for a period of first five years;
- 50% of such profits for next five years; and
- 50% of such profits for further five years subject to re-investment of profits in the business of the taxpayer in prescribed manner;

To qualify for this deduction, the following key conditions must be satisfied:

- The unit should be newly established in an SEZ and not formed by splitting up or reconstructing an existing business.
- The unit must derive profits from the export of goods or services.
- Operations should have commenced on or after April 1, 2006.
- The unit should not be formed by transferring previously used machinery or plant, unless the value of such used assets does not exceed 20% of the total value of machinery or plant used in the business

New units set up after 1 April 2021 are not eligible for section 10AA of the ITA 1961 (section 144 of the ITA 2025) benefits.

5.2.7 Deduction for employment of new employees under section 80JJAA of the ITA 1961 (section 146 of the ITA 2025)

Section 80JJAA of the ITA 1961(section 146 of the ITA 2025) provides a deduction of 30% of the additional employee cost incurred by an assessee for three consecutive assessment years, beginning with the year in which the new employees are first employed. This provision aims to incentivise employment generation, particularly in labour-intensive sectors, including IT and ITES. The deduction is available to companies and other assessees whose accounts are subject to audit under Section 44AB of the ITA 1961(section 58 read with section 63 of the ITA 2025).

To qualify, the following conditions must be satisfied:

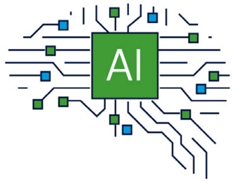
- The new employees must be employed for a minimum period of 240 days in the relevant financial year
- The employee must be a full-time worker and should be registered under the Employees' Provident Fund (EPF).
- The employee's monthly emoluments must not exceed Rs. 25,000.
- The deduction is allowable only in respect of additional employees, i.e., those who increase the total headcount compared to the previous year.

The term "additional employee cost" refers to the total emoluments paid or payable to such additional employees, excluding certain non-allowable payments such as lump-sum bonuses or severance compensation.

5.2.8 Patent Box Regime under section 115BBF of the ITA 1961 (Section 194 of the ITA 2025)

To foster innovation and position India as a global R&D and IP hub, the Government of India introduced the Patent Box Regime through Section 115BBF of the ITA 1961(Section 194 of the ITA 2025), via the Finance Act, 2016. **The key features of the regime are:**

- **Eligibility:** The concessional tax rate applies to royalty income derived from a patent developed and registered in India. The patentee must be the true and first inventor under the Patents Act, 1970.
- **Scope of Income:** The provision strictly applies to royalty income from patents. Income from trademarks, brand names, copyrights, marketing intangibles, or other IP forms is excluded.
- **Final Tax:** The tax rate is 10% (plus applicable surcharge and cess) rate which is treated as a final tax. No further deductions (e.g., R&D expenses, administrative costs) are allowed from such royalty income.
- **Compliance:** To claim the benefit, the taxpayer must file Form 3CFA (Form 65 under ITA 2025 read with Income Tax Rules, 2026) on or before the due date specified under Section 139(1) of the ITA 1961(section 263(1) of the ITA 2025).



For the IT and ITES sector, which is increasingly moving up the value chain from outsourced services to product innovation and proprietary technology development, Section 115BBF of the ITA 1961(Section 194 of ITA 2025) offers a valuable incentive. Indian software and technology companies engaged in in-house development of patented software solutions, AI tools, data processing algorithms, and other tech innovations can benefit substantially by monetising their IP through royalty licensing models.

This provision reflects India's adherence to the OECD's BEPS Action Plan 5 (nexus approach), ensuring tax benefits are tied to substantive R&D activities conducted in India, rather than passive IP holding. This international alignment is especially important for multinational IT/ITES firms with global patent portfolios seeking tax efficiency and certainty in India.

The benefit of concessional taxation is available only for royalty income and does not include income from marketing rights, trademarks, brand names, copyrights, or other intellectual property.

5.2.9 Deduction of expenditure incurred on scientific research under section 35 of the ITA 1961 (section 45 read with section 66 of the ITA 2025)

Section 35 of the ITA 1961(section 45 read with section 66 of the ITA 2025) provides tax deductions for expenditure incurred on scientific research, aimed at encouraging innovation, technological advancement, and product development across various sectors, including IT and manufacturing. 100% deduction is allowed under the following sections if the conditions mentioned therein are complied with:

Section	Condition
Section 35(1)(i) of the ITA 1961 (section 45 read with section 66 of the ITA 2025): In-house Revenue Expenditure	Deduction allowed for revenue expenditure (e.g., salaries, consumables, utilities) on scientific research related to the business of the assessee.
Section 35(1)(ii) of the ITA 1961 (section 45 read with section 66 of the ITA 2025): Sum contributed	Deduction allowed any sum contributed by an assessee to a scientific research association that is approved and engaged in scientific research, not necessarily related to the business of the assessee.

Section	Condition
to scientific research association	This deduction is not available if the assessee opts for taxation under section 115BAA of the ITA 1961 (section 200 read with section 205 of the ITA 2025).
Section 35(1)(iia) of the ITA 1961 (section 45 read with section 66 of the ITA 2025): Contribution to an approved scientific research company	Deduction allowed any sum contributed by an assessee to a company is engaged in scientific research, provided that the company is registered in India, has as its main object the scientific research and development, and is approved by the Department of Scientific and Industrial Research ("**DSIR**"). This deduction is not available if the assessee opts for taxation under section 115BAA of the ITA 1961 (section 200 read with section 205 of the ITA 2025).
Section 35(1)(iii) of the ITA 1961 (section 45 read with section 66 of the ITA 2025): Deduction for Contributions to Social Science or Statistical Research	Deduction for any sum paid by an assessee to an approved research association, university, college, or other institution engaged in social science or statistical research. This deduction is not available if the assessee opts for taxation under section 115BAA of the ITA 1961 (section 200 read with section 205 of the ITA 2025).
Section 35(1)(iv) with Section 35(2) of the ITA 1961 (section 45 read with section 66 of the ITA 2025) : Capital Expenditure	Capital expenditure (excluding land) on scientific research related to the business is fully deductible in the year it is incurred.
Section 35(2AA) of the ITA 1961 (section 45 read with section 66 of the ITA 2025): Contribution to National Laboratories / IITs / Research Associations	100% deduction allowed for any sum paid to a national laboratory, IIT, approved university, or specific research institution for undertaking scientific research. The institution must be approved by the DSIR. This deduction is not available if the assessee opts for taxation under section 115BAA of the ITA 1961 (section 200 read with section 205 of the ITA 2025).

5.2.10 Incentives for entity set-up in Gujarat International Finance Tec-City:

Gujarat International Finance Tec-City ("**GIFT City**"), particularly its International Financial Services Centre ("**IFSC**"), has emerged as a high-potential zone for IT and

ITeS companies. Under the Gujarat IT/ITES Policy 2022–27 ("**the policy**"), GIFT City is being positioned as a nucleus for innovation, exports, and employment in the digital economy, with the state government offering a robust mix of fiscal and non-fiscal incentives aimed at catalysing the sector's long-term growth.

The key objectives of the Policy are:

- Accelerate the expansion of Gujarat's IT/ITES ecosystem.
- Facilitate the development of high-end office spaces and technology campuses.
- Support the creation of a future-ready talent pool via structured skill development programs.
- Attract large-scale and anchor IT investments, with special provisions for mega and strategic IT/ITES projects.
- Position Gujarat as a national hub for innovation in advanced technologies through industry-academia linkages and innovation grants.

Entities in the IT/ITES sector establishing operations within GIFT City and qualifying under the Gujarat IT/ITES Policy can avail themselves of a suite of direct tax, indirect tax, and regulatory benefits. Key among them are:

(i) Income Tax Benefits (Section 80LA of the ITA 1961) (section 147 of the ITA 2025)

Section 80LA of the ITA 1961 (section 147 of the ITA 2025) provides significant tax deductions to units operating in International Financial Services Centres (IFSCs) in India. The provision aims to make IFSCs more attractive for global financial institutions by offering tax incentives on eligible income.

Where any income is derived by a unit set up in an International Financial Services Centre (IFSC), and such income is eligible as per sub-section (2) of section 80LA of the ITA 1961(section 147 of the ITA 2025), the unit can claim a 100% tax deduction on such business income for any 10 consecutive assessment years out of the first 15 years of its operation.

(ii) Finance Act 2026 Amendment: Extension of period of deduction for units in IFSC and rationalisation of tax rate

In order to increase the competitiveness of IFSC, the Finance Act 2026 increased the period of deduction to 20 consecutive years out of 25 years for units in IFSC and 20 consecutive years for offshore banking units (OBUs). Further, the business income of these units from IFSC after the expiry period of deduction will be taxed at rate of 15%.

This amendment has been made effective from 1 April 2026, and will accordingly apply to tax year 2026-27 and subsequent tax years.

Further, it has been recognised that certain OBUs whose initial **ten-year deduction period expired as on 31 March 2025** would not be able to benefit from the extended period due to a break in continuity. Accordingly, the Finance Act, 2026 provides that such OBUs shall be eligible to claim a deduction for a fresh period of ten consecutive tax years, commencing from the tax year beginning on 1 April 2026. However, the benefit shall not be available for the intervening Tax Year 2025—26, thereby maintaining continuity from Tax Year 2026—27 onwards. This amendment is effective from 1 April 2026 and applies from Tax Year 2026—27 onwards

- **Reduced rate of MAT** - MAT is applicable at the reduced rate of 9% (plus applicable surcharge and cess) for units located in an IFSC and derives its income solely in convertible foreign exchange.
- **Other State-Level Financial Incentives** - Stamp Duty Reimbursement: 100% on transactions executed for eligible IT infrastructure and lease arrangements. Electricity Duty Reimbursement: 100% for a period of five years - particularly relevant for energy-intensive IT parks and data centres.

5.2.11 Units established in Software Technology Parks of India ("STPI")

It may be noted that the ITA 1961 / 2025 does not contain specific provisions granting tax benefits exclusively to units established in Software Technology Parks of India ("**STPI**"). However, such units may be eligible to claim general tax incentives available to all assessees.

5.2.12 Tax Implications on Cross-Border Transactions and Arrangements

With the rapid globalization of digital business models, cross-border technology transactions have become a routine feature of multinational operations. These arrangements, which often involve the transfer or licensing of intellectual property, provision of software or digital services, and employee stock plans, bring with them complex tax implications under Indian tax laws and international tax treaties. Understanding the tax incidence in the hands of both foreign and Indian entities is critical to ensure compliance, manage withholding tax obligations, and avoid double taxation.

This section analyses the Indian tax treatment of various inbound and outbound technology arrangements as well as the tax implications on foreign entities engaging in business operations in India.

5.2.13 Tax incidence in the hands of the foreign entity

As per section 6 of the ITA 1961 and ITA 2025, a company is considered a non-resident if it is not incorporated in India and the place of effective management ("**POEM**") is outside India.

Section 2(23A) of the ITA 1961(Section 2(46) of the ITA 2025) defines a foreign company as any company that is not classified as a domestic company under the ITA 1961 and ITA 2025.

In accordance with section 5 of the ITA 1961 and ITA 2025, non-residents are taxable in India only on the following categories of income:

- Income that is received or deemed to be received in India; or
- Income that accrues or arises or is deemed to accrue or arise in India.

The effective tax rates for foreign companies for the TY 2025—26 are provided below:

Level of total income	Effective Tax Rates
Having total income exceeding Rs. 10,00,00,000	**38.22%** [(tax rate 35% plus surcharge 5% thereon) plus health and education cess 4% thereon]
Having total income exceeding Rs. 1,00,00,000 but not exceeding Rs. 10,00,00,000	**37.128%** [(tax rate 35% plus surcharge 2% thereon) plus health and education cess 4% thereon]

Level of total income	Effective Tax Rates
Having total income upto Rs. 1,00,00,000	**36.40%** (tax rate 35% plus health and education cess 4% thereon)

5.2.14 Concept of Place of Effective Management (POEM)

POEM is a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made and is applicable to foreign companies with turnover exceeds INR 50 crores.

The determination of POEM depends on the facts and circumstances of a given case. It recognises the concept of substance over form. The place of effective management differs from a place of management and an entity can have only one place of effective management at any point in time.

The determination of POEM shall be an annual exercise. The process of determining POEM would be primarily based on the fact whether or not the company is engaged in active business outside India ("**ABOI**"). A company shall be said to be engaged in ABOI if the passive income is not more than 50% of its total income and

(i) less than 50% of its total assets are situated in India; and

(ii) less than 50% of total number of employees are situated in India or are resident in India; and

(iii) the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

It may be noted that passive income of a company shall be aggregate of:

(i) income from the transactions where both the purchase and sale of goods is from / to its associated enterprises; and

(ii) income by way of royalty, dividend, capital gains, interest or rental income.

5.2.15 Common Sources of Taxable Income for Foreign Companies in India

Type of Income	Taxability
Business Income	Taxable if the foreign company has business connection or permanent establishment in India (discussed in detail in below section of the publication)

Type of Income	Taxability
Capital Gains	Taxable if the capital asset is situated in India, or if shares derive substantial value from Indian assets
Interest Income	Taxable if paid by an Indian resident or for debt used in India
Royalty / Fees for Technical Services	Taxable if such income is deemed to accrue or arise in India under section 9 of the ITA 1961 and ITA 2025
Dividend Income	Taxable in the hands of the foreign company

5.2.16 Withholding tax provisions for income arising to foreign companies in India

Indian payers remitting any of the above incomes to foreign companies are required to withhold taxes at source as per section 195 or other relevant provisions of the ITA 1961 (section 393, section 395, section 397 and section 400 of the ITA 2025). However, if a DTAA exists between India and the country of residence of the foreign company, and such DTAA has been modified by the Multilateral Instrument ("**MLI**") (where applicable), the treaty benefits may be availed, subject to satisfaction of prescribed conditions. To claim such treaty relief, the foreign entity must furnish the following documents to the Indian payer:

- **No PE Declaration** – A certificate or declaration stating that the foreign entity does not have a permanent establishment in India;
- **Tax Residency Certificate (TRC)** – Issued by the government of the country of residence of the foreign entity;
- **Form 10F (Form 41 under ITA 2025 read with ITA 2026)** – Duly e-filed on the Income Tax portal of India. Rule 21AB of the Income-tax Rules, 1962 requires taxpayers to furnish specified details in Form 10F, including their status, nationality or country of incorporation, tax identification number (or an equivalent identifier), period of residential status, and address outside India. However, this requirement is relaxed where such information is already available in the TRC. Under Rule 75 of the Income Tax Rules, 2026 this relaxation has been removed. Accordingly, the corresponding Form 41 (replacing Form 10F) would need to be filed mandatorily, even if the TRC already contains all the prescribed details.

These requirements ensure compliance with Section 90(4) and Section 90(5) of the ITA 1961 (section 159 of the ITA 2025), which govern the application of treaty provisions.

5.2.17 Outbound Technology Arrangements

As Indian IT and ITES companies increasingly expand their global footprint, a range of outbound technology structures are being adopted such as setting up foreign branches, subsidiaries, or providing software development, technical services, or intellectual property related support to foreign clients or group companies or licensing arrangements with overseas affiliates or customers.

With India being a global hub for IT and engineering talent, such outbound tech arrangements are central to the business models of many Indian subsidiaries of multinational corporations. These typically operate under contract R&D, software development, or design support frameworks, wherein the Indian entity performs backend services, often on a cost-plus basis, while the foreign parent retains the ownership of developed IP.

Moreover, outbound transactions must be carefully assessed for PE and POEM risks in the foreign jurisdiction if decision-making or service control lies with the Indian team. Indian tax authorities also evaluate whether margins earned by Indian contract developers are commensurate with their functional profile. As global tax regimes evolve under BEPS and Pillar Two frameworks, outbound tech structures must balance operational efficiency with robust documentation, functional delineation, and legal clarity in intercompany contracts. **Modern structures for outbound tech (especially SaaS, ITES, BPO, and consulting) include:**

- Branch or subsidiary abroad, with India as a cost centre
- Royalty/ license fee structure from foreign clients (taxable under FTS)
- Contract R&D models in India
- Use of IFSC for holding or back-office operations

  (i) **Under Branch or Subsidiary Abroad**, with India as a Cost Centre, the Indian parent company establishes a branch office or a subsidiary in a foreign country (typically in the U.S., UK, Singapore, or EU) to serve as a client-facing or IP-owning entity. The Indian operations perform backend development, tech support, or R&D activities. The Indian entity is remunerated on a cost-plus basis and profits accrue to the foreign entity. This structure helps the group to easily scale globally while retaining Indian cost advantage and reduce tax exposure in India on global profits, provided functions and risks are correctly aligned. However, if the Indian team controls key decisions or performs DEMPE functions, Indian tax authorities may challenge profit attribution and raise a profit split or PE or POEM risk argument.

(ii) **Under Royalty/ License Fee Structure from Foreign Clients**, an Indian company develops software or a technology platform and licenses it to foreign clients under royalty agreements or charges subscription-based access. Such income is treated as taxable under the head "business profits" and may also be taxable in the client's jurisdiction under relevant DTAA articles. This structure enables monetization of Indian-developed IP globally and retains IP ownership in India, which may qualify for R&D benefits or IFSC advantages.

(iii) **Contract R&D models refer to arrangements where a company** outsources its research and development **(R&D)** work to another entity (often its subsidiary) under a contractual agreement. These models are especially common in the IT/ITES, pharmaceutical, and tech sectors, where Indian subsidiaries perform R&D for their foreign parent companies. **Types of Contract R&D Models in India are as follows:**

- o **Full-Fledged R&D Centre:** wherein India entity performs end-to-end R&D, including risk-taking, innovation, and IP creation. Accordingly, Indian entity would be bearing significant risks (market, tech, and IP risks) and is entitled for residual profit due to higher value addition. The Indian entity may own or co-own IP.
- o **Contract R&D Centre:** wherein India entity undertakes R&D only under instruction from the foreign principal. Accordingly, it bears no significant risks and acts as a service provider. In such model, Indian entity is rewarded on a cost-plus markup.

The Indian entity has no ownership and all IP goes to foreign parent.

- o **Development & Enhancement Service Provider:** wherein India entity sits between full-fledged and contract R&D centre. It may perform some value-added or innovative work but still does not own IP or take full risks. In such situation, the Indian entity warrants a higher markup than typical contract R&D.

(iv) **GIFT City or Back-Office Operation** is a structure of outbound technology which helps Indian entity to serve as a global holding company, IP owner, or shared services centre. Various benefits are available under the ITA 1961 for entities incorporated in GIFT City are mentioned in this chapter.

5.2.18 Inbound Technology Arrangements

Inbound technology arrangements refer to cross-border transactions wherein Indian IT/ITES companies procure or access technology-based products or services from foreign vendors or associated enterprises. These arrangements typically encompass payments for software licenses, cloud infrastructure, SaaS platforms, data hosting, technical services, technology transfers, know-how, and software maintenance or support provided by foreign entities.

Such transactions may give rise to tax implications in India under the heads of royalty, fees for technical services ("**FTS**"), or business income taxable through a permanent establishment ("**PE**"). The precise classification of these payments is critical, as it determines the withholding tax obligations, eligibility for treaty benefits, risk of litigation, and transfer pricing compliance requirements under the ITA 1961.

Given the evolving jurisprudence and the increasing use of digital delivery models in the IT/ITES sector, it is essential for Indian payers to evaluate these arrangements not only in light of domestic tax provisions but also in the context of applicable DTAA and OECD guidance.

A detailed discussion on the taxability of PE exposure, royalty and FTS in such inbound arrangements is provided in the subsequent sections of this publication.

5.2.19 Permanent Establishment

Technological advances and digitization have allowed business to earn cross border revenues without any physical presence. The concept of Permanent Establishment ("**PE**") is critical in international taxation as it determines the right of a country (source state) to tax the business profits of a foreign enterprise.

In the IT and ITES sector, PE risks arise due to offshore outsourcing, intercompany services, and employee secondments.

5.2.20 Business Connection and PE

(i) Under ITA 1961:

The concept of "business connection" is embedded in section 9 of the ITA 1961 and ITA 2025. It is a deeming provision, which states that income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India. This serves as a nexus rule, allowing India to tax the business income of a non-resident even in the absence of physical presence, provided there is a business connection. The term "business connection" is not exhaustively defined but has been interpreted by courts to mean a real and intimate relationship between a business carried on by a non-resident and some activity in India contributing to the income.

As per section 9 of the ITA 1961 and ITA 2025, business connection in its scope include business activities carried out through a **dependent agent** in India. Any person acting on behalf of the non-resident who habitually exercises authority to conclude contracts or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts or habitually maintains in India a stock of goods or merchandise for delivery or habitually secures orders for the non-resident in India shall be considered as business connection of foreign entity in India.

Section 9 of the ITA 1961 and ITA 2025 in relation to significant economic presence ("**SEP**") was introduced in the ITA 1961 from 1st April 2018 to expands the scope of income of a non-resident leading to business connection in India for that non-resident on income which accrues and arises in India that results in a business connection in India for that non-resident. The resulting income, attributable to the SEP, is taxable in India. **Accordingly, the following transactions of non-resident would lead to its SEP in India:**

- Transaction in respect of aggregate payments of INR 20 million or more during the financial year in relation to any goods, services or property carried out by a non-resident in India, including the provision of download of data or software in India or
- Systematic and continuous soliciting of business activities engaging in interaction with 0.30 million users or more during the financial year in India through digital means.

(ii) Under DTAA:

PE is a key concept for determining taxability of foreign enterprises in the source country. **The different types of PE under OEDC/ UN model are as follows:**

Type of PE	Description
Fixed Place PE	A physical location like a branch, office, factory, workshop, or place of management.
Construction PE	A building site or construction/installation project lasting more than a specified period (often 6–12 months depending on DTAA).
Agency PE (Dependent Agent)	Arises when a person habitually concludes contracts or plays a principal role leading to contract conclusion on behalf of a foreign enterprise.
Service PE	Triggered when services (including consultancy) are furnished in the source country for more than a specified period (e.g., 90–183 days).

If a PE is established, the foreign enterprise becomes taxable in India (or the source country) on the profits attributable to that PE.

5.2.21 Back-office work done by Indian entities

Indian subsidiaries or affiliates frequently deliver a variety of support services-such as data processing, IT support, accounting, payroll, and customer service-to their foreign group companies. Whether these activities create a PE for the foreign entity in India largely depends on the operational independence and structural arrangement of the Indian entity.

When the Indian company functions independently, bearing its own risks, managing its staff and infrastructure, making business decisions autonomously, and being compensated on an arm's length (often cost-plus) basis, the likelihood of a PE being established is minimal. In such scenarios, the foreign company does not control the Indian entity's daily operations or premises, and the Indian entity is taxed in India as a separate taxpayer, with no Indian tax exposure for the foreign entity.

However, the risk of a PE increases if the Indian entity acts as a dependent agent, habitually concluding contracts or securing orders for the foreign company, or if the foreign company has the right to use or direct the Indian entity's premises, equipment, or personnel. If the Indian entity's operations are closely integrated with, or effectively an extension of, the foreign business, Indian tax authorities may treat the foreign company as having a PE in India, making it taxable on profits attributable to Indian activities.

The Hon. Supreme Court in the case of **Morgan Stanley & Co. [2007] 292 ITR 416 (SC)** have laid down few important principles which are very helpful for determining whether the Indian subsidiary company when providing back office services shall be considered as PE of the foreign holding entity. **The important points of consideration are as under:**

- The activities of Morgan Stanley Advantage Services's ("**MSAS**") were mainly back-office support, which are considered preparatory or auxiliary in nature.
- Simply carrying out back-office activities in India does not create a fixed place PE, because these tasks are considered preparatory or supportive, not central to the main business.
- Since MSAS did not have the authority to make contracts on behalf of MSCo, there was no agency PE.
- If Morgan Stanley & Co. sent employees to India to perform core business

functions for MSAS, this could lead to a service PE. But if the employees were only in India for oversight or quality control (stewardship), that alone would not create a service PE.

- If MSAS is compensated at ALP for its services, then no further profits are attributable to the PE in India.

In the another landmark judgment for determination of PE, **E-Funds IT Solution Inc. [2017] 399 ITR 34 (SC)**, the Hon. Supreme Court held as under:

- A fixed place PE is only created if the foreign company has a physical location in India that is at its disposal and under its control. Simply entering into contracts with or outsourcing work to a wholly owned Indian subsidiary does not, by itself, result in the creation of a fixed place PE.
- The Court also emphasized that the "functions performed, assets used, and risks assumed analysis is not the correct approach for determining a fixed place PE.
- Furthermore, the fact that the Indian subsidiary provides services to, or is financially dependent on, the foreign entity is not enough to establish a fixed place
- The presence of employees seconded from the foreign entity to the Indian subsidiary does not automatically create a PE, especially if those employees work under the control and supervision of the Indian subsidiary, not the foreign parent.
- A subsidiary does not automatically become a dependent agent PE of the foreign parent simply by virtue of its status as a subsidiary.
- For agency PE to exist, the subsidiary must act on behalf of the foreign entity and habitually exercise authority to conclude contracts or maintain a stock of goods for delivery on behalf of the foreign entity.

