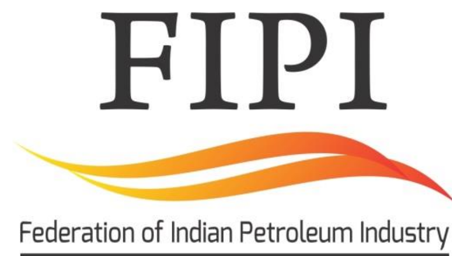

PRE BUDGET MEMORANDUM FOR UNION BUDGET 2019-20

FIPI

Federation of Indian Petroleum Industry

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EXECUTIVE SUMMARY

S No.	Section	Suggestion	Page No
INDIRECT TAX – Goods and Services Tax (GST)			
1	Request for inclusion of Crude oil, natural gas, MS, HSD and ATF under GST	Earliest inclusion of petroleum products such Crude oil, natural gas, MS, HSD and ATF under GST regime	1
Upstream			
2	Inclusion of Upstream Sector under GST	• Include Crude Oil and Gas under GST along with other excluded products viz HSD, MS & ATF to ensure that GST paid on input goods and services can be set-off against the Output GST on Crude oil & Natural 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 • In view of provisions u/s 9(2) of CGST Act, 2017, a suitable notification would be required to be issued to include these excluded petroleum products from specified date under CGST Law and corresponding State/UT Laws along with IGST Law	1

3	Difficulty in availing Credit of Capital Goods being used for Taxable as well as Exempted Supplies	Rule-43(1)(h) of CGST Rules, 2017 may be amended suitably so that interest is not levied on reversal of ITC on monthly basis in case of Capital Goods commonly used for taxable and exempted supplies	3
4	Rationalization of GST rate on goods and services for construction of cross country petroleum and gas pipeline	Since the goods and services purchased for construction of cross country petroleum and gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services etc. are not eligible for input tax credit (ITC) under GST regime, high rate the rate of GST on such goods will increase the cost of pipeline projects. Therefore, it is requested that applicable GST rate on such goods and services should be rationalized and be exempted or considered at lower rate of 5%	4
5	Allowing for GST credit on 'Pipelines laid outside factory premises'	Explanation to Section 17(5) should be amended from the definition of Plant & Machinery to allow the GST credit on pipelines laid outside factory premises	4
6	IGST Exemption on Imports of Goods for Petroleum Operations	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	4
7	IGST exemption on all goods required to be	Such transfer should be exempted	5

	transferred from onshore to offshore / one state to another in same block or one block to another for petroleum operations		
8	GST Rate reduction for works contracts relating to oil and gas exploration and production (E&P) in the onshore area including offshore area up to 12 nautical miles	• Reduction of the GST rate for Onshore works contract relating to oil and gas exploration and production (E&P) from 18% to 12% • Reduction of the GST rate for works contract relating to oil and gas exploration and production (E&P) in the onshore area including offshore area up to 12 nautical miles to 12%	5
9	Clarification required under GST Law that Royalty payment to the Govt does not constitute supply of services	Clarification be issued stating that Service Tax/ GST is not applicable on amount of Royalty payments to the Government	7
10	Clarification required for non-levy of Service Tax/GST on Operator's own share on provision of services through its own resources to the Unincorporated Joint Ventures (UJV)	A clarification may be issued in this regard that Service Tax/GST would not apply on Operator's own share in UJV on provision of services through operator's internal resources	7
11	Availment of Concessional Rate of 5%	An instruction is required to be issued to DGH for issuance of EC	8

	GST against EC	in eligible cases without any restriction on value of procurement	
12	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 Natural Gas / LPG 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 Central Excise Act	8
13	Clarification required under GST Law that Royalty and Dead Rent payments to the GOI do not constitute supply of services	• A clarification be issued stating that Royalty and Dead Rent payments to the GOI do not constitute supply of services	10
14	Registration Requirement in case of Foreign Supplier	A clear guideline may be issued on requirement of obtaining Registration by such Non-Resident Supplier/contractors	10
	Downstream		
1	Relief by way of exemption /lower rate of GST on input used in refining and marketing	Grant exemption / lower GST rate on procurement of major Capital Goods, input and input services for use in Refining, Marketing & Distribution of petroleum	11

	of petroleum products	products in order to minimize the impact of GST, like • BS-VI MS & HSD projects • Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD • Regasification of LNG – from 18% to 5% • Procurement for setting up ethanol production facility	
2	Levy of GST on the LPG and SKO based on indenting	Suitable clarification may be inserted in the GST law that applicability of rate of GST on LPG and SKO between OMCs, Stock transfer from one state to another and import would depend upon ultimate use of the LPG and SKO	11
3	Clarification for supply of Aviation Turbine Fuel (ATF) to foreign going aircraft as Exports / Zero Rated supply	Till the time ATF is included under the GST, we would like to request for insertion of suitable explanation as per following alternatives to amend the definition of export of goods or zero rate goods under the IGST Act to enable us to avail ITC treating the supply as export: • Amendment sought in export of goods definition u/s 2(5) of IGST Act • "export of goods'', with its grammatical variations and	11

		cognate expressions, means taking goods out of India to a place outside India and includes supply of Aviation Turbine Fuel to a foreign going aircraft • Alternatively, the definition of Zero-Rated supply, explained under Section 16 of IGS Act, may be amended to include the following supplies • Export of goods or services or both, or • Supply of goods or services or both to a Special Economic Zone developer SEZ unit • Supply of Aviation Turbine Fuel to a foreign going aircraft	
4	Clarification on documentation for supplies to Special Economic Zone (SEZ) units under GST	Clarification circular to be issued for the documentation required for supplies to SEZ for establishing the proof of export to avoid any litigation at a later date	12
5	Admissibility of Input tax credit in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export	In view of above, Input tax credit to be allowed in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export , when the factory and export ware house are situated in different political states. This would provide relief to the exporters from burden of incurring GST taxes involved in positioning of the goods in the	13

		export warehouse as per the fundamental principles that taxes and duties are not to be loaded in case of exports	
6	Exemption/ Rationalization of GST rate on: • Sea transportation of LNG by vessel, and • LNG regasification activity	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%	13
7	Clarification regarding GST Rate on Liquefied Petroleum Gases (LPG) supplied to OMCs for onward supply to household domestic consumers	Suitable clarification may be issued that GST rate @ 5% on domestic LPG is applicable on LPG supplied by refiners/fractionators (like GAIL/ONGC) to OMCs for ultimate supply to household domestic consumers, in line with MOPNG letter ref. No. P 20023/2/2011-PP dated 23.07.2013	14
8	Formula for reversal of Input Tax Credit	Formula currently prescribed for reversal of credit may be changed for LNG sector	15
9	Tax reversal under Section 17(2) of CGST	Since the exclusion of specified taxes is via rules, alteration of	15

	Act	rules by adding entry 92A of List I in explanation to rule 7 & 8 of Input Tax Credit rules will correct the anomaly and no amendment would be required to the Act	
10	Request for suitable tax relief under GST to compensate the 50% Excise duty benefit available to North East refineries	Since, scheme formulated by the Central Govt. was part of the overall policy framework of industrialization of north east; it is expected that Central Govt. would come out with some scheme to ensure that same benefit is made available to refineries for GST products to boost the long-term sustainability and viability of the North East refineries	15
11	Non Availability of procedure to avail ISD credit of the ITC received by an Input Service Distributor post 27th December 2017 in line with Section 140(7) of the CGST Act	Appropriate procedure to avail ISD credit of the ITC received by an Input Service Distributor post 27th December 2017 in line with Section 140(7) of the CGST Act to be provided	16
12	Levy of nominal GST on excluded petroleum products or include under Zero rated	In order to remove stranding of taxes in the hands of petroleum industry, it is pertinent that either these excluded product are also levied nominal GST parallel with levy of Excise duty /VAT. Alternatively, these products may be included under zero rated good in GST to allow the full availment of input tax Credits under GST	17

