

# Rödl & Partner

## NEWSLETTER INDIA

## ADDING VALUE

Issue:  
January 2020

Latest news on compliance, tax and business  
in India

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Santhosh Tantzsch  
Rödl & Partner (India)

### COMPANY LAW UPDATES

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Key changes brought in the Company Law and rules thereof

#### 1. Online Proficiency Self- Assessment Test of Independent Directors

In order to ensure the integrity of independent directors, the Ministry of Corporate Affairs (MCA) issued the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 (Amendment Rules) which came into force from 1 December 2019. As per these Amendment Rules, every individual who has been appointed as an independent director or who intends to get appointed as an independent director shall apply online to the Indian Institute of Corporate Affairs for inclusion of his name in the databank created and maintained by the institute. Such inclusion can be done for a period of one year, five years or a life-time till the individual continues to hold the office of an independent director in any company.

Once the name has been included in the said databank, such individual shall pass an online proficiency self-assessment test conducted by the Institute within a period of one year from the date of inclusion of his name in the databank. A score of not less than 60 per cent in aggregate in the test shall be considered as the passing score for the test. There is no limit on the number of attempts to pass the test. Non-compliance of this requirement shall result in removal of name of the individual from the databank.

An individual who has served as a director or a key managerial personnel for a period of not less than ten years in a listed public company or in an unlisted public company having paid-up share capital of rupees hundred million or more, shall not be required to take the test.

#### 2. Ministry of Corporate Affairs (MCA) Compliance Monitoring System

The MCA has newly introduced an Artificial Intelligence based Compliance Monitoring System (CMS) for companies in India, named "MCA

CMS". This has the aim of avoiding and detecting any non-compliance under Companies Act, 2013 and rules thereunder.

In case a company fails to comply with any provisions, the MCA CMS portal shall send a show-cause notice to such non-compliant company, Director or the Company Secretary via email, for which a reply to the notice is to be sent by the company within fifteen days from the date of such notice.

In case the company fails to send the reply to such notice, the Registrar of Companies shall initiate penal action for non-compliance of the provision of the Companies Act, 2013 and rules thereunder. At present, there have been notices issued for non-compliance of the provisions of Annual General Meeting and of Secretarial Audit under Section 96 and Section 204 respectively.

#### 3. Amendment in regard to appointment of whole-time Company Secretary for companies and Secretarial Audit

The Ministry of Corporate Affairs (MCA), vide notification dated 3 January 2020, amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, which are effective from the financial year commencing on or after 1 April 2020.

Prior to such notification, there was a requirement to appoint a whole-time Company Secretary for a company with paid up share capital of INR 50 million or more.

With the introduction of this notification, now the threshold limit for the requirement to appoint a whole time Company Secretary has changed and is on every company with paid up share capital of INR 100 million or more.

There have also been certain changes in terms of conducting secretarial audits. Prior to such notification, it was every public company having paid up share capital of INR 500 million or more, or every public company having turnover of INR 2500 million or more were required to annex a secretarial audit report to their board's report.

With the introduction of this notification, in addition to the previous thresholds, every company including private companies having outstanding loans or borrowings from banks or public financial institutions of INR 1000 million or more will be required to annex Secretarial Audit Report to their board's report.

#### 4. Consequence of non-filing of e-form ACTIVE (Active Company Tagging Identities and Verification)

The Ministry of Corporate Affairs (MCA) amended the Companies (Incorporation) Rules vide notification dated 16 October 2019 wherein another consequence of non-filing of e-form ACTIVE was introduced in addition to the existing consequences. The newly introduced consequence states that the companies which are marked as 'ACTIVE non-compliant would not be able to file e-form DIR- 12 (for the intimation of the appointment of a new director) other than in case of cessation of any director, appointment of directors in such company where the total number of directors are less than the minimum number required on account of disqualification of all or any of the director, appointment of any director in such company where Director Identification Number(s) of all or any it's director(s) have been deactivated.

