

# NEWSLETTER

March 2021 (Volume I: Serial No. 03/2021)

Bhatia & Bhatia  
Chartered Accountants



## Covered in this edition:

- Extension for filing declaration under VSV scheme to 31st March 2021
- Clarification on residential status of certain individuals
- Supreme Court backs taxpayers in software royalty case
- HSN/ SAC Code on B2B Invoices mandatory w.e.f. 1st April 2021
- Introduction of new labour codes
- India's new rules for social media, OTT platforms
- Overseas Listings, IPOs become easier for Indian startups
- MoU signed between MCA and CBIC for data exchange

## Key Dates for March:

- GSTR-1 (Turnover more than INR 1.5 Crore) for February month is 11<sup>th</sup> March
- Payment of Provident Fund & ESI contribution for the month of February by 15<sup>th</sup> March
- GSTR-3B (Turnover more than INR 5 Crore) for February month is 20<sup>th</sup> March
- GSTR-9 & GSTR-9C for the FY 2019-20 to be furnished by 31<sup>st</sup> March
- Form-26Q for the FY 2019-20 by 31<sup>st</sup> March
- Last date to revise ITR for the FY 2019-20 is 31<sup>st</sup> March



*If you set your goals ridiculously high  
and it's a failure, you will fail above  
everyone else's success"*

*-James Cameron*

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Jeff Bezos announced a few weeks back that he will step down as Amazon CEO and transition to executive chair of the company's board. Though, he is officially stepping down from the main role, he has no plans of retiring as not only he will stay engaged in Amazon initiatives, but will also put energy into his other passions, like "the Day 1 Fund, the Bezos Earth Fund, Blue Origin, The Washington Post," to name a few.

We at BnB follow the same strategy. As we celebrate success of meeting all the important deadlines as extended over the past few months and closure of the past Financial Year, we have initiated the schedule and plan for the next fiscal year with new ideas and initiatives.

My message to the team is You can't Learn anything, from being perfect! Start challenging yourself!!

- Khumesh Tokas  
Partner



*It always seems impossible until it's done.*

*Nelson Mandela*

# Income Tax



## **CBDT extends timelines to impose penalty & concluding assessments/reassessment for specified period:**

The CBDT has provided further relief to the Income-tax Department and taxpayers by extending deadlines for imposing penalty, completion of assessments and taking action under Benami Act. This includes, inter alia, last date to complete assessment/reassessment proceedings shall be April 30, 2021 if same is getting expired on March 31, 2021 (extended due date). In all other cases, last date would be September 30, 2021.

## **Extension for Vivad Se Vishwas (VSV) Scheme**

The CBDT has extended the last date to opt for and making payment without any additional charges under the Vivad se Vishwas Act, 2020 by one month. The last date for opting for the scheme shall now be March 31, 2021 and the last date for making payment without additional charge is April 30, 2021.



## **Clarification on residential status of certain individuals**

The CBDT has issued Circular No. 2 of 2021 on March 03, 2021 to obtain relevant concerns from individuals facing double taxation due to forced stay in India post COVID-19.

The circular briefed the provisions for determining residential status and stated that though the possibility of double taxation does not exist as per the Income-tax Act, read with tax treaties. CBDT has clarified that, if any individual is facing double taxation due to forced stay in India, he may furnish the information in Form-NR annexed to circular. The said form shall be submitted electronically to the Principal Chief Commissioner of Income-tax (International Taxation).

# Case Laws:

**AO can't import definition of 'Relative' from section 56 to invoke section 40A(2) [IT APPEAL NOS. 249 & 261 (ALL.) OF 2018] (Rajesh Bajaj v. Deputy Commissioner of Income Tax, Circle-1, Allahabad)**

## **Brief facts**

The Assessing Officer ("AO") has made a disallowance of excess rent paid by the taxpayer to the related party (sister-in-law) by invoking the provision of section 40A(2)(b) of the Income-tax Act.

Taxpayer contended that the person to whom rent was paid, do not fall within the definition of relative as provided under Section 2(41). The taxpayer challenged the action of the AO before the CIT(A) but could not succeed.

