Embassy of India
Berlin, Germany

MAKE IN INDIA MITTELSTAND!

Rödl & Partner

Investment support for German Mittelstand Enterprises

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ECONOMIC UPDATE

India on the Upswing

India is well positioned to be among the fastest growing major economies in the world in 2022 while the other major economies may encounter recession or considerable moderation in their growth momentum as per the RBI Governor Mr. Shaktikanta Das. He expects that the favorable growth differential of India provides confidence to investors. This is amply reflected in the surge of portfolio flows into India since July 2022.

MyGovIndia Twitter

Inflows in August alone which stand at US$ 7.5 billion are more than 16 times the net inflows in July. India's foreign exchange reserves of US$ 561 billion (as on August 26) provide a cushion against external shocks encountered on a day-to-day basis. Moreover, the reserves are also reinforced by forward assets.

The State Bank of India (SBI) Report projects India to become the third largest economy by 2029 - up seven places since 2014 when the country was ranked 10th.

India is currently ranked the world's fifth largest economy. If we track India's journey since 2014, it reveals that India is likely to get the tag of third largest economy by 2029. The research report from SBI's Economic Research Department highlighted that the Gross Domestic Product (GDP) growth rate for FY23 is estimated between 6.7-7.7%, but it is standard to have a 6-6.5% growth due to global uncertainties.

India had surpassed Britain to become the world's fifth largest economy according to a Bloomberg report. India extended its lead in the first quarter, showed the GDP figures from the International Monetary Fund. The share of India's GDP is now at 3.5%, as against 2.6% in 2014, and is likely to cross 4% in 2027, which is the current share of Germany in global GDP.

On August 31, GDP numbers released by the National Statistical Office for the first quarter of FY23 had shown that the Indian economy grew 13.5%. The GDP growth rate was lower than the 16.2% forecast by the Reserve Bank of India's Monetary Policy Committee. Indian economy had registered a GDP growth of 20.1% in Q1FY22, owing to a low base.

As many as 16 states, including Odisha, Tamil Nadu and Bihar have integrated with National Single Window System (NSWS) so far with an aim to promote ease of doing business as per Senior Government officials. The government in September last year had soft-launched the NSWS for businesses. It was aimed at providing support to the investors which included the pre-investment advisory, information related to land banks and with provision extended for facilitation of clearances at the Centre and State levels.

ECONOMIC UPDATE

The NSWS portal is proposed as a one-stop shop for investors to support for all the regulatory approvals and services related to investments. It assists in online filing and tracking of all applications and clearances, thereby helping investors to obtain clearances from different stakeholders without physically visiting different government offices.

As per the government, currently, 24 of the 32 Ministries and Departments have onboarded the system and others are in the process. Presently, 181 out of total 368 services identified as relevant, have been onboarded. At the same time, 16 states/ Union Territories (UTs) out of 36 have also onboarded the system as per the Department for Promotion of Industry and Internal Trade (DPIIT).

The States and UT which are yet to integrate with the portal are Haryana, Jharkhand, West Bengal, Rajasthan, Delhi, Chandigarh, among others.

At the moment a common registration form has been in-built into the system which enables the investor to apply in a user-friendly format for investor-related clearances. The form is integrated with the payment gateway (PayGov) and is also integrated with 'Bharat Kosh', thereby integrating all Ministries/ Departments with public financial management system of accounting of the government, along with reconciliation of accounts.

Jamly John, Rödl & Partner

REGULATORY NEWS

Development of Enterprise and Service Hubs Gaining Shape

India has always been supporting its export business. Schemes have been created to allow duty free manufacturing in Special Economic Zones (SEZs) and for registered Export Oriented Units (EOUs). These measures have proved to be a significant contributor to the overall economic growth for any region owing to the benefit and support provided by the government. This has been successful in the past. However, in 2019 the WTO has found India's main export subsidies to be incompliant with WTO regulations due to their potential for distorting competition.

Even earlier, Income Tax incentives for both units had been phased out. Accordingly, the number of SEZ units has been on a steady decline. In order to revise the concept and to overcome the hurdles in the existing scheme, the Indian Government now seeks to revamp those erstwhile successful programs by creating the legal framework for a new scheme of "Development of Enterprise and Service Hubs". It was first mentioned by Finance Minister Nirmala Sitharaman in the Union Budget in February 2022. The law is now getting shape and the Government hopes to pass this bill soon.

