FIPI

Post Budget Memorandum 2018-19

INDIRECT TAXES

CUSTOMS

1. Reduction in Social Welfare Surcharge on import of Crude Oil

Background
Finance Bill, 2018 imposed a new levy called Social Welfare Surcharge (SWS) at the rate of 10% in place of Education CESS of 3% of customs duty on import of goods in to the country. The major import in the country is crude oil which is levied National Calamity Contingent Duty (NCCD) of Rs.50 per metric tonne on domestic as well as on imported crude oil.

Customs duty on import of Crude Oil has been increased from Rs.51.50 to Rs.55 per MT due to levy of SWS at the rate of 10% on NCCD. However, SWS on import of MS & HSD has been kept at the rate of 3%.

Suggestion
Increase in levy of Customs duty on crude oil is an additional burden on Oil companies due to not Cenvatable or pass through levy, therefore, it is suggested that SWS on import of Crude Oil to be reduced to 3% of Customs duty on the line of levy of SWS on import of MS & HSD.

2. Disposal of Imported Goods as Scrap:

Background
The Condition No. 40A under Sl. No. 357A of the Customs Notification No. 12/2012-Cus dated 17.03.2012 *(Now, Condition 48 under Sl. No. 404 of Customs Notification No. 50/2017-Cus dated 30.06.2017)* was amended vide Notification No. 6/2017-cus dated 02.02.2017 to allows the disposal of goods imported for petroleum operation by availing of the benefit of the exemption, which are no longer required for the said purpose, on payment of applicable customs duties on depreciated value. On plain reading of notification, we are of the view that the amendment covers disposal of un-used imported items which are no longer required for petroleum operation and declared as condemned and obsolete.

In this regard, we would like to submit that Companies have constructed various Onshore & Offshore facilities including platforms, pipelines through Lump Sum Turnkey (LSTK) Contracts since 1980. For the construction of the most of the facilities, equipments/ goods were imported/ domestically purchased by availing exemption or concession of customs duty/excise duty. Many items like Cranes, Pumps, Engines, valves, Separators, Tanks, and Piping etc. were imported along with platforms/processing facilities and consolidated value is declared in Bill of Entries (B/E). As and when such items became un-usable due to continuous use, these items were replaced by new items. Such old items have been declared as condemned and to be disposed of as scrap. It is practically impossible to ascertain the depreciated value of such items for levy & payment of customs duty due to non-availability of item-wise value. Similar is the case with old worn out structures like Gratings, Railings etc. which were declared scrap after use are lying in stores and occupying valuable space. In such cases, the requisite condition of exemption notification for utilizing the goods in connection with petroleum operation gets satisfied.

Suggestion
Considering ease of doing business, it is requested to amend Sl. No. 404 [condition no 48(e)] of Notification No 50/2017-Cus or a clarification to the effect that:

(a) The Companies may be allowed to dispose of such excess/ un-used items declared as scrap, on payment of applicable customs duty on the date of such disposal on the supply value/ transaction value of such disposal of goods. Here, the Companies need to pay both Basic Customs duty as well as IGST on the supply value/ transaction value of such disposal of goods.

(b) The disposal of used items which are no longer required for petroleum operations and declared as scrap may be allowed without payment of Customs duty as the condition of the notification has been duly satisfied. However, the Companies would pay applicable GST/IGST on supply value / transaction value of such disposal of excess used goods.

(c) The amendment to the condition/clarification would be applicable to disposal of goods imported under any earlier notifications in this regard by availing the concessional rate of Customs duty.

<u>CENTRAL EXCISE</u>

1. Introduction of Specific rate of excise duty on Aviation Turbine Fuel (ATF)

Background
ATF is falling under ITC (HS) code 2710.19.20 of the Central Excise Tariff Act and presently chargeable at 14% ad-valorem rate of excise duty. Concessional rate of 2% is applicable for ATF sold under Regional Connectivity Scheme.