Thereafter, taxpayer preferred an appeal with the ITAT.

## **Decision of the ITAT**

The definition of the term "relative" provided under section 2(41) does not cover the sister-in-law of taxpayer. However, sister-in-law of taxpayer is covered within the definition of the term "relative" as provided under section 56(2). The Tribunal held that, the provisions of section 40A(2) couldn't be invoked in respect of a transaction of payment of rent to persons who are not falling in the definition in term of 'relative' provided under section 2(41), since the definition provided under 56(2) is only for the relevant clause provided under section 56(2).



**Deduction couldn't be disallowed if nexus between interest payment and business is established (R/TAX APPEAL NOS.1625,1626 & 1628 OF 2007) (B. Nanji & Co. v. Deputy Commissioner of Income Tax)**

## **Brief facts**

Taxpayer, engaged in business of real estate, borrowed funds and utilised same for acquiring a housing finance company. Taxpayer claimed deduction of interest paid on such capital borrowed. However, Assessing Officer disallowed the same on the grounds that capital is borrowed for the purpose of investment and not for the purpose of business.

Further, CIT(A) and ITAT upheld the order and concluded that interest is not allowable under both i.e. Section 36(1)(iii) and section 57(iii) of the Income Tax Act, 1961.

## **Decision of the Gujrat, HC**

HC observed that taxpayer had acquired said finance company so as to make funds readily available when required for development of a housing project or to fund any acquisition of real estate. Thus, the investment in share was nothing but the expansion of business of the taxpayer. Therefore, all the conditions necessary for deduction under section 36(1)(iii) were prima facie satisfied by the taxpayer.

## Compensation received for termination of contract manufacturing agreement is capital receipt (ITA No. 3454/CHNY/2019) [Sai Mirra Innopharm Private Limited v. ITO]

### Brief Facts

The issue in this case relates to whether amount received for termination of contract manufacturing agreement would be considered as revenue receipts or capital receipts.

The matter reached the Chennai Bench of the Income-tax Appellate Tribunal (ITAT).

### Decision of the ITAT

The ITAT observed that the contract was terminated before completion of contract period and the taxpayer has to surrender all the information. As a result of this, the taxpayer had incurred huge loss in the form of investments made for manufacturing facilities as well as loss of profit from the business for which the taxpayer was compensated.

As per section 28(ii) of the Act, any compensation or other payment due to or received by a taxpayer could be brought to tax and nature of such receipts had been defined in sub-clause (a) to (d). Sub-clause (e) to section 28(ii) of the ITA had been added by Finance Act, 2018 w.e.f. 1 April 2019 as per which "compensation by whatever name called in connection with the termination or the modification of the terms and conditions, of any contract relating to his business can be brought to tax as Profits and gains of business of profession". From this, it was very clear that, up to AY 2019-20, compensation received for termination of any agreement could not be taxed under section 28(ii)(e) of the Act.

Considering the provisions of Section 28(va)(a) of the Income Tax Act and other judgments placed on records, the ITAT held that compensation received for pre-closure of contract manufacturing agreement was a capital receipt paid for loss of profit from business / loss of investment, but not in the nature of any compensation or other sum paid for not using any know-how, patent, copyright, trade-mark, license etc. which could be brought to tax under section 28(va)(a) of the ITA.



# International Taxation & Transfer pricing

## Case Laws:

### **Supreme Court backs taxpayers in software royalty case**

**Engineering Analysis Centre of Excellence Private Limited [ITA No. Appeal Nos. 8733-8734 of 2018]**

The Supreme Court recently ruled that payments made by an Indian resident to a foreign recipient for the import of software that is to be sold in India will not be assessable as “royalty” putting two-decade-old taxation conundrum to an end. Supreme Court also held that such payments for the use of software “will not give rise to any income taxable in India” and therefore, no liability would accrue for the resident firms to deduct TDS under Section 195 of the Income Tax Act. SC also clarified that the ruling will apply across the board; when a computer software is purchased directly by an end-user resident in India from a foreign supplier or manufacturer; when resident Indian companies act as distributors or resellers for other residents; when a foreign distributor resells to Indian users; and when software is sold affixed to a device by a foreign supplier to Indian residents.



