FIPI

Federation of Indian Petroleum Industry

PRE BUDGET MEMORANDUM FOR UNION BUDGET 2018-19

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EXECUTIVE SUMMARY

INDIRECT TAX – GOODS AND SERVICES TAX			
SL no.	**Section**	**Suggestion**	**Pg Ref**
Upstream			
1.	Request for inclusion of upstream Sector in GST	Humbly submitted to include Crude oil and Gas under GST to ensure that input GST paid on goods and services can be set-off against the Output GST on Crude oil & Gas. This will rectify the current situation where the "strategically important" segment of Petroleum is being made to bear high taxes to avoid burdening the midstream which is relatively less strategic.	1-3
2.	Input Tax Credit (ITC) not eligible on goods / services used for construction of Pipelines	Considering that GST is applicable on the output supply of services from such pipelines, Input Tax Credit (ITC) on goods / services used for construction of Natural Gas / LPG pipelines may be allowed under GST laws to avoid cascading and inflationary effect. The definition of term "factory" may be provided under the GST law in line with definition under the Factories Act.	3-4
3.	Rationalization of GST rate on services of transportation of goods through pipeline	GST rate applicable on the services of transportation of goods by pipeline may be rationalized at lower rate of 5% in line with the rate applicable on transportation of goods by alternate modes.	4-5
4.	(i) Inter – unit billing for	Notification may be issued under Rule 32(7) of	6-7

	Transportation of gas in a cross Country pipeline for transportation of Natural Gas / LPG from one State to another. (ii)Inter –unit billing by Corporate Office / Zonal Office providing administrative support commonly to different plants / units	the CGST Rules that for the companies engaged in transportation of Natural Gas / LPG though pipeline, the valuation of taxable services supplied between distinct persons where input tax credit is available, shall be deemed to be nil. This will result in avoiding the process of raising bills with no corresponding revenue implication. The administrative support given by Head Office / Zonal Office commonly to different plants / units of the same entity may be covered under Schedule III of the CGST Act and treated as neither a supply of goods nor a supply of services. This will avoid the process of billing which is causing unnecessary administrative and financial burden on the company.	
5.	Interstate transportation of product through pipelines for self-consumption	Service of transportation of product by one registered unit to another registered unit of same legal entity should be fully exempted from GST.	7-8
6.	Bunker fuel supply to Foreign Run Vessel	Bunker fuel sale to the foreign run vessels should be made Zero rated in GST.	8
7.	Additional Tax implication on Offshore LSTK Contracts under GST	Reduce the GST Rate from 18% (with credit) to 12% (with credit) on Offshore works contract for petroleum operations.	8-9
8.	GST Rate on charter hiring of drilling rigs, vessels & helicopters for petroleum operations	Clarification may be issued that the charter hiring of offshore drilling rigs for exclusive usage for petroleum operations, would be subject to same rate as applicable in case of purchase of such rigs i.e. 5%. Similar clarification may also be issued for the charter hiring of vessels &	9-10

		helicopters clarifying that such hiring should attract same rate as applicable in case of purchase of such vessels & helicopters i.e. 5%.	
9.	Certificate from DG, Hydrocarbons (DGH) on subsequent transfer of specified goods from one GST Registration to another GST Registration of same entity for petroleum operations	Requested that the N/N 03/2017-IGST (Rate) and the other similar notifications issued under CGST & SGST Acts, may be amended suitably to allow concessional rate of 5% GST on 'Self Certification' basis.	10
10.	Non-applicability of GST on Royalty payable u/s 6A of ORD Act, 1948	Requested to issue a clarification in this regard to avoid litigation. This will resolve the pre-GST issues as well. Alternatively, an exemption may be issued till inclusion of crude oil & natural gas under GST for levy.	11
11.	Service Tax on Cost Petroleum	Requested that a clarification may be issued in this regard.	11-12
12.	Service Tax on Profit Petroleum	Requested that a clarification may be issued in this regard.	12
13.	Service Tax on Cash Call under UJV Transactions	Capital Contribution in the form of cash call being merely a transaction in money, should not be subject to levy of GST. It is therefore, requested that a clarification may be issued in this regard.	12
14.	Clarification to the effect that consortium members including operator and the consortium formed under PSC are not distinct entities	A clarification, may please be issued that the transactions between members and the consortium (under PSC) for carrying out E&P activities in terms of PSC should not be treated as service provided by one person to another for	13

		levy of GST	
15.	Clarification on non-applicability of service tax and GST on cash calls under existing regime and GST regime respectively	Clarification should be issued under existing regime as well as GST regime that consortium and parties to consortium (which has executed a sharing agreement with Government of India) are not distinct entities and the cash calls are not consideration for services but only a contribution made by contractors.	14
16.	Clarification on non-applicability of service tax and GST on cost petroleum under existing regime and GST regime	Clarification should be issued under existing regime as well as under GST regime that Profit Petroleum/ Cost Petroleum is not consideration for service; these are formulas to determine the Government's share in the production (tax paid sales revenue).	14
17.	Zero rating in respect of supplies made to oil & gas exploration projects	It is being represented that supplies to oil & gas projects be given the status of 'zero rating' enabling suppliers to claim credit and supply goods / services without payment of GST.	15
18.	Exemption from GST on import of vessel	Request to amend Notification No. 50 / 2017 – Customs and provide for complete waiver of IGST on import of all goods required for petroleum operations including tug, vessel and boats.	15-16
19.	IGST implications on disposal of excess or obsolete stock	Recommend to levy of customs duty on disposal of used goods against the entry 404 of Notification No. 50 / 2017 – Customs since customs duty is exempted on import of goods as long as the same are required for petroleum operations. Hence, it is recommended that the levy of customs duty should be withdrawn on disposal of surplus / obsolete / used goods.	16-17
20.	Exemption for O&G upstream companies for	Such levy of IGST on supply of goods from shorebase to offshore location and backload	17

	movement of goods from shore base to offshore	therefrom should be exempted.	
21.	Admissibility of credit for O&G upstream companies – offshore registration in respect of goods being supplied back to shorebase after its use	Such levy of IGST on supply of goods from shorebase to offshore location and backload therefrom should be exempted. Alternatively, in case where no upfront exemption is granted and first supplies from shorebase / offshore location are subjected to IGST of 5% once post introduction of GST, further supplies thereof from shorebase to offshore and backload therefrom to shorebase should be exempted without requiring reversal of credit. Offshore platforms should be allowed to claim credit of GST charged by shorebase to the extent of goods being back-loaded to shorebase.	18
22.	Clarification with regard to treatment of surplus goods, which were imported while claiming an exemption from customs duty on the basis of EC issued by DGH	Clarification circular should be issued to reduce the litigation.	19
23.	Place of Supply where Goods are purchased by Offshore Registration and delivered at Onshore Storage location	In order to avoid litigation, a circular may be issued by MoF in this regard.	19-21
Downstream			
1.	Inclusion of MS, HSD & ATF	In case, there are difficulties in implementing the	21-22

	in GST- estimated stranded taxes post GST	same immediately at least the above products can be brought under GST with zero rate or the nominal rate of 1 to 2% while keeping the existing tax structure in vogue for the time being to address a part of the difficulties faced by the industry. Suitable amendment may be carried out in the CENVAT Rules and 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.	
2.	Relief by way of exemption /lower rate of GST on input used in refining and marketing of petroleum products	It is requested that in line with exemption granted to upstream sector, similar relief may be granted to downstream sector (Refining and marketing) of petroleum products by way of 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 this regards, we would like to request for exemption / lower GST rate on some of major procurement goods and services exclusively by downstream sector.	22-23
3.	Rate of Liquified Petroleum Gases (LPG) for supply to household domestic consumers	A suitable clarification may be issued by the Government on the applicability of GST @ 5% to manufacturers for supply of LPG to OMCs for ultimate supply to household domestic consumers.	23
4.	Remission of GST for storage loss, handling loss and transit loss for petroleum products covered under GST	A suitable amendment/ clarification can be issued that losses up to the permissible limits are permitted and hence the final invoice raised can be for a lesser quantity when within the prescribed limits.	24-25

5.	Continuation of C form for purchase of excluded products	It is suggested that customers for these excluded petroleum products should be allowed to purchase such products against C form as is allowed presently considering the fact there is not additional financial outgo on part of states.	25
6.	Permit Oil Marketing Companies (OMC) to pass on the benefit of service tax charged on throughput fees for fuelling the aircraft for domestic operation	OMCs should be permitted to pass on the benefit of service tax charged on throughput fees for fuelling the aircraft for domestic operation as this would eliminate the cascading effect of tax and facilitate availment of the Cenvat Credit for the Carrier. Upfront exemption to Service Tax on throughput fees pertaining to supply of ATF to foreign bound aircrafts may be notified.	25
7.	Uniformity in classifying ATF for Sales Tax/VAT and ATF to be brought under GST	Centre should work with states to include ATF under the proposed Goods and Service Tax (GST) regime when applicable, else may be brought under Essential Commodities to have uniform taxation. States may be given guidelines to provide Form H benefits to Penultimate buyers.	26
8.	Bio-fuels such as bio-petrol, bio-jet, bio-char, etc. to be within GST and classified accordingly	It shall be clarified that bio-fuels such as bio-petrol, bio-jet, and bio-char shall be within the ambit of GST. Further, rate of GST and the HSN code for each of these bio-fuels shall be clarified to avoid any classification disputes and removal of ambiguity w.r.t they being within the GST regime.	26-27
Natural Gas			
1.	Inclusion of Natural Gas under GST	Natural Gas may be brought under GST ambit as it will have positive impact on the Natural gas based industry and will avoid stranding of taxes.	28-29

		State Governments may be persuaded to reduce and rationalize the VAT rate applicable on Natural Gas in line with the reduction recently carried out by Maharashtra Government. A provision for deemed movement of Natural Gas under GST law may be kept in line with existing provisions of explanation 3 of Section 3 of CST Act 1956, which provides for inter-state sale of gas on deemed movement basis in case of integrated pipeline network.	
2.	Exemption of GST on sea transportation of LNG by vessel and LNG regasification activity.	It is suggested that transportation of LNG by a vessel / Ship from a place outside India to India under voyage charter basis as well as time charter basis may be exempted from levy of GST. Similarly, the activity of regasification of LNG also may also be exempted from levy of GST. In case, it is not possible to fully exempt GST on such services, it is requested that GST rates on regasification and transportation services relating to Natural Gas may be reduced to 5%.	29-30
3.	Alternatively - (2) Amending the definition of 'Non Taxable Supply' under CGST Act	If the definition is amended as above, the ITC reversal to the extent of natural gas would not be required. As a result, the supplier can at least utilize the ITC accrued for other supplies; This can also help in bringing down the cost of natural gas	30
4.	Issuance of clarifications for the phrase "Pipelines laid outside the factory" to remove credit restriction on pipelines used for gas transportation	Ministry should consider issuing a clarification in this regard since the exclusion (on a plain and literal interpretation) is intended to capture and restrict credit in a scenario where factories use pipelines to draw water/other raw materials from sources far away from the factory.	30-31

5.	Declared goods status for Natural Gas/Regasified Liquefied Natural Gas (RLNG) in line with coal, crude oil, Liquefied Petroleum Gas (LPG).	Being a primary energy source like crude oil and coal, Natural Gas should be treated at par and the same tax status granted.	31-32
6.	Import duty benefit on LNG should be extended to all sectors apart from power sector, according the same status as crude petroleum	The import duty of LNG may be made at par with the import duty of crude petroleum, which is presently zero. It is suggested that the custom duty exemption to LNG/Natural Gas may be granted on imports made by any person boosting development of competitive gas markets in India and such should be extended beyond power sector to 'end-use' for other sectors as well, to ensure parity with imported crude.	32-33
7.	Valuation of taxable services for naturally evaporating products like LNG should be clarified in detail to apply on the charges for conversion of the delivered product.	It should be clearly clarified that the charges for the delivered quantity of a volatile product (after taking into account the losses during regasification) shall be taxable as services in order to avoid double taxation.	33-34
8.	Activity of LNG loaning and borrowing in quantity terms in LNG terminals handling, a co-mingled mix of title, goods of same product should be specifically kept	It is sought to seek exemption from any taxing provision for Loan / Borrow transactions of In Tank LNG to enable optimum utilisation of LNG Terminal facilities in India and facilitate higher trade and consumption of this carbon efficient fuel by India entities.	34-35

	out of purview of taxable transactions.		
9.	Reversal of input credit relating to Non-GST supplies like Natural Gas from the common credit pool of Taxable and Non-taxable supplies to be made nil.	The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.	35-39
10.	Tax on Freight Charges for LNG import	We recommend that the GST on import freight for all LNG cargoes be withdrawn to promote the usage of environmentally clean fuel in the country.	39
General			
1.	GST: Procedural Issues		40-55
2.	GST: Rate fitment – Requests for rationalization in rates		56-59
3.	Ease of Doing Business	The requirement of issuing receipt voucher in the format of invoice at the time of receipt of payment may be dispensed with and such receipt voucher may be prescribed for amount of advance pending at the month end.	60
4.	Cenvat Credit of Service tax paid under Forward Charge Mechanism	Appropriate amendment should be made in GST law providing relief to refineries to take input credit for the receipt of bills prior to 30/06/2017 upto 31/03/2018.	60
5.	Exempting the requirement of issuing the consignment note/Lorry Receipt	Rule 54(3) of the CGST Rules, 2017 can be amended to include the following: 'Provided however that transporters engaged by	60-61

	Rule 54(3) of the CGST Rules, 2017 reads as follows:	OMCs are exempted from the provision of the tax invoice or other document mentioned above, if the document provided by the Oil Marketing Companies contains all the other information as prescribed under Rule 46.'	
6.	E-Way Bill for taxable supplies	The following proviso can be added to Rule 138 of the CGST Rules, 2017: 'These Rules shall not be applicable to supplies which are not under the ambit of the GST Regime or are exempted.' Alternatively, the word 'Supply' in the E-Way Bill Rules, could be substituted with the words 'taxable supply' to ensure the applicability of such Rules only to taxable supplies.	62
7.	GST applicability on time charter	Heading 9965 covers coastal and transoceanic (overseas) water transport services of goods. The voyage charter will be covered under the heading 9965 and therefore liable for GST at the rate of 5%. Heading 9973 covers leasing or rental services with or without operator. It is suggested that the time charter should be covered under the heading 9973 and therefore liable to GST at the rate of 5% so that GST rate on time charter is made in line with Voyage charter.	62
8.	Issuance of C Forms	Continuation of concessional CST 2% against Form-C till such time crude oil and natural gas are outside GST. Thus it is requested that MoPNG expeditiously engages with the Ministry of Finance & relevant GOI institutions and state government appropriately to resolve this.	63

9.	No methodology / procedure provided in GST for supply and return stream to downstream customers.	Specific provision needs to be stipulated in GST Act wherein only net quantity has to be treated as supply to downstream customers as was followed in the pre-GST regime.	63-64
10.	GSTN portal problems	It needs to be ensured that the GST portal functions properly at all times and specifically at the time of filing returns else productive hours will be wasted by way of follow up and setting the GSTN portal right.	64
11.	Capital goods received after 30.06.2017 but invoice has been received after 01.07.2017	Clarification needed	64-65
12.	Linkage of benefits under Foreign Trade Policy (FTP) with GST	With the introduction of GST, wherein excise duty is subsumed, the FTP regime for such export benefits would be need to mapped and aligned so as to help industry take benefits of such incentives against their GST output liabilities	65
13.	Treatment of Corporate Office under GST	persons. Accordingly, there should not be any GST implication. Suggestion It is apprehended that the Department may raise demands on costs incurred by registered office on various accounts such as manpower, infrastructure etc. Hence, it is requested that specific exemption or clarification may be issued to avoid litigations. In this regard, it is also pertinent to mention that unlike other sectors, the ONGC would not be able to avail input tax credit as the crude oil &	65-66

		natural gas are outside levy of GST.	
EXCISE DUTY			
Upstream			
1.	Government to review the present rate of 20% of OID Cess and to moderate it to say 8% to 10% of realized crude oil price.	Keeping in view, the unprecedented reduction in crude prices, representations were made by Upstream Oil Companies including ONGC with the Government to review and reduce the rate of OID Cess and make it 8% to 10% ad-valorem.	66-67
2.	Reduction in OID Cess rate on Crude Oil to 8-10%	In view of above, post-budget, various Representations are made by Industry including ONGC to MoP&NG to review the OID Cess and revise to 8% to 10% of realized crude price. Based on these representations, MoP&NG has also recommended to Ministry of Finance vide letter dated 11.04.16 to review the existing rate of 20% and make it 10%-12% ad-valorem. It is requested to review the present rate of OID Cess of 20% and to moderate it to 10% of realized crude oil price.	67-69
Downstream			
1.	Excise Duty of HSD	Since goods required for petroleum operation have been exempted from all other customs and excise duties in the earlier regime, it is also desirable to extend the said benefit to excise duty levied on HSD as mentioned above by amending the notification No.11/2017-CE suitably.	69
2.	Additional duty of excise exemption levied on HSD	It is requested to exempt the additional duty of excise on the HSD procured for the petroleum operations to provide boost and incentive to the	69

		upstream sector.	
3.	Exemption to CNG from payment of excise duty	In view of the above, CNG may be exempted from levy of Central Excise Duty. This will make CNG more economical and will promote its use as environment friendly fuel.	70
4.	Payment of duty at refinery to be made at quantity at 15 degree	In order to eliminate litigations, it is suggested that duty shall be levied at quantity at 15 degrees on all removals from refinery.	70
5.	Permitting Mixed Bonding in Intermediate storage tanks for ATF and Bunkering Fuels	Mixed bonding of Bonded and Duty paid is permitted at AFS. The same facility should also be extended to the intermediate storage tanks. Segregation of the duty paid and bonded ATF can be maintained through accounting records.	70
6.	Excise Duty on Transit Loss on ATF	Allowance should be given for the quantities lost in transit or storage as prescribed by the Govt. of India despite the fact that they are removed under export warehouse procedure.	71
7.	Increase in the cost of production on account on Non Availability of ITC of GST products used for Non GST products.	Reduce the rates of Excise on excisable products and purse the sates to reduce the VAT rates on petroleum products. Include MS, HSD, ATF, Natural Gas in GST. Allow cross utilization of credit i.e GST can be utilized for making payment of Excise and VAT	71-72
8.	Dispute on rate of excise duty on intermingling loss of SKO in pipeline transportation	Appropriate clarification required	72
9.	Rationalization of excise duty on premium diesel	It is recommended to significantly reduce the excise duty differential between branded and regular diesel, bringing it close to or at par with excise duty on regular diesel. This will help	73

		create a market for an efficient branded fuel which will help reduce the environmental impact of vehicular emissions, and help improve the efficiency and performance of the vehicles.	
10.	Processing of Excise Duty refund claims	It is suggested that access should be given to online refund process for quick processing with online Real Time Gross Settlement (RTGS) refund.	74
General			
1.	CENVAT credit on National Calamity Contingency Duty (NCCD).	NCCD should be made Cenvatable against the duty on the finished petroleum products	75
2.	Tapering of Royalty rates	Decision relating to convergence of royalty rates for pre NELP and nomination blocks with NELP blocks was never notified and consequently the benefit of reduced rates which was intended to be passed to provide similar fiscal regime to nomination and pre NELP blocks remained unimplemented.	75-76
3.	Financial incentives to promote IOR/EOR projects	Reduced rate of royalty for IOR/ EOR Exemption from Cess	76-77
4.	Exemption of Excise Duty for compression of natural gas into Compressed Natural Gas (CNG) for use in Natural Gas Vehicles (NGVs)	It is suggested that compression of natural gas into CNG should be exempted from Excise duty as there is no element of manufacturing and the objective is only to improve the storage of gas.	77-78

CUSTOMS DUTY			
Upstream			
1.	Exemption on import of High Value Goods/ Equipments for petroleum operation on re-export basis	Requested to kindly exempt the levy of IGST on import of such high value machineries imported for petroleum operations as was available under pre-GST regime.	78
Downstream			
1.	Levy of Safeguard Duty on import of capital goods under Project Import Regulation	We request exemption to be provided under Section 8(b) of the Customs Tariff Act for materials imported under Project Import Regulation falling under Chapter 98 of the Customs Tariff.	79
2.	Customs duty concession for laying of product and gas pipeline	It is suggested that the customs duty on import of materials viz. pipes; valves; flanges; data communication system for laying of petroleum products and gas pipelines falling under the Customs Tariff headings 72, 73, 74, 75, 76, 78, 79 is exempt from payment of customs duty. The pipeline transportation is environment friendly with Nil pollution and is very cost effective.	79-80
3.	Exemption of Excise Duty for compression of natural gas into Compressed Natural Gas (CNG) for use in Natural Gas Vehicles (NGVs)	It is suggested that compression of natural gas into CNG should be exempted from Excise duty as there is no element of manufacturing and the objective is only to improve the storage of gas.	80
4.	Zero customs duty for new Refineries/Refinery expansions, product and gas pipelines to be made nil.	It is also suggested that the Customs duty on import of material viz. pipes, valves, flanges, data communication system for laying of petroleum products and gas pipelines is made	80-81

		nil.	
5.	Rationalization of customs duty on import of petroleum products viz Motor Spirit (MS) and High Speed Diesel) HSD	It is recommended that the customs duty on import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported. Suitable amendments may be made to fully exempt education cess and secondary and education cess leviable on customs duty to align the customs duty rate with excise duty.	81-82
Natural Gas			
1.	Clarification on non Leviability of customs duty on LPG used for non-domestic purposes in locations storing both imported and indigenous LPG in common tankages as long as there is adequate quantity of indigenous LPG in the tanks.	Appropriate clarification should be issued to confirm that since the locations storing LPG are duty paid locations storing imported as well as indigenous LPG in common tankages, there should be no requirement to pay any Customs duty for LPG used for non-domestic purposes as long as there is sufficient indigenous product available at the given time for such use on which appropriate GST is paid.	83
2.	Import duty benefit on LNG should be extended to all sectors apart from power sector, according the same status as crude petroleum	The import duty of LNG may be made at par with the import duty of crude petroleum, which is presently zero. Moreover, it is suggested that the custom duty exemption to LNG/Natural Gas may be granted on imports made by any person boosting development of competitive gas markets in India and such should be extended beyond power	83-84

		sector to 'end-use' for other sectors as well, to ensure parity with imported crude.	
General			
1.	Customs duty exemption on initial setting up of IH2 plant	It is suggested that exemption from Customs duty shall be granted to all items of machinery, instruments, appliances or components or auxiliary equipment required for setting up of IH2 project or facility	85
CENTRAL SALES TAX			
Natural Gas			
1.	Amendment in CST Act to consider issue of Form C for use of Natural Gas in manufacture of goods covered under GST.	It is therefore suggested that a suitable clarification may be issues under CST Act to clarify that the word ‘goods’ used in section 8(3) of CST Act includes ‘goods’ as defined under the CST Act as well as GST Act and therefore Form C can also be issued for purchase of the ‘goods’ defined under the CST Act for use in manufacture or processing of any other goods for sale.	86
2.	Amendment in CST Act to consider inter-state Stock Transfer of Natural Gas on deemed movement basis in line with amendment in Section 3.	Amendment in Section 6A of the Central Sales Tax Act, 1956 may be introduced to effectively implement the amendment brought in Section 3 of the CST Act vide Union Budget 2016.	87-88
3.	Alternatively - (1) lower rates of VAT/CST if supply is for specified uses (i.e. vital/ important uses) of Natural Gas	A scheme similar to composition scheme can be introduced for suppliers of natural gas since the buyers of natural gas would not be eligible for credit anyway (since their output would be under GST).	89

DIRECT TAXES			
INCOME TAX			
Upstream			
SL no.	**Section**	**Suggestion**	**Pg Ref**
1.	The term 'mineral oil' is understood to include Crude Oil and Natural Gas and the same need clarification to avail the tax holiday under section 80 IB (9) of the Act.	We recommend that in order to clear the doubt and remove ambiguity, It should be clarified that the term 'mineral oil' includes petroleum and natural gas for the purpose of section 80IB (9).	90-91
2.	Concept of 'Undertaking'. Explanation to sub-section (9) of section 80-IB	We recommend that for the purposes of claiming tax holiday "wells/cluster of wells/field" should be regarded as "undertaking" and not the entire "contract area/block". In any case, the insertion of the cited explanation should not be with retrospective effect and suitable amendment should be made.	91
3.	Site Restoration Scheme (s. 33ABA)	This ceiling of 20% should either be removed or increased to 50%.	91
4.	Phase out plan for Tax holiday under section 80-IB	The cut-off criteria for the phasing out of tax holiday u/s. 80-IB (9) may be kept as the intimation of discovery on or before 31.03.2017 rather than the start of commercial production by that date.	92-94
5.	Amendment/Removal of Anomaly in Section 42 of the Income-tax Act, 1961	In order to align this provision applicable exclusively to the upstream hydrocarbon sector with industry terminology and to avoid unnecessary litigation, it is suggested that the word "surrendered" may be replaced with the term "relinquished or cancelled in full or in part,	94-95

		as the case may be" in line with the terminology used in Petroleum & Natural Gas Rules to denote the act of giving up of an area by a licensee.	
6.	Exempting Government Companies from Domestic Transfer Pricing Regulations	Government companies may be exempted from Domestic Transfer Pricing Regulations by amending section 92BA of the Income-tax Act, 1961, to exclude transactions executed by Government companies from the definition of specified domestic transactions.	95
7.	Supreme Court decision in ONGC on section 44 BB	In view of the above, it is recommended that CBDT should consider issuing directions that the ratio decidendi of the aforementioned ruling of Supreme Court must be adhered to by the field officers in all cases where the subject issues are involved.	95-96
8.	Ceiling on profits for Site Restoration Fund (SRF) contribution	It is, therefore, recommended that the deduction should be based on full contribution without any ceiling.	96
Downstream			
1.	Investment Allowance as per Section 32AC of Income Tax Act, 1962	The investment Allowance may please be extended up to 31.03.2019 i.e. the clause of acquiring and installation may be made applicable for the period 01.04.2017 to 31.03.2019, at least for large projects and substantial modification in existing plant to ensure that large size projects become eligible to avail the deduction. Further it should be clarified that installation can be in subsequent years.	96-97
2.	100% Depreciation	Upgradation of Refinery to help reduce the Air	97-98

	allowance for Projects undertaken for upgradation of fuel quality u/s 32	Pollution by limiting the Sulphur content from fuel, the expenditure incurred on this should be made eligible for 100% Depreciation under Section 32.	
3.	200% Weighted tax deduction in respect of in-house R&D Centre u/s 35 (2AB)	In order to encourage research, it is recommended to extend the weighted deduction of 200%.	98
4.	Amendment in Section 35AD	It is suggested that the approval of PNGRB for the common carrier principle may please be waived off. Further these pipelines are capital intensive projects and the revenue generation for break-even from this project will require substantial time. Therefore it is also requested to remove the condition imposed in Section 73 for carry forward and setoff of losses from specified business.	98-99
5.	Deduction u/s.80-IA(4) of the Act for oil storage units and LPG bottling plants	Oil storage and LPG bottling plant facilities in India should get the infrastructure status and accordingly, be granted the exemption u/s.80-IA(4) of the Act. Section 80-IA(4) of the Act grants exemptions to enterprises carrying on business of developing or operating and maintaining, or developing, operating and maintaining any infrastructure facilities (e.g. roads, highways, water, ports etc).	99-100
6.	Income Tax benefits in respect of providing higher rate of depreciation to renewal energy devices	It is proposed to reinstate the Income-tax depreciation rates back to 80%-100% based on which any expenditure on IH2 plant would be eligible for an accelerated depreciation.	100
7.	Income tax benefits in	The term “Infrastructure facility” should be	100

	respect of inclusion of process of conversion of waste in to fuels as "Infrastructure facility" and eligible for required tax benefits under Section 80-IA of the income-tax Act	amended to include specifically the activity of conversion of waste in to fuels done by the IH2 plant and thereby extending the facility of eligible profit deduction under Section 80-IA of the Income-tax Act and extending the date of sun-set clause in order to be eligible to claim such benefits.	
8.	Deduction under section 80IB (9) (iii) for undertaking engaged in refining of mineral oil	Removal of the sunset date and continuation of the deduction till the year 2022 (i.e. the year of Amrut Mahotsav, the 75th year, of India's independence).	101-102
Natural Gas			
1.	Amendment in section 73A and 72A of the Income Tax Act for set off and carry forward of the loss on account of deduction claimed u/s 35AD for growth of cross country Gas pipeline network and building the National Gas Grid (NGG)	It is suggested that Set off of loss computed under section 35AD may be allowed against profits of any other business carried on by the assesse by suitably amending section 73A of the Income Tax Act in line with the provision under section 70 of the Act. Section 72A needs to be amended so that carried forward loss of business of laying and operating a cross country natural gas pipeline network.	102-103
General			
1.	Exemption from MAT	Oil exploration and production companies should be exempted from MAT to promote mineral oil exploration and production sector.	103
2.	Grant of Infrastructure status to E&P Sector	Grant Infrastructure status to E&P sector to avail the benefits available to other Infrastructure projects (eg. take-out finance through ECB,	103

		relaxed provisioning norms for infrastructure lending, eligibility for viability Gap Funding, access to raise funds through Infrastructure Debt fund/tax free infrastructure bond).	
3.	Reduction in Corporate Tax Rate in Finance Act, 2018	It is recommended to reduce the corporate tax rate from existing 30% to 28%.	104
4.	Disallowance of expenditure incurred in relation to exempt income u/s 14A	Section 14A may be amended to provide that if the investments in assets which yield tax free income are made out of own funds such as share capital, free reserves etc. then the addition under this Section should not be made. Further, without prejudice to above even if rule 8D is applicable, there should be an upper limit based on certain percentage of exempt income and not the total expenditure claimed by Assessee.	104-105
5.	Treatment of gain or loss on account of Foreign exchange fluctuation on foreign currency loan for import of asset u/s 43A	It is suggested that clarification be incorporated that section 43A is applicable irrespective of the fact whether indigenous asset are acquired or imported assets are acquired from foreign loans.	105
6.	Amendment in Section 80-IA	It is suggested to extend sun-set clause to 31st March, 2019.	105
7.	Depreciation on Energy efficient LED Lights u/s 32	It is suggested to include LED lights under energy efficient equipment's category.	105
8.	Perquisite tax on housing accommodation provided to employees of CPSE'S under rule 3(1)	We recommend removing the distinction between employees of Central / State Government and CPSEs in the matter of Housing Perquisite Tax and providing for the	106

		same type of treatment to both these category of employees.	
9.	Stepping up the exemption on allowances u/s 10(14)	The new limits can be set at Rs. 1,000 for children education, Rs. 2,000 for hostel allowance.	106-107
10.	Raising the reimbursement limit for medical expenses u/s 17(2)	In view of the spiraling medical costs, increasing this limit to Rs. 50,000 u/s 17(2) would provide some respite.	107
11.	Overall limit for Deduction under-Sec-80CCE	It is recommended to increase the limit to Rs.300,000/- u/s 80CCE.	107
12.	Eligibility criteria for Deduction u/s 80EE	It is recommended to also provide deduction under this section for loans sanctioned even after 31st March, 2017.	107
13.	Corporate Social Responsibility Expenditure	In view of mandatory nature of CSR expenses under new Companies Act, 2013, it is suggested to insert an amendment under Income Tax Act allowing deduction of CSR expenditure. Some of the companies are spending even more than the mandatory limit of 2%, to encourage the application of CSR in letter & spirit, expenditure incurred should be allowed under business expenditure.	107-108
14.	Amendment in provisions relating to Income Deemed to Accrue or Arise in India	It is suggested that nonresident should be taxable in India only if he has a permanent establishment in India and rendered services in India.	108
15.	Disallowance of expenditure relatable to exempt income	In case of Dividend income, disallowance of 1% of the value of investment on presumptive basis is too high in comparison to the actual expenditure incurred, as the investments are shown in books at market value of the	108-109

		investment and dividend is earned on face value of shares. Accordingly, disallowance should be restored to 0.5 % annual average of cost of investment.	
16.	In line with the tax rate of MSME of 25%, and overall intent to reduce effective corporate tax rate from 30% to 25%, the Corporate tax rate from all others companies may be moderated.	Moderate the tax rate to reduce the overall tax incidence.	109
17.	Section 32 AD provides for additional depreciation of 15% for new projects in backward areas. The benefit is available till 2020. Section 32 AD is applicable for notified backward region.	a. Extension and expansion of existing projects . b. Further Section 32 AD is limited to year 2020, the same must be extended to FY 2021-22. c. The same may be extended to whole of india instead of notified backward area.	109
18.	Reinstatement of Section 32 AC: The sunset clause for Section 32AC should be extended to reasonable period say upto 2024.	The government to incentivize capital formation must extend the same to 2024 to enable creation of new P&M Machinery	110
19.	Section 43B(f) allows leave encashment only on payment. Wherever Employer has opted for a dedicated fund and contributes a sum based on	To mitigate the hardship, it is proposed that an Explanation be inserted in Section 43B to the effect that payment to the fund would be equivalent to payment to employees.	110

	actuarial valuations, the spirit behind Section 43B is complied with. Litigations can be avoided if clause (f) of Section 43B is amended to state that payment includes contribution to a dedicated fund.		
20.	Weighted average deduction under section 35(2AB), 35(2AA) to be retained at 200%	With the vision of the Government for strengthening the R&D Activities, it should retain the weighted average deduction to 200%.	110-111
21.	Tax Department is interpreting treatment for perquisite tax borne on behalf of employees to be added to book profit to increase profit u/s 115JB as same is considered as income tax paid falling under Section 115JB(2) , cluse (a) of Expl. (1).	A clarification on above would put to rest the issue involved.	111
22.	Under the Companies Act, P&L Accounts of the Company has to be in compliance with certain mandatory accounting standards, one of which is AS-15(Revised).	Considering the genuineness of the Business Expenditure and disallowance by the Assessing Officer leads only to delaying the deduction under Income Tax Act, suitable amendments are to be brought in Section 36(1) of the Act, permitting the deduction while transferring of the money to the welfare fund namely, 'Post-Retirement Medical Benefit Fund' and 'Death Benefit Fund' in addition to PF & Gratuity, currently specified in the said section.	111

