Taxation and Other Laws (Amendment) Bill 2026: Proposed Rationalisation of India's Offshore Fund-Manager Safe Harbour

The Taxation and Other Laws (Amendment) Bill, 2026 (**Amendment Bill 2026**) was introduced in the Lok Sabha on August 4, 2026, and was passed two days later, on August 6, 2026. Amongst other changes, the Amendment Bill 2026 proposes to relax and realign the Safe Harbour Regime for managing offshore funds from India under the Income-Tax Act, 2025 (**ITA 2025**).

RATIONALE FOR INTRODUCTION OF THE "SAFE HARBOUR" REGIME

In 2015, a "Safe Harbour" regime was introduced in the Income Tax Act, 1961 (**ITA 1961**), by inserting Section 9A, to protect offshore funds from adverse tax consequences arising solely from being managed by India-based fund managers.

Before introduction of the "Safe Harbour" regime, appointing an India-based fund manager created two principal Indian tax risks for an offshore fund:

- *Indian "business connection" / permanent-establishment risk*

Since investment decisions were made in India and other core fund-management functions were performed in India, the tax authorities could contend that the offshore fund carried on business through the Indian manager and therefore had a "business connection in India".

As a consequence, profits attributable to those Indian activities could be treated as income accruing or arising in India and taxed in India. Depending on the applicable tax treaty and the manager's authority and activities, similar facts could also create an Indian "permanent establishment".

- *Indian tax-residence risk*

If substantive investment and management decisions relating to an offshore fund are taken by a manager in India, tax authorities could take the view that the place of effective management of offshore fund such was in India.

If an offshore fund became an Indian tax resident, India could potentially tax its worldwide income as per applicable Indian tax laws (subject to any relief available under the applicable DTAA), rather than only income having an Indian source.

Section 9A therefore provided that an eligible offshore fund will not be regarded as Indian resident merely because its eligible fund manager is situated in India, subject to compliance with various conditions prescribed in Section 9A.

Section 9A of ITA 1961 provided two protections:
- The Indian manager's fund-management activities do not create a "business connection" in India for the qualifying offshore fund.
- The fund does not become an Indian tax resident merely because its fund manager is located and operates in India.

The policy objective was to permit investment decisions, research and portfolio management to occur in India without forcing the fund manager (and associated jobs and expertise) to remain offshore.

SWITCH FROM ITA 1961 TO ITA 2025

Following the replacement of ITA 1961 by ITA 2025 with effect from 1 April 2026, the fund-manager safe harbour continues under section 9(12), read with paragraph 1 of Schedule I to ITA 2025.

Subject to the prescribed conditions, fund-management activities conducted through an eligible fund manager in India do not, by themselves, create a business connection in India for the offshore fund or make the fund resident in India merely because the manager is situated in India.

ELIGIBILITY CRITERIA UNDER ITA 2025 TO AVAIL OF THE SAFE HARBOUR

- The offshore fund must:
  - be established, incorporated or registered outside India, collect funds from its members and invest those funds for their benefit;
  - not be resident in India;
  - either be resident in a country or specified territory having an applicable agreement with India, or be established, incorporated or registered in a jurisdiction notified by the Central Government;
  - be subject, together with its activities, to the applicable investor-protection regulations in its relevant jurisdiction;
  - ensure that aggregate direct participation or investment by Indian residents does not exceed 5% of its corpus, subject to the applicable testing dates, cure period and exclusions;
  - have at least 25 members who are not, directly or indirectly, connected persons;
  - ensure that no member, together with connected persons, holds a direct or indirect participation interest exceeding 10% (the “10% test”);
  - ensure that no group of ten or fewer investors in the offshore fund, together with their connected persons, hold 50% or more of the fund’s participation interests in aggregate (the “50% test”);
  - not invest more than 25% of its corpus in any one entity;
  - not invest in an associate entity;
  - maintain a monthly average corpus of at least ₹100 crore, subject to the special rules for newly established and wound-up funds;
  - not carry on, control or manage, directly or indirectly, a business in or from India; and
  - not have any Indian business connection apart from the activities undertaken on its behalf by the eligible fund manager.
- The eligible fund manager must:
  - be registered as a fund manager or investment adviser under the applicable specified regulations;
  - act in the ordinary course of its fund-management business;
  - not be an employee of, or connected person in relation to, the offshore fund; and
  - together with its connected persons, not be entitled, directly or indirectly, to more than 20% of the profits accruing or arising to the fund from transactions carried out through that manager.
- Manager remuneration: The remuneration paid by the offshore fund to the eligible fund manager must not be lower than the amount calculated under the prescribed methodology.
- Annual compliance: The offshore fund must furnish the prescribed annual statement, currently Form 173 under the Income-tax Rules, 2026, within 90 days after the end of the tax year. The prescribed accountant’s report in Form 172 concerning the manager’s activities and remuneration must also be furnished by the applicable specified date.

