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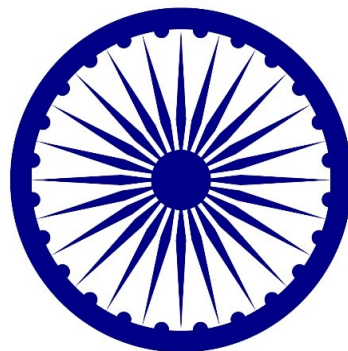
NEWSLETTER INDIA

ADDING VALUE

Issue:  
October 2020

Latest news on compliance, tax and business  
in India

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# Rödl & Partner

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## → Compliance News

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Santhosh Tantzsch  
Rödl & Partner (India)

Initiatives by the Indian Ministry of Corporate Affairs (MCA)

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In the continuous efforts to provide ease of doing business in wake of the pandemic situation of covid-19, the Ministry of Corporate Affairs (MCA) has provided extension of time/ relaxation for various compliances and introduced amendments such as:

- The 'Companies Fresh Start Scheme, 2020' (CFSS-2020) introduced by MCA and which was valid from 1 April 2020 to 30 September 2020, has now been extended to 31 December 2020. The CFSS-2020 is an opportunity for companies to file such belated returns and forms enlisted under the ambit of the scheme, with the Registrar without any additional fees and only normal fees will be payable during the currency of the Scheme (up till 31 December 2020). The CFSS-2020 also grants immunity from launching of prosecution or proceedings for imposing penalty on account of delayed filings of such forms. The Form DIR-3 KYC/ DIR-3 KYC WEB falls under the ambit of CFSS-2020 and accordingly the individuals who have been allotted Director Identification Number (DIN) on or before 31 March 2020 and have not filed Form DIR-3 KYC/ DIR-3 KYC WEB on or before 30 September 2020 (due date), can complete the filing till 31 December 2020 under CFSS-2020.
- Similarly, the LLP Settlement Scheme, 2020, which is an amnesty scheme for LLPs and provides for filing belated forms without additional fees, has been extended up till 31 December 2020.
- The scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 has been extended up till 31 December 2020. The scheme benefit is available to a company or charge holder for charge created or modified before 1 March 2020 but where the due date for filing such forms for charge creation/modification has not expired in accordance with the Companies Act, 2013, as on 1 March 2020 or if the due date for filing such forms falls on any date between 1 March 2020 and 31 December 2020.
- The companies are allowed to conduct Extraordinary General Meeting through video conference or other audio visual means for items other than ordinary business up to 31 December 2020 and within the framework and modalities provided in the previous circulars of the MCA dated 8 April 2020 and 13 April 2020.
- The MCA has further allowed board meetings to be held for the approval of annual financial statements, Board's report, prospectus, matters relating to amalgamation, merger, demerger, acquisition and takeover to be carried out through video conferencing or other audio visual means up till 31 December 2020.
- The Registrar of Companies (RoC) of 25 (twenty-five) jurisdictions have issued orders wherein it has suo-moto granted an extension by a period of three months from the due date for holding Annual General Meeting (AGM) for companies whose financial year ends on 31 March 2020. The RoCs have also clarified vide the order that order grants extension to companies which have filed applications in the requisite form (viz. Form GNL-1) for extension of AGM and which are yet to be approved as well as companies which have filed applications in the requisite form for extension of AGM and which were rejected. The MCA had vide circular dated 17 August 2020 stated that companies which are unable to hold their AGM for financial year ending 31 March 2020 are required to file an application in the requisite form (viz. Form GNL-1) and advised RoCs to take a liberal view of the hardships faced by stakeholders granting extension of time (up to 3 months) for holding AGM in such applications made. However, MCA subsequently vide Press Release dated 8 September 2020 stated that directions were issued to RoCs to issue such orders for extension of AGM without any formal application or fees paid in this regard.
- The MCA vide notification dated 24 August 2020, introduced the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 amending the CSR Rules, 2014. The amendment allows any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business to undertake research and development activity of new vaccine, drugs and medical devices related to

covid-19 for financial years 2020-21, 2021-22 and 2022-23 subject to certain conditions laid down and such activity could be part of the CSR Policy of the company.

## Company Secretarial (CS) compliances for Private Limited Company

Below is the summary of the compliances which need to be adhered to in the next quarter (October-December 2020)

Particulars	Due Date
Hold at least one Board Meeting in quarter Oct-Dec 2020	- 31 December 2020
Hold subsequent Annual General Meeting (AGM)  (The companies having financial year 2019-20 have been granted an <b>extension by a period of 3 (three) months from the due date for holding the subsequent AGM</b> )	- 31 December 2020
Form AOC-4	- 30 days from AGM
Form MGT-7	- 60 days from AGM
Form MSME-I  (Half year return for 1 April 2020 to 30 September 2020)	- 31 October 2020

## Foreign Direct Investment (FDI) Policy

The Ministry of Commerce & Industry, vide Press Note No. 3 (2020 Series) dated 17 April 2020 reviewed the extant FDI Policy. As per the Press Note, a citizen of or an entity incorporated in any country which shares land borders with India (i.e. China, Nepal, Bhutan, Bangladesh, Myanmar, Pakistan and Afghanistan or the “Neighboring Countries”), or where the beneficial owner of an investment into India is situated in, may invest in India only under the Government Route, i.e. with a prior approval from the Government of India.

