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MAKE IN INDIA MITTELSTAND!

Rödl & Partner

NEWSLETTER

Investment Support for German Mittelstand Enterprises

IN THIS ISSUE:

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Rödl & Partner

Economic Overview

The announcement of India's Union Budget for the current financial year was undoubtedly one of the most interesting and long-awaited developments in July. In a nutshell, the Budget prioritises agriculture, employment schemes, MSME support, infrastructure, and sets a fiscal deficit target of 4.9%, with the clear aim of reducing it to 4.5%. It also includes cuts in customs duties, changes in capital gains tax, and revisions to tax slabs under the new tax policy. For a more detailed analysis, we recommend the Indian Government's "Key Features of Budget 2024-2025" document[1], the video recording of our MIIM Budget webinar[2] or the article "India Budget 2024" in this newsletter on pages 3-5, which offers a comprehensive overview of those changes and news that are of relevance to you and your business.

According to a recent DZ BANK survey [3] of over 1,000 SME managers, India has emerged as a key non-European country for SMEs looking to reorganise their supply chains. Many companies see opportunities in India's strong growth, with the economy growing by 7.7% in 2023 and the country's large population offering a solution to the skilled labor shortage. Nearly 40% of SMEs plan to adjust their supply chains, with 15% expecting India to play a bigger role in the next five years, up from just over 10% in 2022. Large SMEs with over €50 million in annual turnover are especially drawn to India, with nearly one in four planning to expand trade relations, compared to around 15% in autumn 2022. India's growth potential is also increasingly being recognised and capitalised on by large corporations, with top consumer goods companies expanding their market share, driven by increased levels of consumption in India's urban and rural areas[4].

India and the European Union have also taken up trade pact discussions again with the aim of highlighting India's trade and investment prospects on the global stage[5]: Union Commerce and Industry Minister Piyush Goyal met with Italian Deputy PM Antonio Tajani at the G7 Trade Ministers' Meeting in Italy, discussing ways to boost cooperation in investments, start-ups, and energy. He also held talks with the UK Secretary of State for Business and Trade and the German Minister for Economic Affairs & Climate Action, Dr. Robert Habeck, to enhance economic ties.

What's more, senior officials from India and the European Union are expected to hold the next round of free trade agreement talks in September, aiming to boost commerce and investments. Darpan Jain, Joint Secretary in the Department of Commerce, stated that the eighth round of talks concluded on June 28, with progress in areas like government procurement, digital trade, technical trade barriers, goods, and market access. Additional inter-sessional meetings are planned for July and August, with the next round of talks scheduled for late September[6].

And, last but not least, Chancellor Olaf Scholz is scheduled to travel to New Delhi for the Indo-German intergovernmental consultations, which are expected to take place on 25th of October 2024. He will be accompanied by a business delegation, among others, and is expected to speak at the 18th Asia-Pacific Conference of German Business[7].

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India Budget 2024

The Honourable Finance Minister presented her seventh consecutive Union Budget on 23 July 2024 with a focus on nine key priorities including Manufacturing & Services, Infrastructure and Employment & Skilling.

The fiscal deficit is projected at 4.9% for FY 24-25, targeting a reduction to 4.5% in the following year. The budget further aims to achieve the goal of Viksit Bharat (Developed India) by presenting a detailed roadmap for envisioning a prosperous and inclusive India by 2047. The major tax and regulatory announcements are highlighted in the following paragraphs:

Direct Tax:

On the direct tax front, several changes have been made with a focus to rationalise, simplify procedures and reduce litigation.

One such announcement, touted as simplification and rationalisation measure to bring consistency in the law is the **overhaul of capital gains tax regime**, which has been debated a lot since its introduction. Period of holding of assets and capital gains tax rates have been streamlined. Long-Term Capital Gains tax rate has been reduced to 12.5% for all assets but indexation benefit is not to be availed. Short term capital gains tax rate increased from 15% to 20%. The exemption limits in case of Long-Term Capital Gains on sale of listed shares and specified securities have been enhanced to 1.25 lakhs.

Buy back of shares was earlier taxed in the hands of the company, now is proposed to be taxed in the hands of the shareholder as Deemed dividends. This announcement is made to treat the taxation of both dividends and buyback, at par with each other. Impact of this amendment in the context of foreign investors from treaty countries would need to be examined in detail.

Another big change is the proposal to **abolish Equalisation levy** on E-Commerce Operators. This seems to be the precursor to implementation of Base Erosion Profit Shifting measures.

A welcome change is the abolishing of Angel Tax. As per earlier taxation scheme, consideration exceeding the fair market value of shares for issue of shares by unlisted companies, was taxed as Income from Other Sources. This was leading to a lot of litigation.

Income tax rates for foreign companies offering their income to tax on net basis have been reduced from 40% to 35%. Income Tax rates under the Simplified Income Tax Rate Regime have been slightly reduced.

Redressal of litigation seems high priority through introduction of slew of measures like a new Vivad se Vishwas Scheme, 2024, simplifying reassessment procedures

Some misses - although heavily speculated, extension of concessional tax rate for new manufacturing companies has been given a miss.

Interestingly, the Finance Minister has announced that a new simplified tax code will be unveiled in six months.

Indirect Tax:

The budget aims to rationalize GST rates and provisions to correct anomalies and promote uniformity across sectors, and customs duty to support the 'Make in India' initiative.