Generally ATF is received at AFSs through intermediate storage locations (Depot/Terminal) instead of directly from Refinery. At the point of removal, the excise duty is paid on destination assessable value by following the principle of Normal Transaction Value under Section 4 of the Central Excise Act read with Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In case of further stock transfers by the intermediate storage locations, the duty payable is again determined based on the value applicable to the final receiving locations i.e. AFSs which result in payment of differential duty. This creates problem in re-ascertaining the correct transaction value for payment of differential excise duty at Refinery.
The extension of same rule for payment of duty on account of further stock transfer of products from one depot to another depot, makes the compliance of valuation rule very difficult for the oil companies.

The adoption of the provisional assessment would be complicated and not a pragmatic solution due to untenable and unending exercise to trace the original duty paying documents for finalization of the provisional assessment both for the department and the oil industry.

Suggestion
Presently MS & HSD are levied specific rate of excise duty whereas ATF is levied ad-valorum rate of duty. MS, HSD and ATF have been kept out from GST levy and continue to be levied under the levy of Excise duty & VAT. Since, MS & HSD both are levied specific rate of excise duty, thus it is requested that ATF should also be levied specific rate of duty in place of ad-valorem duty. This would ensure correct payment of duty at the initial clearance stage itself and will eliminate complexities and difficulties in re-determination of duty on further stock transfers which sometime result in avoidable litigation.

2. Review of exemption granted to Ethanol Blended Petrol (EBP) and Bio-Diesel blended HSD

Background
With implementation of GST, the notifications exempting 5%/10% Ethanol Blended Petrol and Bio-Diesel blended HSD has been amended to replace the word appropriate duty of excise to GST for ethanol and Bio-Diesel. However, the said amendment left out the cases of closing stock (including in transit) of ethanol and bio-diesel on which was already excise duty suffered and bended with MS or HSD, as the case may be, on or after 1.7.2017.
Similar issue has arisen after imposition of Road & infrastructure CESS w.e.f. 2.2.2018, wherein, closing stock (including in transit) of MS & HSD has already suffered AED (Road CESS)

Suggestion
Suitable amendment may be carried out in all such notification by amending the meaning of appropriate duties/taxes to define the meaning of appropriate duty/taxes to cover both duty/taxes as applicable taxes/duty structure prior to and after amendment.

3. Suitable explanation in Notification 09/2018-CE dated 02.02.18 as amended by 16/2018-CE dated 02.02.18

Background
In Budget 2018-19, a Road and Infrastructure Cess, as an additional duty of excise was introduced on Motor spirit (commonly known as Petrol) and High Speed Diesel falling under heading 2710, at the rate of Rs. 8 per litre (Clause 110 read with the sixth schedule of the Finance Bill, 2018). This levy of Road and Infrastructure Cess is effective from 02.02.2018.

Simultaneously,

i. Vide notifications 07/2018-CE and 08/2018-CE both dated 02.02.2018, Additional Duty on Motor Spirit (commonly known as Petrol) and High Speed Diesel levaible on such goods has been exempted.

ii. Vide Notification 9/2018-CE-dated 02.02.2018, the Basic Excise duty on Motor Spirit Commonly known as petrol / High speed diesel intended for sale without a brand name has been reduced from Rs 6.48 per litre / Rs 7.66 per litre to Rs 4.48 per litre / Rs 5.66 per litre respectively. Similar reduction of Rs 2 per litre has been done for branded Motor spirit and branded High Speed diesel.

Suggestion

1. The tariff rate for levy of additional duty of excise on Motor Spirit is Rs. 8 per Litre which is levied under Section 111 of the Finance Act 1998. However Notification 10/2015 dated 01.03.2015, provide for exemption from such duty in excess of Rs. 6 per Litre of Additional Duty on Motor Spirit (commonly known as Petrol). Vide notification 01/2018-CE dated 02.02.2018, the exemption notification 10/2015-CE has been rescinded.
   Similarly, the tariff rate for levy of additional duty of excise on High Speed Diesel is Rs. 8 per Litre which is levied under section 133 of Finance Act 1999. However Notification 11/2015-CE dated 01.03.2015, provide for exemption in excess of Rs. 6 per Litre of Additional Duty on High Speed Diesel. Vide notification 02/2018-CE dated 02.02.2018, the exemption notification 11/2015-CE has been rescinded.