### **AAR held that LOB clause applies to the Singapore based company on sale of shares**

**BG Asia Pacific Holding Pte. Limited [AAR No.: AAR/1376 & 1377/2012]**

The applicant is a company incorporated under the laws of Singapore and as a part of its business restructuring process, applicant proposed to sell its entire shareholding in an Indian Co. to another Indian Co. The AAR rules that capital gains to the applicant upon sale of shares of an Indian company is not taxable in India as the applicant satisfied the conditions of Limitation of Benefit clause under the provisions of Article 13.4 of the India-Singapore DTAA, read with Article 3 of Protocol to said DTAA.



**Training Centres of an entity in Canada would not constitute dependent agency PE (DAPE) in India**

**International Air Transport Association (CANADA) [ITA No. 1705/Del/2016]**

Mumbai Tribunal held that the Authorized Training Centres (ATC) in India would not constitute DAPE as the activities carried out by ATC are not wholly devoted to the assessee and the transactions are at Arm's Length. The Tribunal observed that ATC were independent third party organizations providing training of various courses designed by themselves and third parties in addition to the course designed by assessee. They also observed that there was no material to demonstrate that transactions between assessee and ATC were not at arm's length, to be treated as DAPE under India-Canada DTAA



**Bangalore Tribunal deletes transfer pricing adjustment on Specified Domestic Transaction (SDT) and directs examination u/s 40A(2)**

**Cauvery Aqua Private Limited [IT(TP)A No.2021/Bang/2019]**

Bangalore Tribunal placed reliance on the case of Texport Overseas Pvt. Ltd [IT (TP)A No. 1722/Bang/2017] wherein it was held that once a clause is omitted by subsequent amendment, it would be deemed that clause had never been on the statute. The Tribunal held that the reference to the TPO in respect of specified domestic transactions mentioned in clause (i) of sec.92BA is not valid, as the said provision has been omitted and directs the AO to delete the addition relating to specified domestic transactions made u/s 92CA of the Act.

**Tribunal held that support services are purely logistic and hence would not be characterized as FTS**

**Expeditors International of Washington Inc [ITA No.1705/Del/2016]**

Delhi Tribunal held that the services of Global Account Management ('GAM') expenses and cost allocation of International Freight Logistic Support Services do not fall within the purview of managerial, consultancy or technical services and hence, neither falls u/s 9(1)(i) or Section 9(1)(vii) nor under Article 12 of the DTAA. Further, the Tribunal also states that the support services are purely logistic support for transport of goods and "are very much of a general services in nature and does not require any managerial/Technical or Consultancy Expertise".

**Tribunal deletes transfer pricing addition in respect of interest on account of delay in receipts of outstanding receivable**

**XL India Business Services Pvt. Ltd [ITA No. 6602/Del/2017]**

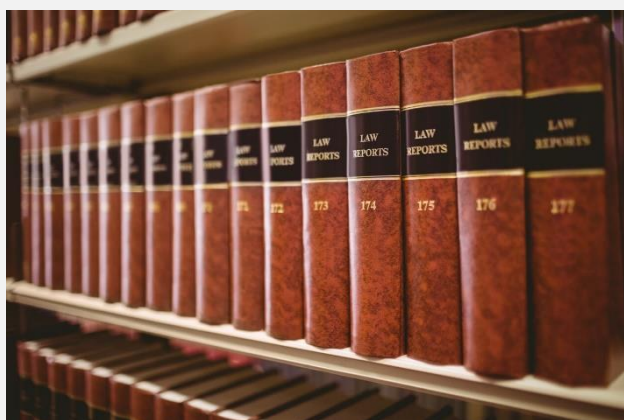
Delhi Tribunal placed reliance on Delhi High Court's judgment in the matter of Kusum Healthcare Pvt. Ltd [ITA No. 765/2016], wherein the HC observed that since assessee had already factored in the impact of receivables on working capital and thereby on its pricing/profitability vis-à-vis that of comparable, adjustment only on the basis of outstanding receivables was impermissible. The Tribunal accordingly held "when the assessee has already taken in to account the impact of outstanding receivables on profitability while making working capital adjustment of the tax payer vis-à-vis of its comparable, then any further adjustment on account of delay payment outstanding to AE cannot be characterized as unsecured loan". Tribunal further noticed that assessee is a debt free company since it has no debts on account of secured or unsecured loans. Tribunal also relied on jurisdictional HC ruling in Bechtel India Pvt Ltd [ITA No. 379/2016] which upheld Tribunal's finding that when the assessee is debt free company the question of receivable does not arise.