Goods and Services Tax ('GST')

- Conditional waiver of interest and penalty in respect of demands pertaining for FYs 2017-18 to FY 2019-20 is proposed, subject to payment of full tax liability before a date to be notified.

- The time limit to avail Input Tax Credit ('ITC') for invoice or debit note for supply of goods or services or both pertaining to FY 2017-18 to FY 2020-21 to be extended up to 30 November 2021.

- It is proposed to enable an authorized representative to appear on behalf of the summoned person before the proper officer.

- The applicability of Section 73 and Section 74 of CGST Act to be restricted up to FY 2023-24 and Section 74A to be inserted in the CGST Act for determination of tax not paid/ short paid/ erroneously refunded/ ITC wrongly availed/ utilized from FY 2024-25 onwards, where a timeline of 42 months has been provided for issuance of SCNs and orders in both fraud and non-fraud cases.

- The maximum amount of pre-deposit for filing appeal before the Appellate Authority is proposed to be reduced from Integrated GST ('IGST') of INR 500 million to INR 400 million and before the Appellate Tribunal from IGST of INR 1000 million to INR 400.

- No refund of unutilized ITC or IGST paid on exports of goods would be allowed where the said supply is subjected to Export Duty.

Customs and allied laws:

- To promote import of mobile phones, printed circuit board assembly and chargers, Basic Customs Duty ('BCD') on these goods has been reduced to 15% from 20%. Similarly, in terms of precious metals, duties on gold and silver are reduced from 15% to 6%, and on platinum from 15.5% to 6.4%, making these metals more affordable and boosting sales. Further, timelines for certain exemptions have been extended.

- Any declaration or document as 'proof of origin' would be accepted to confirm the

- fulfilment of country-of-origin requirements.

- The Government would notify certain manufacturing procedures or other procedures for class of goods which would not be permitted in a custom bonded warehouse.

- The benefit of exemption from GST compensation cess is proposed to be provided on import of goods by any unit or developer in SEZ area, retrospectively from 01 July 2017.

Policy and Regulatory Framework:

On the policy and regulatory front, key focus of the Budget 2024 has been **additional job creation and higher participation of women in workforce**. Several schemes are announced such as employee linked incentives schemes for first timers, manufacturing sector and other employers, skilling and labour related reforms, providing internship opportunities in 500 top companies to youth as well as enhancing the labour services portal for ease of doing business.

Budget seeks to propose that rules pertaining to **foreign direct investment** and overseas investments will be simplified to facilitate foreign direct investments and promote opportunities for using Indian Rupee as a currency for overseas investments.

To facilitate **ease of doing business in India**, it proposes to announce Jan Vishwas Bill 2.0 and the Government seeks to extend the services of the Centre for Processing Accelerated Corporate Exits (‘C-PACE’) for voluntary closure of limited liability partnerships (‘LLPs’) to reduce the closure time, set up an integrated technology platform for improving the insolvency and debt recovery process under the Insolvency and Bankruptcy code (‘IBC’) with measures including enhancing the efficiency of National Company Law Tribunals and debt recovery.

The budget announcements, as expected, aimed to boost manufacturing, ease compliance, reduce litigation, rationalize rates under GST and Customs to promote 'Ease of Doing Business' in India.

While, the budget introduces significant and progressive changes to the tax system, focusing on making it simpler and more rational, opinions are divided on the removal of the indexation benefit for long-term capital assets. Further, the new tax code, set to be unveiled in six months is expected to be progressive and in line with the vision of a developed India—Viksit Bharat—by 2047. Overall, it is a balanced budget focusing on sustain-

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Deutsche Bank

Mittelstand In Focus
India's Digital Public Infrastructure: Pioneering Growth and Inclusion

Digital Public Infrastructure (DPI) is an approach to provide digital networks that enable the efficient provision of social services to individuals. It is projected that by 2030, DPI's contribution to the Indian GDP will triple from the current 0.9% to a range of 2.9-4.2%[1].

India Stack, the name for India's Digital Public Infrastructure architecture, has established a foundation on which private innovation can thrive. This has led to a remarkable transformation of the country in the last decade. India has surpassed conventional development methods by promoting financial inclusion, stimulating a thriving start-up ecosystem and providing equal access to the Internet. This has transformed the country from an offline, cash-based, informal, low-productivity economy to an online, cashless, formal, and high-productivity economy.

Key Transformative Initiatives

1. Aadhaar: Cornerstone of Digital Identity

Aadhaar, established in 2009, is the foundation of India's DPI. This system assigns each resident a distinctive 12-digit identification number while storing their biometric and demographic information. The primary goal of Aadhaar is to facilitate the efficient and standardised verification of an individual's identity across various services. Aadhaar, the world's largest biometric identification system, has registered over 1.3 billion people[2] as of 2023. Offering dependable and secure digital identification has vastly improved the availability of public services, financial inclusion, and social assistance programs.

2. UPI: Revolutionising Digital Payments

The Unified Payments Interface (UPI), launched in 2016 by the National Payments Corporation of India (NPCI), has revolutionised the digital payments sector in India. UPI enables real-time instant fund transfers between bank accounts using mobile devices, eliminating the requirement for conventional payment intermediaries. As of 2023, UPI has successfully handled more than 12 billion transactions monthly, establishing itself as one of the most extensively utilised digital payment systems worldwide[3]. The open API architecture of the system has triggered innovation in the fintech industry and allowed for a smooth interaction with different apps and services.