Further, vide Press Note, in case of any transfer of ownership of any existing or future FDI in an entity in India, which may, directly or indirectly, result in beneficial ownership to be situated in the Neighboring Countries, such subsequent change in beneficial ownership also requires a prior Government Approval.

This Amendment is effective from 22 April 2020, vide notification S.O. 1278 (E) dated 22 April 2020 by Ministry of Finance.

## Insolvency and Bankruptcy Code (Second Amendment) Act, 2020

The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 has been effective from 5 June 2020. The said Amendment has inserted a new section 10A in the Insolvency and Bankruptcy Code 2016 to temporarily suspend initiation of Corporate Insolvency Resolution Process (CIRP) under Section 7, 9 & 10 of the Code for a period of six months from 25 March 2020. Further, Ministry of Corporate Affairs, vide Notification S.O. 3265(E) dated 24 September 2020, has further extended the temporary suspension on initiation of CIRP for another three months i.e. uptill 25 December 2020. No application for initiation of CIRP under section 7, 9, and 10 of the Code shall be filed for any defaults taking place from 25 March 2020 to 25 December 2020.

## Consumer Protection Law

The Ministry of Consumer Affairs, Food and Public Distribution has introduced Consumer Protection Act 2019, which has been notified vide notification number S.O. 2351(E) dated 15 July 2020 to come in force as from 20 July 2020. Under the Consumer Protection Act 2019, the Ministry has introduced the following:

- Prohibiting misleading endorsements/advertisement of any Products
- Prohibiting any unfair contracts entered into between a manufacturer/trader/service provider and a consumer.
- Codified Product Liability which may be imposed on a manufacturer or seller of a product that has caused harm upon usage, due to no fault of the consumer, for reasons like defect in manufacturing or inadequacy or inaccuracy in instructions of the product.
- Established a Consumer Mediation Cell at the District, State and National level, for consumers.
- Increased the jurisdiction of the District State and National Consumer Dispute Redressal Commission, which widens the ambit of the complaints that are eligible to be addressed by each Commission.

In addition to the above mentioned, the Ministry, vide notification G.S.R. 462(E) dated 23 July 2020 has also introduced Consumer Protection (e-commerce) Rules 2020 to include commercial activities, and prevent its misuse from

the consumer's point of view. Under the Rules, the Ministry has placed various obligations and duties on the Marketplace and Inventory e-commerce entities.

## Employment Law Updates

1. Ministry of Labour and Employment vide notification G.S.R 432 (E) dated 4 July release draft Code of Wage 2019 and notified that the said draft of Code of Wages shall be taken into consideration after the expiry of a period of 45 days from such notification. Further, the ministry, vide this notification, invited objections and suggestions to be submitted to [ma.khan15@nic.in](mailto:ma.khan15@nic.in) or [r.bolimeri@nic.in](mailto:r.bolimeri@nic.in)

Ministry of Labour and Employment vide Press Release dated 22 September 2020 notified that the Parliament has passed the three Bills

in order to categorize the labour laws within 4 codes. The Bills passed are: Industrial Relations Code, 2020, Code on Occupational Safety, Health & Working Conditions Code 2020 and Social Security Code 2020. The 4<sup>th</sup> Code, i.e. Code on Wages, has already been passed in 2019. The above mentioned codes are said to amalgamate 29 Labour Laws.

## Contact for further information



Santhosh Tantzschler  
[santhosh.tantzschler@roedl.com](mailto:santhosh.tantzschler@roedl.com)

## → Tax News

### Transfer Pricing

Gauri Bivare,  
Rödl & Partner (India)

#### CBDT issues detailed guidance on mutual agreement procedure

The Central Board of Direct taxes ('CBDT') vide its Notification No. F.No. 500/09/2016-APA-I dated 7 August 2020, has issued a detailed guidance for the benefit of the taxpayers, tax practitioners, tax authorities, competent authority ('CA') of India and treaty partner, for implementing the mutual agreement procedure ('MAP').

In essence, a MAP is an alternate tax dispute resolution mechanism available to the taxpayers under the Double Tax Avoidance Agreement ('DTAAs') for resolving disputes giving rise to double taxation or taxation not in accordance with DTAAs, including transfer pricing disputes.

Almost all DTAAs entered into by India have the MAP Article, and it provides for an additional dispute resolution mechanism offered to taxpayers, in addition to those already available under the Indian tax laws.

This MAP guidance is divided in following four sections:

- Introduction and basic information;
- Access to and denial of access to the MAP;
- Technical issues; and
- Implementation of MAP outcomes.

Further, this guidance follows the introduction of Rule 44G of the Income Tax Rules, 1962 ('the Rules'), as notified on 6 May 2020, which provided for the process to be followed by the Indian CA and by the filed authorities to implement the outcome of the MAP.