**High Court accepts assessee's plea to consider foreign AEs as tested party contrary to TP-Documentation**

**Virtusa Consulting Services Private Limited [APPEAL NO. 996 OF 2018]**

The High Court observed that, when the TPO himself has not attached any sanctity to the TP documentation as submitted by the assessee, could not have foreclosed the assessee from canvassing the issue that the subsidiaries are least complex entities which should be taken note of. Further the HC also held that the revenue seeks to pin the assessee based upon the auditor's certification as filed in Form 3CEB. As could be seen from the statutory form, it pertains only to the transactional claims and has got nothing to do with a tested party. The revenue cannot compare the case of the assessee with that of the assessee who fails to claim in his return of income a deduction or a benefit which he would be otherwise entitled to. Further considering that the TPO accepted the foreign AE in subsequent years, remands the issue back to the TPO for a fresh decision on merits and in accordance with law having due regard to the orders passed by the TPO in the assessee's own case for the previous assessment years.





# Indirect Tax

## **Suspension of Registration**

*CBIC has vide* notification No. 94/2020- CT, dated 22.12.2020, sub-rule (2A) was inserted to rule 21A of the CGST Rules, 2017 which provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act / Rules, and that continuation of such registration poses immediate threat to revenue.



## **IGST Refund (on payment of tax) due to mismatch in IGST liability in GSTR-3B and GSTR-1 for FY 2019-20 and FY 2020-21**

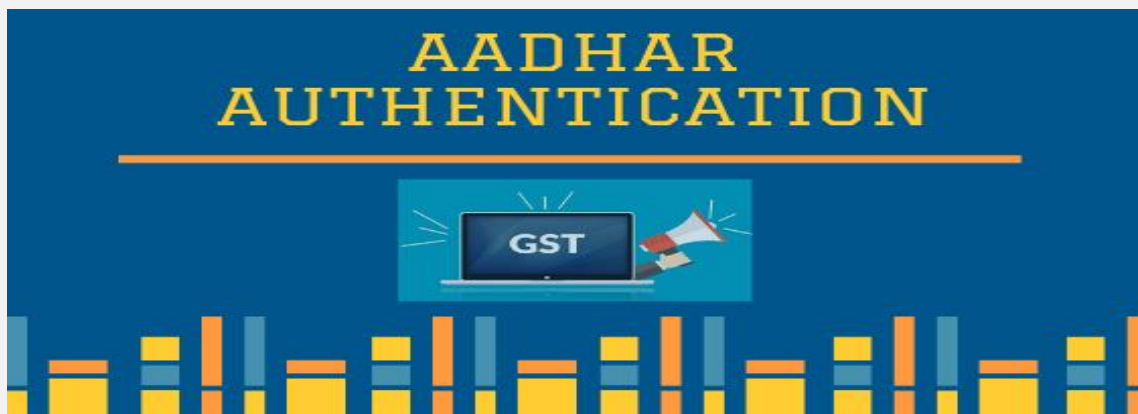
- GST refunds are pending due to mis-match of data between GSTR-1 & GSTR-3B. The IGST refunds relating to the Shipping Bills filed after 31.03.2019 having mismatch error between GSTR-1 and GSTR-3B could not be processed and are held up.
- In order to overcome the problems faced by the exporters, CBIC has decided that the solution provided in the Circular 12/2018-Customs read with Circular No. 25/2019-Customs would be applicable mutatis mutandis for the Shipping Bills filed during the financial year 2019-20 and 2020-21 (i.e. in respect of all Shipping Bills filed/ to be filed upto 31.03.2021).
- Now this procedure has been extended for another 2 years i.e. FY 2019-20 and 2020-21.

