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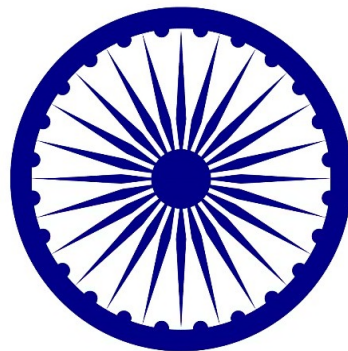
NEWSLETTER INDIA

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### Company Law Updates

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1. Introduction of New Scheme for condonation of delay for companies restored on the Register of Companies by MCA:
  - Ministry of Corporate Affairs(MCA) had earlier introduced the Companies Fresh Start Scheme, 2020 (CFSS-2020) vide General Circular No. 12/2020, dated 30 March 2020 which was initially applicable for the period starting from 1 April 2020 to 30 September 2020, which was further extended till 31 December 2020.
  - MCA now released another General Circular No. 30/2020 dated 15 January 2021, stating that CFSS is no longer applicable for these filings under the Companies Act 2013 beyond 31 December 2020.
  - However, at the same time, MCA received many representations by companies who had filed an appeal under section 252 of the Companies Act, 2013 before the National Company Law Tribunal (NCLT) for restoration against the order of striking off their company names. Since such companies could not avail the benefit of filing under the CFSS-2020 by 31 December, 2020 and would otherwise be liable to be levied additional fees upon filing overdue e-forms, as a result MCA introduced a new scheme „**Scheme for condonation for delay for companies restored on the Register of Companies between 1 December, 2020 and 31 December, 2020 under Section 252 of the Companies Act, 2013**“ (Condonation Scheme). The purpose of this Condonation Scheme is to condone the delay in filing e-forms with the Registrar, with respect to charging of additional fees on account of delay in such filing at the same time without any immunity from civil/ criminal proceedings. This Condonation Scheme is applicable to companies restored on the Register of Companies between 1 December 2020 and 31 December 2020 under Section 252 of the Companies Act, 2013.
  - The Scheme shall be applicable in respect of all e-Forms, except where any increase in authorized capital is involved (e-Form SH-7) and charge related documents (e-Forms CHG-1, CHG-8 and CHG-9).
2. MCA has introduced relaxation of additional fee in filing all AOC-4 e-forms
  - Vide General Circular No. 04/2021 dated 28 January 2021, MCA had imposed relaxation of levy of additional fees in filing e-Forms AOC-4, AOC-4(CFS), AOC-4 XBRL and AOC -4 Non-XBRL for the financial year ended on 31 March 2020. No additional fees were payable up to 15 February 2021.
3. Clarification on holding of Annual General Meeting (AGM) through video conferencing or other audio visual means (OAVM)
  - MCA in continuation of its General Circular No. 20/2020, dated 5 May 2020 , has issued a new General Circular No. 02/2021 dated 13 January 2021 to allow companies whose AGMs were due to be held in the year 2020, or become due in the year 2021, to conduct their AGMs on or before 31 December 2021, in accordance with the requirements provided in paragraph 3 and 4 of General Circular No. 20/2020. Further, it is also clarified that this present new General Circular shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013, and the companies which have not adhered to the relevant timelines shall remain subject to legal action under the Companies Act, 2013.
4. MCA has further notified certain sections of the Companies Amendment Act, 2020
  - MCA has further notified certain sections of the Companies Amendment Act, 2020 with effect from 21 January 2021, 22 January 2021, 11 February 2021, 5 March 2021. Amongst other sections notified under the Companies (Amendment) Act, 2020, the main highlights are as follow:
    - a. Section 62(1) of the Companies Act,2013 is amended to reduce the mandatory time line of 15 days to shorter period as may be prescribed to the existing shareholders for the purpose of acceptance of offer of subscribing to share capital proposed to be issued by the company.

- b. New section 129-A has been inserted which deals with requirement of periodical financial results for such class or classes of unlisted companies, as may be prescribed : to prepare the financial results of the company on such periodical basis and in such form as may be prescribed; to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and to file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed

5. Notification of amendments in various Companies Rules have been notified by MCA.

- MCA vide notification dated 22 January 2021 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 for CSR Implementation, among other things, where every entity who intends to undertake any CSR activity shall register itself with the Central Government by filling the e-Form CSR-1 with the Registrar, with effect from 1 April 2021.

- The amendment in Companies (Incorporation) Rules, 2014, via notification dated 1 February 2021, shall come into force on 1 April 2021 which allows for conversion of One Person Company (OPC) into a Public company or a Private company after altering its memorandum and articles by passing a resolution and making necessary changes as well as increasing the minimum number of members and directors and maintaining the minimum paid-up capital as per the requirements and also shall file an application in e-Form No. INC-6 along with required documents for the same.