5.2.22 Deputation / Secondment of personnel

(i) Deputation in India:

In the IT and ITES sector, it is common for foreign parent companies to depute employees to their Indian affiliates or subsidiaries for project execution, knowledge transfer, or client coordination. Such deputation arrangements, however, require careful evaluation from a tax perspective due to the potential exposure to a Service PE under the ITA 1961 read with applicable DTAA. Under several Indian treaties, a Service PE may be triggered where a foreign enterprise furnishes services in India, through employees or other personnel, for a period exceeding the specified threshold (typically 90 or 183 days in a 12-month period, depending on the treaty).

In substance, a Service PE is likely to arise where the deputed personnel remain on the foreign entity's payroll, continue to be under its control and supervision, and the services rendered in India form part of the foreign enterprise's business operations. This is especially relevant in IT/ITES delivery models where deputed personnel are actively involved in providing services to Indian clients or managing offshore projects. The existence of a Service PE creates a tax liability for the foreign company in India on income attributable to such PE, alongside potential transfer pricing and withholding tax implications.

Jurisprudence has further refined these principles. In **Morgan Stanley & Co. [2007] 292 ITR 416 (SC)**, the Supreme Court held that while deputed employees may not constitute a Service PE if they are under the control of the Indian entity, a Fixed Place PE may still arise if the foreign enterprise is seen to carry on business through a place in India. Conversely, in **Centrica India Offshore Pvt. Ltd. (2014)(227 Taxman 368)(SC))**, the Delhi High Court ruled that deputation of managerial personnel who continued to serve the business interests of the foreign entity resulted in a Service PE. These cases underscore the importance of substance over form: mere documentation of secondment is not sufficient unless backed by actual control, employment responsibilities, and risk assumption by the Indian entity.

The Hon'ble Delhi High Court in the case of ***Commissioner of Income Tax (International Taxation)-1, New Delhi v. Ernst & Young U.S. LLP dated 18 June 2026,*** set aside the findings of the ITAT and held that:

- Cost to Cost reimbursement to Ernst & Young U.S. LLP (**"EY US" / "the Assessee"**) on account of secondment of personnel by EY US to EY India entities (**"EY India"**) is taxable as Fees for Technical Services (**"FTS"**)/ Fees for Included Services (**"FIS"**) under section 9(1)(vii) of the Income Tax Act, 1961 (**"ITA"**) as well as under Article 12 of the India USA Double Tax Avoidance Agreement (**"India – US tax treaty"**).
- The Court observed that the secondees never ceased to be employees of EY US, as EY US retained lien and overarching control over them, and EY India did not have the power to sever the underlying employment relationship between the secondees and EY US.
- Services rendered by such seconded personnel (who never ceased to be employees of EY US) to EY India led to the transfer of technical knowledge, skill, experience, and know-how, (including through implementation of EY group policies/standards and training) satisfying the 'Make Available' test and hence falling under the ambit of Article 12(4)(b) of the India-US tax treaty. The Court relied on the principle laid down in **Centrica India Offshore Pvt. Ltd.**, and noted that the ITAT had failed to consider this binding precedent.
- This landmark ruling highlights that cross-border secondment arrangements must be evaluated based on the substance of the arrangement and actual conduct of the parties, rather than merely on the nomenclature used in the agreement such as "cost-to-cost reimbursement" or absence of mark-up. Where the overseas entity continues to retain employee lien, benefit obligations, repatriation rights or overarching control, the reimbursement may be characterised as consideration for services and taxed as FTS / FIS.
- The ruling also emphasises the importance of the "make available" test under the India-USA DTAA. If seconded personnel transfer technical knowledge, skill, experience, know-how or processes to the Indian entity, including through training or implementation of group policies/standards, such services may be regarded as making

available technical knowledge.

- It is pertinent to note that on a similar issue of reimbursement of salary expenditure, the Delhi Tribunal in ***Horiba India Private Limited****[*] (pronounced just shortly after the current ruling in the case of EY) has taken a contrary view and held that salary expenses reimbursed by Horiba India towards employees seconded by Horiba Japan were in the nature of mere reimbursement without any profit element embedded and thus, not liable to tax in India.
- In this case, the seconded employees were engaged in rendering routine business day-to -day functions of sales and accounting to Horiba India, without having any specialization in any technical skill. Further, placing reliance on Form 16, it was noted that Horiba India was duly deducting tax under section 192 on the entire salary payment. Since, no 'technical' services were rendered by such employees, the Tribunal held that Horiba India is the real and economic employer of the seconded employees and such reimbursement does not constitute FTS either under the Act or the relevant tax treaty.

  GCCs should therefore review their secondment agreements, inter-company arrangements, withholding tax positions, transfer pricing documentation and related GST / PE implications.

Given the prevalence of secondment structures in the IT/ITES industry, it is critical to ensure that deputed personnel are genuinely integrated into the Indian operations, reporting to and working under the supervision of the Indian entity, with corresponding payroll and HR controls. Where deputation involves a recharge with a profit element or continuation of services rendered on behalf of the foreign enterprise, the risk of Service PE is significantly heightened.

Accordingly, Indian IT and ITES entities should proactively assess the nature, duration, and control attributes of deputation arrangements to mitigate inadvertent PE exposure. Clear contractual arrangements, internal HR

[*] Horiba India Private Limited (2026)(TS- 939-ITAT-2026)(Delhi) dated 19 June 2026

policies, and compliance protocols play a crucial role in determining the taxability and attribution of profits arising from such cross-border human resource deployments.

(ii) Deputation outside India:

Indian IT and ITES companies frequently depute their employees to overseas client locations or group entities for short- to medium-term assignments. Such deputation is typically undertaken for purposes such as on-site project delivery, client interaction, implementation support, or transition management. While such arrangements are commercially routine in the sector, they entail important tax, regulatory, and compliance considerations. From an Indian tax perspective, if the deputed employee continues to be on the payroll of the Indian company and the salary is paid in India, the income is taxable in India under the provisions of the ITA 1961, even if services are rendered abroad. Relief may, however, be available under applicable DTAA, subject to conditions such as the duration of stay and tax residency in the host country. Employers often explore the "secondment" or "global mobility" structure, wherein salary is paid either fully or partly by the host entity, and tax equalisation or reimbursement policies are implemented.

Structuring of such deputation must also consider PE risk for the Indian company in the host country, especially if the employee performs managerial or business development roles overseas. **The following could be the typical kinds of PE which could exist for Indian Company in the host countries from deputation of employees:**

- **Fixed place PE** – A fixed place of business through which the business of an enterprise is wholly or partly carried on. There are three criterions embedded in this definition –
  - existence of physical location
  - right to use that place and
  - carrying out of business through that place
- **Service PE** – Generally created when a company provides services

abroad through employees or other personnel and such activities continue for a specific period.

- **Agency PE** – Agency PE may exist in any of the following three situations:
  - a 'dependent agent' has and habitually exercises authority to conclude contracts on behalf of the principal;
  - the dependent agent regularly maintains a stock of goods or merchandise and delivers from the stock on behalf of the principal;
  - the dependent agent secures contracts for the principal.

A clear delineation of control, supervision, and risk assumption, along with proper inter-company agreements, is essential to manage global tax exposures and ensure operational and regulatory efficiency.

5.2.23 Virtual Permanent Establishment

Remote, hybrid, and home-office arrangements have become mainstream business practices in the post-pandemic era. While these flexible models have operational benefits, they have also created significant interpretational challenges in the field of international taxation, particularly in relation to PE exposure and the emerging discourse around "virtual PE." Under international tax frameworks, PE exposure may arise where employees working from home undertake core business functions on behalf of foreign enterprises. The potential for Fixed Place PE, Service PE, or Agency PE in a Work-From-Home ("**WFH**") context is fact-dependent and varies by treaty and jurisdiction.

(i) A Fixed Place PE may be constituted where:

- The employee's home office in India is used regularly and predominantly for the foreign enterprise's business.
- The foreign enterprise requires or directs the employee to work from that location.
- The enterprise has effective control over the premises (e.g., by paying rent, utilities, or providing equipment).

- ➢ The employee performs core operational or client-facing functions (e.g., contract negotiation, management roles).

(ii) A Service PE may be constituted where:

- ➢ An employee is physically present in India, rendering services on behalf of a foreign enterprise.
- ➢ The total number of days of service exceeds the treaty-specific threshold (typically 90 days in a fiscal year, or 30 days for related party services).

(iii) An Agency PE may be triggered when:

- ➢ The India-based employee/ entity habitually concludes or negotiates contracts for the foreign enterprise.
- ➢ The employee acts under the authority of the foreign enterprise and can bind it legally.
- ➢ The individual works exclusively or primarily for that foreign entity.

The Central Board of Direct Taxes (**"CBDT**") has not yet issued formal guidance on PE implications arising from remote work or WFH arrangements. However, Indian tax authorities are known for a substance-over-form approach. In practice, PE risk assessments are typically made by evaluating the permanence of arrangement, degree of control by the foreign enterprise, and significance of the functions performed from India.

While discussing about PE it is pertinent to note the following 2 contradictory judgements:

In the case of **ABB FZ-LLC, Bangalore vs Deputy Commissioner Of Income Tax (IT), Circle-1(1) Bangalore ([2017] 83 taxmann.com 86)**, the Bengaluru ITAT held that a **Service PE existed under Article 5(2)(i)** of the India—UAE DTAA, even though the foreign employees were physically present in India for only **25 days**. The Tribunal emphasized that i**n the age of digital communication**, services can be rendered **virtually**, via email, video conferencing, etc., and **physical presence is not a precondition** for Service PE. The ruling focused on the **duration of service activities**, not just employee presence.

The H**on. Delhi ITAT in the case of Clifford Chance Pte. Ltd. vs. ACIT (ITA Nos. 2681 & 3377/Del/2023)**, held that **physical presence in India is essential for constituting as Service PE under Article 5(6)** of the India–Singapore DTAA. The Tribunal held that:

- Only the days on which actual, billable services are rendered should count towards the 90-day threshold.
- Non-service days, such as vacations, business development, and overlapping days between employees, should be excluded.
- The concept of "virtual service PE" is not applicable under the current treaty framework, and India has not endorsed such a position in any binding form.
- The view that physical presence is unnecessary for Service PE has only been officially adopted by Saudi Arabia and not by India.

This ruling aligns with OECD commentary and confirms that treaty language requiring physical performance must be respected unless formally amended.

To minimise the risk of unintentional PE exposure in India under remote work arrangements, foreign enterprises should consider the following safeguards:

- Implement clearly documented remote work policies that explicitly disclaim intent to create a PE in India.
- Ensure remote work from India is voluntary and not required for business purposes.
- Conduct functional risk assessments to avoid assigning India-based remote workers core revenue-generating or decision-making roles.
- Avoid providing or controlling infrastructure or workspace in India (e.g., rent, IT assets).
- Track days of physical presence and nature of services performed in India to monitor compliance with treaty thresholds.

5.2.24 Royalty and Fees for Technical Services

(i) Royalty under ITA 1961

Explanation 2 to Section 9(1)(vi) of the ITA 1961 (section 9(6)(b) of the ITA

2025) defines "royalty" to mean consideration (including any lump sum or periodic payment) for:

- Transfer of all or any rights in respect of a patent, invention, model, design, secret formula, or process;
- Use or right to use industrial, commercial, or scientific equipment;
- Transfer of rights in or use of copyright in literary, artistic, or scientific work, including software;
- Use or right to use any trademark or similar property;
- Information concerning technical, industrial, commercial, or scientific knowledge, experience, or skill;
- Rendering of services in connection with the above.

Royalty is deemed to accrue or arise in India if:

- It is payable by the Government; or
- It is payable by a resident, unless the royalty is for use outside India for a business carried on outside India; or
- It is payable by a non-resident, where it is used for a business or profession carried on in India or for earning income from a source in India.

Royalty paid to Indian resident shall be taxable as business income or Income from Other Sources ('IFOS') depending on the nature in the hands of the recipient, the payer is required to withhold tax under section 194J of the ITA 1961 (Section 393 read with section 402 of the ITA 2025) at the rate of 2% if the value of the transaction exceeds INR 50,000.

Royalty paid to Non-Resident recipient and taxable in India shall be liable for tax @ 20% under section 195 read with first schedule of the ITA 1961 (section 393, section 395, section 397 and section 400 of the ITA 2025). Further, such non-resident can also avail DTAA benefit, if any, by way producing before the payer his valid Tax Residency Certificate ("**TRC**"), e-filed form 10F (Form 41 under ITA, 2025 read with Income Tax Rules, 2026) and no permanent establishment in India declaration.

In contrast, DTAA may define "royalty" more narrowly, depending on the country involved. For example, Article 12(3) of the India-USA DTAA specifies that royalty generally refers to payments for the use of, or the right to use, copyrights of literary, artistic, or scientific works, patents, trademarks, secret formulas or processes, or for information concerning industrial or commercial experience. While the core concept is similar, DTAAs often provide a more limited definition compared to the ITA 1961.

DTAA generally defines "royalty" similarly but with more restrictive language than the Act. If DTAA applies (and is more beneficial), the definition under DTAA overrides the domestic law.

The CBDT vide various circulars have tried to specify certain types of payments as royalty to reduce litigations. Vide Circular No. 10/2002 dated 9 October 2002, the CBDT clarified that software payments are treated as royalty. However, post Engineering Analysis ruling, this view has been neutralized for most DTAA scenarios.

The Hon. Supreme Court in the case of **Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT 2021) 432 ITR 472 (SC)** clarified that the amounts paid by the resident Indian end user/ distributors to non-resident computer software manufacturers/ suppliers as consideration for the use/ resale of the computer software is not in the nature of Royalty for the use of copyright in computer software. The same, being business income, does not give rise to any taxable income in absence of Permanent Establishment in India and accordingly no consequential liability of withholding tax arises. The Apex Court held that distribution agreement/ end user license agreement in these cases did not create any right or interest for such distributors/ end users, which would amount to use of or right to use any copyright. Thus, such payments do not constitute royalty under the DTAA. To avail DTAA benefit, the payer shall produce before the remitter his valid TRC, e-filed form 10F (Form 41 under ITA, 2025 read with Income Tax Rules, 2026) and no permanent establishment in India declaration. For withholding tax implications kindly refer section of this publication.

Summary of various payment depending upon their nature is as follows:

Type of payment	Whether Royalty under ITA 1961?	Whether Royalty under DTAA?
Shrink-wrapped software	No	No
Technical know-how	Yes	Yes
Equipment hire charges	Yes	Depends upon DTAA
Copyright/license fees	Yes	Yes

(ii) Fees for Technical Services

Explanation 2 to Section 9(1)(vii) of the ITA 1961 (Section 9(7)(b) of the ITA 2025) states that "Fees for technical services" means any consideration (including lump sum) for:

- Rendering of managerial, technical, or consultancy services,
- including provision of technical or other personnel.

But excludes:

- Consideration for any construction, assembly, mining, or like project undertaken by the recipient; or
- income chargeable under the head "Salaries."

Under Section 9(1)(vii) of the ITA 1961, "income by way of fees for technical services (**FTS**)" is deemed to accrue or arise in India if paid by:

- The Government;
- A resident (unless used outside India for a business/profession outside India); or
- A non-resident, if the services are used for business/profession in India.

Most DTAAs contain a narrower definition of FTS than the ITA 1961. Further, Some DTAAs like India–USA, India–UK, India–Canada, India–Australia define FTS as "included services", which require either technical knowledge, experience, skill, or know-how to be made available to the recipient; or development and transfer of a technical plan or design.

"Make Available" clause states that if technical knowledge is not made available to the payer (i.e., recipient can't perform the service independently later), it is not FTS under the DTAA.

FTS paid to Indian resident shall be taxable as business income @ 10% or IFOS depending on the nature in the hands of the recipient, if the value of the transaction exceeds INR 50,000.

Further, FTS paid to Non-Resident recipient and taxable in India shall be liable for tax @ 20% under section 195 read with Schedule I of Finance Act 2025 (section 393, section 395, section 397 and section 400 of the ITA 2025). Further, such non-resident can also avail DTAA benefit, if any, by way of producing before the payer his valid TRC, e-filed form 10F (Form 41 under ITA, 2025 read with Income Tax Rules, 2026) and no permanent establishment in India declaration.

Scenario	Whether FTS under ITA 1961?	Whether FTS under DTAA?
Technical advice by foreign consultant to Indian company	Yes	Depends upon DTAA
Provision of manpower by foreign entity	Yes	Usually Yes
Online services (SaaS, cloud tools)	Disputed – depends on human involvement	Usually not FTS if automated
Training services by expert	Yes	Only if knowledge is transferred/made available

(iii) Royalty and FTS issues around Bundled Software vs. Customised Software

When analysing royalty and FTS issues around bundled vs. customised software, it's essential to distinguish how taxability under the ITA 1961 and relevant DTAAs can differ based on license type, customisation, human intervention, and IP rights.

Bundled Software: Bundled software refers to programs included with the purchase of hardware, software, or services, typically at no additional cost. They are pre-packaged standard software which is either sold or licensed to multiple users at the same time. In the case of sale of bundled software, usually non-exclusive, non-transferable, rights are transferred only for use. There is none or minimal customisation and human intervention is not required.

Such a sale may be classified as royalty under ITA 1961 and ITA 2025, but not as royalty under relevant articles of DTAA unless copyright is transferred (as per Engineering Analysis Supreme Court ruling). As there is no service element, such sales would also not be considered as FTS.

As mentioned in **Engineering Analysis Centre of Excellence Pvt Ltd v. CIT ((2021) 432 ITR 471 (SC))** payments for off-the-shelf software without copyright transfer are not royalty under DTAA; hence no TDS required.

Customised Software: Customised software refers to software that is specifically designed, developed and maintained to meet the unique requirements of a particular organisation, business, or user group unlike as per commercial software which are produced in mass for common purposes and general usage. Customised software includes more usage rights, limited exclusivity, or ownership. There is significant human intervention when it comes to development, deployment and maintenance of customised software.

Payments for customised software are likely to fall under the definition of royalty as mentioned under Section 9(1)(vi) of the ITA 1961 (section 9(6)(b) of the ITA 2025). Further, such payments would be considered as FTS if services involve making available to know-how technical or consultancy service. The withholding tax would be as determined as per section 194J or section 195 of the ITA 1961 (section 393, section 395, section 397 and section 400 of the ITA 2025) depending upon the nature of transaction and the service provider.

Below are few of the factors and corresponding response on whether the factor should be considered as royalty or FTS:

Factors	Classification
Is there human technical service provided?	FTS

Factors	Classification
Is the payer given a right to use a copyright/ patent?	Royalty
Is the software used without modification or support?	Royalty under ITA 1961 only
Is there training, implementation, technical support?	FTS
Is IP or source code transferred?	Royalty

(iv) Royalty issues around Copyright and Copyrighted Article

The distinction between a copyright article (a physical or digital copy of a work) and a copyright (the legal rights in the work) is crucial for determining royalty and FTS tax treatment in India.

A copyright article generally includes the physical or digital object embodying the work (e.g., a book, a CD, or a software download), whereas a copyright generally means legal rights to reproduce, distribute, perform, or adapt the work.

From taxation point of view, payments for the use of, or right to use, a copyright are taxable as royalty. Payments for merely acquiring a copyrighted article (without rights to exploit the copyright) are not considered royalty. The said view is also confirmed by the Hon. Supreme Court in the case of **Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT 2021) 432 ITR 472 (SC)**, wherein the Hon. Supreme Court ruled out that a distinction must be made between the sale of a copyrighted article (like software) and the transfer of copyright rights. For a payment to be considered royalty, there must be a transfer of all or any rights in the copyright by way of license or assignment. Sale of a copyrighted article (e.g., software license for use) does not amount to royalty.

Practical Examples and Tax Treatment:

Scenario	Royalty?	FTS?	Notes
Purchase of a book (copyrighted article)	No	No	Payment for physical/digital copy, not for rights to exploit copyright

Scenario	Royalty?	FTS?	Notes
License to reproduce a book (copyright)	Yes	No	Payment for right to exploit copyright
Subscription to access a legal database	No	No	No rights to exploit copyright, only access to information
Payment for technical support or consultancy	No	Yes	If service is technical/ consultancy, not for IP use

5.2.25 Digital Economy

The digital economy refers to an economy that is based on digital technologies, particularly the internet, digital platforms, cloud computing, data analytics, and artificial intelligence. It represents a structural transformation in how businesses operate, deliver services, and engage with customers.

The IT and ITES sector are both a catalyst and a cornerstone of the digital economy. It enables digital transformation across industries by providing essential infrastructure, software solutions, cloud services, and outsourced business processes. A PE refers to a fixed place of business or a dependent agent in India through which the business of a foreign enterprise is carried out. The presence of a PE in India can result in the foreign company becoming liable for Indian taxes on income derived from Indian sources. Technological advances and digitization have allowed business to earn cross border revenues without any physical presence.

Building on this foundation, the rise of the digital economy has posed significant challenges to traditional international tax frameworks, which are largely based on physical presence as the basis for taxation. As businesses leverage digital platforms to generate revenues from users and customers in jurisdictions without a physical footprint, concepts like PE have evolved to address new forms of value creation. Tax authorities globally, including in India, are revisiting nexus rules and profit attribution principles to ensure that digital transactions are fairly taxed. This has led to measures such as the Equalisation Levy, SEP rules, and multilateral initiatives under the OECD/G20 framework (Pillar One and Pillar Two). Accordingly, understanding the interplay between digital business models, PE risk, and emerging tax regulations is crucial for IT and ITES enterprises operating in a cross-border environment.

5.2.26 BEPS Action Plan 1

The Organisation for Economic Co-operation and Development ("OECD") launched the Base Erosion and Profit Shifting ("BEPS") project in 2013 to combat tax avoidance strategies by multinational enterprises that exploit gaps in tax rules. Action 1 of the 15-point BEPS Action Plan specifically focuses on addressing the tax challenges posed by the digitalization of the economy.

Action plan 1 aims to identify and tackle the tax challenges arising from the digital economy, which allows companies to generate significant profits in jurisdictions without a physical presence, complicating traditional tax frameworks. The digital economy's characteristics such as reliance on intangible assets, data, and user participation, create opportunities for profit shifting to low-tax jurisdictions, eroding tax bases in countries where economic activity occurs.

The 2015 final report on Action 1 highlighted that digitalization exacerbates BEPS issues by enabling businesses to operate cross-border with minimal physical presence, making it difficult to determine where value is created and taxes should be paid. It noted challenges like defining taxable presence (nexus) and allocating profits for digital services.

5.2.27 Ownership of Website: Important Factors to Determine PE

Determining whether the ownership of a website and server can create a PE for tax purposes involves several key factors as mentioned below:

(i) In case of a Server:

- **Physical Presence:** A server is a tangible piece of equipment with a specific physical location. If a foreign enterprise owns or operates a server in another country, this may constitute a fixed place of business, potentially creating a PE if the server is used for core business activities.

- **Control and Operation:** The OECD and Indian authorities consider that a server can constitute a PE if the principal enterprise (not just a hosting service provider) controls, operates, and maintains the server in the host country. Simply leasing server space or using a third-party hosting service generally does not create a PE unless the enterprise has significant control over the equipment.

- **Ownership of Server:** Ownership of the server by the enterprise itself, as opposed to outsourcing to a third party, increases the likelihood of a PE being established.

(ii) In case of A Website:

- **Website as Intangible Property:** A website itself is intangible and does not have a physical location. Therefore, the mere existence of a website does not create a PE unless it is hosted on a server owned or controlled by the enterprise in the host country.
- **Website Hosting Arrangement:** If the website is hosted on a server located in India (for example), but the server is operated by a third party (e.g., a web hosting company), the foreign enterprise may not have a PE unless it has substantial control or ownership over the server.
- **Virtual Presence:** The concept of a "virtual" place of business is recognised in some jurisdictions if the website and server are under the enterprise's control and are used to conduct core business activities.
- **Nature of business activity:** If the website is used only for advertising or information dissemination, then generally no PE. If the website accepts orders, processes payments, and delivers digital content, and is supported by a server under enterprise control, it may be a PE.

(iii) Right of Disposal and Authority:

- **Disposal Test:** The enterprise must have the right to use the place (server location) at its disposal for business purposes. This means more than just having a website; the enterprise must have the authority to use the server as if it were its own premises.
- **Management and Authority:** The presence of management or

employees in the host country who control or manage the server and website further strengthens the argument for a PE.

(iv) Nature and Duration of Activities:

- **Core Business Activities:** If the server is used to conduct core business activities (e.g., sales, customer interaction, data processing), the likelihood of a PE increases.
- **Duration:** The server's presence should be more than temporary or incidental to be considered a PE.