CHANGES PROPOSED BY THE AMENDMENT BILL 2026:

The Amendment Bill 2026 proposes a substantial simplification of the fund-manager Safe Harbour rules**.** Out of 13 eligibility conditions, eight conditions are proposed to be removed and the offshore fund would need to satisfy only five conditions.

- *Five conditions proposed to be retained*

An offshore fund would qualify as an eligible investment fund if:

- it is not resident in India.
- it is either:
  - resident in a country or specified territory having a DTAA with India; or
  - *established, incorporated or registered in a country or specified territory notified by the Central Government*.
- the aggregate direct investment by Indian residents does not exceed 5% of the fund’s corpus.
- the fund does not directly or indirectly carry on, control or manage a business in India.

- no person acting for the fund creates a business connection in India, except through the activities of the eligible fund manager.

- *Eight conditions proposed to be removed*

The following conditions would no longer apply after the Amendment Bill 2026 comes into force:

- The fund and its activities must be subject to investor-protection regulations in its home jurisdiction.
- The fund must have at least 25 unconnected members.
- No member, together with connected persons, may hold more than 10%.
- Ten or fewer members, together with connected persons, must hold less than 50% in aggregate.
- Investment in any single entity may not exceed 25% of the fund's corpus.
- The fund may not invest in an associate entity.
- The fund must maintain a minimum monthly average corpus of ₹100 crore, subject to the existing start-up concession.
- The remuneration paid to the eligible fund manager must not be less than the prescribed minimum amount.

- *Fund manager's eligibility conditions will remain unchanged*

The Amendment Bill 2026 does not propose any changes to the four conditions required to be met by the fund manager of the offshore fund. Accordingly, the manager of the offshore will continue to be required to:

- not be an employee or connected person of the fund;
- hold the requisite regulatory registration;
- act in the ordinary course of its fund-management business; and
- together with connected persons, not be entitled to more than 20% of the fund's profits from transactions carried out through that manager.

IMPLICATIONS FOR AN ELIGIBLE FUND MANAGER LOCATED IN AN IFSC

Clause 3 of the Amendment Bill 2026 proposes to substitute Schedule I of ITA 2025 in its entirety. The substituted Schedule does not reproduce existing paragraph 1(6), which refers to eligible fund managers located in an International Financial Services Centre.

However, section 9(12)(f) of ITA 2025 separately empowers the Central Government, by notification, to disapply or modify one or more of the applicable conditions in the case of an eligible investment fund and its eligible fund manager where the manager is located in an IFSC and commenced operations on or before 31 March 2030. The Amendment Bill does not propose to omit or amend that provision.

Accordingly, the simplified conditions proposed by the Amendment Bill 2026 would constitute the baseline eligibility conditions for an offshore fund managed by an eligible fund manager located in an IFSC. Those conditions would remain subject to any valid notification issued under section 9(12)(f) granting an IFSC-specific relaxation or modification.

STATUS AND COMMENCEMENT

If the Amendment Bill 2026 is enacted and receives presidential assent in its present form, the changes would be deemed effective from 1 April 2026, aligning them with the commencement of ITA 2025.

ELP Comments

If enacted in its present form, the Taxation and Other Laws (Amendment) Bill, 2026 can be expected to encourage more offshore funds to appoint fund managers based in India. By reducing the offshore fund's eligibility requirements from thirteen substantive conditions to five, while retaining the core safeguards concerning non-residence, Indian-resident participation and Indian business activity, the proposed changes would materially simplify access to the fund-manager Safe Harbour . The resulting reduction in compliance burdens and risk of inadvertent *disqualification should provide greater tax certainty for offshore funds and make India a more commercially attractive jurisdiction from which to conduct investment-management activities, supporting the development of India's fund-management industry and the associated creation of skilled employment.*

The full text of the Taxation and Other Laws (Amendment) Bill, 2026 (as introduced in the Lok Sabha) can be found here.

We hope you have found this information useful. For any queries/clarifications, please write to us at insights@elp-in.com or write to our authors:

Vinod Joseph, Partner – Email - *vinodjoseph@elp-in.com*

Yash Ranglani, Senior Associate – Email - *yashranglani@elp-in.com*