23.	It is suggested that tax on distributed profits (DDT) under section 115O of the Income Tax Act shall not be made applicable to PSUs, to the extent of dividend, payable on shares held in the name of President, Government of India.	It is suggested that Section 115O shall not be made applicable to PSUs, to the extent of dividend, payable on shares held in the name of President, Government of India.	112
24.	It is suggested that suitable provision be inserted in the Act whereby prior period expenses, not exceeding 1% of the turnover shall be allowed U/s. 37(1) of the Act, without adjusting earlier year's Return of Income.	It is suggested that suitable provision be inserted in the Act whereby prior period expenses are allowed as deduction in the current year under section 37(1) of the Income Tax Act, 1961. A limit (say not exceeding 1% of the turnover) can be prescribed for such expenditure.	112
25.	It is suggested to suitably increase the threshold exemption provided under Rule 2BB r.w.s 10(14) of the Act were fixed in 1995. Limits like children education allowance, Hostel Education allowance needs to be revisited in line with inflation.	We wish to recommend that the same needs to be revised keeping in view the cost inflation. It may be noted that the said Rule was amended last year only in case of Transportation allowance.	112
26.	It is suggested to suitably increase the threshold limits for calculation of taxable	We wish to recommend that, the threshold limit for perquisite value to be taxed in the hands of employees, needs to be revised keeping in view	113

	value of perquisite under Rule 3 like meal allowance more than Rs 50 / day, and Gifts from employer more than 5000 p a etc.	the cost inflation.	
27.	With implementation of successive pay commission recommendations, the leave salary of both Public and Private Sector employees has substantially increased.	Whereas, a threshold exemption u/s 10(10AA) fixed at Rs.3 lakhs in the year 2002 hasn't undergone any revision over the years. Accordingly, it is suggested to revise the limit from Rs.3 lakhs to Rs.10 lakhs	113
28.	In Finance Act 2012, Section 92BA has been inserted so as to include specified domestic transaction under the purview of 'Transfer Pricing Provisions'.	It is suggested that entire Inter – PSU Oil Company Agreements shall be excluded from the purview of Department's scrutiny of 'arm's length'	113
29.	Under existing Income tax provisions, there are no time limits defined for disposal of application, seeking No Objection Certificate for remittance of TDS u/s 195/197 of the Act.	In order to avoid inordinate delay in obtaining these certificates, it is suggested that an outer limit of say, 30 days shall be fixed for issuance of such certificates, failing which the rate sought in the Application shall be deemed to have been approved.	113-114
30.	Currently, interest u/s 234B/234C charged on the Assessee is 1% per month whereas interest u/s 244A payable to Assessee is 0.5%.	It is suggested to bring parity in the rates and further the rate be linked to any 'reference rate' thereby making it dynamic.	114
31.	Tax Credit u/s 115JAA in	Such restriction on carry forward be extended to	114

	respect of tax paid on deemed income has been allowed to be carried forward for set off to future years but such carry forward shall not be allowed beyond the 10th assessment year	15 years in place of 10 years, now.	
32.	CSR expenditure mandated under the Companies Act, 2013 are towards fulfilling Government's social and developmental agenda.	It is request to revisit the said provision.	114
33.	Section 43A permits adjustment to 'cost of Assets' imported from outside India.	Necessary amendment in the section to allow capitalization of exchange rate differential arising out of loan borrowed in foreign currency even if the Asset is indigenous.	114-115
34.	Group Tax Consolidation / Fiscal Unity	In case, fiscal unity tax regime is introduced, borrowing would be at holding company level while the interest cost would be offset against the income derived by the project SPV thus supporting the infrastructure companies by way of improved cash flows and increased operating profits which would lead to higher IRR at project level.	115
35.	S.14A r.w. R.8D – Amendment with respect to dividend income exempt u/s. 10(34)	It is suggested that s.14A should not be applicable to dividend income exempt u/s.10(34) as the same has already suffered an economic tax in the form of dividend distribution tax.	115
36.	Interest on refunds u/s.244A	It is recommended that the tax authorities are held accountable for such delay by recovering the interest on of refund payable to the assessee pursuant to an appellate order in order	116

		to ensure grant of refund to the assessee in a timely manner.	
37.	S.32AC – extend investment allowance benefit to service and infrastructure companies	Benefit of investment allowance to be extended to service companies as well as infrastructure companies, with a threshold for amount of investment.	116-117
38.	Allowability of Corporate Social Responsibility (CSR) expenses as deduction – S. 37	It is suggested that s.37 be amended by withdrawing "Explanation 2", so that a company can claim deduction of its CSR expenses ad being incurred wholly and exclusively for the purpose of its business.	117
39.	Multiple levy of income tax on dividend – S. 115-O	a. Tax on distribution of dividend is outside the purview of the charging Section of the Act, since it is a tax not on income but on application of income; b. Without prejudice to the above, the Grossing-up Provisions resulting into Additional Tax outgo of approx. 3% should be withdrawn since it is causing undue hardship to assessees;	117-118
40.	S.115-O – Clarification on absolute removal of cascading effect of Dividend Distribution Tax (DDT)	The principle applied for removing the cascading effect of DDT is 'tax should be paid only once on the same income.	118-119
41.	Authority for Advance Rulings	It should be ensured that the time limit prescribed for passing orders should be adhered to by the AAR.	119
42.	Principle of taxing real income - Levying tax on purely notional income due	ICDS should be scrapped altogether.	120

	to ICDS deviates from this principle Clarity on impact of Ind AS on the income tax returns		
43.	Carry forward of Foreign Tax Credit	It is suggested that assessee be permitted to carry forward (say for five years) such unutilized credit for adjustment in future years.	120-121
44.	Rationalizing TDS Provisions	TDS credit may be allowed to the deductee irrespective of the Assessment Year.	121-122
45.	Availability of deduction u/s. 36 in respect of contribution made to Trusts etc., set up for employees' welfare	Suitable amendments may be made in section 36 and/or section 40A (9) of the Act so as to provide that deduction would be available in respect of contribution made by an employer towards a Fund/Trust/Scheme set up for the welfare of employees if such Fund/Trust/Scheme is registered/recognized/approved under the provisions of the Income-tax Act, 1961.	122-124
46.	Amendment in section 234C (Interest for deferment of advance tax)	Upstream oil & gas companies may be exempted from the rigours of section 234C or the rigours may be relaxed by providing that no interest shall be leviable on shortfall of installment of advance tax	124
47.	Underlying Tax Credit	Suitable provisions may, therefore, be inserted in the Act at appropriate place(s) to permit the allowance of underlying tax credit.	124-125
48.	Incentivizing CSR Activities	The amendment made in section 37 by the Finance (No. 2) Act, 2014, regarding non-allowability of deduction in respect of CSR expenditure may be rolled back and it may be provided that CSR expenditure would be deductible in the year of incurrence thereof.	125-126

49.	Making section 14A inapplicable to dividend received by companies from Debt Mutual Funds	Section 14A may be suitably amended to provide that the same shall not apply to expenditure incurred by a company in relation to dividend received by it from a debt mutual fund on which DDT has been paid as per the provisions of section 115R.	126-127
50.	Dichotomy in methods of grossing-up of income subject to tax u/s. 44BB for TDS and assessment purposes	Suitable amendment may be made in section 195A of the Income-tax Act, 1961 so as to provide that where income of the non-resident is taxable u/s. 44BB of the Act, the same would be subject to single stage grossing-up for TDS purposes also.	127-128
51.	Interest on Refunds paid to the assesse to be at par with interest charged by the revenue on short payment of Income tax	Interest rate on the refunds due to the assessee and on the amounts payable by the assessee to the Government may be same on the ground of equity.	128
52.	Providing Consequences of Non-disposal of Rectification Applications under section 154 of Income-tax Act, 1961	It may be provided sub-section (8) of section 154 that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed.	128-129
53.	It may be provided sub-section (8) of section 154 that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed	Section 115-O should not be made applicable to Government companies, to the extent of dividend payable on shares held in the name of President of India.	129
54.	Removing cap on non-taxable employer	a. The amount of any contribution to an approved superannuation fund by the	129-130

	contribution to approved superannuation fund	employer in respect of the assesse may be made fully non-taxable. b. Without prejudice, if the aforesaid suggestion is not agreed to, then the amount of one lakh fifty rupees specified in section 17(2) (vii) of the Income-tax Act, 1961, may be raised to at least two lakh fifty thousand rupees to allow accumulation of sufficient corpus to meet post retirement needs of employees in the scenario of increased life expectancy and high inflation.	
55.	Removal of maximum limit under Section 17(2) (v) of Income-tax Act, 1961, & insertion of clarificatory Explanation	The exemption limit in respect of perquisite resulting from expenditure incurred/reimbursed by an employer on medical treatment of employee or any member of his family in a hospital (other than an employer maintained hospital, government approved hospital or CCIT approved hospital) may be either totally dispensed with or enhanced to at least Rs. 1,00,000/= per year in line with the proposal to enhance it to Rs. 50,000 which was proposed in the last draft of the DTC.	130-131
56.	Revision of thresholds applicable in respect of taxability of perquisites	The threshold limits for the aforesaid perquisite value to be taxed in the hands of employees may be revised upwards keeping in view the cost inflation.	131-132
57.	Rationalization of newly introduced Secondary Adjustment Provisions	Recommendations enclosed	132-138
58.	Inclusion of expenditure incurred on Bio-fuels –	Any expenditure incurred on Bio- Fuel activities should also qualify for a deduction of 200%	138

	Section 35(2AB)	under Section 35(2AB) in order to promote investment/ R&D initiatives for renewable/ non-conventional energy sources.	
59.	Safe harbour allowances for LNG import prices under Transfer Pricing should be based on the actual dispersion of custom import prices for the year and not on ad-hoc basis. [Transfer Pricing]	Considering the above challenges, allowing for safe harbour rules for LNG imports based on actual dispersion of custom import prices is of utmost importance and will avoid litigation costs involved.	138-139
60.	Obtainment of secret comparables from corporates under Sec 133(6) of Income Tax Act should not be applicable for non-commodities like LNG. [Transfer Pricing]	As secret comparison analysis is not accurate, this practice should not be applicable for non-commodities like LNG.	139
61.	Statutory Dues not to be included in the gross receipts for the purpose of section 44BB of the ITA	In view of the above, section 44BB of the ITA should be amended to provide that statutory taxes and dues (such as service tax) recovered by the non-resident service provider from the Indian residents would not form part of gross receipts for computing deemed income under the Section. This will be fair and will eliminate unnecessary litigation on the issue.	140
62.	No disallowance for the domestic company, for charges paid to a PE in India of a foreign company	It is, therefore, recommended that the expense claims (in such a scenario) should not be subject to transfer pricing assessment and disallowance.	140-141

63.	Income Tax benefits under Section 80JJA (Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste)	All these Products from IH2 process if, classified as "Bio-fuels" by Ministry of Petroleum & Natural Gas shall be allowed a deduction on the similar lines of business of collecting and processing or treating of bio-degradable waste for generating for producing bio-gas or briquettes for fuel etc., for a period of 5 consecutive years from the year of commencement of business.	141
64.	Development of Petroleum Infrastructure & Uniform Fair Access for petrol and diesel	It is suggested that access be granted to pipelines on a common carrier basis. A robust mechanism which provides a fair return and compensation (as per a pre-defined formula) to developers and owners of pipelines is important for this to succeed.	141-143
65.	Single window for ease of setting up Retail Fuel Stations	It is suggested that for ease of business, there should be a single window system with reference to clearances/approvals for setting up of fuel stations.	143
66.	Open Access for Aviation Sector in India	An Open Access policy should be introduced to allow Open Access for ATF encompassing airport fuel storage and into plane activities, pipeline access & intermediate storage facilities.	143-144
67.	Allow Intermediate dedicated storage tanks for bonded and non-bonded	Mixed storage of ATF with co-mingling of duty paid and bonded stock of multiple suppliers in a common storage tank may be permitted by a Notification and not left to the discretion of authorities.	144-145
68.	Level playing field for all biofuels technologies	All products from IH2® process (Bio C1 to C4 gases, Bio-LPG, Bio-Petrol, Bio-Jet, BioDiesel, Biochar) need to be classified as Biofuels and brought under GST.	145
69.	Collection & processing waste a non-attractive	a. Income Tax benefits under Section 80JJA (Deduction in respect of profits and gains	145-146

	business	from business of collecting and processing of bio-degradable waste); b. With respect to plants which help to clear up and clean municipal solid waste including plastics, agricultural and forest waste. Accelerated depreciation allowable for Effluent Treatment Plants of 100% as per provisions of the Income Tax Act must be allowed for all technologies that help to manage waste. c. Customs & GST exemption of the procurement of material/components required for setting up Waste to Value projects in similar lines with Solar.	
70.	Choosing proper technology can enhance benefits to the community	Incentivise technologies with extent of Tax concessions	146

FIPI
Federation of Indian Petroleum Industry

PRE-BUDGET MEMORANDUM FOR UNION BUDGET 2018-19

INDIRECT TAX

GOODS AND SERVICE TAX

Upstream

1. **Request for inclusion of upstream Sector in GST**

At the onset, non-inclusion of the products of upstream sector (Crude and natural Gas) is having the huge adverse Impact on the sector. GST has already increased the upstream industry cost on procurement of goods by more than 5% due to withdrawal of exemptions and not allowing input tax credit of GST paid.

Applicable taxes under Pre-GST/GST(Petroleum Sector Outside GST)

Levy	Pre-GST Era	Under GST (Petroleum Sector Outside GST)	Remarks
CVD & SAD on imports	Exempted	IGST - 5%	Negative
Excise Duty on Domestic Goods	Exempted*	IGST or CSGT+SGST (5%)	Negative
Service	15%	18%	Negative

Tax			coupled with levy of GST on Govt Services (Royalty and PP)
CST	2% against C form	IGST - 5%	Negative

This will seriously affect the upstream sector and consequently the country immediately in the following manner:

a. Increased E & P costs significantly; over & above the cost increase due to stranded tax, which will lead to Considerable decrease in exploration acreage and production start from deep water
b. Increase cost in industries which use Crude Oil, Natural gas & other petroleum products; this will lead to an overall increase in inflation.
c. Make competing fuels of Natural gas more economical. Unlike other countries, this will incentivize polluting fuels instead of clean fuel like Natural gas.
d. Derail Hon'ble Prime Minister's vision of Make in India, higher domestic production & increasing the share of Natural gas in the Indian economy.
e. Create uncertainty wrt expected future investments ~US$ 30 Billion (next 5 years) – augment production; 50-60 mmscmd natural gas and 150,000-200,000 bopd crude oil

Suggestion

a. Therefore, it is humbly submitted to include Crude oil and Gas under GST to ensure that input GST paid on goods and services can be set-off against the Output GST on Crude oil & Gas.

b. This will rectify the current situation where the “strategically important” segment of Petroleum is being made to bear high taxes to avoid burdening the midstream which is relatively less strategic.

Exploration Phase

Further, Even after inclusion of Crude Oil and Natural Gas under GST, during the exploration phase (till the time ‘commercial discovery’ is confirmed by GoI), all procurement of goods (whether imports, inter-state or intra-state) should continue to be exempt similar to current regime - commitment under PSC and NELP regime

This is to protect the availability of maximum ‘risk capital’ during exploration phase as chances of success increases with availability of more funds and the same will help in advancement of vision ‘Make in India’

2. Input Tax Credit (ITC) not eligible on goods / services used for construction of Pipelines

a. As per the provisions of GST laws, Input Tax Credit (ITC) is not eligible on goods / services used for construction of immovable property (other than plant and machinery). Further, the definition of Plant & Machinery specifically excludes Pipelines laid outside the factory premises.

b. In view of aforesaid provision of GST law, ITC is not available on goods/services received for construction of pipeline being immovable property and not covered in the definition of plant & machinery.

c. It is submitted that under the erstwhile provisions of Cenvat Credit Rules, input tax credit (CENVAT Credit) was eligible on the goods/services received for construction of pipeline.

d. It is also submitted that the GST is applicable on the services of transportation of goods through such Natural Gas / LPG pipeline and GAIL is making payment of GST on the transportation of entire Gas being transported through Natural Gas / LPG pipelines. The non-availability of ITC on the goods/services received for construction of pipeline will substantially increase the costs of pipeline projects resulting in higher transmission tariff and will lead to cascading and inflationary effect which is against the basis spirit and concept of GST.

e. Key definitions under GST laws is as below for reference. It may be observed that term “factory” is not defined under the GST law.

i. Plant & Machinery is defined as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes following:

(a) Pipelines laid outside the factory premises

(b) Land, building or any other civil structures

(c) Telecommunication towers

ii. Construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization.

f. It may not be out of place to mention that Natural gas is mainly (around 70%) used in priority sectors like Power and fertilizer, non-availability of ITC on the GST paid on procurement on goods and services required for construction of pipeline would lead to increase in the transmission tariff and will in turn make Natural Gas costlier for power and fertilizers sectors. This may result in an adverse effect on many thrust sectors including the priority agricultural sector and may increase the subsidy burden on the Government for such sectors.

Suggestion

a. Considering that GST is applicable on the output supply of services from such pipelines, Input Tax Credit (ITC) on goods / services used for 4-construction of Natural Gas / LPG pipelines may be allowed under GST laws to avoid cascading and inflationary effect.

b. The definition of term “factory” may be provided under the GST law in line with definition under the Factories Act.

3. Rationalization of GST rate on services of transportation of goods through pipeline

It may be observed from the following table that the rate of tax on the activity of transportation of goods in general is @ 5% whereas the services of transportation of goods by pipeline is taxable at the higher rate of GST @ 18%

Sl. No.	Service of Transportation	GST rate
1.	Transportation of goods by Road by GTA	5%
2.	Transportation of goods by vessel	5%
3.	Transportation of goods by Rail	5%
4.	Transportation of goods by Pipeline	18%

Further, Natural gas a much more cleaner source of energy than other alternative available and is primarily used in priority sectors like Power, CNG and fertilizer sector. The high rate of GST on the services of transportation of goods by pipeline will make Natural Gas costlier for power and CNG sector where Input Tax Credit of GST paid on transportation of Natural Gas is not available as the output product is not covered / exempted under GST. Further, this will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc.

Suggestion

GST rate applicable on the services of transportation of goods by pipeline may be rationalized at lower rate of 5% in line with the rate applicable on transportation of goods by alternate modes.

This will lead to lower cost of transportation of Natural Gas and will help in promotion of cleaner source of energy for Power and CNG sector where ITC of GST paid on transportation of Natural Gas is not available. This will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc.

4. (i) Inter – unit billing for Transportation of gas in a cross Country pipeline for

transportation of Natural Gas / LPG from one State to another.

(ii)Inter –unit billing by Corporate Office / Zonal Office providing administrative support commonly to different plants / units

As per the provisions of GST law, different units of an entity having separate GST registrations are defined as 'distinct persons' under GST law and supply of goods/ services between such separately registered units is liable to GST, even if such supply is made without consideration.

In case of service of transportation of goods through pipeline, the pipeline and other installations are to be considered as 'fixed establishment' under GST law and therefore GST registration has been taken in each of the State from where pipeline is passing and each such GST registered unit is treated as 'distinct person'. Accordingly, as per the provisions of GST law, the services of transportation of Natural Gas /LPG by each such unit becomes taxable supply of services for the recipient units situated on the pipeline network.

Invoice for services of transportation of Natural Gas /LPG by each such GST registered unit is to be raised to another unit having separate GST registration and the recipient unit is availing Input Tax Credit of the GST charged by supplier unit. As the recipient unit is eligible to avail entire amount as Input tax credit (ITC), the process of raising bills is leading to an avoidable administrative burden on the company without any corresponding revenue benefit to the exchequer.

As per Rule 32(7) of the CGST Rules, the valuation of taxable services supplied by such class of service providers as notified by the Government, between distinct persons where input tax credit is available shall be deemed to be nil.

Further, in case of head office / Zonal office providing administrative support commonly to different plants / units of the same entity having different GST registration number, invoices are to be raised for supply of services by such head office / Zonal office along with applicable GST to other units being a 'distinct person'. This has been clarified by the Ministry of Finance in the series of FAQs issued (Q. No. 15- Part 4). Relevant extract of FAQ is as below:

"Q15. Would head offices providing centralized HR, Finance and IT functions also need to raise invoices to its branches?

Ans. Yes, if the head office and branches are distinct persons as specified in Section 25(4) of CGST Act, 2017 invoice is required to be issued GST should also be paid."

As the Head Office / Zonal Office just provide administrative support and does not provide any services, the process of raising invoices is leading to an avoidable administrative and financial burden on the company.

Suggestion

It is suggested that:

Notification may be issued under Rule 32(7) of the CGST Rules that for the companies engaged in transportation of Natural Gas / LPG though pipeline, the valuation of taxable services supplied between distinct persons where input tax credit is available, shall be deemed to be nil. This will result in avoiding the process of raising bills with no corresponding revenue implication.

The administrative support given by Head Office / Zonal Office commonly to different plants / units of the same entity may be covered under Schedule III of the CGST Act and treated as neither a supply of goods nor a supply of services. This will avoid the process of billing which is causing unnecessary administrative and financial burden on the company.

5. **Interstate transportation of product through pipelines for self-consumption**

   Transportation of products through cross country pipeline will involve inter-state supply of service of transportation of product by one registered unit to another registered unit of same legal entity under GST law and will be taxable @ 18% under GST regime. Such self-services have not been taxable under existing regime. This new incidence of GST @ 18% on self-service will increase the cost of gas for consumers besides administrative hassles and compliance burden.

Suggestion

Hence it is suggested that the service of transportation of product by one registered unit to another registered unit of same legal entity should be fully exempted from GST.

6. **Bunker fuel supply to Foreign Run Vessel**

Presently supply of Bunker fuel sale to the foreign run vessels is exempted from excise and customs duties vide notification no. 12/2012 by treating them as export and therefore, CENVAT credit is also available.

It is recommended that Bunker fuel sale to the foreign run vessels should be made Zero rated in GST. This will benefit the sale of country productions at competitive rate and also allow Input tax credit on supply of these products.

7. **Additional Tax implication on Offshore LSTK Contracts under GST**

ONGC creates Offshore Facilities such as Offshore Platform, Pipe-laying etc. and have been paying service tax under pre-GST regime at the rate of 6% (i.e. 40%*15%) on such the Offshore LSTK Contract under Rule 2A(ii) of Service Tax Valuation Rules 2006.

Further, under pre-GST regime, the provisions of Sales Tax/VAT Act was not extended to Offshore (i.e. area beyond 12 NM). Since, offshore installations are highly technical in nature, the most of the items required for constructions of such platforms are procured in the course of import.

Under GST regime, the provisions of GST has been extended beyond 12 NM through UT-GST and GST Law. Further, such works contract are treated as pure service and attracts @18% GST.

Therefore, there is an increase in rate of Tax from 6% to 18% without credit (set off) which would adversely affect the E&P business.

Suggestion

For Offshore works contract, there is substantial increase in tax burden under GST regime from 6% to 18%.

It is submitted that ONGC has committed capital investment to the extent of Rs. 65,000 Crore considering the tax component of 6%. Such sudden increase in tax burden would adversely affect the viability of such projects.

Further, the Offshore works contract has major component of material which presently attracts 5% IGST as per Customs N/N 50/2017 (Sl. 404) and GST @5% as per GST N/N 03/2017-IGST (rate). Since, the contractors are made responsible for purchase of goods as well installation & commissioning through a composite works contract, the Department may take a view that it should attract 18% GST on total value including materials.

In view of above, it is requested to kindly reduce the GST Rate from 18% (with credit) to 12% (with credit) on Offshore works contract for petroleum operations.

This issue was also discussed with GST Working Group on Oil & Gas constituted by Govt.

8. **GST Rate on charter hiring of drilling rigs, vessels & helicopters for petroleum operations**

For carrying out petroleum operations, the ONGC charter hires the drilling rigs for longer period say upto 5 years for drilling oil wells. Here, the scope of work normally provides that the contractor shall deploy the rig alongwith operator and crew for drilling such oil wells under guidelines (geo-technical order) issued by ONGC. Similarly, vessels are hired for transportation of materials from onshore storage location to offshore in addition to other support activities such as drilling, towing rig, fire-fighting etc. Further, for transportation of manpower from heli-base located in onshore to offshore drilling/processing platform.

In all the aforesaid contracts, during currency of contract the rigs, vessel and helicopters are at the disposal of ONGC for such usage. However, these equipments are being operated by contractor’s personnel.

As brought out above, the drilling rigs are charter hired for exclusive usage by ONGC for petroleum operations, it should be construed as deemed supply of goods (Transfer of Right to Use any Goods) and accordingly, it should attract GST rate equivalent to the rate applicable on its purchase which is 5% in case of Offshore Drilling Rigs. Similarly, the charter hiring of vessels & helicopters should attract GST rate as applicable on its purchases which is 5%.

Suggestion

It is requested that a clarification may be issued that the charter hiring of offshore drilling rigs for exclusive usage for petroleum operations, would be subject to same rate as applicable in case of purchase of such rigs i.e. 5%. Similar clarification may also be issued for the charter hiring of vessels & helicopters clarifying that such hiring should attract same rate as applicable in case of purchase of such vessels & helicopters i.e. 5%.

9. **Certificate from DG, Hydrocarbons (DGH) on subsequent transfer of specified goods from one GST Registration to another GST Registration of same entity for petroleum operations**

Normally, the machineries such as drilling rigs, logging equipments mud services equipments, tools etc. are frequently transferred from one State to another (one GST Registration to another) for petroleum operations depending upon requirements. Under GST regime, such transfer attracts GST. In terms of N/N 03/2017-IGST (Rate), such transfer would attract IGST @5% on submission of Certificate (Essentiality Certificate i.e. EC) issued by DGH. In case of non-issuance of EC by DGH, the merit rate of GST would apply which may vary from 12% to 28%.

It has been observed that DGH is not issuing EC, in cases where there is transfer of such specified goods from one GST Registration to another of same entity on the pre-text that there is no such stipulation available under notification.

Suggestion

On perusal of N/N 03/2017-IGST (Rate), the DGH should issue EC for such transfer of specified goods required for petroleum operation based on tax-invoice issued by transferor (Supplier work centre). Alternatively, if DGH is not able agreeing to issue EC in such cases, the concessional rate of GST @5% should be allowed based on 'Self-Certification' by Transferee work centre.

It is therefore, requested that the N/N 03/2017-IGST (Rate) and the other similar notifications issued under CGST & SGST Acts, may be amended suitably to allow concessional rate of 5% GST on 'Self Certification' basis.

10. Non-applicability of GST on Royalty payable u/s 6A of ORD Act, 1948

The Royalty is being paid by ONGC pursuant to the statutory provisions contained under 'The Oilfields (Regulation and Development) Act, 1948' (ORD Act) and 'The Petroleum and Natural Gas Rules, 1959' (PNGR) on extraction of mineral oil & natural gas. Thus, the payment of royalty u/s 6A of ORD Act and Rule-13 & 14 of PNGR is in the nature of tax. Further, section 9 of the ORD Act provides for penalty and imprisonment etc. in case of default on payment of such royalty.

