

MONTHLY NEWSLETTER



Welcome to our monthly newsletter

We bring you a concise and noteworthy regulatory developments in Income Tax, Goods & Services Tax, Companies Act during January 2026. We had tried to cover all important updates occurred during January 2026 in this volume of newsletter. The sole purpose of this circulation is to update finance professionals and business owners on direct & indirect taxes and other compliances. Feedbacks are welcome at info@nucleusadvisors.in.

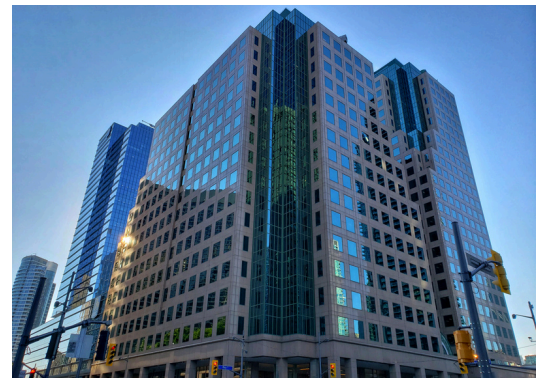
Direct Tax Updates

Authority for Advance Rulings (Income Tax) & Others v. Tiger Global International — Supreme Court (15 Jan 2026)

1. Facts of the Case

The respondents (Tiger Global International II, III & IV Holdings) are Mauritius- incorporated investment holding companies, holding Category-I Global Business Licences and valid Tax Residency Certificates (TRC) from Mauritius. They invested in Flipkart Private Limited, Singapore, whose value was derived substantially from Indian assets.

In 2018, as part of the Walmart global acquisition of Flipkart, the respondents sold their shares in the Singapore company to a Luxembourg entity and earned substantial capital gains. Prior to the transaction, they applied under Section 197 [Enables an assessee to seek a certificate for nil or lower tax deduction at source where income is claimed to be non-taxable or taxable at a lower rate]. for nil withholding and subsequently sought advance rulings under Section 245Q [Permits a non-resident to seek an advance ruling on the taxability of a proposed or completed transaction].





The AAR rejected the applications holding the transaction to be prima facie designed for tax avoidance under proviso (iii) to Section 245R(2) [Bars admission of an advance ruling application where the transaction is prima facie designed for tax avoidance.] The Delhi High Court reversed the AAR, granting treaty protection. The Revenue appealed to the Supreme Court.

2. Issues Before the Supreme Court

Whether the transaction was prima facie designed for tax avoidance, attracting the bar under Section 245R(2) (iii). Whether capital gains from sale of shares of a Singapore company (indirect transfer) were exempt under the India–Mauritius DTAA.

Whether TRC is conclusive for claiming treaty benefits. Whether GAAR (Chapter X-A) can override DTAA benefits, including grandfathered investments. Whether Article 13(3A) (grandfathering) or Article 13(4) applies to indirect transfers.

3. Petitioners' (Revenue's) Arguments

TRC is only prima facie evidence, not conclusive; authorities can examine substance over form. The transaction involved an indirect transfer taxable under Section 9(1) (Explanations 4 & 5) [Deems income from indirect transfer of foreign shares deriving substantial value from Indian assets as taxable in India].

The assessees were conduit / see-through entities, controlled from the USA; "head and brain" not in Mauritius.

- GAAR overrides DTAA by virtue of Sections 90(2A) [Provides that GAAR overrides DTAA benefits in cases of impermissible avoidance arrangements], 95 [Empowers tax authorities to declare an arrangement impermissible if it results in a tax benefit and lacks commercial substance] and 100 [Authorises denial of treaty benefits and recharacterisation of transactions once GAAR is invoked.]

- Grandfathering under Article 13(3A) applies only to direct transfers; indirect transfers fall under Article 13(4) which has no LOB or grandfathering. Rule 10U(2) [Allows GAAR application even to pre-2017 investments where the arrangement is abusive or lacks substance.] permits GAAR application even to pre-2017 investments if the arrangement lacks substance.

4. Respondents' (Assessees') Arguments

- Residence determination under Article 4 of DTAA lies exclusively with Mauritius authorities.
- Valid TRC + Form 10F fully satisfy Section 90(4) & (5) [Mandate furnishing of TRC and prescribed information as a condition for claiming DTAA benefits.] ; Indian authorities cannot go behind TRC. Circular No. 789, upheld in Azadi Bachao Andolan, treats TRC as sufficient evidence of residence and beneficial ownership.
- Treaty benefits cannot be denied by importing domestic anti-avoidance doctrines. The 2016 Protocol and GAAR operate prospectively; investments made prior to 01.04.2017 are fully grandfathered.
- Article 13(3A) covers indirect transfers deriving value from Indian assets.
- No evidence of sham, fraud, or obligation to pass gains to Tiger Global Management.



5. Analysis of Law by the Supreme Court

(a) Treaty vs Domestic Law

DTAA does not abdicate India's taxing sovereignty. GAAR is a statutory anti-abuse regime with overriding effect over DTAA (Section 90(2A)).

(b) Tax Residency Certificate (TRC)

TRC creates a rebuttable presumption, not an irrebuttable one.