Accordingly, this guidance provides a much needed clarity to all the stakeholders, for the approach to be followed, and towards an effective implementation of MAP.

Revision in format of form 3CEB, as prescribed for reporting of international and specified domestic transactions

The CBDT vide its Notification No. 82/2020/F. No. 370142/30/2020-TPL dated 1 October 2020, has

revised the format of Form 3CEB prescribed under Rule 10E of the Rules. This particular Form is furnished as an Accountant's Report under section 92E of Income tax Act, 1961 ('the Act'), by persons who have entered into an international transaction and/or a specified domestic transactions ('SDTs').

This particular revision in the old format of Form 3CEB is primarily made to give effect to the amendments carried out in the provision specified for the meaning of SDTs under section 92BA of the Act.

These respective amendments involved deletion of transactions contained in section 40A(2)(b) within the meaning of SDTs, and insertion of sub-clause (va) in section 92BA, to cover transactions entered between the persons referred to in sub-section (6) of section 115BAB (which provides for lower tax rate for new

manufacturing companies) within the ambit of SDTs.

It is worthwhile to note that disclosure pertaining to reporting of International transactions in old format vis-à-vis new format of Form 3CEB remains unchanged.

Contact for further information



Gauri Bivare  
[Gauri.bivare@roedl.com](mailto:Gauri.bivare@roedl.com)

## → Tax News

### Indirect Tax

Anand Khetan  
Rödl & Partner (India)

#### GST Developments and Associated Procedures

#### **1. The decisions taken in the 42<sup>th</sup> GST Council Meeting**

The following decisions, inter alia, were taken by GST Council in the 42<sup>th</sup> meeting chaired by the Hon'ble Finance Minister of India through video conferencing:

- Levy of Compensation Cess to be extended beyond the transition period of five years i.e. beyond June 2022, for such period as may be required to meet the revenue gap.
- With a view to further enhance Ease of Doing Business and improve the compliance experience, the Council has approved the future roadmap for return filing:
  - Due date of furnishing quarterly GSTR-1 by quarterly taxpayers to be revised to 13<sup>th</sup> of the month succeeding the quarter w.e.f. 1 January 2021.
  - Auto-population of liability from own GSTR-1 and input tax credit from suppliers' GSTR-1s through the newly developed facility in FORM GSTR-2B for monthly filers w.e.f. 1

January 2021 and for quarterly filers w.e.f. 1 April 2021.

- In order to ensure auto population of ITC and liability in GSTR 3B, FORM GSTR 1 would be mandatorily required to be filed before FORM GSTR3B w.e.f 1 April 2021.
- The present GSTR-1/3B return filing system to be extended till 31 March 2021 and the GST laws to be amended to make the GSTR-1/3B return filing system as the default return filing system.
- As a further step for the small taxpayers having aggregate annual turnover less than INR 50 Million, the Council's earlier recommendation of allowing filing of returns on a quarterly basis with monthly payments by such taxpayers to be implemented w.e.f. 1 January 2021. Such quarterly taxpayers would, for the first two months of the quarter, have an option to pay 35 per cent of the net cash tax liability of the last quarter using an auto generated challan.
- Requirement of declaring HSN for goods and SAC for services in invoices and in FORM GSTR-1 w.e.f. 1 April 2021 has been revised where HSN/SAC at 6 digits for supplies of both goods and services for taxpayers with aggregate annual turnover above INR 50 Million and HSN/SAC at 4 digits for B2B supplies of both goods and

services for taxpayers with aggregate annual turnover upto INR 50 Million is supposed to be declared in the invoices and GSTR-1. This change would again entail a requirement to alter the IT systems of suppliers for including the HSN Code/SAC codes at the required digit levels on the invoices/returns.

## **2. Gujarat High Court decision upholding the levy of GST on Intermediary Services**

The Constitutional validity of the levy of GST on such Intermediary Services was challenged before the Hon'ble Gujarat High Court in case of Material Recycling Association of India Vs Uol (2020-TIOL-1274-HC-AHM-GST) wherein the Hon'ble High Court has upheld the levy of GST on intermediary services provided from India to a customer outside India.

However, considering the wider implication on business, it has directed the revenue authorities to consider the representation received from the taxpayers in respect of the levy.

## **3. Conflicting High Court decisions on refund of GST on account of inverted duty structure**

Whether the refund of input tax credit in respect of input services shall be considered or not for the purpose of calculating the refund entitlement of a taxpayer filing refund of GST on account of inverted duty structure was the question raised before the Hon'ble High Court.

The Hon'ble Gujarat High Court in case of VKC Footsteps India Pvt. Ltd. [TS-585-HC-2020(GUJ)-NT] has held that the restrictions introduced in Rule 89(5) of the CGST Rules are not contemplated under Section 54 of the CGST Act and hence the restrictions under Rule 89(5) are ultra vires to the Section 54. Thus, it was held that ITC on input services shall be included for the purpose of calculating the refund claim under inverted duty structure.

