Embassy of India
Berlin, Germany

MAKE IN INDIA MITTELSTAND!

Rödl & Partner

Investment support for German Mittelstand Enterprises

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Economic Update

Source: PTI
PM Narendra Modi with European Commission President Ursula von der Leyen, in New Delhi. Both leaders reviewed the progress of the re-commencement of FTA negotiations

India and the European Union (EU) have recently announced the formation of three working groups under the 'Trade and Technology Council' that was set up to deepen strategic ties with the trade bloc. To lay the groundwork, the working group will cover key issues such as strategic technologies, digital governance and connectivity, green and clean energy technologies and trade, investment and resilient value chains.

The working Groups will now start preparing for the first meeting of the council, which will take place before the next EU-India Summit in spring of 2023. Ministerial meetings of the council will take place at least once a year, with the venue alternating between the EU and India.

India and EU had in April last year agreed to establish a 'Trade and Technology Council', to tackle the challenges at the nexus of trade, trusted technology and security. Such a council is the first for India with any of its partners and second for the EU, following the first one it has set up with the United States (US).

On the EU side, the council will be co-chaired by Executive Vice-Presidents Margrethe Vestager and Valdis Dombrovskis and on the Indian side, it will be chaired by S Jaishankar, Minister of External Affairs, Piyush Goyal, Minister of Commerce and Industry and Ashwini Vaishnaw, Minister of Electronics and Information Technology.

Ministerial meetings of the council will rely on the preparatory work of three working groups which will meet shortly to organise their work. The working group of strategic technologies, digital governance and digital connectivity will work jointly on areas such as digital connectivity, artificial intelligence, 5G/6G, high performance and quantum computing, semiconductors, cloud systems, cybersecurity, digital skills and digital platforms.

As far as green and clean energy technologies are concerned, the focus will be on investment and standards in green technologies. The areas to be explored could be clean energy, circular economy, waste management, plastic and litter in the ocean.

The trade, investment and resilient value chains group will work on the resilience of supply chains and access to critical components, energy, and raw materials. It will also work to resolve identified trade barriers and global trade challenges by promoting cooperation in multilateral fora. It will work towards promotion of international standards and cooperation on addressing global geopolitical challenges.

In 2021-22 and 2020-21, the outbound shipments to the European country stood at USD 12.55 billion and USD 6.5 billion, respectively. The exports are registering healthy growth continuously since 2000-01, when India's exports to that nation was USD 880 million. Further, in 2021-22, the Netherlands was the fifth largest destination for Indian exports as against ninth in 2020-21.

As per the Federation of Indian Export organisations (FIEO) Director General Ajay Sahai, the Netherland has emerged as a hub for Europe with efficient port and connectivity with EU through road, railways and waterways. Petroleum exports went up significantly. During April-November this fiscal, these exports rose from USD 2.7 billion during April-November 2021-22 to USD 6.4 billion as oil companies are using the Netherlands as distribution hub. Aluminium, electrical and electronics and pharma exports also contributed significantly though some of these goods may be finally consumed in Germany or France.

Sources:
PTI
Business Standard
Economic Times

Jamly John, Head of Business Development and Public Relations, Rödl & Partner

India Budget 2023 and Industry Outlook

Being the last full budget before the election year, there were huge expectations from the Union Budget 2023 presented by the Honorable Finance Minister on 1 February 2023. The budget was presented in the backdrop of the impact on the world economy due to the Russia Ukraine war, global recession and need for job creation. India has been considered as the bright spot with estimated nominal GDP growth of 7%, which is the highest amongst major economies of the world. According to the projections of the World Economic Outlook, India's GDP is expected to grow to USD 5.4 Trillion by 2027 making it the third largest economy of the world. Increasing tax collections and increase in the per capita is expected to bring down the fiscal deficit to 5.9 per cent for FY 2023-24.