- MCA has also amended the Companies ( Management and Administration) Rules, 2014 via notification dated 5 March 2021 which states that every company shall file its annual return in Form No. MGT-7 except OPC and Small Company. OPC and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No. MGT-7A.

## 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 (April 2021 – June 2021)

Particulars	Due Date
Hold at least one Board Meeting in quarter April 2021 – June 2021	30 June 2021
Disclosure of interest in Form MBP-1	To be placed in the first board meeting of the financial year 2021-22
Form MSME (For the period 1 October 2020 to 31 March 2021)	30 April 2021
Form DPT-3	30 June 2021

## Ordinance issued by the President of India under the Insolvency and Bankruptcy Code, 2016 (IBC)

- Government has introduced the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (Ordinance) for distressed Micro, Small and Medium Enterprises for mitigation distress caused by the Covid-19 pandemic.

- The said Ordinance highlights several measures taken by the Government of India to mitigate the distress caused by the pandemic , including increasing the minimum amount of default for initiation of corporate insolvency resolution process (CIRP) to INR 10 million and suspending filing of applications for initiation of CIRP in respect of the defaults arising during the period of one (1) year beginning from 25 March 2020. It may be noted that this suspension of filing of applications for initiation of CIRP has ended on 24 March 2021.

- Pursuant to this Ordinance , a new chapter IIIA has been inserted under the IBC which provides for pre-packaged insolvency resolution process for corporate persons classified as micro, small and medium enterprises (MSMEs). One of the feature of this pre-packaged insolvency resolution process is it allows for coming up with an informal plan worked out by creditor and debtor debt resolution which is approved by NCLT. The idea behind this is to ensure quicker, cost-effective and value maximizing outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs.

## Reserve Bank of India (RBI) amends its Master Directions on Know Your Customer (KYC)

Reserve Bank of India (RBI) as on 23 March 2021 issued a notification to amend the Master Direction Know Your Customer Direction dated 25 February 2016. Pursuant to this amendment, the Regulated Entities (REs) have been instructed, *inter alia*, that the procedure laid down under the Unlawful Activities (Prevention) Act, 1967 (UAPA), as provided shall be followed strictly.

## Employment Law Updates

### 1. Introduction of an electronic facility for principal employers by the Employees' Provident Fund Organisation (EPFO) :

- The Employees' Provident Fund Organization launched an electronic facility, unified portal, for principal employers, i.e. establishments engaging contract labor through contractors/manpower service providers, whereby they may be able to add the details of its contractors as well as the Universal Account Number (UAN) of each contract worker deployed at the principal employer's establishment.
- This unified portal enables the principal employer to view whether correct remittances towards Employees' Provident Fund (EPF) is being made by the contractors/manpower service providers in respect of its contract workers deployed at the principal employer's establishment in order to ensure compliance with the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

### 2. The state of Karnataka amends the Karnataka Shops and Commercial Establishments Act, 1961

- The Labour Department of Government of Karnataka has, through notification dated 2 January 2021 allowed all shops and establishments in the State of Karnataka, employing 10 or more persons to operate on a 24x7 basis throughout the year for a period of three years on a conditional basis.

- The recent notification requires employers to appoint additional staff in a manner that every employee can take a day off every week on a rotational basis.

- The notification also stipulates the working hours of any employee as well as the employment of women employees shall not be allowed beyond 8 PM under normal circumstances. Provided such restriction to work post 8 PM is lifted subject to having received written consent of women employees also the employer shall be responsible for undertaking various arrangements for their safety and dignity.

- By the way of notification dated 19 February 2021, the Government of Karnataka amended certain provisions of the Karnataka Shops and Commercial Establishments Act, 1961, which has not increased the maximum accumulation of earned/ plaid leaves from 30 days to 45 days.

## Contact for further information



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## → Tax News

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### Transfer Pricing

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Amendments to income-tax rules and CbCR requirements in India

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Corresponding to OECD's BEPS Action plan 13, India has previously adopted Country by Country Reporting ('CbCR') and Master File compliances in its Tax Legislation, through amendment in Section 92D and Introduction of new Section 286 in Indian Income-Tax Act, 1961.

Further, the framework to comply with these requirements is provided through Rules 10DA and 10DB of the Income-Tax Rules, 1962.

In this connection, the Central Board of Direct taxes ('CBDT') vide its Notification No. 31/2021 / F.No.370142/19/2019-TPL dated 5 April 2021, has notified certain amendments to these Rules i.e. 10DA and 10DB, which comes to effect from 1 April 2021.

#### Master File related amendment

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As per amendment to Rule 10DA(4), where there are more than one constituent entities of an international group required to file the information and document in Master File (i.e. Form No. 3CEAA) in India, now any one entity of the Group can be designated to comply with these requirement, irrespective of their residential status in India.

Pre amendment, only resident entities in India were allowed an option to designate an entity among themselves, to comply with Master File related compliances for other resident constituent entities in India.