However, the Hon'ble Madras High Court in case of Transtonelstroy Afcons Joint Venture [TS-800-HC-2020(MAD)-NT] did not agree with the findings of Hon'ble Gujarat High Court and held that the restrictions under Rule 89(5) of CGST Rules are not ultra vires and held that ITC on input services shall not be considered for the purpose of calculating the refund of inverted duty structure.

The above conflicting cases would result in continuation of the said dispute further and may get clarified only at the level of the Apex Court.

## Important Notifications issued during the quarter

### **1. Date Extension - Annual Return and Reconciliation Statement**

Vide Notification No. 69/2020-Central Tax dated 30 September 2020, the Government has further extended the due date for conducting GST audit and for submission of Form GSTR 9 and Form GSTR 9C (Annual Return and Reconciliation Statement) for FY 2018-2019 till 31 October 2020. It should be noted that the trade chambers and other associations have been representing to the Government for an extension up to 31 December 2020 for carrying out the said compliances.

### **2. Extension of Exemption on Transportation of Exported Goods**

Vide Notification No. 04/2020-Central Tax (Rate) dated 30 September 2020, the Government has extended the exemption from payment of GST available on transportation of goods by either aircraft or vessel from customs station of clearance in India to a place outside India (that is, transport cost for export of goods from India) from September 2020 to September 2021.

### **3. Notifications related to E-Invoicing**

Vide Notification 61/2020-Central Tax dated 30 July 2020, the liability to mandatorily generate E-Invoice would be applicable to taxpayers having turnover above INR 5 Billion in the last financial year (instead of INR 1 Billion). Further, considering the initial phase of implementation during the period from 1 October 2020 to 31 October 2020 shall follow a special procedure wherein the Invoice Reference Number can be obtained by uploading specified particulars in Form GST INV-01 within 30 days from date of issuance of invoice.

Vide Notification 71/2020-Central Tax dated 30 September 2020, the date for implementation of E-invoicing for the specified registered persons supplying to end customer directly has been extended from 1 October 2020 to 1 December 2020.

Additionally, vide Notification 60/2020-Central Tax dated 30 July 2020, the CGST Rules, 2017 were amended to incorporate Form GST INV-01 along with the specifications of the said form which would be utilised for generation of E-Invoice by the registered taxpayers.

#### 4. Notifications related to monthly/ quarterly compliances under GST

Vide Notification 58/2020–Central Tax dated 1 July 2020, a facility to upload GSTR 3B and GSTR 1 through a short messaging service using the registered mobile number is provided to the tax payers for filing of NIL returns.

Vide Notification 59/2020–Central Tax dated 13 July 2020 and Notification 64/2020–Central Tax dated 31 August 2020, the date for filing of GSTR – 4 by composition tax payers was further extended to 31 October 2020.

#### 5. Other Updates

Vide Notification 62/2020–Central Tax dated 20 August 2020, Aadhaar authentication has been made mandatory while obtaining a new registration under Section 25 of the CGST Act. Further, in case the person trying to obtain a registration is not able to authenticate Aadhaar, then the registration would be provided subject to physical verification of the place of business.

Vide Notification 63/2020–Central Tax dated 25 August 2020, Section 100 of the Finance (No. 2) Act, 2019 has been made effective from 1 September 2020. The said section, amends Section 50 of the CGST Act, where the interest would be levied on the net tax liability which would be debited from the electronic cash ledger in place of the gross tax liability. Further vide administrative instruction dated 18 September 2020 has clarified that such amendment would be effective from 1 July 2017.

Vide Notification 65/2020–Central Tax dated 1 September 2020, the time limit for completion of any proceeding, passing of order, issuance of any notice/intimation etc. by an authority or filing of any appeal, reply or application or furnishing any report, document, statement which falls between 20 March 2020 to 29 November 2020 has been extended till 30 November 2020.

Customs and Foreign trade policy related developments

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#### 1. Implementation of CAROTAR, 2020

The Central Board of Indirect Taxes and Customs (CBIC) on 21 August 2020 notified under Notification No. 81/2020–Customs(NT) that the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('CAROTAR 2020') requiring detail disclosures by importers to claim concessional duty benefits under trade pacts such

as Foreign Trade Agreements would come into force on 21 September 2020.

Accordingly, in order to claim preferential rate of duty under a trade agreement, the importer or his agent would, at the time of filing the bill of entry:

- Make a declaration in the bill of entry that the goods qualify as originating goods for a preferential rate under a trade agreement;
- Indicate in the bill of entry the respective tariff notification against each item on which a preferential rate of duty is claimed;
- Produce the certificate of origin covering each item on which a preferential rate is claimed; and
- Enter details of the certificate of origin in the bill of entry including the reference number, date of issuance, originating criteria, etc.

Vide Circular No. 42/2020–Customs dated 29 September 2020, it was further clarified that all importers including Authorized Economic Operator are required to submit 100 per cent of differential customs duty as a security for provisional assessment if inquiry is initiated in terms of Rule 5 of CAROTAR 2020.