The Union Budget has also introduced various fiscal development measures wherein capital expenditure is increased sharply by 33 per cent to INR 10 trillion. The Government has emphasized on the vision to make the nation technology-driven and build a powerful knowledge-based economy by focusing on promotion of Artificial Intelligence and secure online storing and sharing of documents. Apart from these announcements, several changes in the tax and regulatory framework are also proposed which are as follows:

Policy and Regulatory Proposals

A few key highlights of this year's Union Budget from Policy and Regulatory perspective are:

- Promoting "trust-based governance" by decriminalizing more than 3,400 legal provisions from various statutes such as Information Technology Act 2000, the Patents Act 1970 etc. by introducing the Jan Vishwas (Amendment of Provisions) Bill, 2022.

- To formulate and implement the National Data Governance Policy applicable for all governmental departments in order to modernize the data collection and management and enable access to anonymized data.

- Making the Permanent Account Number ('PAN') as the common identifier for all digital systems of specified Government Agencies for the purpose of simplification and transparency for compliance, investments and taxation of the businesses.

- Proposal to refund 95 per cent of the forfeited amount relating to bid or performance security, to MSMEs in cases of failure to execute contracts during the COVID-19 period.

- Setting up of centres for excellence for Artificial Intelligence in educational institutions.

- Proposal relating to delegation of power under SEZ Act to GIFT IFSC authority to avoid dual regulation, single window system for registration and approval etc.

On personal income tax front, there have been many positive changes. As was widely speculated, income tax slabs under new tax regime introduced in 2020 have been made more beneficial. Further, increase in tax rebate, reduction of surcharge, availability of standard deduction are some other moves to make new tax regime popular. Exemption limit for leave encashment on cessation of employment has also been increased significantly.

To continue the phenomenal momentum set around start-up ecosystem, timeline to set up new eligible start-up has been extended by one year. Further, provision permitting loss carry forward despite change in shareholding would now apply for an extended period of ten years from incorporation of eligible start-up. There have also been amendments proposed for speedy disposal of pending appeals, bringing clarity on some disputed matters, removing certain procedural issues (claim of tax withheld in subsequent year for income already offered to tax in prior year) and some other aspects.

Under the Customs Regulations, basic customs duty of certain items such as mid-range-to-premium automobiles, including electric vehicles (EVs) have been increased with the aim to increase domestic manufacturing and enhance value addition. Customs duty rates have been rationalized across various sectors to facilitate better tax administration. Demerit goods such as cigarettes are also expected to become costly. Certain specific exemptions under multilateral or bilateral trade agreements, obligations under international agreements, treaties, conventions, schemes under the Foreign Trade Policy, have been extended.

On GST side, certain legislative changes are proposed to be made to align the legal provisions with the return filing procedures on the GST portal such as reversal of input tax credit (‘ITC’) in case of non- payment to vendors within 180 days and removing the reference of provisionally accepted ITC in respect of refund of GST in cases of zero-rated supplies. In a welcome move, certain offenses under GST Law are decriminalized and the monetary threshold for launching prosecution for the offences is also proposed to be increased.

While some amendments can be considered as positive, amendments such as disallowing the ITC on CSR expenditure, reversal of ITC on the supplies made from bonded warehouse, capping on time limit to furnish certain returns might and the requirement of the recipient to make the payment “to the supplier” for availing ITC may be discouraging.

Our Take

Broadly, barring some exceptions, the recommendations in the budget are aimed at ensuring stability in tax collections, simplifying rules to lower the cost of compliance, encourage the entrepreneurial spirit by decriminalization of laws, and give tax relief to individuals.

The budget is growth oriented, laying emphasis on infrastructure development, green growth and inclusive growth of the nation. The finance minister has done an excellent job in balancing collections and spending and has tried to cover all sectors in her Budget exercise, in order to achieve the long-term objectives of the Government. Overall, the budget is pragmatic and guides a strong growth path for India to be an attractive destination for foreign investments in the years to come.

Anand Khetan, Partner, Head of Indirect Tax Services Western and Southern India, Rödl & Partner

Setting up your Company – Transfer Pricing in India

Any investment into India will result in a variety of transactions between the new Indian subsidiary or the new Joint Venture and the investor's foreign group companies.

The price of those transactions and their terms and conditions (e.g. payment terms) can be priced at will by the companies. Only a few transactions like the issue of new shares must be made at a given price to be legally permissible.