3. Digital India Initiative: Bridging the Digital Divide

The Digital India initiative, introduced in 2015, is a program that's attempting to change the country into a knowledge-based economy enabled by digital technology. The effort centres around three fundamental domains – constructing digital infrastructure, providing governance and services using digital methods, and fostering digital literacy among residents. Notable projects within this effort comprise:

- **DigiLocker** is a cloud-based technology that securely stores and shares digital documents, removing the need for physical documentation.
- **Ayushman Bharat Digital Mission** integrates digital health infrastructure, including personal health records.
- **FASTag** is an electronic toll collection system managed by the National Highway Authority of India (NHAI) and has been mandated for use in private and commercial vehicles eliminating the use of cash.
- **Digi Yatra** is a Biometric-enabled Seamless Travel (BEST) experience that uses a Facial Recognition System (FRS). The system envisions that travellers will go through multiple checkpoints at the airport using paperless and contactless processing.
- ***Bhashini*** is an artificial intelligence (AI) powered language translation tool designed to enhance communication and comprehension among different Indian languages.

4. Open Network for Digital Commerce (ONDC)

India's newest edition to DPI was launched in January 2023 and utilises an open-source methodology to democratise the e-commerce process. The network paradigm facilitates the seamless flow of e-commerce traffic between many digital storefronts, enabling consumers, sellers, and logistics providers to transact regardless of the application/platform they utilise. The network has over 370,000 sellers and service providers, from top brands to farmers and taxi drivers[4]. ONDC serves over 588 cities across the country, covering approximately 70% of cities in India.

Impact and Success

1. Financial Inclusion and Development

India's DPI has been instrumental in promoting financial inclusion. The Pradhan Mantri Jan Dhan Yojana (PMJDY), initiated in 2014, has facilitated the establishment of more than 450 million bank accounts for persons who previously did not have access to banking services. The Jan Dhan-Aadhaar-Mobile Phone (JAM) trinity is formed by the combination of this effort. The JAM framework facilitates the implementation of direct benefit transfers (DBT) to recipients, reducing losses and assuring the effective distribution of subsidies and welfare payments. The extensive use of UPI has facilitated the democratisation of digital payments, granting millions of individuals and small enterprises convenient access to financial services.

2. Healthcare and Social Services

The healthcare sector in India has been greatly enhanced by the country's digital infrastructure, which became particularly apparent during the COVID-19 pandemic. The Aarogya Setu app, introduced in 2020, played a crucial role in tracking the contacts of affected individuals and delivering health-related information. The CoWIN platform effectively coordinated the vaccination rollout, enabling precise and prompt distribution of the anti-COVID jab. The National Health Digital Ecosystem (NHDE) seeks to enhance the digitisation of healthcare services by incorporating electronic health records, telemedicine, and other digital health solutions. This aims to improve access to high-quality healthcare, particularly in remote and underserved regions.

3. Education and Digital literacy

The National Digital Education Architecture (NDEAR) promotes a cohesive digital structure for education, enabling the exchange of resources and improving learning experiences throughout India. While DIKSHA (Digital Infrastructure for Knowledge Sharing) offers an extensive range of digital educational content and tools for teachers and students. These platforms have played a vital role during the COVID-19 pandemic, facilitating uninterrupted learning despite the shutdown of schools. In addition, the Digital India project has implemented digital literacy programs that have equipped millions of Indians with the necessary skills to actively engage in the digital economy.

Deutsche Bank's Support for Clients

Deutsche Bank has continued to enhance our client-centric, highly integrated, and automated workflow solutions across payment ecosystems. We have moved our instant payment product offering in India to a state-of-the-art technology stack encompassing the various aspects of India Stack and UPI. It is a cloud-ready, 24/7, API-enabled, and value-agnostic solution that enables us to meet the business needs of our clients, as well as support our merchant solutions and BaaS business models. Deutsche Bank is also an active participant in the Open Network for Digital Commerce (ONDC) initiative, enabling the onboarding of buyers, sellers, and logistic providers through self and partner capabilities.

Deutsche Bank's cutting-edge API-enabled UPI product offering for clients continues to gather pace, with use cases including instant account and beneficiary validation, instant refunds, request-to-pay, and dynamic QR/ VPA solutions that allow for easy settlement of transactions. We have capitalised on India's digital public infrastructure by adding new features, enhancing existing capabilities, increasing capacity, stability, availability and implementing a digital client experience through APIs and other digital access channels.

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FAQs Social Security Benefits in India

India's extensive social security system is designed to safeguard the welfare & rights of its workforce through various legislations. Let's discover the intricacies of social benefits in India, including its key legislations, eligibility criteria, and statutory contributions such as under the EPF Act and learn about the recent updates of the court rulings affecting the international workers via these Frequently Asked Questions (FAQs): -

1. What is Social Security in India? What are the different statutory benefits under Social Security in India?

India has a robust social security legislative framework governing social security, encom-passing multiple labour laws and regulations. These laws govern various aspects of social security, particularly focusing on the welfare of the workforce. The primary objective of these measures is to foster sound industrial relations, cultivate a high-quality work envi-ronment, ensure legislative compliance, and mitigate risks such as accidents and health concerns. Moreover, social security initiatives aim to safeguard against social risks such as old age, maternity, and unemployment. In this article we cover in detail the key compo-nents of Employees Provident Funds and Miscellaneous Provisions Act, 1952 ("**EPF Act**").