2. Vide notification 14/2018-CE and 15/2018-CE dated 02.02.2018, an explanation has been introduced, for the purpose of clarifying the applicability of notification 07/2018-CE and 08/2018-CE dated 02.02.2018 on the goods manufactured on or before 01.02.2018.

   In view of this, the effective rate of Additional Duty on Motor Spirit and High Speed Diesel becomes Rs. 8 per Litre for the goods manufactured on or before 01.02.2018 and cleared on or after 02.02.2018.

3. Vide notification No. 16/2018-CE dated 02.02.2018 an explanation has been introduced stating that the amendment in principal notification no. 11/2017-CE dated 30.06.2017 introduced vide Notification No. 09/2018-CE dated 02.02.2018 shall not apply to the goods manufactured on or before the 1st February 2018 and cleared on or after the 2nd February 2018. In view of the provision of the notification 16/2018-CE, the basic excise duty applicable on clearances of unbranded Petrol and diesel manufactured on or before the 1st February 2018 would be Rs 6.48 per litre and Rs 8.33 per litre respectively. Similarly for branded petrol and diesel basic excise duty would be Rs.7.66 per litre and Rs.10.69 per litre respectively.

4. In Annexure II of the CBEC TRU letter dated 01.02.2018, it is clarified that total excise duty on Motor Spirit (commonly known as Petrol) and High Speed Diesel, both branded and unbranded even after the changes made in the budget remains unchanged.

5. However, in view of the explanation inserted vide not. 16/2018-CE dated 02.02.2018 in the principal notification 11/2017-CE dated 30.06.2017 (refer notification no. 09/2018-CE dated 02.02.2018), the additional impact of basic excise duty, which is unintended, on the goods manufactured on or before 01.02.2018 and cleared on or after 02.02.2018 would be Rs. 2 per Litre as under:

	Duty rate applicable on Petrol and Diesel cleared on or after 02.02.2018									
	Manufactured on or prior to 01.02.2018					**Manufactured on or after 02.02.2018**				
Product	Basic Excise duty	AED (Road Cess)	SAED	Road and Infra. Cess	Total Excise Duty	Basic Excise duty	AED (Road Cess)	SAED	Road and Infra. Cess	Total Excise Duty
	(a)	(b)	(c)	(d)	(e)	**(f)**	(g)	(h)	(i)	(j)
Petrol (unbranded)	**6.48**	8.00	7.00	0	21.48	**4.48**	0	7.00	8.00	19.48
Petrol (Branded)	**7.66**	8.00	7.00	0	22.66	**5.66**	0	7.00	8.00	20.66
Diesel (unbranded)	**8.33**	8.00	1.00	0	17.33	**6.33**	0	1.00	8.00	15.33
Diesel (Branded)	**10.69**	8.00	1.00	0	19.69	**8.69**	0	1.00	8.00	17.69

- Total Duty on Petrol and Diesel (Branded as well as unbranded) prior to the Budget announcement as depicted in column (j) of above table.

In order to avoid the unintended consequences arisen due to insertion of the explanation in the subject notification (i.e. 16/2018-CE dated 02.02.18), as stated above, it is requested to issue a suitable notification to nullify the unintentional additional impact of Rs. 2 per Litre of basic excise duty on Petrol and Diesel (Branded and unbranded).

It is also requested that suitable amendment may be carried out in the principal notification 11/2017-CE dated 30.06.2017, whereby appropriate duties of excise should also include the additional duty of excise (Road Cess) levied under section 111 of Finance Act 1998 and section 133 of Finance Act 1999 wherever applicable to grant intended exemptions and to avoid any possible dispute at a later date.