Thus, it can be concluded that the ownership and control of the server (not just the website) are critical in determining whether a PE exists. A foreign enterprise may be considered to have a PE if it owns or controls a server in the host country and uses it to conduct core business activities on a lasting basis. The mere presence of a website, without ownership or control of the underlying server, does not generally create a PE.

5.2.28 Equalisation Levy ("EL")

The Organisation for Economic Co-operation and Development ("OECD") in Base Erosion and Profit Shifting ("BEPS") project under Action Plan 1 dealing with the digital economy recommended to impose of a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider or imposition of a equalisation levy on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state.

Considering the same, in 2016, India introduced an EL of 6% on non-residents engaged in online advertisement and related activities. The Finance Act, 2020 further amended the provisions of EL and widened its scope to introduce levy at the rate of 2% on e-commerce supply or services facilitated by a non-resident e-commerce operator. When EL is deducted under the above provisions, income of the recipient non-resident is exempt under section 10(50) of the ITA 1961.

For ease of reference EL introduced by way of Finance Act, 2016 is termed as "EL 1.0" and EL introduced by way of Finance Act, 2020 is termed as "EL 2.0"

EL 1.0 applied @ 6% on consideration paid above INR 1 lakh to non-resident service providers not having PE in India. The payer of services must either be a resident in India carrying on business or profession, or a non-resident with a PE in India. The services provided shall be of the nature of online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement. EL 1.0 is withdrawn with effect from 1 August 2024.

EL 2.0 introduced by Finance Act 2020, was applicable at the rate of 2% of the amount of consideration received or receivable by non-resident e-commerce operator from e-commerce supply or services. The threshold for EL 2.0 levy is INR 2 crore annual revenue from Indian sources by non-resident e-commerce operators. EL 2.0 is withdrawn with effect from 1 April 2025.

India being a signatory to the OECD framework, has agreed to phase out unilateral measures like the Equalisation Levy upon levy of Pillar 1 and Pillar 2 measures as discussed in BEPS 2.0 framework and because of growing trade concerns with the USA, India has abolished EL.

Implications of withdrawal of EL are as follows:

- Reduced tax and compliance burden, potentially lowering operational costs in India by non-resident entities.
- Indian residents may experience reduced costs for digital advertising and e-commerce services procured from foreign entities.
- Signals India's commitment to global tax reforms and may improve trade relations, particularly with countries like the United States.

5.2.29 BEPS 2.0 – Digital Economy Overview

BEPS 2.0 (Base Erosion and Profit Shifting 2.0) is a global initiative led by the OECD/G20 Inclusive Framework to address tax challenges arising from the digitalization of the economy. It builds upon the original BEPS project and introduces new rules to ensure that large multinational enterprises (MNEs) pay a fair share of tax in the countries where they operate and generate profits, especially in the digital economy. BEPS 2.0 specifically targets the challenges of taxing digital businesses, which can operate and generate significant profits in countries without a substantial physical presence. BEPS 2.0 is structured around two pillars:

(i) Pillar One: Reallocation of Profits

Focuses on reallocating certain profits of large multinational enterprises (MNEs) to market jurisdictions where their users or customers are located, regardless of physical presence. This aims to ensure that profits are taxed where economic activities occur and value is created, particularly in digital business models.

(ii) Pillar Two: Global Minimum Tax

Introduces a global minimum tax rate of 15% for MNEs with consolidated revenues above €750 million. This is achieved through the Global Anti-Base Erosion (GloBE) Rules, which include mechanisms such as the Income Inclusion Rule (IIR), Undertaxed Profits Rule (UTPR), and, in some cases, a Qualified Domestic Minimum Top-up Tax (QDMTT).

(iii) Why It Matters – Digital Economy Focus

- ➢ Many digital businesses can operate without a physical presence in user jurisdictions, escaping traditional tax rules.
- ➢ BEPS 2.0 ensures that companies like Google, Amazon, Facebook, and others contribute taxes in markets where they derive value from users and digital activity.

(iv) Key Implications for Businesses

- ➢ Increased compliance burden and need for enhanced tax governance.
- ➢ Reassessment of global structures and supply chains.
- ➢ Potential increase in effective tax rates in low-tax jurisdictions.
- ➢ Enhanced transparency and data reporting, such as Country-by-Country Reporting (CbCR).

5.2.30 OECD Pillar 2

OECD Pillar 2, also known as the Global Anti-Base Erosion (GloBE) Rules, is a central component of the international tax reform designed to address profit shifting and ensure that large multinational enterprises (MNEs) pay a minimum level of tax on income generated in each jurisdiction where they operate.

OECD Pillar 2 applies to Multinational groups with consolidated global revenue exceeding EUR 750 million per year and is introduced to ensure these groups pay a minimum effective tax rate (ETR) of 15% on income in each jurisdiction where they operate.

Core Rules:

- **Income Inclusion Rule (IIR):** Requires the ultimate parent entity (UPE) in a multinational group to pay a top-up tax if the group's income in any jurisdiction is taxed below the 15% minimum rate.
- **Undertaxed Profits Rule (UTPR):** Acts as a backstop, allowing other jurisdictions to collect additional tax if the IIR is not applied or is insufficient, ensuring no low-taxed profits escape the minimum tax.
- **Qualified Domestic Minimum Top-up Tax (QDMTT):** Permits jurisdictions to implement a domestic top-up tax to collect any shortfall before the IIR or UTPR applies.

5.2.31 Specific Sector Issues

(i) Employee Stock Option Schemes ("ESOS")

➢ **Inbound ESOS**

Employee Stock Option Schemes are a widely used talent acquisition and retention strategy among multinational IT and ITeS companies, particularly those operating Indian captive entities or Global Capability Centres ("**GCC**"). These schemes are often granted by the foreign parent entity to employees of the Indian subsidiary, which typically operates on a cost-plus model. Common forms of equity-based compensation include Employee Stock Option Plan ("**ESOP**"), Restricted Stock Units ("**RSU**"), Employee Stock Purchase Plan ("**ESPP**"), Non-Qualified Stock Options ("**NQSO**"), Incentive Stock Options ("**ISO**"), Phantom Stock / Stock Appreciation Rights ("**SAR**"). While the structure and vesting conditions vary across these schemes, the taxability under the ITA 1961 / ITA 2025 largely follows a consistent framework.

Stages of ESOPs and taxation aspects are outlined below:

Stages of ESOS	Particulars	Taxation aspects
Granting	ESOS are granted to employees	No taxation
Vesting	Employee serves the employer during the vesting period and option vests	No taxation
Exercise	Upon completion of vesting period, employee actually exercises its right to purchase the shares at an exercise price	Allotment of shares to an employee is treated as perquisite in the hands of employee and taxable under the head "salaries". The value of any specified security shall be the fair market value ('FMV') **on the date** on which the option is exercised by the employee, as *reduced by* the amount actually paid by the employee in respect of such shares. FMV shall be determined based on whether the shares of companies are listed or unlisted as per the relevant Rule: ***Unlisted shares*** In a case where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange (other than listed shares), the FMV shall be such value of the share in the company, as determined by a **merchant banker** on the specified date.

Stages of ESOS	Particulars	Taxation aspects
		'Specified date' means – ● *the date of exercising of the option; or* ● *any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.* *'Merchant Banker' means Category I Merchant Banker registered with Securities and Exchange Board of India.* ***Listed shares*** In a case where on the date of the exercising of the option, the shares in the company are listed on a recognised stock exchange, the FMV shall be the average of the opening price and closing price of the share on that date on the said stock exchange.

The shares so received when sold by the employees shall be taxable as capital gains in the year in which the shares are sold.

➢ **Outbound ESOS**

In cases where an Indian company issues ESOS to employees of its foreign parent or associated company, there may be no tax liability in India at the time of vesting of such options. However, when the foreign employees subsequently sell the shares, the resultant capital gains may be taxable in India depending on the source of income and situs of the shares, in accordance with the provisions of the ITA 1961 and the applicable Double Taxation Avoidance Agreement ("**DTAA**") between India and the employee's country of residence. Taxability will need to be evaluated based on the specific facts of the case, including residential status, place of service, and the location of the issuing entity.

- **ESOS granted by Indian Company**

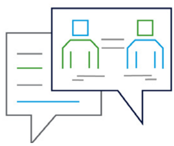
  Taxation in hands of Employee – An Indian Company may issue ESOS to their Indian employees and/ or to employees of its foreign parent or associated company. The taxation of ESOS in the hands of the Indian employees shall be as covered in the para above and the taxation in hands of foreign employees shall be as covered in the para above.

- **ESOP Cost in hands of Indian Company**

  The difference between fair value of the share on the date of grant of option and the exercise price (grant price) is proportionately debited to the profit and loss account over the vesting period in accordance with clause 13.1 read with Schedule I of Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 ('SEBI Guidelines') and Indian Accounting Standard 102 – Share based Payments ('Ind AS 102') as 'ESOS Cost' by the Indian companies following Ind AS accounting.

  The ESOS expense is in the nature of employee costs as ESOS incentives are provided to motivate the employees to perform their best work, which will directly benefit the company and is a reward for the services offered. From a company's perspective, issuing shares to employees at a discount is a way of compensating them, just like paying salary or bonus. The discount offered is the economic cost to the company for those services. As such, said ESOS cost debited to the profit and loss is claimed as allowable expense as per the provisions of section 37(1) of the ITA 1961. The said allowability is adjudicated in-depth by **Special Bench of Hon'ble Bangalore Tribunal** in the case of **Biocon Ltd.** v. **DCIT (2013) (35 taxmann.com 335)***

  Hon'ble High Court of Karnataka in the case of Commissioner of Income Tax, LTU vs. Biocon Ltd.



[2020] 121 taxmann.com 351 (Karnataka) has disposed-off the appeal filed by revenue against the said order of tribunal in favour of the Assessee

The difference between the market price of the shares on the date of exercise of ESOS (which is considered as 'perquisite' chargeable to tax in the hands of its employees and appropriate tax should be withheld) over and above the expenses claimed in P&L account during the vesting period which is accounted in accordance with the SEBI Regulation and Ind AS 102 share based payment may be claimed as 'True-up ESOS Cost' as the same is a cost to the Company.

5.2.32 Income Computation and Disclosure Standard

The Income Computation and Disclosure Standards ("**ICDS**"), introduced under section 145(2) of the ITA 1961 (section 276 of the ITA 2025), are applicable for computing taxable income under the heads "profits and gains of business or profession" or "income from other sources." These standards significantly affect various industries, including the IT/ ITES sector, due to the sector's specific business models, service contracts, and revenue recognition patterns.

The key ICDS issues relevant to the IT and ITES sector:

ICDS	Issues	Impact
ICDS-III: Construction Contracts & ICDS-IV: Revenue Recognition	Many IT/ ITES companies enter into fixed-price contracts for software development or support services, which span multiple financial years.	ICDS-III applies to software development contracts if they are akin to construction contracts. Revenue has to be recognised using the percentage of completion method ("**POCM**"), even if IND AS/ AS allows completed contract or straight-line method in certain cases. For support or BPO services billed monthly, POCM is usually not applicable.
ICDS-IV: Revenue Recognition	Recognition of income like Duty Drawback, MEIS, SEIS, or other export-linked incentives.	Under ICDS-IV, income is recognised when there is reasonable certainty of realisation. This could lead to earlier recognition than under AS or IND AS, impacting timing of taxability.

ICDS	Issues	Impact
ICDS-VI: Effects of Changes in Foreign Exchange Rates	IT/ITES companies deal significantly with foreign currency transactions due to exports.	ICDS mandates recognition of unrealised forex gains/losses on monetary items at each reporting date, even if Ind AS does not require this for all items. Market-to-market losses on foreign exchange forward contracts may not be allowable unless they relate to a firm commitment.
ICDS-V: Tangible Fixed Assets	Treatment of internally developed software or capitalised R&D.	ICDS does not deal with intangible assets, but capitalisation of development expenditure (if tangible in nature) may be required. Depreciation will be calculated as per Income-tax Rules, not accounting depreciation.
ICDS-X: Provisions, Contingent Liabilities and Contingent Assets	Provision for warranties, service-level guarantees, or long-term maintenance contracts.	ICDS does not allow provisioning for contingent liabilities unless there is present obligation and reliable estimate. May lead to disallowance of expense provisions allowed under Ind AS/ AS.
ICDS-IV: Revenue Recognition	Recognition of interest income on delayed payments from clients.	ICDS requires interest income on accrual basis, even if recovery is doubtful. Increases taxable income unless specifically proved to be bad debts later.
ICDS-VII – Government Grants	Grants/ subsidies received under schemes like STPI, SEZ, etc.	ICDS mandates recognition on a reasonable certainty basis which leads to earlier recognition compared to AS/ Ind AS in few cases.

ICDS are not applicable for computation of MAT. ICDS apply for income computation and not for maintenance of books of account.

ICDS—Ind AS Alignment: Towards a Unified Accounting Framework

The Income-computation and Disclosure Standards (ICDS) were notified on 29 September 2016 and made applicable from AY 2017-18 to govern tax computation separately from accounting standards. Over the years, several amendments were made, and clarifications were issued by the CBDT, resulting in a parallel tax accounting framework alongside Ind AS/IGAAP. Finance Act 2026 marks a significant shift by providing the integration of ICDS into Ind AS through the recommendation of a Joint MCA–CBDT Committee, with the revised framework to apply from Tax year 2027-28, thereby easing of compliances.

5.2.33 CBDT Notification on applicability of withholding tax on certain types of software transactions

Notification No. 21/2012 [F.No.142/10/2012-SO(TPL)], S.O. 1323(E), dated 13th June 2012, issued by the CBDT, provides specific exemptions from Tax Deducted at Source ("**TDS**") under Section 194J of the ITA 1961 (Section 393 read with section 402 of the ITA 2025), for certain software transactions. Effective from 1st July 2012, the notification stipulates that no TDS shall be deducted under section 194J of the ITA 1961 (Section 393 read with section 402 of the ITA 2025) on payments made by a resident transferee to another resident transferor for the acquisition of software, provided the following conditions are met:

- **Subsequent Transfer Without Modification:** The software is acquired in a subsequent transfer, and the transferor has transferred the software without any modification.
- **Prior Tax Deduction:** Tax has been deducted either:
    - Under section 194J of the ITA 1961 (Section 393 read with section 402 of the ITA 2025) on payment for any previous transfer of such software; or
    - Under section 195 of the ITA 1961 (Section 393, section 395, section 397 and section 400 of the ITA 2025) on payment for any previous transfer of such software from a non-resident.
- **Declaration from Transferor:** The transferee obtains a declaration from the transferor confirming that tax has been deducted as per the provisions of section 194J of the ITA 1961 (Section 393 read with section 402 of the ITA 2025) or section 195 of the ITA 1961 (Section 393, Section 395, Section 397 and Section 400 of the ITA 2025) and Permanent Account Number ("**PAN**") of the transferor is obtained.

This measure was introduced to prevent the cascading effect of multiple tax deductions on the same software as it passes through various resellers or distributors without any modification and is applicable in the following cases:

- **Standardised Software:** The exemption applies primarily to standardised or "off-the-shelf" software that is transferred without any customisation.
- **For Resellers and Distributors:** Entities involved in the resale of software can benefit from this exemption, provided they ensure that the software is transferred without modification and that the necessary declaration from the original transferor is obtained.
- **For Purchasers:** Buyers acquiring software from resellers should verify the chain of tax deductions and obtain the requisite declaration to ensure compliance and avoid unnecessary tax deductions and compliances.
- **Customised Software:** Payments for customised or specialised software tailored to specific client needs do not qualify for this exemption and may still attract TDS under Section 194J of the ITA 1961 (Section 393 read with section 402 of the ITA 2025).

5.2.34 Lease exports and export of goods

For IT and ITeS sector, lease exports would mean leasing of IT equipment, servers, or hardware to a foreign affiliate or client and export of goods include sale of hardware, servers, or even shrink-wrapped/off-the-shelf software licenses. In case of lease exports, physical equipment or bundled software-hardware are exported. However, in case of export of goods physical goods or digital goods (with IP transfer/license sale) are sold. Permanent Establishment ("**PE**") issues arise in both lease exports and export of goods. PE Risk is Higher in case of lease export and can arise in the following cases:

Physical presence of equipment (e.g., servers, network infrastructure) leased to a **foreign client** or **subsidiary, especially** if:

- Located **at client's premises** or **data centre abroad**
- Controlled/maintained by Indian staff or personnel

If **leased equipment** is **used to carry out core business functions** of the client (e.g., server hosting critical applications)

PE Types Potentially Triggered:

Type of PE	Trigger in Lease Export
Fixed Place PE	If a leased asset (e.g., server) is **located at a fixed site** abroad for a substantial period, and **functions are attributable** to an Indian entity
Service PE	If Indian personnel install, maintain, or supervise the asset abroad
Dependent Agent PE	If a foreign affiliate acts on behalf of the Indian company with authority to conclude contracts or handle leased assets in a way that binds the Indian entity
Equipment PE *(OECD/UN Model)*	If equipment is **leased, controlled, and used by the Indian entity** abroad, even without human presence (common in **UN/OECD treaties** – less so in Indian treaties, but depends on DTAA)

PE risk in case of Lease exports can be mitigated by way of Careful structuring of lease terms, avoiding control over leased assets abroad.

PE Risk is usually lower or negligible in case of export of goods because of the following reasons:

Simple **sale of goods** (e.g., servers, hardware, embedded systems) does **not create a PE**, provided:

- No **Indian personnel are present** abroad
- No **warehousing or after-sale support** is offered from a fixed place
- Indian entity does not have a **contract-signing agent** in the foreign country

However, the PE risk would increase in the following scenarios :

Scenario	PE Risk
Post-sale installation/maintenance performed by Indian employees abroad	May trigger **Service PE**
Consignment stock or warehousing abroad by Indian entity	Potential for **Fixed Place PE**
Appointing a **dependent agent** abroad (distributor, marketing arm)	Can create **Dependent Agent PE**

PE risk in the case of export of goods can be mitigated by keeping transactions arms-length and free from post-sale obligations.

5.2.35 Other Finance Act 2026 Amendments

Exemption to a foreign company on any income arising in India by way of procuring data centre services from a specified data centre

In order to attract investment in data centre and promote artificial intelligence data centre framework in India, FA 2026 provides exemption to a foreign company, on any income accruing or arising in India or deemed to accrue or arise in India by way of procuring data centre services from a specified data centre, for a period upto tax year ending on 31st March, 2047.

One of the conditions for exemption is that where services are provided to India users by the foreign company, it shall be routed through an Indian reseller entity.

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 including land, buildings, mechanical electrical power equipment's, cooling system, security and information technology infrastructure including servers, computers, storage systems, operating systems, security solutions, network and associated software platforms, networking and other equipment, human resource in India.

"**Specified data centre"** means a data centre which–

(i) is set up under an approved scheme and is notified in this behalf by the Central Government in the Ministry of Electronics and Information Technology; and

(ii) is owned and operated by an Indian company.

These amendments have been made effective from 1 April 2026 and shall accordingly, apply in relation to the tax year 2026-27 and subsequent tax years.

Transfer Pricing Regulations

6.1 Background

The significance of transfer pricing in India has grown with the expansion of multinational corporations and the increase in cross-border dealings. In response, India has established transfer pricing regulations that are drafted similarly to the OECD's guidelines while also being customised to meet the country's specific requirements.

Accordingly, the Finance Act, 2001, had substituted section 92 by a new section 92 and 92A to 92F (i.e. Chapter X) of the ITA 1961 with effect from assessment year 2002-03. Subsequently, ITA 1961 has been replaced with ITA 2025, wherein section 161 to 177 (i.e. Chapter X) of the ITA 2025 pertains to transfer pricing provisions in India which will be applicable from 1 April 2026.

Throughout the years, the Information Technology enabled Services (ITeS) sector in India has evolved significantly. It has transitioned from merely providing basic outsourced data entry services to delivering sophisticated, high-value knowledge-based services to customers. These services are categorised into different areas, such as infrastructure management, software solutions, cybersecurity, cloud computing and data management. The global Information Technology (IT) / ITeS sectors are experiencing rapid growth and expansion as businesses increasingly integrate artificial intelligence, software, and ITeS services to ensure the smooth functioning of an organisation's technological framework, helping businesses to enhance productivity, streamline operations, and protect against security threats. Multinational enterprises (MNEs) are establishing dedicated business units in various countries to leverage economic benefits.

Recent trend reflects many MNEs setting up subsidiaries as captive units operating on a cost-plus mark-up model in India to support global business. Consequently, the nature of operations in these sectors, which frequently involves provisions of services, cost contribution and technology transfers across borders, brings them under the purview of transfer pricing regulations. These support centre entities majorly belong to IT / ITeS sector due to the inherent use of technology for performing the functions remotely from India. IT/ ITeS MNEs perform diverse range of services like software development support services, data centre support, Business Process Outsourcing (BPO) services, Knowledge Process Outsourcing (KPO), contract R&D, marketing support and other tech enabled functions.

As per the Economic survey 2025-26[6] on computer software and ITeS shows that software services exports have increased by 7.3 per cent (YoY) in FY25, following an increase of 2.3 per cent (YoY) in FY24. In FY25, computer services exports account for over two-thirds of India's total software service exports, while BPO services remain the most significant component of ITeS exports. In FY25, the IT/ ITeS sector reinforced India's position as a global technology and innovation hub, supported by continued revenue growth, a rising role of Global Capability Centres (GCCs), and deeper engagement in higher-value, complex technology activities.

In recent years, a key structural feature underpinning the IT-ITeS sector's performance has been the steady expansion of GCCs – offshore units established by multinational firms to undertake technology development, engineering, analytics and business operations for their global activities. Over time, GCCs have evolved from support-oriented functions into integral components of multinational firms' global operations, undertaking core activities such as product development, engineering, analytics, cybersecurity operations and AI-enabled digital functions, thereby strengthening India's integration into global value chains as a resilient source of growth. The diversification of the GCC ecosystem has been driven by the growing participation of more specialised and innovation-focused mid-market GCCs, comprising mid-sized and emerging multinational firms. GCCs account for a significant share of employment within the IT sector and have contributed meaningfully to incremental hiring in recent years. [7]

Driven by surging data consumption, rapid cloud adoption, and the growing use of AI, India's data centre capacity is projected to reach about 8 GW by 2030. AI data centres are specialised high-performance facilities designed to meet the intensive computational needs of artificial intelligence, machine

[6] https://www.indiabudget.gov.in/economicsurvey/
[7] https://www.indiabudget.gov.in/economicsurvey/

learning, and deep learning workloads. Despite generating nearly 20 per cent of the world's data, India hosts only about 3 per cent of global data centres, around 150 out of 11,000 worldwide, highlighting both a large growth opportunity and a competitiveness gap. Data centres are also double-edged swords as they are very energy intensive.

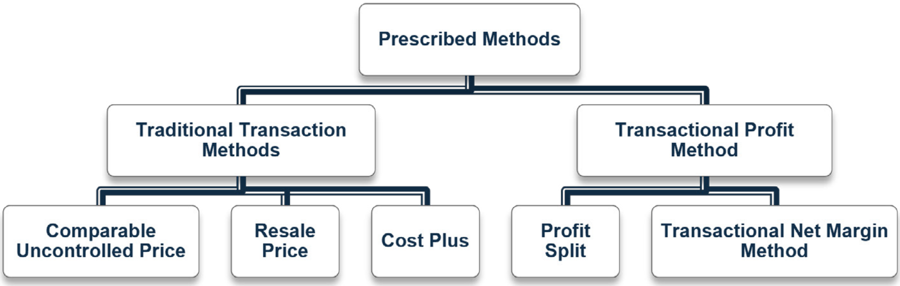
India's Central Government has positioned digital infrastructure as a cornerstone of the next phase of economic expansion, proposing a suite of long-term tax incentives aimed at attracting global cloud and data centre operators. This measure underscores a clear policy intent to mobilise global capital while simultaneously deepening domestic technological and manufacturing capabilities. For this purpose, tax holiday provisions and amendments in safe harbour have been amended by the Government of India vide Finance Act 2026.

Looking ahead, the IT-ITeS sector is well-positioned to play a larger role in India's medium-term growth and productivity. Realising this potential will require strengthening the foundations for innovation-led, capability-intensive growth through a skilled and adaptable workforce, wider diffusion of digital technologies, and a policy environment that supports innovation and scaling.

While there has been advancement in these sectors, however IT/ ITeS MNE's have been subject to scrutiny by tax authorities since the inception of Transfer Pricing regime in India and a major part of direct tax litigation pertains to these companies. Key contentious issues for Indian subsidiaries of such MNEs includes functional characterisation and comparability, actual conduct and contribution in overall value chain, use of high level of intangible assets, application of appropriate mark-ups, computation of operating margins, free of cost services, long credit period/ delayed outstanding etc.

