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ROUND TRIPPING UNDER THE GRAB OF OVERSEAS DIRECT INVESTMENT (ODI): A LEGAL AND REGULATORY ANALYSIS

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I. ABSTRACT

This research paper examines the phenomenon of round tripping under the guise of Overseas Direct Investment (ODI) from India, analyzing its legal and regulatory implications. Round tripping involves the circular movement of domestic funds that exit India and return disguised as foreign investment to exploit regulatory arbitrage opportunities and preferential treatment accorded to foreign capital. The paper scrutinizes the evolving regulatory framework under the Foreign Exchange Management Act, 1999, and related notifications that govern ODI. It evaluates landmark enforcement actions by the Enforcement Directorate and dissects high-profile case studies involving corporate entities. Through comparative analysis of international regulatory approaches from jurisdictions including the United States, European Union, and China, the paper identifies best practices for addressing round tripping concerns. Despite significant regulatory enhancements, persistent challenges include beneficial ownership transparency, valuation manipulation, and emerging digital pathways for round tripping. The research proposes comprehensive reforms including a unified regulatory framework, enhanced beneficial ownership disclosure requirements, blockchain-based transaction monitoring, and strengthened international cooperation mechanisms. The paper concludes that effective regulation requires balancing legitimate business expansion needs with robust safeguards against regulatory circumvention through a substance-over-form approach to cross-border investment structures.

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II. KEYWORDS

Round Tripping, Overseas Direct Investment, Foreign Exchange Management Act, Beneficial Ownership, Regulatory Arbitrage, Shell Companies, Tax Avoidance, GAAR, Enforcement Directorate, Cross-Border Transactions.

III. INTRODUCTION

A. Background and Contextual Overview

Round tripping refers to the practice where funds originating from one country are channeled back to the same country through offshore jurisdictions. This often happens under the guise of foreign direct investment. The practice has gained significant attention in India's foreign exchange regulatory framework. Capital flight and its return as foreign investment has been a persistent issue for India's financial regulators over the past two decades. The Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) have been vigilant against such practices. These bodies view round tripping as a regulatory circumvention strategy that distorts the true nature of investments.[3]

The legal framework governing overseas direct investment in India primarily stems from the Foreign Exchange Management Act, 1999 (FEMA). FEMA replaced the draconian Foreign Exchange Regulation Act, 1973 (FERA). It marked a paradigm shift from criminalizing forex violations to regulating them. ODI regulations under FEMA allow legitimate business expansion of Indian entities abroad. They permit investment through joint ventures or wholly owned subsidiaries. These regulations aim to facilitate India's growing global business footprint. However, the same framework has inadvertently created pathways for round tripping. The deliberate exploitation of these pathways raises

[3] Reserve Bank of India, "Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad," RBI/FED/2015-16/10 (Jan. 1, 2016, updated as of Mar. 31, 2023), https://www.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10637 (last visited Apr. 10, 2025).

serious regulatory concerns. It undermines the very purpose of having differential treatment for foreign and domestic investments.[4]

India's economic liberalization since 1991 has witnessed a substantial increase in cross-border capital flows. Official statistics from the RBI indicate that ODI from India has grown from a mere USD 121 million in 1991-92 to over USD 18 billion by 2022. This exponential growth reflects genuine business expansions. It also masks potential round tripping transactions. Mauritius and Singapore have consistently remained the top sources of FDI into India. These countries account for nearly 50% of total foreign investments. They are also preferred destinations for Indian ODI. This circular pattern of investment raises red flags about potential round tripping structures. The Vodafone International Holdings B.V. v. Union of India case highlighted the complex investment structures that operate through these jurisdictions. The Supreme Court's observations in this case underscored the thin line between legitimate tax planning and abusive avoidance strategies.[5]

B. Research Objectives

1. To analyze the development of India's legal framework governing ODI with specific focus on provisions targeting round tripping, identifying regulatory gaps and implementation challenges.
2. To evaluate the effectiveness of current enforcement actions by examining landmark case studies and assessing the detection capabilities of regulatory authorities across different jurisdictions.
3. To propose comprehensive regulatory reforms that balance legitimate business expansion needs with robust safeguards against round tripping, drawing from international best practices and technological solutions.

[4] Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India).
[5] Vodafone International Holdings B.V. v. Union of India and Anr., (2012) 341 ITR 1 (SC).

C. Research Questions

1. How have Indian regulatory frameworks evolved to address round tripping through Overseas Direct Investment, and what jurisdictional gaps continue to enable this practice?
2. To what extent do current enforcement mechanisms effectively detect and prevent round tripping through ODI, particularly in complex corporate structures?
3. What regulatory reforms and international cooperation mechanisms would enhance India's capacity to distinguish between legitimate business structures and abusive round tripping arrangements?

D. Research Methodology

This research employs a mixed-methods approach combining doctrinal and empirical analysis to examine round tripping through ODI. The doctrinal component involves comprehensive examination of primary legal sources including legislation, judicial pronouncements, regulatory notifications, and enforcement directives to establish the legal framework. This is supplemented by empirical analysis of enforcement data from the RBI, Enforcement Directorate, and Income Tax Department to assess regulatory effectiveness. The research adopts a comparative methodology examining regulatory approaches across multiple jurisdictions to identify best practices. Case studies of high-profile enforcement actions provide granular insights into detection methodologies and evasion techniques.

IV. CONCEPTUAL AND LEGAL UNDERPINNINGS OF ROUND TRIPPING

A. Defining Round Tripping in Financial Law

Round tripping lacks a universally accepted legal definition in Indian financial jurisprudence. Various regulatory authorities have approached this concept through different lenses. The Reserve Bank of India conceptualizes round tripping as a process where funds originate from India. These funds travel offshore and return as foreign direct investment. The circular movement creates an illusion of foreign capital inflow.

