



Building a better
working world

Responding to COVID-19

Tax and regulatory impact areas

79%

Board members
state that their
organizations are
**not very well
prepared to deal
with a crisis-
event**

EY Global Risk Survey, 2020



**This is going to be a
slow-rolling, highly
consequential event**

Marshall W. Meyer
Professor Emeritus The
Wharton School
University of Pennsylvania



The outbreak of the Coronavirus Disease 2019 (COVID-19) has stricken communities across the globe. The virus' rapid geographical spread has caught the world off-guard, with major implications for personal health, business continuity and the world economic order. Globally integrated supply chain models have been disrupted, threatening a financial slow-down.

Unfortunately, most organizations around the world are finding it challenging to navigate through these uncertain times. According to EY's Global Risk Survey 2020 - which surveyed 500 board members and CEOs across the world - nearly 4 out of 5 respondents stated that their organizations are not very well prepared to deal with a crisis-event.

In India, 519* cases have been detected and the government is taking proactive measures to control the spread - with cross-border travel restrictions and limited trade. It is a critical time for the Indian economy. While corporates are planning responses at various levels, they can specifically benefit from focused readiness assessment, monitoring and decision making to navigate through uncertainty and complexity.

The Government of India is working towards introducing various economic and fiscal stimulus measures in the coming future. **Earlier today, the Hon'ble Finance Minister of India announced deferment of various statutory and regulatory deadlines.** A separate EY Tax alert has been issued covering the announcements in detail.

350,000+

People have
contracted the virus

CNBC.com, 23 March 2020

COVID-19 likely to
cost economy

\$1 trillion

during 2020

United Nations Report, 9 March 2020

94%

of Fortune 1000
companies are
facing supply chain
disruptions

Fortune Magazine, 21 Feb 2020

*As on 24 March 2020, Health Ministry, Government of India

From an overall context, given the volatility due to COVID-19 pandemic, organizations are facing multiple challenges ranging from the health and well-being of employees, disruptions in supply chain, working capital shortages and even the risk of closure of operations.

Following are some questions across key impact areas to help you understand the likely disruption from a tax and regulatory perspective arising from the above and your organisation's current preparedness level to manage this disruption.

Direct tax

A. Improving cash flows and addressing capital needs

Tax refund

- ▶ What is the quantum of cash tax receivables and why are they stuck with the Government?
- ▶ What are the options to facilitate early release of cash tax receivables from the Government?

Lower/ Nil TDS/ TCS

- ▶ Is there a need to reassess the business projections and explore the need for a lower/ nil-tax withholding order?
- ▶ Have you assessed the impact of TCS on cash flows of your business and are there options to optimize the same?

B. Place of Effective Management ('POEM')/ Permanent Establishment ('PE') considerations

- ▶ Is there is a Place of Effective Management ('POEM')/ Permanent Establishment ('PE') risk where personnel based overseas in senior management positions with Indian HQ companies have returned from overseas locations and shall continue to manage and operate the overseas operations remotely from India?

- ▶ Is there a PE risk on account of mobility restrictions under various scenarios including employees who have finished overseas deputation and have shifted to home country payroll but still stuck overseas till the situation normalises, extended stay of expatriates in host countries, remotely working from affiliates offices overseas on account of movement restrictions, overseas entities bearing expenditure of employees at home such as leased line and rent?

C. Tax deductions and allowances

- ▶ What are the tax implications of cancellation of contracts (for example, advance write offs, CWIP write offs)?
- ▶ What is the tax impact of Voluntary Retirement Scheme ('VRS') for employees in case of downscaling operations?
- ▶ What is the tax impact on business discontinuance including deduction for expenses and carry forward of losses?

D. Other key issues

- ▶ In the context of employees working from home, have you considered and analysed implications under SEZ regulations, DOT guidelines to ensure compliance thereof?
- ▶ What are the relevant areas of consideration in the event of any tax year extension?