6.2 Methods of Transfer Pricing

As per the Indian transfer pricing provisions, income arising from an international transaction(s) with an AE shall be computed having regard to the ALP and the calculation of ALP has to be done by using transfer pricing methods as under:



Other Method: Apart from the above five methods there is 'Other Method' that allows the use of any method that has been used or maybe used to determine ALP in the instances where the application of the five specific methods is not possible or due to the uniqueness of the transaction.

6.2.1 Application of the aforesaid methods in the case of IT/ITeS is discussed as follows:

(i) Comparable Uncontrolled Price (CUP) Method

The CUP method involves identifying the price charged for property transferred or services provided in a comparable uncontrolled transaction, or a set of such transactions, and adjusting such price to account for any differences between the international or specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises involved, which could materially affect the price in an open market.

Generally, CUP is most effective where AEs buy or sell the same goods or services in comparable transactions with unrelated enterprises (Internal CUP) or when unrelated enterprises buy or sell the same goods or services, as is being done between the associated enterprises (External CUP). Under CUP, the standard of comparability required is very high. Under CUP method, a transaction is considered comparable only if both the tangible property or service provided and the circumstances surrounding the controlled transaction are substantially the same as those of the uncontrolled transaction.

While applying the CUP, several factors should be considered for determining whether controlled and uncontrolled transactions are truly comparable, particularly for goods. **These factors may include, but are not**

limited to:

- the type of good or service being transacted;
- the timing of the transaction; and
- the contractual terms of the transaction.

In the case of services, comparability must be assessed based on situations where a company has rendered similar services to both related parties and third parties. **Key indicators of comparability include:**

- the services rendered closely resemble to each other;
- the services are rendered simultaneously or within a reasonable time gap; and
- the nature and scope of work is similar.

In a nutshell, the CUP method works best when the transactions being compared are very similar in every important way to ensure that prices are aligned with what unrelated parties would agree upon under similar circumstances.

(ii) Applicability of CUP in the case of Provision of Services:

The CUP method can be applicable on service transactions when the services provided to related parties closely match those offered to independent third parties in terms of timing, scope, and nature of work. However, in the IT/ITeS sector, Indian subsidiaries generally function as captive service providers, delivering specialised services exclusively to their foreign affiliates and typically not dealing with unrelated third parties. For instance, an Indian IT company providing customised software development solely for its parent company, or an ITeS firm offering dedicated back-office support only to its global group affiliates, typically lacks comparable third-party transactions.

Similarly, the foreign affiliates rarely procure similar services from independent Indian vendors. As a result, both internal and external CUP methods are often not feasible for establishing arm's length prices in these contexts of provision of services.

(iii) Resale Price Method (RPM)

The RPM is normally used in cases involving the purchase and resale of tangible property or services in which there is no substantial value addition by the reseller either by physically altering such goods or by using marketing intangibles.

Under RPM, the reseller of goods is compensated for the costs incurred and an appropriate profit is provided for functions performed, tangible and intangible assets employed, and risks borne. The RPM assesses whether a controlled transaction is conducted at arm's length by comparing the gross profit margin earned in a comparable uncontrolled transaction.

RPM requires close comparability of functions performed or risks assumed by controlled parties and the comparable uncontrolled parties. If there are differences in the functions performed or risks assumed between the controlled and uncontrolled transactions, RPM becomes less reliable.

(iv) Applicability on Provision of Services:

RPM is more appropriate where one enterprise markets the goods of the other enterprise wherein normal risk distributor resells products/ services without any value addition and gross profit ('GP') margin of the reseller can be appropriately identified. RPM is normally used in case of distributor of products and generally not applicable in case of provision of services.

(v) Cost Plus Method (CPM)

The CPM is used for transactions involving manufacture, assembly, or production of tangible products, or the provision of services to related parties. It calculates a mark-up on costs to compensate for functions performed, capital invested, and risks assumed by the related party. It primarily relies on internal cost information, which is ordinarily available to MNEs.

CPM is effective for transactions involving semi-finished goods, joint facility agreements, long-term buy-and-supply arrangements, or service provision. High comparability with uncontrolled manufacturers or service providers ensures reliable results. However, factors like cost structures, business management efficiency, and lack of reliable external data can affect CPM's reliability.

(vi) Applicability on Provision of Services:

While CPM can be considered for IT/ITeS service providers in certain scenarios, it is generally not preferred for benchmarking service transactions in practice as the method's primary focus on cost structures makes it sensitive to variations in accounting practices and operational efficiencies, which can distort comparability. Also, in absence of reliable data on the functional and risk profile of comparable companies which are necessary for the application of CPM, a lot of adjustment may be needed which also makes application of this method often not feasible.

Moreover, CPM does not adequately capture the differences in functional complexity, risk profiles, or the level of value addition, particularly in the service industry involving skilled manpower, process know-how, or the use of intangibles. In the context of India's evolving IT/ITeS sector, CPM lacks in reflecting the true arm's length price and is typically used for less complex, low risk support services where cost bases are comparable and easy to verify.

(vii) Profit Split Method (PSM)

The PSM assesses whether the allocation of combined profit or loss from one or more controlled transactions is at arm's length by evaluating the relative value of each controlled taxpayer's contribution to that combined profit or loss. By examining the combined profits of two related parties in a transaction, PSM ensures a fair division of profits between both organisations. **Further, the brief overview of the application of PSM is as below:**

- ➢ PSM determines if the allocation of combined profits or losses from controlled transactions is at arm's length by assessing each taxpayer's contribution. This allocation follows either the combined or residual profit split method.
- ➢ PSM first identifies the total profit from the transactions to be split

among associated enterprises. It then allocates these profits based on an economically valid approach, mirroring what would be expected in an arm's length agreement. The combined profit can be either the total profit or a residual profit from unique intangibles. Contributions are evaluated through a functional analysis and compared with external market data, such as profit split percentages or returns from similar independent enterprises.

PSM is most often used by groups providing integrated services in which more than one enterprise is involved in the entire value chain right from investments, to performing core business function to sale and post-sale activities of intangibles developed by the group.

(viii) Applicability on Provision of Services:

The PSM is particularly suited for service transactions involving complex intercompany dealings and significant intangible assets. It is ideal when multiple related transactions are so intertwined that they cannot be reliably evaluated in isolation. This makes PSM especially relevant for cases involving substantial R&D activities and the creation of valuable Intangible assets/ Intellectual property (IP). For software companies, PSM is often used when the contributions of each party in the value chain are difficult to separate or benchmark individually.

Currently, many Indian subsidiaries of MNEs operate as low-risk service providers, focusing on specific phases of software development or R&D within a predefined scope. These entities typically do not engage in high-value functions such as capital investment, product architecture, design, or commercialisation, and thus are not considered joint risk-takers. Consequently, PSM is generally not preferred for such Indian subsidiaries since their involvement does not justify a profit split based on shared risks and rewards.

Further, contribution-based profit split is generally preferred wherein all participating entities are engaged in the development of key assets/ intangible, designing the marketing strategy, deciding on the level of marketing expenditure in each jurisdiction where services will be performed and every participant's contribution is unique and valuable to the potential success of the overall product/ services. However, in cases wherein the functional indulgence of a particular participating entity is not economically significant for the business operations and that such entity does not make any unique and valuable contributions in relation to the overall arrangement, such entity shall not be remunerated on the profit split method and some other prescribed method may be used.

However, as India emerges as a major global hub for IT/ ITeS, many MNEs have established contract R&D centres and IT hubs in the country. In these scenarios, Indian entities may play a more significant role in developing intangibles or intellectual property, actively contributing to the overall value creation within the group. When Indian subsidiaries have substantial involvement in the value chain, PSM may become a suitable method to benchmark IT development and contract R&D services, regardless of whether they hold legal or economic ownership of the resulting intangibles.

(ix) Transactional Net Margin Method (TNMM)

TNMM aims to determine the arm's length result based on the net profit margin as a percentage of costs incurred or sales effected, or assets employed realised by an enterprise from an international transaction entered into with an associated enterprise.

TNMM proves to be a highly practical tool for assessing the arm's length nature of provision of services related transactions, as it focuses on key elements such as functions performed, assets utilised, and risks borne (FAR analysis) and compares the net profit margin (relative to an appropriate base) that the tested party earns in a controlled transaction to the same net profit margin earned by the tested party in a comparable uncontrolled transaction.

TNMM examines the net profit margin that a taxpayer realises from a controlled transaction (or transactions that are appropriate to aggregate). Under TNMM, the standard of comparability is relaxed relative to other methods with only broad similarity of functions required. Comparable transactions need to be only broadly similar. Significant product diversity and some functional diversity between the controlled and uncontrolled parties are acceptable.

Also, TNMM is particularly relevant and widely used in the IT/ ITeS industry due to the routine and pre-defined scope of activities and is seen as the most preferred method by the tax authorities as well.

Moreover, TNMM is generally used in transfer pricing as one of the most appropriate method due to its flexibility and practicality, especially when direct comparable are unavailable and is often favoured for its broad applicability across various industries and its ability to accommodate differences in functions and risks. However, one of the major challenges is the lack of close comparable, TNMM often relies on broadly comparable companies rather than exact matches. This broad comparability may reduce the reliability of the analysis, as differences in business models, geographic markets, and accounting practices can significantly affect profit margins. Adjusting for such differences involves subjective judgments and increases the risk of tax authority scrutiny.

(x) Applicability of Provision of Services:

TNMM focuses on net profit margins relative to an appropriate base such as costs, sales, or assets. TNMM allows for the use of external comparables, facilitating a more consistent and reliable transfer pricing analysis. Its reliance on net profit indicators makes it less sensitive to minor functional differences between the tested party and comparables, enhancing its applicability and reliability in determining arm's length pricing for service transactions within the IT/ITeS industry where the services are standardized and internal comparables are often scarce.

6.3 Safe Harbour Rules ('SHR') applicable to IT/ ITeS sector in India

A "safe harbour" under Indian transfer pricing regulations is a dispute resolution mechanism where tax authorities accept the transfer price declared by the taxpayer, provided certain conditions are met and that relieves eligible taxpayers from certain obligations otherwise imposed by a jurisdiction's general transfer pricing rules. Transfer pricing compliance and administration is often complex, time consuming and costly. Properly designed safe harbour provisions, applied in appropriate circumstances, can help to relieve some of these burdens and provide taxpayers with greater certainty.

The SHR in India provide predefined margins or mark-ups that eligible taxpayers can apply to qualifying international transactions, offering certainty and reducing the risk of transfer pricing disputes. Once a company opts for SHR and declares prescribed transfer price in respect of eligible transactions, such transfer price is accepted/ rejected by income-tax authorities after verification. SHR also provides simplified compliance, with an aim to bring clarity on acceptable profit margins for specific transaction types, including software development services, contract R&D, intra-group services, BPOs, KPOs, and other low value-adding operations in the IT/ ITeS sectors.

The Central Board of Direct Taxes (CBDT) had first introduced the SHR in 2013 by way of a notification, applicable for five years starting from FY 2012-13 and thereafter SHR has been extended. Recent Notification No. 21/2025 extended the scope of the same upto FY 2025-26. The existing SHR transactions and rates pertaining to IT/ ITeS Sector are as follows:

SHR- Eligible transaction and Rates:

Eligible International Transaction	Safe Harbour Rules (applicable upto FY 2025-26)	
Provision of software development services/ ITeS	OPM* of 17%	Transaction value up to INR 100 Crore
	OPM of 18%	Transaction value between INR 100 Crore and INR 300 Crore
Provision of KPO Services	OPM of 24%	Employee Cost/ Operating Expense > 60%
	OPM of 21%	Employee Cost/ Operating Expense between 40% to 60%
	OPM of 18%	Employee Cost/ Operating Expense < 40%
Provision of contract R&D services (relating to software development)	OPM of 24%	Transaction value up to INR 300 Crore

**Operating profit margin*

As per the Finance Act 2026 and Income- tax Rules, 2026, amendment has been made as per which all software development, ITeS, KPO, and software-related contract R&D services would be treated as a single category, Information Technology (IT) Services and a uniform safe harbour rate of 15.5% has been prescribed for such IT services. Further, eligibility threshold has been increased from Rs.300 crores to Rs.2,000 crores.

Additionally, Safe harbour applications will be processed through an automated system and can be applied for up to 5 years at the taxpayer's choice in relation to ITeS.

The Act has also extended SHR to data centre services with a 15% safe harbour margin.

The above-mentioned amendments represent the Government's considered response to sustained industry feedback that the earlier margin norms and eligibility thresholds under SHR were not fully aligned with prevailing commercial realities, which were frequently resulting in avoidable compliance challenges amid competitive cost pressures. The revised framework is expected to provide meaningful relief and enhanced certainty to Global Capability Centres and other eligible entities by better reflecting their operating and risk profiles.

6.4 Challenges in the IT/ITeS Sector

In recent years, the IT/ITeS industry has been at the forefront of transfer pricing litigation. This sector has encountered significant challenges, which include compliance with evolving regulations, valuation of Intangible assets, Intra-group services, comparability, functional classification and prolonged legal disputes. The ALP determination process depends heavily on expert judgment and estimates within the framework of applicable transfer pricing laws. However, in the absence of clear and detailed guidance, there remains a high risk of interpretational differences, which increases the probability of litigation with revenue authorities.

Understanding these issues is crucial for companies in the IT/ITeS industry to navigate the complexities of transfer pricing regulations and minimise the risk of prolonged legal battles. Further, to mitigate transfer pricing disputes, companies can utilise various dispute resolution mechanisms available in the Indian transfer pricing law such as Advance Pricing Agreements and SHRs etc. Additionally, aiming to streamline compliance and reduce administrative tasks, the introduction of a multi-year ALP determination framework wherein, the ALP determined for a particular previous year shall apply to the similar transactions for the next 2 consecutive previous years as well, subject to the existence of certain conditions. These mechanisms offer proactive strategies to ensure compliance and reduce litigation risks.

6.4.1 Intangibles and Intellectual Properties (IP)

In recent years, many MNEs have established R&D centres in India, where local entities contribute significantly to the development of intangibles like software, patents, and proprietary technology. Although these functions are often performed under contractual arrangements, their economic contribution may exceed that of routine service providers and determining appropriate compensation generally involves evaluating not only the costs incurred but also factors such as technical expertise, risk-taking, functional control, and the use of existing intangible assets.

Valuing such intangibles for transfer pricing purposes remains complex due to their unique, non-physical nature and the absence of direct market comparables. Unlike tangible assets, intangibles derive their value from future income potential and strategic relevance, requiring a clear distinction between legal ownership and economic contribution when pricing intra-group transfers.

A key consideration is the application of the DEMPE framework i.e., Development, Enhancement, Maintenance, Protection, and Exploitation. Even if a group entity legally owns an intangible, it is not entitled to the full return unless it meaningfully participates in these value-generating activities. Instead, returns must be allocated based on actual contributions, ensuring alignment with the principle of economic substance.

Taxpayers also face interpretational and practical challenges in valuing intellectual property rights (IPR). Questions often arise around the appropriateness of valuation methods such as whether the discounted cash flow (DCF) method alone is sufficient or how to allocate residual profits when the legal IP owner lacks operational involvement. These complexities can lead to disputes if the transfer pricing arrangements do not reflect the real value creation within the group.

6.4.2 Analysis from transfer pricing perspective

In the IT/ITeS sector, where intangible assets like software, proprietary technology, and digital platforms drive value creation, establishing appropriate transfer pricing for their commercialisation is critical. Whether intangibles are licensed, transferred internally, or used within the group, pricing must reflect the actual economic contributions of each entity involved in developing, enhancing, managing, and exploiting these assets.

Valuing such intangible assets poses unique challenges because of their intangible nature and the difficulty in predicting future benefits, which are often influenced by dynamic market conditions. This uncertainty leads to assumptions in valuation that can be open to interpretation, increasing scrutiny by tax authorities and the risk of disputes, particularly in transactions involving high-value intangibles.

To mitigate these risks, transfer pricing frameworks should be supported by detailed analyses of functions performed, risks borne, and assets used by each group company. Comprehensive documentation and robust valuation techniques such as DCF analysis are essential to justify pricing decisions. Ensuring that transfer prices truly reflect the underlying economic reality helps minimise potential tax adjustments and strengthens compliance for IT/ITeS companies engaged in intangible asset transactions.

6.4.3 Determination of Service Charge

In the IT/ITeS sector, establishing appropriate service charge arrangements between Indian subsidiaries and their foreign group companies is a crucial aspect of transfer pricing. Given the technical nature and diversity of services offered, ranging from software development to technical and process support, accurate pricing is both operationally and tax-sensitive.

As mentioned above, most Indian captive service providers operate on a limited-risk model, and thus, the TNMM is commonly used to evaluate pricing. However, benchmarking poses practical challenges, especially when identifying companies with similar functional and risk profiles. While TNMM offers flexibility, its reliability often depends on adjustments made for differences in working capital, risk levels, or asset intensity to make the analysis more comparable. These economic adjustments are essential to arrive at a justifiable arm's length outcome and are often subject to tax authority scrutiny.

Another important consideration is the business maturity stage of the Indian entity. Newer operations typically experience higher costs and lower profitability, whereas more established units may demonstrate greater efficiency and scale. Transfer pricing analysis must reflect this life-cycle variation to avoid distorted results.

Overall, service charge planning in the IT/ITeS space remains a highly contentious and litigated area, with frequent disputes on comparability, adjustments, and the perceived role of the Indian entity within the global value chain. A carefully structured pricing model, supported by sound documentation and a clear economic rationale, is essential for managing transfer pricing risks effectively.

6.4.4 Comparability Analysis

(i) **Functional Characterisation**

The Indian sofware and IT/ITeS industry is charcterised by Indian companies going global and foreign MNEs setting up their arms in the form of GCC units, R&D Centres, Offshore Dedicated Centres (ODCs) etc.

From a functional perspective, both taxpayers and tax authorities broadly categorise various IT / ITES sector services as under:

- ➢ provision of software development support services/ Data centres / IT products;
- ➢ contract R&D Services wholly or partly relating to software development;
- ➢ provision of information technology enabled services (it includes back-office operations; call centres or contact centre services data search integration and analysis, etc.);
- ➢ provision of knowledge process outsourcing services (it includes human resources services, business analytics, financial analytics, market research, etc.); and

- other inter-company transactions such as intra group services, outstanding trade receivables etc.

In transfer pricing analysis, it is critical to accurately distinguish between different categories of service providers such as Research & Development (R&D) vs. Contract R&D, Software Development Services (SDS) vs. Software Development Support Services (SDSS), and BPO vs. KPO. Mischaracterisation by the Transfer Pricing Officer (TPO) or tax authorities often leads to flawed benchmarking and unjustified tax adjustments. For instance, TPO may wrongly classify routine software support providers as full-fledged software development companies, applying higher margins meant for value-added functions. Conversely, software development companies may be incorrectly treated as low-risk support service providers. Similarly, contract R&D providers, who operate under limited risk models are sometimes mischaracterised as full-risk R&D entities assumed to own valuable intangibles. In the case of BPOs, TPOs may mistakenly categorise them as KPOs, thereby applying inappropriate high-profit benchmarks meant for knowledge-intensive services. These inaccuracies distort the arm's length analysis and result in inflated or unrealistic profit expectations, ultimately leading to prolonged disputes and litigation.

6.4.5 Software Development Services vs Software Development Support Services (SDS vs SDSS):

In the normal course, SDS involves high-value functions such as product conceptualisation, architectural framework design, coding, testing, and the delivery of customised software solutions. These core development activities are typically performed by software development companies, which often retain commercial and legal ownership of the intellectual property created. In contrast, SDSS providers focus on routine, instruction-based tasks such as bug fixes, system updates, and user support, without involvement in early-stage conceptualisation or architecture, and generally do not hold any IP rights.

This distinction holds significance in transfer pricing analysis, as software development companies typically earn higher margins due to the value they create, while support service companies generally earn lower, stable margins as their work is more routine.

In the Indian context, development centres providing SDSS typically operate under the direction of foreign principals, executing assigned low-end routine tasks without participating in conceptualisation and architecture of services. However, Tax Authorities or TPO sometimes incorrectly characterise routine software support service providers as software development companies. As a result, they apply higher profit margin benchmarks that are actually appropriate for development activities and other high end services, not for low-end routine service providers having insignificant risk. This misclassification often leads to inflated transfer pricing adjustments and unfair tax demands on support service providers.

6.4.6 Contract R&D vs R&D:

The distinction between routine software developer and contract R&D or between enterpreneurial R&D and Contract R&D can often be complicated. Indian entities often claim their Development Centre in India should be treated as a contract R&D service provider with limited functions, assets and risk. This classification becomes crucial in determining the appropriate arm's length margin under India's transfer pricing framework.

In the normal course, R&D means creating new products, improving existing ones, or developing new technologies. Companies doing full-fledged R&D usually take the risks, spend their own money, and are the legal owners of the ideas, products, or patents they develop. They also have the commercial rights to earn profits from these developments.

On the other hand, Contract R&D means carrying out research work on behalf of another company, usually under detailed instructions and guidelines. Contract R&D service providers do not own the results of the research nor do they have the right to commercially exploit or sell the developed products or technologies. Their role is limited to that of a service provider, executing predefined work without assuming significant risk.

CBDT provides the following guidelines to identify such centres:

- **Economically Significant Functions:** The foreign entity handles most critical functions, such as conceptualisation, design, and strategic direction, while the Indian centre executes assigned tasks.

- **Provision of Funds and Assets:** The foreign entity or AEs provide funding, capital, significant assets, and remuneration to the Indian centre.
- **Supervision and Control:** The Indian centre operates under the direct supervision and control of the foreign entity or AEs, which make strategic decisions and monitor activities.
- **Risk Assumption:** The Indian centre does not assume significant risks. If actual conduct shows otherwise, contractual terms are not the final determinant. In cases involving low or no tax jurisdictions, the foreign entity is presumed not to control risk unless rebutted by the Indian centre.
- **Ownership Rights:** The Indian centre has no ownership rights to the research outcomes, which remain with the foreign entity as evident from both contracts and conduct.

In the Indian transfer pricing landscape, most R&D activities performed by the Indian entities are actually contract R&D services being rendered to parent companies located outside India. The research services executed in India are as per the guidelines and directions of the foreign parent company, with little to no autonomy over key decisions.

Since the Indian centres neither assume significant entrepreneurial risk nor retain ownership of the research outcomes or intellectual property, they are generally remunerated on a cost-plus basis consistent with other low-risk service providers. Tax authorities often confuse the contract R&D with the end-to-end developers and apply comparability with companies that undertake entrepreneurial R&D functions and earn higher margins. This leads to prolonged litigation and distorted transfer pricing outcomes.

6.4.7 BPO vs KPO:

BPO services are ITeS provided mainly with the assistance or use of IT, while KPO services are the BPO services provided mainly with the assistance or use of IT, requiring application of knowledge and advanced analytical and technical skills. BPOs are low-end services such as back office administrative operations, data processing, call centres etc. On the other hand, KPOs are high-end services such as business analytics, market / legal research, financial analytics etc.

While formulating a transfer pricing policy for Indian BPO/KPO services, it's crucial to analyse the functional similarities between the taxpayer and potential comparables to ascertain if a company qualifies as a good comparable.

Accordingly, a common issue arises when TPO incorrectly classify low-end BPO services as high-end KPO operations, leading to the use of inappropriately high margin benchmarks that are more appropriate for knowledge-driven services. This misclassification of characterisation can result in flawed comparability analysis and unwarranted or unjustified transfer pricing adjustments.

Worth noting that the Finance Act 2026 combines software development services, ITeS, Knowledge Processing Outsourcing (KPO) and software development-related contract R&D services under a single category of IT-services for applying SHR. The same is subject to separate notification/ amendment under the Income Tax Act, read with Income Tax Rules.

(i) Issue while conducting comparability analysis

Conducting a comparability analysis for transfer pricing in the rapidly evolving tech sector presents significant challenges. The unique and fast-changing nature of these services complicates the identification of suitable comparables. Accurate comparisons require careful consideration of specific services offered, the expertise required, geographic markets, and transaction timing. Additionally, allocating costs and profits for intra-group services, such as centralised IT support, is essential to comply with arm's length principles and avoid tax issues.

A brief summary of the issues that arises during the comparability analysis are provided below:

- **Qualitative and Quantitative testing:** In many transfer pricing audits, the methodology for selecting comparable companies is often not fully disclosed, leading Indian tax authorities to sometimes choose comparables with higher profit margins for IT/ ITeS service providers in an arbitrary or selective way. To enhance the robustness of comparability analysis, both qualitative and quantitative filters play a critical role.

Quantitative filters are especially important in the IT / ITeS sectors. For instance, the turnover filter helps set an upper limit on the revenue of potential comparable companies, ensuring that selected comparables are similar in size and operational scale to the taxpayer. Another key filter is the export revenue threshold, which excludes companies primarily operating in the domestic market by rejecting those whose export sales constitute less than a specified percentage of their total sales. This threshold, which is periodically revised by tax authorities, aims to include only companies with significant export activities.