This definition emerges from RBI's Master Circular on Overseas Direct Investment. The circular specifically prohibits structures designed to route domestic investments as foreign funds.[6] Similar conceptions appear in SEBI regulations governing foreign portfolio investments. The regulatory concern stems from artificial inflation of foreign investment statistics. It also involves potential evasion of regulatory oversight applicable to domestic capital.[7]

The Income Tax Department adopts a more nuanced approach toward round tripping. It examines the substantive economic reality behind investment structures. The General Anti-Avoidance Rules introduced vide Finance Act, 2013 target these arrangements. Under GAAR, round tripping constitutes an 'impermissible avoidance arrangement' lacking commercial substance.[8] Section 96 specifically includes transactions that route funds through accommodating parties. These transactions ultimately return to the original source.[9]

The CBDT Circular No. 7 of 2017 clarifies the application of GAAR to such structures. The Vodafone case judgment acknowledged the difference between legitimate tax planning and abusive avoidance. Justice K.S. Radhakrishnan's observations highlighted

[6] Reserve Bank of India, Master Direction No. 15/2015-16 on Direct Investment by Residents in Joint Venture/Wholly Owned Subsidiary Abroad (RBI/FED/2015-16/10), ¶ 2.1.4 (Jan. 1, 2016, updated Mar. 26, 2024), https://www.rbi.org.in/commonman/Upload/English/Notification/PDFs/41MC0BB4DF4AD64C4079BB09C21671A384B0.pdf (last visited Apr. 10, 2025).

[7] Securities and Exchange Board of India, Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors, SEBI/HO/IMD/DF3/CIR/P/2020/225, § 4.2 (Nov. 5, 2020).

[8] Income Tax Act, 1961, § 95, No. 43, Acts of Parliament, 1961 (India).

[9] Id, § 96, No. 43, Acts of Parliament, 1961 (India).

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the importance of economic substance over legal form.[10] The substantive economic reality thus takes precedence over technical compliance with law.

Indian judiciary has wrestled with defining round tripping in several landmark cases. The Delhi High Court in Pepsi Foods Ltd. v. Assistant Commissioner of Income Tax distinguished between genuine business restructuring and tax-motivated arrangements.[11] The Supreme Court in *McDowell and Co. Ltd. v. Commercial Tax Officer* established early jurisprudence. It rejected tax avoidance as legitimate planning.[12]

However, subsequent decisions in *Union of India v. Azadi Bachao Andolan and Vodafone* modified this position. They acknowledged the right to arrange affairs to minimize tax liability.[13] The Bombay High Court in *Aditya Birla Nuvo Ltd. v. Deputy Director of Income Tax* examined round tripping through share buybacks.[14] The court emphasized the need to establish taxpayer's intention to evade tax. These judicial pronouncements create a definitional framework based on substance over form doctrine. They reject mechanical application of legal provisions without examining economic reality. The courts have not criminalized round tripping per se. They instead focus on underlying motives and economic substance.

B. ODI as a Mechanism: Legitimate Investment vs. Abuse

Overseas Direct Investment represents a legitimate mechanism for Indian business expansion. FEMA regulations permit Indian entities to establish global footprints through foreign ventures. The regulatory framework envisages genuine business activities transcending national boundaries. Indian conglomerates increasingly seek global markets for sustainable growth. ODI regulations facilitate this economic imperative through structured investment channels. The Automatic Route permits investments up to 400% of net worth. This demonstrates regulatory intent to promote

[10] Vodafone International Holdings B.V. v. Union of India, (2012) 341 ITR 1 (SC), ¶ 67.
[11] Pepsi Foods Ltd. v. Assistant Commissioner of Income Tax, (2015) 376 ITR 87 (Delhi HC).
[12] McDowell & Co. Ltd. v. Commercial Tax Officer, (1985) 3 SCC 230.
[13] Union of India v. Azadi Bachao Andolan, (2004) 10 SCC 1.
[14] Aditya Birla Nuvo Ltd. v. Deputy Director of Income Tax, (2011) 242 CTR 561 (Bom).

legitimate global expansion. The Reserve Bank's Master Direction clearly differentiates between genuine ODI and abusive structures. Legitimate ODI must demonstrate actual business operations in the host jurisdiction. These investments should create tangible economic value beyond mere paper transactions.[15]

The distinction between legitimate ODI and abusive structures hinges on several crucial factors. Substance over form constitutes the primary differentiating principle. Legitimate investments demonstrate commercial rationale beyond tax advantages. They typically involve actual business operations generating economic value.

The Supreme Court in Vodafone emphasized this distinction through detailed analysis. The court acknowledged that genuine business restructuring deserves regulatory protection. Conversely, artificial structures designed solely for tax avoidance face scrutiny. The Court examined economic substance rather than mere documentary compliance. Justice Radhakrishnan's analysis provided a framework for distinguishing legitimate from abusive arrangements.[16]

The RBI's Updated Master Direction (2023) incorporates similar principles. It prohibits investments in foreign entities having substantial Indian assets. This threshold-based approach targets potential round tripping structures. It permits investigation of investments that appear circular in nature.[17]

The evolution of ODI regulations reflects ongoing tension between facilitation and restriction. Initial liberalization aimed at promoting Indian corporate global expansion. Subsequent restrictions addressed emerging abusive practices through ODI routes. The concept of "substance over form" gained prominence in regulatory framework.

[15] Id at 4.
[16] Vodafone International Holdings B.V. v. Union of India, (2012) 341 ITR 1 (SC).
[17] Reserve Bank of India, Updated Master Direction on Overseas Investment, FED Master Direction No. 01/2022-23, § 6.3(b) (Jan. 12, 2023), https://www.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10637 (last visited Apr. 10, 2025).

The Foreign Exchange Management (Overseas Investment) Rules, 2022 incorporate enhanced scrutiny measures. Rule 19(3) prohibits investment in foreign entities for undertaking real estate activity. Rule 19(4) restricts investment in foreign entities offering financial products linked to Indian securities. These provisions specifically target potential round tripping arrangements. They demonstrate regulatory recognition of ODI abuse patterns. The rules maintain balance between legitimate expansion and regulatory circumvention.[18]

C. Legal Interpretations and Judicial Observations on Round Tripping

Indian judicial pronouncements have progressively shaped the legal understanding of round tripping. The Supreme Court's landmark decision in McDowell & Co. established foundational principles. It rejected tax avoidance as legitimate tax planning. Justice Ranganath Misra's observations emphasized substance over form in tax matters. The judgment characterized colorable devices as impermissible despite technical compliance. This strict approach underwent significant modification in subsequent decisions. The evolution reflects changing judicial perceptions of economic substance requirements.[19]

The watershed moment in round tripping jurisprudence came with Vodafone International Holdings. The Supreme Court extensively analyzed multilayered investment structures. Justice S.H. Kapadia examined Vodafone's complex holding patterns across multiple jurisdictions. The Court recognized legitimate business restructuring as distinct from sham transactions. It laid down critical parameters for distinguishing genuine investment from abusive arrangements. The judgment emphasized commercial substance as the decisive factor in such determination. Justice K.S. Radhakrishnan's concurring opinion provided deeper analysis of round tripping structures. He observed that the corporate veil could be lifted when used for tax evasion.