Hence, GST should not be applicable as there is no quid pro quo i.e. something in return and hence the ingredients of supply are not there.

It is also pertinent to mention that in case of India Cement Ltd. vs. State of Tamil Nadu, the Seven Judges Bench of the Hon'ble SC held that royalty is a tax. However, in case of Mineral Area Development Authority vs. M/s Steel Authority of India (SAIL) & others this matter is pending before the Larger Bench of Nine Judges of the Hon'ble SC.

Suggestion

Royalty payable u/s 6A of ORD Act and Rule-13 & 14 of PNGR is in the nature of tax. Hence, it should not be leviable to GST. It is also submitted that whether royalty is in the nature of tax or not is pending before the Larger Bench of Nine Judges of the Hon'ble SC.

Since, crude oil & natural gas are outside levy of GST, the credit of GST paid, if any on royalty would not be available for set-off and would result into substantial adverse financial implication on ONGC.

It is requested to issue a clarification in this regard to avoid litigation. This will resolve the pre-GST issues as well. Alternatively, an exemption may be issued till inclusion of crude oil & natural gas under GST for levy.

11. Service Tax on Cost Petroleum

The term "Cost Petroleum" is nothing but recovery of investment made for exploration and production of hydrocarbon from its sales revenue in terms of Production Sharing Contract (PSC). In case of there being no production, there would neither be any recovery nor the Govt. would repay for such investment and as such it would become loss to the consortium/contractor. Therefore, GST should not be leviable on Cost Petroleum/Investment as the same is not a supply. Further, it is to mention that the operator has already paid GST on hiring of various services such as drilling, survey & exploration services etc. while incurring such costs.

Suggestion

The cost-petroleum being recovery of investment as specified under PSC signed with Govt. of India, it should not be treated as supply.

It is therefore, requested that a clarification may be issued in this regard.

12. Service Tax on Profit Petroleum

As per PSC, the Consortium member is under obligation to pay specified percentage of revenue net of cost petroleum to the Govt. which is known as profit petroleum. The profit petroleum is the share of Govt. in the mineral deposit which otherwise belongs to the Govt. Therefore, the Govt. is not providing any services to the consortium/ contractor under PSC. Accordingly, there should not be any GST implication on payment of Profit Petroleum to the Govt.

Suggestion

Profit Petroleum is the share of the Govt. in mineral deposits which otherwise belongs to Govt. and should not be treated as supply.

It is therefore, requested that a clarification may be issued in this regard.

13. Service Tax on Cash Call under UJV Transactions

In terms of PSC, one of the consortium members is designated as an operator who has to carry out E&P activity on behalf of other partners based on work plans and budget duly approved by Management Committee which includes Government Nominee as well. The Operator incurs expenditure from the contribution received by way of Cash Call from the partners.

In this context, the CBEC Circular dated 24.09.2014 at para 3 has clarified that cash calls are capital contributions made by the members of JV to the JV.

Suggestion

Capital Contribution in the form of cash call being merely a transaction in money, should not be subject to levy of GST.

It is therefore, requested that a clarification may be issued in this regard.

14. Clarification to the effect that consortium members including operator and the consortium formed under PSC are not distinct entities

In order to augment the indigenous production of Crude Oil and Natural Gas, Govt of India announced New Exploration Licensing Policy (NELP) in the year 1999 which, inter-alia, provides fiscal stability during entire period of contract. Accordingly, International Competitive Bids (ICBs) are invited for award of hydrocarbon bearing Blocks. Normally, Indian and/or Foreign Companies form consortium and participate in the tender. After award of contract, Production Sharing Contract (PSC) is signed by the Govt. with the respective consortium Members for carrying out E&P activities.

In terms of PSC, one of the consortium members is designated as an operator who has to carry out E&P activity based on work plans and budget duly approved by Management Committee which includes Government nominee as well. Hence, the operator is executing the PSC for exploration & production of hydrocarbons on behalf of consortium and other members are merely making the financial/capital contribution in terms of their participating interest. Therefore, the consortium formed under PSC is not an Association of Persons (AoP) and operator is not providing any service to its consortium members. Operator, as designated under PSC, is incurring expenditures from the contribution received from the partners for the Exploration and Production of hydrocarbons. Hence, there is neither any intention to provide service by operator to its members nor consortium formed under PSC can be treated as an AoP for the purpose of levy GST.

Suggestion

As per the provisions of Income Tax Act, the constituent members of the PSC are not taxed as Association of Persons (AoP) but are taxed in their individual capacity. Therefore, the consortium members including operator and the consortium are not distinct entities.

In line with above, a clarification, may please be issued that the transactions between members and the consortium (under PSC) for carrying out E&P activities in terms of PSC should not be treated as service provided by one person to another for levy of GST.

15. **Clarification on non-applicability of service tax and GST on cash calls under existing regime and GST regime respectively**

A Circular No. 179/5/2014-ST dated 24 September 2014 was issued regarding applicability of service tax on cash calls. However, the said circular has kept the issue open for interpretation of service tax authorities. Given this, recently, oil and gas companies are burdened with demand of service tax on cash calls.

Suggestion

Hence, clarification should be issued under existing regime as well as GST regime that consortium and parties to consortium (which has executed a sharing agreement with Government of India) are not distinct entities and the cash calls are not consideration for services but only a contribution made by contractors.

16. **Clarification on non-applicability of service tax and GST on cost petroleum under existing regime and GST regime**

Recently, E&P companies have received correspondence from departmental authorities with regard to service tax demand on cost petroleum treating the cost petroleum as consideration paid by government to exploration companies for mining services undertaken by them.

The arrangement of PSC is such that it invites exploration companies to undertake exploration for itself in conjunction with Government of India. The authorities are demanding service tax on the activity of exploration without appreciating the rationale of PSC.

Suggestion

Given the above, clarification should be issued under existing regime as well as under GST regime that Profit Petroleum/ Cost Petroleum is not consideration for service; these are formulas to determine the Government’s share in the production (tax paid sales revenue). There is no activity carried out by the Government/ Contractors and these are not consideration for a service but simply a share of the government in the production.

Internationally, Profit Petroleum/ Cost Petroleum are not considered as ‘service’ by the Governments to O&G companies or vice versa and nowhere in the world are indirect taxes applied on such transactions.

17. 'Zero rating' in respect of supplies made to oil & gas exploration projects

While certain petroleum products are being kept outside the ambit of GST, withdrawal of existing exemptions and higher rate of GST, as compared to rate of service tax, would pose greater challenge to E&P companies.

Suggestion

Given this, it is being represented that supplies to oil & gas projects be given the status of 'zero rating' enabling suppliers to claim credit and supply goods / services without payment of GST.

18. Exemption from GST on import of vessel

In energy sector, vessels, tugs, barges etc. are imported by upstream companies or its vendors i.e. sub-contractors into India under charter-hire arrangements for specific period of lease. Import of vessel was exempted from payment of whole customs duty subject to EC issued by DGH. Under GST regime, though Basic Customs Duty and Customs Cess continues to be exempted, IGST of 5% is made applicable in terms of Entry no. 404 of Notification No. 50 / 2017 – Customs. In view of this Notification, IGST of 5% stands applicable on the assessable value of vessel, barge or tug at the time of its importation. In case where such vessel, tug or barges are imported by operators, sub-contractors or other vendors, such upfront payment of IGST @ 5% on assessable value of vessel, barge or tug leads to huge blockage of cash-flow for all importers. Also, in case where vessel, tug or barges are imported by sub-contractors or their vendors for shorter period of contract, the importers would not be in the position to claim credit of IGST paid since there would not be sufficient output GST liability. Such importers would be mandatorily required to opt for drawback or export the same on payment of IGST and claim refund of the same. Such additional compliance coupled with huge blockage of cash-flow has already impacted operations of oil & gas companies. Further, where the same are imported by upstream companies, the amount of IGST paid less Drawback shall be a cost, leading to increased tax cost for oil & gas upstream sector. In case where vessel is imported for lease period of more than 18 months, drawback is also not admissible.

Suggestion

Given this, we request to amend Notification No. 50 / 2017 – Customs and provide for complete waiver of IGST on import of all goods required for petroleum operations including tug, vessel and boats.

19. IGST implications on disposal of excess or obsolete stock

As per Customs Notification No. 50/2017 – Customs read with Notification No. 3/2017 – IGST, tax payers are required to pay GST on depreciated value of goods subject to maximum depreciation to the extent of 70%. The said depreciated value needs to be computed by reducing prescribed percentage for each quarter of usage from its original price. Such mechanism requiring payment of GST at the time of disposal of excess / obsolete stock is not in line with the decision of the Apex Court. As per Customs Notification No. 50/2017 – Customs read with Notification No. 3/2017 – IGST, tax payers are required to pay GST on depreciated value of goods subject to maximum depreciation to the extent of 70%. The said depreciated value needs to be computed

by reducing prescribed percentage for each quarter of usage from its original price.

Such mechanism requiring payment of GST at the time of disposal of excess / obsolete stock is not in line with the decision of judicial courts in case of Clough Engineering Limited and Swiber Offshore Construction Pvt. Ltd. Notwithstanding the above, even if GST is made payable at the time of disposal, the methodology to arrive at depreciated value from original purchase price for the purpose of payment of GST has been prescribed without appreciating the ground reality. The goods intended to be disposed of are typically purchased / imported 5 to 10 years back. On other hand, in terms of all indirect tax legislations, maximum time period for maintaining the records is five years. Hence, it is not possible for tax payers to maintain invoices / bill of entry in respect of goods purchased before five years. Hence, the process of arriving at depreciated value by reducing purchase price by prescribed % is not possible. It is not possible for tax payers to correlate each goods being disposed-off with its original bill of entry or purchase invoices after lapse of several years. Additionally the value derived from sale of such unutilized surplus goods are at the scrap rate and payment of duty at 30% of import value makes the entire transaction revenue negative.

Suggestion

Given this, we recommend to levy of customs duty on disposal of used goods against the entry 404 of Notification No. 50 / 2017 – Customs since customs duty is exempted on import of goods as long as the same are required for petroleum operations. Hence, it is recommended that the levy of customs duty should be withdrawn on disposal of surplus / obsolete / used goods.

20. **Exemption for O&G upstream companies for movement of goods from shore base to offshore**

In case of oil & gas upstream sector, goods procured and kept at shorebase are supplied to offshore platforms as per indent. Subsequently, the same goods are supplied back to shore on real time basis on account of non-utilization / space constraint at offshore platforms. Again after few days / weeks, the same goods are required at offshore. Shorebase supplies the same goods to offshore again where IGST was paid during 1st dispatch. Under GST regime, shorebase and offshore location are distinct persons. Hence, on the basis of law, as it stands today, supplies from shorebase to offshore location would attract IGST. Hence, shorebase and offshore locations are required to issue tax invoice and pay IGST on its supplies to offshore location / shorebase, as the case may be, at the time of each supply.

Suggestion

Given this, such levy of IGST on supply of goods from shorebase to offshore location and backload therefrom should be exempted. Alternatively, in case where no upfront exemption is granted and first supplies from shorebase / offshore location are subjected to IGST of 5% once post introduction of GST, further supplies thereof from shorebase to offshore and backload therefrom to shorebase should be exempted without requiring reversal of credit. Such benefit of exemption if not conferred on such subsequent supplies between the same taxable persons i.e. shorebase and offshore platforms would mean levy of GST time and again on the same set of goods.

21. Admissibility of credit for O&G upstream companies – offshore registration in respect of goods being supplied back to shorebase after its use

In oil & gas sector, there would be multiple movement of goods from shorebase to offshore location and viz versa. Basis current legislation and credit mechanism on GSTN, it seems that offshore locations may not be allowed to claim credit of GST charged by shorebase since goods are used in exploration of oil & gas, which is outside the ambit of GST. Given this, while offshore locations may not eligible to claim credit of IGST charged by shorebase, offshore locations would be burdened with GST once

again at the time of backload without credit. Such paradox would result into levy of GST again on the same goods as and when they are supplied from shorebase to offshore and loaded back to shorebase. Further, such situation is against the principle of seamless flow of credit.

Suggestion

Given this, we recommend

Option 1: Such levy of IGST on supply of goods from shorebase to offshore location and backload therefrom should be exempted.

Option 2: Alternatively, in case where no upfront exemption is granted and first supplies from shorebase / offshore location are subjected to IGST of 5% once post introduction of GST, further supplies thereof from shorebase to offshore and backload therefrom to shorebase should be exempted without requiring reversal of credit. Such benefit of exemption if not conferred on such subsequent supplies between the same taxable persons i.e. shorebase and offshore platforms would mean levy of GST time and again on the same set of goods.

Option 3: Offshore platforms should be allowed to claim credit of GST charged by shorebase to the extent of goods being back-loaded to shorebase. At times, the goods supplied to offshore platforms are returned to shorebase after lapse of considerable period. In such scenario, credit should continue to be allowed irrespective of its time limit. GSTN system should be in place to ensure availment of such credit.

22. Clarification with regard to treatment of surplus goods, which were imported while claiming an exemption from customs duty on the basis of EC issued by DGH

Presently, exemption from customs duty is granted on import of goods required for oil and gas exploration and exploitation subject to condition of producing EC issued by DGH. Given this, the goods are imported with an intention to use in petroleum operations without payment of customs duty. However, over a period of 5 – 10 years, there is an unused surplus which accumulates and needs to be disposed.

Suggestion

It has been observed that the customs authorities have been issuing show cause notices to demand customs duty on surplus goods as such surplus goods have not been used for oil and gas exploration. This issue remains under litigation inspite of a positive Supreme Court decision in case of Clough Engineering. Hence, a clarification circular should be issued to reduce the litigation.

23. Place of Supply where Goods are purchased by Offshore Registration and delivered at Onshore Storage location

ONGC has major operations in Offshore where there is no storage facility for materials required for petroleum operations. Therefore, the Offshore unit falling under jurisdiction of UT (Other Territory beyond 12 NM) procures goods under its GST Registration and directs the suppliers to deliver the goods at Onshore Storage Location (Nhava) falling under jurisdiction of Maharashtra. Subsequently, such goods are transferred to Offshore as and when required for petroleum operations. In case of exigencies such as blow out, fire etc. goods are immediately transferred from Onshore Supply Base to Offshore.

Under pre-GST regime, there were no tax implications on such subsequent transfer to Offshore.

Under GST Law, the movement of goods from Onshore Storage Location to Offshore is not a supply of goods as it is already procured under

Offshore Registration. However, it is apprehended that Department may take different view and litigate.

Suggestion

Here, the goods required for petroleum operation under PEL/ML area in Offshore are procured under GST Registration of Offshore and due to non-availability of storage space in offshore, the suppliers are directed to deliver at Onshore Storage Location (Nhava). In this regard, the relevant provisions under IGST Act, to determine the Place of Supply of Goods is as under.

Sec. 10. (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—

a. *where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;*
b. *where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;*

…………

On plain reading of Sec. 10(1)(b), it appears that if Purchaser (here Offshore) gives instruction to the Supplier to Deliver the Goods to a Recipient or any other person [here Nhava, a distinct person u/s 25(5) of CGST Act], the Place of Supply shall be the Location of Purchaser (i.e. Offshore).

In view of above, the procurement of Goods for Offshore under Offshore GST Registration is being made as 'Bill to – ONGC Offshore' and 'Ship to – ONGC Nhava Storage' with Place of Supply as ONGC Offshore.

This view was also discussed with GST Working Group on Oil & Gas constituted by Govt. wherein it was emerged that the goods imported/purchased in the name of person registered in Offshore UT under his GSTIN even if stored in a different State in a warehouse operated by a different person or same legal entity under different GSTIN will not be treated as supply made in the State of Storage. However, the formal communication is awaited.

In view of above, in order to avoid litigation, a circular may be issued by MoF in this regard.

Downstream

1. **Inclusion of MS, HSD & ATF in GST- estimated stranded taxes post GST**

As per the GST Act, MS, HSD & ATF which constitute around 70% of the total petroleum products being manufactured and marketed by oil refining and marketing companies (OMCs) are not included in the GST and are proposed to be continued with existing system of taxation like Excise Duty and VAT etc. As per the provision of GST Act, input credits can be claimed only if the output is also under GST. The plants and equipments which are used exclusively for MS, HSD & ATF will not be entitled for input credit.

In case of common facilities/inputs/services, the input credit can be availed only in the proportion of the turnover attributable to the GST paid outputs. Thus, most of inward credit on input material, input services and capital goods cannot be availed timely.

It may be further noted that the refineries send and receive intermittent streams from other refineries for processing to utilize the capacities available on secondary units in the country thereby increasing the total output of petroleum product in the country and savings precious foreign exchange. Since intermittent products are not excluded from the GST list, it is assumed that the same will attract GST and since the end products are not in GST the input credits could not be available, leading to unviability of such optimisation processing solutions.

Inter-State Purchase of Input materials and capital goods against Form-C at concessional rate of 2% will not be available and now attract the full IGST at the applicable rates in range of 18% to 28%. This will increase the cost of production and capital cost of projects ***with no possible set-off.***

Suggestion

If MS, HSD & ATF are also included under GST like any other product so that the input credits can be claimed against the GST payable on outputs seamlessly thereby reducing the cost of production and capital cost of projects in downstream sector. In case, there are difficulties in implementing the same immediately at least the above products can be brought under GST with zero rate or the nominal rate of 1 to 2% while keeping the existing tax structure in vogue for the time being to address a part of the difficulties faced by the industry.

Alternatively, suitable amendment may be carried out in the CENVAT Rules and 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.

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

   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 will not be available for set off to downstream sector of Oil & Gas. This would become an under-recovery to this sector.

   Suggestion

   In case our suggestion for allowing input tax credit used in relation to excluded petroleum products is not accepted for set-off against GST liability on other petroleum products or against EXCISE / VAT payment of these products, then it is requested that in line with exemption granted to upstream sector, similar relief may be granted to downstream sector (Refining and marketing) of petroleum products by way of 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 this regards, we would like to request for exemption / lower GST rate on some of major procurement following goods and services exclusively by downstream sector:

a. **BS-VI MS & HSD project**

In order to implement the BS-VI quality fuels in the country by 2019, Oil Refining sectors to undertake substantial investment expenditure on such quality up-gradation projects. Since, both MS & HSD are out of GST, there will be huge loss of ITC on such expenditure. ***Therefore, it is pleaded that procurement of Capital Goods, Input and Input Services for these projects may be exempted or lower rated.***

b. Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD

There are many intermediate products or feeds, which are either transferred by one refinery unit to another unit or imported for further processing at receiving refinery.

Some of the major feed are Reformate/ DHDT/ SRGO / Isomerate / Alkalyte etc. which are used for manufacturing of MS & HSD. Since, these feeds would be under GST at the rate of 18%, there will be huge loss of ITC to the refining sector, which would affect the economic viability of processing of these feed and production of refinery. Therefore, specific exemption to be granted on intermediate feed transferred by one refinery unit to another or import of such feed for manufacture of MS/HSD.

c. Ethanol for blending with MS (Petrol)

Ethanol is purchased by Oil Marketing Companies (OMC) for blending with MS for selling of Ethanol Blended Petrol (EBP). Since, MS is out of GST, no credit of GST paid on Ethanol would be available to OMCs. As per GST Rate schedule, GST on Ethanol is 18%. It is requested that Ethanol for blending with MS to be exempted or kept at lower rate of 5%.

d. Transportation of POL products

Rate of GST on Transportation of Goods by GTA is at 5% without ITC. The levy is under Reverse charge mechanism (RCM) on the recipient of service. For transportation of excluded petroleum products, there will be no ITC on payment made by OMCs under RCM and also no ITC would be available to GTA. Therefore, we request that transportation of these excluded petroleum products may be exempted and similar exemption may also be granted on movement though Rail and Vessel mode of transportation.

3. **Rate of Liquified Petroleum Gases (LPG) for supply to household domestic consumers**

Under GST regime, GST @ 5% is applicable on LPG for supply to household domestic consumers or to non-domestic exempted category (NDEC) customers by IOCL, HPCL and BPCL at entry no 165 of schedule 1 of the notification no. 1/2017-Cenral Tax (Rate) dated 28.06.2017. In other cases, the GST is payable @ 18%. Accordingly, as per industry practice, GST @ 5% is applicable on the manufacture of LPG supplied to OMCs for ultimate supply to household domestic consumers. Accordingly, the manufacturers of LPG are supplying LPG to OMCs @ 5% based on the end use certificates given by OMCs for domestic use. However, in absence of specific mention of any other name other than OMCs, other manufacturers may have to face litigation on this account.

Suggestion

A suitable clarification may be issued by the Government on the applicability of GST @ 5% to manufacturers for supply of LPG to OMCs for ultimate supply to household domestic consumers.

4. **Remission of GST for storage loss, handling loss and transit loss for petroleum products covered under GST**

The weight and volume of petroleum products by its inherent nature is dependent upon the temperature and density. For the transmission process of the petroleum products, either by direct pipeline or vessel or tank wagon or tank lorry, the company incurs loss due to variation in temperature and / or density. This handling loss or storage loss or transit loss is well recognized within the petroleum industry for petroleum products and variation tolerance within 1% to 2% is well accepted.

Suggestion

A suitable amendment/ clarification can be issued that losses up to the permissible limits are permitted and hence the final invoice raised can be for a lesser quantity when within the prescribed limits.

Section 17 (5) (h) provides for denial of credit on goods lost, stolen, destroyed, written off, disposed-off by way of gift etc. The variation in the volume/ quantity due to natural evaporation or change in temperature may not be covered as goods lost, stolen or destroyed. Hence we may not insist reversal of ITC, if the variation in quantity is in permissible limit. The following are the limits are prescribed under excise: SKO 0.5; LDO 0.5 furnace oil .25.

5. **Continuation of C form for purchase of excluded products**

   Presently, C forms are issued by customers for procurement of petroleum products on interstate basis which results into lower tax cost. Under GST regime, these customers will not be able to issue C forms for inter-state purchase of excluded products & no credit will be available to them for excise duty & sale tax suffered on such excluded petroleum products purchased. This will result into higher cost in their hands which will lead to switching them to substitute products which may not be environment friendly. Ex- Natural gas may be substituted by Furnace Oil or Naphtha.

   Suggestion

   It is suggested that customers for these excluded petroleum products should be allowed to purchase such products against C form as is allowed presently considering the fact there is not additional financial outgo on part of states.

6. **Permit Oil Marketing Companies (OMC) to pass on the benefit of service tax charged on throughput fees for fuelling the aircraft for domestic operation**

   ATF is currently stored under the custody of Storage/ fuelling operators located at the airports. Service-tax is levied and collected by on such storage charges and into plane charges.

   Suggestion

   OMCs should be permitted to pass on the benefit of service tax charged on throughput fees for fuelling the aircraft for domestic operation as this would eliminate the cascading effect of tax and facilitate availment of the Cenvat Credit for the Carrier.

   Upfront exemption to Service Tax on throughput fees pertaining to supply of ATF to foreign bound aircrafts may be notified.

7. **Uniformity in classifying ATF for Sales Tax/VAT and ATF to be brought under GST**

   ATF is currently stored under the custody of Storage/ fuelling operators located at the airports. Service-tax is levied and collected by on such storage charges and into plane charges. The General rate of sales tax / value added tax on ATF charged by various states in India goes up to up to 30% approx. No uniformity is there in classifying ATF.

   Some states classify under Sales tax and some under VAT. India being an ATF surplus country, disparate and relatively high rate of sales tax/ VAT is impacting the competitiveness of Indian ATF supplying companies vis-à-vis Imports.

   Suggestion

   It is suggested that Centre should work with states to include ATF under the proposed Goods and Service Tax (GST) regime when applicable, else may be brought under Essential Commodities to have uniform taxation.

   Local taxes such as Entry Tax, Octroi, resale tax act as an Entry barrier for the ATF suppliers and the Government may connect with states to enable abolition of these taxes.

   States may be given guidelines to provide Form H benefits to Penultimate buyers.

8. **Bio-fuels such as bio-petrol, bio-jet, bio-char, etc. to be within GST and classified accordingly**

   IH2® technology (Integrated Hydropyrolysis and Hydroconversion) is a catalytic thermochemical process which can convert a broad range of waste biomass to produce biofuels such as bio-gasoline, bio-diesel, bio-petrol, bio-jet, bio-char, etc. in an efficient, sustainable and self-sufficient manner. These bio-fuels are directly produced from biomass residues derived from the forestry sector (sawdust, slash, forest litter,pre-commercial thinnings, etc.), the agricultural sector (bagasse, corn stover, cotton straw, castor stalks, paddy straw, cane tops/trash, mulberry sticks, jatropha cuttings,

   etc.) as well as the municipal sector (solid mixed organic waste including select plastics).

Currently most wastes including agricultural waste are burnt causing pollution and health issues to the population. Burning of waste can be completely avoided by the IH2® process. Further, if sufficient waste is allocated to IH2® processes, there would be significant benefits for the country's energy security and will result in significant foreign exchange savings.

Use of mixed organic municipal solid waste with waste plastics in IH2® plant will greatly help in achieving objectives of the Swachh Bharat Mission on a large scale. The process will also help in contributing to climate change mitigation, creating new employment opportunities and leading to environmentally sustainable development.

Since production of bio-fuels is non-polluting and has several other benefits, it is essential to ensure that there is no ambiguity with regard to their taxability.

Apart from petrol, diesel, ATF, natural gas, crude and alcohol for human consumption all other goods are covered under the ambit of GST. Further, bio-diesel is specifically classified under HSN code 3826 0000. However, there is no specific classification for bio-petrol, bio-jet, bio-char. Thus, it is not clear if these bio-fuels shall fall under HSN code 27 (applicable to petrol/diesel) or shall be classified under any other HSN.

Suggestion

It shall be clarified that bio-fuels such as bio-petrol, bio-jet, and bio-char shall be within the ambit of GST. Further, rate of GST and the HSN code for each of these bio-fuels shall be clarified to avoid any classification disputes and removal of ambiguity w.r.t they being within the GST regime.

Natural Gas

1. Inclusion of Natural Gas under GST

a. Natural Gas' is presently kept outside the ambit of GST till the recommendation of GST Council and existing legacy taxes viz. Central Excise Duty, State VAT, Central Sales Tax will continue to be applicable on Natural Gas. Non-inclusion of Natural Gas under GST regime is having adverse impact on Natural Gas prices due to stranding of taxes in the hands of Gas producers/suppliers and is also impacting Natural Gas based industries due to stranding of legacy taxes paid on Natural Gas.

b. The VAT rate on Natural Gas is very high in different states (viz. UP-26%, AP 14.5%, MP 14%, Punjab 14.3% etc.). Since Gas based industries do not get benefit of tax credit of VAT paid on purchases of Natural Gas, it is resulting in increase in cost of production of such industrial consumers and would have inflationary effect on the economy.

c. The following services are primarily involved in the supply chain of Natural Gas on which applicable GST becomes cost for the seller of Natural Gas :

Sl. No.	Services	GST Rate
1.	Transportation of LNG by vessel	5%
2.	Regasification of LNG	18%
3.	Transportation of NG / LPG through pipeline	18%

d. In case of imported LNG the cost of Transportation of LNG by vessel and activity of regasification of LNG forms around 12% to 15% of total cost of RLNG, which attracts GST and tax credit of same is not available against sale of RLNG. This leads to increase in the cost of marketing of Natural Gas and such companies have to build-in such tax costs in the selling price of Natural gas. This leads to inflationary effect on the economy.

Suggestion

In view of above following is proposed:

a. Natural Gas may be brought under GST ambit as it will have positive impact on the Natural gas based industry and will avoid stranding of taxes.
b. In case it is not possible to include Natural Gas under GST ambit at present, the State Governments may be persuaded to reduce and rationalize the VAT rate applicable on Natural Gas in line with the reduction recently carried out by Maharashtra Government.
c. A provision for deemed movement of Natural Gas under GST law may be kept in line with existing provisions of explanation 3 of Section 3 of CST Act 1956, which provides for inter-state sale of gas on deemed movement basis in case of integrated pipeline network.

2. Exemption of GST on sea transportation of LNG by vessel and LNG regasification activity.

Since the domestic production of Natural Gas is not enough to cater the increasing demand, import of LNG at large scale is required to augment the supply of Natural Gas for use in priority sectors such as Fertilizer, CNG, LPG, PNG etc. Presently GST (@5%) is applicable on the transportation of LNG by vessel / Ship from a place outside India to the first customs station of landing in India. Further, the imported LNG has to be re-gasified and converted into Natural Gas (known as RLNG - Regasified Liquefied Natural Gas) for transportation and consumption in India. The activity of regasification of LNG attracts GST @ 18%.

The levy of GST on sea transportation of LNG and on the activity of regasification of LNG increases the landed cost of imported LNG for domestic industrial consumers. ‘Natural Gas’ is being kept outside the ambit of GST till the recommendation of GST council. Transportation of LNG and regasification activity is under GST ambit resulting in stranding of taxes while selling Natural Gas.

Suggestion

In order to promote gas-based industry in India, it is suggested that transportation of LNG by a vessel / Ship from a place outside India to India under voyage charter basis as well as time charter basis may be exempted from levy of GST. Similarly, the activity of regasification of LNG also may also be exempted from levy of GST. In case, it is not possible to fully exempt GST on such services, it is requested that GST rates on regasification and transportation services relating to Natural Gas may be reduced to 5%.

3. **Alternatively - (2) Amending the definition of 'Non Taxable Supply' under CGST Act**

At present a company in the business of supply of natural gas and other goods (which are leviable to GST) has to reverse the ITC accrued in view of Section 17(2) of the CGST Act to the extent of exempt supplies.

Exempt supplies include non-taxable supplies and thus supply of natural Gas;

As a result, the supplier cannot set off the entire ITC on inputs and input services against output GST of other goods;

Suggestion

If the definition is amended as above, the ITC reversal to the extent of natural gas would not be required. As a result, the supplier can at least utilize the ITC accrued for other supplies;

This can also help in bringing down the cost of natural gas.

4. **Issuance of clarifications for the phrase "Pipelines laid outside the factory" to remove credit restriction on pipelines used for gas transportation**

Under the Section 17(5) of the CGST Act, ITC is not available on works contract services in relation to construction of an immovable property. However, Plant & Machinery is specifically excluded from the ambit of Immovable Property. Plant & machinery has been defined to exclude pipelines laid outside the factory. Therefore, the result is that if a works contract leads to a construction of pipeline outside the factory, ITC shall not be available.

Companies engaged in the business of laying of pipelines face a major hit from this exclusion since the department may take a view that ITC is not available in respect of any pipeline laid outside the factory. But the pipelines laid for supply of natural gas etc. by companies which are in the business of gas transportation are not per se pipelines laid 'outside the factory'. There is no factory at all in such cases.