Authorities may examine commercial substance, control and management, especially post-GAAR.

(c) GAAR Applicability

GAAR applies to arrangements resulting in tax benefit after 01.04.2017, regardless of when investment was made.

Rule 10U(1)(d) [Grants limited GAAR exemption to certain grandfathered investments.] does not grant blanket immunity; Rule 10U(2) permits scrutiny of abusive arrangements.

(d) DTAA Article 13 Interpretation

Article 13(3A) applies only to direct transfers of Indian company shares.

Indirect transfers fall under Article 13(4) — no grandfathering or LOB protection.

Accepting the assessee's interpretation would defeat treaty intent and domestic anti-abuse law.

6. Precedent Analysis

The Court placed significant reliance on its earlier decisions in *Union of India v. Azadi Bachao Andolan* and *Vodafone International Holdings BV v. Union of India*. In *Azadi Bachao Andolan*, it was held that treaty shopping per se is not illegal and that a Tax Residency Certificate is sufficient evidence of residence for treaty purposes. In *Vodafone*, the Court reiterated the "look at" principle, cautioning against dissecting a composite transaction and holding that corporate structures can be disregarded only where they are sham or colourable devices.

These decisions, according to the Court, continue to hold the field and govern the interpretation of treaty entitlements and anti-avoidance principles in cross-border transactions.

7. Court's Reasoning

The Supreme Court found that the AAR had exceeded its jurisdiction by rendering conclusive findings at the threshold stage, whereas Section 245R(2) contemplates only a prima facie examination. The Court held that once valid Tax Residency Certificates were produced, the assessee's residence and treaty eligibility stood established and could not be reopened by Indian tax authorities through a parallel enquiry into Mauritian law.

On facts, the Court was satisfied that the assessee had sufficient commercial substance, including long-term investments, board-level decision-making, and operational presence in Mauritius. The allegation that control and management lay outside Mauritius was not supported by cogent evidence.





(8. Final Conclusion of the Supreme Court

The Supreme Court concluded that the transaction was not designed for avoidance of tax and that the capital gains arising to the assesseees were not taxable in India under the India–Mauritius DTAA. The assesseees were held entitled to treaty benefits and grandfathering under Article 13(3A). The order of the AAR was found to be unsustainable, and the judgment of the Delhi High Court was affirmed.



GST UPDATES



INDIRECT TAXATION

1. Advisory on Filing Opt-In Declaration for Specified Premises, 2025

The GST Portal has enabled electronic filing of opt-in declarations under Notification No. 05/2025 – Central Tax (Rate) dated 16 January 2025 for suppliers of hotel accommodation services declaring their premises as “Specified Premises”.

Eligible Persons: Regular GST taxpayers (active or suspended) supplying hotel accommodation services and applicants for new GST registration.

Note: Composition taxpayers, TDS/TCS registrants, SEZ units/developers, casual taxpayers and cancelled registrations are not eligible.

Declarations Available:

Annexure VII – For existing registered taxpayers opting for specified premises for a subsequent financial year.

Annexure VIII – For new registration applicants, effective from the date of registration.

Key Points: A maximum of 10 premises can be selected per declaration, with separate reference numbers for each premise. Suspended taxpayers may file declarations, but cancelled taxpayers cannot.

2. Advisory on RSP-Based Valuation of Notified Tobacco Goods under GST

Background:

GST has been notified on an RSP (Retail Sale Price) basis for specified tobacco and tobacco-related products. From 1 February 2026, tax will be calculated on the RSP printed on the package, instead of the actual transaction value.

Key Important:

Under the revised valuation mechanism, GST is payable on RSP irrespective of discounts or actual sale price.

Even if goods are sold below MRP, GST liability remains unchanged.

Since RSP is treated as inclusive of GST, the GST amount is extracted from the RSP and the taxable value is

derived accordingly. As a result, invoice value and GST taxable value may differ, making correct RSP declaration and system alignment critical.



GST UPDATES



Conclusion:

The RSP-based valuation applies to supplies made on or after 1 February 2026. This change has a significant impact on pricing and GST compliance for the tobacco sector. Timely alignment of packaging, invoicing and tax systems is essential to avoid disputes, interest and penalties.

Advisory on Interest Collection and Related Enhancements in GSTR-3B

Background:

GST law provides that interest on delayed payment should be levied only on the net cash tax liability, after adjusting the balance available in the Electronic Cash Ledger. Earlier, system computation did not fully give this benefit. To align portal functionality with Rule 88B(1) of CGST Rules, 2017, GSTN has introduced enhancements in GSTR-3B effective from January 2026.

Key Points:

Applicable for January 2026 tax period onwards for all delayed GSTR-3B returns.

Interest will be calculated after considering the minimum cash balance in the Electronic Cash Ledger.

Interest is leviable only on the net tax payable in cash, not on the gross liability.

Delay period is counted from the due date of return till the date of tax payment (offset).



COMPLIANCE CALENDER



Direct Taxes

February 14, 2026

Due date for issue of TDS Certificate for tax deducted under section 194-IA, section 194-IB, section 194M, section 194S (by specified person) in the month of December, 2025.

February 15, 2026

Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending

December 31, 2025.

Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2026 has been paid without the production of a challan.

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