This effectively meant that foreign resident entities who were liable to comply with Master File related compliances in India, earlier could not designate their Indian resident associated entities to comply with these requirements in India on their behalf.

Therefore, these amendment would now rule out compliance requirement in India for foreign entities and avoid duplicative compliance efforts for the MNE group in India.

Alternatively, it would now also be possible to designate foreign entity to carry out Master File compliance for all constituent entities of the MNE group in India.

#### CbCR related amendment

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As per amendment to Rule 10DA(6), the threshold for applicability of CbCR related compliance requirement is now amended to INR 6,600 crores from INR 5,500 crores provided earlier.

These corresponds to currency fluctuation in INR vis-a-vis EURO, and now realigns with the threshold of OECD's BEPS Action Plan 13 of EUR 750 million.

This would further reduce the chances of applicability of CbCR to Indian entities having a foreign parent, wherein, the CbCR compliances are not applicable to such parent entities due to threshold of 750 Million (or such equivalent currency limit) in their respective jurisdiction.

Thus overall, both the amendments brought in by the CBDT are very welcome step and would certainly ease the compliance of Indian taxpayers.

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## Indirect Tax

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### IDT Developments and Associated Procedures

#### 1. Finance Bill 2021 receives Presidential Assent:

The Finance Bill, 2021 introduced by the Finance Minister during the Union Budget presented on 1 February 2021 received the assent of the Hon'ble President, on 28 March 2021. While the changes which were introduced under the GST laws are now a part of the respective legislations, the same would be made effective from a date to be notified later.

#### 2. Important decisions to be taken in upcoming 44<sup>th</sup> GST council meeting:

The 15th Finance Commission in its report has recommended merging of two GST rates of 12 per cent and 18 per cent. This may be discussed in forthcoming meeting of GST Council. Along with the merging of tax slabs, issues such as correcting inverted duty structure on textiles, fertilizers etc. may also be taken up.

#### 3. Supreme court on the powers of DRI officers to issue SCNs:

The apex court has recently decided in the matter of **Canon India Pvt. Ltd. [TS-75-SC-2021-CUST]** that DRI officers have no power to issue SCNs under the Customs Act, 1962 as officers of DRI are not proper officers to issue SCNs. This landmark decision of the Supreme Court is expected to have a huge ramification on the pending and upcoming litigations involving SCNs issued by DRI officials and it is most likely that the Government would come up with a series of retrospective amendments to counter the judgment of Apex Court.

Further, following such decision of Hon'ble Supreme Court, CBIC has issued Instruction No. 4/2021-Cus dated 17 March 2021 wherein it is clarified that until further notice, for all the cases where DRI has investigated, the show cause notice shall be issued by the jurisdictional Commission rates from where imports have taken place.

As the ratio of this decision was bound to raise questions vis-a-vis the SCNs

issued under the GST regime by DGGSTI, the Hon'ble Karnataka High Court has also decided the matter on similar ground on the powers of DGGSTI officers to raise SCN.

### Important Notifications issued during the quarter

#### 1. Amendments in CGST Rules:

Vide Notification No. 01/2021-Central Tax dated 1 January 2021, the Government has amended the CGST Rules, 2017. The gist of these amendments is, as follows:

##### a. Registered persons filing monthly GST returns:

A registered person shall not be allowed to file monthly GSTR-01 if he has not furnished GSTR-3B for preceding two months.

##### b. Registered persons filing quarterly GST returns:

A registered person shall not be allowed to file periodical GSTR-01 if he has not furnished GSTR-3B for preceding tax period.

##### c. Registered person restricted to use balance in Electronic Credit Ledger under Rule 86B:

A registered person shall not be allowed to file GSTR-01 or use invoice furnishing facility if he has not furnished GSTR-3B for the preceding tax period.

#### 2. Exemption from Aadhar Authentication to Certain class of taxpayers

Vide Notification No. 03/2021-Central Tax dated 23 February 2021, a class of person namely a person who is not citizen of India, Department of Central or State Government, local authority, Public Sector Undertaking, etc. are exempted from undertaking Aadhar authentication.

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

Vide Notification 05/2021- Central Tax dated 8 March 2021, the liability to mandatorily generate E-Invoice ('IRN') and QR Code would be applicable also to taxpayers having aggregate turnover above INR 500 Million in any financial year post implementation of GST.



## Customs and Foreign trade policy related developments

### 1. Introduction of Customs Authority for Advance Ruling Regulation, 2021:

Vide Notification 01/2021- Customs (N.T.) dated 4 January 2021, the Government has introduced Customs Authority for Advance Ruling Regulation, 2021

As per the regulation, the applicant would be required to make an application in Form CAAR-1 before the jurisdictional Authority (i.e. Customs Authority for Advance Rulings, Delhi or Customs Authority for Advance Rulings, Mumbai).