Natural Gas			
1	Rationalization of GST rate on services of transportation of Natural Gas through pipeline	• GST @ 5% applicable on the services of transportation of goods by pipeline may be provided with ITC Benefit • 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	17
2	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	18
General			
1	Amendment in explanation inserted to Chapter V- Input Tax Credit of CGST Rules, 2017 to determine the value of Non-GST supply	Value of these non-GST petroleum products should be included in the Non-GST turnover of only in the manufacturing State and suitable amendment to be made in clause 2 of Explanation inserted to the end of Chapter 5- Input Tax Credit of CGST Rules, 2017	19
2	Exemption from TDS provisions on transactions between	The TDS provisions should not be made applicable for supplies of goods and services between PSUs	20

	notified entities	since there would not be any revenue implication on such supplies and it will ease in compliance of tax deduction from other suppliers	
3	GST Registration by Non-Resident Taxable Person	The foreign service providers do not register themselves under GST even though there is statutory obligation for registration. Oil companies are dependent on these service providers due to the proprietary nature and expertise of the services. While GST at the applicable rate is paid by the oil companies under reverse charge mechanism it is suggested that a clarification may be issued whether registration or reverse charge is mandatory in such cases	20
4	Treatment of Corporate Office under GST	A clarification or exemption may be issued to the effect that costs incurred by Corporate Office on various accounts such as manpower, infrastructure etc. would not be subject to GST	20
INDIRECT TAX – Excise Duty			
Upstream			
1	Reduction in Rate of OID Cess	Rate of OID Cess to be reduced to 8% - 10% of the realized price of oil	21
Downstream			
1	Introduction of Specific rate of excise duty on	Presently MS & HSD are levied specific rate of excise duty	22

	Aviation Turbine Fuel (ATF)	whereas ATF is levied ad-valorum rate of duty. MS, HSD and ATF have been kept out from GST levy and continue to be levied under the levy of Excise duty & VAT. Since, MS & HSD both are levied specific rate of excise duty, thus it is requested that ATF should also be levied specific rate of duty in place of ad-valorem duty. This would ensure correct payment of duty at the initial clearance stage itself and will eliminate complexities and difficulties in re-determination of duty on further stock transfers which sometime result in avoidable litigation	
2	Review of exemption granted to Ethanol Blended Petrol (EBP) and Bio-Diesel blended HSD after GST implementation w.e.f. July 2017	Suitable amendment may be carried out in the above referred notification no. 11/2017-CE dated 30.06.17, 14/2017-CE dated 30.06.2017 and 20/2017-CE dated 3.7.2017 by amending the meaning of appropriate duties/taxes that Ethanol or Bio-diesel on which the appropriate duty of excise or central tax, State tax, Union territory tax or integrated tax, as the case maybe, have been paid	23
3	Request of exemption granted to Ethanol Blended Petrol (EBP) and Bio-Diesel blended HSD after imposition of Road & Infrastructure	The referred notifications may be amended suitably clarifying the meaning of appropriate duties of excise to include both RIC and AED (Road Cess) to avoid any litigation with regards to stock of MS	24

	CESS (REC) w.e.f. 01.02.2018	(Petrol) and HSD as on 1.2.2018 which have been blended with Ethanol or Bio-Diesel, as the case may be, on or after 2.2.2018	
4	Exemption to CNG from payment of excise duty	CNG may be exempted from levy of Central Excise Duty. This will make CNG more economical and will promote use of this environment friendly fuel in domestic and commercial transportation sectors	25
5	Reduction in Social Welfare Surcharge on import of Crude Oil	Increase in levy of Customs duty on crude oil is an additional burden on Oil companies due to not Cenvatable or pass through levy, therefore, it is suggested that SWS on import of Crude Oil to be reduced to 3% of Customs duty on the line of levy of SWS on import of MS & HSD	25
		General	
1	Exemption/Concessional rate of Social Welfare Surcharge	To provide an exemption or concessional rate of SWS on import of LNG	26
2	Exemption from mandatory fixed pre-deposit	Mandatory pre-deposit may be exempted	26
3	Cross utilization of GST Input Tax Credit against Excise duty/Sales Tax	The request for levy of nominal GST is not practical, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be	27

		carried out in the CENVAT Rules to allow the tax credit of GST paid inputs against the output tax liability of Excise on non-GST products since the credit was earlier available under CENVAT & VAT laws; there would not be any additional outgo to the Govt. by allowing cross utilization	
4	Duty Credit on MS and HSD brought to refinery for reprocessing	Non-Cenvatable products like MS and HSD when received in the Refinery for re-processing should either be exempted from payment of duty at the time of clearance after re-processing or Cenvat Credit should be allowed on these products at the time of receipt in the Refinery by suitably amending the definition of 'Input' contained in the Cenvat Credit Rules'2017 for re-processing of such products in the refinery	27
5	Removal of National Calamity Contingent Duty on Crude Oil levied @ Rs.50/MT	The additional burden of NCCD imposed on the Oil Refineries may be withdrawn	28
INDIRECT TAX – Custom Duty			
Downstream			
1	Exemption on import of LNG	Nil rate of customs duty should be made applicable on import of LNG	28
2	Double payment of custom duty on import of LNG under FOB supplies due to inclusion	Issue suitable clarification that in case of import of LNG on FOB basis, the Boil-off gas arising out of LNG and utilized as fuel during	30

	of value of LNG used by the ship during the transportation of LNG in CIF value of imports where Custom Duty is paid on full Bill of Lading quantity based on suppliers' invoice	the course of transportation should not be added to the cost of freight as such quantum of LNG has already suffered customs duty in the FOB value	
3	Specific clarification under Customs to provide exemption on LNG consumed for SEZ operations by ONGC C2-C3 Dahej Plant post GST regime	Issue clarification in line with clarification issued under pre-GST regime so that exemption can be claimed on import of LNG	31
		Natural Gas	
1	Full exemption to be granted on Liquid and Gas pipelines projects covered under chapter 98	The present customs duty being levied at the rate of 5% should be reduced to Nil on Liquid as well as Gas pipelines projects covered under chapter 98.01. Alternatively, an exemption from custom duty may be provided to Liquid (crude oil & petroleum products) and Natural gas pipeline projects laid in specified states such as north east states, J&K etc.	30
		General	
2	Clarification on applicability of Condition No. 48 under Sl. No. 404 of Customs Notification No. 50/2017-Cus dated	Considering ease of doing business, a clarification is requested under Customs Law as well as GST Law to the effect that the condition 48 of notification no. 50/2017-Cus dated 30.06.2017	31

	30.06.2017 on disposal of scrap	and similar condition under GST Notification No. 3/2017-(Rate) would not apply on disposal of unused & surplus items as well as the used items which are no longer required for petroleum operations and have become scrap	
INDIRECT TAX – Central Sales Tax			
Upstream			
1	Clarification required under the erstwhile Service Tax Law to the effect that Cost Petroleum under the Production Sharing Contract (PSC) is not a consideration for service to GOI and thus not taxable per se	The Ministry of Finance (TRU) vide circular No. 32/06/2018-GST dated 12th February' 2018 at Para-6 has clarified that Cost Petroleum is not a consideration for service to GoI and thus not taxable per se A similar clarification be issued stating that service tax is not payable on Cost Petroleum being not a consideration for any service	32
Downstream			
1	Non-issuance of Form-C under CST Act	A clarification/amendment is requested under CST Act, to the effect that inter-state supply of Petroleum Products kept out of GST including supply of crude oil to the refineries would continue to be eligible for concessional rate of 2% CST against Form-C for manufacture of GST as well as Non-GST products by such refineries	33