<u>CENVAT CREDIT RULES</u>

1. Cross utilization of GST Input Tax Credit against Excise duty/Sales Tax

Background
As per the provision of GST Act, input credits can be claimed only if the output is also under GST. Therefore, purchases of goods and services which are to be used for MS, HSD & ATF will not be entitled for input tax credit.

Suggestion
In case our request for levy of nominal GST is not acceded, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be carried out in the CENVAT Rules and respective State VAT laws to allow the tax credit of GST paid inputs against the output tax liability of Excise / VAT on the products excluded from GST.
Since, the credit was already available in the CENVAT & VAT laws; there would not be additional outgo on the Govt. by allowing cross utilization.

2. Duty Credit on MS and HSD brought to refinery for reprocessing

Background
As per Rule 15 of the Central Excise Rules, 2017, if the goods on which duty is paid at the time of removal thereof are brought back into the factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules. These goods can be cleared again on payment of applicable duty after subjecting them to manufacturing process.

After clearance on payment of duty sometimes petroleum products become off-spec. and have to be brought back to the Refinery for re-processing so as to make them marketable. In case of products such as MS and HSD which are non-Cenvatable, Refinery is not eligible to get any CENVAT credit and duty has to be paid again at the time of their clearance after re-processing, resulting in double payment of duty.

Suggestion
It is suggested that non-Cenvatable products like MS and HSD when received in the Refinery for re-processing should either be exempted from payment of duty at the time of clearance

after re-processing or Cenvat Credit should be allowed on these products at the time of receipt in the Refinery by suitably amending the definition of 'Input' contained in the Cenvat Credit Rules'2017 for re-processing of such products in the refinery.

SERVICE TAX LAW:

1. Non-applicability of Service Tax/GST on Royalty:

Background

The Royalty is being paid u/s 6A of ORD Act, 1948 which is in the nature of tax.

Accordingly, E&P Sector is of the view that service tax/GST is not applicable on such payment of Royalty. The similar matter is also pending before larger bench of SC.

E&P Sector has been requesting the Govt. for necessary clarification/exemptions from time to time.

Suggestion

It is requested to kindly clarify that Royalty payable u/s 6A of ORD Act, would not be subject to levy of service tax/GST.

GOODS & SERVICES TAX (GST)

1. Levy of nominal GST on excluded petroleum products or include under Zero rated

Background

Though major petroleum MS, HSD, ATF, Crude Oil and Natural Gas has now been constitutionally included under GST, however, these products have been kept out from levy of GST till the GST councils recommends it. These product are continued to be liable under the existing excise and sales tax/VAT laws.

Since the inputs/input services procured by the petroleum industry post GST scenario is liable to tax under GST whereas the major final products of the petroleum industry continue to be liable under the existing excise and sales tax/VAT laws, etc. Thus, credit of input GST is not allowed when used in supply of these non-GST goods, such exclusion is resulting in to higher stranding of taxes in the hands of the petroleum industry.

It is against the objective of introducing stability and uniformity in taxation of goods and services all over the country. Also it has resulted in more compliance work for the Petroleum Industry and Government as well.

Suggestion

In order to remove stranding of taxes in the hands of petroleum industry, it is pertinent that either these excluded product are also levied nominal GST parallel with levy of Excise duty /VAT. Alternatively, these products may be included under zero rated good in GST to allow the full availment of input tax Credits under GST.

2. Suggestion to include Aviation Turbine Fuel (ATF) under GST

Background

Though we have been requesting to Govt. to include all the petroleum products under GST to have a seamless credit chain providing relief for mitigating the impact of loss of Input Tax Credit and avoid multiple compliances of law. However, in case due to any reason our request for inclusion of all petroleum products under GST is not possible, the Govt. may consider to at least including Aviation Turbine Fuel (ATF) under GST on the following grounds/ justification:

I. ATF is falling under ITC (HS) code 2710.19.20 and presently chargeable at 14% (2% under Regional Connectivity Scheme) ad-valorem rate of excise duty. VAT/Sales tax rate on ATF varies from State to State and is in the range of 25% to 30%.