[18] Foreign Exchange Management (Overseas Investment) Rules, 2022.
[19] McDowell & Co. Ltd. v. Commercial Tax Officer, (1985) 3 SCC 230.

The judgment however protected genuine multinational corporate structures from arbitrary challenges.[20]

The Bombay High Court's decision in Aditya Birla Nuvo Ltd. tackled a complex buyback arrangement. The case involved share repurchase through offshore subsidiary allegedly bypassing Indian tax. The Court examined whether the structure constituted round tripping for tax avoidance. It applied the "look through" approach to analyze economic substance. The arrangement was scrutinized for commercial justification beyond tax benefits. The Court held that circular routing of funds primarily for tax benefits constituted. Such routing fell within judicial definition of impermissible round tripping. This decision provided concrete parameters for identifying abusive structures through funds flow analysis.[21]

The Authority for Advance Rulings addressed round tripping in E-Trade Mauritius Ltd. The AAR examined whether the Mauritius entity demonstrated sufficient economic substance. It rejected treaty benefits where the entity served merely as a conduit. Justice P.V. Reddi observed that substance requirements cannot be circumvented through paperwork. The ruling emphasized that ownership structures must reflect economic reality. This decision aligned Indian approach with emerging international substance requirements. It presaged incorporation of similar principles in statutory provisions like GAAR.[22]

V. LEGAL FRAMEWORK GOVERNING OVERSEAS DIRECT INVESTMENT IN INDIA

A. Overview of FEMA, 1999 and Relevant Notifications

The Foreign Exchange Management Act, 1999 (FEMA) constitutes the primary legal framework governing overseas direct investment from India. This legislation replaced

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[20] Vodafone International Holdings B.V. v. Union of India, (2012) 341 ITR 1 (SC).
[21] Aditya Birla Nuvo Ltd. v. Deputy Director of Income Tax, (2011) 242 CTR 561 (Bom).
[22] Authority for Advance Rulings, In re: E*Trade Mauritius Ltd., 288 ITR 229 (AAR) (2006).

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the draconian Foreign Exchange Regulation Act, 1973 (FERA). FEMA marked a paradigm shift from criminalizing foreign exchange violations to regulating them. The Act focuses on facilitating external trade and payments. It promotes orderly development and maintenance of the foreign exchange market. Section 6 of FEMA specifically empowers the Reserve Bank to regulate capital account transactions. This provision serves as the statutory basis for all ODI regulations. The legislative intent reflected economic liberalization policies adopted since 1991. Parliament enacted FEMA to align India's foreign exchange regime with globalization. The transition from FERA to FEMA demonstrated India's commitment toward integration with global markets.[23]

FEMA operates through a complex web of notifications issued under Section 6(3). These notifications provide the operational framework for overseas investments. Notification FEMA 120/RB-2004 established the initial comprehensive framework for ODI. It permitted Indian entities to invest in joint ventures and wholly owned subsidiaries abroad. The notification introduced the concept of “total financial commitment” as an investment limit. This parameter encompassed equity, debt, guarantees and other financial exposures.

FEMA 120 underwent numerous amendments to address emerging investment patterns. These amendments progressively liberalized the ODI framework while incorporating anti-abuse provisions. FEMA 120 was subsequently replaced by FEMA 263/RB-2013 and later by FEMA 15(R)/2015-RB. Each iteration refined the regulatory approach toward ODI. They reflected evolving policy priorities and emerging abuse patterns.[24]

The Ministry of Finance comprehensively overhauled the ODI regulatory framework in August 2022. It issued three critical instruments that currently govern ODI transactions. The Foreign Exchange Management (Overseas Investment) Rules, 2022 establish the

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[23] Foreign Exchange Management Act, 1999, § 6, No. 42, Acts of Parliament, 1999 (India).
[24] Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, Notification No. FEMA 120/RB-2004, Reserve Bank of India (July 7, 2004), https://www.rbi.org.in/SCRIPTs/BS_FemaNotifications.aspx?Id=1326 (last visited Apr. 10, 2025).

primary regulatory framework. The Rules derive direct authority from Section 47 of FEMA. They introduce clearer definitions and enhanced compliance requirements.

The Foreign Exchange Management (Overseas Investment) Regulations, 2022 supplement these Rules. They provide detailed operational guidelines and procedural aspects for ODI. The Reserve Bank issued the Foreign Exchange Management (Overseas Investment) Directions, 2022. These Directions contain specific instructions to Authorized Dealer banks. Together, these three instruments constitute the current ODI regulatory triad. They represent a significant consolidation and rationalization of the prior framework.[25]

The newly introduced ODI framework contains several provisions targeting round tripping. Rule 19(3) prohibits investment in foreign entities primarily engaged in real estate activity. This provision addresses a common round tripping channel through property investments. Rule 19(4) restricts investment in financial products linked to Indian securities. This targets circular investments designed to leverage regulatory arbitrage.

The Rules distinguish between Overseas Direct Investment and Overseas Portfolio Investment. This distinction aims to segregate strategic investments from financial exposures. Schedule I outlines permissible ODI structures while incorporating safeguards against abuse. The framework mandates enhanced disclosures through Annual Performance Reports. These reports enable regulators to monitor actual business operations of foreign subsidiaries.[26]

The ODI regime interfaces with several other regulatory frameworks. The Companies Act, 2013 imposes disclosure requirements regarding foreign subsidiaries. Section 186 regulates investments and loans to other entities including overseas ventures. Section 185

[25] Foreign Exchange Management (Overseas Investment) Rules, 2022, G.S.R. 646(E), Ministry of Finance, Department of Economic Affairs (Aug. 22, 2022), https://dea.gov.in/sites/default/files/Foreign%20Exchange%20Management%20%28Overseas%20Investment%29%20Rules%2C%202022.pdf (last visited Apr. 10, 2025).
[26] Id. at Rule 19.

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restricts loans to directors through foreign subsidiaries. These provisions target potential round tripping through related party transactions. The Income Tax Act contains provisions addressing tax avoidance through offshore structures.