General			
1	Continuation of C form for purchase of excluded products	Suitable clarification may be issued in this regards that customers of these excluded petroleum products would be allowed to purchase such products against C form as is allowed earlier considering the fact there is not additional financial outgo on part of states	34
DIRECT TAX			
Upstream			
1	Deduction under Section 35AD to crude oil pipelines	Conditions under Section 35AD to be amended suitably to remove the requirement of approval of PNGRB for crude oil Pipelines	35
2	Section 42 - Deduction in case of business of prospecting of mineral oil	Considering the genuine hardship of the assessee, an explanation may be inserted in section 42(1)(a) that an intimation by the assessee for surrender of area to appropriate authority will be construed as area surrendered for allowing the deduction of infructuous or abortive exploration expenses. It may also be clarified by inserting proviso in Section 42 that tax payer will be eligible to claim deduction for exploration drilling expenses (including survey expenditure) in the year of incurrence against other business income irrespective of fact that	35

		commercial production has started or not. Further non allowable of deduction for farm in cost (past cost plus premium), reduces the activity in this market and is clearly against the interests of expediting exploration. This is despite the fact that income arising out of farming out any interest in the block is taxable in the hands of assignor under Section 42(2). Thus, it is suggested that Section 42 is amended suitably to add a provision for deduction of acquisition (farm-in) expenses	
		Downstream	
1	Deduction under Section 80IB(9) on Refining business	Considering that the delay in the project completion is due to unavoidable circumstances which were beyond the control of the company, the benefit of section 80-IB(9) may be reintroduced for the said project by allowing for project completion date from 31.03.2012 to 31.03.2017	35
2	Benefit of Section 32AD to be extended to existing undertaking	Conditions under Section 32AD is to be suitably amended to include new investment in existing manufacturing unit for expanding capacity or meeting environmental requirement	37
3	Deduction in respect of	CGD business is a capital intensive	37

	expenditure on specified business under Section 35AD be extended to City Gas Distribution Entities	business wherein heavy capital investments are necessary before the commencement of business. Bringing the CGD business within section 35AD will help to reduce the tax outflows in period of capital expenditure and promote growth and investments in CGD sector. Further this will also provide a big push to government's intentions of increasing number of PNG connections and help phase out the current LPG subsidy. City Gas distribution entities are duly authorized by Petroleum and Natural Gas Regulatory Board (PNGRB) to lay, build and operate City Gas Distribution Network in various cities. Since CGD pipeline are integral part of the pipeline infrastructure and vital for India to become a gas based economy it is requested to include CGD within the ambit of section 35AD	
		Natural Gas	
1	Benefit of Section 80-IA to be extended to 'Gas projects'	The word "loading and unloading facility", may be substituted by "the loading or unloading facility" for the purpose of definition of "Port" for section 80-IA and the condition of transferring the structure to port authority may be removed. Further benefit of Section 80-IA (4) has been restricted to any infrastructure	38

		facility starts operation up to 31.03.2017. It is suggested to remove/extend the sun set clause to promote the make in India campaign	
2	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)	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	39
		General	
1	Set-off of Dividend Distribution Tax (DDT) under Section 115-O	Such set-off of DDT may also be allowed for dividend received from companies other than subsidiaries. Since, at times JV may be incorporated with 50%-50% shareholding between two JV partners and in such a situation the benefit will not be available even though the investment in such JV is quite significant and	40

		where holding interest is quite substantial but only not being a subsidiary company. Alternatively, the word "subsidiary" may be substituted by the words "holding more than twenty percent"	
2	Corporate Social Responsibility Expenditure	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	40
3	Relaxation given to 100% subsidiary companies from applicability of the provisions of deemed Gift Income u/s 56(2)(x) of the Income Tax Act may be extended to JVs/associate companies	Although, section 56(2)(x) was primarily introduced for Anti abuse measure to curb malafide transaction without any commercial substance. However, when the section was actually implemented, the same covers all the business transactions entered by an entity without having regard to genuineness of the transaction This is particularly applicable in case of acquisition of securities either via subscription of initial capital or purchase from a strategic investor. This is leading to increased compliance cost and time to complete such transaction. Therefore, it is requested to exempt acquisition of shares of foreign subsidiaries,	41

		domestic subsidiaries (other than 100% subsidiaries), Joint ventures and Associates from purview of section 56(2)(x) in line with exemption to transaction between holding company and 100% subsidiary via Finance Act 2018	
4	Beneficial rate of corporate tax (25%) to the newly incorporated companies	The benefit of lower rate of corporate tax (25%) should be allowed to newly incorporated companies based on the turnover threshold in the year of incorporation	41
5	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	42
6	Multiple levy of income tax on dividend – S. 115-O	• 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	43

		• 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 assesses	
7	S.115-O – Clarification on absolute removal of cascading effect of Dividend Distribution Tax (DDT)	• 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 • 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	43
8	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	44

9	Phasing out of exemptions	The process of phasing out of exemptions and deductions should not be done across sectors. There are various sectors where the turnaround time for the companies to reach a break even and start earning profits takes longer than some other industries	45
10	Carry forward of Foreign Tax Credit (FTC)	The Assessee be permitted to carry forward (say for five years) such unutilized credit for adjustment in future years	45
11	Corporate Tax Rate from All Companies be Moderated	Intent of the Govt. is to reduce effective corporate tax rate from 30% to 25%, Corporate tax rate from all companies may be moderated	46
12	Section 32 AD must be extended to 2023-24	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 2023-24 and should be expanded to include substantial expansion	46
13	Reinstatement of Section 32 AC	The sunset clause for Section 32AC should be extended to reasonable period say upto 2024. This will help achieve higher capital formation, job creation, higher economic growth, thrust to make in India initiative	46
14	Amendment in clause (f)	Section 43B(f) allows leave	47

	of Section 43B	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	
15	Weighted average deduction under section 35(2AB), 35(2AA) to be retained at 200%	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%	47
16	Clarification that loss on Sale of Oil bonds is a revenue loss	The Section 37(1) needs to be suitably amended to provide deduction for business loss arising from sale of such bonds	48
17	TDS on Transportation payment under section 194C	The discussed provision is resulting into unnecessary huge compliance. Exemption from TDS deduction may be provided to all as was available till 31st May 2015 on the condition of furnishing of the PAN by contractor to deductor. Condition of obtaining the self-declaration form, from the deductee and updating every time in ERP system is a very	48

		cumbersome & time consuming process	
18	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), clause (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		49
19	Clauses iv, iv-a & v of Section 36(1) permits deduction from income under the head, income from business or profession on long term retirement benefits, namely, recognized PF, approved superannuation fund, pension scheme and approved gratuity fund. Any contribution of the Employer beyond these benefits is disallowed u/s 40A(9) of the Act. Considering that PSUs are governed by DPE Guidelines for fixation of Salaries/ Perquisites, it is imperative to amend Section 36(1) to include other retirement benefits existing in vogue in PSUs, namely, Post-Retirement Medical Benefit Fund and Death Benefit Fund		49
20	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		49
21	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		50
22	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 pa etc.		50

23	Suitably increase the threshold limit for exemption u/s 10(10AA) towards leave salary paid at the time of superannuation or otherwise, currently fixed at Rs. 3 lakhs (fixed vide notification dated 31/05/2002) to Rs.10 lakhs	50
24	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 of the Act. At least in cases involving remittance to Non Residents, 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	50
25	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	50
26	The Explanation 2 to Section 37 inserted vide Finance (No.2) Act, 2014 be withdrawn so as to facilitate deduction towards expenditure incurred under Corporate Social Responsibility	50

PRE-BUDGET MEMORANDUM FOR UNION BUDGET 2019-20

INDIRECT TAX

Goods and Services Tax (GST)

1. **Request for inclusion of Crude oil, natural gas, MS, HSD and ATF under GST**

   Background

   At the onset, non-inclusion of basic petroleum products such as Crude oil, natural gas, MS, HSD and ATF under the newly introduced GST regime is affecting the sector adversely. Presently, the industry is paying GST on procurement of plant machinery and services and is unable to get the input tax credit as the final product is not included under GST. This is leading to immense pressure on the industry, which, in turn, is straining the entire economy.