The DESH scheme is proposed to be open for manufacturing and service activities, with "enterprise hubs" designated for manufacturing and service activities and "service hubs" limited to service activities. It will replace the current SEZ schemes.

The DESH scheme proposes to provide following major benefits:

- the Income Tax rate will be reduced to 15% for a period of upto 2034
- payments of import duties for the purchase of raw material and capital goods from abroad will be deferred and fully waived if goods manufactured by the companies will finally get exported
- financing norms governing loans from abroad will be eased
- Automated one stop approvals will be introduced for ease of doing business

Unlike SEZ units, DESH units will not be required to export the majority of their products for qualifying under the scheme (no Net Foreign Exchange Earner status required) and sales to the Indian domestic tariff area shall not attract import duties. The fact that the scheme thus applies beyond exporting activities will make it WTO compliant.

With the above proposed benefits, India trusts that that new DESH scheme will further enhance its standing as global manufacturing and service hub.

We suggest foreign investors to monitor the news on the DESH scheme closely. The MIIM-Team will keep you up to date about any new important developments.

Tillmann Ruppert, Gaurav Makhijani, Rödl & Partner

REGULATORY NEWS

Labour Law Reforms

After more than 20 years, the Indian government has finally enacted labour law reforms to codify and most importantly, uniform the outdated labour laws in India. This long-awaited step is intended to adopt the labour laws to the current employment market and resolve tensions between employers' and employees' interests under the current legislation.

The Code on Wages, 2019 is one of the first of four labour codes which received the Indian Parliament's nod and the Presidential assent on 8th August 2019. Subsequently, 29th September 2020 marked the passing of the long awaited 3 (three) labour codes i.e. the Code on Social Security, 2020, the Occupational, Safety, Health and Working Conditions Code, 2020 and the Industrial Relations Code, 2020 by both houses of Parliament in India and having received Presidential assent. The four new labour codes ("Labour Codes") will simplify and rationalize in total 29 current central labour laws relating to wages, social security, occupational safety and industrial disputes.

Currently all State Governments are requested to prepare the state relevant Rules under the Codes. Most of the State Governments have already published their draft Rules under the Codes, which are currently open for comments. Therefore, the implementation of the Labour Codes is expected to be implemented anytime soon. The Key Highlights of the Codes are summarized in the following:

Code of Wages, 2019:

- Subsumes 4 wage related laws into one single piece legislation.
- Introduction of a national uniform minimum wage rate ("Floor Wage"), which is based on a worker's minimum standard of living. Furthermore, the Floor Wage should be reviewed and adjusted at least every 5 years.
- Uniformed definition of the term "wage", which shall include all remuneration whether by way of salaries, allowances or otherwise and includes basic pay, dearness allowance and retaining allowance. This could potentially increase the employer's costs towards calculating statutory benefits which are calculated on wages for provident fund, gratuity, leave encashment etc. The possibility that the take-home salary will be less, as higher contribution on provident fund may entail but it will give an added advantage to retirement fund of the employees.

Code of Social Security, 2020:

- Consolidates nine labour laws relating to social security
- So-called "platform workers" and "gig workers" are included in the social security system.
- Opting in and Opting out of voluntary coverage from Employee State Insurance and Employees' Provident Fund
- Introduction of fixed-term employment relationships with the right to receive gratuity with one year employment

REGULATORY NEWS

Occupational Safety, Health and Working Conditions Code, 2020:

- Replaces 13 labour laws relating to safety health and working conditions
- Uniformed registration for manufacturing companies under the Occupational Safety, Health and Working Conditions Code, 2020.
- Annual Health check free of cost for all employees to be provided by employer
- Companies are required to issue a written appointment letter to workers to formalize employment relationships.
- Strengthen the restrictions on hiring contract workers for core activities

Industrial Relations Code, 2020:

- Strikes to be permitted only after due notice.
- Introduction of new determination of the negotiating Trade Unions
- Widening of the applicability of Standing Orders provisions (applicable for Industrial Establishments employing 300 or more workers)
- Widening the regulations for lay off, retrenchment and closure (applicable for Industrial establishments employing 300 or more workers)
- Arbitration is now an option for disputes between workers and employees as long as it is agreed upon in the employment agreement
- Introduction of Inspector-cum-Facilitator

Way Forward:

The Labour Codes mostly introduce balanced changes for both industries and workers, seeking to provide more social security for workers on the one hand and more flexibility for employers on the other. Nevertheless, despite the introduction of the new Labour Codes, other existing laws will continue to exist and will remain additionally applicable to employers. Furthermore, different labour laws will continue to apply to manufacturing and service companies. Therefore, the Labour Codes will only simplify labour law to a limited extent.