The powers of the Authority, the procedure for filing application, etc. have been given in detailed manner in Notification 01/2021-Customs (N.T.)

Further, vide Notification 02/2021-Customs (N.T.), the CBIC has rescinded Customs (Advance rulings) Rules, 2002 introduced vide Notification 55/2002-Customs (N.T.).

### 2. Common Customs Electronic Portal:

Vide Notification 33/2021- Customs (N.T.), the Central Board of Indirect Taxes and Customs has notified URL: <https://www.icegate.gov.in> as the Common Customs Electronic Portal for facilitating registration, filing of bills of entry, shipping bills, other documents and forms prescribed under the said Act or under any other law for the time being in force or the rules or regulations made thereunder, payment of duty, functions specified to be carried out through common portal.

### 3. Filing Advance Bill of Entry for imports

Vide Notification No. 35/2021-Cus (N.T.) dated 29 March 2021 read with Circular No. 8/2021-Cus dated 29 March 2021, w.e.f. 29 March 2021 for all imports from countries other than Bangladesh, Maldives, Myanmar, Pakistan and Sri Lanka coming at sea ports, the Bill of Entry is required to be filed at least one day prior to arrival of vessel.

Similarly for all the imports from Inland Container Depot, the Bill of Entry is required to be filed at least one day prior to arrival of vessel/vehicle/aircraft.

For imports from Airports or Land Customs Stations, the Bill of Entry is expected to be filed latest by end of the day of arrival of aircraft/ vehicle.

Further, vide the aforesaid Circular dated 29 March 2021, the requirement of Master Bill of Lading or Master Airway Bill is done away with.

### 4. Extension of Foreign Trade Policy 2015-20 upto 30 September 2021:

Vide Notification 60/2015-2020, dated 31 March 2021, the existing **FTP 2015-20** has been extended up to 30 September 2021.

### 5. Extension of exemption benefit on IGST and Compensation cess on goods imported by EOUs, AA and EPCG holders:

Vide Notification No 19/2021- Customs, dated 30 March 2021 and Notification No. 23/2021-Cus dated 31 March 2021, CBIC has extended the benefit of exemption from payment of IGST and Compensation Cess to EOU and Advance Authorization as well as Export Promotion Capital Goods ('EPCG') Scheme Authorization holders respectively until 31 March 2022.

### 6. Amendment in the Import Policy of Copper and Aluminium:

Vide Notification 61/2015-2020, the import policy condition of certain items of Copper and Aluminium classified under Chapter 74 and 76 of ITC (HS), 2017 has been revised from 'Free' to 'Free subject to compulsory registration under Non-Ferrous Metal Import Monitoring System (NFMIMS).

The NFMIMS shall require importers to submit advance information in an online system for import of items and obtain automatic registration number. The importer can apply for registration not earlier than 60<sup>th</sup> day and not later than 5<sup>th</sup> day before the expected date of arrival of the import consignment.

The NFMIMS will be effective from 12 April 2021 i.e. Bill of Entry filed on or after 12 April 2021 for items listed in Annexure -I and Annexure -II to the notification.

### 7. IEC application and mandatory updation:

Vide Notification No. 58/2015-2020 dated 12 February 2021 the Ministry of Commerce & Industry has made it mandatory for all the IEC holders to ensure that details in its IEC are updated electronically every year during the April-June period. In cases where there are no changes in IEC, the same is also required to be confirmed online by the IEC holder. IEC shall



be de-activated if it is not updated within the above prescribed time and can be reactivated only on its successful updation.

Process of updation of IEC within the above time period is completely online and can be done without payment of any charges.

## 8. Clarifications issued by CBIC

- Vide Circular No. 5/2021-Cus dated 17 February 2021 it is clarified that if there is mismatch which is resulting in holding up of IGST refunds in respect of all past shipping bills, irrespective of its date of filing, subject to payment of Rs. 1,000/- as fee towards such rendering of service by Customs Officers for correlation and verification of the claim.
- Vide Circular No. 7/2021-Cus dated 22 February 2021, the issues relating to payment of Agriculture Infrastructure & Development Cess ('AIDC') by EOU unit are clarified. CBIC has clarified that EOU unit would be entitled to claim

the upfront exemption from payment of AIDC. However if the inputs are used for clearance in DTA, then EOU unit would be required to surrender the AIDC exemption along with BCD exemption. Similarly, it is clarified that the benefit of depreciation on capital goods which is allowed for the purpose of calculating the customs duty while removing the capital goods from EOU unit would also be allowed for the purpose of calculating the liability of AIDC as well.