II. Out of excluded petroleum products ATF is contributing only around 1% of Central Excise revenue to Central Govt. and less than 5% Sales tax revenue to State Govts.

III. Around 98% of ATF is sold on Intra State basis and inter-state supply is only to the tune of 1 to 1.5%. Therefore, if GST is levied on ATF at revenue neutral rate, states will not suffer the shortage of tax revenue on ATF on account of inter-state supply under the destination based tax regime.

3. Relief by way of exemption/lower rate of GST on input used in refining and marketing of petroleum products

Background
In the scenario wherein the major petroleum products i.e. MS, HSD and ATF is kept outside the GST regime, the input taxes paid on input, capital goods and input services is not available for set off to downstream sector of Oil & Gas. This has become an under-recovery to this sector.

Suggestion
In this regards, we suggest for granting exemption / lower GST rate on procurement of major Capital Goods, input and input services for use in Refining, Marketing & Distribution of petroleum products in order to minimize the impact of GST, like

- BS-VI MS & HSD projects
- Inter unit transfer of Reformate/DHDT/SRGO & other feeds for manufacture of MS/HSD
- Ethanol for blending with MS (Petrol) – from 18% to 5%
- Regasification of LNG – from 18% to 5%

4. Rationalization of GST rate for construction of cross country petroleum and gas pipeline

Background
The goods and services purchased for construction of cross country petroleum and natural Gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services, etc. are not eligible for input tax credit (ITC) under GST regime and will attract GST up to 28% (on Gas compressors).

Applicability of high GST rate on goods and services required for laying the pipeline without benefit of ITC will substantially increase the cost of such projects.

Suggestion
Since the goods and services purchased for construction of cross country petroleum and gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract

services etc. are not eligible for input tax credit (ITC) under GST regime, high rate the rate of GST on such goods will increase the cost of pipeline projects. Therefore, it is requested that applicable GST rate on such goods and services should be rationalized and be exempted or considered at lower rate of 5%.

5. Tax reversal under Section 17(2) of CGST Act

Background

Sec 15(2)(a) "Value of taxable supply" includes any taxes, duties, levied under any law other than CGST, SGST, IGST, UTGST & GST (Compensation to state) Act. Exclusion of excise & VAT is provided via explanation to rule 7 & 8 of Input Tax Credit Rules. Entry 92A of List I covers CST for interstate transactions.

Present rule does not cover entry 92A of List I, which will increase the reversal ratio, which appears to be an error.

Suggestion

Since the exclusion of specified taxes is via rules, alteration of rules by adding entry 92A of List I in explanation to rule 7 & 8 of Input Tax Credit rules will correct the anomaly and no amendment would be required to the Act. We have also requested to Commissioner (GST) vide our letter dated 7.9.17.

6. Clarification on documentation for supplies to Special Economic Zone (SEZ) units under GST

Background

Prior to 01.07.2017, for supply of goods without payment of duty to SEZ units, ARE-1 was required to be prepared as per provisions of Rule 30 of the SEZ rules and Central Excise law. Bill of export along with ARE-1 was required to be prepared only in cases where claim of export entitlement were involved.

As per section 16 of the IGST Act 2017, supplies to SEZ are treated as zero rated supplies. Post 01.07.2017, preparation of ARE-1 for GST products is not relevant for goods covered under GST law. Further there is no clarity on the preparation of Bill of export with respect to supplies of GST goods to SEZ units and also the documents which might be required to substantiate the proof of export. In certain places the SEZ authorities are not willing to sign the bill of exports.

Suggestion

Clarification circular to be issued for the documentation required for supplies to SEZ for establishing the proof of export to avoid any litigation at a later date.

7. Amendment in explanation inserted to Chapter V- Input Tax Credit of CGST Rules, 2017 to determine the value of Non-GST supply

Background

Section 2(47) of CGST Act defines exempt supply to include non-taxable supply, therefore, for the purpose of common input tax credit (ITC) reversal, turnover of these excluded products would be counted as exempt supply as per formula prescribed under Rule 42 and Rule 43 for the reversal of common Input / Input Services and Capital goods credit respectively.