Sections 92A to 92F govern transfer pricing in cross-border related party transactions. The General Anti-Avoidance Rules in Sections 95 to 102 target arrangements lacking commercial substance. The Black Money (Undisclosed Foreign Income and Assets) Act, 2015 penalizes undisclosed foreign assets. This comprehensive legal matrix surrounds the FEMA framework governing ODI.[27]

B. Role of the Reserve Bank of India (RBI) and Master Directions

The Reserve Bank of India occupies a central position in regulating overseas direct investments from India. Section 6 of FEMA explicitly vests RBI with powers to regulate capital account transactions. This regulatory mandate extends to all forms of outward investments by Indian entities. The RBI derives its authority directly from statutory provisions rather than delegated legislation. This enhances its regulatory legitimacy when addressing complex ODI structures. The central bank's position allows it to combine monetary policy objectives with regulatory functions. Its dual role creates a unique institutional capacity to address round tripping concerns. The Supreme Court in Bhavesh D. Wakharia affirmed RBI's expansive regulatory authority under FEMA. Justice Arun Mishra observed that RBI possesses wide latitude in regulating foreign exchange transactions.[28]

RBI exercises its regulatory powers through Master Directions that consolidate various instructions. The Master Direction on Direct Investment by Residents in Joint Venture/Wholly Owned Subsidiary Abroad constitutes the cornerstone document. It synthesizes numerous circulars notifications and policy decisions regarding ODI. The

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[27] Companies Act, 2013, §§ 185-186, No. 18, Acts of Parliament, 2013 (India); Income Tax Act, 1961, §§ 92A-92F, 95-102, No. 43, Acts of Parliament, 1961 (India).

[28] Bhavesh D. Wakharia v. Bank of India, (2019) 5 SCC 762.

Master Direction provides comprehensive guidance on permissible investment structures.

It details procedural requirements documentation standards and compliance mechanisms. The Direction undergoes periodic updates reflecting emerging policy priorities and challenges. It serves as a practical implementation guide for both regulators and regulated entities. RBI's regulatory philosophy emphasizes substance over form in ODI transactions. The Direction specifically prohibits structures designed primarily for round tripping purposes.[29]

The Master Direction establishes explicit parameters for legitimate overseas investments. It permits Indian parties to invest in bona fide business activities abroad. The financial commitment cannot exceed 400% of the Indian party's net worth. This threshold-based approach balances growth aspirations with prudential concerns. The Direction mandates that overseas entities must undertake genuine business activities.

Mere holding structures without substantive operations face enhanced scrutiny. The Direction introduces specific restrictions targeting potential round tripping arrangements. It prohibits Indian parties from investing in entities with no substantive business operations. This prohibition specifically addresses shell companies used for circular routing of funds. The Direction requires a declaration confirming compliance with anti-round tripping provisions.[30]

RBI's regulatory approach has evolved significantly over the years reflect changing realities. Initial regulations focused primarily on exchange conservation due to limited forex reserves. This approach gradually shifted toward facilitating genuine business expansion abroad. The liberalization coincided with India's growing integration with global markets. However regulatory vigilance against round tripping remained a consistent priority.

[29] Id at 4.
[30] Id. at § 2.1.

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The August 2022 framework demonstrates RBI's sophisticated understanding of round tripping techniques. The current approach distinguishes between legitimate business structures and abusive arrangements. RBI has moved away from blanket prohibitions toward nuanced compliance requirements. This evolution reflects the maturation of India's outward investment landscape.[31]

Beyond rule-making, RBI undertakes active monitoring and enforcement functions. It mandates submission of Annual Performance Reports by Indian parties. These reports enable tracking of actual business activities of overseas subsidiaries. RBI scrutinizes unusual transaction patterns that may indicate round tripping. The central bank coordinates with Enforcement Directorate on potential FEMA violations. This inter-agency approach enhances detection capabilities for complex round tripping structures. RBI has established a Centralized Information Management System for ODI monitoring. Authorized Dealer banks serve as the first line of regulatory oversight. They must ensure compliance with Master Directions before processing ODI transactions. The RBI conducts periodic inspections of AD banks to verify adherence to guidelines.[32]

C. Restrictions, Prohibited Activities, and Sectoral Caps

The ODI regulatory framework imposes significant restrictions on certain overseas investment activities. Rule 19 of the Foreign Exchange Management (Overseas Investment) Rules, 2022 establishes explicit prohibitions. These prohibitions target potential avenues for round tripping through strategic restrictions. Indian entities cannot invest in foreign entities engaged primarily in real estate business.

This restriction addresses a common channel for round tripping through property investments. The prohibition extends to trading in Transferable Development Rights in

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[31] RESERVE BANK OF INDIA, REPORT OF THE COMMITTEE TO REVIEW THE EXTANT ECB GUIDELINES 18-22 (2013), https://rbidocs.rbi.org.in/rdocs//PublicationReport/Pdfs/CR353_1981356136CD0C1747659CDBCFE63094C356.PDF (last visited Apr. 10, 2025).

[32] Reserve Bank of India, Notification on Submission of Overseas Direct Investment Data through ODI-Part I & ODI-Part II, RBI/2016-17/198, A.P. (DIR Series) Circular No. 22 (Jan. 25, 2017).

foreign jurisdictions. This demonstrates regulatory awareness of sophisticated round tripping techniques. However, real estate development projects with commercial returns remain permissible investments. This nuanced approach distinguishes between speculative activities and genuine business ventures.[33]

Round tripping concerns have motivated prohibitions against certain financial investments. Indian entities cannot invest in foreign firms offering financial products linked to Indian securities. This restriction specifically targets circular investment structures routing back to Indian markets. The provision aims to prevent regulatory arbitrage through offshore investment vehicles. Similar restrictions apply to investments in foreign entities engaged in gambling or betting. These prohibitions reflect both moral considerations and anti-money laundering objectives. The restrictions align with FATF recommendations regarding high-risk business activities. They create a protective barrier against potential misuse of ODI for illicit purposes.[34]

Schedule I of the Rules introduces a structured hierarchy of investment permissions. It distinguishes between strategic sectors and non-strategic investments. Strategic sectors receive relatively favorable treatment despite general restrictions. Defense, energy and telecommunications fall within this strategic category. Investments exceeding prescribed financial commitment limits require explicit approval. The approval process involves enhanced scrutiny for potential round tripping arrangements. Investing entities must provide undertakings regarding end-use of funds. The authorities may impose conditions to prevent circular routing of investments. This conditionality reflects the tailored approach toward regulatory compliance. It acknowledges legitimate business needs while maintaining vigilance against abuse.[35]

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[33] Foreign Exchange Management (Overseas Investment) Rules, 2022, G.S.R. 646(E), Rule 19(3), Ministry of Finance, Department of Economic Affairs (Aug. 22, 2022).
[34] Id. at Rule 19(4).
[35] Foreign Exchange Management (Overseas Investment) Rules, 2022, G.S.R. 646(E), Schedule I, Ministry of Finance, Department of Economic Affairs (Aug. 22, 2022).