Suggestion

Therefore, the Ministry should consider issuing a clarification in this regard since the exclusion (on a plain and literal interpretation) is intended to capture and restrict credit in a scenario where factories use pipelines to draw water/other raw materials from sources far away from the factory. Issuing a clarification shall be beneficial to the Industry which is already bearing the brunt of non-inclusion of natural gas under GST.

5. **Declared goods status for Natural Gas/Regasified Liquefied Natural Gas (RLNG) in line with coal, crude oil, Liquefied Petroleum Gas (LPG).**

Natural Gas/Regasified Liquefied Natural Gas (RLNG) should be brought under the new GST Regime, even if Zero rated. More details on this is covered under point no. 1.2.2. If it is finally decided that Natural Gas/RLNG is kept out of the GST Regime for the time being, it should at least be granted a declared goods status in lines with coal, crude oil, Liquified Petroleum Gas(LPG). Presently there is varying Value Added Tax (VAT) on Natural Gas, including RLNG, across the country. It may be advisable for the Government to treat RLNG/Natural Gas as a "declared good" so that they have a common concessional rate of VAT. Status of "Goods of Special Importance" under Section 14 of Central Sales Tax (CST) Act 1956 for Natural Gas/RLNG in line with Coal, crude oil, LPG would result in ceiling the state tax rate to the concessional CST rate (currently~2%). Under the current system, delivered price of gas from the same source of supply varies considerably on

account of taxation differences (ranges from 2% to 14.5%).However, it is worthwhile to note that rationalization of gas would result in higher price affordability (or Cost benefit) for consumers and in turn the growth in consumption. Growth of gas markets would ultimately increase the tax revenue generation as growing gas markets would attract higher investments in pipeline and city gas distribution networks.

The biggest impact of declaring Natural Gas as a declared good would be on economic development of small on-land and isolated fields. A large number of such fields awarded under New Exploration Licensing Policy (NELP) block remain unattractive due to high local sales tax. Reduction in tax will directly impact the cost of piped natural gas. In addition, lower tax will reduce large subsidy burden on these products. Declared goods status will also make imported LNG cheaper, and thus relatively more affordable for local industries. Further, use of natural gas in transportation would significantly

reduce pollution. Higher penetration of gas as an energy option would also mean reduced oil dependency and overall macro-economic benefit (Forex and subsidy savings) for the country.

Internationally, substantial tax differentials exist between natural gas and competing polluting fuels. This is primarily to incentivize the use of cleaner fuel that in turn provides immense health and environmental benefits.

Suggestion

Being a primary energy source like crude oil and coal, Natural Gas should be treated at par and the same tax status granted.

6. **Import duty benefit on LNG should be extended to all sectors apart from power sector, according the same status as crude petroleum**

Import of LNG presently attracts Basic Customs Duty of 2.575 % ad valorem which adds to the cost of supply to end-users. Till 25 June 2011, this was the same rate, import of crude petroleum attracted until it was brought down to zero. Hence it is no longer at parity with crude.

LNG and Natural Gas (NG) imported for generation of power have been exempted from Customs Duty vide Notification No. 12/2012 dated 17.03.2012 (Serial Number 139).

However, this exemption is applicable only to the power sector and that too in case of imports for supply to a power generating company only. This exemption is not applicable to other sectors like fertilizer and petrochemicals, which results in additional costs for use of LNG and also currently leads to preferential treatment for imported crude, without justification i.e. cleaner fuel i.e. Natural Gas imports is discriminated with crude oil imports.

The benefits of using LNG are far-reaching than the revenue loss to the exchequer.

International LNG prices are at least 20-25% lower than the Crude Oil (or petroleum fuels) on heat equivalent basis and thus, reduces the cost of energy to end-consumer in addition to the Forex saving.

International Best Practices Many countries have exempted custom duty on import of natural gas, for example Argentina, Brazil, Mexico, USA and Norway. Moreover, there is no justification to have differential tax treatments for LNG and crude petroleum.

Suggestion

The import duty of LNG may be made at par with the import duty of crude petroleum, which is presently zero.

Moreover, it is suggested that the custom duty exemption to LNG/Natural Gas may be granted on imports made by any person boosting development of competitive gas markets in India and such should be extended beyond power sector to 'end-use' for other sectors as well, to ensure parity with imported crude.

7. **Valuation of taxable services for naturally evaporating products like LNG should be clarified in detail to apply on the charges for conversion of the delivered product.**

Naturally volatile and evaporating products like gasoline or LNG are susceptible to continuous erosion of quantity in their natural state. LNG is liquefied natural gas compressed by 600 times and remaining in liquid form only at temperatures of -160 degrees centigrade. Exposed to ambient conditions the entire product evaporates on its own.

The usable form of LNG is its regasified state as natural gas. The process of

regasification of LNG involves the passing of the liquid through heat exchangers, compressors and pipelines in a controlled manner. Any repair to the regasification machinery in the normal course involves the venting of the liquid / gas contained therein to the atmosphere under regulated conditions. Due to the continuous nature of losses of the product that is inherent to its handling and processing, it is the norm worldwide to pre-agree on a percentage of such losses and consumption or usage of LNG /gas while contracting for the regasification of LNG. This is done with a view to allocate the risk of handling the product between parties and bring certainty to the

contractually deliverable quantities and the ad valorem price per unit for the same.

Shortfalls and excess of actual losses over pre-agreed norms are compensated by the service provider or taken as part of stock and disposed of as per provisions of Generally Accepted Accounting Principles (GAAP), VAT and Income Tax laws. However, due to misunderstanding of the process there are claims on taxability of the tolerance norms and any quantities of the product lying in excess over the loss tolerance quantities by both VAT and Service Tax/GST. The same value should not be taxable under two

separate indirect taxes.

Suggestion

It should be clearly clarified that the charges for the delivered quantity of a volatile product (after taking into account the losses during regasification) shall be taxable as services in order to avoid double taxation. The value of product lost or consumed during the process of regasification shall be deemed includible in the charge levied for processing as it is intrinsic to the process itself.

8. **Activity of LNG loaning and borrowing in quantity terms in LNG terminals handling, a co-mingled mix of title, goods of same product should be specifically kept out of purview of taxable transactions.**

For the purpose of transportation, natural gas is liquefied to -160 Degrees for ease of handling. This liquefied natural gas or LNG is transported and stored in special vessels and storage tanks that are heavily insulated in order to maintain the temperature of LNG. Natural gas is sold in energy units of the contents thereby making it widely tradable without determination of its physical characteristics or source of supply etc.

However, due its transmission over high seas from countries around the world, the supply happens in ship loads the schedule of which cannot be accurately determined.

LNG Storage Tanks are also expensive to build and maintain due to the safety challenges of dealing with a high energy content of the natural gas in its liquid form.

These LNG storage tanks are used to store the goods of various parties with virtual segregation of title stocks. However, due to limited storage space, there are situations where demand exists with a certain entity while the title of LNG stock in the Tank is held by another entity resulting in mismatch and restriction of free trade and commerce of LNG in India, i.e. LNG is available in the Tank, there are willing customers

at the gate but the LNG cannot be supplied to them.

The Indian entities are apprehensive of stretched application of laws like 'Right to Use of Goods', rules of barter etc and thereby hesitant to feely carry out loan / borrow of in tank LNG so as to enable transfer of goods to that entity which has the demand orders in hand.

Suggestion

It is sought to seek exemption from any taxing provision for Loan / Borrow transactions of In Tank LNG to enable optimum utilisation of LNG Terminal facilities in India and facilitate higher trade and consumption of this carbon efficient fuel by India entities.

9. **Reversal of input credit relating to Non-GST supplies like Natural Gas from the common credit pool of Taxable and Non-taxable supplies to be made nil.**

In the recently promulgated GST Act the Government has included Petroleum products including Natural Gas under the purview of the GST Act but has reserved the date of levying tax on them to a later date. Until then, the prevalent indirect laws of VAT as per the CST and State VAT Act would continue to apply.

Under this dual indirect tax regime the mechanism of allocating common credits used by companies engaged in both GST services and (non GST) trading turnovers has not been correctly defined. To begin with, said mechanism has categorised income from both revenue streams of service and trade as ‘turnover’.

This was not so under the prevailing Cenvat Credit Rules where trading turnover was clarified vide an explanatory note to mean the ‘value add’ or difference between cost and sales for comparing with a service income.

This difference or margin alone constitutes income for a trading entity.

It would be grossly erroneous and unfair to compel a company to lose common credit merely because it has (non GST) trade turnover which is more than 10 times higher than a service income merely for the same unit of measure due to the cost of the traded goods. This cost is of traded goods is not a value add of a trader and therefore should be excluded from the definition of turnover for comparing with a service income.

While there is no GST input credit available on purchase of (non-GST) goods like petroleum products, under the current GST Act, the input credit reversal mechanism stipulates a turnover based disallowance which inflicts a damage of up to 10 times on the common credits genuinely purchased by a business entity for his business.

To explain further, a GST enabled service income stream like ‘regasification tariff’ consists of less than a Dollar per unit measure. However the price of a traded natural gas can be upto $ 10 per unit measure. Hence a business entity engaged in regasification service and trading of a petroleum product like LNG would have an adverse ratio of due to the high turnover values of traded goods and therefore lose its entire common credit due to the reversal mechanism being based on gross turnover which includes the price paid for a purchased trade stock. As pointed out above, this price could be more than 10 times higher than the regas tariff for the same unit of the product. This is akin to comparing the price of an air conditioner with the installation charges of an Air Conditioner by an AC dealer to its customer and denial of common

credits on business costs of the AC Dealer. What is more reasonably comparable is the margin made by the dealer on the sale of the Air Conditioner with the installation charges for the Air Conditioner.

This was correctly contained in the Cenvat Credit Rules under an Explanation 1 of sub rule 3 (D) of Rule 6 which stated that :

'Value' for the purpose of sub rules (3) and (3A) 'in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten percent of the cost of goods sold, whichever is more.

In the absence of such an explanation as part of the GST Rules there is an apparent lacuna in the draft of Clause 7 (i) of the Input Tax Credit Rules which warrants immediate correction.

Suggestion

Categorisation of petroleum products under the GST Laws :

Clause 7 – Manner of determination of input tax credit in certain cases and reversal thereof:

EXCERPTS FROM INPUT TAX CREDIT RULE

(i) The amount of input tax credit attributable towards exempt supplies, be denoted as 'D1' and calculated as:

D1= (E÷F) × C2

where,

'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero rated supplies, during the tax period, and

'F' is the total turnover of the registered person during the tax period:

(112) "turnover in State" or "turnover in Union territory" means the aggregate

value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union - *From the definition of the CGST/SGST Act*

EXCERPTS FROM CGST / SGST Act

(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, **and includes non-taxable supply;**

(78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as

may be prescribed and shall be paid by the taxable person.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

From a combined reading of the various provisions of the GST Act it is evident that

- the exempt turnover includes non GST leviable category ie the petroleum goods
- Turnover as it stands in the bill includes the cost of traded goods for a trading entity.

Incorrect Classification of Petroleum Goods as ‘Exempt”

It is also being pointed out that including the petroleum goods as exempt category is unfair as VAT and Excise duties etc will continue to be applicable taxes on the manufacture and sales of these products.

At the same time with the introduction of GST for all goods and services excluding petroleum goods renders them ineligible to take input credit which were currently being availed under the extant VAT & Excise laws. Under these laws (ie Gujarat VAT) regasification of LNG to RLNG constituted ‘manufacture’ and therefore VAT on sale of LNG was offset with VAT purchases used for conversion of LNG to RLNG.

This hitherto available input tax credit would be lost while also denying the input tax credit of common credits used in the business of a non-GST and GST revenue streams.

It is therefore earnestly requested for the GST Council to take note of this inadvertent error in the drafting of the GST Rules and kindly correct the same by excluding the petroleum goods (being taxed separately) from the purview of exempt and total turnover under the Clause 7 (i) of the Input Tax Credit Rules.

Hence, the redrafted Explanation under sub clause (i) of the Input Tax Credit Rules should read as follows:

Explanation : 'For the purposes of this clause, the aggregate value of exempt supplies and total turnover shall exclude *the turnover of such goods not leviable to tax under the Act currently (ie petroleum crude, high speed diesel, motor spirit , natural gas and aviation fuel)* and the amount of any duty or tax levied under entry 84 of List 1 of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

This correction shall remove the fallacy of the draft ratio of reversal of common credit which does not distinguish between the turnover of a service with that of traded good.

10. Tax on Freight Charges for LNG import

With effect from 22nd January 2017, the new Notification on service tax imply that Prepaid Ocean Freight (OFR) at Origin on Imports into India by way of Vessel is subject to Service Tax (now GST). This law applies to all Cargo that arrives India on Vessels.

Therefore, Tax is payable on import freight for Container Cargo, Bulk Cargo, RORO and even LNG.

This additional tax on import freight of LNG cargo has resulted in increase in cost of LNG for the importer.

Suggestion

We recommend that the GST on import freight for all LNG cargoes be withdrawn to promote the usage of environmentally clean fuel in the country.

General

1. GST: Procedural Issues

Various procedures have been laid down under the GST Law however certain procedural aspects needs to be to be addressed by way of issuing suitable clarification/notifications in these regards to safeguard the interest of the Oil and Gas Industry.

S. No	Issue	Justification
1	**Registration related issues**	▪ As per Notification 117 dated 8th March 1996 issued under Section 293A of Income Tax Act, UJV under PSC is not recognized as person & thus no need of PAN & Income tax compliances. ▪ However, under GST, registration is PAN based except for Non- Residents Relief Sought ▪ It is requested to provide a suitable mechanism for obtaining the registration by Operator under its PAN ▪ It is also requested that once the upstream sector is in GST, a mechanism is provided to transfer credit to each Participating Interest Holder in PSC.

2	**GST applicability on transfer of goods from onshore to offshore / one state to another in same block or one block to another**	▪ Under the newly introduced Goods and Services Tax ("GST"), the government, by way of issuance of Notification No. 3/2017- Integrated Tax (Rate) dated 28.06.2017 ("Exemption Notification") has levied concessional rate of GST for inter-state supplies of goods required in connection with petroleum operations. ▪ Similar notifications have been issued under the Customs Act, 1962 , Central GST law and under the respective state GST laws ▪ Such Notifications inter alia has clause (d) to Condition No. 1, which prescribes that transfer of goods among different Blocks/GST registered premises of same oil Exploration and Production ("E&P") Company or Operator can happen only after obtaining a certificate from the Directorate General of Hydro Carbons ("DGH") certifying that the

		goods subject to transfer are required for petroleum operations **Rationale** ▪ No clarity is there on the issuance of DGH certificate on account of transfer of goods from onshore to offshore / one state to another in same block or the transfer of goods from one block to another (transfer between different registration of same legal entity). ▪ Further, as the petroleum operations are carried out under the aegis of a Production Sharing Contract ("PSC") entered with the Government of India and as per the mandate of the PSC and practice adopted by the DGH, transfer of goods from one block to another could only happen at its cost price. **Relief Sought** ▪ It is humbly requested that such transfer to be exempt; Or ▪ A remedy may be provided

		to allow transfer on basis of self-certification of the licensee or contractor
3	**Deemed Export – Clarification / amendment is requested**	▪ In the Pre GST era, as per para 7.02.(f) (i) of FTP 2015-20 – "Deemed Import", domestic manufacturers were availing customs exemption on import of raw materials against Advance Authorization for manufacturing the final goods supplied for petroleum operation as custom duty was NIL for import of goods required for petroleum operations. ▪ However, Notification # 50/2017-Cus dated 30.06.2017, provides for exemption from Basic Customs Duty (BCD) only on import of goods required for petroleum operations and concessional rate of IGST is @5%. **<u>Relief Sought</u>** ▪ Considering the above, a suitable clarification /amendment is requested to the effect that domestic

		supply of goods required for petroleum operation would be treated as 'Deemed Export' under Para 7.02(f) of FTP-2015-20 despite levy of IGST @5% and domestic manufacturer would be eligible for exemption of BCD on import of raw material for manufacturing the final goods supplied for petroleum operations.
4	**IGST exemption on Temporary Imports**	▪ As per the recent notification – 72/2017-CUSTOMS, temporary imports are exempt from IGST, subject to conditions which inter alia provides: -re-exports are done within specified period of 3 months (maximum 18 months on approval of AC/DC of customs) -Submission of bank guarantee equivalent to IGST **<u>Relief Sought</u>** ▪ Notification to be amended for non-applicability of AC/DC approval and without any maximum cap

		or 5 years for the goods imported for petroleum operations since petroleum operations may require temporary imports for a longer tenure ▪ No requirement of Bank Guarantee (as under erstwhile regime) for the same as it will lead to significant blockage of borrowing funds for investment for petroleum operations
5	**Valuation of Scrap Disposal**	▪ The Exemption Notification issued under Customs Act as mentioned above inter alia has clause (e) to Condition No. 48, which prescribes the scheme for sale/transfer of goods imported duty free by way of availing the exemption as per this notification at the time of Import of goods ▪ It seeks to provide for mechanism of payment of tax on removal of scrap/ waste/ unused/ surplus/ obsolete goods which were sourced under the Customs Notification without payment of duty

		and are no longer required for petroleum operations at the depreciated value of such goods. ▪ Considering the complexities involved in the petroleum operations, determination of purchase value of most of the items disposed off will pose practical difficulties and it is impractical to implement the same. **Relief Sought** ▪ **Generation of Scrap of un-used goods & difficulty in determination of purchase price** It is humbly requested to amend the notification to allow the disposal of un-used goods which are no longer required for petroleum operation on payment of GST on the transaction value /sales value of such goods and not on the depreciated purchase vale, which is practically impossible to be determinable. ▪ **Generation of Scrap after**

		<u>use of Goods for petroleum operations & difficulty in determination of purchase price</u> It is humbly requested to issue a clarification that no GST is payable on disposal of used goods as scrap which becomes un-usable due to its continuous use for petroleum operation and declared for sale as scrap.	
6	**Clarification required on the certain transactions to be disregarded as supply**	Royalty	▪ Royalty is a share of the Government revenue in the production of hydrocarbons and is success based i.e. not payable on

			exploration failure. ▪ It is part of overall economic share of the Government & not against any service. ▪ Thus, it should be clarified that royalty payable by the O&G companies to the Government is not leviable

			to service tax/GST.
		Profit Petroleum / Cost Recovery	▪ Profit petroleum is the share of Govt. in the produced hydrocarbon which otherwise belongs to the Govt. only and not against any service. Cost Petroleum" is nothing but recover

			y of investment made for exploration and production of hydrocarbon in terms of PSC ▪ This is not linked to any service and thus it will not qualify as supply ▪ Thus, it should be clarified that profit Petrole

			um/cost recovery payable by the O&G companies to the Government is not leviable to service tax/GST
		Cash Calls	▪ Cash Call" represents capital contribution of the partners & is 'merely a transaction in

			money' hence not in the nature of consideration for any taxable service as clarified by the CBEC in its circular No. 179/5/2014-ST dated 24.9.2014 ▪ Thus, it should be clarified that Cash Call continues to be in

			the nature of capital contributions hence not subjected to service tax/GST
		Farm In and Farm Out Transactions	▪ It should be clarified that Sale and purchase of Participating Interest/Share (PI) in the PSC is similar to sale & purcha

			se of business hence not liable to GST.
		Condensate to be treated as Crude Oil	▪ It should be clarified that Condensate to be treated as Crude Oil under GST and HSN code for Crude Oil be permitted to be used for Conde

			nsate as well.
		Relinquishment of Block	▪ It should be clarified that no GST is applicable at the time of relinquishment of Block to Government as PI holders seizes to be party to the PSC

2. GST: Rate fitment – Requests for rationalization in rates

As the GST has already increased the upstream industry cost on procurement of goods and services due to withdrawal of exemptions available to this sector in the pre-GST regime and not allowing input tax credit of GST paid hence relief is sought by the Industry by the rationalization of the GST rates.

S.No	**Particulars**	**Rationalization of Rate Required**
1	IGST exemption on Imports for Petroleum Operations	▪ under Pre-GST regime, goods required for petroleum operation whether under pre and post-NELP or CBM Policy or under nominated blocks are exempt from whole of Basic customs duty (BCD) and CVD vide notification No.12/2012-Cus as amended by notification No.12/2016-Cus Sl-357A (List-34). ▪ SAD is also not payable for the said imported goods (notification No.21/2012-Cus Sl-1) in view of customs duty and CVD exemption. ▪ Similarly excise duty exemption has been

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		allowed vide notification No.12/2012-CE dated 17.3.2012 SI-336 as amended by notification No.12/2015-CE to goods supplied for use in petroleum operation including CBM and marginal field ▪ These provisions have been introduced to give effect to sovereign promise as provided in the Production Sharing Contracts ("PSC") executed with Government of India that all imports should attract NIL duty of tax. ▪ Currently, imports are subject to 5% IGST as per the concessional notification issued for the goods to be imported for petroleum operations. **<u>Suggestion:</u>** ▪ Thus, considering the commitment under PSC and NELP regime, it is prayed that exemption to be continued to upstream sector for all procurement of goods

		(whether imports, inter-state or intra-state) similar to one provided in Pre-GST regime.
2	GST Rate on services to be rationalized	▪ In the Pre GST era, 6% service tax applies on works contracts (which is major input service for upstream sector) and rest of the services were taxed at 15% **Suggestion** ▪ Merit rate of GST @12% on all services used for petroleum operations except point no 2 & 3; and ▪ Works contract service should be subject to 5% GST; and ▪ Mining services (for petroleum operations) in

		particular, drilling and drilling related services, to be taxed @ 5% since the major consideration under contract is towards rental of the rigs/ equipment
3	Rental of onshore Rigs/ Equipment	▪ Under GST, rental of onshore rigs/equipment is taxable as service Rate of GST is rate as applicable to rigs/equipment **<u>Suggestion:</u>** Rate applicable should be 5% as applicable to procurement of any rigs/equipment for petroleum operations against DGH certificate

3. **Ease of Doing Business**

Advances received against supply of goods will attract GST and the receipt vouchers to be issued will have all particulars which are applicable to invoice. Further, adjustment of such advance against subsequent supplies will also create administrative hassles for assessees. Since amounts pending at the of the month only are to be considered as advance for levy of GST, the requirement of issuing receipt voucher in a format similar to invoice at the time of receipt of advance payment is very cumbersome.

Suggestion

The requirement of issuing receipt voucher in the format of invoice at the time of receipt of payment may be dispensed with and such receipt voucher may be prescribed for amount of advance pending at the month end.

4. **Cenvat Credit of Service tax paid under Forward Charge Mechanism**

Due to complexity of operations and scale of transaction considering the major capital project which are under process, there are bound to be certain such invoices which shall be processed or received on or after 01.07.2017. As the excise duty is payable in Refinery post 01.07.2017 but in the absence of any specific provisions in GST and considering the New Cenvat Credit Rules, 2017 which does not specify the service tax paid under Finance Act, 1994 as an eligible duty in Rule 3(1), the service tax paid will be cost to company.

Suggestion

Appropriate amendment should be made in GST law providing relief to refineries to take input credit for the receipt of bills prior to 30/06/2017 upto 31/03/2018.

5. **Exempting the requirement of issuing the consignment note/Lorry Receipt**

Rule 54(3) of the CGST Rules, 2017 reads as follows:

"Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also containing other information as prescribed under rule 46."

Accordingly, where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the prescribed details in addition to information as prescribed under Rule 46 of the CGST Rules, 2017.

At present for every consignment BPCL prepares the invoice and the driver of the TL signs the invoice as a representative of the Transporter. In case we need to collect LR/Consignment note for every load from the Transporter, the document recording and storage and retrieval activity at the location increases. In era of paper less documentation this tremendously increase the work load along with increased storage space for record keeping/filing and other related jobs.

In case BPCL undertakes to generate Consignment note/LR on behalf of the transporter along with every invoice, then the number of documents generated doubles thereby increasing the stationery cost/document handling activity/storage space etc. Many transporters are not based at the location of loading especially the Dealer Transporters and transporters who are major fleet owners while many Dealer Transporters are single TL owners. Posting a representative at the loading location for the purpose of issuing LR/Consignment may not be feasible.

Suggestion

Rule 54(3) of the CGST Rules, 2017 can be amended to include the following:

'Provided however that transporters engaged by OMCs are exempted from the provision of the tax invoice or other document mentioned above, if the document provided by the Oil Marketing Companies contains all the other information as prescribed under Rule 46.'

6. **E-Way Bill for taxable supplies**

Section 146 of the CGST Act, 2017 reads as follows:

"The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out other such functions and for such other purposes as may be prescribed."

The Government by powers under the above section can notify the Common Goods and Service Tax Electronic Portal for facilitating, inter alia, electronic way bill. From the wordings of the E-Way Bill Rules, it appears that these provisions are extended to exempted and non-taxable supplies.

Suggestion

The following proviso can be added to Rule 138 of the CGST Rules, 2017:

'These Rules shall not be applicable to supplies which are not under the ambit of the GST Regime or are exempted.'

Alternatively, the word 'Supply' in the E-Way Bill Rules, could be substituted with the words 'taxable supply' to ensure the applicability of such Rules only to taxable supplies.

7. **GST applicability on time charter**

SAC 9966 covers Rental services of water vessels including passenger vessels, freight vessels and the like with or without operator. The time charter of such vessel will be covered under Heading 996602 and therefore liable for GST at the rate of 18%. The issue requires immediate resolution as the oil industry is engaged in hiring of vessels on time charter basis for both GST as well as non GST products. In case of non GST products like MS, HSD and ATF it will be huge under recovery.

Suggestion

Heading 9965 covers coastal and transoceanic (overseas) water transport services of goods. The voyage charter will be covered under the heading 9965 and therefore liable for GST at the rate of 5%. Heading 9973 covers leasing or rental services with or without operator. It is suggested that the time charter should be covered under the heading 9973 and therefore liable to GST at the rate of 5% so that GST rate on time charter is made in line with Voyage charter.

8. **Issuance of C Forms**

We understand that post introduction of GST, the States are now demanding abolition of concessional rate of CST 2% against Form-C in order to augment revenue. Moreover some of the states / buyers are taking a view that post amendment in definition of goods in CST Act as per Taxation Laws Amendment Act, 2017, C forms can only be issued for manufacture or production of goods as specified in amended definition (i.e. petroleum crude, natural gas, HSD, motor spirit, ATF and alcoholic liquor for human consumption)

If this demand of the State(s) is accepted, the upstream sector will face another setback due to decreased sales realization of domestic crude oil and natural gas and making import cheaper. Non issuance of C forms by buyers could have significant impact on the sector as prices are on import parity basis and buyers may not absorb the additional cost. All imports of goods required for petroleum operation should be exempt.

Suggestion

a. Continuation of concessional CST 2% against Form-C till such time crude oil and natural gas are outside GST.
b. Thus it is requested that MoPNG expeditiously engages with the Ministry of Finance & relevant GOI institutions and state government appropriately to resolve this.

9. **No methodology / procedure provided in GST for supply and return stream to downstream customers.**

CPCL is supplying Superior Kerosene Oil and petroleum gases to downstream customers viz., Tamil Nadu Petrochemicals Ltd (TPL), Kothari Petrochemicals Ltd (KPL) and CETEX. CPCL supplies the above goods to the downstream customers who extract n-parrafin content, polyisobutylene and butenes from the supply and return back the balance stream to CPCL. The extraction of n-parrafin content, polyisobutylene and butenes will be in the range of 15% to 18%. In the pre-GST regime orders were issued by the Commissioner of Excise for payment of duty only on the extracted portion by the downstream customers. Thus, CPCL based on the order of the Commissioner was billing only on the net quantity ie., difference between the Supply and return stream.

In the GST regime, there are no specific provisions to accommodate the above supply and return stream transaction. This creates an anomaly wherein the entire supplies made to the downstream customer should be considered as supply and GST is payable for the entire supplies. After extraction of the required composition, the balance quantity sent back to CPCL will be considered as supply and invoice will be raised by the downstream customer. This would artificially inflate the value of supplies for both CPCL and downstream customer. On the other hand, CPCL must show the return stream as a purchase quantity. This gives rise to a situation wherein CPCL will be purchasing its own supplied product.

Suggestion

Specific provision needs to be stipulated in GST Act wherein only net quantity has to be treated as supply to downstream customers as was followed in the pre-GST regime.

10. GSTN portal problems

CPCL faced glitches in the GST network while filing GSTR 3B return for the month July 2017. With a steady follow up with the GSTN officials our problem was finally rectified. However, while submitting our maiden GSTR-1 return the same glitches appeared which were later resolved by the GST officials. We feel that there is encryption error occurring while transmitting the submitted details to GSTN portal since the additional place of business is getting repeated in the profile portion. It needs to be ensured that the GST portal functions properly at all times and specifically at the time of filing returns else productive hours will be wasted by way of follow up and setting the GSTN portal right.

11. Capital goods received after 30.06.2017 but invoice has been received after 01.07.2017

If the Services or Goods are received before 30.06.2017 but invoice has been received after 01.07.2017 with bill date prior to 30.06.2017, credit will be available for transitional credit if the same is recorded in the books of account within a period of thirty days from the 01.07.2017.

However, for capital goods in transit there is no clear provision whether to avail the credit of in transit items.

12. Linkage of benefits under Foreign Trade Policy (FTP) with GST

The Foreign Trade Policy (FTP) is primarily focused around export-import guidelines and various incentives available for export of goods and services outside India. In addition, for companies effecting deemed exports, i.e., supplies for specified projects/purposes in India (such as power projects, refineries, etc.) that are also eligible for various incentives available for physical exports.

Under the erstwhile FTP regime regulating the Served from India Scheme (SFIS) – Period covered 2014-19, the benefit could be utilised mainly for payment of customs duty for import of capital goods, excise duty on domestic procurement of inputs or goods, including capital goods. While these benefits can either be utilised by the Company or its group entities and the SFIS as such is not marketable. These scripts have to be utilised within the prescribed time limit of 18 months from issue date.

With the introduction of GST, wherein excise duty is subsumed, the FTP regime for such export benefits would be need to mapped and aligned so as to help industry take benefits of such incentives against their GST output liabilities.

13. Treatment of Corporate Office under GST

As per Sec 25(5) of CGST Act, the two establishments of same entity covered under different GST Registrations are treated as distinct persons and accordingly any supply of goods or services between such persons are subject to levy of GST, even if there is no consideration for such supply in view of Schedule-I of CGST Act.

ONGC has its operations across India including Offshore and has its registered office in Delhi. There is office of company secretary who primarily interacts with stake holders, regulatory authorities for compliance purposes. Similarly, the Offices of Board of Directors primarily executes its functions entrusted by Govt. of India such as fixation of MoU targets, internal controls, decision on business policies etc. There are other corporate offices such as Corporate Accounts, Corporate Taxes etc. who discharge their functions centrally at registered office, New Delhi.