#### 2. Compulsory registration under Steel Import Monitoring System ('SIMS')

Vide Notification No. 33/2015–2020, dated 28 September 2020, all imports under the Chapter 72, 73 and 86 of ITC (HS), 2017 would be required to be registered under SIMS. Further, vide Public Notice No. 19/2015–2020 dated 28 September 2020, the Bill of Entries filed for goods covered by the above notification after 16 October 2020 would compulsorily require a registration under SIMS.

#### 3. Withdrawal of MEIS Scheme

Vide Notification No. 30/2015–2020 dated 1 September 2020, the benefit under MEIS for the exports made in the period 1 September 2020 to 31 December 2020 would be limited to INR 20 Million per existing IEC. Further, the existing IEC holder who has not exported goods during the period from 1 September 2019 to 31 August 2020 or new IEC obtained on or after 1 September 2020 would not be eligible to claim benefit under the MEIS Scheme. Further, from 1 January 2021, the MEIS scheme would be withdrawn.

The ceiling limit of INR 20 million may be subject to further downward revision to ensure that the total claim does not exceed allocation prescribed by Government of INR 50 billion.



#### 4. Measures towards contactless assessments

Vide Circular No. 32/2020-Customs dated 6 July 2020, it is clarified that the registration of Authorized Dealer Code and bank account can be updated through ICEGATE portal.

The importer was required to visit physically for debit of bond after bill of entry is returned to the importer for payment of customs duty. However, now such debit in the bond will be done automatically in ICES and same will be reflected in first copy of bill of entry.

Vide Circular No. 34/2020-Customs dated 30 July 2020, 2<sup>nd</sup> Phase of Faceless Assessment was implemented w.e.f. 3 August 2020 at notified ports for import of goods falling under prescribed Chapter Headings.

Additionally, vide Circular No. 41/2020-Customs dated 7 September 2020, Auto Let Export Order under Express Cargo Clearance System (ECCS) is allowed for Courier Shipping Bills filed for clearance of export goods under ECCS which will be subjected to scrutiny under Risk Management System.

#### 5. Other Updates

Vide Notification 90/2020-Customs(NT) dated 17 September 2020, Bill of Entry (Forms) (Amendment) Regulations, 2020 has been made applicable from 21 September 2020 where the Form I, II and III as per Bill of Entry (Forms) Regulations, 1976 has been amended.

Vide Notification 75/2020-Customs(NT) dated 17 August 2020, Manufacture and Other Operations in Special Warehouse Regulations, 2020 has been notified. These regulations would be applicable to all the units that operate under Section 65 or apply for permission to operate under Section 65, with a license for special warehouse under Section 58 of the Customs Act.

Contact for further information



Anand Khetan  
[anand.khetan@roedl.com](mailto:anand.khetan@roedl.com)

## → Tax News

### Direct and International Taxation

Juhi Gera  
Rödl & Partner (India)

TCS on sale of goods applicable from 1 October 2020

With a view to widen the tax-net, the Indian government (vide the Finance Act, 2020) has extended the scope of Tax Collected at Source ("TCS") provided under Section 206C of the Income-tax Act, 1961 (ITA). As per the extended scope, tax is required to be collected at source on foreign remittances under the Liberalized Remittance Scheme, sale of overseas tour package and on **sale of goods by specified seller (exceeding a specified limit)**. Such extended scope is applicable from 1 October 2020.

Regarding TCS on sale of goods, it is applicable on every seller whose total sales, gross receipts or turnover from his business exceeds INR 100 million in the immediately preceding Financial

Year (FY). Specified seller who receives any amount as consideration for sale of any goods aggregating to INR 5 million or more in a FY from a buyer, at the time of receipt of such amount is required to collect TCS at the rate **0.1 per-cent** on the sale consideration exceeding INR 5 million as income-tax. Further, as a covid-19 relief measure, till 31 March 2021, lower rate of TCS at the rate of **0.075 per-cent** shall be applied instead of 0.1 per-cent.

The Indian Government vide circular no. 17 of 2020 dated 29 September 2020 has clarified (inter alia) that, TCS is required to be collected at the time of receipt of sales consideration. Threshold of receipt of sales consideration of INR 5 million for applicability of TCS shall be computed based on sales from 1 April 2020. Further, no adjustment for sales return, discount or indirect taxes including Goods and Service Tax is required to be made for calculation of TCS on sale of goods. To know more, read our newsflash on this topic.

[Read more »](#)

## The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 received the Presidential assent on 29 September 2020. It has, inter alia, enacted the relaxations provided earlier in timelines amid covid-19 pandemic to ease the tensions of missing deadlines under various statutory laws. For details of relaxations now enacted, please refer to our newsflash on Ordinance introduced in March 2020. [Read more »](#)

Other key highlights of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 are as follows:

- Inserts provisions to legislate and support faceless assessment scheme with effect from 1 November 2020 empowering the Central Government to notify schemes for faceless processes by eliminating physical interface to the extent technologically feasible
- Amends the Direct Tax Vivad se Viswas Act, 2020 to extend the date for payment “without additional amount” to 31 December 2020
- Provides 100 per cent deduction for donation made to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (“PM CARES FUND”)
- Provides reduction in rates for deduction or collection of tax at source in respect of certain transactions by 25 per cent for the period from 14 May 2020 to 31 March 2021.