- **Economic adjustment:** In transfer pricing for IT/ITeS, economic adjustments are vital to align profit margins with actual risks and operations. While Indian ITeS subsidiaries typically have limited risks and stable profits as captive units, tax authorities often consider single-customer dependence a significant market risk, supporting higher margin expectations.

  Among economic adjustments, working capital risk adjustment is essential in the IT/ITeS sector due to fluctuations in receivables and payables, which influence financing costs and overall profitability. Accounting for these differences helps to ensure transfer prices accurately reflect the true economic situation. Similarly, foreign exchange risk plays a key role in cross-border IT/ITeS transactions, where currency volatility can cause gains or losses that must be considered to avoid profit distortion. Additionally, interest on overdue receivables impacts profitability, as delayed payments increase financial risk and costs. Transfer pricing policies should incorporate appropriate interest adjustments to fairly compensate for this credit risk.

- **Trade Receivables:** Recently, transfer pricing authorities have started treating outstanding trade receivables overdue beyond a certain period as loans. They are imputing notional interest on these amounts, assuming they should be charged to the group company. The notional interest is determined using the prevailing LIBOR rate or, in some cases, the fixed deposit rate/Prime Lending Rate (PLR) at the time the receivables were created.

6.4.8 Intra-Group Services

Intra-group services (IGS) means services that are performed by one or more members of a multinational enterprise group on behalf of one or more other members of the same multinational enterprise group. It is generally in the nature of low-value adding services.

Further, OECD has also provided some examples of services that would likely meet the definition of low value-adding services, including IT/ITeS services ,which fall in IGS:

"Information technology services where *they are not part of the principal activity of the group, for example installing, maintaining and updating IT systems used in the business; information system support (which may include the information system used in connection with accounting, production, client relations, human resources and payroll, and email systems); training on the use or application of information systems as well as on the associated equipment employed to collect, process and present information; developing IT guidelines, providing telecommunications services, organising an IT helpdesk, implementing and maintaining of IT security systems; supporting, maintaining and supervising of IT networks (local area network, wide area network, internet);*"

IGS are considered rendered if the recipient derives a benefit for which an independent third party would be willing to pay or perform the activity themselves. Further, OECD Guidelines also mentioned following things in regards of benefit test of IGS:

(i) **Economic Value Test:** An intra-group service is rendered if the activity provides economic or commercial value, enhancing or maintaining the recipient's business position. This can be assessed by considering whether an independent enterprise would pay for the service or perform it in-house.

(ii) **Identified Need:** If an IGS meets a specific need of a group member, it is straightforward to determine the existence of the service. An independent enterprise would typically either perform the activity itself or hire a third party.

Payments made for these services can indicate that services were provided, but labels like "management fees" are not definitive proof. Conversely, the absence of payments or contracts does not automatically mean no services were rendered. In IGS, the centralised cost incurred by the group are allocated to each entity on the basis of key of allocation such as turnover, staff employed, etc., and then these cost generally reimbursed on a cost-to-cost basis or charged with a minimal mark-up.

In Indian transfer pricing litigation, tax authorities sometimes mistakenly classify IGS as core IT/ ITeS services of the Indian entity then apply the arm's length prices specified for IT/ ITeS in the SHR, leading to proposed income adjustments. These adjustments occur when the entities fail to provide proper documentary evidence to substantiate that the services offered to their group entities are genuinely IGS. This misclassification and lack of substantiation can result in significant tax implications for the Indian entity.

6.4.9 Secondary Adjustment

The secondary adjustment provision in transfer pricing, mandates an additional adjustment in the books of accounts after a primary adjustment has been made to align the transfer price with the arm's length price. This applies when the primary adjustment exceeds INR 1 crore, whether made voluntarily by the taxpayer under Advance Pricing Agreements, Safe Harbour Rules, or the Mutual Agreement Procedure.

The excess amount (i.e., the difference between the arm's length price and the actual transaction price) is required to be repatriated to India within 90 days from the specified date. If not repatriated, it is deemed to be an advance to the foreign associated enterprise, and interest is imputed. Furthermore, if the taxpayer chooses not to repatriate the amount, they have the option to pay one-time additional tax (currently 18% plus surcharge plus cess) on the excess money to avoid the deemed advance and interest implication.

In the IT/ITeS sector, companies frequently engage in high volumes of cross-border transactions, including software development, technical support, and back-office operations. These transactions often operate under cost-plus models with fixed markups. Due to the challenges in identifying exact comparables, even minor pricing discrepancies can lead to significant primary adjustments.

Managing the subsequent secondary adjustments presents several practical challenges. Companies must track and repatriate adjusted amounts, calculate deemed interest, or consider paying a one-time 18% additional tax to avoid ongoing interest implications.

6.5 Dispute Resolution

Dispute resolution in TP is essential for addressing conflicts between MNEs and tax authorities regarding TP methodologies, ensuring compliance and preventing double taxation. Various mechanisms provided for dispute resolution include SHR, Advance Pricing Agreements, Mutual Agreement Procedure, Dispute Resolution Panel, etc. which are discussed in detail in ensuing paragraphs.

6.5.1 Advance Pricing Agreements (APAs)

The APA is an agreement between the CBDT and the applicant for determining the arm's length price or specifying the manner in which the arm's length price is to be determined in relation to an international transaction over an agreed period of time i.e. five prospective years with an option to roll back the result up to a maximum of four prior years. India introduced the APA scheme after almost 11 years (effective from 1 July 2012) of the introduction of transfer pricing regulations to provide certainty to taxpayers.

An APA is entered to provide certainty on transfer pricing for a transaction by mutually agreeing in advance on key aspects such as the arm's length price, benchmarking method, applicable mark-ups, and transaction terms including payment conditions, credit periods, and interest rates. This agreement between the taxpayer and the CBDT helps reduce compliance costs by minimising the risk of transfer pricing audits and lengthy litigation. Once finalised, the APA is binding on both the taxpayer and the income tax authorities for the agreed period.

Further, the APA process involves four key stages. It begins with strategy formulation through information gathering and optional pre-filing meetings. The main application phase includes industry analysis, FAR and economic studies, and drafting critical terms. Authorities then conduct site visits, interviews, and negotiations to finalise the agreement. Post-approval, the taxpayer must ensure compliance through annual reporting, audits, and potential renewal or revision.

There are three types of APA:

- **Unilateral APA (UAPA):** APA between a taxpayer and the tax administration of the country where it is subject to taxation.
- **Bilateral APA (BAPA):** APA between the taxpayer, associated enterprise and corresponding tax authorities of both the countries.
- **Multilateral APA (MAPA):** APA between taxpayer, the tax authority, two or more associated enterprises and the tax authority of the countries where such enterprises are located.

APA can be filed either by an Indian constituent entity or a foreign related party who is engaged in any cross-border transaction. Every executed APA offers the taxpayer multi-year tax certainty, covering a period of five prospective years with an option to roll back for up to four prior years, providing stability and predictability for a total of up to nine years.

Following the introduction of the APA regime in India, taxpayers have submitted more than 2000 applications, for APAs encompassing a diverse range of intercompany transactions across various industries. The Service industry forms a large part of the APA applications including IT/ITeS-related services. In such cases, the application has been made across the spectrum covering international transactions relating to provision of IT services, software development, BPO services, KPO Services, R&D contracts, engineering design services, etc.

Further in most cases, the APA authorities have accepted TNMM as the MAM. Taxpayers' growing interest in filing APAs for tax certainty is matched by the Indian APA Authorities' dedication to finalising these agreements and proactively addressing disputes. The APA programme has significantly contributed to the Government of India's mission to enhance ease of doing business, particularly for multinational enterprises engaged in extensive cross-border transactions. As per the APA Annual Report 2024-25 issued in September 2025, tax authorities in India have entered into a record 174 APAs with Indian taxpayers in FY 2024-25. These includes UAPAs, BAPAs and MAPAs. With this, the total number of APAs since the inception of the programme has reached 815, comprising 615 UAPAs, 199 BAPAs and 1 MAPA. Additionally, on 27th March, 2025 a record 34 APAs were signed on a single day.[8]

Further, it was reported that a total of 109 UAPAs were signed across various sectors. Of these, 44 agreements pertain specifically to the Information Technology domain. The report also highlights that the time taken to conclude an APA ranges from 12 months to 72 months. Accordingly, the average time required to process an APA, on a cumulative basis, is approximately 45.41 months (around 4 years).

Subsequently, vide Finance Act 2026, it has been provided to fast-track Unilateral APA processing for IT service providers with a target to conclude the same within 2 years which can be extended to a maximum 6 months at taxpayer's request. This initiative is expected to significantly reduce the overall APA completion timeline from the current average of around 4 years to approximately 2 to 2.5 years. Given the TP litigation scenario in India and uncertainty on determining the arm's length price, this measure is likely to encourage more IT companies to consider entering into APA in the future.

6.5.2 Mutual Agreement Procedure (MAP)

MAP is a dispute resolution mechanism laid out in the Double Taxation Avoidance Agreements entered into between the countries. It helps in resolving jurisdictional as well as economic double taxation.

MAP follows a similar process to BAPA (Bilateral advance pricing arrangement), except that the BAPA is for future years, whereas, the MAP is possible only when the incidence of double taxation has occurred, i.e. in case of the transfer pricing adjustment and hence, to this extent, the MAP is a post-facto procedure.

It provides an opportunity to a resident taxpayer to approach tax authorities to resolve the dispute in consultation with the tax authorities of another country and

[8] https://www.incometaxindia.gov.in/documents/20117/43010/APA-REPORT-2024-2025.pdf/beea5ac8-ea03-787b-caf8-e76e2f1f9557?t=1763013049210&doAsUserId=%27%3FcategoryId%3D

arrive at a mutually acceptable solution. As per the framework agreement signed between India and the USA under the MAP provisions with an intention of resolving cases of the technology sector, multiple transfer pricing disputes regarding IT/ITeS industry have been resolved.

6.5.3 Dispute Resolution Plan (DRP)

Introduced under the Finance Act, 2009, the DRP is an alternative dispute resolution mechanism in India designed to expedite the resolution of transfer pricing disputes. It comprises a panel of three Commissioners of Income Tax and is available to foreign companies and other eligible taxpayers facing unfavourable transfer pricing adjustment.

Further, taxpayers can file objections within 30 days, and the DRP is mandated to issue directions within nine months, which are binding on the Assessing Officer. The order of the Assessing officer pursuant to such DRP directions is non-appealable by the Department.

The IT/ITES sectors often engage in cross-border transactions, making them susceptible to transfer pricing adjustments. However, the DRP mechanism provides these sectors with a platform to resolve disputes related to inter-company pricing, allocation of profits, and other transfer pricing issues efficiently.

Moreover, the DRP's binding directions on the AO ensure that the assessment process is aligned with the panel's guidance, reducing the likelihood of prolonged litigation and fostering a more predictable tax environment for IT/ITES companies operating in India.

6.5.4 Safe harbour

As discussed earlier, Finance Act 2026 placed renewed emphasis on preventive dispute resolution with a strategic focus on strengthening and expanding the Safe Harbour framework to provide upfront certainty and minimise protracted tax litigation, particularly in transfer pricing matters.

In light of the growing volume of cases leading to a significant workload before the DRP and courts, introduction and expansion of the **Safe Harbour Regime** under the Finance Act 2026 is expected to play a critical role in reducing the inflow of disputes. By providing upfront certainty on transfer pricing outcomes for eligible transactions, the enhanced SHR is likely to substantially limit the number of cases requiring recourse to the DRP, thereby enabling the authorities to undertake more focused and in-depth scrutiny of residual high-risk cases. ***This policy shift reflects the Government's broader intent to prevent litigation at the threshold and promote an efficient, risk-based dispute resolution framework.***

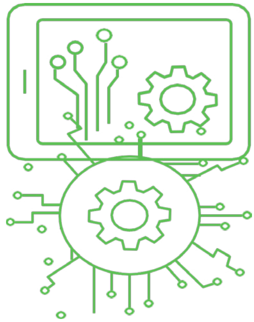
6.6 Compliance Requirements

Transfer Pricing Compliance requirements that need to be fulfilled by the Indian MNEs companies under ITA 1961 and ITA 2025 is as follows:

Compliances and Applicability			
Forms under ITA, 1961 read with Income Tax Rules, 1962	**Corresponding Forms under ITA 2025 read with Income Tax Rules, 2026**	**Particulars of the Forms**	**Due date**
<u>Local file/ TP Report:-</u> Aggregate value of international transaction exceeds INR 10 million.			No timeline for submission, however, it should be maintained by 31 October
Form No. 3CEB	**Form No. 48**	No minimum monetary threshold limit.	31 October of succeeding TY
Form No. 3CEAA	**Form No.56**	**<u>Master file:</u>** **<u>Part A –</u>** Mandatory for all Indian affiliates. **<u>Part B –</u>** Applicable if – (i) Consolidated global turnover exceeds INR 5 billion **<u>AND</u>** (ii) Aggregate value of international transaction exceeds INR 500 million; or Aggregate value of international transactions involving intangibles exceeds INR 100 million	30 November of succeeding TY

Compliances and Applicability			
Forms under ITA, 1961 read with Income Tax Rules, 1962	**Corresponding Forms under ITA 2025 read with Income Tax Rules, 2026**	**Particulars of the Forms**	**Due date**
Form No. 3CEAB	**Form No. 57**	**Master File intimation:** Master file intimation applicable to MNEs that exceed the prescribed Master File thresholds and have multiple entities operating in India.	30 days before the due date of filing the Form 3CEAA/Form No. 56.
Form No. 3CEAD	**Form No. 59**	**Country by Country Report (CbCR)** – Total consolidated group revenue for the preceding accounting year exceeds INR 64,000 million	12 months from the end of the accounting year.
Form No. 3CEAC	**Form No. 58**	**CbCR intimation:** CbCR notification is required when the parent entity files the report in its home jurisdiction and an automatic exchange of CbCR is active between the parent's jurisdiction and India's jurisdiction.	2 months prior to the due date for filing the CbCR.
Form No. 3CEFA, Form No. 3CEFB and Form No. 3CEFC	**Form No. 49** ***(Single Form)***	**Application for opting SHR in case of the following transactions:–** ● Eligible International Transaction ● Eligible Specified Domestic Transaction ● Eligible Business	On or before the due date of filing the return of income and the return of income of the relevant year must be furnished before furnishing the form for opting SHR

7.1 Introduction:



Information Technology is the use of systems (especially computers and telecommunications) for storing, retrieving, and sending information in electronic form.

The term is commonly used as a synonym for computers and computer networks, but it also encompasses other information distribution technologies such as television and telephones.

In a business context, the Information Technology Association of America has defined information technology as *"the study, design, development, application, implementation, support, or management of computer-based information systems".*

Modern businesses rely heavily on technology for their day-to-day operations, so the expenses delegated to cover technology that facilitates business in a more efficient manner are usually seen as "just the cost of doing business".

Information Technology (IT) & Information Technology Enabled Services (ITES) sector renders a range of IT-intensive processes and services.

This ever-growing sector is a dynamic and pivotal force in today's global economy, encompassing a broad spectrum of industries and processes that harness technology for innovation and efficiency. From software development and hardware manufacturing to IT consulting, system integration, and outsourcing services, these industries drive digital transformation across sectors. They enable businesses to optimise operations through cloud computing, artificial intelligence, and cybersecurity solutions, while telecommunications and networking companies ensure seamless connectivity worldwide.

Digital marketing and e-commerce platforms leverage IT for targeted advertising and online transactions, supported by robust cybersecurity measures to protect sensitive data. Meanwhile, advancements in AI and machine learning are revolutionising industries by automating processes, analysing vast datasets for insights, and enhancing decision-making capabilities. Healthcare IT firms develop critical systems like electronic health records and telemedicine platforms, while education technology innovators enhance learning through e-learning platforms and virtual classrooms. Overall, the IT & ITES sector not only drives economic growth and job creation but also shapes the future of global business and connectivity.

India is regarded as the back office of the world mainly attributable to its IT and ITES industry.

These include business process outsourcing (BPO), knowledge process outsourcing (KPO), e-business solutions, application development, content management, re-engineering etc. provided from a distant location and delivered over telecommunication networks.

Indian IT&ITES services largely focus on verticals such as content management, finance and accounts, research and analytics segment.

7.2 Navigating Change: GST vs. VAT/Service Tax in the ITES Landscape

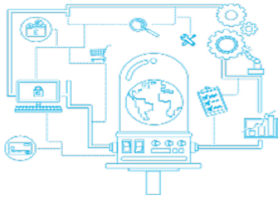
The IT&ITES sector faced specific challenges under the erstwhile VAT/Service tax regime in India, many of which have been effectively addressed under GST.

The earlier VAT/Service tax regime in India was complicated due to multiple taxes, extensive compliance obligations, and the cascading effect of taxes.

A few of the major challenges that IT&ITES businesses faced under the then existing VAT/Service Tax era in India are enumerated hereunder:

- One of the notable challenges was determining the tax treatment of packaged software, whether it should be subject to VAT as goods or to Service tax as a service. VAT rates typically hovered around 5% across states, while the Service tax rate was significantly higher at 15%. Additionally, excise duty was applied to IT products manufactured, compounding the tax burden especially for software distributed on physical media like CDs or DVDs.

- Compliance under the VAT regime involved multiple filings, audits, and varying state-specific regulations, adding to administrative burdens for ITES companies operating across different states.
- Under the old regime, determining the place of supply for ITES, such as software development services provided to clients abroad, was complex. This often led to uncertainties and disputes regarding the applicability of taxes. GST has introduced clear and uniform rules for determining the place of supply, ensuring consistency and reducing ambiguity.
- Service tax exemptions and refunds on exported services were subject to cumbersome procedures and delays, affecting cash flow. GST has alleviated the process of filing and obtaining GST refunds for taxes paid on inputs used for exported services to a remarkable extent, thereby improving the cash flow management for industries operating in the sector.
- Complex contractual arrangements in the ITES sector, such as bundled software and service contracts, often pose challenges under the VAT/ Service tax regime regarding the classification of transactions and tax applicability. GST provides clearer guidelines and classifications, reducing disputes and ensuring consistency in tax treatment.



Transition to GST has standardised compliance requirements with a single online portal (GSTN), reducing paperwork, easing compliance efforts, and enhancing transparency. GST has proven to be a simpler and unified tax regime, largely benefiting the IT & ITES sector.

While businesses have faced increased infrastructure and overhead costs under GST, there are considerable advantages such as the seamless flow of Input Tax Credit (ITC). Previously, traders selling goods were unable to claim credit for the Service tax paid on Annual Maintenance Contracts (AMCs) for their computers and software. With GST, businesses now have access to this ITC, facilitating smoother operations and reducing overall tax liabilities.

This shift under GST reflects a significant improvement in tax efficiency and compliance for the IT industry, aligning with broader efforts to enhance ease of doing business in India.

7.2.1 GST Implications:

(i) Rates of GST:

Accurate determination of GST rates is crucial for businesses across all sectors, ensuring compliance with tax laws and optimising financial management. In the context of the ITES sector, precise classification of services under GST dictates the applicable tax rate and eligibility for Input Tax Credit (ITC). This determination directly impacts pricing strategies, cost structures, and competitiveness in the market. By correctly identifying the GST rate applicable to their services, ITES companies can avoid tax disputes, minimise compliance risks, and maintain smooth operations.

Consistently tracking any changes in notified GST rates is paramount for businesses, especially in dynamic sectors like ITES, where services can attract different rates based on classification and government directives. Fluctuations in GST rates, whether due to policy adjustments or regulatory updates, directly impact pricing strategies, cost calculations, and compliance requirements for ITES companies. By staying vigilant and promptly adapting to these changes, businesses can ensure they apply the correct GST rates to their services or IT goods, thereby avoiding penalties and maintaining regulatory compliance.

In the context of the ITES sector in India, the issue of classification and GST rates has been a significant point of discussion and consideration. GST rates for various services under the ITES umbrella were initially set at 18%, but specific services or IT goods can fall under different rates.

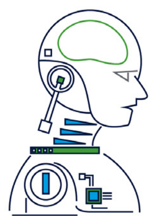
The 56th GST Council Meeting held on 3 September 2025 marked a significant step towards "GST 2.0" or Next-Gen GST Reforms, with the objective of simplifying the rate structure, reducing classification disputes and easing compliance for businesses. The Council approved a broad rationalisation of GST rates by moving towards a simplified two-rate structure comprising a **Merit Rate of 5%** and a **Standard Rate of 18%**, while prescribing a special **40% rate for select de-merit / sin goods.** The reforms also included targeted rate reductions and exemptions across goods and services, with an emphasis on providing relief to consumers, correcting inverted duty structures and improving ease of doing business. For the IT & ITES sector, while the core output services generally continue to be taxed at the standard rate, these reforms may have indirect relevance for procurement costs, vendor contracts, classification positions and ITC planning, particularly in relation to goods, equipment, facilities and other business support services. The revised rates became majorly effective from 22nd September 2025.

In the case of **M/s GDC Dimension Data Pvt Ltd [2019 (10) TMI 617],** the applicant filed for an advance ruling before the **Authority for Advance Ruling, Karnataka** for accurate classification of their IT support services. On thorough examination, it was observed by the authorities that the support services rendered by the applicant include the support of software products and also hardware products. Some of the plans include support of the entire infrastructure (especially Pro-active support services). Hence, it is common contract for maintenance of hardware and software and is directly related to the Group related to "information technology services" and hence is covered under the Group 99831.

The operations of the applicant are analysed with reference to the above and found that the support services mentioned above are all related to such services which are not directly involved in the provision of the service or supply of goods by the recipient, and hence only assists the recipient of services by providing advice, troubleshooting of hardware and software, to recover the damaged portion and the like. This would mean that the applicant is providing support services which are technical in nature and hence such support operations of the applicant squarely falls under the Service Code 998313. The managed services offered by the applicant is verified and found that they are involved in the management of IT infrastructure including networks and hence these services squarely fall under the Service Code 998316.

The classification of services within the ITES sector under GST also involves determining whether a particular service qualifies as an 'information technology service' or a 'business support service' and accordingly assigning the applicable tax rate. This distinction is crucial as it directly impacts the tax liability of service providers and the input tax credit available to their customers.

We draw attention towards the judgement pronounced in the case of **M/s Ansys Software Pvt Ltd [2019 (10) TMI 566]** wherein the applicant was engaged in performing all the necessary pre-sale co-ordination work so that the parent company can make the supply of the relevant software. The applicant would also be rendering post sales technical support services to the persons who have purchased Ansys software and using it, 24*7 customer support services either through email or through telephone or through web support.



It was held by the **Authority for Advance Ruling, Karnataka** that the marketing and pre-sales technical support services provided by the applicant would amount to facilitating the supply of goods or services or both by the parent company to other persons, and not supplies effected in its own account, hence would be covered under the definition of an "intermediary". Further, the services would amount to the provision of Distributive trade services under Heading 996111, the description of which is "Services provided for a fee or commission or on contract basis on wholesale trade". This is clear from the reason that the consideration for the above service is fixed as a percentage of the Sales Order Value of the respective customer. Further, in relation to the post sales technical support services rendered by the applicant to the end-customer of Ansys US, the recipient of supply of services would be the person who is liable to pay that consideration, and as per the terms of the contract, the parent company makes the payment of consideration to the applicant for the services rendered to the end-customers by the applicant on behalf of the parent company. The services supplied are Information Technology Support Services covered under Service Code 998313 to the end-customer on behalf of the parent company by the applicant.

The challenge lies in ensuring consistent interpretation and application of GST rates across different states and jurisdictions, as well as addressing any ambiguities or disputes regarding the classification of services. Further, doubts regarding classification are not limited to provision of services but also are prevalent in the classification of IT goods or a combination of goods and services. Mostly, in case of composite supplies i.e. natural bundling of one or more goods and services in common trade parlance, appropriate classification becomes crucial if the standalone components of the bundle attract different GST rates.

Reliance is placed on the ruling pronounced by the Authority for Advance Ruling, Tamil Nadu in the case of **M/s HP India Sales Pvt Ltd [2019 (10) TMI 274]** wherein the applicant was engaged in the sale of IT products primarily desktops containing CPU, monitor, keyboard and mouse or any combination of input/output unit. The applicant sought a ruling on whether the supply concerned shall be classifiable as a single supply of desktop computer or is a composite supply involving the principal supply of the CPU. It was held by the authorities that in the tax invoice submitted by the applicant the product description is given as Desktop Computer which in common parlance and technical sense is known as a system unit which is otherwise known as a central processing unit along with its connected peripheral units of input & output devices. In this case, the processing unit gives essential character to the product in question. Hence, the desktop consisting of CPU, monitor, Keyboard and mouse supplied by the applicant is a single supply classified under Tariff Heading 8471 with GST Rate of 18%.