Enterprises must remain vigilant and careful with regard to their labour policies. They should carefully analyse which provisions are now applicable to them and to which extent. It is advisable to review existing employment contracts, policies and other contracts with regard to conformity with the labour reforms and, if necessary, to amend them accordingly. It is expected that due to higher transparency and accountability provided in the Labour Codes, that the compliance enforcement will be stricter, harsher and imposing higher penalties in case of non-compliance.

Ursula Hoffmann-Mukherjee, Rödl & Partner

GOOD TO KNOW

6th India-Germany Inter-Govt. Consultations (IGC) Session

On May 2, 2022, Prime Minister Narendra Modi made his first foreign visit of 2022 to Berlin. The Plenary session of the India-Germany Inter-Governmental Consultations (IGC) were held under the co-chairmanship of PM Modi with the Chancellor of Federal Republic of Germany, Olaf Scholz.

https://www.pmindia.gov.in

The prime focus of IGC was to establish the "Green and Sustainable Development Partnership" between India and Germany with a further emphasis to envisage a whole-of-government approach to India-Germany cooperation on sustainable development goals and climate action.

Both the nations stressed their firm commitment to the objective of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels and boosting an unbiased transition towards renewable energies. It was decided that both sides will work towards identifying deliverables in the priority areas of energy transition, renewable energy, sustainable urban development, green mobility, circular economy, climate action inter alia on mitigation, climate resilience and adaptation, agro-ecological transformation, conservation and sustainable use of biodiversity, environment protection & sustainable use of natural resources *(https://www.pmindia.gov.in/en/news_updates)*.

The plenary session concluded with the signing by PM Modi and Chancellor Mr. Scholz of the Joint Declaration of Intent (JDI) establishing the Green and Sustainable Development Partnership. Some of the agreements, inter alia, signed on the occasion of 6th IGC are *(https://www.pmindia.gov.in/en/news_updates)* –

i. JDI on Green and Sustainable Development Partnership
ii. Indo-German Development Cooperation regarding Renewable Energy Partnership
iii. JDI on continuation of cooperation in the field of advanced training of corporate executives and junior executive from India.
iv. Indo-German Green Hydrogen Task Force
v. JDI on Agroecology
vi. JDI on Forest Landscape Restoration
vii. JDI on the implementation of Triangular Development Cooperation projects in Third Countries

Germany has agreed to make an advance commitment of EUR 10 billion for new and additional development assistance until 2030 under the aforesaid JDI.

India envisages these actions as clear dedication of both the nations to support the achievement of their ambitious goals in the climate action and sustainable development space and further promote Indo-German research and development (R&D). This would encourage private investment and thus leveraging further funding in these and ancillary sectors.

Neha Sharma, Rödl & Partner

Special: E-Filing of Form 10F

Foreign enterprises with income taxable in India are now required to file reports about their tax residency (Form 10F) online (CBDT Notification 3/2022). Submissions are usually made once a year. It is expected that Indian customers will refuse payments without proper proof of filing or subject them to higher taxation. For filing the forms, a tax registration in India (Permanent Account Number / PAN) will be required. Submissions are to be made via the portal: https://www.incometax.gov.in/iec/foportal

In Detail:

- Income of German enterprises from transactions with India is often subject to Income Tax in India. This applies esp. to income from fees for “technical” services, license fees, interest and dividends, as well as capital gains and permanent establishments. In most cases, the tax is withheld and paid as withholding tax by the Indian payor/customer.
- According to Indian law in read together with the double taxation avoidance agreement (DTAA) between Germany and India, the tax rate is usually 10.0%. In order to apply the DTAA, the German company must submit a tax residency certificate issued by the German tax authorities ("TRC") and a so-called “Form 10F”, which essentially repeats and supplements the information in the TRC. This also applies if the German enterprise does not have a tax registration in India (Permanent Account Number / PAN).
- So far, this has been done informally. TRC and Form 10F were sent in writing or electronically as a pdf. Now both have to be filed online first. The following steps are necessary for this:

  (1) Apply for a PAN and a digital signature
  (2) Register on the pages of the Indian tax department
  (3) Login under https://www.incometaxindiaefiling.gov.in/home
  (4) Click: „E-File“ – “Income Tax Forms” - „File Income Tax Forms” - “Persons not dependent…” – “Form 10F”
  (5) Chose the right Assessment Year
  (6) Click: „Let’s get started“
  (7) Fill in the form
  (8) File the form using your digital signature
  (9) Download the form under “View Filed Forms” and send it to the Indian customer

- Tip: When you apply for a TRC chose periods ranging from 1.4. until 31.3. of the following year. If possible, leave the income and especially the names of the Indian customers open. Then you can use one Form 10F and one TRC for multiple customers. It is currently not possible to file multiple TRCs and Form 10F.
- Our assessment: The change is aimed to better track tax residence status of foreign taxpayers. It will affect all German enterprises with sales to India. Companies without a PAN may now need to register for a PAN. Contact us if you we shall support with the submission.
- **Link: Instructions for e-Filing Form 10F (German) (click to open)**

Tillmann Ruppert, Gaurav Makhijani, Rödl & Partner

Special: E-Filing of Form 10F – GERMAN VERSION

Ausländische Unternehmen mit in Indien steuerpflichtigen Einkünften müssen Meldungen zur steuerlichen Ansässigkeit (Form 10F) ab sofort online einreichen (CBDT Notification 3/2022). Die Einreichung erfolgt i.d.R. 1x jährlich. Es ist zu erwarten, dass indische Kunden Zahlungen ohne entsprechende Einreichungsnachweise ablehnen oder einer höheren Besteuerung unterwerfen. Voraussetzung für die Einreichung ist eine Steuerregistrierung in Indien (Permanent Account Number / PAN). Die Einreichung erfolgt unter der Adresse: https://www.incometaxindiaefiling.gov.in/home

Im Detail:

- Einkünfte deutscher Unternehmen aus Geschäften mit Indien unterliegen häufig der Besteuerung in Indien (Income Tax). Dies betrifft u.a. Einkünfte aus Vergütungen für „technische" Dienstleistungen, Lizenzgebühren, Zinsen und Dividenden sowie Veräußerungsgewinne und Einkünfte aus ertragsteuerlichen Betriebsstätten. Meist wird die Steuer als Quellensteuer durch den indischen Zahlenden / Kunden einbehalten und entrichtet.

- Der Steuersatz beträgt nach indischem Recht in Verbindung mit dem Doppelbesteuerungs-abkommen (DBA) Deutschland-Indien meist 10,0%. Um das DBA zur Anwendung zu bringen, muss das deutsche Unternehmen eine Ansässigkeitsbescheinigung der deutschen Finanzverwaltung (Tax Residency Certificate, „TRC") und eine sog. „Form 10F" vorlegen, die im wesentlichen Angaben aus der TRC wiederholt und ergänzt. Dies gilt auch, wenn das Unternehmen keine PAN besitzt.

- Bislang geschah dies formfrei. TRC und Form 10F wurden Kunden mit der Rechnung postalisch oder elektronisch (pdf) übersandt. Nun müssen beide zunächst online eingereicht werden. Hierzu sind die folgenden Schritte notwendig:

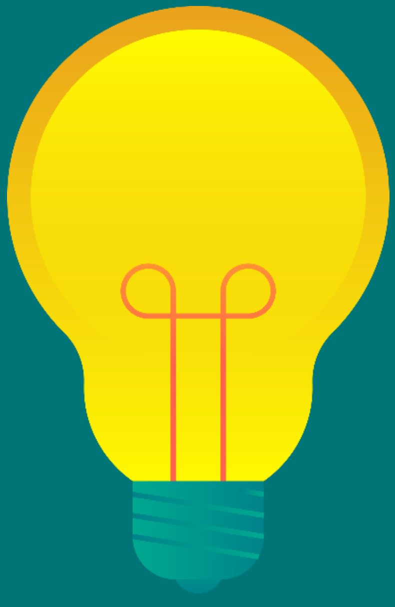
    (1) Beantragung einer PAN und einer Digitalen Signatur
    (2) Registrierung auf den Seiten den indischen Finanzverwaltung
    (3) Login unter https://www.incometaxindiaefiling.gov.in/home
    (4) Auswahl: „E-File" – "Income Tax Forms" - „File Income Tax Forms" - "Persons not dependent…" – "Form 10F"
    (5) Auswahl des zutreffenden Assessment Year
    (6) Auswahl: „Let's get started"
    (7) Eintragungen vornehmen
    (8) Einreichung unter Nutzung Ihrer Digitalen Signatur
    (9) Download der Form unter "View Filed Forms" und Übermittlung an Ihren indischen Kunden