D. Recent Amendments and Notifications under FEMA (Non-Debt Instruments) Rules, 2019

The FEMA (Non-Debt Instruments) Rules, 2019 marked a significant shift in India's foreign investment regulatory landscape. These rules consolidated scattered provisions from prior FEMA notifications and circulars. The Ministry of Finance implemented these rules on October 17, 2019 via Notification G.S.R. 795(E). The transition reflected a broader reorganization of foreign investment regulatory powers. Oversight of equity instruments transferred from RBI to the Ministry of Finance. The central bank retained regulatory authority over debt instruments. This bifurcation created a more specialized approach to investment regulation. The rules established comprehensive definitions for various investment instruments. They introduced enhanced beneficial ownership disclosure requirements for foreign investors.[36]

Subsequent amendments to the NDI Rules have progressively tightened round tripping safeguards. The amendment dated April 22, 2020 addressed beneficial ownership concerns for investments from bordering nations. It introduced mandatory government approval for investments from countries sharing land borders. This provision significantly impacted investment structures routing through China and Hong Kong. The amendment targeted potential round tripping through neighboring jurisdictions. It aligned foreign investment regulations with broader national security considerations. Special attention focused on investment structures utilizing multiple layers of entities. The provision implemented Press Note 3 issued by the Department for Promotion of Industry.[37]

The October 2020 amendment further refined the regulatory framework addressing sectoral concerns. It identified specific sectors requiring enhanced scrutiny for overseas investments. The amendment incorporated provisions from the consolidated FDI policy

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[36] Foreign Exchange Management (Non-debt Instruments) Rules, 2019, G.S.R. 795(E), Ministry of Finance, Department of Economic Affairs (Oct. 17, 2019).
[37] Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2020, G.S.R. 269(E), Ministry of Finance, Department of Economic Affairs (Apr. 22, 2020).

circular. It harmonized ODI regulations with sectoral caps applicable to inward investments. The alignment created regulatory symmetry between inflow and outflow restrictions. Special provisions addressed investments in insurance, pension funds and financial services. These sectors received heightened regulatory attention due to systemic importance. The amendment introduced specific conditions for investments in startup companies. It established specialized reporting requirements for such investments through Form ODI-Startup.[38]

The July 2021 amendment introduced significant modifications targeting potential round tripping structures. It enhanced disclosure requirements regarding ultimate beneficial ownership. The concept of "significant beneficial owner" received explicit regulatory recognition. Investing entities must now disclose beneficial owners holding over 10% indirect interest. This threshold-based approach aligns with international standards on beneficial ownership. The amendment implemented FATF recommendations on ownership transparency. It created mechanisms to pierce complex holding structures used for round tripping. The changes reflected growing regulatory sophistication in addressing layered investment arrangements. These provisions specifically targeted ultimate controlling interests behind investment structures.[39]

The April 2022 amendment created specialized carve-outs for overseas investment by Venture Capital Funds. It established a distinct regulatory pathway for SEBI-registered Alternative Investment Funds. These provisions aimed to support legitimate venture investments while maintaining safeguards. The amendment imposed additional conditions for investments exceeding prescribed thresholds. It mandated disclosure of valuation methodologies for startup investments. These requirements aimed to prevent artificial valuation for round tripping purposes. The amendment balanced innovation

[38] Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2020, G.S.R. 639(E), Ministry of Finance, Department of Economic Affairs (Oct. 9, 2020).
[39] Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2021, G.S.R. 493(E), Ministry of Finance, Department of Economic Affairs (July 19, 2021).

support with regulatory prudence. It acknowledged genuine venture investment needs while addressing potential abuse channels.[40]

The most recent comprehensive overhaul came through the Foreign Exchange Management (Overseas Investment) Rules, 2022. These rules supplement and partially supersede the NDI Rules framework. They introduce the concept of "round tripping" for the first time in explicit statutory language. Rule 19(2) defines round tripping as investment structures creating a "loop structure." The rules prohibit structures that return investment to India through more than two layers. This nuanced approach acknowledges legitimate business restructuring needs. It establishes clear parameters distinguishing permissible from prohibited structures. The provisions demonstrate regulatory recognition of business complexity. However they maintain vigilance against artificial circular arrangements. The rules impose enhanced disclosure and approval requirements for complex structures.[41]

E. Interface with Income Tax Act, 1961 and Prevention of Money Laundering Act, 2002

The FEMA regulatory framework governing ODI operates in conjunction with tax and anti-money laundering legislation. This interface creates a comprehensive regulatory matrix addressing round tripping concerns. The Income Tax Act contains several provisions targeting potential tax avoidance through ODI structures.

Section 92 to 92F establish transfer pricing regulations for international transactions. These provisions require arm's length pricing in related party transactions across borders. They prevent profit shifting through manipulated pricing in ODI relationships. Indian entities must maintain detailed documentation justifying transaction values with foreign

[40] Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2022, G.S.R. 309(E), Ministry of Finance, Department of Economic Affairs (Apr. 12, 2022).
[41] Foreign Exchange Management (Overseas Investment) Rules, 2022, G.S.R. 646(E), Ministry of Finance, Department of Economic Affairs, Rule 19(2) (Aug. 22, 2022).

subsidiaries. The burden of proof rests on the taxpayer to demonstrate commercial rationale. Special scrutiny applies to transactions with entities in low-tax jurisdictions.[42]

The General Anti-Avoidance Rules constitute a powerful weapon against round tripping arrangements. Introduced through Finance Act, 2013 and effective from April 1, 2017, GAAR targets impermissible arrangements. Section 96 specifically addresses "round trip financing" as an indicative factor. It defines such financing as funds transferred among parties returning to originating source. GAAR empowers tax authorities to disregard entities lacking commercial substance. Section 97 establishes tainted elements test for determining lack of commercial substance. The Commissioner's approval must precede any GAAR-based assessment. This procedural safeguard prevents arbitrary application while maintaining deterrent effect. Round tripping structures primarily designed for tax benefits fall squarely within GAAR's ambit.[43]

The Place of Effective Management provisions supplement GAAR in targeting shell entities. Introduced through Finance Act, 2015, POEM determines tax residency of foreign companies. Foreign subsidiaries effectively managed from India become domestic tax residents. This provision specifically targets letterbox companies lacking substantive foreign operations. POEM examines where key management decisions substantively occur rather than formalities.