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→ Tax News

## Domestic and Direct Tax Updates

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CBDT issues multiple instructions for selection of cases u/s 148 for income escaping assessment

The Central Board of Direct Taxes ('CBDT') issued multiple instructions directing the tax authorities about categories of cases to be considered as 'potential cases' for taking action u/s. 148 of the income Tax Act, 1961 (ITA). Some of the categories include (i) cases where there are audit objections (Revenue/Internal), (ii) cases of information from any other Govt. agency/ Law enforcement agency, (iii) Potential cases including - (a) Reports of Directorate of Income Tax (Investigation), (b) Reports of Directorate of Intelligence & Criminal Investigation, (c) Case from Non-filer Management System & other cases as flagged by the Directorate of Income-Tax (Systems) as per risk profiling, (iv) cases where information is arising out of field survey action and (v) cases of information received from any Income-tax authority.

CBDT extends various due dates

CBDT has extended the last date for linking of Aadhaar number with PAN from 31 March 2021 to

30 June 2021, in view of the difficulties arising out of the Covid-19 pandemic. Due-date for issue of notice u/s 148, passing orders pursuant to directions issued by the Dispute Resolution Panel (DRP) & processing of equalisation levy statements have also been extended to 30 April 2021.

Faceless Proceedings

CBDT has passed an order to specify the scope of faceless assessments, states that assessments pending as on 31 March 2021 and initiated on or after 1 April 2021, with an exception of International Tax and Central Charges, shall be completed in a faceless manner u/s 144B.

CBDT has announced Faceless Penalty Scheme, 2021. The Scheme covers all penalty matters imposed under the provisions of Income Tax Act, 1961.

Certain procedural amendments have also been specified in respect of Faceless Assessment Scheme, 2019.

CBDT notifies Rule 29BA and Form 15E to apply for certificate u/s 195 w.e.f. 1 April 2021

CBDT notifies Rule 29BA for making an application for grant of certificate determining appropriate

proportion of sum chargeable to tax in case of payment made to non-residents under sub-section (2) and (7) of Sec. 195, w.e.f. 1 April 2021; Notices Form 15E to be filed electronically to be examined by AO after considering various factors.

## Supreme Court of India rules in favour of taxpayers in software taxation case

Taxability of payment for software licenses was a disputed issue, which has finally been settled by Supreme Court in the case of **Engineering Analysis Centre of Excellence (P.) Ltd. [2021] 125 taxmann.com 42 (SC)**.

Supreme Court of India held that payments made for software are not covered under Art. 12 of DTAAs and Indian payers are not liable to withhold tax under Sect. 195, as no income is chargeable to tax in India. SC referred to the terms of end user licence agreements (EULA) in the cases before it and observed that the said EULAs did not create any interest or right in the Indian distributors or end users, which could amount to right to use any copyright. To know more, read our newsflash on this topic. [Read more »](#)

## CBDT notifies extension on certain reporting requirements under Form 3CD

In view of the prevailing situation due to Covid-19 pandemic across India, it has been decided by CBDT that the reporting requirement under clause 30C (information in relation to impermissible avoidance arrangement entered by the Assessee) and clause 44 (reporting of various Goods and Service Tax details) of the Tax Audit Report shall be kept in abeyance till 31 March 2022 .

## Enhancement of scope of transactions to be reported under Statement of Financial Transaction

Scope for transactions to be reported by the Specified entity has been enhanced to include a) Capital gains on transfer of listed securities or units of Mutual Funds, b) Dividend income, and c) Interest income which needs to be reported now while filing the SFT.

## Key Amendments to Finance Bill, 2021

Hon'ble Finance Minister (FM) Nirmala Sitharaman had presented the Finance Bill, 2021 (FB 2021 or Bill) on 1 February 2021. In the wake of the representations received from various stakeholders, while moving the Bill for approval by the Lok Sabha on 23 March 2021, the FM introduced amendments to FB 2021 (Amended FB 2021). The same also received Presidential Assent

on 28 March 2021 and the Finance Act, 2021 (FA 2021) came in force with effect from 1 April 2021. The changes would be effective from previous year 2020-21, unless any other date is notified. The amendments made while enacting FA 2021 were generally intended to address certain ambiguities arising from the wordings of proposals as contained in the FB 2021. Please refer to the Financial Budget 2021 published on our website. [Read more »](#)

Key changes made while enacting the FA 2021 are as follows:

The term 'liable to tax' used in DTAAs was proposed to be defined under Income Tax Act by the FB 2021. The definition which referred to „a liability of tax under any law for the time being in force in any country“, raised an ambiguity on the nature of taxes to be considered i.e. whether liability in respect of indirect taxes or any other taxes (other than income tax) would also result in the satisfaction of the „liable to tax“ definition as proposed by FB 2021. It also raised an ambiguity on the country to be referred for the purposes of application of the definition.

Definition of „liable to tax“ thus was modified to specifically provide that persons having an „income-tax liability“ under the laws in force in a country shall be considered as liable to tax in such country. Thus, liability in respect of indirect taxes or other taxes (other than income tax) will not be considered as satisfying the definition of „liable to tax“.