#### 5. Shift of the registered office of a company within the same State from the jurisdiction of one Registrar of Companies (RoC) to the jurisdiction of another RoC

The Ministry of Corporate Affairs (MCA) vide its notification dated 16 October 2019 also introduced rules relating to application made to the Regional Director for sifting the registered office of a company within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies. The Regional Director may upon examining such an application give its orders without hearing the order either approving or rejecting the application within fifteen days of receipt of the application. The certified copy of the order of the Regional Director, approving the transfer of registered office of the company within the same State, shall be filed in e-form INC-28 with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

#### 6. Extension of deadline for filing BEN-1 and BEN-2.

The MCA vide circular dated 1 January 2019 has extended the due date for filing of Form BEN-1 and e-form BEN-2 up to 31 March 2020 without payment of additional fees.

#### COMPANY SECRETARIAL (CS) COMPLIANCES FOR PRIVATE LIMITED COMPANY

Below is the summary of the compliances which needs to be adhered to in the next quarter (Jan-Mar 2020):

Sr. No	Particulars	Due Date (2020)
1.	Hold at least one Board Meeting in quarter Jan-March 2020 (Gap between previous board meeting and this meeting should not be more than one hundred and twenty days)	31 March
2.	Form AOC- 4 (Annual Accounts)	29 January (If AGM was held on 31 December)
3.	Form MGT-7 (Annual Return)	29 February (If AGM was held on 31 December)
4.	Form BEN-1 and BEN- 2	31 March
5.	Form MSME- I (Due early in the following quarter for the period 1 October 2019 to 31 March 2020)	30 April

#### EMPLOYMENT LAW UPDATES

**Now the Payment of Wages Act, 1936 applies to all shops and commercial establishments in the state of Karnataka**



The Government of Karnataka has notified that the all the provisions of the Payment of Wages Act,

1936 (the Payment of Wages Act) shall be applicable to all the employers and employees in all establishments which are covered under the Karnataka Shops and Commercial Establishment Act, 1961. The relevant notification in this regard was issued by the Karnataka Government as on 17 October 2019. The consequential impact of this is that now additional obligation is casted on all the employers to meet the compliances as prescribed under the Payment of Wages Act which widely include timely payment of wages, fixing of wage-periods, permissible deductions, maintenance of records and registers. Any non-compliances of the provisions may result in penal consequences. It is pertinent to note that the provisions of the Payment of Wages Act currently applicable to all employees earning wages up to INR 24,000 per month.

### **Bombay High Court takes a stand on criminal liability of directors under the Bombay Shop and Establishment Act, 1948**

The Bombay High Court in the case of Mr. Om Prakash Bhatt v/s State of Maharashtra in dealing with a criminal writ petition filed under the erstwhile Bombay Shop and Establishments Act, 1948 has clarified that not every director of the company shall be held criminally liable for the alleged violations resulting from non-compliances under the Shop and Establishments Act. The Bombay High Court placed a reliance on the definition of “employer” as given under section 2(7) of the Shop and Establishments Act. Accordingly it was held that for the purpose of imposing criminal liability with regard to the offences committed by the company, the same shall not be imposed on all directors but only those persons having the charge of affairs of the company. Further, there must be a clear averment to the effect that such a concerned director/s were in charge of the affairs of the establishment as a precondition for holding them liable resulting from such violations.

### **THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) 2019**

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On 28 December 2019, the Insolvency and Bankruptcy Code (Amendment) Ordinance 2019 (Ordinance) was promulgated to further amend the Insolvency and Bankruptcy Code.

2016 (the Code) with a view to remove certain ambiguities and ensure smooth implementation of the Code. A notable objective of the Ordinance is:

To provide immunity against prosecuting corporate debtor. The amendments provide that the liability of a corporate debtor for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process (CIRP) shall cease. The corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not:

- 1. A promoter or in the management or control of the corporate debtor or a related party of such a person; or**
- 2. A person with regard to whom the relevant investigating authority, has a reason to believe that he had abetted or conspired for the commission of the offence and based on material in support of the same, a report is already submitted to the relevant statutory authority or Court for its consideration.**

### **CONTACT FOR FURTHER INFORMATION**

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

## → Tax News

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### Transfer Pricing

Tillmann Ruppert,  
Rödl & Partner India/Nuremberg

#### ADVANCE PRICING ARRANGEMENT (“APA”) STATISTICS

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Central Board of Direct Taxes (“CBDT”) has published its third Annual Report (FY 2018-19) in the month of November 2019.