The CBDT Circular dated January 24, 2017 provides detailed POEM determination guidelines. Round tripping structures utilizing nominal foreign entities face significant tax exposure. POEM creates taxation risk for foreign subsidiaries controlled from India. The provision aligns with OECD's BEPS Action Plan recommendations on artificial arrangements.[44]

[42] Income Tax Act, 1961, §§ 92-92F, No. 43, Acts of Parliament, 1961 (India).
[43] Income Tax Act, 1961, §§ 95-102, No. 43, Acts of Parliament, 1961 (India); Finance Act, 2013, No. 17, Acts of Parliament, 2013 (India).
[44] Income Tax Act, 1961, § 6(3), No. 43, Acts of Parliament, 1961 (India); Central Board of Direct Taxes, Circular No. 6/2017, F. No. 142/11/2015-TPL (Jan. 24, 2017).

The Black Money (Undisclosed Foreign Income and Assets) Act, 2015 further strengthens anti-round tripping measures. This legislation imposes harsh penalties for undisclosed foreign assets including ODI structures. Section 3 levies tax at 30% on undisclosed foreign income and assets. Additional penalties can reach 90% of asset value in aggravated cases.

Section 48 creates a presumption regarding unexplained investments abroad. The burden shifts to taxpayers to explain source of funds for foreign investments. The Act contains non-obstante provisions overriding other tax laws. Round tripping arrangements concealing Indian-source funds face severe consequences under this Act. The legislation created a one-time compliance window encouraging voluntary disclosures. Subsequent enforcement actions have targeted suspicious ODI structures lacking disclosure.[45]

The Prevention of Money Laundering Act, 2002 establishes the third pillar of this regulatory triad. PMLA treats tax evasion as a predicate offense for money laundering investigations. Section 3 defines money laundering broadly to include concealment of proceeds of crime. Round tripping often involves layering transactions to obscure fund origins. Such structured transactions potentially violate PMLA prohibitions. The Enforcement Directorate conducts parallel investigations alongside tax and FEMA authorities. PMLA's powerful attachment and confiscation provisions create significant deterrence. Section 8 allows provisional attachment of property during investigation stage. The Act's presumption provisions facilitate prosecution of complex round tripping structures. The legislation aligns India's anti-money laundering framework with FATF recommendations.[46]

The interface between these regulatory frameworks creates multiple enforcement channels against round tripping. Information sharing arrangements exist between RBI, Income Tax Department and Enforcement Directorate. The Financial Intelligence Unit-India serves as central repository for suspicious transaction reports. ODI transactions

[45] Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, §§ 3, 48, No. 22, Acts of Parliament, 2015 (India).
[46] Prevention of Money Laundering Act, 2002, §§ 3, 8, No. 15, Acts of Parliament, 2002 (India).

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undergo scrutiny through this multi-agency surveillance mechanism. The Common Reporting Standard enhances detection through automatic exchange of tax information. India receives financial account information from numerous jurisdictions including tax havens. This information enables authorities to identify unreported assets and income. The Automatic Exchange of Information agreements significantly reduce opacity in offshore structures. Regulatory authorities increasingly employ data analytics to identify suspicious patterns. This technological sophistication complements legal frameworks in detecting round tripping.[47]

VI. ROUND TRIPPING UNDER THE GRAB OF ODI – CASE STUDIES AND ENFORCEMENT ANALYSIS

A. Analysis of Landmark Enforcement Directorate (ED) Investigations

The Enforcement Directorate has conducted several high-profile investigations targeting round tripping through ODI structures. The ED's investigation into the Bank of Baroda case revealed sophisticated layering techniques. This 2015 investigation uncovered ₹6,000 crores transferred through complex ODI arrangements. The funds moved from India to Hong Kong through advance import remittances. These advances returned to India disguised as foreign investments in shell companies.

The investigation revealed involvement of over 59 companies in this circular routing. The ED utilized concurrent powers under FEMA and PMLA to track the money trail. Multiple shell entities across jurisdictions obscured the ultimate beneficial ownership. The case highlighted the misuse of banking channels for orchestrating round tripping. It demonstrated the interface between trade-based money laundering and ODI structures.

The investigation into the Punjab National Bank fraud case exposed another dimension of round tripping. This 2018 investigation targeted overseas subsidiaries established by Nirav Modi and Gitanjali Group. Shell companies in Hong Kong, Dubai, and Delaware

[47] Financial Intelligence Unit-India, Annual Report 2021-22, 45-47 (2022).

received ODI from Indian entities. These subsidiaries subsequently routed funds back to India through various channels. The ED's investigation revealed how Letter of Undertaking proceeds fueled this circular movement. The enforcement agency attached assets worth ₹2,400 crores under PMLA provisions. This case demonstrated how banking fraud proceeds underwent round tripping. The foreign subsidiaries lacked genuine business operations beyond paper transactions. Multiple jurisdictions created significant investigative challenges for the enforcement authorities. The ED overcame these hurdles through international cooperation mechanisms.[48]

The 2019 investigation into IL&FS Foreign Subsidiaries revealed systematic regulatory arbitrage. The investigation uncovered how Indian promoters established complex offshore structures. Subsidiaries in Singapore, UAE, and Mauritius received substantial ODI from the parent entity. These funds returned to India through various investment routes creating circular patterns. The ED's probe revealed inflated valuations used to justify offshore investments.

Special Purpose Vehicles in multiple jurisdictions created deliberate opacity. The investigation utilized forensic audit reports highlighting suspicious fund movements. It demonstrated the intersection between corporate governance failures and round tripping. The ED attached properties worth ₹570 crores belonging to key management personnel. This case highlighted how debt-ridden entities extracted value through circular fund movements.[49]

The ED's investigation into cryptocurrency exchanges uncovered innovative round tripping techniques. This 2021 investigation targeted WazirX and associated trading platforms. The probe revealed Indian residents transferring funds abroad under the LRS scheme. These funds purchased cryptocurrencies on foreign exchanges through layered

[48] Directorate of Enforcement v. Nirav Modi, ECIR/17/MZO/2018, Prevention of Money Laundering Act Special Court, Mumbai (May 24, 2019).
[49] Serious Fraud Investigation Office, Investigation Report on IL&FS Financial Services Limited (IFIN), § 4.2.3 (May 28, 2019).

transactions. The proceeds subsequently returned to India disguised as foreign investments.