2. What are the key legislations dealing with social security in India?

India has several key social security laws, including the Employees' Compensation Act, 1923; the Employees' State Insurance Act, 1948; the Employees' Provident Funds and Mis-cellaneous Provisions Act, 1952; the Maternity Benefit Act, 1961; the Payment of Gratuity Act, 1972; the Cine Workers Welfare Fund Act, 1981; the Building and Other Construction Workers Welfare Cess Act, 1996; and the Unorganised Workers' Social Security Act, 2008. Certain states in India have their own local legislation governing Labour Welfare Fund (LWF). For example, in Maharashtra, there is the Maharashtra Labour Welfare Fund Act, 1953; in Karnataka, it is the Karnataka Labour Welfare Fund Act, 1965, and in Tamil Nadu, there is the Tamil Nadu Labour Welfare Fund Act, 1972. These state-specific laws deter-mine the contribution frequency and amount to the LWF, which varies from state to state. Both employers and workers contribute to the LWF for the benefit of workers. Contribu-tions can be made annually or half-yearly, depending on the state's regulations. Employers are required to deduct and contribute the specified amount from the salaries of workers and submit it to the state Labour Welfare Board within the prescribed timelines.

3. Who eligible to avail of social security benefits under these laws?

Eligibility for social security benefits may vary depending on factors such as employment status, salary levels, and the nature of work. It is observed that government-controlled so-cial security schemes in India primarily cater to a limited segment of the workforce. The obligatory contributions by employers towards social benefits vary significantly, obliging contributions from all enterprises based on the employee threshold, typically ranging from a minimum of 10 to 20 employees or more. Furthermore, mandatory coverage under specif-ic laws is contingent upon thresholds linked to employees' salary levels.

4. What is the scope of social security benefits in India?

In India, social security benefits are provided through various acts and schemes, including the Employees' State Insurance Act, 1948 (ESI Act), the Employees' Provident Fund & Mis-cellaneous Provisions Act, 1952 (EPF Act), the Maternity Benefit Act, 1961, the Payment of Gratuity Act, 1972, and the Employees' Compensation Act, 1923. These laws aim to ensure employees receive benefits such as sickness, maternity leave, disability, medical, and death benefits, depending on the specific legislation. They cover employees in different types of establishments and industries, with contributions required from both employers and employees.

5. What are the primary features of the Employees' Provident Fund Act in India concerning social security benefits?

The Employees' Provident Funds and Miscellaneous Provisions Act of 1952 is one of social security laws in India providing benefits to employees/industrial workers. The Employees' Provident Funds and Miscellaneous Provisions act mainly provides retirement or old age benefits, such as :- 1) Provident Fund, 2) Superannuation Pension, Individual Pension, Fami-ly pension and 3) Deposit linked insurance. The primary aim of the Employees' Provident Funds and Miscellaneous Provision Act, 1952 is to extend comprehensive terminal benefits to employees/industrial workers. These benefits encompass scenarios like retrenchment, closure, retirement upon reaching the age of superannuation, voluntary retirement, resig-nation, and retirement due to incapacity to work.

6. What establishments does the EPF Act apply to?

The EPF Act is mandatorily applicable to all establishments having 20 or more employ-ees. The EPF Act continues to apply even if the threshold falls below 20 employees. Fur-ther, any establishment employing less than 20 persons can also be voluntarily covered under section 1(4) of the EPF Act.

The term "employee" for the purpose of applicability under the EPF Act is not restricted to those employees who are on the payroll of the establishment. Section 2(f) of the EPF Act gives a wide definition of "employee" to provide any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establish-ment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the es-tablishment. In other words, permanent, temporary, full time, part time, casual, time – rat-ed, piece – rated employees, contract employees working for the establishment will also be counted for the purpose of mandatory coverage under the EPF Act.

7. **What are the statutory schemes covered under the EPF Act and eligible employees covered?**

There are three schemes under the EPF Act as provided below:

(a) Employees' Provident Fund Scheme, 1952 (EPF Scheme)

EPF Scheme is set up under the EPF Act for the purpose of providing a post-retirement benefit for the employees or a class of employees or their legal heirs in case of death, employed under the establishment. The following employees are covered under the EPF Scheme:

i. *Any person employed for work within an establishment or engaged through a con-tractor for work related to an establishment, is mandatorily required to be covered under the EPF Scheme if their salary is less than INR 15,000 per month. Further-more, employees who have been members of the EPF Scheme are required to con-tinue even though their monthly wage exceeds INR 15,000/-.Further, those earn-ing above INR 15,000 per month may also be covered since 1 September, 2014 on a voluntarily basis.*
ii. *Individuals classified as disabled employees under the new para 82 of the EPF Scheme, appointed on or after 1 April, 2008 and working in the private sector with monthly wages up to INR 25,000 are covered.*
iii. *Any person classified as an International Worker under the new para 83 of EPF Scheme, is also covered.*

(b) Employees' Pension Scheme, 1995:

Employees' Pension Scheme (EPS)is framed under the EPF Act for the purpose of provid-ing the superannuation pension, retiring pension or permanent total disable-ment pension to the employees and also to provide widow or widower's pension, chil-dren pension or pension payable to the beneficiaries of such employees. Under this scheme, out of the employers' contribution of 12 per cent, 8.33 per cent is allocated to Employees' Pension scheme and balance of 3.67 per cent is allocated to Employees' Provident Fund Scheme. The government amended rules related to EPF and Employ-ees' Pension Scheme via noti-fication in August 2014, which became effective from 1 September, 2014, any new joinees/ individuals who joined Employees' Provident Fund on or after September 1 2014, if at the time of joining their monthly wage (Basic+ Dearness Allowance) exceeded INR 15,000/- per month, they would be ineligible to be a part of EPS, and in such case 8.33 per cent of employer's share is not to be diverted to the pension scheme and total employer's share goes to EPF Scheme.

(c) Employees' Deposit-linked Insurance Scheme, 1976:

Employees' Deposit-linked Insurance Scheme (EDLI) under the EPF Act is for the pur-pose of providing insurance benefits to the employees of an establishment or a class of estab-lishments to whom this EPF Act applies in case of death while in service. For this scheme no amount is taken from employee's salary. However, the employer has to make a payment of 0.5 per cent of the total pay on which contributions are payable of a maximum of INR 15,000 every month.

8. Who are Excluded Employees under the EPF Act?

a. Employees who have withdrawn the full amount of their contribution in the Fund ei-ther upon retirement from service after reaching the age of 55 years or upon migra-tion from India for permanent settlement abroad or for taking employment abroad.
b. Employees whose pay exceeds INR 15,000 per month provided he is not a member of PF before (effective from 1 September, 2014).
c. Individuals who, as per the Certified Standing Orders, are classified as apprentices, or who are declared to be apprentices by the authority specified by the appropriate Gov-ernment.

9. What are the statutory contributions under the EPF Act?

Under the EPF Act, the EPFO has constituted and maintains a fund known as the Em-ploy-ees' Provident Fund (EPF). Both employer and employees have to make monthly contribu-tions towards the EPF. The rate of monthly contribution payable by both employer and employee currently is 12 per cent each on employee's basic salary and dearness allow-ance. Further under the EPF Act currently there is a maximum wage ceil-ing of INR 15,000/- per month except for those employees who qualify as "International Workers" under new para 83 of the Employees Provident Fund Scheme, 1952.

Further, the rate of contribution payable by the employer is 10 per cent on the monthly wages and an equivalent contribution of 10 per cent is payable by the employee, in case of certain establishments including establishments having less than 20 employees.

10. Can an employer withdraw the applicability of the EPF Act when the contributions made under the EPF Act were on voluntary basis?

No, once an employer (who is not mandatorily required to be covered) under the EPF Act opts for voluntary coverage, such employer cannot thereafter ask for withdrawal of cov-er-age even when the number of employees is reduced below 20.

11. Which are the components of wages considered for the EPF statutory contribution purpose?

The EPF Act defines the "basic wage" under Section 2(b)(ii) as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. The definition of "basic wage" explicitly excludes cash value of food concessions, dearness allowance, house-rent allowance, overtime allowance, bonus, commission, presents made by the em-ployer. However, section 6 of EPF Act categorically provides that the EPF contribution shall be payable on monthly basis upon ***basic wages, dearness allow-ance and re-taining allowance (if any) payable to each of the employee.*** In other words, the EPF contribution is primary invited on "basic wages" and "dearness allow-ance".

Further, the Honorable Supreme Court in ***Regional Provident Fund Commissioner (II), West Bengal vs. Vivekananda Vidyamandir & Others. [2019 LLR 339],*** had primarily reiterated that all those allowances whether titled as "special allowance" or any other allowances of like nature which are universally, necessarily and ordinarily paid to all employees across the board, are to be considered as a part of "basic wages" for the pur-pose of provident fund contribution. Hon'ble Supreme Court further clarified that certain allowances are excluded by law for the EPF contribution purpose which are vari-able or linked to any incentive for production of greater output by an employee. For instance over-time allowance, bonus, commission, or other similar allowance which are not necessarily to be found to be paid in all the estab¬lish¬ments nor are they necessari-ly earned by all the employees hence, shall specifically stand ex¬cluded from the EPF contributions. However, the said ruling does not impact the domestic workers contribut-ing provident fund on amounts exceeding INR 15,000/- per month which is the current maximum wage ceiling. However, the Hon'ble Supreme Court ruling impacts companies employing foreign nation-als qualifying to be "International Workers" as the maximum wage ceiling does not apply. Hence the risk of higher contribution is seen to be consider-able in respect of employe¬es qualifying as the "International Workers".

12. What are the special provisions under the EPF Act pertaining to International Worker (IW) in terms of global mobility?

Until October 2008, foreign nationals working in India were not covered under the Provi-dent Fund regulations if their pay exceeded the wage ceiling. Conversely, Indian nationals working abroad were required to contribute to the social security schemes of the respec-tive countries, often losing contributions due to limited overseas tenure or failure to meet minimum contribution or residence requirements. In order to create a level playing field, the Ministry of Labour, Government of India, introduced significant changes in the Em-ployees Provident Fund Scheme, 1952, and the Employees Pension Scheme, 1995, in Octo-ber 2008. These changes introduced a new category of workers known as International Workers. As a result, every eligible IW working in an establishment in India required to con-tribute to provident fund schemes became obligated to enroll in these schemes, effective from 1 November, 2008.