## Electronic assessment and appeal scheme

Pursuant to the launch of platform, “Transparent Taxation – Honouring the Honest” and with an objective to enable greater efficiency, transparency and accountability, an E-Assessment Scheme was notified in September 2019. Now, the Indian Government vide notification no. 60/2020 dated 13 August 2020 amended the E-Assessment Scheme, 2019 to new ‘Faceless Assessment Scheme, 2019’.

The key amendments of the Faceless Assessment Scheme 2019 inter alia include extending the scope of e-assessments to best judgement assessments, amendments in procedural aspects, levying penalty and transfer of concluded penalty proceedings to the jurisdictional officer for further action, provides option for requesting personal hearing subject to approval by Chief Commissioner or Director General of Income-tax (specified circumstances for personal hearing yet to be prescribed).

Further, the Indian Government had introduced a new provision vide the Finance Act, 2020 for conducting faceless appeal proceedings before the Commissioner (Appeals). On 25 September 2020 vide notification no. 76 & 77, the Indian Government has provided the procedure of the Faceless Appeal Scheme, 2020 wherein it notified, inter alia, cases that shall be covered under the Faceless Appeal Scheme. Further, it is envisaged that all the communications under this Scheme shall be made electronically; there shall be no physical interface between the taxpayer or their counsel and the tax department. However, the appellant may request for personal hearing (subject to approval).

## Extension in due date for filing Tax Return for Financial Year (“FY”) 2018-19

Considering the genuine difficulties faced by the taxpayers due to the outbreak of covid-19 pandemic, the Central Board of Direct Taxes (‘CBDT’) has further extended due-date for filing belated/revised return for FY 2018-19 to 30 November 2020.

## Banks not to levy charges on transactions made through prescribed electronic modes

In order to encourage digital economy and move towards a less-cash economy, Finance (No. 2) Act, 2019 introduced a new section 269SU ITA, whereby every person carrying on business and having total sales, turnover or gross receipts of more than INR 500 million during the preceding financial year (“specified person”) shall mandatorily provide facilities for accepting payments through prescribed electronic modes. Further, a new provision was also introduced in Payment and Settlement Systems Act 2007 (PSS Act), which provides that no Bank or system provider shall impose any charges on a payer making payments or a beneficiary receiving payment through the electronic modes prescribed under section 269SU ITA (effective from 1 January 2020).

However, representations were received that some banks were still imposing and collecting charges on transactions made through the prescribed electronic modes. In this regard, CBDT vide circular no. 16 of 2020 dated 30 August 2020 has clarified that such practice on part of banks is a breach of the provisions of PSS Act and section 269SU ITA, attracting penal provisions under both PSS Act and ITA. Banks were advised to refund any charges collected on transactions carried out through prescribed electronic modes, on or after 1 January 2020 and not to impose any charges on such transactions.

Contact for further information

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Juhi Gera  
[juhi.gera@roedl.com](mailto:juhi.gera@roedl.com)

## → Tax News

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### International Tax Updates

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Chetan Kakariya  
Rödl & Partner (India)

#### MasterCard ruling on expanded Equalization Levy

MasterCard Asia Pacific Pte. Ltd. (MasterCard) had filed a writ petition before the Delhi High Court (Delhi HC) against the 2018 ruling of Authority of Advance Ruling (AAR). The 2018 ruling of AAR had held that MasterCard has a Permanent Establishment (PE) in India.

Earlier this year, the Indian Government has widened the scope of Equalisation Levy (EL) to include “e-commerce supply or services” provided by a non-resident e-commerce operator, under its purview. A non-resident e-commerce operator is required to pay two per cent EL on value of e-commerce supply or service, on quarterly basis. Further, if a non-resident e-commerce operator, providing the specified service, has a PE in India and the specified service is effectively connected with such PE, no EL shall be charged.

Pending disposal of writ petition filed by MasterCard on PE issue, it approached Delhi HC to avail stay on payment of EL, since AAR had already held that MasterCard has a PE in India. In response to the notice issued by Delhi HC tax department filed an affidavit stating that it is bound by the AAR ruling and as such, it has no authority or desire to collect EL from MasterCard, since MasterCard would pay tax on income effectively connected to the PE upheld by AAR. Further, it was also made clear that MasterCard would be liable to pay EL along with statutory interest for the period of delay, in case it is finally

held by Delhi HC that MasterCard does not have a PE in India.

#### Vodafone wins \$2 billion tax arbitration case against Indian Government

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The tax dispute between the Indian Government and Vodafone Group dates back to 2007, when Vodafone acquired the Indian mobile assets from Hutchison Whampoa. Due to this acquisition, the Indian Government insisted Vodafone to pay certain taxes, which Vodafone Group challenged. In 2012, the Supreme Court of India (SC) ruled in favor of Vodafone Group. However, the Indian Government, in the same year, introduced retrospective amendments in law, which made the SC ruling redundant.