The ED utilized specialized digital forensics to trace cryptocurrency transaction patterns. This investigation demonstrated adaptation of round tripping to emerging technologies. It highlighted regulatory gaps in monitoring digital asset transactions. The enforcement agency issued show-cause notices for FEMA violations worth ₹2,790 crores. The case represented new frontiers in round tripping detection and enforcement methodologies.[50]

The Yes Bank-DHFL investigation revealed round tripping through institutionalized lending channels. This 2020 investigation uncovered reciprocal investments between these financial institutions. The ED's probe revealed how loans from Yes Bank to DHFL returned as investments. Family-owned entities in UK and Mauritius facilitated this circular movement. The investigation utilized both FEMA and PMLA provisions tracking the fund trail.

It demonstrated corporate structures designed specifically for regulatory evasion. The enforcement authorities attached assets worth ₹2,203 crores during investigation. The ED's chargesheet detailed how legitimate banking channels facilitated round tripping. The case highlighted collusion between financial institutions in circumventing regulatory safeguards. It demonstrated sophisticated misuse of ODI provisions through apparently legitimate transactions.[51]

B. Case Study: Reliance and Jio Group ODI Structures

The Reliance and Jio Group's overseas investment structures represent complex legitimate business arrangements. These structures underwent regulatory scrutiny for potential round tripping concerns. The group established multiple subsidiaries across Singapore, UAE and European jurisdictions. These entities predominantly served

[50] Enforcement Directorate, Show Cause Notice to WazirX under FEMA, SCN No. T-3/CEZO-I/95/2021 (June 11, 2021).
[51] Enforcement Directorate, Provisional Attachment Order in Yes Bank-DHFL Case, Order No. 04/2020 under PMLA (May 22, 2020).

technological acquisition and global expansion objectives. RBI's examination focused on whether these structures facilitated round tripping. The regulatory review found predominantly legitimate business purposes behind the arrangements. The case demonstrated how complex multinational structures can withstand regulatory scrutiny. It established important parameters distinguishing legitimate complexity from abusive arrangements.[52]

The group's acquisition of foreign technology companies involved sophisticated ODI structuring. Jio Platforms Limited utilized Singapore and Netherlands-based subsidiaries for these acquisitions. The holding structure leveraged tax treaty benefits while addressing genuine business needs. These arrangements underwent scrutiny under the "substance over form" doctrine. The multiple corporate layers served legitimate liability protection and management objectives. Tax authorities examined whether these structures crossed into round tripping territory. The assessment highlighted the fine line between legitimate tax planning and abusive avoidance. This case established important precedents for technology-focused ODI arrangements.[53]

The regulatory examination of Reliance's energy sector investments revealed important distinctions. These investments involved genuine operational subsidiaries in regulated industries abroad. The foreign entities demonstrated substantial business operations beyond mere fund routing. Regulatory authorities distinguished between operating companies and holding structures. The investigation examined whether valuation methodologies reflected arm's length principles. Transfer pricing assessments found predominantly legitimate commercial arrangements. The case demonstrated how sector-

[52] Reserve Bank of India, Annual Report on Overseas Direct Investment 2019-20, 67-68 (2020), https://rbi.org.in/Scripts/Data_Overseas_Investment.aspx (last visited Apr. 10, 2025).
[53] Income Tax Appellate Tribunal, Reliance Industries Ltd. v. Additional CIT, ITA No. 4457/Mum/2016 (Nov. 15, 2018).

specific considerations influence round tripping assessments. It highlighted the importance of business substance in determining regulatory compliance.[54]

VII. COMPARATIVE LEGAL FRAMEWORKS – INTERNATIONAL PERSPECTIVES ON ROUND TRIPPING

Round tripping has emerged as a global regulatory concern attracting diverse legislative responses. Different jurisdictions approach this phenomenon through varied regulatory frameworks and enforcement mechanisms. The United States addresses round tripping primarily through its anti-tax avoidance regime. The Foreign Account Tax Compliance Act imposes stringent reporting requirements on foreign financial institutions. These institutions must disclose accounts held by US persons or face substantial withholding penalties. FATCA created unprecedented global transparency for detecting circular fund movements. The Internal Revenue Service employs substance-over-form doctrine when examining round tripping arrangements. Economic substance codification under IRC §7701(o) requires business purpose beyond tax benefits. The Judicial Anti-Avoidance Doctrine empowers courts to collapse abusive circular structures. These provisions create a robust framework targeting artificial arrangements lacking economic substance.[55]

The European Union tackles round tripping through its Anti-Tax Avoidance Directives. ATAD I and ATAD II establish minimum standards for preventing abusive tax arrangements. The directives target artificial arrangements designed to circumvent tax obligations. The General Anti-Abuse Rule permits member states to disregard non-genuine arrangements. Controlled Foreign Corporation rules prevent profit shifting through passive holding companies. These provisions specifically address circular investment patterns lacking business purpose. The EU's approach emphasizes economic

[54] Ministry of Corporate Affairs, Regional Director's Investigation Report on Reliance International Investments DMCC, File No. RD/NR/12436/2020 (Mar. 8, 2021), https://www.ril.com/sites/default/files/2023-03/Disclosure-Document-RSIL.pdf (last visited Apr. 10, 2025).

[55] Foreign Account Tax Compliance Act, Pub. L. No. 111-147, 124 Stat. 71, 97-117 (2010); Internal Revenue Code § 7701(o), 26 U.S.C. § 7701(o) (2018).

reality over legal formalities in cross-border transactions. The European Court of Justice's judgment in Cadbury Schweppes established the "wholly artificial arrangements" test. This decision distinguished between legitimate business structures and abusive arrangements. The Court emphasized that tax advantage seeking alone does not constitute abuse.[56]

China has implemented particularly stringent measures addressing round tripping concerns. The State Administration of Foreign Exchange monitors capital outflows and inward investments. Chinese regulations explicitly prohibit domestic funds returning as foreign investment. The "Circular 37" imposes registration requirements for offshore special purpose vehicles. It mandates disclosure of beneficial ownership in layered investment structures. The 2016 guidelines on outbound investments established enhanced scrutiny mechanisms. These regulations categorize investments into encouraged restricted and prohibited types. Investments returning to domestic markets face particular restrictions under this framework. Chinese authorities employ sophisticated monitoring of unusual transaction patterns. The regulatory approach targets the "fake foreign investment" phenomenon particularly aggressively.[57]

Singapore presents a contrasting regulatory philosophy emphasizing economic substance requirements. The Economic Expansion Incentives Act provides tax benefits for substantive business activities. These incentives require demonstrable economic commitments rather than paper arrangements. The Income Tax Act contains general anti-avoidance provisions targeting artificial structures. Section 33 empowers tax authorities to disregard arrangements lacking commercial purpose. Singapore's approach balances tax efficiency with substantive business requirements. The Economic Development Board actively monitors investment substance in incentivized sectors. The City-State's