As per the report, fifty Advance Pricing Arrangements out of which forty one Unilateral and eleven Bilateral were signed during the FY 2018-19. Therefore, total number of Advance Pricing Arrangements signed are two hundred and seventy one (two hundred and forty Unilateral and thirty one Bilateral).



This Indian Advance Pricing Arrangement programme has been appreciated nationally and internationally as complex transfer pricing issues which were prone to long drawn litigation are being increasingly resolved through Advance Pricing Arrangements. A reduction by approximately eight hundred and ninety litigations (either in Income Tax Appellate Tribunal or in courts) was achieved due to Advance Pricing Arrangements entered into so far.

Central Board of Direct Taxes Annual Report states that even though revenue collection is not the primary objective of the Indian APA Programme, it is estimated that two hundred and seventy one signed Advance Pricing Arrangements have resulted in additional income of about INR 100 billion and it resulted in tax payment of INR 36 billion without getting into litigation or there being any dispute.

#### CONTACT FOR FURTHER INFORMATION

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Tillmann Ruppert  
[tillmann.ruppert@roedl.com](mailto:tillmann.ruppert@roedl.com)

→ Tax News

## Indirect Tax

Anand Khetan  
Rödl & Partner (India)

### GST DEVELOPMENTS AND ASSOCIATED PROCEDURES

#### 1. Annual Return and GST Audit for FY 17-18-deferred

With the intent to simplify the return filing procedure, various fields of Annual Return (GSTR-9) and Reconciliation Statement (GSTR-9C) have been made optional by the Government Vide Notification 56/2019- Central Tax dated 14 November 2019.

As the taxpayers were facing certain technical problems, the due date of filing both the returns i.e. GSTR-9 & GSTR-9C for FY 2017-18 has been extended to 31 January 2020 vide Order No. 10/2019-Central Tax dated 26 December 2019.

Due date of filing GSTR-9 & GSTR-9C for FY 2018-19 has been extended to 31 March 2020.

#### 2. Refund Procedure- Made Fully Electronic



In order to eliminate human intervention and expedite procedures for claim of refunds, Central Board of Indirect Taxes and Customs (CBIC) has made the entire system for filing of refund claims automated.

In this regard, the board has issued Circular No. 125/44/2019 GST, which is very comprehensive and will supersede all other GST refund Circulars (issued before this Circular) and will govern refund filed on and after 26 September 2019. Further, the refund claims filed before

26 September 2019 will be governed by the earlier Circulars.

### IMPORTANT NOTIFICATIONS ISSUED DURING THE QUARTER

#### 1. E-Invoicing

Vide Notification No. 70/2019 – Central Tax dated 13 December 2019, the Government has made E-invoicing mandatory for businesses having turnover of INR 1 billion or more. It shall be effective from 1 April 2020.

Vide Notification No. 69/2019 – Central Tax dated 13 December 2019 Government has notified ten web portals managed by GSTN which can be used for issuance of E-invoice. Further, vide Notification No. 72/2019- Central Tax Quick Response (QR) code will be mandatory from 1 April 2020 for B2C invoices if aggregate turnover in a financial year exceeds INR 5 billion.

#### 2. Optional Annual Return Filing

Vide Notification No. 47/2019 – Central tax dated 09 October 2019, the Government has made filing annual return in Form GSTR-9 optional for F.Y 2017-2018 and F.Y 2018-2019 for registered suppliers having a turnover up to INR 20 million.

#### 3. Restriction on claim of ITC

The Government had issued Notification No. 49/2019 – Central tax dated 09 October 2019, to amend Rule 36. As per amended Rule 36, the input tax credit availed by a registered person based on invoices/debit notes not uploaded by the supplier cannot exceed 20 per cent of the amount of input tax credit available to the said registered person in respect of invoices/debit notes uploaded by its supplier. The Rule 36 was further amended to tighten the restriction on the input tax credit available in respect of invoices/debit notes not updated vide Notification No. 75/2019- Central Tax dated 26 December 2019. The cap of 20 per cent input tax credit is reduced to 10 per cent with effect from 1 January 2020.