Petroleum products manufactured in oil refineries are stock transferred out of the state to other states in order to cater the demand in those States and to maintain un-interrupted

supply of these essential commodities across the country. In some cases goods are further stock transferred to another state due to change in mode of transportation like pipeline to railway/road and other logistic requirement. Since, GST is a State specific levy, every state has to apply its reversal ratio based on taxable & exempted turnover of that State.
The above provision is resulting in to reversal of ITC on account of same goods in multiple states. Since, this product has already suffered ITC reversal in the manufacturing State, the same should not be included in turnover of the subsequent states.

Suggestion
Considering the above, it is suggested that value of these non-GST petroleum products should be included in the Non-GST turnover of only in the manufacturing State and suitable amendment to be made in clause 2 of Explanation inserted to the end of Chapter 5- Input Tax Credit of CGST Rules, 2017, by insertion of a new sub-clause as per follows;

*"**Explanation.-** For the purpose of this Chapter,-*
(1) ....
(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-
(a) ...
(b) ...
(c) the value of non-taxable goods i.e. MS (Petrol), HSD, ATF, Crude Oil and Natural Gas shall be included in the exempt turnover of only in the state where such goods is manufactured"

8. Request for suitable tax relief under GST to compensate the 50% Excise duty benefit available to North East refineries

Background
The North-East Refineries are having uneconomic operations due to a number of factors like limited demand, limited crude availability, sub-economic size, location disadvantage etc. In order to support their operations and to make it economic viable after de-regulation of petroleum products, Central Govt. formulated a scheme whereby all NE refineries were exempted from payment of Central Excise duties to the extent of 50% vide Notification No.29/2002-CE dated 13.5.2002**.**
With the GST implementation in the country w.e.f. 01.07.2017, except 5 petroleum products, all other petroleum products e.g. Naphtha, Bitumen, FO, LPG, SKO, Wax, etc. are covered under GST. Since, Excise duty is not applicable on the products subsumed under GST; therefore, benefit of 50% Excise duty as provided earlier to NE refineries is no longer available on manufacturing and supply of these GST products. Further, there is no such exemption available under GST, thus, NE Oil Refineries are deprived of excise concession.

Suggestion
Since, scheme formulated by the Central Govt. was part of the overall policy framework of industrialization of north east; it is expected that Central Govt. would come out with some scheme to ensure that same benefit is made available to refineries for GST products to boost the long-term sustainability and viability of the North East refineries.

9. Movement of Goods from Nhava Storage to Offshore:

Background
The goods required for petroleum operation in Offshore (including East Coast) are procured under Offshore GST Registration, however the same are stored at Nhava Storage. Since there is no storage facility in Offshore, the Nhava Storage has been created to cater the

requirement of Offshore alone. Accordingly, such goods are transferred to Offshore as and when required for consumption/usage. Un-used items (or excess quantity) or after use, the goods are again returned back to Nhava Storage.

Further, GST being a destination based consumption tax, the taxes are being correctly paid to the Offshore (Union Territory) by procuring under Offshore GST Registration. Hence, Nhava Storage should be treated as Service Provider of Storage Service to Offshore.

Suggestion
This issue was taken up with Sectorial Committee on GST for Oil & Gas for clarifying our understanding. Though the understanding was verbally affirmed, a line of confirmation in this regard would be helpful to avoid dispute.

CENTRAL SALES TAX

1. Continuation of C form for purchase of excluded products

Background
After the amendment carried out under the Central Sales Tax, 1956 (CST Act), through The Taxation Laws (Amendment) Act, 2017 (18 of 2017) (the Amendment Act), CST is levied on inter-state sale of excluded petroleum products. Considering the amendment made in the definition of 'goods' under Section 2(d) of CST Act to covers only 6 products i.e. crude oil, petrol, diesel, natural gas, ATF, alcoholic liquor for human consumption, there is un-certainty whether C form for concessional rate can be issued by the purchaser of these goods for use in manufacturing of GST goods or in telecommunications network or in mining or in generation or distribution of electricity or any other form of power as defined in Section 8 of CST Act.