## **Applicability of Dynamic QR Code on B2C invoices**

- Dynamic QR Code will be applicable mandatorily w.e.f. 01.02.2021 on B2C invoices if the annual aggregate turnover of the registered person exceeds INR 500 crores in any of the financial year from 2017-18 onwards.
- In case of export invoices, though such invoices are made by the registered person to an unregistered person, however e-invoices are required to be issued in respect of such invoices as per Notification No. 13/2020.

## DUE DATES:

Return	Period	Due dates
GSTR-9A (Composition Annual Return)	January – March 2021	13 <sup>th</sup> April, 2021
GSTR-1 Quarterly Taxpayer (Turnover upto INR 1.5 Crore)	February 2021	20 <sup>th</sup> March, 2021
GSTR-9 and 9C	FY 2019-20	31 <sup>st</sup> March, 2021
GSTR-3B (Turnover more than INR 5 Crore)	February 2021	20 <sup>th</sup> March, 2021



### Exemption from Aadhaar Authentication for Registration

- On 23rd February, 2021 CBIC notifies Sub section 6B and 6C of Section 25 of CGST Act, 2017 in relation to persons exempted from Aadhaar authentication while registration:
- not a citizen of India; or
- a Department or establishment of the Central Government or State Government; or
- a local authority; or
- a statutory body; or
- a Public Sector Undertaking; or
- a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

### HSN/ SAC Code on B2B Invoices

HSN/ SAC Code on B2B Invoices will be mandatory w.e.f. 01.04.2021.