   Suggestion

   Earliest inclusion of petroleum products such Crude oil, natural gas, MS, HSD and ATF under GST regime.

Upstream

2. **Inclusion of Upstream Sector under GST**

   Background

   Non-inclusion of the products of upstream sector (mainly Crude and Natural Gas) is having the huge adverse Impact on the sector as ITC is not available.

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

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 (if under ICB)	IGST or CSGT+SGST (5%)	Negative
Service Tax	15%	18%/12% (exploration, drilling & mining services)	Negative coupled with levy of GST on Royalty
CST	2% against C form	IGST - 5%	Negative
Stock Transfer	NIL	IGST-5%	Negative

This is seriously affecting the upstream sector and consequently the country due to the following:

- Increased E&P costs significantly; over & above the cost increased due to stranded tax, which will lead to Considerable decrease in exploration acreage and production start from deepwater
- Make competing fuels of Natural Gas more economical. Unlike other countries, this will incentivize polluting fuels instead of clean fuel like Natural gas
- Derail Hon'ble Prime Minister's vision of Make in India, higher domestic production & increasing the share of Natural Gas in the Indian economy
- Create uncertainty w.r.t.expected future investments

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 pre-GST 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'.

Suggestion

- Therefore, it is humbly submitted to include Crude Oil and Gas under GST alongwith other excluded products viz HSD, MS & ATF to ensure that GST paid on input goods and services can be set-off against the Output GST on Crude oil & Natural 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
- In view of provisions u/s 9(2) of CGST Act, 2017, a suitable notification would be required to be issued to include these excluded petroleum products from specified date under CGST Law and corresponding State/UT Laws along with IGST Law

3. Difficulty in availing Credit of Capital Goods being used for Taxable as well as Exempted Supplies

Background

As per Rule-43 of CGST Rules, the entire Credit of GST paid on Capital Goods being commonly used for taxable as well as exempt supplies can be availed. However, as per Rule-43 (1)(h) of CGST Rules, 2017, the interest would be required to be paid on amount to be reversed on monthly basis till 60 months. Further, the issues get more complicated where substantial number of capital goods are purchased at different point of time which requires detailed calculation in respect of each such capital goods for the purchases of reversal alongwith interest. Further, in petroleum Industries, interest component would be much higher than the Credit amount due to higher exempted turnover on account of supply of crude oil & natural gas.

Considering the fact that GST is leviable on supply of majority of goods and services, it can be concluded that Rule-43 of CGST Rules is not applicable in case of other major industries and seamless credit of GST on Capital Goods is available.

However, E&P industry is not able to take even minimum possible input tax credit in respect of Capital Goods due to interest implications on reversal of majority of input tax credit availed on Capital Goods.

Suggestion

Rule-43(1)(h) of CGST Rules, 2017 may be amended suitably so that interest is not levied on reversal of ITC on monthly basis in case of Capital Goods commonly used for taxable and exempted supplies.

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

Background

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

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

Suggestion

Since the goods and services purchased for construction of cross country petroleum and gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services etc. are not eligible for input tax credit (ITC) under GST regime, high rate the rate of GST on such goods will increase the cost of pipeline projects. Therefore, it is requested that applicable GST rate on such goods and services should be rationalized and be exempted or considered at lower rate of 5%.

5. Allowing for GST credit on 'Pipelines laid outside factory premises'

Background

In the GST Act, pipelines laid outside the factory premises are specifically excluded from the purview of Input Tax credit by virtue of explanation to Section 17(5). Under the GST law, there is no concept of manufacturing and therefore, restricting the credit for pipeline beyond factory, is unreasonable and creating undue hardship on already burdened oil sector.

Suggestion

In view of above, it is requested that explanation to Section 17(5) should be amended from the definition of Plant & Machinery to allow the GST credit on pipelines laid outside factory premises.

6. IGST Exemption on Imports of Goods for Petroleum Operations

Background

- Under Pre-GST regime, goods required for petroleum operation whether under pre & post-NELP or CBM Policy or under nominated blocks were 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 was also not payable for the said imported goods (notification No.21/2012-Cus Sl-1) in view of exemption from BCD & CVD.
- Similarly excise duty exemption had been allowed vide notification No.12/2012-CE dated 17.3.2012 Sl-336 as amended by notification No.12/2015-CE to goods supplied for use in petroleum operation including CBM and marginal field, if such supplies were under ICB Tenders.
- 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.

Suggestion

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.

7. IGST exemption on all goods required to be transferred from onshore to offshore / one state to another in same block or one block to another for petroleum operations.

Background

Goods transferred have been subjected to GST already. Therefore, the GST on subsequent transfer results in additional GST cost due to non-availability of ITC on initial procurement as the Crude & Natural Gas are outside GST. Subsequently, on transfer of such goods, the time-limit for availment of ITC is not available, hence GST payment on such transfer become additional cost to E&P Sector.

Suggestion

It is humbly requested that such transfer to be exempt.

8. GST Rate reduction for works contracts relating to oil and gas exploration and production (E&P) in the onshore area including offshore area up to 12 nautical miles

Background

- The contracts entered into by E& P operators in the nature of onshore works contracts are currently taxed @18% which is significantly higher as compared to pre-GST era
- In the pre-GST era, the effective rate of tax on such works contracts which were composite in nature and where vendors were registered in composition scheme of their respective

states was ranging between 11% to 12% which has been substantially increased to 18%. Please refer state wise rates below:

State	Pre-GST Regime	GST Regime
Rajasthan	12%	18%
Gujarat	12%	18%
Andhra Pradesh	11%	18%
Assam	11%	18%

- However in case of those works contracts where the goods & services were identified separately and vendors were maintaining separate books of accounts for goods & services, the effective tax rate was ranging around 7% which has substantially increased to 18% because of the obligation to charge 18% GST for the works contract services as mentioned under GST Law. Please refer state wise rates below:

State	Pre-GST	GST
Rajasthan	6.87%	18%
Gujarat	6.90%	18%
Andhra Pradesh	6.87%	18%
Assam	6.90%	18%

- Thus, rate of works contract has increased substantially under GST regime as compared to rate pre GST regime for onshore works contract

Suggestion

- We request for reduction of the GST rate for Onshore works contract relating to oil and gas exploration and production (E&P) from 18% to 12%
- We request for reduction of the GST rate for works contract relating to oil and gas exploration and production (E&P) in the onshore area including offshore area up to 12 nautical miles to 12%

9. Clarification required under GST Law that Royalty payment to the Govt does not constitute supply of services

Background

- Royalty is paid on production of Crude Oil & Natural Gas as per provisions of Oilfields (Regulation & Development) Act, 1948 (ORD Act). In case of non-payment of such Royalty as imposed u/s 6A of ORD Act, there is provision for imposition of penalty and imprisonment as well like any other statutes enacted for levy of taxes and duties. Thus, royalty as being paid is in the nature of tax
- 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
- Treating right to use natural resources as supply of services & levying tax is a step backward & further increase the tax burden with adverse consequences on project profitability & incremental investments

Suggestion

It is requested that a clarification be issued stating that Service Tax/ GST is not applicable on amount of Royalty payments to the Government

10. Clarification required for non-levy of Service Tax/GST on Operator's own share on provision of services through its own resources to the Unincorporated Joint Ventures (UJV)

Background

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 CBIC 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 and are not subject to Service Tax. Similar clarification has been issued under GST regime also.

Industry is of the view that since UJV is not a distinct person, the Service Tax/GST is not payable to the extent of Operator's own share in such UJV as same is service provided/supplied to same person. However, Service Tax/GST is applicable to the extent of other partners' share in such UJVs.