Although the registered office and work centres are distinct persons under GST Law, there is no specific supply involved between such distinct persons. Accordingly, there should not be any GST implication.

Suggestion

It is apprehended that the Department may raise demands on costs incurred by registered office on various accounts such as manpower, infrastructure etc. Hence, it is requested that specific exemption or clarification may be issued to avoid litigations.

In this regard, it is also pertinent to mention that unlike other sectors, the ONGC would not be able to avail input tax credit as the crude oil & natural gas are outside levy of GST.

EXCISE DUTY

<u>Upstream</u>

1. **Government to review the present rate of 20% of OID Cess and to moderate it to say 8% to 10% of realized crude oil price.**

a. OID Cess is levied on crude oil produced as a duty of excise under The Oil Industries (Development) Act, 1974.

b. OID Cess is being levied on crude oil from nominated blocks and Pre-NELP Exploratory Blocks.

c. Prevalent framework for OIDB Cess:

-NELP blocks: Cess not applicable

-26 identified fields under Production Sharing Contracts: Frozen rate of Cess

-All other fields: Levy of 20% Ad valorem.

d. High Cess disincentives production, incremental investments

It further increases tax burden, which is high vis-à-vis other importing countries

It is also against “Make in India” vision of GOI as imports are tax exempt

Given India’s geological landscape hence it is important to reduce Cess

Suggestion

Keeping in view, the unprecedented reduction in crude prices, representations were made by Upstream Oil Companies including ONGC with the Government to review and reduce the rate of OID Cess and make it 8% to 10% ad-valorem.

In view of above, Oil Cess paid by Oil and Gas companies on “production or extraction of crude oil” should be subsumed under the GST provisions in the spirit of “one tax” and to achieve fungibility of taxes.

If not possible, Cess rate of 8 to 10% of the realized price of oil will likely strike balance

2. Reduction in OID Cess rate on Crude Oil to 8-10%

a. OID Cess is levied on crude oil produced as a duty of excise under u/s 15(1) of Oil Industries Development Act (OID Act), 1974. In exercise of the power conferred under this section, the Ministry of Petroleum & Natural Gas (MoP&NG) notifies the rate of OID Cess from time to time. OID Cess is being levied on crude oil from nominated blocks and Pre-NELP Exploratory Blocks. OID Cess has been abolished for NELP/ HELP blocks.

b. OID Cess was made 20% ad-valorem w.e.f. 01.03.2016 from specific rate of Rs. 4,500/MT.

c. It is submitted that before making Cess as ad-valorem, OID Cess was earlier revised from Rs. 2,500/MT to Rs. 4,500/MT w.e.f. 17.03.12, when the price of Indian Basket of crude oil was in the range of US$ 110/bbl. Keeping in view unprecedented reduction in crude prices, representations were made by Upstream Oil Companies including ONGC with the Government to review and reduce the rate of OID Cess and make it 8% to 10% ad-valorem.

d. **However, as decided in the Union Budget 2016-17 and in terms of the Notification dated 28 Mar’16, Government of India, amended Oil Industries (Development) Act, 1974 and made OID Cess as “20 percent ad-valorem” effective from 01.03.2016.**

e. Though, in the Budget, the change in OID Cess was sought by industry and intended by the Government as a relief to the industry, due to higher rate of OID Cess of 20%, the purpose of rationalizing the cess and giving relief to the industry has been defeated.

f. The revised rate of 20% ad-valorem will further negatively impact oil companies once oil prices start moving northwards. Moreover, as OID Cess has been levied historically in range of 8-10% of crude price, there appears to be little rationale in making it 20% ad valorem. It is also worth mentioning here that In Mar'12, when OID Cess was revised from Rs. 2,500/MT to Rs. 4,500/MT, the price of Indian basket of crude was in the range of US$ 110/bbl. However, under the revised rate of 20% ad valorem, at a crude price of US$ 110/bbl, OID Cess works out to more than double of pre-revised rate of Rs. 4,500/MT.

g. In addition to OID Cess, other statutory levies viz royalty (@ 10% and 20% on crude oil production from offshore & onshore areas respectively), VAT (@ 5%) are also payable on production/ sale of crude oil. At prevailing crude oil prices, with the revised rate of 20% for Cess, ONGC would end up paying almost one-half of crude price towards statutory levies. Moreover, since both royalty and OID Cess are production levies and not pass through to Buyers, it adds up in cost of production of crude oil.

h. The revised rate of OID Cess coupled with prevailing lower crude prices is affecting ONGC's cash flow negatively and thus will affect Company's future plans for Exploration and Production of Hydrocarbons. Further, higher OID Cess will make many new development projects of ONGC, particularly in deepwater and High Pressure High Temperature (HPHT) areas, economically unviable.

i. It is pertinent to mention that under NELP and HELP policy, OID Cess has already been abolished.

Suggestion

In view of above, post-budget, various Representations are made by Industry including ONGC to MoP&NG to review the OID Cess and revise to 8% to 10% of realized crude price. Based on these representations, MoP&NG has also recommended to Ministry of Finance vide letter dated 11.04.16 to review the existing rate of 20% and make it 10%-12% ad-valorem.

It is requested to review the present rate of OID Cess of 20% and to moderate it to 10% of realized crude oil price.

<u>Downstream</u>

1. **Excise Duty of HSD**

a. Excise Duty @ 10.33 per litre (intended for sale without brand name)/ 12.60 per litre (With brand name) is levied w.e.f June 30 , 2017 on High Speed Diesel(HSD) vide notification no.11/2017-CE.

b. However Excise duty was exempt for HSD procured for the E& P sector vide Notification No. 12/2012-CE dated March 17, 2012.

c. HSD is continuously required for running offshore supply vessels and rigs. They consume huge quantities of HSD. Levy of Excise duty @Rs.10.33/litre adversely affect the fund flow of the E&P companies

Suggestion

Since goods required for petroleum operation have been exempted from all other customs and excise duties in the earlier regime, it is also desirable to extend the said benefit to excise duty levied on HSD as mentioned above by amending the notification No.11/2017-CE suitably.

2. **Additional duty of excise exemption levied on HSD**

a. Additional Excise Duty @Rs.6 per litre is being levied on High Speed Diesel (HSD) u/s 133 of Finance Act, 1999.

b. This additional duty is in addition to the excise duty levied vide notification .11/2017-CE dated June 31, 2017.

c. As the GST has already increased the upstream industry cost on procurement of goods by more than 5% due to withdrawal of exemptions and not allowing input tax credit of GST paid.

Suggestion

Hence it is requested to exempt the additional duty of excise on the HSD procured for the petroleum operations to provide boost and incentive to the upstream sector.

3. **Exemption to CNG from payment of excise duty**

Presently, Central Excise duty is applicable on CNG due to Chapter Note 3 of Chapter Note to Chapter 27 of CETA. It is desirable that CNG (conversion of Natural Gas into CNG) be exempted from Central Excise Duty after introduction of GST considering that credit of GST paid on input/input services/ capital goods used for production/supply of CNG will not be available to producers and suppliers of CNG which in turn will lead to cascading and inflationary effect. Further, CNG being a clean fuel needs to be promoted and any increase in prices of CNG will discourage its usage.

Suggestion

In view of the above, CNG may be exempted from levy of Central Excise Duty. This will make CNG more economical and will promote its use as environment friendly fuel.

4. **Payment of duty at refinery to be made at quantity at 15 degree**

In order to eliminate litigations, it is suggested that duty shall be levied at quantity at 15 degrees on all removals from refinery.

5. **Permitting Mixed Bonding in Intermediate storage tanks for ATF and Bunkering Fuels**

After withdrawal of the warehousing provision the board has permitted establishment of the intermediate storage locations for storing of Bonded ATF. However, no mixed bonding of the bonded and duty paid ATF is permitted in such intermediate storage locations. This puts enormous operational constraints particularly in places where there are limitations on the availability of the storage tanks.

Mixed bonding of Bonded and Duty paid is permitted at AFS. The same facility should also be extended to the intermediate storage tanks. Segregation of the duty paid and bonded ATF can be maintained through accounting records.

6. Excise Duty on Transit Loss on ATF

With the withdrawal of warehousing provision vide notification no. 17/2004-CE dated: 04.09.2004 no movement from the refineries can be done without payment of duty. However, in terms of circular date: 4th January 2005 the duty has to be paid on the quantity at the time of clearance from the refinery, and therefore duty has to be paid on the quantities lost in transit or storage after its clearance from the refinery.

Further as regards the clearance of ATF to be ultimately supplied to foreign Going Aircraft it was specified that though ATF can be removed for an export warehouse without payment of duty but no condonation will be allowed as regards the storage losses suffered during the storage of ATF either at Intermediately Storage Location or at Export Warehouse. Such losses are treated as diversion for home consumption and duty leviable along with interest at the rate of 24%.

These losses occur because of the peculiar nature of petroleum products which expands with the rise in temperature and contracts with the fall in temperature and which are beyond our control and occur purely because of natural causes.

Suggestion

Allowance should be given for the quantities lost in transit or storage as prescribed by the Govt. of India despite the fact that they are removed under export warehouse procedure.

7. Increase in the cost of production on account on Non Availability of ITC of GST products used for Non GST products.

a. **GST paid Biodiesel & Ethanol**.

Applicable GST rate on Biodiesel and Ethanol is 18%. GST suffered ethanol & biodiesel is used for blended MS and HSD. The same is as per GOI directives. As the RSP on these products cannot be more than the RSP on normal MS & HSD, restriction on cross utilization of ITC would result increase in the cost of production and to be absorbed by HPCL.

It is worth mentioning that in the erstwhile tax law, ITC was available for ethanol and biodiesel.

Suggestion

Hence it is advisable to reduce GST on Ethanol & biodiesel used for blending in MS & HSD to Zero rated or provide for cross utilization by way of separate notification to the Oil Industry.

b. Capital Goods & Inputs

Applicable GST rates for capital goods, inputs & Input Services used for production of Petroleum products is ranging between 12% to 28%.

Whereas Non GST products namely MS, HSD & ATF constitute more than 80% of the products manufactured and sold by HPCL.

As there is a restriction on cross utilization of ITC on all the inputs and capital goods this would result increase in the cost of production.

It is worth mentioning that in the erstwhile tax law, ITC was available for all capital goods and inputs used in the process of production and providing service.

Suggestion

Reduce the rates of Excise on excisable products and purse the sates to reduce the VAT rates on petroleum products.

Include MS, HSD, ATF, Natural Gas in GST.

Allow cross utilization of credit i.e GST can be utilized for making payment of Excise and VAT

8. Dispute on rate of excise duty on intermingling loss of SKO in pipeline transportation

Oil Companies have been using the pipeline for transportation of multiple products i.e. MS, HSD and SKO from its Refinery to various pipeline head depots /installations. Each parcel of HSD, SKO and MS individually is called a batch. The sequence of the products is MS then SKO then HSD then SKO. Since all the products packed inside the pipeline move at very high velocity and pressure, some commingling/intermixing of batches is unavoidable at the boundary of the continuous batches and this intermixing of two adjoining products inside a pipeline is called an INTERFACE. The interfaces between MS-SKO or HSD–SKO are generally upgraded to MS or HSD respectively.

After removal of warehousing facility for petroleum products w.e.f. 06.09.2004, the Board Circular no 796/29/2004 CX dated 04.09.2004 states that the excise duty is liable to be paid by the refineries at the time of removal. Rule 4(1) of Central Excise Rule 2002 states that no excisable goods on which any duty is payable, shall be removed without payment of duty from a place where they are produced or manufactured or from a warehouse.

Thus the applicable duty on MS, HSD, manufactured by the Refinery needs to be discharged at the factory gate on clearance through the pipeline after removal of the warehousing facility for petroleum products.

HPCL is paying GST at 18% for SKO pumped in the batch and the GST paid SKO stock will be upgraded to MS or HSD and will be sold accordingly.

Suggestion

In view of the above, it is advised to obtain appropriate clarification.

9. Rationalization of excise duty on premium diesel

It is an acknowledged fact that premium fuel reduces environmental impact by cleaner burning of the fuel and enhances the life of the engine, thereby improving the overall efficiency. Inspite of the fact that such offerings are there in the Indian market for more than a decade, the market for branded diesel is practically non-existent. The key reason for this is higher taxation on branded diesel thereby making the product too expensive for the diesel market. The excise duty on branded diesel is INR 2.36/Ltr higher as compared to regular diesel.

After incorporating the impact of state and local levies (sales tax/VAT, Entry Tax, LBT etc.) the difference in taxation between branded diesel and regular diesel is more than INR 3/Ltr. Hence, the higher excise duty on branded diesel makes the fuel commercially unviable for a highly price sensitive diesel market in India. This is very much evident from the fact that even after more than a decade of introduction of branded diesel the penetration of branded diesel is less than “0.01%” of the total diesel market in India.

Hence there is a need to bring the excise duty on branded diesel at par with nonbranded diesel urgently to promote an efficient fuel. The key benefits of encouraging the usage of branded diesel by reducing the excise duty differential when compared with regular diesel are:

1. Reduced environmental impact of vehicular emissions by cleaner/complete burning of fuels

2. If the Excise duty differential is reduced significantly even without bringing it completely at par with regular diesel, it will increase the government revenues by developing the market for branded diesel.

Suggestion

It is recommended to significantly reduce the excise duty differential between branded and regular diesel, bringing it close to or at par with excise duty on regular diesel. This will help create a market for an efficient branded fuel which will help reduce the environmental impact of vehicular emissions, and help improve the efficiency and performance of the vehicles.

10. Processing of Excise Duty refund claims

Currently where movement of bonded stock is not possible, duty paid stock is supplied to foreign going airlines and duty refund is claimed. This process takes inordinately long delay.

Suggestion

It is suggested that access should be given to online refund process for quick processing with online Real Time Gross Settlement (RTGS) refund.

General

1. **CENVAT credit on National Calamity Contingency Duty (NCCD).**

   Presently NCCD (National Calamity Contingency Duty) of Rs.50/MT is payable on the indigenous as well as on the imported crude. Even though the same is Cenvatable, it can be set off only against payment of NCCD, making the CENVAT credit virtually Nil both to the producer and consumer of crude. NCCD should be made Cenvatable against the duty on the finished petroleum products.

2. **Tapering of Royalty rates**

a. Keeping in view the proposed dismantling of Administered Pricing Mechanism (APM), a Committee headed by Sh J.M. Mauskar, Joint Secretary (Exploration) in the Ministry of Petroleum & Natural Gas (MoP&NG) was constituted in 2000 for evolution of a new scheme of royalty w.e.f. 1.4.1998. Based on the recommendations of the Mauskar Committee, the new royalty scheme effective from 01.04.1998 was circulated vide Resolution dated 17 Mar'03. Salient features of the Resolution dated 17 Mar'03 are as under:

(i) Royalty will be fixed on Ad valorem basis.

(ii) Royalty will be calculated on cum-royalty basis

(iii) **Effective from 01.04.2002, for onland areas, royalty will be paid @ 20% of the wellhead price till 2006-07. The convergence process would commence w.e.f. 2007-08 with tapering rates of royalty @ 1.5% each year so as to facilitate convergence with NELP royalty rate of 12.5% by 2011-12. For offshore areas, royalty will be paid @ 10% of the wellhead price**.

b. Subsequently, the scheme of royalty was issued by Government vide notification dated 16 Dec'04, wherein it was decided that the royalty on production from nomination blocks shall be levied @ 20% and 10% of well head price in respect of onland and offshore areas respectively.

c. The convergence process, which was envisaged from 2007-08 with tapering rate/s of royalty @ 1,5% each year so as to facilitate convergence with NELP royalty rate of 12.5% by 2011-12 did not happen and royalty on production from onland nominated blocks are still being paid @ 20% of well head price.

Suggestion

ONGC has been requesting MoP&NG to expedite the process of tapering and issue necessary notifications to this effect considering the fact that convergence process was to start from 2007-08.

However, the above decision relating to convergence of royalty rates for pre NELP and nomination blocks with NELP blocks was never notified and consequently the benefit of reduced rates which was intended to be passed to provide similar fiscal regime to nomination and pre NELP blocks remained unimplemented.

It is once again submitted to expedite the decision on tapering the rate of royalty so as to converge it with NELP rate of royalty to allow a level playing field under various regimes.

3. Financial incentives to promote IOR/EOR projects

Contribution of IOR/EOR projects in ONGC

Most of ONGC's existing producing fields are more than 35 years old and natural decline of the order of 7% - 8% in these fields due to various factors like reduced reservoir pressure, rise in water-cut etc. from the aging/ matured fields is an established world-wide phenomenon. ONGC has so far been able to successfully arrest production decline from matured fields by infusion of fresh technology and capital for field redevelopments and IOR/ EOR schemes. Incremental oil recovery is possible from our old and matured fields only by significant investments in the form of re-development projects. Such incremental barrels come at a significant cost and the cost of production for per unit of oil through re-development schemes specially in offshore has increased many folds.

Suggestion

In order to make investments in these schemes viable in depressed crude oil price scenario, we seek following fiscal incentives:

Reduced rate of royalty for IOR/ EOR: Para 1.(1) B.(ii) (e) of Royalty Notification dated 16.12.2004 provides that "Reduced rate of royalty, as may be notified by the Government from time to time, will be levied on production from fields under Enhanced Oil Recovery (EOR)/ Improved Oil Recovery (IOR)." The action in this regard has gained special significance and the reduced rates of royalty in view of depressed economics of oil to be produced from such fields. It is submitted that MoP&NG may consider notifying reduced rates of royalty in respect of these projects say 50% of normal applicable royalty rates.

Exemption from Cess: OID Cess is levied on crude oil from nominated blocks and Pre-NELP Blocks. It is pertinent to mention that OID Cess on crude oil from Pre-NELP discovered fields is payable at the rates specified in the respective PSCs i.e. at Rs. 900/MT. Moreover, OID Cess is not payable on crude oil produced under NELP/ Help and Marginal Field Policy. In view of above, MoP&NG is requested to exempt Cess on production from IOR/EOR to make them economically viable.

4. **Exemption of Excise Duty for compression of natural gas into Compressed Natural Gas (CNG) for use in Natural Gas Vehicles (NGVs)**

Compression of gas is considered as a 'Manufacturing of Goods' and results in levying of an Excise duty (@ 14.42%) on compression of gas into CNG for use in NGVs. It is worthwhile to note that the compression of natural gas for supplying to the vehicular segment entails change of mass density in order to increase the storability. Hence conversion of natural gas to compressed form is only for the purpose of transportation and should not be considered as manufacturing, thus excise duty should be exempted on CNG.

We have not come across any such instance in any other gas market where it attracts duties like Excise duty. Exemption of Excise duty will result in significant price differential in CNG and Diesel prices that in-turn would incentivize the use of gas as a vehicular fuel. This will also help the country to reduce on its diesel subsidy.

Suggestion

It is suggested that compression of natural gas into CNG should be exempted from Excise duty as there is no element of manufacturing and the objective is only to improve the storage of gas.

CUSTOMS DUTY

Upstream

1. **Exemption on import of High Value Goods/ Equipments for petroleum operation on re-export basis**

The upstream sector charter hires high value machineries such as Offshore Drilling Rigs, Vessels, and Equipment etc. for petroleum operations and on completion of operations such imported machineries are re-exported back.

Under pre-GST regime, the import of such high value machineries were exempted from whole of customs duty (i.e. BCD, CVD & SAD) under Sl. No. 357A of N/N 12/2012-Cus (as amended).

Under GST regime, the import of such machineries would attract IGST @5% under Sl. No. 404 as per N/N 50/2017-Cus.

Considering the high value of such imported offshore rigs (to the extent of Rs. 6,000 Crore), the levy of 5% IGST would increase the cost of drilling operations due to the following reasons:

The credit of IGST paid at the time of import would not be fully utilized;

The levy of IGST on import would result into liquidity issue.

Suggestion

The levy of 5% IGST under GST regime would increase the cost of drilling. Since the GST is payable in India on hire charges, it is requested to kindly exempt the levy of IGST on import of such high value machineries imported for petroleum operations as was available under pre-GST regime. This is similar to the exemption available to the air-lines.

Downstream

1. **Levy of Safeguard Duty on import of capital goods under Project Import Regulation**

   Projects of national importance approved by Govt of India involving huge capital outlays are being implemented by Oil Companies. In our case we have undertaken substantial expansion of our Kochi Refinery and there are further more projects in pipeline for future implementation. We have in liaison with Ministry of Finance have obtained concessional rate of customs duty on project imports under Project Import Regulation. The import of capital goods are effected in line with the procedures laid down under the Project Import Regulations. The items imported under the Project Import Regulation falls under Chapter 98 of the Customs Tariff. Whereas these items primarily falls under different Chapter heading owing to its basic classification. Safeguard duty has been imposed vide Notification on these items falling under the primary classification and no duty is imposed on items falling under Chapter 98 of the Customs Tariff. However, field formations are of the view that although these items are imported under Chapter 98, but since the primary classification is subject to safeguard duty, such duty shall be imposable on these items. This is resulting in unnecessary litigations and substantial increase in the cost of the projects.

   Suggestion

   We request exemption to be provided under Section 8(b) of the Customs Tariff Act for materials imported under Project Import Regulation falling under Chapter 98 of the Customs Tariff.

2. **Customs duty concession for laying of product and gas pipeline**

   In deregulated scenario, Oil companies are building large number of cross-country pipelines for reaching the products to consumer at a reduced cost. In order to build such facility, Government is requested to waive the applicable customs duty on all materials required for building cross-country pipeline meant for Product and Gas movement.

Suggestion

It is suggested that the customs duty on import of materials viz. pipes; valves; flanges; data communication system for laying of petroleum products and gas pipelines falling under the Customs Tariff headings 72, 73, 74, 75, 76, 78, 79 is exempt from payment of customs duty. The pipeline transportation is environment friendly with Nil pollution and is very cost effective.

3. **Exemption of Excise Duty for compression of natural gas into Compressed Natural Gas (CNG) for use in Natural Gas Vehicles (NGVs)**

Compression of gas is considered as a 'Manufacturing of Goods' and results in levying of an Excise duty (@ 14.42%) on compression of gas into CNG for use in NGVs. It is worthwhile to note that the compression of natural gas for supplying to the vehicular segment entails change of mass density in order to increase the storability. Hence conversion of natural gas to compressed form is only for the purpose of transportation and should not be considered as manufacturing, thus excise duty should be exempted on CNG.

We have not come across any such instance in any other gas market where it attracts duties like Excise duty. Exemption of Excise duty will result in significant price differential in CNG and Diesel prices that in-turn would incentivize the use of gas as a vehicular fuel. This will also help the country to reduce on its diesel subsidy.

Suggestion

It is suggested that compression of natural gas into CNG should be exempted from Excise duty as there is no element of manufacturing and the objective is only to improve the storage of gas.

4. **Zero customs duty for new Refineries/Refinery expansions, product and gas pipelines to be made nil.**

Zero customs duty should be introduced for the capital goods imported for the new refineries as was extended to RPL Refinery, instead of the current rate of duty of 21.5% (viz., 3% customs + 18.00% GST), so as to provide a level playing field to the new Refineries of the PSUs.

Suggestion

It is also suggested that the Customs duty on import of material viz. pipes, valves, flanges, data communication system for laying of petroleum products and gas pipelines is made nil.

5. **Rationalization of customs duty on import of petroleum products viz Motor Spirit (MS) and High Speed Diesel) HSD**

Budget 2015 implemented duty rationalization measures for central excise and customs duty for petroleum products viz. Motor Spirits and HSD. While the additional duty of excise and additional duty of customs (commonly known as "Road Cess") were revised upwards, simultaneously, basic excise duty rates on MS and HSD (both branded and unbranded) were reduced, thereby keeping neutralizing the overall impact of the rate change.

Besides, as a rationalization measure, one of the key amendments was that education cess and secondary and education cess leviable on excise duty had been fully exempted. Given this, education cess and secondary education cess as applicable to petroleum products, including MS and HSD, were also fully exempted. To compensate and adjust for this impact, additional duty of excise has been increased. However, as mentioned above, the overall impact on the aggregate effective excise duty remained unchanged as the additional duty was increased after exemption to cess.

As consequence of revisions in basic excise duty and additional duty of excise for MS and HSD, Countervailing Duty (CVD) and additional customs duty were also revised.

While the rate rationalization was done primarily for excise duty thereby fully exempting education cess and secondary and higher education cess, for the purpose of customs duty, education cess and secondary and higher education cess continue to apply on imports of petroleum products, that is, MS and HSD. Consequently, overall effective customs duty on import of petroleum products is higher as compared to effective duty of excise as applicable on indigenous procurement of such products.

Historically the government has always maintained parity and uniformity in both duty rates and duty structure between the Central Excise and Customs.

Impact:

In terms of additional duty impact, the effect has been that imports of MS & HSD have become expensive by approximately INR 0.54/litre for Diesel and by INR 0.67/Litre for Petrol, when compared to effective excise duty when procured indigenously. Also this additional impact is now dependent upon excise duty which the Government changes from time to time therefore creating an uncertainty about the effective landed cost of the product for an importer.

This change impacts the industry wherever imports of MS and HSD are involved and more so, where company is trading and will not be eligible for credits for these duties and hence, even marginal distortion has significant impact on the cost of imported product.

In the absence of rationalization, companies which are importing products are the ones who are most impacted. It does not impact those entities which are involved in indigenous production primarily affecting multinational companies operating in this field. In a market where the companies operating in fuel retail alone are already disadvantaged due to lack to access to indigenous products and basic customs duty on imports, this additional impact of cess is another barrier. Hence in the interest of a level playing field and fair competition, this anomaly should be addressed as a priority. This will help enable investment in and business growth of retail petroleum sector.

Suggestion

It is recommended that the customs duty on import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported. Suitable amendments may be made to fully exempt education cess and secondary and education cess leviable on customs duty to align the customs duty rate with excise duty.

Natural Gas

1. **Clarification on non Leviability of customs duty on LPG used for non-domestic purposes in locations storing both imported and indigenous LPG in common tankages as long as there is adequate quantity of indigenous LPG in the tanks.**

   With effect from 02/05/2005 Customs duty on import of LPG/Butane/ Propane for Domestic PDS purposes has been made 'Nil' vide Notification No. 37/2005 dtd. 02/05/2005. LPG is also produced by our own refineries. At port locations LPG indigenously produced as well as imported is stored in common storage tanks in commingled condition since irrespective of the source, the BIS specification of the product is same. Though LPG is primarily used only for domestic PDS purposes, some minor quantity of LPG is also required for Non domestic purposes. Differential GST is duly deposited for such use by our refineries. LPG plants are duty paid locations and there is no mandatory requirement of maintaining stock records as per FIFO basis for receipts and dispatches.

   Customs authorities however have initiated proceedings under the Customs Act on the ground that on the basis of FIFO system some portion of the Imported LPG is also being used for non-domestic purposes and the exemption extended for imports is not applicable, therefore appropriate Custom duty should also be paid for such use in spite of GST having been deposited.

   Appropriate clarification should be issued to confirm that since the locations storing LPG are duty paid locations storing imported as well as indigenous LPG in common tankages, there should be no requirement to pay any Customs duty for LPG used for non-domestic purposes as long as there is sufficient indigenous product available at the given time for such use on which appropriate GST is paid. A representation on this issue is already pending with the CBEC.

2. **Import duty benefit on LNG should be extended to all sectors apart from power sector, according the same status as crude petroleum**

   Import of LNG presently attracts Basic Customs Duty of 2.575 % ad valorem which adds to the cost of supply to end-users. Till 25 June 2011, this was the same rate, import of crude petroleum attracted until it was brought down to zero. Hence it is no longer at parity with crude.

LNG and Natural Gas (NG) imported for generation of power have been exempted from Customs Duty vide Notification No. 12/2012 dated 17.03.2012 (Serial Number 139).

However, this exemption is applicable only to the power sector and that too in case of imports for supply to a power generating company only. This exemption is not applicable to other sectors like fertilizer and petrochemicals, which results in additional costs for use of LNG and also currently leads to preferential treatment for imported crude, without justification i.e. cleaner fuel i.e. Natural Gas imports is discriminated with crude oil imports.

The benefits of using LNG are far-reaching than the revenue loss to the exchequer.

International LNG prices are at least 20-25% lower than the Crude Oil (or petroleum fuels) on heat equivalent basis and thus, reduces the cost of energy to end-consumer in addition to the Forex saving.

International Best Practices Many countries have exempted custom duty on import of natural gas, for example Argentina, Brazil, Mexico, USA and Norway. Moreover, there is no justification to have differential tax treatments for LNG and crude petroleum.

Suggestion

The import duty of LNG may be made at par with the import duty of crude petroleum, which is presently zero.

Moreover, it is suggested that the custom duty exemption to LNG/Natural Gas may be granted on imports made by any person boosting development of competitive gas markets in India and such should be extended beyond power sector to 'end-use' for other sectors as well, to ensure parity with imported crude.

General

1. **Customs duty exemption on initial setting up of IH2 plant**

   IH2® technology (Integrated Hydropyrolysis and Hydroconversion) is a catalytic thermochemical process which can convert a broad range of waste biomass to produce biofuels such as bio-gasoline, bio-diesel, bio-petrol, bio-jet, bio-char, etc. in an efficient, sustainable and self-sufficient manner.

   Setting up of IH2 plant/facility shall involve crores of capital requirement and sourcing certain equipment from outside India. Since setting up of this plant shall help in meeting the energy requirements of the country that too without polluting the environment, exemption should be provided from Customs duty on import of equipment required for setting up of IH2 plant.

   In the past also CBEC has granted such exemption from customs duty on initial setting up of a solar power plant.

   Suggestion

   It is suggested that exemption from Customs duty shall be granted to all items of machinery, instruments, appliances or components or auxiliary equipment required for setting up of IH2 project or facility.

CENTRAL SALES TAX

Natural Gas

1. **Amendment in CST Act to consider issue of Form C for use of Natural Gas in manufacture of goods covered under GST.**

The Central Sales Tax Act, 1956 (CST Act) has further been amended vide Taxation Laws(Amendment) Act, 2017 w.e.f. 01st July 2017 and the definition of 'goods' have amended to mean only the following goods namely:

a. petroleum crude;
b. high speed diesel;
c. motor spirit (commonly known as petrol);
d. natural gas;
e. aviation turbine fuel; and
f. alcoholic liquor for human consumption

Section 8 (3) of of CST Act provides certain inter-state transactions for which Form C can be issued which includes purchase of 'goods' intended for re-sale / for use in the manufacture or processing of 'goods' for sale

In view of amendment in the definition of 'goods', difficulty is being faced by manufacturers / traders of 'goods' other than specified above for issuance of Form C as other goods are outside the ambit of definition of 'goods' under CST Act. Various state governments have also issued circulars on similar lines. As a result, Natural Gas being sold on CST basis to vital sectors like fertilizer, petrochemical , steel etc. has become costly due to non –issuance of Form C by state governments to the manufacturers of such other goods other than for use in power sector.