Vide Notification No. 75/2019-Central Tax dated 26 December 2019, Rule 86A has been introduced wherein the proper officer not below the rank of Assistant Commissioner can restrict the debit of an amount in the Electronic Credit Ledger

for discharge of liability under Section 49 or for

claim of refund of any unutilised amount in case of prescribed circumstances such as invoice based on which input tax credit is availed is received from a non-existing supplier, receipt of invoices without receipt of goods, the tax mentioned in the invoices by the supplier is not paid by the supplier, etc.

Upon satisfaction of the fact that conditions for disallowing the debit in Electronic Credit Ledger no longer exist, the proper office may allow such debit entries. Further, such restriction shall cease to have effect after expiry of one year from the date of imposition of such restriction.

#### 4. Timelines to furnish Form GSTR 1 and GSTR-3B

Vide Notification No. 44, 45, 46/2019 – Central Tax dated 9 October 2019 and on account of deferment of the new system of filing GST returns, the Government has proposed the following dates for filing returns during October 2019 to March 2019:

- GSTR 3B – by the twentieth day of the following month
- GSTR 1 – as tabulated below:

Period	Aggregate turnover < INR 1.50 Crores	Aggregate turnover > INR 1.50 Crores
October 2019	Return for the quarter by 31 January 2020	11 November 2019
November 2019		11 December 2019
December 2019		11 January 2020
January 2020	Return for the quarter by 30 April 2020	11 February 2020
February 2020		11 March 2020
March 2020		11 April 2020

#### IMPORTANT CIRCULAR ISSUED DURING THE QUARTER

Central Board of Indirect Taxes and Customs had initially issued Circular No. 107/26/2019-GST dated 18 July 2019 providing for clarification on in relation to various doubts related to supply of Information Technology enabled Services (ITeS services) under GST. The said Circular has been

withdrawn *ab initio* vide Circular No. 127/2019 – GST dated 4 December 2019.

Central Board of Indirect Taxes and Customs (CBIC) has issued a Circular No. 130/2019- GST dated 31 December 2019 to clarify the confusion in the industry on applicability of Reverse Charge mechanism on renting of motor vehicles. The Circular clarifies that the RCM would be applicable only in following case

- **Supplier:** Any person other than Body Corporate
- **Recipient:** A Body Corporate
- **Invoice by Supplier:** Should not carry any GST on the invoice
- **Liability:** On recipient to discharge 5 per cent GST.
- **Cost of fuel:** Cost of fuel is included in the price charged

Vide Circular No. 113/2019 dated 11 October 2019, Central Board of Indirect Taxes and Customs has clarified that parts classified under HS Code of Chapter 84, 85 and 94 such as Solar Evacuated Tube, etc. used for manufacture of solar water heater system will attract 2.5 per cent GST under Sl. No. 234 of Notification No. 1/2017-Central Tax (Rate) as a part for manufacture of solar power based devices.

Vide Circular No. 115/2019-Central Tax dated 11 October 2019, it is clarified that airline is not required to charge GST on the Passenger Service Fees, User Development Fee, etc. collected from the passenger if it satisfies the condition of “Pune Agent” as per Rule 33 of the CGST Rules, 2017. Further, it is clarified that the registered passenger who is ultimate recipient of the airport services may take ITC of the GST paid on said charges on the basis of “Pure Agent’s” invoices issued by the airline operator to them.

Vide Circular No. 116/2019 dated 11 October 2019, it is clarified that placing of name plates of donor in the premises of charitable organisations does not involve the business activity of donor being advertised. Thus, no GST would be leviable.

Vide Circular No. 118/2019-Central Tax dated 11 October 2019, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware/test kits in a composite supply, where such testing is an ancillary supply, would be the location of the service recipient as per Section 13(2) of the IGST Act which would be outside India and provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

Vide Circular No. 121/2019-Central Tax dated 11 October 2019, it is clarified that grant of licenses by the State Governments as an agreement between the Centre and States has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

Vide Circular No. 122/2019-Central Tax dated 5 November 2019, quoting of Document Identification Number (DIN) on communication issued by Officers of Central Board of Indirect Taxes and Customs to the tax payer is made effective in cases such as search authorization, summons, etc. except certain circumstances which are prescribed in the said circular. Further, it is clarified that any specified communication without DIN shall be treated as invalid and deemed to have never been issued.