FB 2021, proposed that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. FB 2021 also proposed to amend capital gains provisions to provide that cost of acquisition of self-generated goodwill acquired in tax neutral transfer will be NIL.

FA 2021 has brought an amendment to adjust closing WDV of intangible asset as on 31 March 2020 by reducing the standalone tax WDV of goodwill computed as difference between actual cost of goodwill and depreciation allowable on such goodwill till 31 March 2020. The reduction shall, however, not exceed the closing WDV of intangible assets as on 31 March 2020.

- FB 2021 proposed to withdraw exemption available to interest accruing on employees' contribution to specified provident fund schemes, on the contributions in excess of INR 0.25 million per annum made on or after 1 April 2021.

- FA 2021 increases the threshold of employees' contribution, beyond which interest on such

- excess contribution will be taxable, to INR 0.5 million per annum, where there is no contribution made by employer to such fund.
- Finance Act, 2020 expanded the scope of Equalisation Levy (EL) introduced by Finance Act, 2016. Equalisation Levy at the rate of 2 per cent was levied on the amount of consideration received or receivable by an e-commerce operator from ecommerce supply or services.
  - FA 2021 clarifies that, for the purposes of EL, consideration shall not include consideration for sale of goods owned by, or provision of services rendered by a resident in India or Permanent Establishment (PE) of NR in India where such sale/ service is effectively connected to PE in India.
  - FB 2021 proposed to increase the time limit for issuance of notice for reassessment to ten years, where income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to INR 0.5M or more.
  - For this purpose, FA 2021 has defined the term „asset“ to include immovable property, shares and securities, loans and advances, and deposits in bank account.
  - Presently, the ITA provides for levy of fee on a taxpayer for belated filing of tax return at INR 5,000, if return is furnished by 31 December following the tax year and INR 10,000, if return is furnished beyond 31 December. But, if the total income of taxpayer does not exceed INR 0.5M, the fee is reduced to INR 1,000.
  - From FY 2020-21 onwards, belated return or revised return are to be filed three months before the end of the relevant assessment year (up to December 31) or before the completion of the assessment, whichever is earlier. Accordingly, FA 2021 puts a cap to the fee for delayed furnishing of tax return to INR 5,000. The cap of INR 1,000 for taxpayer whose total income does not exceed INR 0.5M continues as it is.
  - The due date for linking Aadhaar and Income Tax PAN has been extended to 30 June 2021. In case of non-linking, your PAN Card would become in-operative and FA 2021 proposes to levy fees as may be prescribed by the CBDT but not exceeding INR 1,000 at the time of intimation of Aadhaar number to tax authority
  - FB 2021 proposed to increase the limit for exemption from Tax Audit from erstwhile INR 50 million to INR 100 million, if cash receipt and payment does not exceed 5 per cent of total receipts and total payments respectively
  - FA 2021 prescribes payment or receipt by the way of cheque or bank draft other than by account payee to be treated as payment or receipt in cash for computing 5 per cent threshold to claim benefit of the increased monetary limit of INR 100 million to trigger requirement of tax audit.

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→ Tax News

## International Tax Updates

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OECD's updated guidelines to address Covid-19 impact on Permanent Establishments (PEs)

In January 2021, the OECD published „Updated Guidance on Tax Treaties and Impact of the Covid-19 pandemic“ clarifying concerns related

to creation of PEs, potential change in residence for entities and individuals, etc. The OECD had issued an earlier guidance in April 2020, clarifying certain positions, which has now been updated.

Several aspects have been touched upon in the Guidance. On the creation of PEs, OECD has clarified that temporary working from home, conclusion of contracts from the Home

Office, should not create Fixed Place/Agency PEs for businesses. It is also clarified that a Construction Site PE would not be regarded as ceasing to exist when work is temporarily interrupted. On similar lines, it has been clarified that individuals participating in management decisions of an entity will not have an impact on the constitution of Place of Effective Management. Similar clarifications have been issued in the context of residence of stranded individuals, employees remotely working from other jurisdictions.

## India's response to Sect. 301 Report of US on Equalization Levy 2.0

The U.S. administration had announced initiation of investigation under Section 301 of the U.S. Trade Act, 1974 against the Equalisation Levy implemented by India. The Ministry of Commerce and Industry has published its response to Sec 301 Report of US on India's Equalisation Levy 2.0. In its Response, India has strongly defended the levy on the ground that:

- a. The Equalisation Levy was applied prospectively, and has no extra-territorial application;
- b. The Equalisation Levy does not discriminate against any US companies, as it applies equally to all non-resident e-commerce

operators, irrespective of their country of residence;

- c. The Equalisation Levy was one of the methods suggested by 2015 OECD/G20 Report on Action 1 of BEPS Project which was aimed at tackling the taxation challenges arising out of digitization of the economy; and
- d. The purpose of the Equalization Levy is to ensure fair competition, reasonableness and exercise the ability of governments to tax businesses. Finally, the report states that the Government of India will examine the determination/decision notified by the US in this regard, and would take appropriate action keeping in view the overall interest of the nation.