Aggrieved by such action of the Indian Government, the Vodafone Group initiated arbitration proceedings against the Indian Government and it filed a claim in Hague-based International Court of Justice (“ICJ”) against the Indian Government with respect to retrospective amendments to the ITA. Vodafone contended that India Government violated the India-Netherlands Bilateral Investment Promotion & Protection Agreement (“BIPA”).

ICJ ruled that the India Government, by not following the SC ruling, has breached “the guarantee of fair and equitable treatment” of BIPA. Accordingly, there is an obligation on India to cease seeking dues from Vodafone. Also, India Government should reimburse the legal representation cost to Vodafone.

## French Supreme Court ruling on beneficial ownership in context of dividends.

The taxpayer company (Resident in France) paid dividends to its parent company (Based in Luxembourg) without withholding the tax at source by availing the Parent-Subsidiary Directive (PSD) exemption. However, French revenue authorities denied such exemption.

The PSD, inter alia, provides that the withholding tax exemption is only available for profit distributions made by qualifying EU subsidiaries to their qualifying EU parents.

The Supreme Administrative Court (SAC) noted that, the French law implementing the PSD prescribes that the withholding tax exemption applies, if the EU recipient is the beneficial owner of the dividends. SAC referred to the decision of Court of Justice of the European Union (CJEU) in a so-called Danish case, wherein it was explicated that directives such as the PSD are designed to ensure that the profits distributed by the subsidiary company to its parent company are not subjected to double taxation. However, the CJEU had stated that such mechanisms are not intended to apply, when the beneficial owner of the dividends is a company having its tax residence outside the EU. It also referred to sub-clause 3 of Article 1 of the PSD, which states that “The provisions of 1 do not apply when the dividends distributed benefit a legal person controlled directly or indirectly by one or more residents of States which are not members of the Community, unless this legal person justifies that the chain of participations does not have as main object or as one of its main objects to take advantage of the provisions of 1” .

SAC noted that in the present case, the distribution was made to a Swiss bank account; however, the taxpayer failed to provide minimum substantive evidence such as a bank identity statement, establishing that the parent company was indeed the holder of the Swiss bank account. Hence, upholding the order of the lower authorities, SAC denied the PSD exemption.

In light of increased thrust of tax authorities across the globe on anti-abuse provisions and implementation of Multilateral Instrument in terms Base Erosion and Profit Shifting measures, this ruling holds importance.

## SC recommends for revamp of Advance Ruling System reduce litigation

Recently, the SC adjudicated a 44-year-old case of National Co-Operative Development Corporation vs. Commissioner of Income-tax (Civil Appeal Nos. 5105-5107 of 2009).

While delivering the verdict as a postscript, the SC recommended to the Government to revamp the Advance Ruling system on account of ever-increasing number of dockets. Taxation is one of the largest area for litigation for the Government, wherein the petition rate before the SC by the tax authorities is 87 per cent. The SC recommended to the Indian Government to consider the efficacy of the advance ruling system and make it more comprehensive as a tool for settlement of disputes.

The increasing number of applications pending before AAR on account of its low disposal rate due to lack of adequate number of presiding officers to deal with the cases. Since the time taken by the AAR on an average basis is 4 years, the basic purpose of providing an advance ruling is defeated.

As per the SC, a vibrant system of Advance Ruling can be helpful in reducing taxation litigation. Further, SC also suggested re-considering the ceiling limit of INR 100 million set in for making any application by a resident to AAR.

## Refund of taxes on non-taxable offshore supplies

The Bangalore bench of the Income Tax Appellate Tribunal (ITAT) in the case of ABB AB v. DCIT (ABB AB) [ITA No. 464/Bang/2018 and 2878/Bang/2019] held that the taxpayer is eligible for refund of taxes deducted from payments for non-taxable offshore supplies.

ABB AB, a tax resident of Sweden, claimed a refund of tax deducted at source (TDS) from payment for offshore supply contract, on the basis that offshore supply was not taxable in India. The tax officer, considering provisions of section 199 ITA read with Rule 37BA of the Income Tax Rules (Rules), denied the credit for TDS on the basis that corresponding income (i.e. income from the offshore supply) was not offered to tax. Section 199 ITA provides that any deduction made as per the provisions of the ITA would be treated as payment of tax on behalf of the person from whose income the deduction is made. Rule 37BA provides that credit for TDS shall be given for the year, in which such income is assessable.

The ITAT noted that receipts under the offshore supply contract were not chargeable to tax in India. Therefore, ABB AB was eligible for refund of TDS on the offshore supply receipts.

This reaffirms the principle that the taxpayer is entitled to claim refund of any TDS suffered in respect of income not taxable in India.

## Contact for further information



Chetan Kakariya  
[chetan.kakariya@roedl.com](mailto:chetan.kakariya@roedl.com)

## → Accounting/Audit News

### Business Process Outsourcing

Gaurav Jain  
Rödl & Partner (India)

#### Guidance Note on the Companies (Auditor's Report) Order, 2020

Companies (Auditor's Report) Order, 2020 (CARO 2020) was issued on 25 February 2020 by The Ministry of Corporate Affairs. The Order comes into effect for financial year 2020-21 onward as a result of one year deferral notification dated 24 March 2020. The Order contains significant changes and several new reporting requirements. In order to clarify the requirement in initial stage, the Auditing and Assurance Standards Board of ICAI undertook the revision of the Guidance Note on CARO 2016 to provide appropriate guidance on new requirements on 13 June 2020. The major clarification has been provided in the area of Property, Plant and Equipment, Intangible assets and Immovable property.