*“Leadership is the self-confidence of working with people smarter than you”*

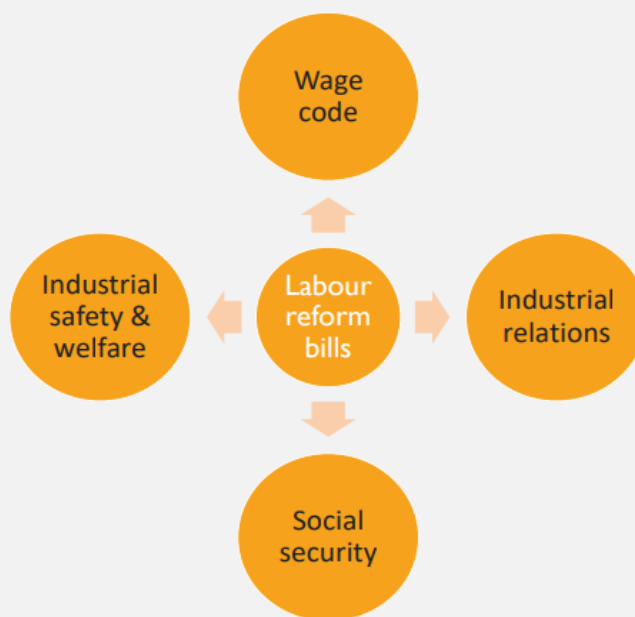
*-Azim Hashim Premji*

# Secretarial, Regulatory & Business Updates

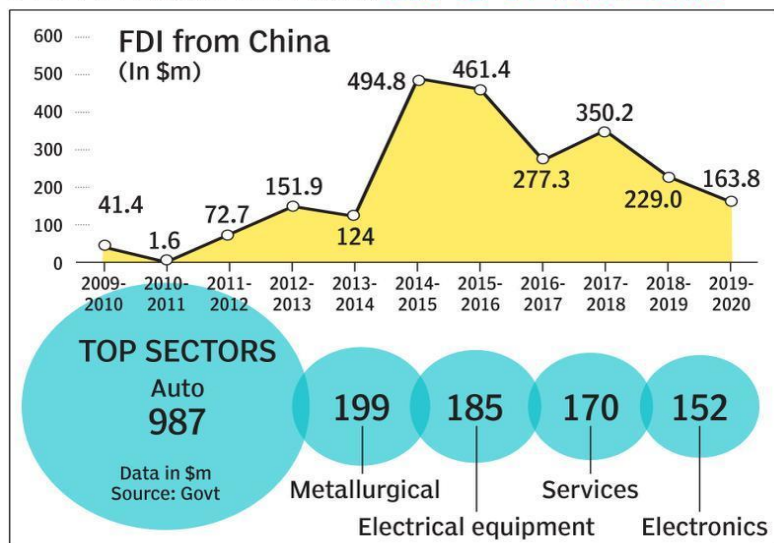
## Government envisages new labour codes

The Labour Ministry had envisaged implementing the four labour codes from April 1 2021. The ministry is in the final leg of amalgamating 44 central labour laws into four broad codes on wages, industrial relations, social security and occupational safety, health and working conditions (OSH).

The country's most wide-ranging labour reforms in decades will have an impact on both employers' outgo and employees' take-home salaries. Once implemented, the codes will prompt companies to restructure employee compensation packages or "cost to company" (CTC).



## FDI FROM CHINA AT 6-YEAR LOW



## Government starts clearing FDI from China

The Central Government initiated the process to give the green signal to foreign direct investment (FDI) proposals from China on a "case-by-case" basis, lifting curbs that were put in place to thwart opportunistic takeovers or acquisitions of Indian companies because of the coronavirus pandemic. To help smoothen the process, the Government has set up a coordination committee comprising officers from ministries of home, foreign, commerce and NITI Aayog.

## Government lays down rules for social media, OTT platforms

The Government released a set of new guidelines to regulate social media, online streaming, and digital content platforms. The new Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 prescribes, for the first time, how digital news organisations, social media and OTT platforms will be regulated by the Indian Government.



## Startup India: Govt's Rs 945-cr Seed Fund to back 3,600 entrepreneurs

The Startup India Seed Fund, which has a target corpus of Rs 945 crore to be disbursed over five years in early-stage startups, is looking to support around 3,600 entrepreneurs through 300 incubators. The investment will be made in eligible startups in order to support their proof of concept, prototype development, product trials, market-entry, and commercialization. These 3,600 entrepreneurs will represent DPIIT-registered startups across sectors and incorporated not more than two years ago at the time of applying for the scheme. The selected startups will be offered up to Rs 20 lakhs as a grant for proof of concept and up to Rs 50 lakhs through convertible debentures or debt or debt-linked instruments for commercialization of the product. Startups selected under the scheme would preferably be from sectors including social impact, waste management, water management, financial inclusion, education, agriculture, food processing, biotechnology, healthcare, energy, mobility, defence, space, railways, oil and gas, textiles, etc.

## Overseas Listings, IPOs Become Easier For Indian Startups

The Government has clarified that Indian tech companies that choose to list on overseas stock exchanges would not be considered as listed companies in India. Until now, companies that raised funds from public investors on overseas exchanges were considered as listed companies in India as well, and subject to stringent rules and regulations mandated by the Securities and Exchange Board of India (SEBI). These include disclosures on a quarterly basis to the regulator on the financial performance as well as corporate governance.

From now, companies listed abroad wouldn't be considered as public companies in India and hence, would not need to comply with the norms for listed companies.



### **SEBI issues Consultation paper on “Review of Regulatory Provisions related to Independent Directors”**

The SEBI has issued consultation paper on review of regulatory provisions related to Independent Directors (IDs) on the boards of listed entities. It has sought views of public on proposals including broadening eligibility criteria for IDs, process of appointment / re-appointment and removal of IDs, enhancing transparency in nomination and resignation of IDs, strengthening composition of Board Committees, etc. Views are also sought on need for review of remuneration of IDs.