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## → Accounting/Audit News

### Business Process Outsourcing

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#### Amendments in CARO 2020

The Ministry of Corporate Affairs issued the **Companies (Auditor's Report) Order, 2020 (CARO 2020)** in supersession of the Companies (Auditor's Report) Order, 2016, which is applicable to a wide range of companies and includes several new reporting requirements as compared to the previous version. Some of the clauses are re-introduced in the CARO 2020 and some clauses are updated with respect to current changing market conditions. Based on the current market scenario and in the wake of recent corporate frauds, through CARO 2020 MCA has put

additional responsibility on the auditor to report with respect to the loan related disclosures and the Company's internal audit system. On an overall basis, CARO 2020 is a step in the right direction seeking to enhance reporting and governance in several key areas.

The Companies (Auditor's Report) Order, 2020 lists out as many as 21 broad items compared to 16 broad items in Companies (Auditor's Report) Order, 2016 on which the applicable companies are mandatorily required to report. MCA vide order dated 17 December 2020 has changed the applicability date of Companies (Auditor's Report) Order, 2020 to the financial years commencing on or after the 1 April 2021. So, Companies (Auditor's Report) Order, 2020 (CARO 2020) will be applicable from FY 2021-22.

Mentioned below are the differential clauses areas where amendments / changes have been made in CARO 2020:

List of Clauses	Amendments in CARO, 2020
1. Non-Current Assets	<p><b>Amendment</b> - Words „Fixed Assets” now replaced with Property, Plant, Equipment and Intangible Assets (PPEIA).</p> <ul style="list-style-type: none"> <li>- If Title deeds of the immovable properties not in the name of Company, then report all such instances.</li> <li>- Any Benami Proceedings initiated to be reported.</li> <li>- Revaluation of property, plant or equipment or intangible property to be reported.</li> </ul>
2. Inventory and Other Current Assets	<ul style="list-style-type: none"> <li>a. Auditor to report whether the coverage and procedure of physical verification by the management is appropriate or not.</li> <li>b. Any Discrepancy beyond 10 per cent to be disclosed.</li> <li>c. New sub-clause b. has been inserted which requires auditors to report any working capital limit above 5 crores on the collateral of Current Assets to be disclosed and returns filed with bank in consonance with books.</li> </ul>
3. Reporting on Loans, Investments Guarantees, Securities and advances in nature of Loan	<p>In CARO 2020, this clause now includes Investments, provision of loans or advances in the nature of loans, or stood guarantee, or provided security, indicate the aggregate amount during the year, and balance outstanding at the balance sheet date:</p> <ul style="list-style-type: none"> <li>- to subsidiaries, joint ventures and associates</li> <li>- to parties other than subsidiaries, joint ventures and associates.</li> </ul> <p style="text-align: center;">Where there are loan and advances in the nature of repayable on demand, without any terms or period of payments then to specify the amount of loans or advances given to promoters and related parties.</p>
4. Reporting on Unrecorded Income	<p><b>Newly inserted</b> - Auditor needs to report on:</p> <ul style="list-style-type: none"> <li>a. Transaction not recorded in books but disclosed in the income tax assessment.</li> <li>b. Whether or not the unrecorded income has been disclosed in the books of accounts.</li> </ul>
5. Loans & Other Borrowings	<ul style="list-style-type: none"> <li>a. Default of Interest payment is also covered.</li> <li>b. Coverage of reporting is expanded to include all types of lender as against Bank, FI, Government and Debenture holders as per old CARO (e.g. Default in repayment of Inter-corporate Loans also needs to be reported)</li> <li>c. <b>New sub-clauses</b> requires reporting on: <ul style="list-style-type: none"> <li>- The details of funds borrowed by holding company for the purpose of discharging obligations of group entities - usage of long term and short term funds.</li> <li>- The details of funds borrowed by pledging the securities held in its group entities and defaults in its repayment.</li> <li>- Whether the company is a declared willful defaulters, diversion of loan taken for the other purpose or not.</li> </ul> </li> </ul>