Consequently, companies now have to alter their existing systems and processes to comply with the new requirement laid down in CARO, 2020.

#### Re-inventing Finance Process and Internal Control in Work from home due to covid-19

We have now been working from home for a significant time period and the situation is expected to be in status-quo for foreseeable future. Especially, the support functions such as finance team, HR and office administration staff may not join back soon to avoid large numbers of employees at office.

However, the businesses has started to re-vamp across the industries; warranting a relook into our processes and controls in such environment from different perspective. For example: How are approvals taking place, where are vendors invoices centralized etc. Some

guidance on business finance processes and structuring which company can now start looking with new perspective to standardize is as below:

- a. Approval Matrix and Method:
  - Check all methods of approval documented in various process; see which areas need an added option of email approval
  - Remove all physical vouchers approval requirement from documented process manual, if any, under Internal Financial Control (IFC issued by MCA)
  - Re-visit the approval limits and authorizations designed in the previous environment and change to current crisis requirement including cost-effectiveness objectives
  - Send an email clarification to all employees directing that, no approvals are done on apps not used for business purpose such as 'WhatsApp' etc.; otherwise this will result in problems during audit process
- b. Documentary management system
  - Check whether the soft copies documentary management system for invoices, agreement etc. is in place
  - Ensure important physical documents i.e. signed contract, licence etc. during this period have been archived properly
  - Lay down the unambiguous documentary management policy with assigned responsible person and timelines for update
  - Ensure the documents are timely saved on required designated path/server and proper mechanism are placed for assurance.
- c. Process re-structuring
  - Check all the processes which are becoming a bottleneck due to requirements based on previous business environment

- Ensure the digital transformation required in various areas for effective control, maintain future oriented approach.
- Re-structure cross-functional, centralized, and old-fashioned activities and roles
- Proper communication to all the employees at different location about the emerging changes in process and instruction to be followed

In addition to above, any company also needs to look into various other process such handover processes from exiting employees, HR and administration related matters as well to avoid any issue once the industry is returns from current work from home environment.

We would emphasis companies to create a proper checklist and step plan for each vertical and understand the current experience over the last few months and plan future course of action for restructure.

Contact for further information



Gaurav Jain  
[gaurav.jain@roedl.com](mailto:gaurav.jain@roedl.com)

## → Country Introduction: Rödl & Partner in Mexico

Our Office in Mexico was founded in the year 2011.

Today we have 57 colleagues, Mexican and German Professionals, in three offices: in our main office Puebla, in the capital Mexico City and in Querétaro.

### Audit

Our certified auditors provide all audit services, from auditing the HB I according to Mexican rules and audits of HB II according to IFRS and German GAAP till Financial Due Diligences and advisory.

### BPO

We carry out Financial Accounting, Payroll, Bank transactions services, Reportings and advisory.

### Contact Persons

Audit	BPO	Tax	Legal	Customs
<a href="#">Jan Adams</a>	<a href="#">Jan Adams</a>	<a href="#">Roberto Gonzáles</a>	<a href="#">Moritz Deppe</a>	<a href="#">Roberto Gonzáles</a>

### General Director

Dr. Dirk Oetterich, LL.M.  
[dirk.oetterich@roedl.com](mailto:dirk.oetterich@roedl.com)

### Hot Topics

Audit	BPO	Tax	Legal	Customs
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### Tax

We provide the entire tax compliance range, like monthly and annual tax returns, Transfer Pricing studies as well as Tax Due Diligences and advisory. Within our tax team, we have got a dedicated customs advisory team.

### Legal

Our own lawyers are specialists in corporate law, trade law, employment law, trademark law and others. Further, we have experience in Legal Due Diligences and M&A transactions.

Fraud Risks/Checks HB I Audits HB II Audits (IFRS/HGB) Reviews Digitalization in Audit Financial DD	Accounting Digitalization (RDoX, Port.) BPE/Process Management Financial Statements	Monthly/Annual tax Compliance Tax DD Transfer Pricing BEPS DTA/Structuring	Legal DD/M&A Corporate Law Trade Law Employment Law Trademark law Renewable Energy	Customs USMCA (Free Trade Agreement North America) Customs VAT issues Import registrations
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Rödl & Partner Consulting Pvt. Ltd.  
Lunkad Sky Cruise, Wing B  
Survey No 210/3,  
Viman Nagar  
Pune – 411 014  
T +91 20 6625 7100 | [www.roedl.com/india](http://www.roedl.com/india)

**Responsible for the content:**

Martin Wörlein  
[martin.woerlein@roedl.com](mailto:martin.woerlein@roedl.com)

**Editing:**

Karuna Advani  
[karuna.advani@roedl.com](mailto:karuna.advani@roedl.com)

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