International Worker means: -

a. Any Indian employee having worked or going to work in a foreign country with which India has entered into a social security agreement and being eligible to avail the bene-fits under social security programme of that country, by virtue of the eligibility gained or going to gain under the said agreement;
b. An employee other than an Indian employee, holding other than an Indian Passport, working for an establishment in India to which the EPF Act, applies.

13. Who can be excluded from International Worker under the EPF Act?

An international worker who is contributing to the social security program of their home country and is officially recognized as such through a Detachment Certificate for a specific period, as outlined in the bilateral Social Security Agreement between that country and India, is considered an 'excluded employee' according to these regulations. India is having a bilateral comprehensive economic agreement with Singapore wherein specifically ex-empts natural persons of either country to contribute to the social security fund of the host country (e.g. para 4 of Article 9.3 of CECA between India and Singapore provides that “Natural persons of either Party who are granted temporary entry into the territory of the other Party shall not be required to make contributions to social security funds in the host country)

14. What is a Social Security Agreement (“SSA”)?

SSA is a mutual agreement aimed at safeguarding the social security rights of workers as-signed to another country. As a bilateral arrangement, it typically ensures equal treatment and prevents duplicate coverage.

Scenario 1: Worker Moving to a SSA Country to perform temporary work for his/her Indian Employer.

Worker contributing to a contributory pension scheme in India can avail a Certificate of Coverage (COC) to be exempt from paying social security contribution in the SSA Country.

Scenario 2: Worker Moving to a Non-SSA Country to perform temporary work for his/her Indian Employer.

Worker may have to contribute towards Social Security in both India as well as the country he or she is moving to for the temporary work.

15. Which countries have entered into a SSA with India?

Countries like Belgium, Germany, Switzerland, the Grand Duchy of Luxembourg, France, Denmark, Republic of Korea, Netherlands, Hungary, Finland, Sweden, Czech Republic, Norway, Austria, Canda, Australia, Japan, Portugal. Recently, India signed Social Security Treaty with Brazil with effect from 1 January 2024.

16. Can an international worker benefit from reciprocity if their home country exempts Indian nationals from social security under domestic law, despite the lack of a Social Security Agreement with India?

International workers cannot profit from reciprocity without a formal agreement in place. All International Workers must be enrolled, with the exception of those with a valid de-tachment certificate under an SSA.

17. What is the monthly pay considered for contribution under the EPF Act for International workers? How will the recent Karnataka High Court judgment regarding International Workers affect this?

The contribution shall be calculated on the basis of monthly pay containing the following components actually drawn during the whole month whether paid on daily, weekly, fort-nightly or monthly basis:

- *Basic wages - All emoluments paid or payable in cash while on duty or on leave / holi-day except Dearness allowance, House rent allowance, Overtime allowance, Bo-nus, Commission or any other similar allowance payable in respect of employment and any presents made by the employer*
- *Dearness allowance - All cash payments by whatever name called paid to an em-ployee on account of a rise in the cost of living*
- *Retaining allowance*
- *Cash value of any food concession*

Furthermore, it has to be noted that; the Contribution is payable on the to-tal salary payable on account of the employment of the employee employed for wages by establishment covered in India even for responsibility outside India also. Additionally, there is no cap on the salary up to which the contribution has to be made by both the employer as well as an employee. The maximum wage ceiling of INR 15,000 per month does not apply in the case of International Workers.

The international workers are mandatory to contribute 12 percent of their salaries (not subject to any cap) to the Indian Provident Fund scheme. The exemption from making contributions for employees earning salary in excess of INR 15,000 per month does not apply to international workers. Additionally, the employers are also compulsorily to pay an equal amount, i.e., 12 percent of salary as their contribution to the scheme.

In the recent case (heard with several other petitions) of Karnataka High Court titled ***Stonehill Education Foundation v. The Union of India (WP No. 18486/2012)***, delivered on 25 April 2024, the Karnataka High Court ruled that Para 83 of the Employ-ees' Provident Fund Scheme 1952("Provident Fund Scheme") and Para 43-A of the Em-ployees' Pen-sion Scheme, 1995 ("Pension Scheme") and struck down these special provi-sions for 'International workers'.

The Hon'ble High court found these provisions, introduced in 2008, to be discriminatory as they mandated international workers to contribute to the Provident Fund irrespective of their salary, while domestic workers earning above INR 15,000 per month were exclud-ed.

The Hon'ble High court ruled that the distinction between international and domestic workers violated Article 14 of the Constitution, which guarantees equality before the law.

However, it is important to note that this judgement was passed by a single-judge bench of the Karnataka High Court. Such rulings are often challenged before larger benches of the High Court or the Supreme Court. The EPFO is reportedly contemplating an appeal against the ruling until the matter is finally decided, employers may continue to deposit EPF contributions for international workers to ensure compliance, unless specific guid-ance is provided by the EPFO.

Conclusion:

The recent Karnataka High Court ruling has significantly impacted the social security landscape for international workers in India.

