

## A Business Newsletter from Bhatia & Co. Certified Public Accountants

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### [USCIS Issues New H1B Policy Memorandum Significantly Easing Employer-Employee Guidance](#)

Two controversial policy memorandums that caused the denial of a large number of H1B petitions for the past ten years have been rescinded by the USCIS.

The agency issued a new Policy Memorandum wherein, effective immediately, they have rescinded the memorandum that determined Employer-Employee Relationship for Adjudication of H-1B Petitions (including Third-Party Site Placements), issued in January 2010 (popularly known 'Neufeld' Memo) and as well as the other required Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites issued in February 2018.

Hopefully, this Memorandum ends 10 years of relentless harassment of both the employers & employees in terms of H1B adjudication process wherein USCIS had created their own arbitrary rule defining 'employer-employee relationship' and the USCIS adjudication officers were even more whimsical in their interpretation of that rule and deny genuine cases. [More](#)

### [DACA wins an important Supreme Court ruling](#)

In a significant win for the advocates and supporters of the Deferred Action for Childhood Arrivals, known as DACA, the Supreme Court on June 18 blocked the Trump administration to it.

DACA is an Obama-era program that protects hundreds of thousands of immigrants brought to the US as children from deportation. [More](#)

However, USCIS Deputy Director for Policy Joseph Edlow issued as [statement](#) stating that the Supreme Court's opinion has no basis in law and merely delays the President's lawful ability to end the illegal Deferred Action for Childhood Arrivals amnesty program. [More](#)

### [Trump to suspend H-1B work visas and others through end of year](#)

WASHINGTON (Reuters) - U.S. President Donald Trump will expand an existing visa ban to include certain non-immigrant work visas as part of a move to protect U.S. workers amid the economic devastation tied to the coronavirus pandemic, a senior administration official said on June 22.

Trump will block the entry of foreign workers on H-1B visas for skilled workers and L-1 visas for workers being transferred within a company through the end of the year, the official said. The president will also block seasonal workers on H-2B visas, with an exception for workers in the food service industry. [More](#)

### [Indo American Chamber next event](#)

Indo American Chamber of Commerce will host a webinar on June 24, 2020 at 6.30 p.m. where two new startups in the healthcare space, DoktorUp and Nimble Heart, will showcase their products.

It is part of the chamber's startup showcase.

To Register please go to:

<https://tinyurl.com/IndoAmCC>

### [SBA - EIDL Advance and EIDL Loan program reopen for eligible non-agricultural businesses](#)

On June 15, the U.S. Small Business Administration announced that it has [reopened](#) the Economic Injury Disaster Loan (EIDL) and EIDL Advance programs for eligible small businesses and non-profits experiencing economic difficulties due to COVID-19.

The EIDL program offers long-term, low interest loans designed to alleviate temporary loss of revenue from disasters or unforeseen circumstances. Small businesses can use these loans to cover

## [Supreme Court Delivers Major Victory To LGBTQ Employees](#)

In a historic decision, the U.S. Supreme Court ruled Monday that the 1964 Civil Rights Act protects gay, lesbian, and transgender employees from discrimination based on sex. The ruling was 6-3, with Justice Neil Gorsuch, President Trump's first appointee to the court, writing the majority opinion. The opinion was joined by Chief Justice John Roberts and the court's four liberal justices.

"Today," Gorsuch said, "we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear." He found such discrimination is barred by the language in the 1964 law that bans discrimination in employment based on race, religion, national origin or sex. [More](#)

## [PPP Flexibility Act gives borrowers more time to spend loan funds and still obtain forgiveness](#)

Payroll Protection Program Flexibility Act which was enacted earlier this month, amends the loan forgiveness provisions of the PPP Act by giving borrowers more time - 24 weeks instead of 8 weeks - to spend the loan funds and still obtain forgiveness. The Act also reduces the minimum amount required to be spent on payroll from 75% to 60% and with up to 40% of the loan amount to be used for mortgage interest, rent, or utility payments to obtain full loan forgiveness of that amount.

PPPFA has extended the date to replace full-time equivalent employees and restore salaries from June 30, 2020 until December 31, 2020 which provides relief for those businesses that have a loss of Full time equivalent employees in its workforce because of Covid-19 related restrictions that prevent the same level of business activity through the end of the year.

Borrowers have been given flexibility, whereby they could obtain full forgiveness if there is a reduction in workforce based on the inability to find qualified employees or if they were unable to restore operations to Feb. 15, 2020, levels due to COVID-19 restrictions. These are in addition to previous guidance that let companies exclude workers who turned down good-faith offers of re-employment.

For the unforgiven portion of the PPP loan, the PPPFA also extends the repayment period to five years from the original two while retaining the original 1% interest rate in respect of loans made after June 5. The Borrower can now apply for forgiveness of its Paycheck Protection Program (PPP) loan using SBA Form 3508. In the alternative the borrower could use SBA Form 3508EZ in any of the following conditions:

The Borrower is a self-employed individual,

payroll, inventory, debt payments, or various other expenses. EIDL Advance is an additional program that provides up to \$10,000 (\$1,000 per employee) in emergency grants for small businesses that are experiencing temporary economic hardships. These grants do not require repayment. [More](#)

## [Leading Indian tax luminary Girish Ahuja explains Indian tax changes for NRIs](#)

India's leading tax expert and author, Dr. Girish Ahuja addressed a well-attended webinar under the aegis of the Indo American Chamber of Commerce and San Francisco Chapter of the Institute of Chartered Accountants of India on May 13.

Dr. Ahuja, who was nominated by the government of India in 2019 for redrafting the Indian Income Tax Act spoke on subjects including residential status, tax/foreign tax credit on dividends, equalization levy, capital gains on sale of property and other investments in India, ease of doing business in India and tax and regulatory environment for investments in India.