Corporate law

- ▶ Have you assessed the implications with respect to a company's compliance obligations under corporate laws and business challenges such as timely meeting its CSR obligations, impact on payment of managerial

remuneration due to the impact on business operations, making vendor payments to micro and small enterprises within the prescribed timeline?

A. Improving cash flow and addressing capital needs

- ▶ Whether there are concerns related to GST credit realisation/ filing of transaction wise details by vendors impacting credit availability?
- ▶ Is accumulation of Input Tax Credit in GST registrations leading to cash flow issues/ need to find a resolution to accumulation of Credit?
- ▶ Are there any pending GST refunds (inverted duty structure/ refund related to exports - accumulated credit, GST paid on exports)?

B. EXIM

- ▶ Are there SEIS/ MEIS applications pending to be filed, which could potentially get hit by limitation of time and where extension of timelines would be required to utilise the benefits therein?
- ▶ Are there SEIS/ MEIS applications which have not been sanctioned by the Department?
- ▶ Do you wish to transition to the new scheme of export incentives (RoDTEP), if the same is announced in April 2020?

C. State incentive schemes

- ▶ Is capital investment expected at your end - green field investments/ expansion of capacity etc and have relevant state incentive schemes been explored?
- ▶ If State incentives claims have been filed, are related benefits pending clearance even after due sanction by the authorities?

D. Supply chain

Export

- ▶ Considering the recent Government restriction on export of certain goods in wake of COVID-19, what is the impact to your customer base in countries to which you regularly export?
- ▶ Is discharge of export obligation pending under FTP scheme (AA/ EPCG) for which amnesty/ one-time settlement option is required?

Import

- ▶ Considering the impact on procurement of goods, is there a need to evaluate whether the new import jurisdictions enjoy FTA/ PTA benefits?
- ▶ Is there merit in looking at global supply chain rejig in the coming months/ year?



A. Supply chain

- ▶ Owing to COVID-19 impact, many businesses are re-engineering their supply chain models. Have you considered revalidating the Group's Transfer Pricing ('TP') Policy in light of such re-designed supply-chain models?
- ▶ Due to supply chain disruptions, there is a dramatic drop in demand and/ or supply and businesses are facing liquidity issues amongst other challenges. With HQs' cash flows dented, have you considered revising the agreed profitability levels for captive centres, contract manufacturers or limited risk distributors?

B. Benchmarking analysis and APA

- ▶ Financial stress will be recorded and reflected in the financial statements of taxpayers as well as comparable companies and the impact may vary from country to country and region to region.
 - ▶ Have you considered what financial model should be developed to account for differences arising from financial impact for different companies/ sectors?
 - ▶ Have you considered if global/ regional comparables can be used for any benchmarking analysis?

- ▶ Businesses or intangibles have been valued mostly by discounting their projected cash flows. Have you considered if discounting of projected cash flows will be the best methodology to determine business/ intangible's valuation?
- ▶ Have you considered renegotiating or revising the critical assumptions agreed/ negotiated in the APAs due to financial strain on the economic fundamentals surrounding the businesses?

C. Reallocation of costs/ Intra Group charges

- ▶ Macro-economic changes lead to changes in the financial costs in the market. Have you considered redetermination of financial costs involved in intra-group financial transactions?
- ▶ With considerable time being spent by the management to deal with the global impact of COVID-19, have you considered if such management costs should be shared by HQs with local operating companies?
- ▶ With suppliers triggering the 'force majeure' clauses, have you evaluated if risks and costs associated with suppliers' failures should be re-allocated amongst group companies?
- ▶ To revive, many businesses may allow moratorium period, extended credit period, waive-off penalties or other payments to third parties. Have you considered how will such revised terms offered to third parties impact your intra-group dealings?