There is no clarity whether such entities would be termed as dealer under the CST Act post amendment of the definition of the goods in the CST Act and whether would be able to obtain Form C from the respective State Govt. for purchase of HSD/NG for intended purposes. Further, it is gathered that State Govts. are also not clear on the issue of Form C to such purchasers.

Suggestion
It is suggested that suitable clarification may be issued in this regards that customers of these excluded petroleum products would be allowed to purchase such products against C form as is allowed earlier considering the fact there is not additional financial outgo on part of states. We have also requested to CBEC vide our letter dated 7.8.2017.

DIRECT TAXES

INCOME TAX ACT:

1. Deduction under Section 80IB(9) on Refining business

Background

Section 80-IB(9) allows deduction of 100% of profits for a period of 7 consecutive assessment years to an undertaking which begins refining of mineral oil between 01.10.1998 to 31.03.2012.

IOC's 15 MMTPA capacity mega refinery project at Paradip, Orissa has commissioned in Nov 2015. The above project of IOC was prescribed for the benefit of section 80-IB(9) vide Notification No. 66/2008 dated 30.05.2008. It was initially envisaged that the project would be completed and commissioned before 31.03.2012. However, the completion of this project has been delayed due to various reasons beyond the control of IOC.
This issue was also taken up by MOP&NG with MOF in earlier year's Union Budget proposals for the oil industry, wherein it was requested to extend the sunset clause from 31.03.2012 to 31.03.2017. However, the request was not acceded.

Non availability of such benefit under section 80-IB(9) will affect the economics of the project adversely.

Suggestion

The delay in the project completion is due to unavoidable circumstances which were beyond the control of company, it is suggested that the benefit of section 80-IB(9) may be reintroduced for the said project by allowing for project completion date from 31.03.2012 to 31.03.2017.

It is also suggested that the benefit should be reintroduce for the projects with substantial increase in capacity say costing more than Rs.5000Crs or 20% increase in capacity. Further, Increase in period of deduction from 7 years to 15 years may also be considered.

2. Deduction under Section 35AD to crude oil pipelines

Background

Section 35AD provides benefit of 100% deduction in respect of whole of any expenditure of capital nature incurred for laying and operating a cross country natural gas or crude or petroleum oil pipeline network subject to the conditions, *interalia,* that such pipeline network to be approved by PNGRB and has common carrier capacity as per PNGRB regulations.

However, crude oil pipelines have been excluded from the ambit of common carrier for PNGRB approval under Section 2(j)(ii) of the PNGRB Act, 2006. Thus, we are unable to avail the above benefit on the laying & operation of crude oil pipelines.

Suggestion

It is requested that conditions under Section 35AD is to be amended suitably to remove the requirement of approval of PNGRB for crude oil Pipelines.

3. Set-off of Dividend Distribution Tax (DDT) under Section 115-O

Background

Section 115-O provides set-off of DDT, being paid by the subsidiary company on the dividend distributed to the parent company, for the purpose of calculation of DDT on dividend declared, distributed or paid by the parent company. In the Budget, 2013, such benefit was also extended w.e.f. 01.06.13 to set-off the DDT paid by the domestic company under section 115BBD for dividend received from its foreign subsidiary company.