Suggestion

A clarification may be issued in this regard that Service Tax/GST would not apply on Operator's own share in UJV on provision of services through operator's internal resources.

11. Availment of Concessional Rate of 5% GST against EC

Background

Under pre-GST regime, there was exemption from payment of customs duty on import and exemption of excise duty on domestic procurement against Essentiality Certificate (EC) for petroleum operations. Further, there were no tax implication on stock transfer of goods.

Under GST regime, the procurement of goods (Import as well as domestic purchases) are subject to 5% GST against EC. Further, the movement of goods from one GST Registration to another is treated as taxable supply and attracts 5% GST against EC.

Presently, the DGH is issuing EC for Import of goods irrespective of its value, however, in case of domestic procurement EC is being issued only for procurement of goods with value of Rs. 10 Lakh and above.

In absence of EC in such cases, upstream sector is not able to avail the benefit of concessional rate of 5% GST as provided by Govt.

The non-issuance of EC hampers the smooth conduct of operations as well as increase in tax cost. Hence, there is adverse financial implication on domestic purchase of goods from small vendors.

Suggestion

An instruction is required to be issued to DGH for issuance of EC in eligible cases without any restriction on value of procurement.

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

Background

- As per the extant 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'

- In view of aforesaid provision of GST law, it may be interpreted that ITC is not available on goods/services received for construction of Natural Gas / LPG pipeline networks being immovable property and not covered in the definition of plant & machinery
- It is submitted that under the erstwhile provisions of Cenvat Credit Rules, input tax credit (CENVAT Credit) was eligible, in general, on the goods/services received for construction of pipeline
- 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
- Key definitions under GST laws is as below for reference. It may be observed that term "factory" is not defined under the GST law
- 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
- Construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization
  a. 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

- Considering that GST is applicable on the output supply of services from such Natural Gas / LPG 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 Central Excise Act

13. Clarification required under GST Law that Royalty and Dead Rent payments to the GOI do not constitute supply of services.

Background

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.

- Central Board of Excise & Customs, in FAQ on Government Services states "The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism"
- It may be noted that same FAQ mentions that "Royalty paid under the Oil Field (Regulations and Development) Act, 1948 for extraction of crude oil and natural gas is not in the nature of 'consideration'"
- Treating right to use natural resources as supply of services & levying tax is a step backward & further increase the tax burden with adverse consequences on project profitability & incremental investments

Suggestion

It is requested that a clarification be issued stating that Royalty and Dead Rent payments to the GOI do not constitute supply of services.

14. Registration Requirement in case of Foreign Supplier

Background

Upstream Sector also awards the contract to Foreign Service Providers which are in the nature of technical consultancy, supervision for installation, commissioning, certification, training etc. For example, E&P Sector regularly exports solar turbines for repair/overhauling to the Foreign Manufacturer (OEM) and re-imports the same after repairs. However, installations of such solar turbines are carried out under supervision of manufacturer's representatives.

As per GST Law, such manufacturer providing supervisions services would be required to obtain Registration in India. However, the Service Provider is un-willing to take Registration. Such issue appears in various activities undertaken by Non Resident contractors under different contracts.

Suggestion

It is requested that a clear guideline may be issued on requirement of obtaining Registration by such Non-Resident Supplier/contractors.

Downstream

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

Background

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

Suggestion

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

- BS-VI MS & HSD projects
- Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD
- Regasification of LNG – from 18% to 5%
- Procurement for setting up ethanol production facility

2. Levy of GST on the LPG and SKO based on indenting

Background

The GST rate for domestic LPG is 5% whereas for non-domestic LPG, tax rate is 18%. Similarly, GST rate for SKO (PDS) is 5% whereas for SKO(Non-PDS), tax rate is 18%. There is also import of substantial quantity of LPG for domestic end use purpose.

Suggestion

It is suggested that to avoid any ambiguity, suitable clarification may be inserted in the GST law that applicability of rate of GST on LPG and SKO between OMCs, Stock transfer from one state to another and import would depend upon ultimate use of the LPG and SKO.

3. Clarification for supply of Aviation Turbine Fuel (ATF) to foreign going aircraft as Exports / Zero Rated supply

Background

Under the present form of GST, even though major petroleum products have been kept out of GST ambit, however, exports of such goods are considered 'Zero Rated' (u/s 16 of IGST Act) to enable them to avail Input Tax Credit on such exports to avoid exporting taxes.

While going through the GST provisions relating to Zero Rated supply, an ambiguity has arisen regarding supply of ATF to foreign going airlines. Under the GST provisions, the term 'exports of goods' have been defined, as taking goods out of India to a place outside India. Though, the ATF is supplied to a foreign going aircraft for the purpose of ''consumption outside India'' but may not get covered directly within the definition of export of goods to treat them as zero rated supply as it is being "supplied within India''.

Suggestion

Till the time ATF is included under the GST, we would like to request for insertion of suitable explanation as per following alternatives to amend the definition of export of goods or zero rate goods under the IGST Act to enable us to avail ITC treating the supply as export:

- Amendment sought in export of goods definition u/s 2(5) of IGST Act
- "export of goods'', with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes supply of Aviation Turbine Fuel to a foreign going aircraft"
- Alternatively, the definition of Zero-Rated supply, explained under Section 16 of IGS Act, may be amended to include the following supplies:
    - export of goods or services or both, or
    - supply of goods or services or both to a Special Economic Zone developer SEZ unit
    - supply of Aviation Turbine Fuel to a foreign going aircraft"

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

Background

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

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

Suggestion

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

5. **Admissibility of Input tax credit in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export**

Background

As per section16, Zero rated supply means export of goods and the state which exports the Non GST goods are eligible for ITC. However in case of movement of Non GST goods from manufacturing unit situated in one political state to Export ware house situated in another political state, GST ITC is not eligible, as such stock transfer movement is not termed as transaction under section 16 of the IGST Act 2017 in the manufacturing state even though the Central excise procedure is fully followed in such cases for movement of bonded product.

Suggestion

In view of above, Input tax credit to be allowed in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export, when the factory and export ware house are situated in different political states. This would provide relief to the exporters from burden of incurring GST taxes involved in positioning of the goods in the export warehouse as per the fundamental principles that taxes and duties are not to be loaded in case of exports.

6. **Exemption/ Rationalization of GST rate on:**

a. <u>Sea transportation of LNG by vessel, and</u>

b. <u>LNG regasification activity</u>

- 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 – Re-gasified 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%.

7. Clarification regarding GST Rate on Liquefied Petroleum Gases (LPG) supplied to OMCs for onward 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%
- Subsequently a new entry no. 165A has also been inserted w.e.f. 25.01.2018 which seems to expand the scope of the concessional rate of GST @ 5% on LPG for supply to household domestic consumers which may also cover the supplies made by suppliers of LPG other than OMCs (i.e. GAIL & ONGC etc.). The entry no 165A inserted by notification is as below
- 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
- During Pre-GST regime, VAT was levied on LPG in similar manner and LPG for domestic use was attracting concessional rate of VAT. LPG for domestic use was included in the category of declared goods under section 14 of the CST Act 1956 under which there was upper ceiling of State VAT rate of 4% / 5%. The MoPNG had also clarified vide letter ref. No. P 20023/2/2011-PP dated 23.07.2013 to the effect that the LPG supplied in bulk as well as in cylinders by refiners/fractionators to OMCs for ultimate sale for domestic use will qualify as supply of LPG for domestic use by such refiners/ fractionators. However, the State revenue authorities in Maharashtra have disregarded the circular issued by the MoPNG and provision of section 14 of the CST Act 1956 while confirming the demand by levying the full VAT rate on supply of LPG by GAIL to OMCs
- Under the GST regime also, the GST authorities have recently started raising objections on the ground that concessional GST rate @ 5% is not applicable on domestic LPG supplied by GAIL to OMCs due to the reason that GAIL itself is not supplying LPG to domestic consumers. The issue is being raised by the GST authorities in-spite of insertion of new entry no 165A by Notification no. 6/2018 dated 25.01.2018. It may be appreciated that the issue is relevant not only for GAIL but for the entire oil and gas industry

Suggestion

It is requested that suitable clarification may be issued that GST rate @ 5% on domestic LPG is applicable on LPG supplied by refiners/fractionators (like GAIL/ONGC) to OMCs for ultimate supply to household domestic consumers, in line with MOPNG letter ref. No. P 20023/2/2011-PP dated 23.07.2013.