Further, vide Circular No. 128/2019-Central Tax dated 23 December 2019, quoting of Document Identification Number has been made effective for every communications including

emails sent to the tax payer. Further standard format for communication are being prescribed which are made effective from 1 January 2020. It is reiterated that any communication without Document Identification Number except circumstances prescribed in circular dated 5 November 2019 shall be treated as invalid and shall deemed to have never been issued.

## 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)

### TAXATION LAWS (AMENDMENT) ACT, 2019 PASSED

In September 2019, the Indian government had introduced the Taxation Laws (Amendment) Ordinance, 2019 ('Ordinance') significantly reducing the corporate income tax rate for domestic companies (22 per cent/15 per cent) subject to fulfillment of certain conditions. The Ordinance has now been enacted with few modifications on 11 December 2019 as Taxation Laws (Amendment) Act, 2019 ('TLA'). The key provisions of Taxation Laws (Amendment) Act, 2019 are given hereunder in brief:

- **Clarity regarding set off and carry forward of loss:** the companies availing lower tax rate of 22 per cent shall not be allowed to set off of loss or depreciation brought forward from earlier years, if such loss or depreciation is attributable to any of the exemptions/benefits which are required to be foregone to avail the lower tax rate, for example, loss/unabsorbed depreciation attributable to additional depreciation, profit linked incentive for Special

Economic Zone (SEZ) units, investment/project linked incentives, etc shall not be allowed to be carried forward and set off once the lower tax rate is availed by the company.

- **Computation of Written Down Value ('WDV') of fixed assets:** if a company has unabsorbed depreciation on account of additional depreciation and it opts for lower tax rate of 22 per cent, the company will be allowed to make an adjustment in the Written Down Value of the block of assets as on 1 April 2019, i.e. the companies will be allowed to re-compute and increase WDV of the asset as on 1 April 2019.
- **Mandatory surcharge for companies availing concessional income-tax rate:** for companies availing the lower tax rates of either 22 per cent or 15 per cent, surcharge of 10 per cent shall apply irrespective of amount of total income.
- **Clarification on concessional tax rate of 15 per cent for new manufacturing companies:** where the total income of such companies includes income, which is neither derived nor is incidental to manufacturing or production of an article or thing and in respect of which no specific rate of tax has been provided, such income shall be taxed at the rate of 22 per cent and no deduction or allowance in respect of any

expenditure or allowance shall be allowed in computing such income.

- **Rationalization of Minimum Alternate Tax ('MAT') provisions:** companies opting for lower tax rates of 22 per cent or 15 per cent shall not be required to pay Minimum Alternate Tax. For other companies, the Minimum Alternate Taxes rates have been reduced from 18.5 per cent to 15 per cent.

You can read in detail in our [newsflash report](#).

## CBDT PRESCRIBES THREE NEW ELECTRONIC MODES FOR ACCEPTING PAYMENTS

In order to encourage digital economy and move towards a less-cash economy, Finance (No. 2) Act, 2019 introduced a new section 269SU in the Income-tax Act, 1961 ('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.

Central Board of Direct Taxes ('CBDT') vide Notification no. 105/2019 dated 30 December 2019 has now prescribed three mandatory modes for accepting payments electronically by such specified person, in addition to facilities provided by such person, with effect from 1 January 2020 namely:

- Debit Card powered by RuPay
- Unified Payments Interface (UPI) (BHIM-UPI)
- UPI Quick Response Code (UPI QR Code) (BHIM-UPI QR Code)

In case, specified persons fail to provide such facility to accept payments in prescribed electronic modes, a penalty of INR 5,000 per day shall be levied.

To allow sufficient time to the specified person to install and operationalise the facility for accepting payments through the prescribed electronic modes, the penalty shall not be levied if the specified person installs and operationalizes the facilities on or before 31 January 2020.

## DIN MANDATORY IN CORRESPONDENCE ISSUED BY INCOME-TAX DEPARTMENT

Presently, almost all notices and orders issued by Income-tax department are being generated electronically on the Income Tax Business Application ('ITBA') platform. However, instances

have been noted where the notice, order, summons, letter and any correspondence ("communication") were issued manually, without maintaining a proper audit trail of such communication.