However, pricing and conditions have an impact on taxes and customs duties. There always is the risk that group companies (also called "associated enterprises" / AEs) may set them with the aim to save taxes and duties. E.g. the price of goods sold to a manufacturing entity may be too high as compared what would normally have to be paid. Consequently, the profit margin of the manufacturer and thus his income tax payable will decrease. One may say that on the other hand, the customs duty payable upon import goes up. However, both effects are independent of each other. The Indian law does not provide for a holistic Transfer Pricing approach to examine both, taxes and duties.

Now, in most cases, pricing and conditions are not set with the aim to avoid taxes in India or to save customs duties. They are usually set as per best practice and with the aim to incentivize the AEs to optimize their operations. Still, if prices are not "normal" or "fair" (technically called as not "at arm's length"), the authorities have to adjust them for income tax and customs purpose. Also, if such an adjustment is made, Interest and penalties may apply.

When it comes to verify the pricing, Indian regulations are in line with the OECD approach. The methods applied in most cases are the Comparable Uncontrolled Price ("CUP") method and the Transactional Net Margin Method ("TNMM"). Under the CUP method, a price is compared to the price unrelated parties have charged or paid in a comparable situation. An Indian taxpayer may for example argue that he is selling products at the same price to his AE as to unrelated customers. Under the TNMM the net margin earned by the Indian taxpayer is used as a benchmark, and compared with the margin earned by similar manufacturers in India. Assume an Indian service provider who renders routine services to his foreign AE, e.g. sales support or assembly support services. If the net profit margin he earns from such services is similar to the margin of comparable Indian service providers, then the commission or hourly fee he is earning can be termed to be at arm's length.

The Indian Income Tax authorities have the benefit of analyzing prices retrospectively, i.e. with superior knowledge. This may seem unfair as the taxpayer can only try his level best to determine a fair price at the time of transaction but he does not know the future arm's length price or margin. Still, if the taxpayer realizes after the end of the Financial Year that the pricing was not at arm's length, he may by himself ("suo moto") adjust them. If he does so until the books are closed, this is termed a "year-end adjustment" which also results in adjusted book profits. If the books are already closed, he can still adjust the prices for the purpose of his income tax calculation, thus avoiding interest and penalties. In addition, a so called "secondary adjustment" will be required, i.e. the taxpayer would have to e.g. ensure a refund of excess funds paid to his AE in order to avoid taxation of deemed interest.

Investors are well advised to plan and/ or evaluate their inter-company pricing and conditions of intragroup transactions well in advance before starting operations in India. Such "TP-planning" will reduce tax risks minimize the need for last-minute adjustments.

Critical aspects to be looked at by the taxpayers from planning perspective are management fees and royalties charged to India. The benefit for the Indian taxpayer from purchasing the underlying service or license must be clearly documented and the arm's length price of the fees and royalties needs to be justified.

Related party transactions, the roles the parties have played, the methodology applied and the arm's length character have to be documented through a Transfer Pricing report. It must be prepared if transactions with AEs exceed INR 10 Mio. (approx. EUR 120,000) in the relevant Indian Financial Year and shall be maintained on a contemporaneous basis i.e. should exist by 31 October, following the end of such Financial Year. The time limit to produce the report to the tax office upon demand has just been reduced from 30 to 10 days under the Budget 2023-24 which was notified on 1 February 2023. In addition, and irrespective of the amount of transactions, an Indian auditor has to certify that the transactions were at arm's length (so-called "Form 3CEB"). The Form 3CEB has to be filed by 31 October. Taxpayers who form part of a larger group may also have to file a so called "Master File" (high level overview) and "Country by Country Reporting" (specific financial data) in India largely in line with OECD standards.

After a period of approx. one to two years from the end of the Financial Year, the authorities may select the pricing for a closer review (Transfer Pricing assessment), especially in case of high intercompany management fees or royalties charged and in cases of continuous operating losses.

For high value transactions which carry a high risk of uncertainty taxpayers may opt for applying for a unilateral or bilateral Advance Pricing Agreement. Such APAs determine the Transfer Pricing methodology for 5 years. They are binding on the taxpayer and the authorities involved and thus provide for legal certainty and reduce the risk of litigation.