Suggestion

It is therefore suggested that a suitable clarification may be issues under CST Act to clarify that the word 'goods' used in section 8(3) of CST Act includes 'goods' as defined under the CST Act as well as GST Act and therefore Form C can also be issued for purchase of the 'goods' defined under the CST Act for use in manufacture or processing of any other goods for sale.

2. **Amendment in CST Act to consider inter-state Stock Transfer of Natural Gas on deemed movement basis in line with amendment in Section 3.**

As per Section 6A of the Central Sales Tax Act 1956, in case of inter-state stock transfer of goods, the burden of proving movement of goods is on the dealer.

Section 6A of the Central Sales Tax Act 1956 provides that in case any dealer claims that he is not liable to pay tax under this Act on the ground that the movement of such goods from one state to another was occasioned by reason of transfer of goods to any other place of his business (or to his agent or principal) and not sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer.

It may be observed that section 3 of CST Act, 1956 was amended by the Budget 2016 by inserting the following explanation-3 to allow deemed movement of Gas for inter-state sale:

"Where the gas sold or purchased and transported through a common carrier pipeline or any other common transport or distribution system becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one State to another."

It is understood that aforesaid amendment was brought considering the very nature of the gas as a product which becomes co-mingled and fungible in the common pipeline transportation system. Natural Gas available from different sources is transported through inter connected cross country pipeline and it is inevitably and invariably comingled and/or swapped for efficient and equitable distribution to various consumers in the different States.

As per section 6A of CST Act, a dealer has to establish actual physical movement of goods from one State to another in order to establish it as inter- state stock transfer of those goods. However, in case of Natural Gas, it is difficult to trace the molecules being transferred from one State to another as it commingles with other gas in the pipeline system. Further, in case of swapping, Gas is introduced in the pipeline distribution system in one State and taken out from the system in another State irrespective of actual physical movement and it is therefore not possible to claim a transaction as stock transfer transaction and may require multiple transactions of sale and purchase having tax implications in both States.

When the total quantity of Natural Gas is comingled, it will not be possible to segregate and treat sale & stock transfer differently. In fact, the Quantity for stock transfer has to be a balancing figure only after considering sale on deemed movement basis. Thus, it may be clear from the above that although it may not be possible to demonstrate physical movement for stock transfer, the treatment for stock transfer needs to be aligned with inter-state sale due to balancing requirement.

Thus, the aforesaid amendment brought in the Section 3 of the Central Sales Tax Act 1956 by the Union Budget 2016 can-not be effective in meeting its objective till a similar amendment is brought in Section 6A of the CST Act.

Suggestion

With a view to develop cost effective and tax efficient mechanism for Gas swapping as well as to resolve the issues emerging from comingling of gas, it is requested that an amendment in Section 6A of the Central Sales Tax Act, 1956 may be introduced to effectively implement the amendment brought in Section 3 of the CST Act vide Union Budget 2016.

A suggested draft of the proposed amendment is given below:

"Explanation - Where the gas is transferred by a dealer to any other place of business and is transported through a common carrier pipeline or any other common transport or distribution system wherein it becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such transfer of gas by that dealer shall be deemed to be a movement of goods from one State to another."

<u>Alternatively</u>

"The explanation 3 to section 3 will mutatis mutandis apply to inter-state transfer of Gas based on deemed movement."

3. **Alternatively - (1) lower rates of VAT/CST if supply is for specified uses (i.e. vital/ important uses) of Natural Gas**

   The Hon'ble Finance Minister has already written to all the States for lowering VAT rates on natural gases for various specified uses of natural gas. This can help the final consumers in terms of cost of natural gas.

   Suggestion

   A scheme similar to composition scheme can be introduced for suppliers of natural gas since the buyers of natural gas would not be eligible for credit anyway (since their output would be under GST).

   Further, inter-state purchases of natural gas by manufacturers and power producers should be allowed to happen upon issuance of Form C at a concessional CST rate of 2% – currently, contradictory circulars exist in various States in this regard; an uniform position ought to be clarified allowing issuance of Form c in such cases.

DIRECT TAXES

INCOME TAX

Upstream

1. The term 'mineral oil' is understood to include Crude Oil and Natural Gas and the same need clarification to avail the tax holiday under section 80 IB (9) of the Act.

a. The definition of 'mineral oil' as provided under various statutes governing petroleum sectors i.e. Oilfields (Regulation and Development) Act, Oil Industry (Development) Act includes petroleum and natural gas. However, section 80IB (9) of the Act does not provide any definition of the term 'mineral oil', thus meaning of the same has to be imported from other provisions of the Income Tax Act, which provides that word mineral oil includes natural gas also or otherwise the definition given under the statutes governing petroleum sectors.

b. Clause 5(11) of the Petroleum Tax Guide, 1999 states that tax holiday will be available on production of 'Petroleum' in India. Further, clause 3(j) defines 'Petroleum' means crude oil and natural gas.

c. NELP Notice Inviting Offers (NIOs) (prior to NELP VII) do provide for 7 year tax holiday both on crude oil and natural gas. Further, CBM NIOs do provide for 7 year tax holiday and CBM is nothing but natural gas.

d. However, in the recent past the subject matter is under different interpretation which may deviate from the correct legal and intended position.

Suggestion

We recommend that in order to clear the doubt and remove ambiguity, It should be clarified that the term 'mineral oil' includes petroleum and natural gas for the purpose of section 80IB (9).

Recently, Gujarat High Court in the case of Niko Resources has held that tax holiday will be available on production of Gas. Government should accept the decision and not appeal against the same to resolve the litigation.

2. **Concept of 'Undertaking'. *Explanation to sub-section (9) of section 80-IB***

a. As per cited explanation, for the purpose of claiming deduction under this sub-section, all blocks licensed under a single contract/PSC shall be treated as a single 'undertaking' that too with retrospective effect, i.e. 1.4.2000. This trend of government policy in terms of imposing taxes and taking away the existing benefit is certainly not in the right spirit.

b. After this amendment, substantial fiscal benefits have been taken away, which were available otherwise. For the purposes of claiming tax holiday "wells/cluster of wells/field" rather than "contract area/block" should be regarded as "undertaking" for the following reasons:

(i) The wells or cluster of wells can exist on their own as viable independent units;

(ii) Under the current mechanism of PSCs, each field development plan is separately considered as the basis for development;

(iii) There can be one well "Field" which can exist on its own in a field

Suggestion

We recommend that for the purposes of claiming tax holiday "wells/cluster of wells/field" should be regarded as "undertaking" and not the entire "contract area/block". In any case, the insertion of the cited explanation should not be with retrospective effect and suitable amendment should be made.

3. **Site Restoration Scheme (s. 33ABA)**

Due to environmental concerns, site restoration/ abandonment is increasingly attracting the attention of governments worldwide and ceiling of 20% of the profits that can be deposited in the Site Restoration Fund Scheme may not be sufficient .

Suggestion

This ceiling of 20% should either be removed or increased to 50%.

4. Phase out plan for Tax holiday under section 80-IB

a. The national security of a country is inextricably linked to its energy security. There is a significant gap between the demand for, and production of, hydrocarbons in India. The need to bridge this gap cannot, therefore, be overemphasized. That having been said, it is also a fact that exploration for hydrocarbons is an inherently risky business with high input costs without any assurance of a commensurate return. Hence, to encourage investments in this critical sector of the Indian industry, it is necessary to incentivize investments therein. Fortunately, the need to do so was recognized in the following special provisions contained in the Income-tax Act, 1961-

(i) Section 42, which provides for the deduction of expenses incurred in the prospecting for, extraction and production of mineral oils in accordance with the agreement entered into by the assesse with the Central Government (these provisions continue to be largely un-amended and explorers who have successfully bid for blocks under the New Exploration Licensing Policy in force since 1999 are allowed deduction for their revenue and capital expenses in the year of incurrence in accordance with the terms contained in the Production Sharing Contracts (PSCs) executed by them with the Government); and

(ii) Section 80-IB, which provides a seven year tax holiday for profits derived by an undertaking from the production of mineral oils in India. These provisions have witnessed a significant whittling down over the last six years.

b. The rationale for allowing a tax holiday to the profits derived by an undertaking from production of hydrocarbons can be understood from the following statement contained in the memorandum to Finance (No. 2) Bill, 1998:-

"In recognition of the need to boost the production of Petroleum and Natural Gas, it is proposed to give tax incentives. The business of

enterprises engaged in extraction, production and refinement of Petroleum & Natural Gas is of a unique nature and needs special tax provisions.…"

c. India continues to be significantly hydrocarbon deficient and, therefore, the need to incentivize the upstream hydrocarbon sector persists. However, the Finance Act, 2011, has inserted a Proviso after clause (ii) of sub-section (9) of section 80-IB to the effect that tax holiday in respect of the production from blocks which are awarded under contracts licensed after 31-03-2011 would not be allowable. Thus, tax holiday under section 80-IB (9) was made unavailable if hydrocarbon production resulted from blocks which are awarded under contracts licensed after 31-03-2011. Further, in a bid to phase out tax holiday under section 80-IB (9) completely, the Finance Act, 2016, has introduced sun set clauses in the provisions of section 80-IB (9) which provide that no tax holiday would be available if commercial production is started after 31-03-2017. This would apply even to production from blocks which are awarded under contracts licensed till 31-03-2011.

d. The commencement of commercial production of oil and gas is the culmination of a long series of exploratory and development activities which span over several years. Such exploratory and development activities entail investment of huge amounts of funds. An entity which has already committed huge funds for the exploration and development of an oil and gas block but is not able to commence commercial production by 31.03.2017 due to geological, regulatory, or operational factors would be hugely disadvantaged vis-à-vis another entity which is able to commence commercial production by 31.03.2017 owing to different geological, regulatory, or operational factors

Suggestion

The cut-off criteria for the phasing out of tax holiday u/s. 80-IB (9) may be kept as the intimation of discovery on or before 31.03.2017 rather than the start of commercial production by that date.

5. **Amendment/Removal of Anomaly in Section 42 of the Income-tax Act, 1961**

Section 42(1)(a) of the Income-tax Act, 1961, provides for deduction of "expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to beginning of commercial production" in computing the profits and gains of any business consisting of the prospecting for or extraction or production of mineral oils. The deduction for infructuous or abortive exploration expenses is not allowed till the surrender of the area, though the same are charged off in the books of account.

Deduction in respect of well found and declared dry during a particular year should justifiably be allowed without the requirement of surrender of the PEL/ML area to smoothen appropriate phasing of expenditure by the assessee and revenue collections for the Government and to bring uniformity in tax treatment. However, the word "surrendered" in the above clause precludes allowability of deduction for expenditure incurred in an area which cannot be surrendered for any practical constraints.

Suggestion

Clause (a) of sub-section (1) of section 42 of the Income-tax Act, 1961 reads as-

"to expenditure by way of infructuous or abortive expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee".

The aforesaid clause may be replaced by the following proposed clause-

"to expenditure by way of infructuous or abortive expenses in respect of any area prior to the beginning of commercial production by the assessee."

However, even if the preceding suggestion is not agreed to, then, in order to align this provision applicable exclusively to the upstream hydrocarbon sector with industry terminology and to avoid unnecessary litigation, it is suggested that the word "surrendered" may be replaced with the term "relinquished or cancelled in full or in part, as the case may be" in line with the terminology used in Petroleum & Natural Gas Rules to denote the act of giving up of an area by a licensee. It is pertinent that the word "surrendered" is not used anywhere in the Petroleum & Natural Gas Rules and, therefore, its usage is susceptible to differing interpretation by different persons.

6. **Exempting Government Companies from Domestic Transfer Pricing Regulations**

Transfer Pricing Regulations have been extended to specified domestic transactions from financial year 2012-13. Transfer Pricing Provisions are tax avoidance measures intended to prevent shifting of profits from high tax paying entities/jurisdictions to nil/low tax paying entities/jurisdictions.

Government companies are another arm of the government and the profits of these companies are for the benefit of the public at large and not for any private persons. Government companies are also subject to various controls including proprietary audits by the Comptroller and Auditor General of India. There can, therefore, be neither any incentive for, nor any likelihood of, any Government company shifting profits to another entity. Compliance with domestic transfer pricing regulations requires Government companies to maintain voluminous documentation and incur substantial time and money in compliance without any significant revenue gain for the Government.

Suggestion

Government companies may be exempted from Domestic Transfer Pricing Regulations by amending section 92BA of the Income-tax Act, 1961, to exclude transactions executed by Government companies from the definition of specified domestic transactions.

7. **Supreme Court decision in ONGC on section 44 BB**

There has been a considerable legal debate on applicability of the section 44BB of the ITA with respect to technical services provided in relation to E&P activities. This issue was recently analysed and discussed in detail by the Supreme Court (SC) in the case of Oil and Natural Gas Corporation

Limited v/s. CIT in Civil Appeal No. 731 of 2007 (SC) and has been held in favour of the service providers.

Suggestion

In view of the above, it is recommended that CBDT should consider issuing directions that the ratio decidendi of the aforementioned ruling of Supreme Court must be adhered to by the field officers in all cases where the subject issues are involved.

8. **Ceiling on profits for Site Restoration Fund (SRF) contribution**

Abandonment and site restoration of O&G installations are significant part of the project life cycle in the E&P sector. This phase involves huge capital outlay and has considerable environmental implications.

Section 33 ABA of the ITA provides for tax deduction on contribution to the Site Restoration Fund (SRF) subject to a ceiling of 20% of the profits from the business. This ceiling could result in a situation where the assesse is unable to claim full deduction for the amount deposited in the SRF in the absence of sufficient profits.

Suggestion

It is, therefore, recommended that the deduction should be based on full contribution without any ceiling.

<u>Downstream</u>

1. **Investment Allowance as per Section 32AC of Income Tax Act, 1962**

The Investment Allowance under Section 32AC of the Income Tax Act, 1961 (which promotes growth in the area of manufacture) was available for investments made in plant and machinery from 01/04/2015 to 31/03/2017. However to promote Make in India initiative the deduction should be extended upto 31.03.2019.

BPCL is implementing a major capacity expansion project at its Kochi Refinery in Kerala State from present 9.5 MMTPA to 15 MMTPA. The Propylene Derivatives Petrochemical Project (PDPP) under this expansion plan envisages production of 47 TMT of Acrylic acid, Acrylates viz. 180 TMT of Butyl Acrylate, 10 TMT of 2 Ethyl Hexyl Acrylate and Oxo Alcohols viz. 38 TMT of Normal Butanol, 47 TMT of 2 Ethyl Hexanol and 7 TMT of Iso Butanol. The identified products are predominantly being imported and hence this project promotes the "Make in India" initiative under the Petrochemicals category of the Chemicals Sector as notified by Government of India. The estimated cost of the project is approx. Rs. 4600 crores.

However, considering the high capital investment for this pioneering petrochemical venture of BPCL, it would be difficult to remain competitive unless adequate support is received from Central Government by tax deduction in form of Investment allowance.

Suggestion

The investment Allowance may please be extended up to 31.03.2019 i.e. the clause of acquiring and installation may be made applicable for the period 01.04.2017 to 31.03.2019, at least for large projects and substantial modification in existing plant to ensure that large size projects become eligible to avail the deduction. Further it should be clarified that installation can be in subsequent years.

2. **100% Depreciation allowance for Projects undertaken for upgradation of fuel quality u/s 32**

Under the Auto Fuel policy, the Govt. has directed oil companies to supply High Speed Diesel with minimum prescribed Sulphur content. Now as per proposed Auto Fuel Policy of Government, Oil companies are required to provide the HSD with maximum Sulphur content of 0.005% (BS-IV) with effect from 01.04.2017 throughout the country.

Huge capital investment is required to be undertaken so that they can comply with the Directives of the Govt. Such reduction of Sulphur content helps to reduce the Air Pollution. As per Section 32 of the Income Tax Act, 1961 the assessee who are engaged in the Business or Profession are allowed the Depreciation Allowance in respect of assets used in Business or Profession. Rule 5 of the Income Tax Rules along with Appendix-1 provides for the rate of deprecation on various categories of assets. As per this rule, 100% depreciation allowance is admissible in respect of air/ water pollution control equipments.

Government in a move to fight pollution is going to implement BS VI norms by 1st April, 2020 in order to comply with these norms huge outlay of more Rs. 5000 crore is estimated.

Suggestion

Upgradation of Refinery to help reduce the Air Pollution by limiting the Sulphur content from fuel, the expenditure incurred on this should be made eligible for 100% Depreciation under Section 32.

3. **200% Weighted tax deduction in respect of in-house R&D Centre u/s 35 (2AB)**

Finance Act, 2016 has amended section 35(2AB) so as to reduce the weighted deduction to 150% w.e.f. FY 2017-18 and 100% w.e.f. FY 2020-21. However weighted deduction of 200% should be allowed to boost corporate for increase in Research and development in India. This will also help in achieving Make in India Program by providing incentive for promoting innovation. This would also be in line with the government policy of encouraging innovation and R&D.

We shall be incurring substantial expenditure on R&D in the current year which is going to increase further in future years on account of undertaking of extensive research on Non-Renewable Energy resources and Biofuels.

Suggestion

In order to encourage research, it is recommended to extend the weighted deduction of 200%.

4. **Amendment in Section 35AD**

Under the existing provisions of section 35AD of the Income-tax Act w.e.f. 01.04.2010, investment-linked tax incentive is provided by way of allowing 100% deduction in respect of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the “specified business”. The ‘specified business’ include the business of laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. The incentive is available if the project of cross country pipeline is approved by Petroleum & Natural

Gas Regulatory Board and is being operated on common carrier principle. The crude oil pipeline dedicated for the Refineries and also dedicated product and gas pipelines for customer are inadvertently getting excluded. Further as per sec 73 the carry forward and setoff of loss from such specified business can be set off against the same business.

Suggestion

It is suggested that the approval of PNGRB for the common carrier principle may please be waived off. Further these pipelines are capital intensive projects and the revenue generation for break-even from this project will require substantial time. Therefore it is also requested to remove the condition imposed in Section 73 for carry forward and setoff of losses from specified business.

5. **Deduction u/s.80-IA(4) of the Act for oil storage units and LPG bottling plants**

The International Energy Agency (IEA) predicts that by 2020, India will be the largest oil importer, increasing its vulnerability to threats of physical supply disruptions and to large price fluctuations. A strategic oil inventory is imperative for energy security given this scenario.

Suggestion

Thus oil storage and LPG bottling plant facilities in India should get the infrastructure status and accordingly, be granted the exemption u/s.80-IA(4) of the Act. Section 80-IA(4) of the Act grants exemptions to enterprises carrying on business of developing or operating and maintaining, or developing, operating and maintaining any infrastructure facilities (e.g. roads, highways, water, ports etc).

a. **Oil Storage**

Granting infrastructure status would help enterprises creating oil storage facilities to enjoy the tax holiday for 10 years out of 15 years window. The average ticket size for such facilities would range from INR 2000 crs to INR 3000 crs, resulting into an approx taxable profit of INR 200-300 crs p.a. leading to tax savings of INR 68-102 crs under normal provisions. However, such enterprises would continue to pay tax under MAT regime i.e. INR 42-63 crs. Effectively, such enterprises could benefit by approx. INR 26-39 cr p.a. per project.

b. LPG Bottling Plant

As far as LPG bottling facility is concerned, currently all the Oil Marketing Companies (OMCs) put together the approx. capacity is 15 Million Metric tonnes p.a. (188 bottling plants). By the year 2018-19, the incremental capacity is pegged at 8.51 Million Metric Tonnes p.a. Thus at an average ticket size of INR 100 cr per facility (each facility of 60,000 Metric Tonnes), the incremental investments over next 2-3 years is pegged at INR 14,000 crs. Considering the profit margin of approx. 15% the overall profits would be INR 2100 crs to INR 2500 crs resulting into a tax saving of INR 273 crs (Tax under Normal Provisions INR 714 crs less Tax under MAT INR 441 crs).

Considering the fact that land acquisition is a big hurdle faced by OMCs, commercially it is economically feasible for the OMCs to outsource these projects to Oil/LPG Storage companies. With the Government's vision to create 10crore new cooking gas connections over next 3 years and oil ministry's directions to OMCS to prepare a project plan with the private players, it would be imperative for the Governments to grant the infrastructure status to LPG bottling plant u/s.80-IA(4) of the Act.

6. **Income Tax benefits in respect of providing higher rate of depreciation to renewal energy devices**

   Currently the Income-tax depreciation rates for the specified renewable energy devices under New Appendix I read with Rule 5 were brought down to 40% by by the Income-tax (Twenty Ninth Amendment) Rules, 2016, w.e.f. 1-4-2017. It is proposed to reinstate the Income-tax depreciation rates back to 80%-100% based on which any expenditure on IH2 plant would be eligible for an accelerated depreciation.

7. **Income tax benefits in respect of inclusion of process of conversion of waste in to fuels as "Infrastructure facility" and eligible for required tax benefits under Section 80-IA of the income-tax Act**

   The term "Infrastructure facility" should be amended to include specifically the activity of conversion of waste in to fuels done by the IH2 plant and thereby extending the facility of eligible profit deduction under Section 80-IA of the Income-tax Act and extending the date of sun-set clause in order to be eligible to claim such benefits.

8. Deduction under section 80IB (9) (iii) for undertaking engaged in refining of mineral oil

100% deduction under section 80 IB(9) (iii) was available for seven years to an undertaking engaged in refining of mineral oil and begins such refining on or before the 31st day of March, 2012. The said deduction was not available for substantial expansion of the existing capacity of the refinery.

Oil Refineries requires huge capital outlay for its set up/expansion and with very low return on its operation, makes the investment in oil refining business less viable. Discontinuation of the deduction would further discourage the industry for setting up new refinery or expanding its capacity.

Prime Minister's vision of 'Team India' aims to make India the manufacturing hub. Continuation of the said deduction at least till the year 2022 (i.e. the year of Amrut Mahotsav, the 75th year, of India's independence) and encouraging the new set up/expansion of refinery, will be contributory to Prime Minister's vision of 'Team India' to make India the manufacturing hub and give a strong push to energy growth of the country.

Therefore, the said deduction should be continued and the period of deduction should be increased from 7 (seven) years to 10 (ten) years; moreover, deduction should also be made available for substantial expansion of the existing capacity of the refinery.

The 'Team India' vision also envisages bringing North Eastern regions at par with the rest of the country. Hence, to promote development in the region period of deduction should be increased from 7 years to 15 years in the North Eastern Region, which will encourage the set up of the new industry/expansion of the existing capacity in the region.

Suggestion

a. Removal of the sunset date and continuation of the deduction till the year 2022 (i.e. the year of Amrut Mahotsav, the 75th year, of India's independence).
b. Deduction should be made available for substantial expansion of the refinery.

c. Period of deduction to be increased from 7 (seven) years to 10 (ten) years.
d. Period of deduction in North Eastern Region to be increased from 7 (seven) years to 15 (fifteen) years.

Natural Gas

1. **Amendment in section 73A and 72A of the Income Tax Act for set off and carry forward of the loss on account of deduction claimed u/s 35AD for growth of cross country Gas pipeline network and building the National Gas Grid (NGG)**

Under section 35AD of Income Tax Act, 100% deduction in respect of capital expenditure incurred prior to commencement of operation of the specified business to the assesses engaged in laying & operating a cross-country Natural Gas/Crude/Petroleum pipeline network for distribution is allowed. The following restrictions in section 73A and 72A are also causing problem for Natural Gas pipeline industry and needs to be addressed:

a. Section 70 provides that in case of loss under any head of income (other than head of Capital gain), assesses are entitled to set off such loss from any other source of income under the same head. Therefore loss from one business can be set off from profits of other businesses. However section 73A provides that loss computed under sec 35AD will be set off only against profits & gains of Specified Business (in our case business of laying and operating a cross-country natural gas pipeline laid after 01.04.2007). This restricts the claim for adjustment of 35AD loss against the profits of other pipelines laid prior to 1st April 2007 and other businesses of the company, which is allowed otherwise in all other cases. This discrimination needs to be removed and set off of loss computed under section 35AD may be allowed against profits of any other business carried on by the assesse as provided under section 70 of the Act.
b. Section 72A needs to be amended suitably so that in case of amalgamation or demerger of a company, accumulated losses in specified business (u/s 35AD) of amalgamating company or demerged company shall be allowed to be carried forward and set off in the hands of the

resulting company where such loss of specified business (u/s 35AD) is directly related to the undertakings transferred to the resulting new company.

Suggestion

It is suggested that Set off of loss computed under section 35AD may be allowed against profits of any other business carried on by the assesse by suitably amending section 73A of the Income Tax Act in line with the provision under section 70 of the Act.

Section 72A needs to be amended so that carried forward loss of business of laying and operating a cross country natural gas pipeline network. (u/s 35AD) of a demerged company or amalgamating company is allowed to be carried forward and set off in the hands of the resulting company in case of demerger or amalgamation.

General

1. **Exemption from MAT**

   The above referred incentive of granting the 7-year tax holiday is virtually nullified due to MAT provisions. The Oil and Gas sector companies normally earn higher book profits in the initial years however even during the tax holiday period companies are required to pay MAT @ 18.5% on book profits once commercial production begins.

   Suggestion

   Oil exploration and production companies should be exempted from MAT to promote mineral oil exploration and production sector.

2. **Grant of Infrastructure status to E&P Sector**

   Grant Infrastructure status to E&P sector to avail the benefits available to other Infrastructure projects (eg. take-out finance through ECB, relaxed provisioning norms for infrastructure lending, eligibility for viability Gap Funding, access to raise funds through Infrastructure Debt fund/tax free infrastructure bond).

3. **Reduction in Corporate Tax Rate in Finance Act, 2018**

In Budget 2015 Honorable Finance Minister proposed a phased reduction in corporate tax rate along with phased elimination of exemptions. In Budget 2016 a plan of phasing out exemptions was announced; however Corporate tax rate was lowered only for new manufacturing companies and relatively small enterprises.

Phasing out exemptions include accelerated depreciation being limited to 40% from 01.04.2017 which will be impacting the corporate profitability.

Impact of proposed change will be deferment of tax depreciation to the tune of Rs.717 crores approx. which will result in excess tax outflow of Rs.248 crores during FY 2017-18.

Suggestion

It is recommended to reduce the corporate tax rate from existing 30% to 28%.

4. **Disallowance of expenditure incurred in relation to exempt income u/s 14A**

As per provisions of Sec. 14A of the Act, the expenditure which is incurred in respect of exempt income shall not be allowed while calculating the Income of the assessee. Rule 8D (Inserted with effect from 24.03.2008) as amended by Finance Act 2016 provides for the method of calculating the amount of expenditure incurred in case of exempt income. Disallowance u/s 14A read with Rule 8D is aggregate of the following amounts:

a. Expenditure directly attributable to exempt income.
b. 1% of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income.

Even though the investments made in assets generating exempt income are out of Own funds of the Company, the Income Tax Dept. is not accepting the fact and have made heavy additions under this Section for the years where assessment has been completed.

Estimated disallowance for F.Y. 17-18 will be Rs. 93.17 crores on dividend income which amounts to double taxation.

Suggestion

Section 14A may be amended to provide that if the investments in assets which yield tax free income are made out of own funds such as share capital, free reserves etc. then the addition under this Section should not be made.

Further, without prejudice to above even if rule 8D is applicable, there should be an upper limit based on certain percentage of exempt income and not the total expenditure claimed by Assessee.

5. **Treatment of gain or loss on account of Foreign exchange fluctuation on foreign currency loan for import of asset u/s 43A**

   Sec 43 A allows actual foreign exchange gain or loss on foreign loans taken for imported assets to be adjusted to the block of assets, However the act is silent on treatment on indigenous asset acquired out of foreign Loans which is resulting in uncertainty on treatment to be given on such foreign exchange losses.

   Suggestion

   It is suggested that clarification be incorporated that section 43A is applicable irrespective of the fact whether indigenous asset are acquired or imported assets are acquired from foreign loans.

6. **Amendment in Section 80-IA**

   Deduction u/s 80IA in relation to power generating plants is available only if the undertaking begins to generate power on or before 31st March, 2017. To ensure India becomes a Power Surplus country by 2019, above deduction should be provide to promote generation of power from renewable resources such as Solar Power Plant or Wind Mills.

   Suggestion

   It is suggested to extend sun-set clause to 31st March, 2019.

7. **Depreciation on Energy efficient LED Lights u/s 32**

   With the government objective of reducing energy consumption by increasing use of LED Lights the depreciation schedule should also include LED Lights under energy efficient equipment's to be eligible for accelerated depreciation.

   Suggestion

   It is suggested to include LED lights under energy efficient equipment's category.

8. **Perquisite tax on housing accommodation provided to employees of CPSE'S under rule 3(1)**

   The valuation of perquisite on rent free accommodation is currently divided in to two categories:

a. **Central and state government employees**: Valuation is equal to license fee charged for such accommodation as reduced by rent actually paid by employee.

b. **Other employees (including employees of PSU's /PSEs)** on company owned/ leased accommodation is based on three slabs 15%/10% and 7.5% effective from 01.04.2006 by Finance Act,2007 based on the population of the location, as per census of 2001. The discrimination between employees of Central/ State Government and those of CPSEs like BPCL with regard to Housing Perquisite Tax, has led to widespread discontent amongst employees of CPEs as deduction of Housing Perquisite Tax based on valuation of 15%, 10%, 7.5% (depending upon population of cities) of annual salary has eroded the income of employees substantially, more so, since for the purpose of annual salary, various components like Pay, Allowances, Bonus or any monetary payment by whatever name called are taken into account.

   The gap between the earnings of CPSE employees occupying company accommodation and those on HRA is widening. Besides, the heavy incidence of Housing Perquisite Tax has been a long standing grievance of employees in CPEs who are occupying company accommodation.

   Suggestion

   We recommend removing the distinction between employees of Central / State Government and CPSEs in the matter of Housing Perquisite Tax and providing for the same type of treatment to both these category of employees.

9. **Stepping up the exemption on allowances u/s 10(14)**

   As per current tax laws, children education allowance, hostel allowance are tax exempt up to a nominal amount of Rs. 100, Rs. 300 per month respectively. These limits have not changed in a decade and it's time that these are revisited as expenses towards the same have increased drastically.

Suggestion

The new limits can be set at Rs. 1,000 for children education, Rs. 2,000 for hostel allowance.