Reference is also made to the case of **M/s IL & FS Education & Technology Services Ltd [2019 (3) TMI 1075]** wherein the **Appellate Authority for Advance Ruling, Maharashtra** observed that the ICT (Information and

Communication Technology) Project was a Central Government driven one and the training along with the supply of computers is an inherent part of the project and the project is envisioned as such. Therefore, a major pre-requisite for a supply to be a composite supply, that the said bundle should be naturally bundled is satisfied here. The supply of computers along with training is itself envisaged and conceived as such by the Ministry of Human Resources Development and therefore by its very nature, the supply can be said to be naturally bundled.

Thus, the training provided by the appellant is advanced training or training aided by technology which helps in easy delivery of the contents to the student through visual mediums. The project is nothing but a training project aided by technology. Merely because hardware and software is provided by the appellant, it does not mean that the training to be done is not a principal supply. The entire bundle was hence held to be classified as a supply of exempted services under Entry No. 72 of Central Tax (Rate) Notification No. 12/2017 i.e. Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.

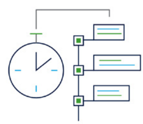
(ii) Input Tax Credit (ITC):

Input Tax Credit (ITC) holds significant importance for the ITES (Information Technology Enabled Services) sector under the GST regime, facilitating cost management and enhancing competitiveness. ITC allows businesses to offset the GST paid on inputs and input services against the GST liability on output supplies. For ITES companies, which often incur substantial expenses on IT infrastructure, software licenses, and support services, claiming ITC ensures that they are not burdened with tax on tax and can effectively manage their cash flow.

To avail ITC, certain conditions must be met as laid down under Section 16 of the CGST Act, including possession of valid tax invoices or other prescribed documents evidencing payment of tax, compliance with GST filing requirements, and ensuring that the goods or services are duly received and are used for business purposes. Proper documentation is crucial as it enables to substantiate the claim for ITC during audits or assessments by tax authorities. Maintaining detailed records of invoices, receipts, and other relevant documents is essential to validate eligibility and ensure compliance with GST regulations.

Few of the critical aspects surrounding entitlement and availment of ITC are encapsulated hereunder:

- **Blocked Credits:** Under GST laws, Section 17(5) specifies conditions where Input Tax Credit (ITC) is restricted or blocked. These restrictions typically apply to certain categories of goods and services, such as food and beverages, health and fitness services, motor vehicles (except for specific uses like transportation of passengers in similar line of business), ITC in relation to discharge of Corporate Social Responsibility (CSR) obligations and works contract services related to immovable property construction. Further, ITC is not allowed for goods or services used for personal consumption or provided as free supplies to employees.
- **Time Limit for Availing ITC:** Businesses are required to demonstrate alertness and ensure due recording and claiming of ITC within the prescribed timeframe i.e. by the due date of filing annual returns or by the return filed till 30th November of the following financial year, whichever is earlier. After the stipulated deadline, any unclaimed input tax credit shall stand lapsed and may result in a loss to the entity.



- **ITC Reversal:** Input Tax Credit (ITC) reversals under GST regulations are necessary to correct previously claimed credits in specific situations defined by the law. One significant scenario involves Rule 42 of the CGST Rules, which mandates the reversal of ITC attributable to exempt supplies made by a taxpayer. This rule requires businesses to calculate and reverse the proportionate ITC related to exempt supplies, ensuring that credits are only claimed for taxable supplies.

Another instance where ITC reversal is required is when a capital goods asset is sold, transferred, or disposed of before the completion of its useful life of 5 years. In such cases, where ITC was initially claimed on the capital goods, a portion of the credit must be reversed to account for the remaining useful life not completed.

- **Matching with supplier filing details under report in Form GSTR 2B:** As per Rule 36(4) of the CGST Rules, 2017, ITC shall be availed by a recipient only when the details of invoices/ debit notes by the counterparty are furnished in their GSTR 1 statement and are auto-fetched in the recipient's GSTR 2B as eligible input tax credit. Discrepancies between purchase data and GST portal information, due to vendors' delayed or incorrect filings lead to unnecessary hassles and delays in availment of ITC. Taxpayers must thus be careful and implement supplier management systems as well as strict onboarding criteria for optimising ITC benefits.

Further, the GSTN has introduced the Invoice Management System ("IMS") on the GST portal as a significant step towards making invoice-level ITC matching a practical reality. IMS enables the recipient to review invoices and credit/debit notes reported by suppliers in GSTR-1/IFF/GSTR-1A and mark them as accepted, rejected or pending. As per the GSTN advisory, accepted invoices form part of GSTR-2B as eligible ITC, rejected invoices are excluded from GSTR-2B, and pending invoices are deferred for future action; where no action is taken, the invoice is treated as deemed accepted for GSTR-2B generation.

While IMS is presently positioned as a facilitative/voluntary mechanism and does not add a separate compliance burden, it represents a clear movement towards real-time, invoice-wise ITC validation and may be mandated in due course. Accordingly, taxpayers in the IT & ITES sector should proactively align their vendor reconciliation, ERP workflows and GSTR-2B review processes with IMS to avoid future ITC mismatches, disputes and credit leakages.

- **Reverse Charge Mechanism (RCM):** Under GST, several services are liable to be taxed under the Reverse Charge Mechanism (RCM), where the liability to pay tax shifts from the service provider to the service recipient. For instance, legal services provided by advocates or law firms, services rendered by directors to companies, renting of motor vehicle, and security services all fall under RCM. These examples illustrate scenarios where businesses or individuals receiving these services must directly pay GST to the government, ensuring compliance with GST regulations and proper tax management within the ITES sector and beyond.

  The IT & ITES sector in India has adapted flexibly to evolving work models, with Work From Home (WFH) and hybrid arrangements becoming a norm post-pandemic. This shift has introduced new considerations regarding GST, especially when registered entities rent residential dwellings for employees from unregistered landlords. Under GST, as per Notification No. 5/2022-CT (Rate), renting of a residential dwelling to a registered person is taxable under RCM, effective July 18, 2022 and applies regardless of whether the landlord is registered or unregistered under GST. Thus, when an IT/ITES company rents a residential property, GST under RCM applies. Given the prevalent WFH arrangement, many IT/ITES firms obtain on rent residential accommodation for employees required to work remotely or at client/project locations. Such transactions trigger GST under the Reverse Charge Mechanism at 18%. The GST paid under RCM can be claimed as ITC by the registered company if the accommodation is genuinely for business purposes (for example, leased in the company's name and used exclusively for employees' official duties). However, split-use scenarios (business & personal) require appropriate documentation and allocation. Companies must ensure proper compliance, documentation such as clear agreements and rental invoices, and evaluation of ITC eligibility based on the actual use scenario to optimise tax benefits and minimise litigation risks.

Following the Notification No. 09/2024—Central Tax (Rate) dated 8 October 2024, the scope of the reverse charge mechanism ("RCM") under Notification No. 13/2017—Central Tax (Rate) has been expanded by inserting Entry 5AB. With effect from 10 October 2024, where any unregistered person provides services by way of renting of any property other than a residential dwelling to any registered person, the liability to discharge GST shifts to the registered recipient under RCM. For the IT and ITES sector, this amendment is particularly relevant where registered companies, start-ups, captive centres, co-working operators or back-office units take commercial premises, office spaces, development centres, warehouses, training facilities or similar non-residential properties on rent from unregistered landlords. In such cases, the IT/ITES entity, being the registered recipient, would be required to pay GST under RCM, report the liability in its GST returns and may avail input tax credit subject to the usual conditions and restrictions under the GST law. The amendment does not cover renting of residential dwellings under this entry, and therefore, its practical application is primarily to commercial or other non-residential property arrangements.

Import of services by an Indian entity from a supplier located outside India is usually taxable in the hands of the Indian recipient company subject to the place of supply falling in India. In the IT&ITES Sector, such imports typically include cloud computing, software licensing, data analytics and technical consultancy. ITES companies must diligently track and document RCM transactions to ensure accurate reporting and compliance with GST regulations.

- **Input Service Distributor (ISD):** ISDs are the centralised office of the registered person under the same Permanent Account Number (PAN) and in receipt of invoices from suppliers where the services are absorbed by one or more business locations. Thus, obtaining registration and filing of ISD returns under GST is mandatory for credit distribution among GST-registered entities associated with the establishment, in proportion to their respective branch turnovers.

  With effect from 1 April 2025, the mechanism of ISD for the distribution of ITC in relation to common services for which invoices are received at the head office or the central office has become mandatory for the businesses. The process of distribution vide filing of return in Form GSTR 6 by the ISD is thus obligatory for apportioning such ITC that are commonly billed at one office/location however consumed by one or more locations/branches.

  It is crucial for organisations with centralised procurement or service functions (e.g., head office receiving consulting services, software licenses, advertising services, audit fees, etc.) that are attributable to their various branches or units to evaluate the ISD implications and undertake necessary registrations and compliances.

  The significance of ITC for the ITES sector lies in its ability to reduce the overall cost of operations, improve profitability, and support growth initiatives. By minimising tax liabilities and enhancing financial efficiencies, ITC empowers ITES companies to invest in innovation, expand their service offerings, and remain competitive in a global market. Thus, diligent adherence to ITC regulations and documentation requirements not only ensures compliance but also maximises the benefits derived from GST implementation for the ITES sector.

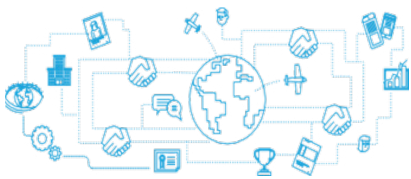
- **GST Documentation:** For IT & ITES companies, GST documentation compliance is relevant not only for routine service invoicing but also for export billing, inter-company cross-charges, sale or transfer of hardware, movement of laptops/equipment and disposal of fixed assets. E-invoicing is presently mandatory for registered persons whose aggregate turnover exceeds Rs. 5 crore in any preceding financial year from 2017-18 onwards. The requirement applies to invoices and prescribed documents issued in respect of supplies to registered persons, i.e., B2B supplies, as well as export supplies. Accordingly, IT & ITES entities crossing the prescribed threshold should ensure generation of Invoice Reference Number ("IRN") and QR code through the Invoice Registration Portal on issuing tax invoices, export invoices, credit notes and debit notes, wherever applicable.

Separately, e-way bill compliance may become relevant for IT & ITES companies in cases involving movement of goods, such as supply, transfer, sale, leasing or disposal of tangible assets, including servers, laptops, networking equipment, data centre equipment, office assets, promotional material or other hardware. Under Rule 138 of the CGST Rules, 2017, every registered person causing movement of goods of consignment value exceeding **Rs. 50,000** is generally required to furnish details in Form GST EWB-01 before commencement of movement, whether such movement is in relation to a supply, for reasons other than supply, or due to inward supply from an unregistered person. State-specific limits and exemptions may also need to be checked, particularly for intra-State movement of goods.

(iii) Place of Supply:

In the ITES sector, understanding the place of supply rules under GST is critical. These rules determine whether a transaction is subject to GST and which jurisdiction has the right to collect it.

Section 13 of the IGST Act,2017 provides for the Place of Supply of services where the location of supplier or location of recipient is outside India.



According to Section 13(2) of the IGST

Act, 2017, the place of supply of services is generally determined to be the location of the recipient of services. This rule applies unless specific provisions in Section 13 separately provide for a different place of supply based on the nature of the service or other relevant factors.

For ITES companies providing services such as software development, IT consulting, or data processing, the place of supply typically depends on whether the recipient of the service is located within India or outside. This distinction affects tax treatment, whether the service is considered intra-state or inter-state, which in turn influences compliance requirements and tax liabilities. Proper interpretation and application of these rules ensures ITES firms can manage their GST obligations efficiently and maintain regulatory compliance in a competitive global market.

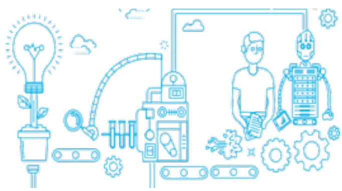
Reference is made to the following proviso to Section 13(3)(a) of IGST Act, 2017 which deals with the provisions of place of supply of services rendered in respect of goods located remotely:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services.

In the realm of information technology, it is common for services to be provided in relation to tangible goods located remotely from the service provider's location. This often results in a distinction between where the service is performed and where the goods physically exist. The proviso in Section 13(3) of the IGST Act addresses this scenario by specifying that for services provided remotely through electronic means, the place of supply should be determined based on the actual location of the goods being serviced.

<u>The same could be demonstrated with the help of an illustration:</u>

ABC IT Solutions Pvt. Ltd., based in Bengaluru, provides cloud-based data analytics services to a client in Australia for data stored on servers located in Mumbai, India. According to



the proviso to Section 13(3) of the IGST Act, since the service (cloud-based data analytics) is provided from a remote location (Bengaluru) by electronic means (cloud computing platform), the place of supply shall be the location where the goods (data on servers in Mumbai, India) are situated at the time of supply of services. Therefore, despite the client (Australian company) being located abroad and the service provider (ABC IT Solutions Pvt. Ltd.) in Bengaluru, India, the place of supply for the cloud-based data analytics services will be Mumbai, India. This is in accordance with the proviso to Section 13(3) of the IGST Act, which ensures that GST is applied based on the location of the goods (data servers) being serviced, even though the recipient of the services (Australian client) is located outside India.

Understanding the nuances of the place of supply in the ITES sector is essential for accurately applying GST to the specific nature of transactions. By adhering to the rules, ITES companies ensure that tax liabilities are correctly determined, fostering clarity and compliance in a global business environment where services span across geographical boundaries. This approach not only supports efficient tax administration but also helps businesses address regulatory complexities and optimise their operational strategies effectively.

7.3 IT & ITES and 'Intermediary':

The GST treatment of intermediary services in the IT & ITES sector has witnessed a transformative shift with the omission of Section 13(8)(b) of the IGST Act, 2017 pursuant to the Finance Act, 2026, effective from 30th March 2026. While intermediary classification had long remained one of the most litigated and contentious areas under GST, the recent amendment substantially alters the landscape for cross-border service transactions and is expected to provide significant relief to the export-oriented technology sector.

Historically, the IT & ITES sector faced persistent concerns regarding intermediary services, particularly in cases where Indian entities rendered support, back-office, customer care, marketing support, facilitation, or operational assistance to overseas group entities under

cost-plus remuneration models. The core dispute revolved around whether such entities were rendering services on a principal-to-principal basis or merely facilitating supplies between overseas entities and customers. The classification assumed critical importance since intermediary services were specifically carved out under Section 13(8)(b) of the IGST Act, which deemed the place of supply to be the location of the supplier, thereby denying export status to such transactions even where the recipient was located outside India.

Under the erstwhile regime, intermediary services constituted an exception to the general rule contained in Section 13(2) of the IGST Act. While Section 13(2) provided that the place of supply of services would ordinarily be the location of the recipient, Section 13(8)(b) mandated that in case of intermediary services, the place of supply would be the location of the supplier. Consequently, several services rendered by Indian IT & ITES companies to foreign customers were subjected to GST in India despite the services being consumed outside India. The amendment introduced through the Finance Act, 2026 removes this exception and restores intermediary services to the general place of supply framework under Section 13(2). Accordingly, the place of supply of intermediary services shall now be the location of the recipient of services. This effectively enables such transactions to qualify as exports of services, subject to fulfilment of prescribed conditions under GST law.

'Intermediary' has been defined in the sub-section (13) of section 2 of the IGST Act, 2017 as under:

"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

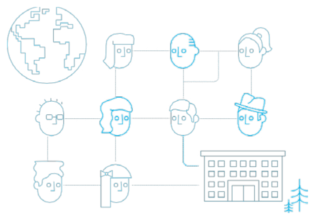
Thus, for a service to be classified in the nature of an intermediary, the following conditions continue to remain relevant:

- **Minimum of three parties** – i.e. two parties engaged in main supply and the third one facilitating or arranging the main supply between the said two parties.

- **Two distinct supplies** – i.e. main supply between the two transacting parties and the ancillary supply rendered by the intermediary.
- **Intermediary service provider** to have the character of an agent, broker or any other similar person – i.e. a **facilitative role** in the transaction.
- **Exclusion of services supplied on one's own account –** i.e. supplies undertaken on a principal-to-principal basis would not qualify as intermediary services.

Thus, the essence of intermediary services continues to remain facilitation or arrangement of a supply between two persons and excludes services supplied independently on one's own account. However, the practical significance of such classification in cross-border transactions has now considerably reduced owing to the amendment in the place of supply provisions.

The controversy surrounding intermediary classification had given rise to divergent judicial interpretations over the years. Revenue authorities frequently sought to classify support services rendered by Indian entities to foreign affiliates as intermediary services, thereby denying export benefits and refund claims.



One of the most notable rulings in this regard was the decision in the case of **Authority for Advance Ruling Maharashtra in M/s VservGlobal Pvt Ltd**, wherein back-office support services rendered to overseas clients were held to be intermediary services on the ground that the activities facilitated supplies between overseas entities and Indian customers. The ruling significantly impacted the IT & ITES industry and resulted in denial of export benefits to several businesses.

Subsequently, extensive representations were made by the industry, including by **National Association of Software and Service Companies,** seeking clarity on the scope of intermediary services for the IT-ITeS sector. In response, CBIC issued **Circular No. 159/15/2021-GST dated 20 September 2021** clarifying that a person supplying services on a principal-to-principal basis cannot be regarded as an intermediary and that sub-contracting of services would not qualify as intermediary services. The Circular also clarified that an intermediary merely arranges or facilitates another supply and does not himself provide the main supply.

Judicial precedents thereafter gradually evolved in favour of taxpayers. The **Hon'ble Delhi High Court in the case of M/s OHMI Industries Asia Private Limited** held that market research services rendered independently by the Indian entity to its overseas parent could not be classified as intermediary services since there was no arrangement or facilitation of supplies between third parties.

Similarly, the **Hon'ble Karnataka High Court** in the case of **Amazon Development Centre India Private Limited** observed that customer support services rendered on a principal-to-principal basis to foreign affiliates would qualify as export of services and not intermediary services. The courts consistently emphasised the absence of agency characteristics, lack of authority to negotiate or conclude contracts, and independent provision of services as indicators against intermediary classification.

While these judicial developments provided substantial relief to the industry, the omission of Section 13(8)(b) now fundamentally changes the relevance of the debate itself. Even where a transaction may technically fall within the scope of intermediary services, the place of supply in cross-border scenarios would now ordinarily shift to the location of the overseas recipient under Section 13(2).

Consequently, intermediary services supplied to foreign customers may now qualify as exports of services and become eligible for zero-rating benefits, including refund of unutilised input tax credit, subject to fulfilment of statutory conditions. The amendment is therefore expected to enhance tax certainty, improve global competitiveness of Indian service providers, and significantly reduce litigation surrounding intermediary classification in the IT & ITES sector.

The amendment may also have implications from an import of services perspective. Under GST, place of supply provisions play a pivotal role not only in determining export status but also in determining whether a transaction qualifies as import of services liable to tax under reverse charge. With intermediary services now falling under the general place of supply rule, transactions involving procurement of intermediary or facilitation services from overseas entities may also require fresh evaluation from a place of supply standpoint. Accordingly, businesses engaged in cross-border service arrangements would be required to revisit their contractual structures and tax positions in light of the amended framework.

Despite the amendment, maintaining robust documentary support and clearly drafted contractual arrangements continues to remain essential. Businesses should continue to ensure that agreements appropriately define the scope of services, the nature of obligations undertaken, and the principal-to-principal character of transactions wherever applicable. Proper factual substantiation and alignment between contractual terms and actual conduct of parties would remain relevant from a compliance and litigation management perspective.

The omission of Section 13(8)(b) marks a significant policy shift under GST and represents a major relief for the Indian IT & ITES industry. The amendment aligns the place of supply provisions with the fundamental destination-based principle of GST and removes a long-standing anomaly that had adversely impacted export competitiveness of Indian service providers. While intermediary classification may continue to retain interpretational relevance in limited contexts, the larger dispute surrounding denial of export benefits to intermediary services in cross-border transactions may now gradually become a matter of the past.

7.3.1 Export of Services:

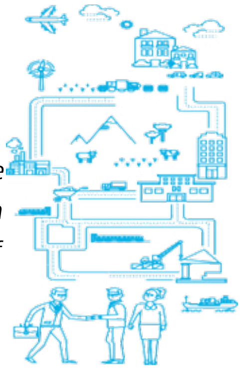
Under the GST framework in India, Section 16 of the Integrated Goods and Services Tax (IGST) Act, 2017 ensures that the export of goods and services, including IT services, is treated as zero-rated supplies. For the ITES sector, this means that when companies export services such as software development, IT consulting, and business process outsourcing (BPO), these transactions may qualify for zero-rating under GST.

Being zero-rated implies that GST is not suffered on the output of exported services nor on the inputs used to provide those services, such as software, hardware, and other related services. This allows ITES firms to claim a refund of GST paid on inputs, which helps in reducing costs and enhancing competitiveness in global markets.

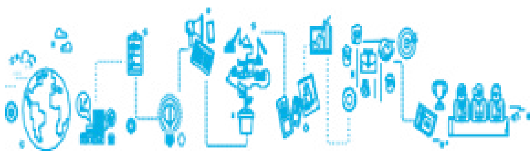
The concept of zero-rating is placed in the tax provisions with an intent to make the entire supply chain devoid of GST, thereby encouraging exports which plays a significant role to strengthen nation's economy by way of contribution to GDP, fostering economic growth and development, increasing employment opportunities, and maintaining adequate foreign exchange reserves.

As per Section 2(6) of the IGST Act 2017, the supply of any service is considered as an export of service, where the following conditions are met:

- *the supplier of service is located in India;*
- *the recipient of service is located outside India;*
- *the place of supply of service is outside India;*
- *the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian Rupees wherever permitted by Reserve Bank of India; and*
- *the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8 of the IGST Act, 2017.*



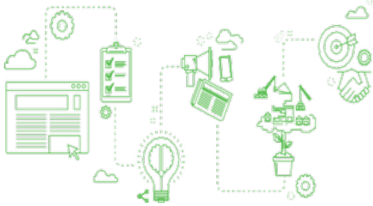
Declaration on export invoice copy would be required in case such exports are made without payment of IGST i.e. under the cover of a Letter of Undertaking filed in Form GST RFD 11.



To benefit from zero-rated status, ITES companies must adhere to specific compliance requirements, including proper documentation and filing refund claims. Understanding and effectively utilising these provisions are crucial for ITES firms looking to expand their international footprint and leverage GST benefits for export-oriented growth strategies.

7.3.2 OIDAR Services (Online Information and Database Access or Retrieval)

(i) Definition of OIDAR Services:



OIDAR is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services.

OIDAR services, which include electronically supplied services like software downloads, online gaming, and cloud computing, are a subset of ITES offerings that leverage digital platforms for global service delivery. Both sectors share commonalities in leveraging technology to deliver services remotely, often crossing international borders without physical presence.

Under GST, OIDAR services are subject to specific regulations and compliance requirements, highlighting the intersection between digital innovation and regulatory frameworks within the broader ITES ecosystem. This integration features the importance of clear tax classifications and compliance procedures to facilitate seamless cross-border transactions and ensure regulatory alignment in the digital economy.

The definition of OIDAR as laid down under Section 2(17) of the IGST Act, 2017 has been **amended vide the Finance Act, 2023 dated 31 March 2023 with effect from 1 October 2023**. In view of the changes brought about in the definition of OIDAR, the degree of human intervention while rendering such services shall not play a role to determine classification as an OIDAR service and all electronically supplied services whose delivery is mediated by information technology over the internet or an electronic network, and which are impossible to ensure in the absence of information technology shall be considered as OIDAR Services.

The amended definition of 'Online information and database access or retrieval services' (OIDAR) as given in Section 2(17) of the IGST Act, 2017, which is reproduced hereunder, for reference:

"Online information and database access or retrieval services" means

services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as:

- *Advertising on the internet*
- *Providing cloud services*
- *Provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet*
- *Providing data or information, retrievable or otherwise, to any person in electronic form through a computer network*
- *Online supplies of digital content (movies, television shows, music and the like)*
- *Digital data storage*
- *Online gaming excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017.*

Thus, the scope of OIDAR has been broadened to include a gamut of E-services. The broad basing of OIDAR services impacts the tax incidence of the suppliers located offshore and supplying their digital products over the internet or electronic network in India.

The definition of 'non-taxable online recipient' has also been amended to widen its coverage. From 1 October 2023, any unregistered person receiving online information and database access or retrieval services located in taxable territory shall be considered a non-taxable online recipient.

7.4 Scope of Taxation:

Section 14 of the IGST Act ,2017 provides that on supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax (IGST) on such supply of services.

Consider XYZ Co., a company based in Australia, that offers an online platform where users in various countries, including India, can subscribe to access a vast library of e-books. Customers in India pay a subscription fee to XYZ Co. to read and download e-books through their website. Under Indian GST regulations, XYZ Co., being located outside India, is considered an overseas supplier providing OIDAR services to unregistered customers in India.