### **Triton EV Signs MoU with BEL to Develop EV Opportunities in India**

The US-based new subsidiary of Triton Solar, Triton EV, has announced its expansion plans in India with its manufacturing facility set up for electric vehicles (EVs) and energy storage systems. The Company aims to make a strong and most robust EV production centre in India.

### **SEBI proposes introduction of concept of “Accredited Investors” in Indian securities market**

The SEBI has issued consultation paper on introduction of concept of “Accredited Investors” (‘AI’) in Indian securities market. The paper proposes that resident Individuals, HUFs and Family Trusts having annual income - (i) greater than or equal to Rs. 2 Cr. or (ii) net worth of Rs. 7.5 Cr. or more with more than Rs. 3.75 Cr. of financial assets shall be eligible to be classified as Accredited Investors, and, in case of body corporates, the net worth should be greater than Rs. 50 Cr to be AI.



### **Amazon announces first device manufacturing line in India**

E-commerce giant Amazon has announced its plans to begin manufacturing devices in India. This is the first Amazon manufacturing line in India and reiterates the firm’s commitment to the government’s “Make in India” for an Aatmanirbhar Bharat.



### **Ikea to invest Rs 5,500 crore for its first Meeting Places concept in India**

Ingka Group, the parent company of Swedish home furniture giant Ikea, announced the acquisition of a 48,000-square-metre land parcel in Noida, on the outskirts of Delhi, for developing an Ikea store anchored retail shopping mall under its Ingka Centres business concept called Meeting Place.

### **Adani Ports to develop ‘country’s biggest’ logistics park in Sanand**

The Gujarat government signed a memorandum of understanding (MoU) with Adani Ports and SEZ Limited for establishing India’s biggest multi-model logistics park at Virochan Nagar, near Sanand in Ahmedabad.

### **Madhya Pradesh proposes land for mega integrated textile park in Ratlam**

The Madhya Pradesh Industrial Development Corporation (MPIDC) has proposed an industrial land in Ratlam to develop a mega integrated textile park. This came after the finance minister announced to launch seven mega textile parks with integrated facilities in three years in the Union budget 2021-22.

### **Apple maker Pegatron leases space near Chennai; to invest \$150m in Tamil Nadu**

Apple’s contract manufacturer Pegatron Corporation has leased out half a million square feet space in an industrial park near Chennai developed by a city-based real estate company. The company which has plans to pump in around \$150 million into setting up contract mobile manufacturing facilities for Apple in Tamil Nadu, will use this site for assembling and warehousing purposes,

### **Ministry of Corporate Affairs and CBIC sign MoU Delhi for data exchange**

The Ministry of Corporate Affairs and Central Board of Indirect Taxes and Customs has signed a Memorandum of Understanding for data exchange between the two organisations. It is in line with the vision of both organisations to harness data capabilities to ensure effective enforcement. Both are going to benefit from access to each other’s databases which include details of import-export transactions and consolidated financial statements of companies registered in the country.



Central Board of Direct Taxes  
(CBDT)

CBDT signs MOU with CBIC  
for exchange of information



### **Entities need to file e-form CSR-1 for undertaking CSR activities**

The Ministry of Corporate Affairs (MCA) has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 wherein provisions related to CSR expenditure, CSR reporting, transfer of unspent amount have been discussed in details. In addition to that, entities need to file e-form CSR-1 for undertaking CSR activities w.e.f. 01, April, 2021.

### **Rules relating to beneficial owner extended to LLPs**

The Ministry of Corporate Affairs has extended the rules relating to significant beneficial ownership (SBO) to limited liability partnerships.

The following provisions of Companies Act will be extended to LLPs as well: Requirement of obtaining SBO declaration from persons holding beneficial interest beyond a prescribed threshold and the need to maintain a register of such declaration. As a result, LLPs may have to obtain SBO declaration from its partners.

lating to calling of information, inspecting books of accounts, conducting inquiries will also apply to the LLP Act. Government may notify some offences relating to LLPs as non-cognisable

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