For details about pricing Intellectual Property transactions, please click here.

For details about tax aspects of contract manufacturing in India, please click here.

For further details about Indian taxes, please click here.

Tillmann Ruppert, Partner, Rödl & Partner
Pritamraj Jhala, Senior Associate, Rödl & Partner

The 6th MIIM Exchange Platform

On 7th February 2023, the "Make in India Mittelstand!" programme organised its annual flagship event, the MIIM Exchange Platform at the Indian Embassy in Berlin. The event provided the perfect opportunity to further nurture the economic cooperation between India and Germany and highlighted various prospects presented by the Indian market. The MIIM Exchange Platform is the largest yearly gathering of its kind at the Embassy and offers its attendees valuable insight into the diverse opportunities available in Indian market for German SMEs. Additionally, participants were inspired by success stories shared by German Mittelstand companies who have previously ventured into India.

Following a Covid-induced break, the “Make in India Mittelstand!” programme, currently in its 7th year, marked its return with high-level keynote speakers from German industry associations, policy makers from both India and Germany, as well as professionals with considerable experience in the Indian market. The event was a great success, with the attendance of over 120 participants indicating that, despite the current global challenges, there is an increasing interest in the Indian market and the MIIM programme.

The Ambassador of India to Germany, H.E. Mr. Harish Parvathaneni, referred to the manifold existing initiatives between India and Germany, specifically in the field of green energy, and discussed the importance of the digital economy and India’s contribution to technology-based financial inclusion.

State Secretary Mr. Udo Philipp (left) and the Ambassador of India to Germany, Mr. Harish Parvathaneni

Dr. Christian Wagner, Dr. Volker Treier, Dr. Caroline King and Mr. Nils Wrogemann (from left to right) engrossed in conversation

State Secretary H.E. Mr. Udo Philipp from the Federal Ministry of Economic Affairs and Climate Action (BMWK), additionally highlighted the common values shared by India and Germany as democratic countries.

This was followed by a contribution from **Mr. Volker Treier, Member of the Executive Board, German Chamber of Commerce and Industry (DIHK)**, who highlighted the significance of India and the EU signing a Free Trade Agreement, emphasizing that “investment follows trade”.

Mr. Andreas Jahn, Member of the Federal Executive Board and Head of Foreign Trade, The Federal Mittelstand Association (BVMW), discussed the importance of business and education exchange between India and Germany as a future-oriented resource for Indo-German economic relations to the benefit of businesses in both countries.

All speakers, panellists and moderators.

The keynote addresses were followed by an overview of the MIIM programme and its accomplishments over the years, as it now has more than 165 member companies and facilitated declared investments of more than 1.5 billion euros. This was followed by advice and case studies from experts and companies that have already ventured into India.

Panel I: Martin Wörlein, Dr. Christian Wagner, Dr. Caroline King, Nils Wrogemann (from left to right)

The **first panel discussion**, “Indo-German Strategic Partnership: Navigating Global Headwinds Together” moderated by **Mr. Martin Wörlein, Head - India Desk at Rödl & Partner**, explored the need to diversify investments in the current times, and the panelists agreed that India is a reliable and successful investment destination, which could be further enhanced with a Free Trade Agreement.

The **second panel discussion** “Make in India for the World – How the Mittelstand Can Capitalise on a Rapidly Growing India” centered on the experiences of the panelists in India and was moderated by **Mr. Stefan Halusa, Director General, Indo-German Chamber of Commerce (IGCC)**, who highlighted that entry into the Indian market can be facilitated with the assistance of experienced advisors. The panelists also pointed out that India should be taken into consideration for R&D and global sourcing, in addition to setting up manufacturing hubs for the local market.

Panel II: Stefan Halusa, Aykut Arslan, Uwe Weiss, Michael Petry (from left to right)

The 6th MIIM platform concluded with a networking reception that enabled meaningful exchanges of experiences, opinions and ideas.