In order to prevent such instances and to maintain proper audit trail of all communication, Central Board of Direct Taxes vide circular no. 19/2019 dated 14 August 2019 has mandated quoting of a computer-generated Document Identification Number ('DIN') in the body of such communication for all communications issued by any Income-tax department on or after 1 October 2019.

Central Board of Direct Taxes has also specified exceptional circumstances where the communication can be issued manually but only after recording reasons in writing and obtaining prior approval of Chief Commissioner/Director General of Income-tax. Exception circumstances inter alia can be: technical difficulties in generating/allotting/quoting the DIN and issuance of communication electronically or issues due to delay in Permanent Account Number ('PAN') migration; etc.

Any communication not in conformity of with the prescribed guidelines of CBDT shall be treated as invalid and shall be deemed to have never been issued.

The communication, if issued manually shall have to be regularized within fifteen working days of its issuance as per procedure prescribed by the Central Board of Direct Taxes.

## TIME LIMIT EXTENDED FOR APPLYING FOR COMPOUNDING OF OFFENCES IN PROSECUTION CASES

Central Board of Direct Taxes has been issuing guidelines from time to time for compounding of offences in prosecution cases under Direct Tax Laws.

Cases were brought to the notice of the Central Board of Direct Taxes, that taxpayers could not apply for Compounding of Offences, when the compounding application was filed beyond twelve months.

With a view to mitigate unintended hardship to taxpayers in deserving cases, and to reduce the pendency of existing prosecution cases before the courts, the Central Board of Direct Taxes in September 2019 had relaxed this time limit to 31 December 2019, i.e. compounding application could be filed with the concerned authorities by this date, even where the twelve months' timeline lapsed.

With a view to give a final opportunity to taxpayers and to reduce pendency of prosecution cases before Courts, this time limit further stands extended to 31 January 2020.

## IND-SWISS AGREE TO ENHANCED COOPERATION IN FIGHTING TAX EVASION

The Indian and Swiss government secretaries met in India in November 2019 to further discuss and extend their cooperation in the fight against offshore tax evasion. CBDT vide press release dated 13 November 2019 informs that the secretaries have expressed satisfaction over the progress made over the past few years in the area of administrative assistance in tax matters.

While reiterating their countries' commitment to global tax transparency for tackling offshore tax evasion, the secretaries encouraged the competent authorities of the two countries to have continuous dialogue to further enhance the cooperation under the India-Switzerland Double Taxation Avoidance Agreement ('DTAA').

The secretaries also exchanged views on addressing the challenges arising out of digitalization of the economy and agreed that coordinated international actions, as in the case of tax base erosion and profit shifting project, are central to achieving a consensus-based long-term solution that leads to desired tax certainty and sustainable development.

## NEW DTAA WITH CHILE AND REVISION OF DTAA WITH BRAZIL

The government has approved signing of protocol to the DTAA between India and Brazil. It has further given a nod to signing of the DTAA and Protocol between India and Chile. The aim for entering into such DTAA and the amending protocol is to incorporate the minimum standards (like preamble test, a principal purpose test, a general anti-abuse provision, simplified limitation of benefits, etc.) and other recommendations of G20 OECD Base Erosion Profit Shifting (BEPS) Project in the DTAA(s).

This will help in eliminating double taxation and prevent fiscal evasion and avoidance with respect to taxes on income by restricting tax planning strategies which exploit gaps and mismatches in tax rules between the countries.



## CBDT RELEASES SYNTHESISED TEXT FOR TREATIES MODIFIED BY MLI

Central Board of Direct Taxes has released synthesised text for treaties modified by the Multilateral Instrument ('MLI'), which India had deposited with the OECD on 25 June 2019.

Central Board of Direct Taxes had published such synthesised texts for MLI modified DTAA's with Japan, UAE, Singapore, Serbia, Finland, Slovakia, UK, Austria, Australia, Lithuania, Ireland and Poland.

Similarly, the government of Japan, UK, Australia and Poland have also issued synthesised texts for the MLI modified DTAA with India.