8. Formula for reversal of Input Tax Credit

Background

The formula prescribed under GST in case of reversal of input credit tax credit takes into account taxable as well as exempt supplies which includes non-GST supplies. Currently, since LNG is outside the purview of GST, the ratio of exempt and taxable supplies is huge due to which there is a huge loss of credit under to LNG sector.

Further, considering such disparity, Government has also prescribed specific formula of credit reversal for banking sector. It is suggested that a new formula may be prescribed under law for the benefit of LNG sector.

Suggestion

It is suggested that the formula currently prescribed for reversal of credit may be changed for LNG sector.

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

Background

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

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

Suggestion

Since the exclusion of specified taxes is via rules, alteration of rules by adding entry 92A of List I in explanation to rule 7 & 8 of Input Tax Credit rules will correct the anomaly and no amendment would be required to the Act.

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

Background

The North-East Refineries are having uneconomic operations due to a number of factors like limited demand, limited crude availability, sub-economic size, location disadvantage etc. In order to support their operations and to make it economic viable after de-regulation of

petroleum products, Central Govt. formulated a scheme whereby all NE refineries were exempted from payment of Central Excise duties to the extent of 50% vide Notification No.29/2002-CE dated 13.5.2002.

With the GST implementation in the country w.e.f. 01.07.2017, except 5 petroleum products, all other petroleum products e.g. Naphtha, Bitumen, FO, LPG, SKO, Wax, etc. are covered under GST. Since, Excise duty is not applicable on the products subsumed under GST; therefore, benefit of 50% Excise duty as provided earlier to NE refineries is no longer available on manufacturing and supply of these GST products. Further, there is no such exemption available under GST, thus, NE Oil Refineries are deprived of excise concession.

Suggestion

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

11. Non Availability of procedure to avail ISD credit of the ITC received by an Input Service Distributor post 27th December 2017 in line with Section 140(7) of the CGST Act

Background

Following is the extract of Section 140(7):

"Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day."

Section 140(7) is an overriding section of the CGST Act which states an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day. Hence there is no time limit for availing credit of the invoices issued on the Input Service Distributor for availing credit.

Vide notification numbered 22/2017-Central Tax dated 17th August 2017 CBEC has amended table no 7(a) & 7(b) of Trans 1 to include the Input Tax Credit on account of ISD in Trans 1. Last date of amendment of Trans 1 is 27th December 2017. Hence please advise appropriate procedure to avail ISD credit of the ITC received by an Input Service Distributor post 27th December 2017 in line with Section 140(7) of the CGST Act.

Suggestion

Appropriate procedure to avail ISD credit of the ITC received by an Input Service Distributor post 27th December 2017 in line with Section 140(7) of the CGST Act to be provided.

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

Background

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

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

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

Suggestion

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

Natural Gas

1. Rationalization of GST rate on services of transportation of Natural Gas through pipeline

- It may be observed that presently GST rate on the services of 'transportation of Natural gas through pipeline' is applicable @12% (with ITC benefit) and @5% (without ITC benefit)
- Further, as per GST Laws, two different registered units of an entity are considered distinct persons and inter-unit billing for supply of goods/ services between such units is required to be carried out with applicable GST. Considering such provisions under GST Laws, the lower GST rate @5% (without ITC Benefit) could not practically be implemented so far, as

Input Tax Credit (ITC) of GST payable on the inter-unit billing, for services of transportation of Natural Gas, will not be available to recipient unit of GAIL

- 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

- It is proposed that GST @ 5% applicable on the services of transportation of goods by pipeline may be provided with ITC Benefit
- 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.

2. Inclusion of Natural Gas under GST

Background

'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.

The VAT rate on Natural Gas is very high in different states (viz. UP-26%, AP 14.5%, MP 14%, 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.

Suggestion

In view of above following is proposed that it is proposed that 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.

General

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

Background

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

Petroleum products manufactured in oil refineries are stock transferred out of the state to other states in order to cater the demand in those States and to maintain un-interrupted supply of these essential commodities across the country. In some cases goods are further stock transferred to another state due to change in mode of transportation like pipeline to railway/road and other logistic requirement. Since, GST is a State specific levy, every state has to apply its reversal ratio based on taxable & exempted turnover of that State.

The above provision is resulting in to reversal of ITC on account of same goods in multiple states. Since, this product has already suffered ITC reversal in the manufacturing State, the same should not be included in turnover of the subsequent states.

Suggestion

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

*"**Explanation.-** For the purpose of this Chapter,-*

(1) ....

(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-

(a) ...

(b) ...

(c) <u>the value of non-taxable goods i.e. MS (Petrol), HSD, ATF, Crude Oil and Natural Gas shall be included in the exempt turnover of only in the state where such goods is manufactured</u>"

2. Exemption from TDS provisions on transactions between notified entities

Background

As per section 51 of CGST Act, 2017, the notified entities are required to deduct tax at the rate of 2% (CGST-1% & SGST-1% or IGST-2%) on payments made or credited to supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees. No deduction of Tax is required when the location of supplier and place of supply is different from the State of the registration of the recipient.
Public Sector undertakings (PSUs) have been notified as person responsible for deduction of tax vide Notification No. 50/2018-GST, under Section 51(1) (d). TDS provisions are applicable to transactions between notified entities also.

Suggestion

It is requested that the TDS provisions should not be made applicable for supplies of goods and services between PSUs since there would not be any revenue implication on such supplies and it will ease in compliance of tax deduction from other suppliers.

3. **GST Registration by Non-Resident Taxable Person**

Background

OMC's award the contract to Foreign Service Providers which are in the nature of technical consultancy, supervision, installation etc. Therefore, as per GST Law, such Foreign Service Providers providing supervision services would be required to obtain Registration in India u/s 24 (v) of CGST Act, 2017. However, such Service Providers are not willing to provide such services due to the requirement of GST Registration in India.

Suggestion

The foreign service providers do not register themselves under GST even though there is statutory obligation for registration. Oil companies are dependent on these service providers due to the proprietary nature and expertise of the services. While GST at the applicable rate is paid by the oil companies under reverse charge mechanism it is suggested that a clarification may be issued whether registration or reverse charge is mandatory in such cases.

4. Treatment of Corporate Office under GST

Background

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.

The upstream sectors have its operations across India including Offshore and has Registered Office in one of the States. The Corporate Offices such as 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.

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

It is also pertinent to mention that unlike other sectors, the upstream sector would not be able to avail input tax credit as the crude oil & natural gas are outside levy of GST.

Suggestion

A clarification or exemption may be issued to the effect that costs incurred by Corporate Office on various accounts such as manpower, infrastructure etc. would not be subject to GST.