Moving forward, both employers and international workers must remain informed about legal developments and potential legislative changes. Employers should stay updated on social security regulations, while international workers are advised to seek professional advice to understand the implications of the ruling in respect to their specific situations. As India's social security system adapts to the evolving global economy, further legal refinements and clarifications can be expected to ensure a fair and equitable system for all workers.

Disclaimer:

The content provided in this article is for general informational purposes only and does not constitute professional advice. It is essential to seek specific advice from qualified professionals regarding your individual situation or needs. Any reliance on the information provided here is at your own risk.

Rushak Tadkalkar, Partner, Rödl & Partner
Apoorva Singh, Senior Associate, Rödl & Partner

Upcoming Events

India's Economic Horizon: Investment and Manufacturing Opportunities

11.09.2024 | Munich

Register here!

Asia-Pacific Conference of German Business 2024

24 - 26 October 2024 | New Delhi

Register here!

RE-INVEST 2024

16-18.09.2024 | Gandhinagar (Ahmedabad)

More details will follow shortly

Wirtschaftstag Indien

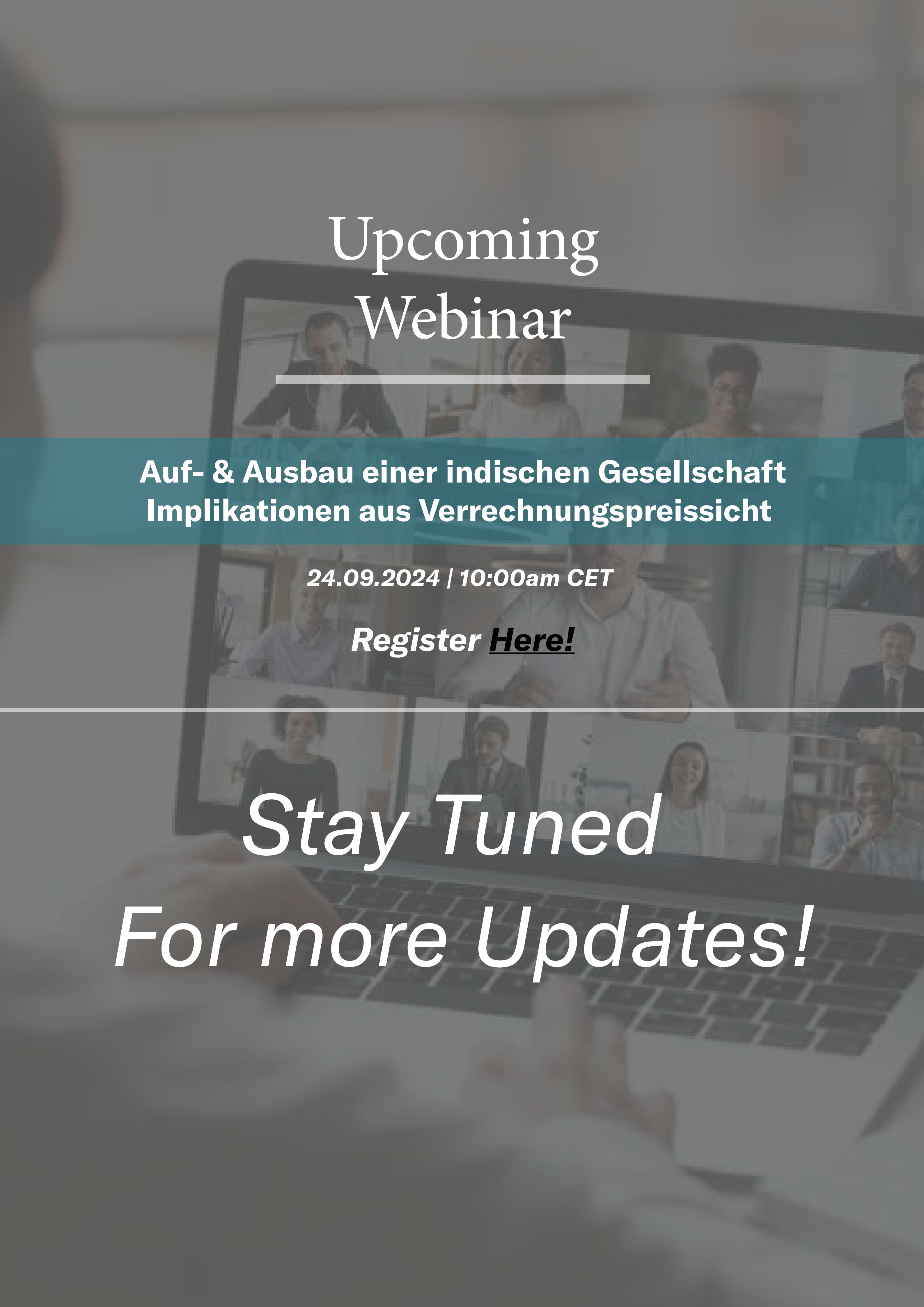
01.10.2024 | Nürnberg

Register here!

Indien im Fokus: Neue Chancen auf dem Subkontinent

09.10.2024 | Frankfurt

Register here!


Upcoming
Webinar
Auf- & Ausbau einer indischen Gesellschaft
Implikationen aus Verrechnungspreissicht
24.09.2024 | 10:00am CET
Register Here!
Stay Tuned
For more Updates!