*MIIM is a free of cost investment facilitation Programme operated by Embassy of India, Berlin in association with its Knowledge Partner Rödl & Partner and competent panel of Programme Partners including the Indo-German Chamber of Commerce (IGCC). If you would like to know more about the MIIM Programme and are interested in becoming a member of the Programme, please feel free to write us at **miim@indianembassy.de**.*

EVENTS

1. **MIIM Roadshow in Munich:**
   24th of **March 2023**

Save the date, the invitation will follow shortly!

WEBINARS

1. **Decoding the Union Budget, 2023 – 21.02.2023**
   Click here to register.

2. **'Waste to Wealth'** – scheduled for beginning of March 2023

Stay tuned for many more events!

About MIIM

MIIM' is a market-entry support programme for German Mittelstand and family-owned enterprises launched by Embassy of India Berlin, Germany in 2015; driven by Government of India's national programme, 'MAKE IN INDIA'.

The objective of MIIM programme is to facilitate investments by German Mittelstand and family-owned companies in India and to provide market entry related services.

The MIIM program has enrolled more than 165 companies which represent a cumulative declared investment of 1.5 bn EUR to India.

As a part of MIIM program members are exposed to a wide range of business support services under a single platform. The program is being implemented with the support of its Knowledge Partner – Rödl & Partner, Facilitation Partners including Central and State Government Ministries in India and also key industry partners who can support the companies in various aspects of market entry into India. Offered services includes Strategy consulting, M&A, operational market entry support, tax & legal support, financial services and other services

And many more members.

Rödl & Partner

Knowledge Partner | MIIM Programme Partner

We are proud to introduce our new MIIM-member …

SchäferRolls GmbH & Co. KG

When it comes to roll covers in the manufacturing and converting of web material, SchäferRolls has been a leading light in outstanding performance for decades. Our roll covers are a reflection of our experience, gained through numerous successful applications, all meeting the specific demands of your manufacturing system. At the heart of this success lies our commitment to taking the product quality and resource efficiency of your converting line to new levels. SchäferRolls, founded in 1946, operates five production facilities worldwide with a total production area of more than 30,000 m².

Roll covers:
- Rubber covers – natural and synthetic rubber
- Composite covers – fibre-reinforced materials
- Polyurethane covers – rotational and vertical casting
- Ceramic, metal and chrome covers

Complete rolls:
- Functional and guide rolls
- Replacement parts

Roll services:
- Mechanical overhaul of roll cores and covers
- Monitoring and maintenance of mounted and attached parts
- On-site cover repair service
- Logistics and transportation management

Application engineering
- Calculation and validation of machine and product-related cover designs
- Thermographic analysis and electronic nip measurement

We are proud to introduce our new MIIM-member …

FOGTEC Brandschutz GmbH

The owner-managed company FOGTEC Brandschutz GmbH was founded in 1997. FOGTEC develops, produces and markets fire detection and firefighting systems. Our employees come from 20 countries and are based at six sites, one of them is FOGTEC Fire Protection India Pty in Mumbai. The headquarter is based in Cologne, Germany. With approx. 170 employees FOGTEC is a typical German small and medium enterprise company acting worldwide with local partners in the different markets.

FOGTEC business is distributed in four business sectors, which are called Rail Systems (rolling stock), Fixed and Mobile Systems (building and industrial applications), Tunnel Systems (underground infrastructure) and New Energy Carriers (all around Lithium Ion Batteries and Hydrogen). Approx. 80% of our products are produced for export worldwide.

One of the main products of FOGTEC is the well-known FOGTEC Water Mist technology to make water usable for firefighting in most efficient way. This technology is applied in huge numbers of projects around the world, where conventional technologies for fire protections come to their limits. Landmark-like projects as Mekka Clock Tower in Saudi Arabia, polar research stations in Antarctica, power transformer stations in India, Power distribution network in Singapore, the complete regional train fleet of youngest generation in Australia, the Hugh Grant tunnel in New York or the national archaeological museum in Peru are only very few of realized contracts.

In India FOGTEC is present by its own subsidiary in Mumbai. There a local sales and engineering support team is acting in the fire protection market for India, Middle East and South East Asia. Additionally FOGTEC set up a software development and testing team as well as started with local purchasing and assembly activities.

MAKE IN INDIA MITTELSTAND!

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