Excise Duty

Upstream

1. **Reduction in Rate of OID Cess**
   - The OID Cess is levied only on crude oil produced domestically. Thus, it places domestic crude oil production vis-à-vis imported crude oil at a significant disadvantage as imported crude does not attract such duty. This levy, thus, is against the very spirit of "Make in India" and needs an amendment
   - In March 2015, Hon'ble Prime Minister's gave a clarion call to reduce energy imports by 10% by 2022. A committee constituted by Hon'ble Minister of State (I/C), P&NG, to follow up on 'Reduction in import by 10% in energy sector by 2022, and for preparing a roadmap to reduce the import dependency, has among others recommended the following as a way forward, which are relevant from the point of view of proposal hereunder:
     - Increase in domestic oil/ gas production and Asset acquisition abroad

- Requisite policy changes including exemption from Oil Cess for marginal and small fields developments nominated to National Oil Company (NOCs) in line with the resolution on marginal field policy approved by Cabinet
- Additional fiscal incentives such as reduction in Cess to offset higher per unit cost in respect of IOR/ EOR oil
- Sliding scale of Royalty / Cess or certain dispensation may be allowed to incentivize production of difficult oil (such as IOR/EOR, HP-HT, Deep/Ultra Deep water)

Suggestion

Rate of OID Cess to be reduced to 8% - 10% of the realized price of oil

Downstream

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

Background

ATF is falling under ITC (HS) code 2710.19.20 of the Central Excise Tariff Act and presently chargeable at 11% ad-valorem rate of excise duty. Concessional rate of 2% is applicable for ATF sold under Regional Connectivity Scheme.

Generally ATF is received at AFSs through intermediate storage locations (Depot/Terminal) instead of directly from Refinery. At the point of removal, the excise duty is paid on destination assessable value by following the principle of Normal Transaction Value under

Section 4 of the Central Excise Act read with Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In case of further stock transfers by the intermediate storage locations, the duty payable is again determined based on the value applicable to the final receiving locations i.e. AFSs which result in payment of differential duty. This creates problem in re-ascertaining the correct transaction value for payment of differential excise duty at Refinery.

The extension of same rule for payment of duty on account of further stock transfer of products from one depot to another depot, makes the compliance of valuation rule very difficult for the oil companies.

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

Suggestion

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

2. **Review of exemption granted to Ethanol Blended Petrol (EBP) and Bio-Diesel blended HSD after GST implementation w.e.f. July 2017**

Background

As per Central Excise notifications no. 11/2017-CE & 14/2017-CE dated 30.06.2017 and 20/2017-CE dated 3.7.2017, 5% / 10% Ethanol Blended Petrol and Bio-Diesel blended HSD are exempt from the levy of Central Excise duty with a condition that both MS & Ethanol and HSD & Bio-diesel, as the case may be, have suffered the appropriate duty/taxes. The said notifications grants the exemption on 5%/10% Ethanol Blended Petrol and Bio-Diesel blended HSD w.e.f. 01.07.2017 where Ethanol and Bio-diesel is procured by the Oil Marketing Companies (OMCs) on or after 01.07.2017 and has suffered appropriate GST levied under respective GST laws for blending with MS and HSD respectively.

The above notifications have left out the transitional issue while making amendment in the meaning of appropriate duties/taxes for Ethanol and Bio-diesel. The above referred notifications have amended meaning of ‘appropriate duties’ from the word ‘Central Excise’ to ‘CGST, SGST, IGST and UTGST’. The words “Central Excise duty” has been omitted from the word appropriate duties for Ethanol and Bio-diesel. OMCs were having closing stocks of Ethanol and Bio-Diesel (including in transit) as on 30.06.2017 which was blended and supplied on or after 1.7.2017. Such closing Stocks (including in transit) of Ethanol and Bio-diesel had suffered Central Excise duty.

Suggestions

Suitable amendment may be carried out in the above referred notification no. 11/2017-CE dated 30.06.17, 14/2017-CE dated 30.06.2017 and 20/2017-CE dated 3.7.2017 by amending the meaning of appropriate duties/taxes that Ethanol or Bio-diesel on which the appropriate duty of excise or central tax, State tax, Union territory tax or integrated tax, as the case maybe, have been paid.

3. Request of exemption granted to Ethanol Blended Petrol (EBP) and Bio-Diesel blended HSD after imposition of Road & Infrastructure CESS (REC) w.e.f. 01.02.2018

Background

Similar to above request to review exemption to Ethanol Blended Petrol and Bio-Diesel Blended HSD at the time of GST implementation, a further issue has also arisen subsequent to imposition of additional duty of excise in the name of Road & Infrastructure Cess (RIC) w.e.f. 1.2.2018 by replacing earlier Additional Excise duty (Road Cess). Though, Govt. has issued notifications no. 11/2018-CE, 12/2018-CE and 13/2018-CE all dated 2.2.2018 exempting 5%/10% Ethanol Blended Petrol (EBP) and Bio-Diesel blended HSD from newly imposed AED (RIC) consequent to such change in duty structure.

It is to submit that there are separate notifications (copy attached) granting exemption of Basic Excise duty (BED), Special Additional Excise duty (SAED) and newly imposed RIC to Ethanol Blended Petrol (EBP) and Bio-Diesel blended HSD, which are summarized as per below:

Duty type	5% EBP	10% EBP	Bio-Diesel HSD
Basic Excise Duty (BED)	11/2017-CE		
Road & Infrastructure CESS (RIC)	11/2018-CE	12/2018-CE	13/2018-CE
Special Additional Excise duty (SAED)	28/2002-CE		

All these exemptions are with the condition that appropriate duties of excise on MS (Petrol) or HSD and GST on Ethanol or Bio-Diesel, as the case may be, has been paid. The meaning of "appropriate duties of excise" has been defined separately in all these exemption notifications i.e. for BED, RIC and SAED.

Consequent to imposition of new levy RIC, there are following issues needs to be addressed suitably:

a. Meaning of "appropriate duties of excise" has been amended / issued in the BED and RIC exemption notification to include only RIC. The words "Additional Excise duty", levied up to 1.2.2018, has been omitted / not inserted in the meaning of appropriate duties of excise.

b. Notification No. 28/2002-CE dated 13.05.2002 exempting SAED has not been modified to include even RIC in the meaning of "appropriate duties of excise".

In this regard, we would like to submit that OMCs were having closing stocks of MS (Petrol) and HSD (including in transit) as on 1.2.2018 which were blended and supplied on or after 2.2.2018.

Such closing Stocks (including in transit) of MS (Petrol) and HSD have suffered Additional Excise duty (Road Cess) cleared on or before 1.2.2018.

Suggestion

In view of above, it is requested that the above referred notifications may be amended suitably clarifying the meaning of appropriate duties of excise to include both RIC and AED (Road Cess) to avoid any litigation with regards to stock of MS (Petrol) and HSD as on 1.2.2018 which have been blended with Ethanol or Bio-Diesel, as the case may be, on or after 2.2.2018.

4. Exemption to CNG from payment of excise duty

Background

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. This will promote usage of this environmental friendly fuel in domestic and commercial transportation sectors.

It may also be observed that after introduction of GST considering that credit of GST paid on input/input services/ capital goods used for production/supply of CNG is not available to producers and suppliers of CNG which in turn leads to cascading and inflationary effect.

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 use of this environment friendly fuel in domestic and commercial transportation sectors.

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

Background

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

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

Suggestion

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

General

1. **Exemption/Concessional rate of Social Welfare Surcharge**

Background

Social Welfare Surcharge ('SWS') has been made applicable on import of various goods (except few exemptions) after removal of Education Cess and Secondary & Higher Education Cess. The rate of such surcharge is as high as 10%.

Under pre-GST regime, the rate of cess applicable on import of LNG was 3%. However, w.e.f. February 2018, on import of LNG, though the aforesaid cess was removed, however, the rate of SWS has impacted the sector as the same is 10% on such imports. The same has increased the cost of procurement for LNG sector as such Surcharge is not adjustable with any other duty.

Suggestion

It is thus suggested to provide an exemption or concessional rate of SWS on import of LNG.

2. **Exemption from mandatory fixed pre deposit**

Background

With the enactment of Finance Act, 2014, section 35F of the Central Excise Act, 1944 and the relevant section of Customs Act and Finance Act 1994 have been amended for payment of mandatory pre deposit for all appeals to be filed before Commissioner (Appeals) / Tribunal subject to outer limit of Rs 10 Cr.