- Tipp: Beantragen Sie das TRC für Zeiträume vom 1.4. bis 31.3. des Folgejahres. Lassen Sie die Einkünfte und v.a. die Namen der indischen Kunden möglichst offen. Dann können Sie *eine* Form 10F und *ein* TRC für mehrere Kunden verwenden. Aktuell ist es nicht möglich, mehrere TRCs / Form 10F einzureichen.

- Einschätzung: Die neue Anforderung dient der Überwachung der steuerlichen Ansässigkeit ausländischer Unternehmen. Sie wird alle deutschen Unternehmen mit Umsätzen in Indien betreffen. Für Unternehmen ohne PAN kann es durch die Änderung notwendig werden, eine PAN zu beantragen. Sprechen Sie uns an, wenn wir Sie bei der Einreichung unterstützen sollen.

- **Link: Anleitung zum E-Filing der Form 10F (click to open)**

Tillmann Ruppert, Gaurav Makhijani, Rödl & Partner



REMINDER TAX COMPLIANCE

Indian and foreign companies earning income taxable in India are required to file their Income Tax returns in the months to come (deadline usually 31 October / 30 November). For more details, please consult our FAQ: Quellensteuern, Steuerregistrierung (PAN) und Steuer-deklaration (click to open)

LINKS TO USEFUL CONTENT:

MIIM

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Rödl & Partner India
German Version
English Version

Click to open

WEBINARS

Spezial-Webinar zum E-Filing der Form 10F

20 September 2022; Time: 14:00 – 15:00 CEST; Rödl & Partner
click to register

Post Lunch Quick Bites – Stolpersteine beim Aufbau eines Geschäftsbetriebes vermeiden!

22 September 2022; Time: 13:30 – 14:45 CEST; **click to register**

Million Chips, Billion Dreams - India's $10 Bn Semiconductor Program

29 September 2022; Time: 10:00 – 11:30 CEST; **click to register**

SEMINARS

Make in India Mittelstand ! Investitionsstrategien und staatliche Förderungen für Investoren

Cologne, 5 October 2022; Time: 14:00 – 18:00 CEST
Munich, 11 October 2022; Time: 14:00 – 18:00 CEST
Stuttgart, 12 October 2022; Time: 14:00 – 18:00 CEST
Please drop an Email to miim@indianembassy.de for further information and early registration

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 150 companies which represent a cumulative declared investment of 1.4 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

MAKE IN INDIA MITTELSTAND!

Investment support for German Mittelstand Enterprises

MIIM Team

MRS. RACHITA BHANDARI
Head MIIM Project Team | Deputy Chief of Mission |
Embassy of India, Berlin

MR. SAKETA MUSINIPALLY
Deputy Head - MIIM Project Team | First Secretary |
Embassy of India, Berlin

MR. MARTIN WOERLEIN
MIIM Project Team I Head of India Practice I
Rödl & Partner

MIIM Hotline:
Email: miim@indianembassy.de
Phone: +49 30-25795514
Fax: +49-30-25795520

MIIM Online

- www.makeinindiamittelstand.de
- www.facebook.com/IndiaInGermany
- www.twitter.com/eoiberlin
- www.linkedin.com/in/miim-make-in-india-mittelstand

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Rödl Rechtsanwaltsgesellschaft
Steuerberatungsgesellschaft
Äußere Sulzbacher Straße 100
90491 Nürnberg
Deutschland/Germany
www.roedl.com

Embassy of India
Tiergartenstraße 17
10785 Berlin
Deutschland/Germany
https://indianembassyberlin.gov.in/

Verantwortlich für Inhalt, Layout, Satz / Responsible for content and layout
Tillmann Ruppert
Tillmann.Ruppert@roedl.com
Rödl Rechtsanwaltsgesellschaft
Steuerberatungsgesellschaft
Äußere Sulzbacher Straße 100
90491 Nürnberg
Deutschland/Germany