A. Improving cash flow and addressing capital needs between group entities for inbound and/ or Indian headquartered structures

- ▶ Are there retained earnings and/ or reserves to declare dividends/ undertake buyback of share capital? Should the company explore National Company Law Tribunal approved capital reduction?
- ▶ Are there outstanding inter-company payables? Can group entities advance loan? Can investment of a fresh instrument be explored with a regular income flow?
- ▶ Can intra-group share transfers be evaluated?

B. Corporate restructuring

- ▶ Considering the capital market situation and significant drop in share prices, will closely held promoter groups re-evaluate their holding stake in listed companies?
- ▶ Is delisting of the Indian company desired? Will minority shareholder desire an exit in delisted entity given significant erosion in prices?
- ▶ Are there opportunities in restructuring the current debt? What are the transaction costs on restructuring?

C. M&A transactions which have been signed but not closed

- ▶ Have you evaluated condition precedents, representations and warranties, requirement to procure no-objection certificate from the Indian Tax Authorities and other terms in transaction documents and/ or due diligence findings to assess impact, if any, on closing timelines and other commercial parameters, and also, have you evaluated alternative solutions to specific concerns?
- ▶ Are there alternative solutions to expedite closing or deferring/ slowing the pace of transaction closing or completion of on-going restructurings depending on the requirements of the seller or buyer, respectively?
- ▶ Is there a requirement to adjust and re-negotiate pricing and deal terms in light of changed circumstances and emerging uncertainties?
- ▶ What would be the impact of 'force majeure' and other 'material adverse action' based covenants and possibility of terminating deals pre-closing?
- ▶ What would be the impact on pending/ proposed open offers in the current market sentiment?



A. Outbounds to foreign countries - Indian employees abroad now returning to India/ stuck in India due to COVID -19 and working remotely from home for foreign country projects

- ▶ Have you considered the tax implications in India for these employee?
- ▶ Have you evaluated if there are any exemptions available under the Indian tax laws and if yes, how long can the employee continue working from India remotely and still avail the exemption?
- ▶ Considering that the employees are working remotely from India, have you taken into account any consequential tax withholding requirement for the Indian company or foreign company?
- ▶ What would be the implication from a social security (Provident Fund) perspective?
- ▶ Should the employer consider tax equalizing the employees due to the extended stay, where the employee would qualify as Tax resident and subject to tax on global income?

B. Inbounds to India

On local employment contracts

- ▶ Have you evaluated the tax implications in India and the home country for foreign nationals under a local employment contract in India, now returning to their home country and working remotely from their home country

On expatriate assignments

- ▶ Given that there is disruption of work currently, are you re-considering the assignment period of your inbound assignees?
- ▶ Have you taken into consideration the challenges arising due to restrictions in travelling back to India?

On business visa

- ▶ Are there concerns on the necessity to travel back to their home countries?
- ▶ Have you taken into considerations the challenges/ delay in obtaining a new business visa at a later date? Are there any restrictions?

C. Immigration issues

- ▶ Have you enforced travel restrictions for your employees (in addition to the mandated ones)?
- ▶ What are the options you are evaluating for visa expired cases where employees are in foreign location/ away from home country?
- ▶ Have you assessed the immigration status for people who were supposed to leave for assignments?



Where you are facing any of the above concerns or any other tax/regulatory issues arising on account of COVID - 19, please reach out to your client serving teams to discuss the same and we can help you evaluate next steps.

Further, at EY, have an experienced and dedicated Tax and Economic Policy team which has handled large advocacy mandates successfully over several years. We encourage you to let us know if there are any specific issues which require representation before the Government and our team will be happy to assist with the same.

While EY continues to undertake several precautionary measures to ensure the safety and wellbeing of our people, clients and communities, with our Business Continuity Plan in place, we shall continue meeting your service needs with minimal disruption.



Ernst & Young LLP

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/en_in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camac Street, 3rd Floor, Block C, Kolkata - 700016

© 2020 Ernst & Young LLP. Published in India.
All Rights Reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.