The sole purpose of synthesised text is to facilitate the understanding of the application of MLI to the respective DTAA. Such synthesised text does not constitute the source of law. The authentic legal texts of the DTAA and the MLI shall take precedence and remain the legal texts applicable.

## CONTACT FOR FURTHER INFORMATION



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

## → Accounting/Audit News

### Business Process Outsourcing

Aafreen Athani  
Rödl & Partner India

#### MONTHLY MIS REPORTING/REPORTING TO MANAGEMENT

The MIS- Monthly Information System report or the monthly reporting to the management provides concise view of the accounting and various other related parameters to the Management of the Company.



The Monthly Information System (MIS) report is an informational document which provides information on the financial health of the company. The basic MIS reports usually include the monthly Balance Sheet, Profit and Loss account, and the monthly statement of Cash Flow. This management report may be monthly, quarterly or half - yearly as per the client requirements. These Monthly Information System reports help the management evaluate their business's daily activities, track the accounting numbers and make decisions for the company for its growth and development.

Specially for the foreign-invested companies the Monthly Information System reporting for its subsidiary is of paramount importance since it gives the picture of the financial numbers for its subsidiary and provides a sense of control to the parent company. The Monthly Information System reporting of the Indian subsidiary is usually requested by the foreign management either in accordance with the Indian Accounting Standards or as per the Foreign Accounting Standards or as per the IFRS (International Financial Reporting Standards).

Although the majority of the accounting principles and procedures under both are same but there are some carved-out differences that

need attention. It is important to know that there are certain differences in these accounting GAAPs (Generally Accepted Accounting Principles)- the Indian GAAP and the Foreign GAAP/IFRS. If the parent company wants the MIS reporting of its Indian subsidiary in other than Indian Generally Accepted Accounting Principles then there are certain adjustments that needs to be taken care of with respect to the financial numbers of such subsidiary. In such a scenario the Group Accounting Policy of such group company is important. The accounting adjustments are to be taken care of by comparing the local Accounting Policy with that of the Group Accounting Policy. Also if there is a specific MIS reporting format at the Group level then the same needs to be followed for reporting the numbers of the local entity.

Let's take an example of an Indian subsidiary the parent company of which is in Germany. If the parent company wants the MIS of its Indian subsidiary in accordance with the German Generally Accepted Accounting Principles, then following are some of the adjustments that needs to be taken care of:

#### **Adjustment for Depreciation:**

Many times under the Group Accounting Policy it is required that Fixed Assets under a certain threshold are to be written off immediately instead of providing the monthly depreciation in the said reporting period. Under the Indian Accounting Standards no such specific requirement exists and hence assets are capitalised and depreciated according to the Indian Companies Act. However for Monthly Information System reporting purpose an adjustment for the differences as noted must be undertaken and accordingly the depreciation under both the Generally Accepted Accounting Principles will be different.

#### **Adjustment for Foreign Exchange Transactions:**

As per the Group Accounting Policy the month-end open foreign receivables and payables are to be restated as per the defined foreign exchange rates which are usually the German Interbank Forex Rates. Under the Indian Accounting Standards however there is no specific requirement to use forex rate from any particular source for the restatement of its foreign outstanding. The only requirement is to consistently use the same source for the foreign exchange rates. However it is important to note that under the Indian Tax

requirements certain governmental sources for forex rates are required to be followed. Hence the same is to be taken care of. An adjustment for these differences must be made in the MIS reporting. Owing to these differences the resultant forex exchange gain or loss under both the Generally Accepted Accounting Principles will be different.

Needless to mention an effective reconciliation of the accounting numbers under both the Generally Accepted Accounting Principles should be maintained so as to have better control on the accounting numbers and reporting of the Indian entity. A Monthly Information System reconciliation sheet for reconciling the differences of the financial numbers for the both the Generally Accepted Accounting Principles would be helpful for any future reference.

## CONTACT FOR FURTHER INFORMATION



Aafreen Athani  
[aafreen.athani@roedl.com](mailto:aafreen.athani@roedl.com)

## Imprint

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Roedl & Partner Consulting Pvt. Ltd.  
Lunkad Sky Cruise, Wing B  
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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:**  
Anuradha Joshi  
[anuradha.joshi@roedl.com](mailto:anuradha.joshi@roedl.com)

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