6. Reporting on use of money raised through issue of own shares	<p>a. Reporting under two different clauses of CARO 2016 are combined under single clause.</p> <p>b. In case of preferential allotment or private placement of shares or convertible debentures, auditor is also required to verify and report compliance of Section 62.</p>
7. Fraud Reporting	Reporting to be done for any fraud report filed by the auditor in Form ADT 4 u/s 143(12) to the CG or any complaints from the informers considered by the auditors while submitting the reports.
8. Reporting on Nidhi Company	<p><b>Newly inserted sub-clause (c) for reporting as under:</b></p> <p>– Whether there has been any default in payment of interest on deposits or repayment thereof for any period and if so, the details thereof;</p>
9. Reporting on Internal Audit System	<p><b>Newly inserted:</b></p> <p>a. whether the company has an internal audit system commensurate with the size and nature of its business</p> <p>b. whether the reports of the Internal Auditors for the period under audit were considered by the statutory auditor</p>
10. Reporting on Registration u/s 45-IA of RBI Act	<p><b>New sub-clauses (b),(c) and (d) are inserted which requires reporting on</b></p> <p>– whether the non-banking finance or housing finance activities are done after taking certificate of registration from RBI</p> <p>– fulfilment of classification criteria laid down by RBI for Core Investment Company</p> <p>– Number of CICs in the Group to which company belongs</p>
11. Reporting on Cash Losses	A <b>new clause</b> is inserted which requires reporting on amount of cash loss incurred by the company in current as well as previous year.
12. Resignation of the Statutory Auditors	A <b>new clause</b> is inserted which requires reporting on resignation of the statutory auditors during the year, if any and whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditors
13. Reporting on Financial Position	<p>A <b>new clause</b> is inserted which requires auditors to report on company's ability to pay off existing liability over a period of next one year as and when they fall due.</p> <p>Auditors are now loaded with a huge responsibility to verify and report on financial stability of the company for next one year.</p>
14. Reporting on CSR Compliance	<p>A <b>new clause</b> is inserted which requires to report on:</p> <p>a. Whether in respect of other than ongoing projects, the company has transferred unspent amount to a fund specified in Schedule VII to the Companies Act, 2013 within a period of 6 months of the expiry of F.Y.</p> <p>b. Whether any amount remaining unspent has been transferred to special account.</p>
15. Qualifications or adverse remarks in the consolidated	<p>A <b>new clause</b> is inserted which requires to report on :</p> <p>– Whether there have been any qualifications or adverse remarks by the respective auditors in the</p>



financial statements	- Companies (Auditor's Report) Order (CARO) reports of the companies included in the consolidated financial statements, if yes, indicate the details of the companies and the paragraph numbers of the CARO report containing the qualifications or adverse remarks
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## Concluding Remarks

The new CARO amendments to enhance reporting requirements will provide useful information to users about the underlying financial statements and the findings of the auditor. These have been designed to bring in greater transparency in the financial state of affairs of the companies.

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## → Country Introduction: Rödl & Partner in Dubai

The UAE has established itself as the main business hub in the GCC, so it was natural for Rödl & Partner to expand operations to this region. Having been present in the UAE since 2004, and opening an official branch operating as the head of GCC in 2013, Roedl & Partner has a strong client base including German, local and international companies.

We provide professional services in German, English and Arabic among other languages covering a number of areas such as legal, tax and corporate consulting, employment and commercial laws.

## UAE - India Relationship

Diplomatic relations between the UAE and India were established in 1972 and remain strong today. There are over 3.4 million Indian citizens living in the UAE, constituting the largest ethnic community at about 30 per cent of the population. The UAE has become the third largest trading partner of India with yearly bilateral trade worth \$60 billion.





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## Services Rödl & Partner Dubai

Tax Consulting	Legal	Management and IT Consulting	Audit	Tax Declaration and BPO
<ul style="list-style-type: none"> <li>- Tax Consulting 4.0</li> <li>- International Tax Planning</li> <li>- Transfer Pricing</li> <li>- Transactions</li> <li>- Ongoing Tax Consulting</li> <li>- Withholding Tax (WHT)</li> <li>- Income Tax</li> <li>- Value Added Tax (VAT)</li> <li>- Assertion of rights and defence</li> <li>- Entrepreneurial family advisory</li> <li>- High net worth individuals, top athletes</li> </ul>	<ul style="list-style-type: none"> <li>- „Full-service“ Commercial law</li> <li>- Corporate law</li> <li>- Employment Law</li> <li>- Transactions</li> <li>- Company succession</li> <li>- Shareholder conflicts</li> <li>- Assertion of rights</li> <li>- Compliance, prevention and defence</li> <li>- Public law</li> </ul>	<ul style="list-style-type: none"> <li>- Business Process Consulting</li> <li>- Corporate finance</li> <li>- ERP solutions SAP and Microsoft Dynamics AX</li> <li>- IT Outsourcing and Cloud computing</li> <li>- CRM Solutions Targenio</li> </ul>	<ul style="list-style-type: none"> <li>- Audits of annual and consolidated financial statements, quarterly reviews</li> <li>- Expert opinions, special audits and assurance services</li> <li>- Financial and performance audits</li> <li>- International accounting, reporting</li> <li>- IT audits</li> </ul>	<ul style="list-style-type: none"> <li>- Financial Accounting</li> <li>- Payroll accounting</li> <li>- Financial statements and declaration</li> <li>- Ongoing Consulting services</li> <li>- Tax accounting</li> </ul>

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