10. Raising the reimbursement limit for medical expenses u/s 17(2)

Salaried individuals are currently entitled to a tax exemption of Rs. 15,000 on medical reimbursement.

Suggestion

In view of the spiraling medical costs, increasing this limit to Rs. 50,000 u/s 17(2) would provide some respite.

11. Overall limit for Deduction under-Sec-80CCE

An increase in Section 80CCE to Rs. 300,000/- would definitely help in mobilization of savings and forced investments in various income generating options.

Suggestion

It is recommended to increase the limit to Rs.300,000/- u/s 80CCE.

12. Eligibility criteria for Deduction u/s 80EE

One of the condition for eligibility of Deduction u/s 80EE is that loan should be sanctioned between 1st April, 2016 and 31st March, 2017. This eligibility period should be extended to ensure Housing for All by 2022 scheme is successful.

Suggestion

It is recommended to also provide deduction under this section for loans sanctioned even after 31st March, 2017.

13. Corporate Social Responsibility Expenditure

Corporate social responsibility expenditures have become part of business operations a company, particularly in case of PSU. Further New Companies Act 2013 also provides for mandatory CSR expenses to the extent of 2% of average Net profit of a company in last 3 preceding year. In order to promote development of the country, CSR expenses need to be promoted. Under CSR various development programmes like development of schools for poor children, roads & bridges in rural areas, financial assistance to NGOs engaged in helping poor by providing employment are carried out.

Suggestion

In view of mandatory nature of CSR expenses under new Companies Act, 2013, it is suggested to insert an amendment under Income Tax Act allowing deduction of CSR expenditure. Some of the companies are spending even more than the mandatory limit of 2%, to encourage the application of CSR in letter & spirit, expenditure incurred should be allowed under business expenditure.

14. Amendment in provisions relating to Income Deemed to Accrue or Arise in India

It is provided under Sec 9(1) (v) ,(vi) & (vii) that income of a non-resident shall be deemed to accrue or arise in India and shall be included in the total income of the non-resident, whether or not (i) the non-resident has a residence or place of business or business connection in India; or (ii) the non-resident has rendered services in India.

As a result of above provision, if a service is utilized in India rendered by a Nonresident, he will be taxable in India whether or not he has permanent establishment in India or whether or not he has actually rendered services in India.

In recent years, incidence of tax on both services and goods are kept at par. Goods imported from outside India for use In India are not subject to Income Tax in India. Similarly services generated outside India should not be taxable in India just because the service recipient is a resident of India.

Further ,the above provision has increased the cost of procurement of services from Non residents located outside India as Indian tax costs are built in the cost of services.

Suggestion

It is suggested that nonresident should be taxable in India only if he has a permanent establishment in India and rendered services in India.

15. Disallowance of expenditure relatable to exempt income

Section 14A of the Income-tax Act, 1961 (Act) provides for disallowance of expenditure incurred in relation to earning of exempt income. Where the Tax Officer is not satisfied with the taxpayer’s claim with respect to determination of amount liable for disallowance under section 14A, Rule

8D of the Income-tax Rules, 1962 (Rules) provides for the mechanism to determine the quantum of such disallowance.

The Central Board of Direct Taxes (CBDT) vide notification no. 43/2016 dated 2 June, 2016, has amended Rule 8D. The new Rule 8D came into effect from the date of its notification in Official Gazette. Sub-Rule 2, which prescribes method of determining the expenditure in relation to exempt income has been amended and disallowance on presumptive basis has been enhanced to 1% from 0.5% of the annual average of the monthly averages of value of investments yielding exempt income [Rule 8D(2)(ii)].

Suggestion

In case of Dividend income, disallowance of 1% of the value of investment on presumptive basis is too high in comparison to the actual expenditure incurred, as the investments are shown in books at market value of the investment and dividend is earned on face value of shares. Accordingly, disallowance should be restored to 0.5 % annual average of cost of investment.

16. **In line with the tax rate of MSME of 25%, and overall intent to reduce effective corporate tax rate from 30% to 25%, the Corporate tax rate from all others companies may be moderated.**

During the 16-17 Budget, the rates have been reduced to 25% for MSME companies. The intention of Government to reduce the effective tax rate to 25%, they should look to moderate the tax rate to reduce the overall tax incidence.

17. **Section 32 AD provides for additional depreciation of 15**% **for new projects in backward areas**. **The benefit is available till 2020**. **Section 32 AD is applicable for notified backward region**. Section 32 AD must be extended to

a. extension and expansion of existing projects .

b. Further Section 32 AD is limited to year 2020, the same must be extended to FY 2021-22.

c. The same may be extended to whole of india instead of notified backward area.

18. **Reinstatement of Section 32 AC: The sunset clause for Section 32AC should be extended to reasonable period say upto 2024.**

    Section 32 AC which provided one time depreciation of 15% of commissioning of new assets is over in AY 17-18. The government to incentivize capital formation must extend the same to 2024 to enable creation of new P&M Machinery

19. **Section 43B(f) allows leave encashment only on payment. Wherever Employer has opted for a dedicated fund and contributes a sum based on actuarial valuations, the spirit behind Section 43B is complied with. Litigations can be avoided if clause (f) of Section 43B is amended to state that payment includes contribution to a dedicated fund.**

    Section 43B allows certain expenditure only upon payment. Primarily, taxes and welfare expenditure on employees fall under this section. Effective 01/04/2002, a new clause (f) was inserted to permit deduction of any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, only upon payment. Large Corporates set up dedicated funds for 'Leave Encashment' and basis the actuarial valuation, contributes an amount equivalent to the liability to the said fund. In such cases, employer no longer retains the said funds in the business operations. However, Assessing Officers deny the expenditure on the pretext of 43B(f) as contribution to the fund is not considered by them to be equivalent to payment to employees. In this manner, a genuine business expenditure gets disallowed and the claim of expenditure is deferred.

    Suggestion

    To mitigate the hardship, it is proposed that an Explanation be inserted in Section 43B to the effect that payment to the fund would be equivalent to payment to employees.

20. Weighted average deduction under section 35(2AB), 35(2AA) to be retained at 200%: The deduction on Scientific research and contribution to National Laboratories have been reduced from 200% to 150%. With the

vision of the Government for strengthening the R&D Activities , it should retain the weighted average deduction to 200%.

21. Tax Department is interpreting treatment for perquisite tax borne on behalf of employees to be added to book profit to increase profit u/s 115JB as same is considered as income tax paid falling under Section 115JB(2) , cluse (a) of Expl. (1). However, industry believes that tax paid on perquisites under section 17(2) is on behalf of employees and not of the Company. A clarification on above would put to rest the issue involved.

22. Under the Companies Act, P&L Accounts of the Company has to be in compliance with certain mandatory accounting standards, one of which is AS-15(Revised). As per the Standard, it is mandatory to provide for long term employee benefits such as post- retirement medical benefits, death benefit, leave encashment etc., based on actuarial valuation. While the Books cannot reflect true and fair view unless complied with the Accounting Standards, the Assessing Officer treats these expenditure as a contingent liability and disallows deduction, primarily because of Section 36(1) that permits only few of the chosen retirement benefits, namely, PF, Gratuity and Pension.

    After all, in Public Sector Organizations, Department of Public Enterprises has mandated providing a portion of their salary to its employees in the form of 'Retirement Benefits'. In a Going Concern, there would get accumulated, substantial expenditure towards Long Term Employee Benefits, incurred year after year, that gets allowed under the current Income Tax provisions. As a result, 'tax cost' as a % of profit before tax goes higher and higher with consequent piling up of Deferred Tax Assets. Considering the genuineness of the Business Expenditure and disallowance by the Assessing Officer leads only to delaying the deduction under Income Tax Act, suitable amendments are to be brought in Section 36(1) of the Act, permitting the deduction while transferring of the money to the welfare fund namely, 'Post-Retirement Medical Benefit Fund' and 'Death Benefit Fund' in addition to PF & Gratuity, currently specified in the said section.

23. It is suggested that tax on distributed profits (DDT) under section 115O of the Income Tax Act shall not be made applicable to PSUs, to the extent of dividend, payable on shares held in the name of President, Government of India.

    Section 115O of the Income Tax Act provides for payment of tax on distributed dividends by companies. Since majority of shares in PSUs is held by the Govt. of India, and as and when dividend is declared on such shares, it becomes the property of the Govt., enjoying constitutional immunity of taxes, income tax should not be again levied thereon. Therefore, it is suggested that Section 115O shall not be made applicable to PSUs, to the extent of dividend, payable on shares held in the name of President, Government of India.

24. **It is suggested that suitable provision be inserted in the Act whereby prior period expenses, not exceeding 1% of the turnover shall be allowed U/s. 37(1) of the Act, without adjusting earlier year's Return of Income.**

    It is suggested that suitable provision be inserted in the Act whereby prior period expenses are allowed as deduction in the current year under section 37(1) of the Income Tax Act, 1961. A limit (say not exceeding 1% of the turnover) can be prescribed for such expenditure. It will obviate administrative difficulties in claiming the deduction in respect of previous years and rectifications proceedings etc. There will not be any revenue loss to the government from this clarification, since corporate tax rates over a period of years have remained more or less the same.

25. It is suggested to suitably increase the threshold exemption provided under Rule 2BB r.w.s 10(14) of the Act were fixed in 1995. Limits like children education allowance, Hostel Education allowance needs to be revisited in line with inflation.

    The Exemption limits for various allowances (eg: Children's Education Allowance, Hostel Allowance etc.) mentioned in Rule 2BB r.w.s. 10(14) was fixed in 1995. We wish to recommend that the same needs to be revised keeping in view the cost inflation. It may be noted that the said Rule was amended last year only in case of Transportation allowance.

26. It is suggested to suitably increase the threshold limits for calculation of taxable value of perquisite under Rule 3 like meal allowance more than Rs 50 / day, and Gifts from employer more than 5000 p a etc.

    After the abolition of Fringe Benefit Tax vide Finance (No.2) Act 2009, Perquisite tax in the hands of employees was reintroduced vide Notification No. 94/2009 dt. 18/12/2009 from FY 2009-2010 by inserting new Rule 3 basis which, few perquisites like Free food and non-alcoholic beverages, is taxable if the cost per meal per employee exceeds Rs. 50/- and Gift from employer is taxable if the value exceeds Rs.5000 p.a etc. We wish to recommend that, the threshold limit for perquisite value to be taxed in the hands of employees, needs to be revised keeping in view the cost inflation.

27. With implementation of successive pay commission recommendations, the leave salary of both Public and Private Sector employees has substantially increased. Whereas, a threshold exemption u/s 10(10AA) fixed at Rs.3 lakhs in the year 2002 hasn't undergone any revision over the years. Accordingly, it is suggested to revise the limit from Rs.3 lakhs to Rs.10 lakhs
28. In Finance Act 2012, Section 92BA has been inserted so as to include specified domestic transaction under the purview of 'Transfer Pricing Provisions'. Considering that transactions between PSU Oil Companies for exchange of products are anyway concluded at arm's length and such products are exchanged on tonne to tonne basis, it is suggested that entire Inter – PSU Oil Company Agreements shall be excluded from the purview of Department's scrutiny of 'arm's length'
29. Under existing Income tax provisions, there are no time limits defined for disposal of application, seeking No Objection Certificate for remittance of TDS u/s 195/197 of the Act. As per the Provisions of section 195 and as per Rule 37BB, any payment made to Non-residents requires payer to obtain a No Objection Certificate from Assessing officer or a Certificate from a Chartered Accountant in Form 15CB before making payment to the concerned party. In order to avoid inordinate delay in obtaining these

certificates, it is suggested that an outer limit of say, 30 days shall be fixed for issuance of such certificates, failing which the rate sought in the Application shall be deemed to have been approved. Further a clarification may also be issued on Rule 37BB, so as to exempt the Trade payments for imports made from Non-resident parties, wherever they do not have any Permanent Establishment in India. This will reduce the administrative difficulty with regard to the volume of transactions involved vs. tedious compliance procedures as per New Rule 37BB.

30. Currently, interest u/s 234B/234C charged on the Assessee is 1% per month whereas interest u/s 244A payable to Assessee is 0.5%. It is suggested to bring parity in the rates and further the rate be linked to any 'reference rate' thereby making it dynamic.
31. Tax Credit u/s 115JAA in respect of tax paid on deemed income has been allowed to be carried forward for set off to future years but such carry forward shall not be allowed beyond the 10th assessment year. Such restriction on carry forward be extended to 15 years in place of 10 years, now.

32. CSR expenditure mandated under the Companies Act, 2013 are towards fulfilling Government's social and developmental agenda. By inserting a specific explanation (Explanation 2 to Section 37(1) of the Act) to the effect that CSR expenditure is not deemed to be incurred wholly and exclusively for the purposes of carrying on business, Companies do not get tax break on such expenditure. Since Corporates supports the social and developmental agenda of the Government, especially, 'Swatch Bharat Abhiyaan' it is imperative that the said expenditure be permitted as a deduction while computing the business income. Accordingly, it is request to revisit the said provision.

33. Section 43A permits adjustment to 'cost of Assets' imported from outside India. The background to the introduction of this section was devaluation of rupee done during 1966-67, which, but for introduction of this section would have led to disallowance of exchange rate differential, impacting large number of Corporate Assesses. Over the last 5 decades, funding of

capital projects has undergone sea change and External Commercial Borrowing is one of the major sources of low-cost funding of large projects wherein Assets acquired need not be imported from outside India and it could be Indian Assets as well. The Hon'ble Prime Minister's theme of 'Make in India', would get a huge fillip if necessary amendment is made in the section to allow capitalization of exchange rate differential arising out of loan borrowed in foreign currency even if the Asset is indigenous. This would also enable keeping the effective tax rate at 25%, intended to be achieved over the 4 years.

34. Group Tax Consolidation / Fiscal Unity

At present, in India there is no fiscal unity tax regime wherein companies within a particular group could opt to file a single consolidated tax return for the entire group. The infrastructure companies in India have witnessed cost overruns, long gestation periods and lower profitability which results in negative internal rate of returns ('IRR'). In case, fiscal unity tax regime is introduced, borrowing would be at holding company level while the interest cost would be offset against the income derived by the project SPV thus supporting the infrastructure companies by way of improved cash flows and increased operating profits which would lead to higher IRR at project level.

35. S.14A r.w. R.8D – Amendment with respect to dividend income exempt u/s. 10(34)

CBDT may come up with an amendment in s.14A of the Income Tax Act that the said section is not made applicable to dividend income exempt u/s. 10(34) as the same has been subject to dividend distribution tax in the hands of the company.

The intention of introducing s.14A is not to allow expenses pertaining to income which are exempt from tax.

Suggestion

Accordingly, it is suggested that s.14A should not be applicable to dividend income exempt u/s.10(34) as the same has already suffered an economic tax in the form of dividend distribution tax.

36. Interest on refunds u/s.244A

S.244A of the Act should be amended to increase the rate of interest on refunds due to the taxpayer from 0.5%p.m. to 1% p.m.

Further, the interest on refund under s. 244(1A) is granted additional interest @ 3% where refund arises out of an appellate order and such refund is not granted within 3 months from the end of the month in which such appellate order was passed. It is recommended that such interest should be linked with the personal liability of the tax officers.

For delay in payment of tax, Revenue charges the interest @1% p.m. u/ss. 234A, 234B, 234C of the Income Tax Act. While the interest on refund due to the taxpayer is calculated @0.5% p.m. The rate of interest charged on the taxpayer as well as the rate of interest payable to the taxpayer should be kept same.

In majority of the cases, the tax authorities do not grant refund to the assessee even where relief has been granted from the appellate authorities. This causes genuine hardships to the assessee as even after obtaining a favourable decision of the appellate authority the assessee is left at mercy of the tax authorities who would give effect to such appellate order and grant refund to the assessee.

Suggestion

Therefore, it is recommended that the tax authorities are held accountable for such delay by recovering the interest on of refund payable to the assessee pursuant to an appellate order in order to ensure grant of refund to the assessee in a timely manner.

37. S.32AC – extend investment allowance benefit to service and infrastructure companies

Presently, investment allowance is available only to manufacturing companies and not to service companies and infrastructure companies.

The Finance Minister, in his 2015 Budget Speech, had mentioned that the Government would remove several tax exemptions and incentives for corporate taxpayers, and also reduce corporate tax rate from 30% to 25% over 4 years. Last year, however, the Government introduced special investment allowance only for West Bengal, Bihar and Andhra Pradesh.

Suggestion

Benefit of investment allowance to be extended to service companies as well as infrastructure companies, with a threshold for amount of investment.

If exemptions and profit linked deductions such as 80-IC are phased out, then allowance brought in for WB, Bihar and AP ought to be extended to other Eastern Indian states.

38. Allowability of Corporate Social Responsibility (CSR) expenses as deduction – S. 37

Under the Companies Act, 2013 certain companies are mandated to spend a certain percentage of their profit on CSR activities. Explanation 2 to s.37 provides that any expenditure incurred by an assessee on CSR activities referred to in s.135 of the Companies Act, 2013 would not be deemed to be an expenditure incurred by companies for the purpose of their Business or Profession.

In the Explanatory Memorandum explaining provisions contained in the Finance Bill, 2014, it is explained that the Bill seeks to provide for "C - Measures to Promote Socio-economic Growth"; and that "the objective of CSR Expenditure is to share the burden of the Government in providing Social Services by Companies having net worth/ turnover/ profit above a threshold".

Considering that CSR expenses are statutorily required to be incurred they should be allowed unconditionally as expenditure incurred wholly and exclusively for the company's business like any other statutory payments.

Suggestion

It is suggested that s.37 be amended by withdrawing "Explanation 2", so that a company can claim deduction of its CSR expenses ad being incurred wholly and exclusively for the purpose of its business.

39. Multiple levy of income tax on dividend – S. 115-O

As per existing s.115-O, any Domestic Company distributing dividend out of its already taxed profit is required to pay tax @ 20.358% on Dividend distributed to its shareholders.

Considering that a Domestic Company has already paid tax @ 34.608% on its total income, further payment of DDT @ 20.358% is excessive. After introduction of "Grossing-up Provisions", the effective tax on dividend distribution is higher by 3%.

A question arises as to whether distributable profits qualifies as 'income' under the Act. 'Income' is defined inclusively u/s. 2 (24) but 'distributable profits' are not specifically mentioned in the extended arm [Clauses (i) to (xviii) of s.2 (24)]. Considering that Income Tax is a tax on income of the previous year, and would not cover something which is not the income of the previous year but an application of already taxed income for the same or earlier years, the distributable profits out of which dividends are paid cannot constitute the company's "income" by any stretch of imagination [see SC (larger bench) decision in CIT v. Khatau Makanji Spinning & Weaving Co. Ltd. 2002-TIOL-1156-SC-IT-LB]. Accordingly, levy of Dividend Distribution Tax (DDT) on tax paid income u/s.115-O is invalid. Even expenses incurred for earning the exempted dividend income are disallowable u/s.14A r.w. R.8D and consequent taxable. Furthermore, with introduction of levy of tax on dividend received by Individual, HUF, firm in excess of Rs.10 lacs, tax is effectively levied on dividend for the third (3rd) time.

Suggestion

a. Tax on distribution of dividend is outside the purview of the charging Section of the Act, since it is a tax not on income but on application of income;
b. Without prejudice to the above, the Grossing-up Provisions resulting into Additional Tax outgo of approx. 3% should be withdrawn since it is causing undue hardship to assessees;

40. S.115-O – Clarification on absolute removal of cascading effect of Dividend Distribution Tax (DDT)

a. The levy of Dividend Distribution Tax (DDT) at multiple levels has been a subject matter of grievance by corporates. It is suggested that dividends which have suffered DDT be treated as pass through and be not subjected to levy of DDT.

b. The existing provision should be amended to provide uniform and simplified taxation regime so as to provide for the DDT credit, irrespective of the stipulating condition that one company should hold 51% or more of the share capital of the company declaring, distributing or paying the dividend.

The proviso to Section 115-O(1A) of the Act provides that the same amount of dividend shall not be taken into account for reduction more than once. An explanation can be inserted clarifying that the benefit of DDT paid by a subsidiary company is available at each company level in a multi-tier corporate structure so as to avoid the cascading impact of DDT. This will go a long way in boosting investors' confidence and improve the ease of doing business in India.

S.115-O provides that the tax base of DDT, i.e., dividend payable in case of a company, is to be reduced by the amount of dividend received from its subsidiary, if such subsidiary has paid the DDT payable on such dividend. This ensured removal of cascading effect of DDT in a multi-tier structure, where dividend received by a domestic company from it's subsidiary company (in which it holds equal to or more than 51% of the nominal value of equity share capital).

Suggestion

The principle applied for removing the cascading effect of DDT is 'tax should be paid only once on the same income'. But this has been applied in a limited context, as, when a company holding only 20% shares in another company receives and pays dividend has to pay DDT on both, the receipt and payment separately, though to the extent of the receipt, it is the same dividend (income).

Therefore, an amendment to provide uniform and simplified taxation regime would mitigate the adverse impact on growth of Indian companies.

41. Authority for Advance Rulings

The Authority for Advance Rulings (AAR) has a significant backlog of cases. Getting an advance ruling within a reasonable time has become extremely difficult.

Suggestion

It should be ensured that the time limit prescribed for passing orders should be adhered to by the AAR.

42. Principle of taxing real income - Levying tax on purely notional income due to ICDS deviates from this principle

Clarity on impact of Ind AS on the income tax returns

Conceptually, tax should be paid on income; logically, income should be as per the books of accounts, especially if they are audited and maintained in accordance with generally accepted accounting principles, except to the extent of fair value accounting adjustments that neither cause income nor create losses in a recognised sense, as required under IFRS or Ind AS.

For example, as per ICDS VI dealing with Forex fluctuations, forex loss arising on account of certain capital nature items is allowable as deduction, which the same is ultra virus the provisions of the Act. Similar issues be identified and necessary amendments be made to avoid future litigation. .

Insofar as Ind AS vis-a-vis MAT is concerned, a report dated 18 March 2016, by a Committee under chairmanship of MP Lohia has been issued, has made recommendations. One related to the year of transition, i.e., where adjustments made in retained earnings (not being routed through P&L account) on first time adoption, are required to be added to book profit in the year of transition. This seems to tax notional profit, and needs to be addressed.

Suggestion

ICDS should be scrapped altogether.

There are certain positions emerging out of ICDS that are not in line with the provisions of the Income Tax Act, i.e. contrary to general provisions being ss. 28 or 37. Necessary amendments to be brought into the Income Tax Act to make ICDS consistent with the provisions of the Income Tax Act

In levying MAT, the notional and unrealised “profit” entries necessitated by Ind AS first time adoption requirements should be neutralised.

43. Carry forward of Foreign Tax Credit

The Income tax Act, 1961 allows for set-off in respect of foreign taxes paid on overseas income.

However, in case of loss/inadequate profits, no set off may be possible. In the current economic scenario of the global economy, business outlook has become extremely uncertain and results have become very volatile.

Suggestion

It is suggested that assessee be permitted to carry forward (say for five years) such unutilized credit for adjustment in future years.

44. Rationalizing TDS Provisions

a. Various sections contained in Chapter XVII-B of the Income-tax Act, 1961, dealing with deduction of tax at source from sums payable to residents/non-residents require tax to be deducted at source at the time of credit of such sum to the credit to the account of the payee or at the time of payment thereof, whichever is earlier. It is also provided that where any such sum is credited to any account, whether called "Suspense account" or by any other name in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and tax is, therefore, required to be deducted accordingly.

A liability for expenses which may have been incurred by a person as on the Balance Sheet date but for which neither the payee has preferred any claim nor the amount payable has been quantified is often provided on an entirely ad hoc basis in the books of account by assessees to avoid any comment from auditors to the effect that the accounts may not reflect a true and fair view. In most of these cases, even the identity of the payees is not known and a consolidated liability is provided on an entirely ad hoc basis such as the amount which had been paid on a particular account in the preceding years. Owing to such ad hoc nature of such liabilities, they are mostly reversed at the start of the succeeding year and whenever identity of the payees and amounts payable to them becomes clear, liability for the same is provided subsequently. In circumstances where the identity of the payee and the amount payable to that payee are not known and only an ad hoc liability is provided, the requirement to deduct tax at source causes hardship to assessees.

Suggestion

The Central Board of Direct Taxes has, vide circular no. 03/2010 dated 02-03-2010, clarified that there is no need for banks to deduct tax at source on provisioning of interest since no constructive credit to depositor's/payee's account takes place. As this is a problem faced by all assessees and not just the banking fraternity, it is suggested that similar dispensation may be provided to all assessees by making suitable amendments in the provisions of the relevant sections contained in Chapter XVII-B of the Income-tax Act, 1961, dealing with deduction of tax at source. At the same time, to safeguard the interests of the revenue, it may be provided that the requirement not to deduct tax at source from sums so credited to any account shall apply only if the credit is afforded unilaterally i.e., without any invoice having been received from the payee, the amount is not credited to any particular payee's account, and the entire amount of the credit so afforded at the end of an accounting period is reversed at the beginning of the succeeding accounting period by the payee.

Credit for TDS deducted is available to the deductee in the year in which the corresponding income is offered to tax. If, for any reason, credit for TDS is not claimed in the relevant year, the same would get lapsed and would not be available against tax payable by the deductee on income of any subsequent year. The aforesaid leads to undue hardship to the deductees from whom TDS was rightfully deducted and is also reflected in Form no. 26AS.

Suggestion

TDS credit may be allowed to the deductee irrespective of the Assessment Year.

45. Availability of deduction u/s. 36 in respect of contribution made to Trusts etc., set up for employees' welfare

a. Section 36 of the Income-tax Act, 1961, provides for deduction in respect of contribution made by an employer towards certain funds/schemes set up for employees' welfare as specified therein. Further, section 40A(9) disallows any deduction in respect of any sum paid by an employer towards setting up or formation of any fund, trust, company etc., except to the extent provided by section 36 of the Act. As a consequence, deduction is available to the employer only in respect of contribution made towards funds/schemes specified in section 36 of the Act. If contribution is made towards any other fund/trust/scheme set up for the welfare of employee, no deduction would be available to the employee in respect of the same notwithstanding the fact that such fund/trust/scheme is recognized/registered under the provisions of the Income-tax Act, 1961.

b. The aforesaid section 40 (9) was inserted by the Finance Act, 1984 (with retrospective effect from 01-04-1980) as a measure to combat tax evasion. While explaining the rationale for insertion of section 40A (9), the Memorandum to the Finance Bill, 1984 had brought out that:-

   "Instances have come to notice where certain employers have created irrevocable trusts, ostensibly for welfare of employees, and transferred to such trusts substantial amounts by way of contribution. Some of these trusts have been set up as discretionary trusts with absolute discretion to the trustees to utilise the trust property in such a manner as they may think fit for benefit of employees, without any scheme or safeguards for the proper disbursement of these funds. Investment of trust funds has also been left to the complete discretion of trustees. Such trusts are, therefore, intended to be used as a vehicle for tax avoidance by claiming deduction in respect of such contributions, which may even flow back to the employer in the form of deposit"

c. It further states that with a view to discourage creation of such trusts, the Finance Bill seeks to make the amendments (i.e., to insert section 40A (9)]. Thus, going by the aforesaid rationale, deduction in respect of contribution to a Fund/Trust should be disallowed only if such Fund/Trust has been created as a measure for tax evasion. Consequently, if a Fund/Trust is formed with a bona fide intention for welfare of employees, there ought not to be any bar on deduction in respect of contribution made towards such Fund, Trust, etc. Registration/recognition of a Fund/Trust/Scheme under the provisions of the Income-tax Act, 1961 ought to be sufficient to establish the bona fides of creation of such Fund/Trust/Scheme for the benefit of employees.

Suggestion

Suitable amendments may be made in section 36 and/or section 40A (9) of the Act so as to provide that deduction would be available in respect of contribution made by an employer towards a Fund/Trust/Scheme set up for the welfare of employees if such Fund/Trust/Scheme is registered/recognized/approved under the provisions of the Income-tax Act, 1961.

46. Amendment in section 234C (Interest for deferment of advance tax)

Section 234C of the Income-tax Act, 1961, provides for levy of interest where there is shortfall in any installment of advance tax actually paid vis-à-vis the installment of advance tax payable as per the returned income. In upstream oil and gas companies, there are certain unpredictable factors which lead to difficulty in estimation of taxable profits and under estimation results in levy of interest u/s. 234C for no fault of the companies.

Suggestion

Upstream oil & gas companies may be exempted from the rigours of section 234C or the rigours may be relaxed by providing that no interest shall be leviable on shortfall of installment of advance tax, if any, to the extent that such shortfall is attributable to either of the following reasons:

(a) Fluctuations in the international prices of Crude Oil.

(b) Movements in the Exchange Rates for foreign currencies,

(c) Government directives on subsidy sharing

47. Underlying Tax Credit

There is no provision under the Act for claiming credit for tax on income paid by a foreign subsidiary (hereinafter referred to as underlying tax credit). The non-allowance of underlying tax credit creates a discriminatory tax environment in favour of a foreign branch model for investing overseas as against a foreign subsidiary company model. This is for the reason that, while profits earned by a foreign branch or a 100% foreign subsidiary both beneficially belong to the Indian assessee and are taxed in India (branch profits when earned and subsidiary profits when repatriated to India), credit for foreign income tax paid is allowed in the case of foreign branch but not in the case of a foreign subsidiary.

Suggestion

Since the decision as to which model should be used for investing overseas is guided primarily by commercial considerations and not by tax considerations, and being forced to opt for the foreign branch model for tax reasons could make Indian entities un-competitive vis-à-vis entities of countries which allow underlying tax credit, it would be apt to allow underlying tax credit. Suitable provisions may, therefore, be inserted in the Act at appropriate place(s) to permit the allowance of underlying tax credit.

48. Incentivizing CSR Activities

The Finance (No. 2) Act, 2014, has inserted an Explanation in section 37 of the Income-tax Act, 1961, with effect from financial year 2014-15, to provide that any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013, shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. The Explanatory Memorandum to the Finance (No. 2) Bill, 2014, states that CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business and since the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company.

While there was a demand for incentivizing incurrence of CSR expenditure by allowing 200% deduction for the same, the aforesaid amendment has even withdrawn the 100% deduction which was otherwise admissible. Further, while the making of a voluntary donation may be said to be application of one’s income, incurrence of expenditure in compliance with the mandate of a statute cannot be said to be so. In the cases of Public Sector Enterprises, CSR activities are not only mandated by statute but are also closely monitored by their administrative ministries and are undertaken in various areas of national importance. Expenditure incurred on such CSR activities is, therefore, better targeted and more beneficial for the nation and society as large as compared to voluntary donations. It, therefore, appears incongruous that, deduction of CSR expenditure has been disallowed while continuing to allow 100%/50% deduction in respect of voluntary donations.

