TAXMANN®

www.taxmann.com

• Income-Tax • GST • International Taxation • Transfer Pricing • FEMA & Banking • Competition Laws • Company & SEBI Laws • IBC • Accounts & Audit • Indian Acts & Rules

**[2020] 116 taxmann.com 677 (Article)**

**[2020] 116 taxmann.com 677 (Article)**

Date of Publishing: May 22, 2020

# COVID-19 together with new Tax Regime – Silver Lining for "Make in India"

**UDAY AGARWAL**

Director-Taxation, SS Kothari Mehta & Co

**LUV GUPTA**

Executive-Taxation, SS Kothari Mehta & Co

The Indian Government launched its "Make in India" initiative in the year 2014 with an intent to make India an attractive destination for the global manufacturing hub. Since 2014, Government has been making restless efforts to improve the conditions for doing business in India. The efforts being put in are also evident from the fact that India stands at position 63 among 190 countries as per World Bank's Ease of Doing Business 2020 survey as against its position at 142 in 2014 report.

There are indicators which clearly depicts the triumph of the Government towards its initiative. FDI in India has followed a positive trend since the launch of Make in India. FDI inflow from April 2014 to March 2019 ($286 Bn) is 46.94% (approx.) of the overall FDI received in the country since April 2000 ($592.08 Bn). In last few years, many countries and companies have expressed their interest for investment in India. To mention a few latest achievements: In January 2020, Amazon India announced investment of US$ 1 billion for digitising small and medium businesses and creating one million jobs by 2025. Same time, Mastercard announced its plans to invest up to US$ 1 billion in India over next five years to double-up its research and development efforts for the Indian market. In October 2019, French oil and gas giant Total S.A. have acquired a 37.4 per cent stake in Adani Gas Ltd. for Rs. 5,662 crore (US$ 810 million).

The Government has provided several reliefs under Make-in-India initiative to encourage companies to set up manufacture in India. The promulgation of the Taxation Law (Amendment) Ordinance, 2019 was a big relief provided by the Indian Government in September, 2019. This subsequently became the Taxation Laws (Amendment) Act, 2019 in December. *Vide* the said amendment, the manufacturing company, which would be incorporated after 1st October 2019, will have the advantage to pay corporate tax at the rate of only 15%. The tax rate would further be increased by surcharge and cess, and the effective tax rate would come to 17.16% appx.

Effective corporate tax rate of 17.16% is amongst the lowest in the list of countries that can be looked upto for manufacturing facilities. The rate of tax offered by other G20 countries is listed below:

| *Country* | *Applicable tax rate* |
|---|---|
| **Brazil** | 34% |
| **France** | 33.3% |
| **Japan** | 30.62% |
| **Argentina** | 30% |
| **Australia** | 30% |
| **Germany** | 30% |
| **Mexico** | 30% |
| **South Africa** | 28% |
| **Canada** | 26.5% |
| **China** | 25% |
| **Netherlands** | 25% |
| **South Korea** | 25% |
| **Spain** | 25% |
| **Italy** | 24% |
| **Indonesia** | 22% |
| **Turkey** | 22% |
| **United States** | 21% |
| **Russia** | 20% |
| **Saudi Arabia** | 20% |
| **United Kingdom** | 19% |
| **Switzerland** | 18% |
| **Singapore** | 17% |

With the concessional tax rate of 17.16%, it would not be incorrect to say that India will be looked as the most favored nation for manufacturing by Multinational Companies.

In addition to the aforesaid, another major reform which may further encourage the Make-in-India initiative is abolition of Dividend Distribution Tax (DDT). Abolition of DDT would assist the foreign investor in repatriation of funds with lower taxes in India. The companies declaring dividend earlier were required to pay DDT effectively @20.56% (after grossing up and levy of surcharge and cess come) on the amount of dividend as additional income tax and the amount of dividend received was exempt in the hands of shareholders. DDT is not considered as withholding tax on dividend, therefore, its availability as credit in the country of residence is always questioned.

The eligibility of credit of DDT assumed further importance in view of the provisions of Multilateral Instruments (MLI) which has been developed as part of BEPS Action Plan-15. MLI has been developed by an ad hoc Group of 100+ jurisdictions in order to implement Tax Treaty related measures to prevent BEPS. The MLI Convention advocates for shift from exemption method to credit method in order to eliminate double taxation. Thus DDT, not being a withholding tax, may not be available as tax credit in the country of residence resulting into double payment of taxes by the recipient.

With the abolition of DDT, the dividend payable to the non-resident investor would be subject to withholding tax in India, however, the taxes withheld in India will be available as credit in the country of residence of the investors. In addition, the rate of withholding tax would also be governed by the provisions of Tax Treaties, if beneficial, which India has signed with other countries. Most of the Tax Treaties provide for withholding tax on dividend which is lower than effective DDT rate of 20.56%. Thus, abolition of DDT would help the non-resident investors in repatriation of funds with lower taxes in India by way of lower withholding taxes in India and tax credit in the country of residence.

Due to outbreak of Covid-19, there is a severe hit on the manufacturing and supply chain across the globe. As a result of Covid-19 outbreak, the global economy is coming to a halt. The International Monetary Fund (IMF) in its World Economic Outlook (Apr-2020) has stated that *"As a result of the pandemic, the global economy is projected to contract sharply by -3 percent in 2020, much worse than during the 2008-09 financial crisis."* The situation raises a question as to whether the Make-in-India initiative of the Indian Government would suffer due to outbreak of Covid-19.

Outbreak of Covid-19 is having a big impact on the global supply chains. Companies with one country centered supply chains are mostly affected. There are countries which have already started analyzing the best available options for diversifying its supply chains. For instance, recently, a major German footwear brand, Von Wellx, owned by Casa Everz Gmbh, has decided to move its factory operations from China to India with an initial investment of Rs. 110 crore. Japan is looking to diversify the manufacturing and supply chains to newer destinations. The Japanese government has come out with an announcement to earmark 2.2 billion Dollars of its record economic stimulus package to assist its manufacturers shift production out of china. Besides these, Tech giant Apple is also planning to shift its substantial production from China to India. Many big companies around the world, which depend on supply chains on one particular country, are having second thoughts now to reduce their dependence on single country based manufacturing. The companies have realized that they need to diversify the risk in there production lines.

In the light of the aforesaid, India here stands a good chance to emerge as reliable substitute. The Indian Government is already taking up measures to ensure availability of sufficient infrastructure and other facilities to companies intending to shift their business to India considering the outbreak of Covid-19. In this line, India has already identified land measuring to appx 4,61,589 hectares in various parts of the country to provide the necessary facilities to the businessmen. In addition, to ensure smooth functioning, Government has been performing actively to bring out the policies so as to reduce the compliance burden on business and bringing solution with respect to procedural complications. For instance, the government has extended the due dates for filing the returns during the pandemic, simplified the methods for procuring certificates of lower or nil deduction of tax at source etc.

The Covid-19 outbreak has made the world realize the materiality of risk involved in putting all eggs in one basket. The new regime of 17.16% tax rate would be a sweeping reform for successful implementation of Make-in-India initiative. With India offering young workforce and various tax & policy initiatives, would definitely force multinational corporations to consider India as an option to establish their units. All these factors may help in increasing the FDI and GDP of India, thereby giving a positive end to the Indian economy post this pandemic.

■■