Neeraj Bhatia, a highly respected tax expert and president of Bhatia & Co. based in Silicon Valley, supplemented Dr. Ahuja's perspective from the American standpoint.

In India some of the changes made by the recently passed Finance Act 2020 could have impact on taxability of Non-Residents as well as foreign entities transacting in India. These include changes to the taxability of visiting Non Resident Indians by introducing the concept of 'Deemed Resident', abolition of Dividend Distribution Tax, imposing 2% Equalization Levy on e-Commerce operators, amongst others.

**Deemed Resident** - India's Finance Act 2020 has made significant changes to the taxability of visiting NRIs, who stay in India for longer duration, by introducing the concept of 'Deemed Resident'.

Under the prior provisions, for taxability purposes, an individual was treated as Resident of India, if he satisfied either of the following conditions:

- (i) Stay in India is of at least 182 days during the Financial Year (April 1 to March 31); or
- (ii) Stay in India is of at least 60 days during the Financial Year and at least 365 days during 4 preceding Financial Years. Finance Act 2020 has reduced the maximum period of stay in India from 182 days to 120 days for those Indian citizens or Persons of India origin (PIOs) who have total income, other than income from foreign sources exceeding Rs 1.5 million during that Financial year. Besides, relaxation has been provided to an Indian citizen or a Person of Indian Origin (PIO)

independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form.

The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period (as defined below) compared to the period between January 1, 2020 and March 31, 2020 and The Borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period OR the Borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020.

### **Postponed Tax deadline - July 15 approaches**

Due to Covid-19, the Treasury Department and Internal Revenue Service had postponed the 2019 Income Tax return filings for Individuals, Corporations, Nonprofit organizations and other taxpayers, whose filing was due on April 15th or later, till July 15, 2020. That due date is now less than a month away.

In addition, taxpayers have also been allowed to defer federal income tax payments due on April 15, 2020, to July 15, 2020, without penalties and interest, regardless of the amount owed. This deferment applies to all taxpayers, including individuals, trusts and estates, corporations and other non-corporate tax filers as well as those who pay self-employment tax. Taxpayers did not have to file any additional forms or call the IRS to qualify for this automatic federal tax filing and payment relief.

As July 15, the new tax-filing deadline, draws near, the IRS has reminded all taxpayers who have yet to file their 2019 federal tax return to file electronically now and pay the tax due, if any. Taxpayers who owe for tax year 2019 or need to pay 2020 estimated taxes originally due for the first quarter on April 15 or the second quarter on June 15 can make payment up to the July 15 due date without incurring extra interest/ penalty during the intervening period.

Individual taxpayers who need additional time to file beyond the July 15 deadline, can request a filing extension by filing Form 4868 through their tax professional, tax software or using the Free File link on IRS.gov. Businesses who need additional time must file Form 7004.

who comes on a visit India by increasing the number of days of presence from 60 days to 182 as mentioned in point (ii) above.

However, those Indian citizens or a PIO, who, being outside India, come on a visit to India in any Financial Year shall be considered Not Ordinarily Resident if their total income, other than the income from foreign sources, exceeds Rs 15 lakhs and their stay in India is 120 days or more but less than 182 days.

These changes would have impact on taxability of certain income which accrues or arises from Indian sources  
Abolition of Dividend Distribution Tax (DDT) - Finance Act, 2020 has also abolished Dividend Distribution Tax (DDT) regime under which the incidence of tax on Dividend was on companies declaring dividend in the form of DDT. Such Dividends paid by Domestic Company were exempt in the hands of receivers (including Non-Residents) in India. The dividends distributed would, however, be subject to Tax deduction at Source (Tax withholding). This change is a boon for overseas investors as foreign shareholders will now be able to claim Foreign Tax credit on the tax withheld/ paid in India, which they were not able to claim on DDT as that was not a tax levied on individual taxpayers.

**Equalization Levy** - Finance Act 2020 has also imposed an Equalisation Levy (EL) at the rate of 2% on the consideration received or receivable by an e-commerce operator from e-commerce supply of goods or services made or provided or facilitated by it to any person who is resident in India. EL will also be levied on supply to goods or services to non-residents in certain circumstances such as sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India).

[More](#)

focus on international transactions and tax planning. Our Team of highly skilled and diversified range of finance and business professionals provide services in areas of business and individual tax, audit & review, international tax planning, incorporation and corporate compliance, accounting, outsourcing, business consulting, financial and retirement planning, immigration consulting and litigation support to a diverse range of clients.. We are located in the heart of Silicon Valley in Santa Clara, CA for the last 15+ years as well as in Pleasanton, CA and have offices in New Delhi for 30+ years.

Our recent engagements in the US and India include cross border tax planning and transactions, M&A, corporate structuring, and complex Tax audits and representation including recent overseas disclosure programs (OVDP/OVDI/ Streamlined disclosure programs). The clientele include startups, multinational companies, government organizations, Public Sector Banks, and Auto dealerships.

Bhatia & Co. is headed by Neeraj Bhatia, who is an accomplished accounting professional with more than 30 years' expertise in international and domestic tax planning and compliance for startups and multinational entities. Neeraj is a licensed CPA in California, New York and Colorado and a CA in India. He also has a LL.M. in International Taxation from the US, Costs and Works (Management) Accountancy, and a Bachelor (Honors) degree in Commerce from India.

During his academic years he has received several awards and scholarships for being the top ranker nationally. Recently in January, 2018 Neeraj Bhatia was awarded the prestigious Hind Rattan Award (Jewel of India award) on the occasion of Pravasi Bhartiya Diwas by the NRI Welfare Society for keeping Flag of India high abroad at their 37th International Congress of NRIs held in Bangkok, Thailand.

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