Suggestion

The amendment made in section 37 by the Finance (No. 2) Act, 2014, regarding non-allowability of deduction in respect of CSR expenditure may be rolled back and it may be provided that CSR expenditure would be deductible in the year of incurrence thereof. If a complete roll-back is not considered desirable, the same may be rolled back for at least Public Sector Enterprises.

49. Making section 14A inapplicable to dividend received by companies from Debt Mutual Funds

Section 14A of the Income-tax Act, 1961, provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. The rationale behind this provision is that no deduction should be allowed for any expenditure which an assessee incurs in relation to tax free income.

Section 10(35) of the Income-tax Act, 1961, provides that any income received in respect of the units of a Mutual Fund shall not form part of the Total Income. In other words, dividend from a Mutual Fund is exempt from tax in the hands of the recipient. However, u/s. 115R of the Income-tax Act, 1961, the Mutual Fund is required to pay Dividend Distribution Tax (DDT) @ 30% plus surcharge @ 12% plus Education Cess @ 3% resulting in an effective DDT rate of 34.608% when dividend is distributed to a company. As per sub-section (2A) of section 115R, DDT is to be calculated by grossing up the amount of dividend.

The effect of the above provisions is that a company in receipt of dividend from a debt mutual fund receives dividend after DDT payment by the mutual fund. The DDT payment is equal to the tax which the recipient company would have paid if the dividend had not been subjected to DDT and would have been taxable in the company's hands itself. Thus, effectively, the recipient company is paying the full amount of tax on dividend received from a debt mutual fund and the amount received is really not tax free in the hands of the recipient company.

Suggestion

Section 14A may be suitably amended to provide that the same shall not apply to expenditure incurred by a company in relation to dividend received by it from a debt mutual fund on which DDT has been paid as per the provisions of section 115R. The Income Tax Simplification Committee headed by Justice (Retd.) R.V. Easwar has also recommended that dividend received after suffering dividend-distribution tax should not be treated as exempt income and no expenditure should be disallowed as relatable to the same.

50. Dichotomy in methods of grossing-up of income subject to tax u/s. 44BB for TDS and assessment purposes

Section 195A of the Income-tax Act requires multi-stage grossing up of income for TDS purposes if tax on the income of the payee is to be borne by the payer.

Section 44BB of the Income-tax Act, 1961 is a deeming provision which provides that income of a non-resident engaged in the business of providing services and facilities in connection with prospecting for, or extraction or production of mineral oils, shall be deemed to be 10% of the amounts specified in sub-section (2) thereof. Sub-section (2) of section 44BB would include any tax payable in respect of the sums payable to the non-resident. It has been held by the Hon'ble Uttarakhand High Court that the provisions of section 44BB admit of only single stage grossing up and the Hon'ble Supreme Court has dismissed Special Leave Petition filed by the Revenue against the Hon'ble High Court's judgment. Thus, the issue has attained the finality.

Suggestion

Suitable amendment may be made in section 195A of the Income-tax Act, 1961 so as to provide that where income of the non-resident is taxable u/s. 44BB of the Act, the same would be subject to single stage grossing-up for TDS purposes also.

51. Interest on Refunds paid to the assesse to be at par with interest charged by the revenue on short payment of Income tax

Under the provisions of section 244A, the rate of interest applicable on refunds due to an assessee is 0.5% per month or part thereof whereas under the provisions of sections 234A, 234B and 234C, the rate of interest chargeable from the assessees is 1% per month or part thereof. Further, interest on refunds is subject to tax in the hands of the assessee whereas no deduction is admissible for interest paid by an assessee.

Suggestion

Interest rate on the refunds due to the assessee and on the amounts payable by the assessee to the Government may be same on the ground of equity.

52. Providing Consequences of Non-disposal of Rectification Applications under section 154 of Income-tax Act, 1961

Section 154(7) of the Income-tax Act, 1961, specifies a time limit of four years for making amendments to orders for rectification of mistakes apparent from records. This time limit is reckoned from the end of the financial year in which the order sought to be amended was passed. However, it is seen that, in a large number of cases, the assessing officers simply do not dispose of an assessee's application under section 154 for years together, which results in loss to the assessee. Apparently to overcome this problem, a new sub-section (8) was inserted in section 154 by the Union Budget, 2001, to provide that an application made by the assessee under this section would be disposed of within a period of six months. However, the consequences that would arise if the application so made is not disposed of within six months have not been spelt out.

Suggestion

It may be provided sub-section (8) of section 154 that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed. Simultaneously, the assessee may also be given the right to appeal against an order in respect of which he had filed an application under section 154 but which is lying undisposed for more than six months. This would ensure promptness in disposal of applications under section 154 and avoid undue harassment to the taxpayers.

53. Section 115-O not to be applicable in respect of dividend payable by a Government company to the President of India

Section 115-O of the Income-Tax Act, 1961, provides for payment of tax on distributed dividends by companies. Since majority of shares in a Government company is held by the Government of India, and as and when dividend is declared on such shares, it becomes the property of the Government enjoying constitutional immunity of taxes, income tax should not be again levied thereon.

Suggestion

Section 115-O should not be made applicable to Government companies, to the extent of dividend payable on shares held in the name of President of India.

54. Removing cap on non-taxable employer contribution to approved superannuation fund

Section 17(2)(vii) of the Income-tax Act, 1961, provides that the amount of any contribution to an approved superannuation fund by the employer in respect of the assesse, to the extent it exceeds one lakh fifty thousand rupees, is treated as a taxable perquisite in the employees' hands. Approved superannuation funds are governed by the provisions of Schedule IV to the Income-tax Act, 1961, and Rules 82 to 97 of the Income Tax Rules. As per Rules 87 and 88, a cap of 27% of an employee's salary (including the 12% contribution to provident fund) has been prescribed for employer's contribution to an approved superannuation fund. Thus, an employer's contribution to an approved superannuation fund is capped at

15% of an employee's salary. Employer's contribution to superannuation funds is, in the case of Public Sector Enterprises, also restricted by guidelines of the Department of Public Enterprises.

Employer's contribution to a recognized provident fund, which is also meant to meet the social security needs to employees post retirement, is, however, taxed in the employee's hands only if the same is made at a rate exceeding 12% of the employee's salary. Therefore, while employer's contribution to a recognized provident fund is taxed in the employee's hands only if the same is made at a rate exceeding 12% of the employee's salary, an employer's contribution to an approved superannuation fund becomes taxable the moment it exceeds Rupees One Lakh Fifty Thousand, even if the same is well within the cap of 15% of salary.

Suggestion

a. The amount of any contribution to an approved superannuation fund by the employer in respect of the assesse may be made fully non-taxable. Merit of considering the entire employer's contribution to an approved superannuation fund as non-taxable in the employee's hands had been recognized in the last draft of the Direct Taxes Code (DTC) since the same does not subject employer's contribution to an approved superannuation fund to tax in the employee's hands without any maximum limit.

b. Without prejudice, if the aforesaid suggestion is not agreed to, then the amount of one lakh fifty rupees specified in section 17(2) (vii) of the Income-tax Act, 1961, may be raised to at least two lakh fifty thousand rupees to allow accumulation of sufficient corpus to meet post retirement needs of employees in the scenario of increased life expectancy and high inflation.

55. Removal of maximum limit under Section 17(2) (v) of Income-tax Act, 1961, & insertion of clarificatory Explanation

Clause (ii) of the Proviso to sub-section (2) of section 17 of the Income-tax Act, 1961, provides that expenditure incurred/reimbursed by an employer for treatment in an employer maintained hospital, government approved hospital or CCIT approved hospital (in respect of prescribed ailments) is fully exempt from tax. However, clause (v) of the Proviso to sub-section (2) of section 17 provides for exclusion from perquisite chargeable to tax of a sum not exceeding Rs. 15,000/= in the previous year in respect of any sum paid by the employer in respect of any expenditure actually incurred by an employee on the medical treatment of himself or his family members other than in an employer maintained hospital, government approved hospital or CCIT approved hospital. Thus, any sum exceeding Rs. 15,000/= paid by the employer in respect of medical expenses actually incurred by the employee is taxed.

The aforesaid results in the employee suffering on two counts – one by way of suffering of himself or a family member from a disease and the other by having to pay tax on the reimbursement of expenditure on medical treatment actually incurred by him - especially in cases of serious diseases, the treatment of which is very costly.

Suggestion

The exemption limit in respect of perquisite resulting from expenditure incurred/reimbursed by an employer on medical treatment of employee or any member of his family in a hospital (other than an employer maintained hospital, government approved hospital or CCIT approved hospital) may be either totally dispensed with or enhanced to at least Rs. 1,00,000/= per year in line with the proposal to enhance it to Rs. 50,000 which was proposed in the last draft of the DTC. Further, a clarificatory Explanation may also be inserted to clarify that where an employee has/had to avail treatment, purchase medicines or get tests conducted in an emergency or life-threatening situation, the full cost of such treatment, medicines and tests shall also be treated as fully exempt from tax.

56. Revision of thresholds applicable in respect of taxability of perquisites

After the abolition of Fringe Benefit Tax vide Finance (No.2) Act 2009, taxability of different perquisites in the hands of employees was reintroduced from FY 2009-2010 by inserting new Rule 3. As per the aforesaid Rule 3, few perquisites like Free food and non-alcoholic beverages, is taxable if the cost per meal per employee exceeds Rs. 50/- and Gift from employer is taxable if the value exceeds Rs.5000 p.a etc

Suggestion

The threshold limits for the aforesaid perquisite value to be taxed in the hands of employees may be revised upwards keeping in view the cost inflation.

57. Rationalization of newly introduced Secondary Adjustment Provisions

The Finance Bill, 2017 has introduced the concept of secondary adjustment on Transfer Pricing (TP) adjustments. A taxpayer is required to make a secondary adjustment, where the primary adjustment to transfer price has been made in the following situations:-

Suo moto by the taxpayer in the return of income;

a. By the AO during assessment proceedings, and has been accepted by the taxpayer;
b. Adjustment determined by an Advance Pricing Agreement (APA) entered into by the taxpayer;
c. Adjustment made as per the safe harbour rules under section 92CB; or
d. Adjustment arising as a result of resolution of an assessment by way of the mutual agreement procedure (MAP) under an agreement entered into under section 90 or section 90A for avoidance of double taxation.

Further, the proposed section 92CE(3)(v) defines 'Secondary adjustment' as an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

The additional amount receivable from the AE as a result of the primary adjustment should be repatriated by the taxpayer into India within a prescribed time limit. If the same is not received by the taxpayer within the time-limit, then the primary adjustment will be deemed as an advance extended to the overseas AE and a secondary adjustment in the form of notional interest on the outstanding amount should also be offered to tax as an income of the taxpayer.

The above requirements for repatriating the adjustment amount into India and

imputing a notional interest are triggered if the TP or primary adjustment exceeds rupees one crore. The manner of computation of interest on the amount deemed as advance made by the taxpayer to the AE would be prescribed.

The situation of excess payment treated as loan given to AE on which notional interest in computed and added to the income of the assessee till the excess amount is repatriated by AE.

It would be difficult for AE to repatriate the money to India on account of secondary adjustment as the income-tax laws and any other relevant laws pertaining to such country may not allow to repatriate money. Further the AE would have paid tax on such amount in its home country. This would lead to double taxation. This would lead to double taxation.

Further, the same cannot be treated as advance in the books of account maintained in India as the books of account are prepared as per the provisions of Companies Act, 2013 read with Indian Accounting Standards.

Issue 1

Sub-section (1) of the proposed section 92CE provides for secondary adjustments to be made in respect of primary adjustments in certain situations. The phrase "secondary adjustment" has been defined in Clause (v) of Sub-section (3) to mean an adjustment in the books of account of the assesse and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price as determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit

of the assessee. Sub-section (2) lays down the requirement for excess monies to be repatriated to India and for interest to be levied thereon, if not repatriated within the prescribed time. However, Sub-section (2) does not refer to 'secondary adjustment' as envisaged under Sub-section (1) and defined in Clause (v) of Sub-section (3). The absence of references to Sub-section (1) and/or 'secondary adjustment' in Subsection (2) results in an apparent disconnect between Sub-sections (1) and (2) which may have unintended consequences.

Issue 2

The section is unclear as to whether the interest levy is a one-time levy or will apply on a year to year basis until the amount related to the "primary adjustment" is brought into India. Further, in case any interest imputed is not paid in the year of imputation, it is unclear whether or not it will itself take the colour of a "primary adjustment" and interest will be levied on such unpaid interest of last year (treating it as an advance). This will lead to a cascading effect and unnecessary burden on the assessee.

Issue 3

In the case of Bilateral APAs or MAPs (relating to transfer pricing, the two Competent Authorities may agree on the amounts to be brought into India and may also agree on the cash remission schedule for the taxpayer. In absence of the requisite cash brought into the recipient country, the double tax relief may not be granted by the recipient country as per the Bilateral APA / MAP. Hence, including Bilateral APAs and MAPs under the provisions of the above section may not be appropriate since the terms of bringing money into India would already have been decided by the two countries and such terms should prevail over a domestic law.

Issue 4

For better clarity and in order to avoid any confusion regarding the assessment year from which the secondary adjustment provisions would be applicable, it may be clarified that the section will be applicable from AY 2018-19, in relation to primary adjustments for fiscal years 2016-17 and thereafter.

Issue 5

Clause (ii) to sub-section (1) of the proposed section 92CE provides that a taxpayer is required to make a secondary adjustment where primary adjustment to transfer price has been made by the AO during assessment proceedings, and has been accepted by the taxpayer. There is lack of clarity on what exactly the term 'has been accepted by the taxpayer' means.

Issue 6

Since a secondary adjustment is already an additional burden on a taxpayer, a high interest rate will exemplify that burden and put pressure on business of the assessee.

Issue 7

Since adjustments are made subsequently when returns are taken up for scrutiny, any requirement to make secondary adjustment would depend upon whether the Associated Enterprise is willing to accept the secondary adjustments to be made in its books abroad. Non-acceptance of the same will lead to inter-company issues during consolidation. It could also require restatement of financial statements of an Indian entity if adjustments are material. This in turn might lead to filing of revised returns.

Implication on shareholders value and lenders agreement (where there are borrowings) would need to be evaluated besides implications under the Companies Act, 2013. Further, FEMA requires money to be remitted within 6 months from the end of the accounting year. Also, if the Associated Enterprise (AE) located abroad does not pass entries in the books, inter-company adjustments/eliminations could be a challenge if the AE is a holding company.

Issue 8

The proviso to the proposed section 92CE(1) states that nothing contained in this section shall apply, if;-

(i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and

(ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

From a bare reading of the proposed amendment, it appears that both conditions i.e. primary adjustment made before 1.4.2016 and it being less than 1 crore need to be complied, because the word "AND" is written between two conditions. It ought to be "OR". Else, in future years, there will be no threshold limit for secondary adjustment.

Issue 9

Applicability of section 92CE has to be restricted only to cases satisfying the base erosion test. The provisions, as presently worded, may give rise to an interpretation that even where the primary adjustment is made in the hands of non-resident, secondary adjustment follows. As a consequence, it may be interpreted as allowing repatriation of funds outside India, which may not be permitted even in terms of FEMA/ RBI regulations.

Issue 10

Section 92CE provides for secondary adjustment in case where excess money (difference between transaction price and arm's length price), which remains outside India, due to the primary adjustment under TP is not repatriated to India.

Taxable funds may remain outside India only in case where a foreign party is

involved. In other words, there may be possible base erosion only in case where one of the parties to the transaction is foreign AE. A transaction between two domestic entities, will not lead to profits allocable to India, remaining outside India.

Issue 11

Section 92CE deems the difference between the transaction price and arm's length price as an advance (which is to be recorded in the books) and provides for imputation of interest on such advances. However, there is no specific provision to reverse the advances appearing in the books even in case where the AE relationship ceases to exist or in case where the excess money is repatriated.

Suggestion

Recommendation for Issue 1

Sub-sections (1), (2) and (3) need to be revisited to streamline and appropriately link up the three sub-sections to provide adequate clarity as to the specific requirements from the taxpayers on this front.

Recommendation for Issue 2

The computation mechanism for levy of interest under Sub Section (2) should be clearly prescribed with detailed examples to obviate uncertainty including the trigger for such secondary adjustment or interest levy and the start date for levy of interest.

Appropriate safeguards by way of clarificatory provisions / Rules should be brought in to obviate an interest on interest situation and cascading effect.

Recommendation for Issue 3

It is suggested that Bilateral APAs and MAPs may be excluded from the purview of section 92CE.

Recommendation for Issue 4

The Government may issue a clarification that section 92CE will be applicable from A.Y.2018-19, in relation to primary adjustments for fiscal years 2016-17 and thereafter.

Recommendation for Issue 5

Government should clarify the term 'has been accepted by the taxpayer' in order to provide certainty on the applicability of these provisions in such situations. For e.g. if the taxpayer is in appeal against the assessment order to Tribunal, in such cases, will secondary adjustment provisions be applicable only after the Tribunal proceedings are completed or the same will be applicable after Court proceedings are completed i.e. if the taxpayer further appeals to High Court/ Supreme Court.

Recommendation for Issue 6

Considering the secondary and additional nature of the adjustment, a reasonable rate of interest may be notified.

Recommendation for Issue 7

The said issues may be considered and appropriate remedial measures may be incorporated to avoid genuine hardship.

Recommendation for Issue 8

It is suggested that the proviso may be restated as under:

(i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and **OR**

(ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

Recommendation for Issue 9

In order to remove this anomaly it is recommended that section 92CE(2) be amended to clarify that the section applies only in case where the primary adjustment is made in the hands of the Indian AE.

Recommendation for Issue 10

In order to avoid any unwarranted litigation, it may be clarified that section 92CE applies only to international transaction and not domestic transactions as covered under section 92BA.

Recommendation for Issue 11

It may be specifically provided that the advances appearing in the books of the parties be reversed in following cases where AE relationship ceases to exist or excess money is repatriated.

58. **Inclusion of expenditure incurred on Bio-fuels – Section 35(2AB)**

Any expenditure incurred on Bio- Fuel activities should also qualify for a deduction of 200% under Section 35(2AB) in order to promote investment/ R&D initiatives for renewable/ non-conventional energy sources.

59. **Safe harbour allowances for LNG import prices under Transfer Pricing should be based on the actual dispersion of custom import prices for the year and not on ad-hoc basis. [Transfer Pricing]**

The LNG sector like much of the global energy industry today is such that practically every company will have to engage in intercompany trade to a greater or lesser extent.

In India, specifically, as the reliance on imported LNG increases, there is bound to be intercompany trade. With this trade comes a need to determine prices which adhere to relevant transfer pricing legislation, which normally reflects arms-length pricing.

Increasingly, long term pricing for LNG is being replaced by spot prices which are largely determined by a number of instantaneous factors. Nearly

25% of LNG globally is now traded on the spot market. Functions here often involve the identification of potential spot purchasers, agreement with potential counterparties, and range of intermediary logistic services. Further the challenges of accommodation of regasification and trading prices, wherein determining safe harbour ad hoc can be extremely challenging.

Suggestion

Considering the above challenges, allowing for safe harbour rules for LNG imports based on actual dispersion of custom import prices is of utmost importance and will avoid litigation costs involved.

60. **Obtainment of secret comparables from corporates under Sec 133(6) of Income Tax Act should not be applicable for non-commodities like LNG. [Transfer Pricing]**

The term secret comparable denotes a comparable whose data is not available in the public domain but is known only to the tax authority which is making the transfer pricing adjustment. Determination of LNG pricing is highly complex, due to international price changes, varying cost of intermediary logistic services etc. Thus, secret comparables obtained from corporates are usually far from accurate and hence should not be applicable. Arms-length price for LNG needs to account for functional differences. Thus, allowing use of secret comparables for non-commodities, where pricing isn't as straight forward as commodities, leads to a high number of disputes and unnecessary protracted litigations between both government and corporates.

Best Practices

Developed countries, such as the US & UK have an official policy of not using secret comparables for any Arm's Length Principle (ALP) evaluation. In Australia and Netherlands, under specific judicial pronouncements, secret comparables are not allowed.

Suggestion

As secret comparison analysis is not accurate, this practice should not be applicable for non-commodities like LNG.

61. Statutory Dues not to be included in the gross receipts for the purpose of section 44BB of the ITA

Section 44BB of the ITA provide for taxation of non-residents on a presumptive basis.

This section deems a specified percentage of the amounts received by the nonresidents for the activities covered by the provisions as income under the ITA. In the past there has been considerable litigation on whether Government dues, such as service tax, recovered by the non-residents from the Indian parties would constitute part of gross receipts as these statutory dues are to be paid over by the non-resident taxpayers to the Government, there is no income element therein.

Suggestion

In view of the above, section 44BB of the ITA should be amended to provide that statutory taxes and dues (such as service tax) recovered by the non-resident service provider from the Indian residents would not form part of gross receipts for computing deemed income under the Section. This will be fair and will eliminate unnecessary litigation on the issue.

62. No disallowance for the domestic company, for charges paid to a PE in India of a foreign company

Often, domestic companies' expenditure includes fees / charges in respect of services / facilities availed from foreign companies. If the services / facilities are availed from an associated enterprise, the expense claim is scrutinized in detail and is often the subject matter of disallowance.

Unless the associated enterprise is subject to gross basis of taxation in India, or presumptive taxation resulting in a lower effective tax rate than the domestic company, such transactions result in the following tax effect:

− Tax break, at 30% (plus surcharge and cess), in the hands of the domestic

Company

− Income in the hands of the foreign company, to be included while computing

taxable income – which would be taxable at 40% (plus surcharge and cess)

Thus, there is no tax loss to the exchequer.

Suggestion

It is, therefore, recommended that the expense claims (in such a scenario) should not be subject to transfer pricing assessment and disallowance.

63. Income Tax benefits under Section 80JJA (Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste)

Currently, the IH2 plant helps to clear up and clean municipal solid waste including plastics, agricultural and forest waste and produces Bio C1 to C4 gases, Bio-LPG, Bio-Petrol, Bio-Jet, Bio-Diesel, Biochar. All these Products from IH2 process if, classified as "Bio-fuels" by Ministry of Petroleum & Natural Gas shall be allowed a deduction on the similar lines of business of collecting and processing or treating of bio-degradable waste for generating for producing bio-gas or briquettes for fuel etc., for a period of 5 consecutive years from the year of commencement of business.

64. Development of Petroleum Infrastructure & Uniform Fair Access for petrol and diesel

Fuel products pipelines are an efficient, economical and safe mode of bulk transportation of petroleum products from a refinery or a storage installation to a demand centre. The infrastructure for transportation, storage and distribution of fuel products in India is largely owned and controlled by the Public Sector oil marketing companies. Private players don't have access to these assets, so currently they use rail and road tankers as the predominant mode of transportation. Railways and roads are inefficient modes of carrying fuels products because they consume significantly more energy than pipelines with the added risk of safety and environmental degradation caused due to leaks and product spills.

Putting up a second pipeline where one already exists is not economically viable and is a waste of resources. Moreover, a single company's ownership of a monopoly transportation medium is inherently detrimental to the development of competition.

To prevent such situations, the common carrier principle has been utilised in the USA and other developed countries. Annexure-4 identifies the benefits of implementing the common carrier principle along with best practices from US, UK and Canada.

Development and access to common carrier pipelines for essential items petrol and diesel, provision of linkages from other terminals, pumping stations, jetties in ports

and tap off to other terminals at the receiving end needs to be ensured for all pipelines.

The implementation of existing regulations notified by PNGRB, will lead to the

development of a free, fair and competitive industry regime. This would lead to several benefits for the country, such as:

a. A non-discriminatory policy will be seen as a positive attempt by the Government to bring more transparency into the industry. This will promote and encourage greater participation from industry players bringing in more investment and efficiencies that will be beneficial for the country
b. Making the fuels marketing industry more attractive for new entrants and thereby increasing competition and hence the choice available for customers
c. Monetization of existing pipeline infrastructure through divestment into an independent entity/multiple entities and subsequent privatization can yield significant revenue to the Government which can then be utilized towards other economic or social welfare programs
d. Efficient utilization of existing infrastructure by eliminating the need for various companies to set up independent pipeline networks. Effective allocation of scare capital can be done in other sectors of the economy that could be significantly more beneficial to the country.

Suggestion

It is suggested that access be granted to pipelines on a common carrier basis. A robust mechanism which provides a fair return and compensation (as per a pre-defined formula) to developers and owners of pipelines is important for this to succeed. In addition, there could be a revenue sharing model which could culminate in a win-win situation for NOCs and private players. Provision of a common carrier policy will help enable investment in and business growth of retail petroleum sector through fostering fair competition and providing a level-playing field.

65. Single window for ease of setting up Retail Fuel Stations

The current statutory approval/ licenses requirement for setting up of a Retail fuel station is very tedious and time consuming. The actual cycle time from the time that the site has been identified to the time that the site becomes operational is approximately 410 days. There are a total of about 20 approvals which need to be obtained from the Central and State authorities. Further the process/nature of approvals varies from state to state and is not uniform.

It takes anywhere between 12-18 months before all approvals are in place for a fuel station to be made operational.

In case of challenges related to any activity / permitting, the timeline can get further extended. During such time from the acquisition of the plot to commissioning of the retail outlet, an oil company would have invested significant capital in acquiring a real estate land parcel and construction of the retail outlet. Any delay may impact the viability of the project and can impact the confidence of the oil company to invest further in new locations.

In line with the Government of India's Smart City Mission of focus on Core Infrastructure development including Urban Mobility, there is a need for single

window clearances/approvals of Retail Fuel Stations in these cities to facilitate ease of doing business to the industry.

Suggestion

It is suggested that for ease of business, there should be a single window system with reference to clearances/approvals for setting up of fuel stations.

66. Open Access for Aviation Sector in India

Aviation Turbine Fuel (ATF) costs ~40-50% of the operating cost of a domestic airline carrier. It is imperative to have an open access policy framework for ATF to bring down the cost of fuel for airlines and enable sustenance and growth of the sector. The supply of Aviation Turbine Fuel (ATF) at airports traditionally has been through individual fuel farm stations (FFS) owned by each Oil Marketing Company (OMC) supplying fuel. In

2008, Hyderabad and Bangalore became the first Open Access Airports where all fuel suppliers could bring fuel into a common facility with Into-plane operations being managed by independent service providers. This was followed by Delhi T3 terminal (While Cochin Airport is based on the principles of "common access", this facility is not available to the private players). The key issue is that private players do not have access to fuel facilities and ITP in most airports in India.

Key Concerns;

a. Airports other than those mentioned above do not have such open access facility for fuel
b. No road map developed with respect to Open Access for New Airports
c. Currently there is no access with respect to private players for transporting ATF in the existing pipelines. These guidelines are still under formation by PNGRB.
d. Currently there is no access with respect to private players for storage of ATF in intermediate storage facilities before airports. Such facilities for example are available up-stream of airports at Bangalore, Delhi etc.

Suggestion

An Open Access policy should be introduced to allow Open Access for ATF encompassing airport fuel storage and into plane activities, pipeline access & intermediate storage facilities. Such a policy would focus towards availability of ATF infrastructure for all players at common rates, create a level playing field and instil real competition in this fast growing deregulated sector.

67. **Allow Intermediate dedicated storage tanks for bonded and non-bonded** ATF sourced from Refinery, for operational convenience at a storage location ATF sourced from Refinery, for operational convenience may be stored in Intermediate storage location, before transferring to the Fuel Farm Station (FFS) in the vicinity of the airport. Per circular issued by CBEC, mixed bonding of duty paid ATF with non-duty paid ATF is permitted only at the FFS's and not permitted at intermediate storage

installations. This results in increase of operating cost as there would be a need to have dedicated storage tanks for bonded and non-bonded ATF.

Suggestion

Mixed storage of ATF with co-mingling of duty paid and bonded stock of multiple suppliers in a common storage tank may be permitted by a Notification and not left to the discretion of authorities.

68. Level playing field for all biofuels technologies

Currently it seems like only ethanol and Biodiesel are listed in GST. All products from IH2® process (Bio C1 to C4 gases, Bio-LPG, Bio-Petrol, BioJet, BioDiesel, Biochar) need to be classified as Biofuels, brought under GST and taxed as such. In this connection, a representation has been made to the Ministry of Petroleum & Natural Gas for such classification. HSN codes also exist for various bio-products but it needs to be made sure that all the products mentioned above fit into description of those HSN codes.

Suggestion

All products from IH2® process (Bio C1 to C4 gases, Bio-LPG, Bio-Petrol, Bio-Jet, BioDiesel, Biochar) need to be classified as Biofuels and brought under GST.

69. Collection & processing waste a non-attractive business

Tax benefits can make the business attractive.

Suggestion

a. Income Tax benefits under Section 80JJA (Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste);

b. With respect to plants which help to clear up and clean municipal solid waste including plastics, agricultural and forest waste. Accelerated depreciation allowable for Effluent Treatment Plants of 100% as per provisions of the Income Tax Act must be allowed for all technologies that help to manage waste.

c. Customs & GST exemption of the procurement of material/components required for setting up Waste to Value projects in similar lines with Solar. E.g.:

(i) Customs - GENE RAL EXEMPTION NO. 198. Exemption to all items of machinery etc. for the initial setting up of a solar power generation project: [Notifn. No.30/10-Cus., dt. 27.2.2010]

(ii) Customs - GENERAL EXEMPTION NO. 201. Exemption to all items of machinery required for the initial setting up of a solar power

(iii) generation or facility: [Notifn No. 1/11-Cus., dt. 6.1.2011 as amended by 14/14]

d. Accelerated depreciation: It appears that 80% depreciation is allowed for various Renewal energy devices so IH2 is expected to be covered considering it is available for “agricultural and municipal waste conversion devices producing energy”. http://www.incometaxindia.gov.in/charts%20%20tables/depreciation%20rates.htm

e. Infrastructure status and extension of all Income Tax and other benefits to all waste to fuel technologies

f. Policy should allow for access to Green funds for waste to value technologies

g. Infrastructure status and extension of all Income Tax and other benefits to all waste to fuel technologies

h. Policy should allow for access to Green funds for waste to value technologies.

70. Choosing proper technology can enhance benefits to the community

Incentivise technologies with extent of Tax concessions linked to:

a. Integration of multiple missions / objectives of the government –
Swachh Bharat, Energy Security, Savings in Foreign Exchange, Make
In India, Skill India, etc

b. Extent of energy content recovery

c. Extent of GHG reduction

d. End to end value comparison across technologies – value of health benefits, reduction in pollution, products of the technology

e. Extent to which they leverage existing infrastructure to spread across the country