सत्यमेव जयते

CGI Munich

MAKE IN INDIA MITTELSTAND!

Rödl & Partner

India's Economic Horizon: Investment and Manufacturing Opportunities

India, with its flourishing economy, expanding and diverse consumer base, significant demographic potential, and innovation-driven environment, offers abundant opportunities for businesses aiming to expand internationally. The Indian market is experiencing considerable interest from German Mittelstand companies and is rapidly becoming their preferred investment destination.

Are you a German SME looking for new growth and expansion opportunities? Do you wish to explore the dynamic and vibrant Indian market?

If so, this event is tailored for you! Join us for this interactive and informative session to gain insights into India's current investment ecosystem, economic landscape and the country's investment climate, along with an overview of the offerings by the Indian government for foreign companies and other topics relevant to decision-makers of Mittelstand companies. Additionally, enjoy a networking session where you can connect with fellow business leaders and policymakers.

Wednesday, 11th of September 2024

10:00 – 13:00 hrs

Hotel Bayerischer Hof | Promenadepl. 2-6, 80333 München

Register here

Programme Partners

CGI Munich

MAKE IN INDIA MITTELSTAND!

Rödl & Partner

Time	Agenda
09:45 – 10:00 hrs	**Registration & Entry**
10:00 – 10:10 hrs	**Welcome Address by Consul General of India, Munich**
10:10 – 10:30 hrs	**Presentation by Invest India** Investment Ecosystem and Economic Landscape in India
10:30 – 11:15 hrs	**Panel Discussion** India's Investment Climate: Navigating Economic and Business Opportunities Dirk Matter - Managing Driector, Indo-German Chamber of Commerce Taksh Sharma - Assistant Manager, Invest India Bernhard Baumgärtner - Consultant, BBC Consult, Former Director Asia Pacific of ProMinent GmbH Moderator - Tillmann Ruppert, Partner, Rödl & Partner
11:15 – 11:30 hrs	**Testimonial 1** Bernhard Baumgärtner Consultant, BBC Consult, Former Director Asia Pacific of ProMinent GmbH
11:30 – 11:45 hrs	**Testimonial 2** Dimitrios Xirofotos Director Sales, Spohn & Burkhardt GmbH & Co. KG
11:45 – 12:00 hrs	**Q&A Session**
12:00 – 13:00 hrs	**Networking Session**

Programme Partners

Rödl & Partner · KHAITAN & CO · KFW DEG · Deutsche Bank · SBI · INVEST INDIA · AHK · INVEST PUNJAB · TIDCO · TRIFAC · RIICO · wbidc · EDB · iNDEXTb

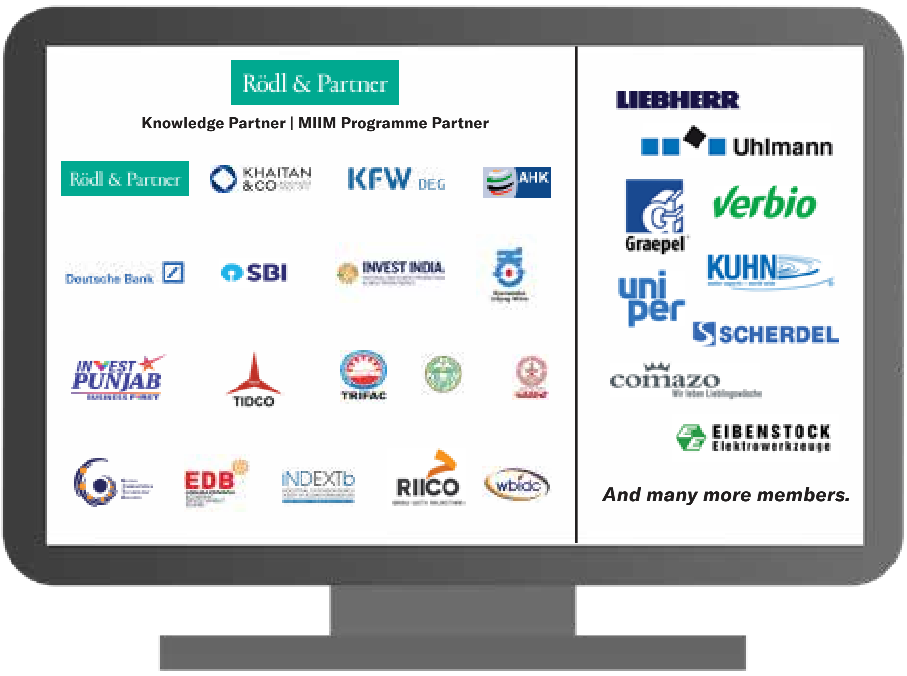
About MIIM

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 218 companies which represent a cumulative declared investment of 2.1 bn EUR to India. MIIM has supported and facilitated the establishment of approximately 122 new manufacturing sites and expansions, along with 65 new subsidiaries. The program also offers numerous workshops—both physical and virtual—and networking events that facilitate knowledge exchange, while also serving as catalysts for meaningful partnerships that drive innovation and growth.

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.



MAKE IN INDIA MITTELSTAND!

Rödl & Partner - Exclusive Knowledge Partner

Investment support for German Mittelstand Enterprises

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