When OIDAR services are provided by a person outside India to a person located in India, the treatment under GST is summarised as follows:

7.4.1 Supplies to a registered person in India (B2B):

- To be treated as an import of service and accordingly, tax to be paid on a reverse charge basis by the registered Indian recipient.
- Corresponding input tax credit may be availed subject to the fulfilment of conditions.

7.4.2 Supplies to an unregistered person in India (B2C)

- OIDAR supplier to obtain registration under the Indian GST law and pay IGST on supply of such services.
- If an intermediary located outside India arranges or facilitates the supply of OIDAR service, he would be deemed to be the recipient of such services from the original supplier located outside India and further supplying the same to an unregistered online recipient in India. Thus, it would be required to obtain a registration under GST in India (e.g. Google Play Store, Apple Store).

While conceptually simple, the practical implications are increasingly complex due to the fragmentation of services procured. Take the case of global APIs, plug-ins, or microservices that charge per-use fees, these are often consumed by development teams without centralised oversight. Identifying, aggregating, and accounting for such imports under RCM.

7.5 Place of Supply:

GST is a destination-based consumption tax, and the liability to pay GST arises if the 'Place of Supply' falls within the taxable territory of India. The provisions of the Place of Supply are provided under the Integrated Goods and Services Tax Act, 2017 (IGST Act).

Determination of the place of supply of goods/ services under the GST law is very relevant as the place of supply of goods and services along with the location of the supplier of service would determine whether the supply is an inter-state supply or an intra-state supply.

Section 13(12) of the IGST Act, 2017, provides for the Place of Supply in case of OIDAR services where either the location of the supplier or the location of recipient is outside India. The same is reproduced as under:

(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Thus, an OIDAR services provider located outside India would be subjected to Integrated GST (or IGST) in relation to supplies made to non-taxable online recipients located in India.

As discussed earlier, in cases where the supplier of such OIDAR services is located outside India and the recipient is a registered person (a business) located in India, liability to pay GST under reverse charge mechanism would get triggered and the recipient in India who is a registered entity (i.e. a B2B recipient in India) under GST will be liable to pay GST under reverse charge and undertake necessary compliances.

7.6 Registration Requirements:

Section 24(xi) of the CGST Act 2017 mandates GST Registration (regardless of any threshold turnover exemption) for every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person.

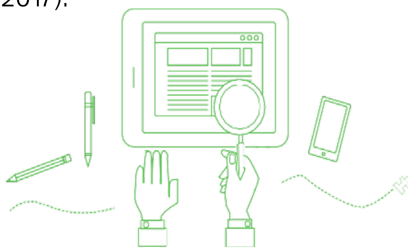
The supplier of OIDAR services from outside India to a non-taxable online recipient in India shall take single GST Registration in India through online filing of simplified Form GST REG 10.

In case the overseas supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of undertaking necessary compliances.

Offshore entities providing OIDAR services in India should also be mindful of potential implications related to establishing a digital presence or permanent establishment (PE) in India. While GST registration is mandatory for OIDAR services, having a PE could invite broader tax implications such as income tax liabilities and additional regulatory obligations. Understanding these aspects ensures comprehensive compliance with Indian tax laws and regulations beyond GST, safeguarding against unintended tax exposures and legal complexities.

7.7 Compliance and Payment:

Every person who has obtained registration as an OIDAR shall file return in Form GSTR 5A on or before the 20th of the succeeding month. (Section 24(xi) of the CGST Act,2017 and Rule 64 of the CGST Rules,2017).



Further, as per the amended GST OIDAR Rules, the OIDAR suppliers located outside India engaged in making supplies to a registered person (where such registered recipients would be liable to GST payment on reverse charge basis) in India shall be required to furnish the details of such transactions through filing of GSTR 5A returns.

Compliance with OIDAR regulations in India is crucial for offshore entities to alleviate the complexities of international taxation and ensure seamless operations. By adhering to GST requirements, including registration, proper invoicing, and timely remittance of taxes, offshore providers can enhance credibility, mitigate compliance risks, and foster trust with Indian customers and regulatory authorities. This proactive approach not only facilitates smooth business transactions but also reinforces commitment to regulatory compliance in the global digital economy, ultimately supporting sustained growth and market expansion in India.

7.8 Challenges in the IT and ITES Sector

7.8.1 GST Refund Claims:

The ITES sector, encompassing services such as Business Process Outsourcing (BPOs) and IT support, is a critical player in the global economy and relies heavily on GST refunds to maintain liquidity and operational efficiency. However, the sector has encountered significant hurdles in the processing of GST refunds for accumulated input tax credit (ITC), primarily arising from complex issues related to the intermediary role and place of supply for exporters.

Companies till now faced challenges with refunds due to the disputed classification of services as intermediaries, which affected their eligibility for refunds. This long-standing issue has now been substantially addressed by the amendment effective from 30 March 2026, whereby Section 13(8)(b) of the IGST Act, which prescribed the place of supply for intermediary services as the location of the supplier, has been omitted. Consequently, such services would now be governed by the default rule under Section 13(2), i.e., the location of the recipient, thereby enabling eligible cross-border supplies to qualify as exports and supporting refund eligibility, subject to fulfilment of other export conditions.

Despite these subsidiaries not qualifying as distinct persons, departmental authorities often challenge their compliance with export conditions, leading to contentious disputes and delayed refunds. These systemic issues highlight the need for clearer guidelines and more streamlined processes to support the sector effectively.

As per the provisions of Section 16 of the IGST Act, 2017, input tax credit (ITC) may be availed by a registered person in relation to their inward supplies which are utilised for making zero-rated supplies, notwithstanding that such supply is an exempt supply. The application for refund shall be made in accordance with Section 54 of the CGST Act, 2017, read along with the procedural aspects enumerated under Rule 89 of the CGST Rules, 2017.

As per the Refund Rules, the turnover of export of services shall be determined as the aggregate amount of payments received during the period for which the refund claim has been filed. Further, any advances received during any of the prior period(s) for which an invoice is raised during the relevant period shall be added to the turnover and any advances received during the relevant period for which an invoice shall be issued during the succeeding period(s) shall be reduced to arrive at the turnover of export of services for purposes of GST refunds.

The Circular No.78/52/2018-GST dated 31 December 2018 seeks to clarify issues in relation to the export of services. In the said Circular, a situation where a portion of export of services is outsourced by the Indian exporter of services to another person located outside India is clarified where full consideration in relation to the outsourced services is not received by the exporter in India. It has been clarified vide the said Circular that the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions of export of services are satisfied.

In the case of **M/S AFORTUNE TRADING RESEARCH LAB LLP [2024 (2) TMI 1121 – MADRAS HIGH COURT],** the petitioner was engaged in providing services to its clients through its online portal. The payments for the services provided by the petitioner were routed through an intermediary namely Paypal with whom the petitioner had entered into an arrangement. The export proceeds were received in convertible foreign exchange by the said intermediary as a credit to their CITI bank account. Thereafter, amounts in Indian currency were transferred from the intermediaries CITI Bank account to the petitioner's account with HDFC Bank after deduction of its service charges.

It was held by the **Hon'ble Madras High Court** that merely because the receipts are routed through the intermediary and received in Indian currency ipso facto would not mean that the petitioner has not exported services within the meaning of Section 2(6) of the IGST Act, 2017. Receipt of payment by an intermediary for and on behalf of its client like the petitioner, will qualify as payment received by the client. It was held that the petitioner is entitled for refund.

The export of service transactions between Indian subsidiaries and their foreign holding companies was litigated and refunds were being denied on the grounds that such transactions fail to serve as service export transactions since the entities are merely establishments of distinct persons. There were show cause notices being issued and refunds denied to Indian arms of such foreign based IT/ ITES multinationals. To resolve the ambiguity and as a major relief to the IT & ITES industry, CBIC vide its Circular 161/17/2021 dated 20 September 2021 clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India are separate legal entities and thus are separate persons under the CGST Act.

Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. (which is incorporated in India under the Companies Act, 2013) to the holding/ associate/related entity of the said company incorporated outside India, would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017.

Reference is made to the judgement in the case of **M/S XILINX INDIA TECHNOLOGY SERVICES PVT. LTD [2023 (9) TMI 630]** wherein the **Hon'ble Delhi High Court** held that the services provided by the petitioner are on its own account and not facilitated by the provision of services from any third-party services provider. The petitioner has provided services on principal-to-principal basis. The terms of the Agreement are unambiguous. The Hon'ble Delhi High Court also expressed its displeasure in respect to the cavalier manner in which the lower authorities passed the order without considering the settled law and the Circular dated 20-09-2021 issued by the department. The Court also condemned the undue burden of tax litigation posed before the taxpayers, which serves to have a debilitating effect on their confidence vested in the tax department.

In conclusion, optimising GST refunds is essential for the ITES sector's smooth functioning and overall success. Addressing delays, enhancing communication, and streamlining procedures are key to ensuring prompt and accurate refunds. Implementing these changes will improve cash flow, support business growth, and reinforce the sector's critical role in the economy. A more effective refund process not only benefits ITES companies but also contributes positively to the broader economic environment.

7.8.2 Deemed Supply Provisions:

In the ITES sector, understanding deemed supplies and their valuation is crucial for accurate GST compliance and financial management. Deemed supplies refer to transactions considered taxable under GST even though they occur without consideration. For ITES companies, these often include the provision of services between related entities, internal transfers of resources, or certain non-monetary exchanges stipulated by GST regulations. Contracts with overseas affiliates are often executed in a dematerialized fashion, without any specific state-based delivery of services, which complicates state-wise revenue reporting and registration compliance.

The valuation of deemed supplies is a critical aspect in this context, as it determines the GST liability and impacts the input tax credit (ITC) claims. For ITES companies, this involves assessing the open market value of services or resources provided without consideration. Proper valuation ensures accurate tax reporting and compliance and helps in avoiding disputes with tax authorities. Typically, the valuation is based on market rates or contract values, but it must be carefully documented to support tax calculations and audits.

Import of services is another significant area where deemed supply principles come into play. As per clause 4 of Schedule I of the CGST Act 2017, the import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business would be treated as supply and chargeable to GST even if made without consideration.

The holding and subsidiary or associate companies fall under the coverage of 'related persons' as explained under GST. Further, in accordance with Section 5(3) of the IGST Act 2017 and entry at Sr. No. 1 of IGST (Rate) Notification No. 10/2017, GST under reverse charge mechanism (RCM) shall be paid by the recipient of services on transactions of import of services.

ITES firms often import services such as consultancy or software support from foreign entities. Under GST, such imports are subject to the reverse charge mechanism, meaning the recipient must account for GST on the imported services. Accurate valuation of these imported services is vital for calculating the correct GST amount and for claiming input tax credits where eligible.

Apart from free software, recently as per this deeming provision, it is also observed that GST demands are raised towards inter-company brand usage even though there is no consideration paid by the Indian Company to its overseas entity for usage.

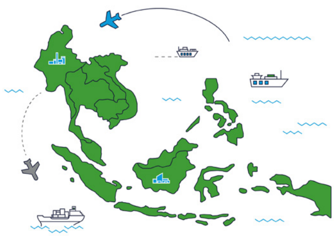
Typically access to software provided by overseas affiliates to Indian Companies is for the limited purpose of enabling the provision of services back to the overseas affiliate and not for any other purposes. Indian companies access the software only for the provision of service under the contract with the affiliate and not for any commercial exploitation with a third party. The Indian companies will be unable to perform their services back to the overseas entity without these software technologies being made available by the overseas entity, given the interdependency of the service and access provided with such software. These tools are generally accessed on internal websites/web links of an overseas entity. In most occasions, the said technology is not downloaded onto the servers in India, but are remotely accessed. This also reiterates the fact that the usage of such software technology is for the limited purpose of providing IT Services to overseas affiliates.

Cross-charging between branches especially for shared services like HR, finance, and IT, has also become a quagmire of compliance. There was a persistent confusion over whether every inter-branch resource deployment should be treated as a taxable supply under Schedule I of the CGST Act, even when no consideration changes hands. This is especially unfair to IT/ITES businesses where such sharing is not only routine but essential to operating efficiencies. Reference is made to Circular No. 199/11/2023-GST dated 17th July 2023 which inter-alia clarified that in case of internally generated services like employee costs, valuation as per second proviso to Rule 28(1) of the CGST Rules, 2017 may be adopted and value as declared on the invoice may be treated as open market value, where the recipient is eligible to full claim of ITC. Further, if the head office has not issued a tax invoice in respect of such services, the valuation may be deemed to be NIL in terms of the said proviso. The clarity vide the said circular is a big relief where no invoice is issued for internally generated services between branches operating under the same PAN and seeks to alleviate the GST burden on such transactions.

Thus, for ITES companies, precise compliance with the provisions of deemed supplies and careful management of imported services are critical for ensuring GST compliance and optimising tax management. ITES businesses should first identify inter-company transactions without consideration, using business operations or transfer pricing documentation if available. Scrutinising foreign payments can also help ascertain transactions involving the import of services, ensuring that they are accurately reported and taxed. Additionally, updating inter-company agreements to clearly define the activities, services, and their valuations can help mitigate potential tax issues and streamline compliance.

7.8.3 Foreign Exchange Realisation:

In the ITES sector, adhering to the requirement of foreign exchange realisation is crucial for effective GST compliance and maximising financial advantages. For businesses exporting services, such as IT support or business process outsourcing, ensuring that payment for services is received in foreign exchange is essential for availing the benefits of zero-rating under GST. Zero-rated supply allows exporters to claim a refund of the input tax credit on inputs and input services used in the provision of export services, thereby relieving them from the burden of domestic taxes.



Compliance with the foreign exchange realisation condition is crucial for this zero-rating benefit. The GST law stipulates that in order to qualify for zero-rating, exporters must receive payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India (RBI). This condition not only secures the eligibility for tax refunds but also ensures that the transactions are recognised as genuine exports under GST regulations.

As per sub-rule (1) of Rule 96A of the CGST Rules, 2017, any registered person availing the option to undertake export of services without payment of IGST i.e. under the cover of Bond/Letter of Undertaking, binds himself to realise the payment in relation to such services in convertible foreign exchange, as per the later of:

- 1 year from the date of issue of the invoice for exports, or
- the period as allowed under the Foreign Exchange Management Act, 1999

In case the registered person fails to realise the export proceeds within the stipulated time, the benefit of zero-rating shall be denied and such a transaction would be subjected to payment of IGST along with applicable interest.

Further, as per the provisions of Foreign Exchange Management Act, 1999, the amount representing the full export value of goods/software/services exported shall be realised and repatriated to India within **fifteen months (realisation period amended vide RBI Circular No. 23(R)/(7)/2025-RB dated 13th November 2025, earlier it was 9 months)** from the date of export. Thus, it is obligatory for exporters to realise and repatriate the full value of services into India within 15 months from the date of rendering services as per the FEMA provisions and regulations made thereunder. Subsequently, the RBI introduced further amendments to the same. The evolution of the prescribed time periods can be understood from the table below.

Time Frame	Period
Before 12th November 2025	9 months from the date of rendering services
From 13th November 2025 to 04th June 2026	15 months from the date of rendering services
From 5th June 2026 and onwards	9 months from the date of rendering services

Failure to comply with these conditions can expose businesses to significant risks, including the denial of zero-rating benefits and GST refunds. It may also result in penalties and interest charges, which can adversely impact the company's financial health and operational stability. Moreover, discrepancies in foreign exchange realisation can attract scrutiny from tax authorities, leading to prolonged audits and potential disputes.

To ensure due compliance, ITES companies must diligently monitor and document the realisation of foreign exchange for their export transactions. Maintaining accurate records of receipts and ensuring timely conversion and repatriation of foreign exchange are essential practices. Companies should also implement robust internal controls and regular audits to verify compliance with the foreign exchange regulations and GST requirements. The foreign exchange realisation condition is thus, a vital component for ITES firms to capitalise on the zero-rating benefit and secure GST refunds.

7.8.4 Software Classification:

The classification of software in Indirect Taxes has been a subject of considerable debate and varying interpretations. Under GST, software can be classified into different categories such as 'goods', 'services', or a combination of both, each attracting distinct tax rates.

Several critical issues arise in the classification of software. One major challenge is distinguishing between software as a product and software as a service. For instance, packaged software sold as a physical product might be categorised differently from custom software solutions or software provided as a service (SaaS). Misclassification can lead to incorrect tax charges, compliance issues, and potential disputes with tax authorities.

"Information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment (Notification 11/2017 – Central Tax (Rate) dated 28 June 2017).

In terms of Schedule II of the CGST Act 2017, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services.

But, if a pre-developed or pre-designed software is supplied in any medium/ storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523.

Further, limited end user licences, which are sold as part of a product (e.g., packaged software, books) are not included under services and treated as a supply of goods.

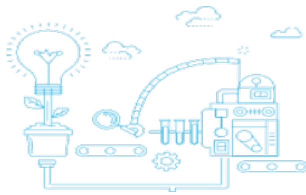
To facilitate easy reference, the following table outlines the HSN/SAC codes applicable to various IT goods and services under GST:

HSN/SAC Code	Description	GST Rate
8523	Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37 (i.e. photographic or cinematographic goods)	18%
997331	Licensing services for the right to use computer software and databases This service code does not include: a) packaged (non-customised) software/database, b) limited end-user licence as part of packaged software	18%
998434	Software downloads	18%
998313	Information technology (IT) consulting and support services	18%
998314	Information technology (IT) design and development services	18%
998315	Hosting and information technology (IT) infrastructure provisioning services	18%
998316	IT infrastructure and network management services	18%
998319	Other information technology services n.e.c.	18%

The **Hon'ble Supreme Court of India** in the landmark judgment pronounced in the case of **M/S TATA CONSULTANCY SERVICES VERSUS STATE OF ANDHRA PRADESH [2004 (11) TMI 11]** held that the test to determine whether a property is "goods" for purposes of sales tax is not whether the property is tangible or intangible or incorporeal. The test is whether the item concerned is capable of abstraction, consumption and use and whether it can be transmitted, transferred, delivered, stored, possessed etc. Admittedly, in the case of software, both canned and uncanned, all the above attributes are present.

The Apex Court ruled that software may be an intellectual property but such personal intellectual property contained in a medium is bought and sold. It is an article of value. It is sold in various forms like – floppies, disks, CD-ROMs, punch cards, magnetic tapes, etc. Each one of the mediums in which the intellectual property is contained is a marketable commodity. The software marketed by the Appellants is canned software and, thus, would be exigible to sales tax.

Reference is made to the advance ruling pronouncement made by the **Authority for Advance Ruling, Karnataka** in the case of **M/S SOLIZE INDIA TECHNOLOGIES PVT LTD [2020 (4) TMI 872**] wherein the applicant was engaged in the purchase of software from their principal partner and supplied the same to its own customers.



It was found that the concerned software was not developed specifically to any customer requirement. It is packaged software and not tailor made to suit individual requirement. The software sold by the applicant is a pre-developed or pre-designed software and made available through the use of encryption keys, hence covered under the definition of "goods". Further, the goods supplied are "computer software" and more specifically covered under "Application Software".

It was ruled by the Authority for Advance Ruling, Karnataka that such supplies of packaged software which is not designed and developed specific to any customer and sold without any customisation, qualifies as "supply of goods" and covered under the HSN 8523.

In the case of **M/S CUMMINS INDIA LIMITED [2019 (3) TMI 656]** it was held by the **Authority for Advance Ruling, Maharashtra** that since the **supply of maintenance service for a single price is made along with the supply of spare parts/goods** as and when required, the supply of both, goods and services are made in conjunction with each other in the ordinary course of business and therefore considering the provisions of the GST Laws, that supply of services/ goods in the present case is naturally bundled, with the supply of goods being incidental to the supply of services and therefore such contract are to be considered as a composite supply of service where the principal supply is service and the supply of goods is incidental to such supply of service.

To mitigate the challenges involved in classification, businesses must adopt a comprehensive approach to classification and documentation. Clear and detailed contracts should specify the nature of the software being provided and the terms of the transaction. Regular reviews and updates of classification practices in line with evolving GST guidelines and judicial rulings are also crucial. Engaging with tax professionals to interpret and apply the correct classification in complex scenarios can further help in navigating the uncertainties and ensuring compliance.

In summary, the classification of software under GST is a nuanced area requiring careful consideration of the nature of the software and its application. Accurate classification not only ensures correct GST application but also minimises the risk of disputes and compliance issues. By focusing on precise documentation and staying informed of regulatory developments, businesses can effectively manage the complexities of software classification and maintain adherence to GST requirements.

7.8.5 Reimbursement of Expenses:

One of the critical concepts in the GST framework is the principle of valuation, which necessitates that the value of a supply must include not only the consideration received but also any additional costs incurred by the supplier in relation to the supply. However, an exception to this principle is the treatment of reimbursements where a supplier acts as a pure agent.

A 'pure agent' is defined under GST as a person who, while providing a supply on behalf of another, acts only on their behalf and does not use the goods or services acquired for their own benefit. The concept has its roots in the former service tax regime, with most of the conditions remaining consistent with those established under the previous service tax regulations.

The key characteristics of a pure agent include acting on behalf of the client, incurring costs on behalf of the client, and not deriving any benefit from the supply other than what is reimbursed. To qualify as a pure agent, certain conditions must be met: the agent must act as a fiduciary, the costs incurred must be directly related to the supply of goods or services to the client, and the costs must be separately identified in the invoice.

Reference is made to Rule 33 of the CGST Rules 2017 which states that the expenses or costs incurred by a supplier as a pure agent of the recipient shall be excluded from the value of supply for purposes of GST.

Further, the expression 'pure agent' is defined as a person who:

(i) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(ii) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(iii) does not use for his own interest such goods or services so procured; and

(iv) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

As mentioned above, the concept of pure agent is borrowed from the erstwhile Service Tax regime and carried forward under GST. Rule 5 of Service Tax (Determination of Value) Rules, 2006 laid down the similar conditions as mentioned in Rule 33 of the CGST Rules, 2017. Further, we refer to the below illustrations in relation to pure agent as provided under Rule 5 of Service Tax (Determination of Value) Rules, 2006:

Illustration 1

In the course of providing a taxable service, a service provider incurs costs such as traveling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are *indicated separately in the invoice issued by the service provider to the recipient of service.*

Illustration 2

Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts to the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by company X.

The role of documentation and agreements is indispensable in establishing the pure agent relationship. Contracts and agreements should clearly delineate the nature of the agency arrangement, specifying that the agent is acting on behalf of the client, and outline the exact costs incurred and reimbursed. Further, the recovery of expenses must be on actuals without any mark-up or profits. Proper documentation is essential for demonstrating that the conditions for pure agent status are met and for ensuring that reimbursed amounts are excluded from the value of supply, thus avoiding additional GST liability.

The concept of pure agent remains a somewhat grey area under GST, leading to divergent interpretations by different departmental authorities. This ambiguity can result in varying compliance expectations and disputes, particularly concerning the treatment of reimbursements. ITES Companies must navigate these complexities with caution, ensuring that their agreements and invoicing practices align with the prevailing interpretations while keeping abreast of any regulatory updates or departmental guidelines.

Reference is made to the judgement in the case of **M/S. PAREXEL INTERNATIONAL CLINICAL RESEARCH PVT. LTD [2019 (11) TMI 1146]** wherein on verification of agreement of Clinical Trial Services, it was found that the applicant was satisfying all the conditions laid down in the Explanation to Rule 33 and hence the applicant qualified as a pure agent of the recipient of services i.e. the foreign affiliates. It was ruled by the **Authority for Advance Ruling, Karnataka** that the value of the invoice raised by the applicant on the foreign affiliates for making payment of the pass-through expenses to the principal investigator and the institution would be excluded from the value of supply.

In summary, while the GST framework provides specific guidelines for the treatment of pure agents and reimbursements, the practical application of these rules requires careful consideration of documentation and contractual terms. As the understanding of these principles evolves, businesses in the IT&ITES domain should remain vigilant to mitigate risks and ensure compliance in this nuanced area of GST law.

7.8.6 Interplay between Withholding Tax (WHT) and GST

The rapid transformation of the IT and IT-enabled services sector has presented unique challenges regarding the taxability of digital business models. As products and services such as SaaS, AI-as-a-Service, and subscription-based APIs become increasingly common, the boundaries drawn by earlier legislative frameworks come under pressure. Traditional distinctions, such as defining downloaded software as goods and cloud-based services as services are often ill-suited to address the complexities arising from modern licensing and consumption patterns. The lines can be particularly blurred when considering emerging models like Offshoring Development Centres, where the role of Indian subsidiaries in the export chain or as intermediaries is often contentious. These evolving operational realities elevate uncertainty around GST characterisations and have direct ramifications for the availability of export benefits and exposure to domestic liabilities. New digital frontiers such as the metaverse and globally consumed virtual environments further complicate existing tax definitions, especially when the locational aspect of service delivery is ambiguous. In instances where Indian vendors are supporting foreign principals, differing jurisdictional approaches have the potential to give rise to double taxation. This suggests a growing need for more nuanced guidance reflecting the realities of digital businesses.