Suggestion

It is requested that such set-off of DDT may also be allowed for dividend received from companies other than subsidiaries. Since, at times JV may be incorporated with 50%-50% shareholding between two JV partners and in such a situation the benefit will not be available even though the investment in such JV is quite significant and where holding interest is quite substantial but only not being a subsidiary company. Alternatively, the word "subsidiary" may be substituted by the words "holding more than fifteen percent"

4. Dependent agent forming a business connection

Background

Presently, a dependent agent who has and habitually exercises in India, an authority to conclude contracts on behalf of a non-resident constitutes a business connection. The proposed amendment provides that a person who plays a principal role which leads to conclusion of contracts by a non-resident will also be considered as a dependent agent. And that the contracts may be:

- in the name of the non-resident; or
- for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or
- for the provision of services by the non-resident

The proposed provision appears is far more extensive than what has been envisaged by the Multilateral Instrument and Action 7 of BEPS. As per the Multilateral Instrument a business connection or PE can be created by a Dependent Agent where he habitually concludes contracts on behalf of a non-resident, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the non-resident.

Further, there is no exclusion with relation to "preparatory and auxiliary" activities nor in respect of activities which are confined to 'purchase of goods or merchandise for the non-resident as compared with such exceptions provided in the Multilateral Instrument.

Also, it would appear that a business connection is created even due to an isolated conclusion of contracts by a non-resident in which the agent plays a principal role or even where the contract as negotiated by the agent, is substantially modified by the non-resident before finalizing the same.

Considering that this proposal has been introduced with the prefix "for the removal of doubts", the tax authorities could extend his provision to the prior years, although this may be unintended.

Suggestion

- The provisions relating to dependent agent should be aligned with the comparable provisions in Multilateral Instrument/ BEPS as also the legislative intent and the words without material modification on routine basis" should be inserted
- Activities of dependent agent which are confined to purchase of goods or merchandise for non-resident must be specifically excluded
- Preparatory/ auxiliary activities should be excluded from the provision
- The words "for the removal of doubts" should be replaced with clear wordings that the proposed amendment applies only from A.Y. 2019-20 onwards.

5. Prosecution on failure to file returns for companies under section 276CC

Background

The proposed amend seeks to remove the relaxation from prosecution in respect of failure to file return of income by the companies when the tax payable net of TDS is 3,000.

Presently, section 276CC provides for imprisonment along with fine to those who wilfully fail to furnish returns within due date or before end of the relevant assessment year. However, it provides for relaxation to all taxpayers against imprisonment, if the tax payable is less than Rs 3,000 post TDS and advance tax, even where the default is considered to be wilful.

This carve out will be onerous for entities, particularly foreign companies, whose entire income is subject to TDS. The risk of prosecution can thus arise even if the tax liability is Nil and is fully met by TDS.

Whereas the objective of the proposal is to plug the loophole in case of shell companies or companies holding Benami properties, section 276CC for the failure of company is likely to be applicable even if it is due to reasonable a cause and genuine cases may also have to undergo proceedings in absence of any exception in law which may lead to increase in undue litigation and harassment. For foreign entrepreneurs, threat of litigation despite there being no tax avoidance may be single most deterrent.

Suggestions

- The provision should be clearly made prospective and applicable in respect of defaults in respect of returns which fall due for submission on or after 1 April 2018.
- Exemptions/relaxation should be provided to foreign companies as also genuine bonafide companies having regard to the intent of the proposed amendment

6. Inclusion of 'significant economic presence'

Background

The proposed amendment is meant to enlarge the scope of business connection in order to tax business models that operate remotely through digital means. Thus, Explanation 2A to section 9(1)(i) is proposed to be inserted as per which 'Significant Economic Presence' (SEP) would also constitute business connection for a non-resident.

It is proposed that SEP in India shall be constituted irrespective of whether a non-resident has a residence or place of business in India or renders services in India. Income attributable to transactions or activities covered in SEP definition is proposed to be deemed to accrue or arise in India.

SEP has been defined as:

1. Any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or
2. Systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

Suggestion
This aspect of taxation should be brought in in tandem with the OECD which is still in discussion as to the appropriate basis of tax rules which may need to be applied to deal with Digital economy players.

In India, considering that initial measures by way of Equalisation levy, and the expanded rule for Dependent agent have already been introduced, besides, adoption of transfer pricing principles aligned with BEPS agenda, this additional limb of taxation on a unilateral basis may not have global acceptance particularly at a time when there is an all out effort to make investing in India more attractive.