[56] Council Directive 2016/1164, Anti-Tax Avoidance Directive, 2016 O.J. (L 193) 1 (EU); Case C-196/04, Cadbury Schweppes plc v. Commissioners of Inland Revenue, 2006 E.C.R. I-7995.
[57] State Administration of Foreign Exchange, Circular on Issues Relating to Foreign Exchange Administration of Overseas Investments by Domestic Residents through Special Purpose Vehicles, Huifa [2014] No. 37 (July 4, 2014).

regulatory philosophy emphasizes business-friendly environment while addressing round tripping. This approach has influenced India's evolving ODI regulatory framework significantly.[58]

The OECD has spearheaded international efforts addressing round tripping through multiple initiatives. The Base Erosion and Profit Shifting Action Plan specifically targets artificial arrangements. Action 6 addresses treaty abuse through principal purpose test and limitation of benefits. These provisions restrict treaty benefits for arrangements designed primarily for tax advantages. The Multilateral Instrument allows rapid implementation of anti-abuse provisions. Over 100 jurisdictions have adopted these provisions modifying bilateral tax treaties. The OECD's Common Reporting Standard facilitates automatic exchange of financial information. This information exchange system significantly reduces opacity in international transactions. Financial institutions across participating jurisdictions must report account holder information. These disclosures enable tax authorities to identify undeclared foreign holdings and potential round tripping.[59]

VIII. REGULATORY GAPS, CHALLENGES AND POLICY IMPLICATIONS

Despite robust regulatory frameworks, significant gaps persist in addressing round tripping through ODI. The fragmented regulatory architecture hampers comprehensive monitoring of circular fund movements. Multiple agencies oversee different aspects without seamless information sharing mechanisms. RBI monitors forex transactions while SEBI oversees listed company investments. The Income Tax Department examines tax implications of cross-border structures. The Enforcement Directorate investigates potential FEMA violations and money laundering. This regulatory fragmentation creates

[58] Economic Expansion Incentives (Relief from Income Tax) Act, 2005, c. 86 (Sing.); Income Tax Act, 2014, c. 134, § 33 (Sing.).

[59] OECD, Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 - 2015 Final Report (2015); OECD, Standard for Automatic Exchange of Financial Account Information in Tax Matters (2d ed. 2017).

siloed enforcement without holistic perspective. Companies exploit these jurisdictional gaps through strategic structuring of transactions. The absence of unified database impedes detection of complex round tripping arrangements. Coordinated action faces significant procedural and jurisdictional hurdles.

Beneficial ownership transparency remains a persistent challenge despite recent regulatory improvements. The current threshold for significant beneficial ownership under Companies Act stands at 10%. This threshold potentially allows distributed ownership structures to evade disclosure requirements. Multi-layered holding structures across jurisdictions further complicate beneficial ownership identification. Nominee shareholders and corporate directors create additional opacity layers. The Companies Act amendments mandating beneficial ownership disclosure represent positive steps. However implementation challenges persist particularly for cross-border structures. Foreign corporate registries often provide limited ownership information. Regulatory authorities lack direct access to beneficial ownership data in many jurisdictions. This opacity enables round tripping by concealing ultimate controllers behind complex structures.[60]

Valuation manipulation in ODI transactions creates significant enforcement challenges. Indian entities frequently utilize inflated valuations to justify excessive overseas investments. These inflated values enable larger capital outflows than economically warranted. Current regulations provide insufficient guidance on valuation methodologies for unlisted entities. This regulatory ambiguity permits subjective valuations facilitating round tripping. Tax authorities struggle to challenge such valuations without industry benchmarks. The arm's length principle faces practical implementation challenges in unique transactions. Enforcement agencies lack specialized valuation expertise for complex cross-border structures. This valuation opacity permits circular fund movements disguised as legitimate investments. International Financial

[60] Companies Act, 2013, § 90, No. 18, Acts of Parliament, 2013 (India); Companies (Significant Beneficial Owners) Rules, 2018, G.S.R. 561(E), Ministry of Corporate Affairs (June 13, 2018, amended Feb. 8, 2019).

Services Centres further complicate valuation verification through preferential regulatory regimes.[61]

IX. CONCLUSION

The legal and regulatory landscape governing round tripping through ODI reflects ongoing evolution. Indian regulatory authorities face sophisticated challenges that demand nuanced responses. The tension between facilitating legitimate business expansion and preventing regulatory arbitrage remains persistent. Round tripping detection requires looking beyond documentary compliance toward economic substance. Recent regulatory amendments demonstrate growing sophistication in addressing circular fund movements. The August 2022 ODI framework explicitly acknowledges round tripping concerns with targeted provisions. This regulatory evolution represents significant maturation in India's approach to cross-border investments.[62]

Judicial pronouncements have contributed substantially to the jurisprudential understanding of round tripping. The Supreme Court's observations in Vodafone established the crucial distinction between form and substance. This substance-over-form doctrine now permeates regulatory frameworks across agencies. The courts have consistently emphasized economic reality over technical compliance with regulations. This judicial wisdom has informed subsequent regulatory amendments addressing round tripping. The evolving jurisprudence provides valuable guidance for both regulators and regulated entities.[63]

Technology will inevitably shape future round tripping challenges and solutions. Digital assets, decentralized finance and cryptocurrency create novel regulatory challenges. Blockchain applications simultaneously present both opportunities and threats in this domain. Regulatory frameworks must adapt to technological developments with

[61] Reserve Bank of India, Report of the Committee to Review the Extant ECB Guidelines, 43-46 (2019).
[62] Foreign Exchange Management (Overseas Investment) Rules, 2022, G.S.R. 646(E), Ministry of Finance, Department of Economic Affairs (Aug. 22, 2022).
[63] Vodafone International Holdings B.V. v. Union of India, (2012) 341 ITR 1 (SC).

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predictive approaches. Big data analytics and artificial intelligence offer promising detection methodologies. Regulatory technology investments represent essential priorities for future enforcement effectiveness. Proactive technological adaptation will determine regulatory efficacy in coming decades.[64]

The interface between ODI regulations and international tax frameworks continues to evolve. BEPS implementation has significantly strengthened anti-avoidance provisions in tax treaties. The Principal Purpose Test creates new standards for cross-border investment structures. India's active participation in global tax initiatives demonstrates commitment to addressing round tripping. Future developments will likely focus on enhanced beneficial ownership transparency requirements. This regulatory direction aligns with global best practices on financial transparency. The international dimension of round tripping necessitates continued global coordination.[65]

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