In the ITES sector, navigating the interplay between Withholding Taxes (WHT) and Goods and Services Tax (GST) presents significant complexities. Withholding

Taxes apply to payments made to non-residents for services such as royalties, technical services, and other forms of income, requiring tax to be deducted at source before remittance abroad. At the same time, GST implications arise on cross-border supply of services, particularly in determining the place of supply, taxability, input tax credit eligibility, and classification of services. Businesses operating in the ITES sector must therefore carefully evaluate both direct and indirect tax implications to ensure appropriate compliance and avoid potential disputes or double taxation.

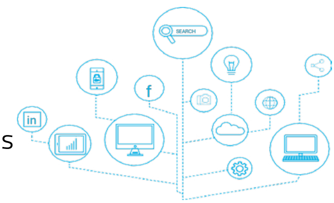
The term "electronic commerce" refers to any commercial transaction taking place in the electronic domain, which can be executed online through electronic networks, such as the internet. This includes both business-to-business (B2B) and business-to-consumer (B2C) transactions, as well as the sale of digital products such as software, e-books, movies, music, and other similar products.

We refer to the provisions of Section 2(44) and 2(45) of the CGST Act, 2017 which define 'electronic commerce' and an 'electronic commerce operator' respectively:

"electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

"electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

On the basis of the aforementioned legal definition, one understands that an Electronic Commerce Operator (ECO) includes three key components: ownership, operation, and management of digital or electronic facilities or platforms for electronic commerce. This encompasses a wide range of online marketplaces, portals, applications, and social media platforms that facilitate the sale of goods and services.



Traditionally one's place of business determines one's tax jurisdiction. But, in the current era of the digital economy, the physical place has become quite immaterial for conducting business anywhere across the globe. Many digital giants may lack a physical presence in India, yet they generate substantial revenue from their large consumer base in the country without contributing a fair share to the Indian treasury. This evolution has created significant challenges in the taxation of cross-border digital and technology-driven services, particularly in determining the applicability of indirect taxes and withholding tax obligations.

From a GST perspective, complexities arise in identifying the place of supply, determining whether services qualify as export or import of services, and assessing the eligibility of input tax credits. Simultaneously, withholding tax provisions may apply to payments made to non-residents for services such as royalties, technical services, and other taxable income, thereby requiring careful evaluation of taxability under domestic law and applicable tax treaties.

The interplay between different tax regimes requires meticulous tax planning and documentation to ensure compliance and optimize tax positions. Businesses must carefully assess each transaction to determine the applicable tax liabilities, including any potential overlaps or interactions among Withholding Taxes and GST. Effective management of these overlapping tax obligations is essential for maintaining compliance and achieving efficient tax outcomes in the ITES sector.

8.1 Special Economic Zones (SEZ) in India

Special Economic Zones (SEZs) are designated areas within India's borders that are granted special privileges and exemptions to facilitate the smooth conduct of authorised operations. For customs purposes, SEZs are treated as being outside the territory of India. Units operating within SEZs may engage in manufacturing, trading of goods or provision of services.

The aim of SEZs is to promote efficient operations and streamline processes through a 'Single Window Clearance' mechanism. To achieve this, the SEZ Act, 2005 was enacted by the Indian Parliament in May 2005. Subsequently, the SEZ Rules, 2006 were notified, establishing the regulatory and procedural framework for implementing the provisions of the Act. Critically, Section 51 of the SEZ Act stipulates that its provisions take precedence over any other inconsistent laws or instruments in force in India.

8.2 Setting Up SEZs for IT and IT-Enabled Services

SEZs designated for Information Technology (IT) or IT-enabled services are not subject to a minimum land area requirement. However, a minimum built-up processing area is specified. Non-processing areas within these SEZs must be established and utilised in accordance with Rule 11B of the SEZ Rules, as amended effective from 6 December 2023.

8.3 Key Compliance Requirements for IT-BPM SEZ Units in India

The following are the key compliances for SEZ Units in India:

(i) **Letter of Approval from SEZ Authorities in Form G:** One-time approval from SEZ authorities generally valid for 5 years and obtaining renewal thereafter.

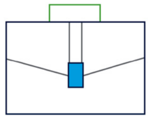
(ii) **Monthly Service Export Reporting Form:** To report the details of service exports, including the nature of services provided, the value of exports, and the corresponding foreign exchange earned by 10th of every month for the previous month.

(iii) **Annual Performance Report:** SEZ units must submit an Annual Performance Report (APR) to the Development Commissioner detailing exports, employment, and other performance metrics by 30th June every year for the previous year.

(iv) **Bond-Cum-Legal Undertaking (BLUT):** Units must execute and maintain a Bond-cum-Legal Undertaking (BLUT) to guarantee customs duty payments if goods are diverted to the domestic market.

(v) **Bonding and Debonding Register:** SEZ Units to maintain a bonding register which contains a record of all goods brought into SEZ from the domestic tariff area ("DTA") or overseas. These goods are allowed duty-free. Once the goods are removed from SEZ, they are subject to payment of customs duty which must be recorded in the debonding register.

8.4 Work from Home Regulations for employees working in SEZ Units



As of November 2023, the Indian government amended the Special Economic Zones (SEZ) rules of 2006 to allow IT companies in SEZs to offer employees the option to work from home (WFH) until December 31, 2024. Subsequently, the Ministry of Commerce and Industry (Department of Commerce), vide Notification No. F. No. K-43013(12)/1/2021-SEZ dated 26 December 2024, extended this timeline till 31 December 2027. The new rules include the following conditions:

(i) IT-BPM companies operating as SEZ units must inform the Development Commissioner (DC) of the relevant zones.

(ii) Units must continue to operate from their premises as per their letter of approval.

(iii) Units must maintain a list of employees who are permitted to work from home and submit it to the DC when requested.

The new rules also liberalize the WFH regime by converting it from a permission-based regime to an intimation-based regime. This allows SEZ units to provide WFH to up to 100% of their employees.

8.5 Import & Duty Exemptions

- Imports of goods into SEZs are exempt from Customs duty and Integrated Goods and Services Tax (IGST), as per the relevant notifications.

- Imports of services into SEZs are also exempt from IGST under the reverse charge mechanism.
- SEZ units and developers are not liable to pay the GST Compensation Cess on imports, pursuant to Notification No. 27/2024-Customs dated 12 July 2024, which is retrospectively effective from 1 July 2017.
- Supplies from an SEZ unit to entities outside the SEZ are treated as imports by the recipient, who must pay the applicable customs duty for bringing the goods into their premises.

It is important to note that recycling of plastic waste or scrap is not permitted within SEZs. Repair and reconditioning activities are allowed provided the goods are re-exported and there is a clear one-to-one correlation established, as per the revised second proviso to Rule 18(4)(d) of the SEZ Rules, effective from 20 June 2024.

8.6 Authorised Operations and Approvals

SEZ units or developers can carry out authorised operations upon approval. The application for approval should be submitted in **Form C7** to the Board of Approval via the Development Commissioner, in line with Rule 9 of the SEZ Rules. The list of default authorised activities is provided under MC&I(DC) Instruction No. 50 dated 15 March 2010. Management and Business Consultant Services related to authorised operations are included in default authorised services as per Instruction No. 94 dated 8 May 2019.

8.7 Net Foreign Exchange (NFE) Requirements and Duty Implications

- SEZ units are required to achieve a Positive Net Foreign Exchange (NFE), calculated cumulatively over a five-year period from the commencement of production.
- Units must execute a Bond-cum-Legal Undertaking to cover duties leviable on imported or domestically sourced raw materials.
- No customs duty applies on the importation of capital goods, raw materials, consumables, or spares into SEZs.

8.8 GST and Domestic Tariff Area (DTA) Considerations

- Supplies made to SEZs for their authorised operations are classified as zero-rated supplies under GST, making them entitled to export benefits.

- As per Para 5.11 of the Handbook of Procedures, 2023, payments for supplies made to SEZ units must be realised from the foreign currency account of the SEZ unit.
- While there are no restrictions on sales from SEZs to the Domestic Tariff Area (DTA), goods cleared from an SEZ to the DTA are regarded as imports by the DTA unit and are subject to customs duties and IGST.

To address industry concerns around under-utilisation of manufacturing capacities in Special Economic Zones (SEZs), the Finance Act 2026 provides a targeted, one-time relaxation for domestic clearances. As per the Finance Act 2026 the eligible manufacturing units in SEZs will be permitted to sell goods into the Domestic Tariff Area (DTA) at concessional rates of duty, subject to quantitative restrictions.

Importantly, the quantity of such DTA sales will not be open-ended; instead, it will be capped to a "prescribed proportion" of the unit's exports, signaling the Government's intent to preserve the export-oriented character of SEZs while providing a calibrated outlet for excess capacity during demand disruptions. The Government has also indicated that necessary regulatory changes will be undertaken to operationalise the measure and to ensure that the dispensation does not distort competition for non-SEZ domestic manufacturers.

For the IT/ITES sector, although this Finance Act 2026 measure is aimed at eligible SEZ manufacturing units (one-time DTA sales at concessional duty, capped to a prescribed proportion of exports), it would matter in practice for large IT/ITES SEZ campuses and multi-product SEZs. Where IT/ITES operations co-exist with ancillary manufacturing/assembly or depend on on-campus vendors, the concession may improve capacity utilisation, vendor viability and supply-chain continuity, indirectly supporting service delivery. IT/ITES SEZ units should nonetheless track the forthcoming notifications for eligibility, export-linked caps and conditions, and for any consequential compliance/process implications for SEZ operations.

8.9 GST Registration and Refunds

- A person having a unit in SEZ would have to obtain a separate GST registration for the SEZ Unit distinct from its GST registration in Domestic Tariff Area in the same state.

- In case of export of goods by DTA to SEZ, the application for GST refund shall be filed by the supplier of goods after such goods have been admitted in full in the SEZ for authorised operations and endorsed by the SEZ authorities. The refund application is to be made within 2 years from the relevant date. However, an SEZ unit itself claiming refund under GST is a matter of dispute with lack of clarity and divergent positions adopted by the GST departmental bodies.

The case of **Vaachi International Pvt. Ltd. [2020 (11) TMI 1]** revolves around the rejection of a refund claim for unutilised input tax, specifically concerning zero-rated supplies to a Special Economic Zone (SEZ). The **Appellate Authority of Advance Ruling, Andhra Pradesh (AAAR)** upheld the rejection, citing Section 54(3)(i) and Rule 89(2)(f) of the GST law, which stipulate that refund provisions apply only to taxpayers supplying to SEZ units or developers. Vaachi International, an exporter of dried ornamental plant materials, claimed the refund under the premise of zero-rated supplies but was denied because the AAAR determined that only suppliers to SEZ units with tax payment are eligible, ensuring claim duplicity is avoided through declarations from SEZ purchasers.

The appellant argued that as a SEZ unit involved in exporting goods, they are eligible for a refund under Section 54(3) of the CGST Act, emphasising that suppliers to SEZs are obligated to obtain declarations confirming that the SEZ unit hasn't claimed input tax credit on those supplies. The appellant further detailed that the IT infrastructure of GSTN allows SEZ units to seamlessly claim input tax paid. However, the AAAR contended that the refund of unutilised tax credit against zero supply is not addressed in this case, stating that only those making supplies to SEZ units or developers are eligible. Ultimately, the appeal was dismissed and the Appellate Authority found that the refund eligibility claim by the appellant was not in accordance with the provisions of the Act.

In **M/S SE FORGE LIMITED VERSUS UNION OF INDIA [2023 (3) TMI 56]**, the Hon'ble Gujarat High Court addressed a petition regarding the refund of IGST to a Special Economic Zone (SEZ) unit. The petitioner, an SEZ unit engaged in

manufacturing engineering components, sought a refund of unutilised Input Tax Credit (ITC) on inward supplies, arguing that the CGST Act does not differentiate between SEZ units and other registered persons regarding ITC eligibility. The appellate authority had previously held that Section 54(3) of the CGST Act, along with related rules, mandates that only the supplier can claim ITC refunds. The court allowed the petition and quashed the order passed by the Commissioner (Appeals) and Assistant Commissioner, directing the respondent to grant the refund of ITC to the petitioner after proper verification and by obtaining a specific undertaking / bond from the petitioner stating that if the supplier at any point of time has taken refund and it comes to the notice of the department, then department will be in a position to recover it with interest.

8.10 Reverse Charge non-applicability for SEZ where LUT is furnished

The case of **M/s. Portescap India Private Limited [2023 (1) TMI 1092]** before the **Appellate Authority for Advance Ruling, Maharashtra**, concerns the classification of supply, specifically regarding zero-rated supply and the applicability of reverse charge mechanism (RCM) under Section 16(1) of the IGST Act, 2017, on services provided to a Special Economic Zone (SEZ) unit.

The appellant, an SEZ unit, sought clarification on whether it was required to comply with RCM for renting immovable property services procured from SEEPZ SEZ Authority and other services. The appellant argued that any supply to an SEZ for authorised operations should be zero-rated, and they should have the option to provide a Letter of Undertaking (LUT) instead of paying tax under RCM, citing Section 16 of the IGST Act and relevant notifications. The authority examined the provisions of the IGST Act, particularly Section 16 concerning zero-rated supplies, and concluded that supplies to SEZ units or developers for authorised operations are indeed zero-rated, superseding notifications that mandate RCM. The authority emphasised that the type or location of the supplier (whether in DTA or SEZ) is irrelevant as long as the supply serves authorised operations in the SEZ. Ultimately, the appellate authority set aside the advance ruling, holding that the appellant is not required to pay GST under RCM on renting of immovable property services received from SEEPZ SEZ, provided they furnish an LUT or bond, and similarly for other services received from DTA suppliers for authorised operations in the SEZ.

In summary, India's SEZ framework offers significant incentives and regulatory benefits designed to boost economic activity, simplify compliance, and encourage foreign exchange earnings, while also ensuring compliance with environmental and trade laws.

8.10.1 Software Technology Parks (STP) in India

The Software Technology Park (STP) Scheme offers a specialised framework for units committed to exporting their entire output of goods and services, excluding permissible sales within the Domestic Tariff Area (DTA). These units may engage in activities such as software development, IT-enabled services, reconditioning, repair, remaking, testing, calibration, quality improvement, technological upgrades, and re-engineering. Notably, trading activities are outside the scope of this scheme.

The STP Scheme is crafted with the following objectives:

- **Boost India's export capabilities**
- **Increase foreign exchange earnings**
- **Attract investment in export-oriented production**
- **Generate employment in the IT and electronics sectors**

Approvals and permissions under this scheme are granted by designated officers from the Ministry of Electronics & Information Technology, supported by the Inter-Ministerial Standing Committee (IMSC).

8.11 Key Operational Provisions

8.11.1 Import Flexibility

STP units can import or procure goods required for their approved operations (including capital goods), whether from DTA suppliers, bonded warehouses, or international exhibitions held in India, subject to compliance with import restrictions and conditions. Imports from a bonded warehouse in DTA/ international exhibition held in India shall be without payment of customs duty and IGST. All imported goods must be used exclusively for production meant for export, under the "actual user" condition.

8.11.2 Capital Goods Import:

Imports of capital goods are allowed on a self-certification basis.

8.11.3 Foreign Exchange Earnings (NFE)

Each unit is required to maintain a positive Net Foreign Exchange (NFE) over a cumulative five-year block, starting from the commencement of production. In addition, where a higher value addition and other conditions are given, they shall be required to be followed. In scenarios where export restrictions affect any item listed in the unit's Letter of Permission (LoP), authorities may extend the NFE calculation period accordingly.

8.11.4 Letter of Permission (LoP)

The LoP issued by the relevant authority acts as an overarching authorization for the unit's operations and entitlements.

8.11.5 Export Modalities

Software and professional services may be exported via data communication links or as physical exports (including courier services). For IT&ITES Services, persons authorised by the STP unit may access the facilities installed in the STP unit through communication links.

8.11.6 DTA Sales for Services

For software and IT-enabled services, DTA sales are allowed up to 50% of the FOB value of exports and/or 50% of foreign exchange earned, provided payments are received in foreign exchange. This includes online delivery through data communication.

8.11.7 Compliance Reporting

STP units must submit a monthly 'Service Exports Reporting Form (SERF)' to their designated STP officer. Further, STP shall file digitally signed quarterly and annual reports as prescribed.

8.12 GST Framework for STP Units

Under Section 147 of the CGST Act, 2017 (read along with Notification No. 48/2017

– Central Tax dated 18 October 2017), supplies made to STP units are categorised as "deemed exports."

Distinction Between Regular and Deemed Exports

- **Regular Exports:** Classified as zero-rated supplies, exempt from GST, with eligibility for GST refund.
- **Deemed Exports:** Subject to GST, but the GST paid can be refunded, either to the supplier or to the STP recipient unit.

8.13 Procedure for Availing Deemed Export Benefits for Supplies to STP Units

(as per Circular No. 14/14/2017 – GST dated 6 November 2017)

- The recipient STP unit must give prior intimation by filing Form A to the supplier and the jurisdictional GST officer of the supplier and that of the recipient.
- The supplier must then supply goods under the cover of a valid tax invoice.
- The tax invoice must be endorsed by the recipient STP unit.
- The recipient must maintain record of such goods in Form B. A digital copy of Form – B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the said unit.

8.14 Comparison between SEZ unit, STPI unit and DTA

8.14.1 Comparison – Structural

Issue	SEZ Unit	STP Unit	Domestic Exporter/DTA within STP Unit
Salient features	• Provides favourable economic regulations with several Direct & Indirect Tax incentives • Authorised operation out of	• Governance & Promotion of IT/ITeS exports • Benefits of FTP apply • Can be set up at any location	• Domestic – no governing body, can be set up anywhere • DTA within STPI – no FTP benefit other than GST

Issue	SEZ Unit	STP Unit	Domestic Exporter/DTA within STP Unit
	a pre-identified location		facilitation
Eligibility	Any individual, co-operative society, company or partnership firm can file an application	Only for IT/ITeS companies that are into exports	No restriction
IEC Registration	Mandatory	Mandatory	Mandatory
GST Registration	Mandatory	GST + STPI mandatory	GST + DTA within STP Unit Registration is mandatory
Minimum Investment projection	No minimum investment required, however the unit holder is expected to achieve the projections, basis which SEZ approval is granted	No minimum investment required, however the unit holder is expected to achieve the projections, basis which STPI approval is granted	No minimum investment projection required
Service charge	One time admission fees/ Minimal Yearly Membership subscription	Annual service charges as levied by STPI.	NA for DTA For DTA within STPI – same as STPI
Validity of Approval	Initial validity of 1 years for set up and commencement of business. Subsequent approval will be for 5 years from the date of commencement.	Initial validity of 2 years for set up and commencement of business. Subsequent approval will be for 5 years from the date of commencement.	NA for DTA For DTA within STPI – same as STPI
Capacity Expansion	Not flexible, expansion allowed only as per approved plan	Not flexible	Flexible

Issue	SEZ Unit	STP Unit	Domestic Exporter/DTA within STP Unit
Movement of Assets	Freely movable between current & new SEZ in the same campus. If different SEZ campus, then procedural formalities required to get permission.	Free movement of assets between STPI and SEZ not permissible. Only through sale transaction. No GST exemption & duty payment on fair value.	Same as STP unit
Movement of Employees	No restriction	No restriction	No restriction
Multiple Businesses, other than IT/ITeS	Possible, with prior approval, only for exports	Possible, with prior approval, only for exports	Possible, no approval required
Work from place outside the said Unit	Possible only in certain situations.	Possible, subject to conditions.	Possible
Minimum size of Unit	Minimum size of unit will be typically be required.	Pace of expansion is flexible and there is no locked rental for a minimum facility size.	Same as STP unit
Realisation of Exports	Positive net foreign exchange earning is mandatory in block of permitted years.	Positive net foreign exchange earning is mandatory in block of permitted years.	Realisation of exports is mandatory to claim refund under GST.
DTA Sale of Goods or Services	There is no restriction on DTA sale of goods or services (provided in Foreign Exchange) subject to achievement of positive Net Foreign Exchange earnings.	DTA sale is allowed up to 50% of previous year FOB value of exports.	No restriction on DTA sale.

8.14.2 Comparison – GST

Issue	SEZ Unit	STP Unit	Domestic Exporter/DTA within STP Unit
GST on Import of Goods	Exemption available from customs duty and IGST on all types of goods imported for Authorised operations by SEZ Units or Developers.	Exemption from Custom Duty and IGST on goods directly connected to Authorised operations as approved by STPI officials and subject to fulfilment of IGCRD Certificate Formalities.	No exemption available. However, exporter will be eligible to claim refund on the IGST portion. But the Basic Customs duty and cess would be a cost to them.
Approval Mechanism for Import of Goods	Single window approval mechanism for SEZ and custom clearance as every SEZ has custom officer sitting near to SEZ gate only.	Multiple departments involvement for approvals and clearance of goods imported.	Only custom department would be involved and imports are procedurally easier on payment of basic customs duty and IGST.
GST on Domestic Procurement of Goods	Exemption available from payment of GST on all types of goods required for Authorised Operations by SEZ Units or Developers	No exemption available. Refund on goods (other than capital goods) may be availed by either the supplier or recipient STP Unit. Refund on ITC on capital goods cannot be availed. However, the same can be availed through payment of taxes	No exemption available. Refund on goods (other than capital goods) may be availed by either the supplier or recipient STP Unit. Refund on ITC on capital goods cannot be availed. However, the same can be availed through payment of taxes

Issue	SEZ Unit	STP Unit	Domestic Exporter/DTA within STP Unit
GST on Domestic Procurement of Services	Exemption available from payment of GST on all types of services required for Authorised Operations by SEZ Units or Developers	No refund available under GST	No refund available under GST.
Import of Services	IGST exemption available on the same.	No exemption allowed and GST under RCM would be required to be paid by the company. However, ITC can be availed on the same and shall be eligible for refund.	No exemption allowed and GST under RCM would be required to be paid by the Company. However, ITC can be availed on the same and shall be eligible for refund.

8.14.3 Comparison – Other Duties & Taxes

Issue	SEZ Unit	STP Unit	Domestic Exporter/DTA within STP Unit
Corporate Income Tax Exemption U/s 10AA	If new SEZ unit in a different location, benefit is not available Available only if it is an extension of the existing facility and the approval has already been already obtained prior to March 31, 2020. This may not be feasible.	No corporate income tax benefit possible since the same is not in place.	No corporate income tax benefit.
Stamp Duty	50% Exemption	No exemption	No exemption

NOTES

NOTES

RSM India

Mumbai (Corporate Office)
9th Floor, Maker Chambers VI
Nariman Point
Mumbai — 400021

3rd floor, Technopolis Knowledge
Park, A Wing, MIDC
Andheri East
Mumbai - 400 093

Navi Mumbai
1201A, Rupa Renaissance
Juinagar, MIDC Road
Navi Mumbai - 400 705

New Delhi - NCR
2nd & 3rd floor, B-37, Sector 1
Noida - 201 301

Gurugram
407, Time Tower, Sector 28
MG Road, Gurugram - 122002

Chennai
2nd & 4th floor, Apex Towers
R.A. Puram, Chennai - 600 028

Bengaluru
3rd floor, Jubilee Building
45, Museum Road
Bengaluru - 560 025

Hyderabad
1208, Gowra Fountainhead
Huda Techno Enclave, Hitec City
Hyderabad - 500 081

Kolkata
5th floor, J K Millennium Centre
Jawaharlal Nehru Road
Kolkata - 700 071

Surat
RSM House, DTA-2
G-02 to G-05 Plot
Gujarat Hira Bourse
Ichhapore-2, Surat - 394 510

Ahmedabad
B/211, 2nd floor, Mondeal Heights
Opp. Karnavati Club, S.G. Highway
Ahmedabad - 380 015

Pune
603, Pride House
Ganesh Khind Road
Opp. NIC University Chowk
Pune - 411 016

Gandhidham
206, Sunshine Arcade II
Plot No. 37, Sector 8
Near D-Mart
Gandhidham - 370 201

Jaipur
101/102, 1st Floor, UDB Tower
University Marg, Bapu Nagar
Jaipur- 302 015

Vijayanagar
A2/UT-F, Power Valley
JSW Steel Township Toranagullu
Bellary - 583 123

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RSM

For further information please contact:

RSM Astute Consulting Pvt. Ltd.

9th Floor, Maker Chambers VI, Nariman Point, Mumbai – 400021

3rd floor, Technopolis Knowledge Park, A Wing, MIDC, Andheri East, Mumbai - 400 093

T: (91-22) 6108 5555/ 6121 4444

F: (91-22) 2287 5771

E: emails@rsmindia.in W: www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Navi Mumbai, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham, Jaipur and Vijayanagar.

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