Considering the complexities involved in the modality of business of OMC and various issue requiring clarification / interpretation, there are litigations involving substantial amount of demand at various levels of adjudication. Mandatory pre deposit for all the appeals thus results in tremendous hardship to the OMCs, who are already bearing the burden of under recoveries and having a fragile working capital position. Further, the time lag involved in resolving the disputes shall block the liquidity of the OMCs.

Suggestion

Since tribunal is the final fact finding authority, it is suggested that mandatory pre deposit may be exempted.

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

Background

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

Suggestion

The request for levy of nominal GST is not practical, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be carried out in the CENVAT Rules to allow the tax credit of GST paid inputs against the output tax liability of Excise on non-GST products since the credit was earlier available under CENVAT & VAT laws; there would not be any additional outgo to the Govt. by allowing cross utilization.

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

Background

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

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

Suggestion

It is suggested that non-Cenvatable products like MS and HSD when received in the Refinery for re-processing should either be exempted from payment of duty at the time of clearance after re-processing or Cenvat Credit should be allowed on these products at the time of receipt in the Refinery by suitably amending the definition of 'Input' contained in the Cenvat Credit Rules'2017 for re-processing of such products in the refinery.

5. **Removal of National Calamity Contingent Duty on Crude Oil levied @ Rs.50/MT**

Background

When the Nation was facing a severe drought during 2003, the Union Finance Budget of 2003-04 imposed National Calamity Contingent Duty (NCCD) of Rs.50 per metric tonne on domestic as well as on imported crude oil, amongst various other goods, to augment the fund available with the Govt. and to support the relief work in the areas affected by natural calamity.

It was mentioned in the Finance Bill, 2003 that this new levy will be limited to one year only. However the Govt. has kept this levy for year after year. This levy has put an additional burden on the Oil Refining Companies.

Suggestion

It is suggested that this additional burden of NCCD imposed on the Oil Refineries may be withdrawn.

Customs Duty

Downstream

1. **Exemption on import of LNG**

Background

LNG being a clean fuel is used by power sector, along with priority sectors like Fertiliser, CGD etc in the country. The Government also recommends import of LNG considering the shortage of gases in the country.

It is suggested that import of LNG may be exempted from customs duty (present rate @ 2.5%) on the lines of crude oil to provide relief to gas based industries and domestic consumers. This will also promote usage of this environmental friendly fuel in industrial and domestic sectors. This will go a long way in giving relief to the ailing power sector.

Suggestion

It is suggested that concessional rate of customs duty should be made applicable on import of LNG

2. **Double payment of custom duty on import of LNG under FOB supplies due to inclusion of value of LNG used by the ship during the transportation of LNG in CIF value of imports where Custom Duty is paid on full Bill of Lading quantity based on suppliers' invoice**

- In cases where LNG is imported into India on FOB basis, the custom duty is required to be discharged on the Bill of Lading quantity based on the invoice of the supplier. The importers are complying with the customs provisions and thus discharging the custom duty on the LNG quantity depicted on the Bill of Lading (FOB Value). However, the quantity actually received differs from the quantity declared on the Bill of lading on account of Boil-off gas used as fuel by the vessel. During the course of provisional assessment, the Customs Authorities seeks to add the value of Boil-off Gas (which is used as fuel during the transportation of LNG) to the cost of freight for subsequently deriving the CIF Value and custom duty thereon

- This has led to a situation of double taxation as the same quantum of LNG will suffer duty twice, once as LNG imported into India (included in FOB Value) and thereafter as cost of freight (as Boil-off gas used as fuel)

Suggestion

It is proposed to issue suitable clarification that in case of import of LNG on FOB basis, the Boil-off gas arising out of LNG and utilized as fuel during the course of transportation should not be added to the cost of freight as such quantum of LNG has already suffered customs duty in the FOB value.

3. **Specific clarification under Customs to provide exemption on LNG consumed for SEZ operations by ONGC C2-C3 Dahej Plant post GST regime:**

Background

Under pre-GST regime, Liquefied Natural Gas (LNG) imported for consumption in the C2-C3 Plant of ONGC located in the Dahej Special Economic Zone through Petronet LNG Limited for the purposes of authorized operations in the SEZ unit was exempted vide Sl. No. 138A of Notification No. 12/2012-Cus dated 17.03.2012 if the importer produces a certificate from the jurisdictional Specified Officer of the SEZ unit certifying that the quantity of LNG for which exemption is being claimed has actually been consumed in terms of equivalent quantity by

the SEZ unit for the purposes of authorized operations during the preceding month. However, field formations raised objection in exemption claim in August 2015 for period prior to preceding month. The matter was represented and TRU, MOF vide Circular D.O.F No. 334/8/2016-TRU dated 29.02.2016 (at Sl. No. 3 of pg 32) clarified as under:

'Sl. No. 138A of Notification No. 12/2012- Customs dated 17.03.2012 seeks to exempt LNG with reference to the consumption of an equivalent quantity for authorized operations in the SEZ unit during any one of the preceding months.'

Under GST regime, Notification No. 12/2012- Customs was superseded and Notification No. 52/2017- Customs dated 30.06.2017 provided the same exemption at Sl. No. 6. However, field formations has again raised objection in exemption claim in absence of clarification as issued under pre-GST regime.

Suggestion

It is requested to issue clarification in line with clarification issued under pre-GST regime so that exemption can be claimed on import of LNG.

Natural Gas

1. **Full exemption to be granted on Liquid and Gas pipelines projects covered under chapter 98**

Background

Liquid (crude oil & petroleum products) and Natural gas pipeline projects have been notified as Project imports under Chapter heading 98.01 at Entry no.33 of Notification no.42/96-Cus, dated 23.07.96 as amended. Further, vide entry no.510 of the Notification No.12/2012-Cus, dated 17.03.12 as amended; all goods under chapter heading 98.01 are leviable to 5% customs duty.

Considering that these projects are capital intensive in nature and important for country's energy security, there is a need to grant exemption of customs duty on the subject projects.

Suggestion

It is suggested that present customs duty being levied at the rate of 5% should be reduced to Nil on Liquid as well as Gas pipelines projects covered under chapter 98.01. Alternatively, an exemption from custom duty may be provided to Liquid (crude oil & petroleum products) and Natural gas pipeline projects laid in specified states such as north east states, J&K etc.

General

2. Clarification on applicability of Condition No. 48 under Sl. No. 404 of Customs Notification No. 50/2017-Cus dated 30.06.2017 on disposal of scrap

Background

The Condition No.48 under Sl. No. 404 of Customs Notification 50/2017-Cus dated 30.06.2017 was amended under pre-GST regime vide Notification No. 6/2017-cus dated 02.02.2017 (i.e. the then Condition No. 40A under Sl. No. 357A of the Customs Notification No. 12/2012-Cus dated 17.03.2012) to allow the disposal of goods imported after availing exemption as such goods were required for petroleum operation, which are no longer required for the said purpose. Such disposal is allowed on payment of applicable customs duties on depreciated value.

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

Suggestion

Considering ease of doing business, a clarification is requested under Customs Law as well as GST Law to the effect that the condition 48 of notification no. 50/2017-Cus dated 30.06.2017 and similar condition under GST Notification No. 3/2017-(Rate) would not apply on disposal of unused & surplus items as well as the used items which are no longer required for petroleum operations and have become scrap.

Central Sales Tax (CST)

Upstream

1. **Clarification required under the erstwhile Service Tax Law to the effect that Cost Petroleum under the Production Sharing Contract (PSC) is not a consideration for service to GOI and thus not taxable per se.**

Background

GOI assigns the exploration and production rights to the Contractors for exploration, development and production of hydrocarbons. The Contractors conduct the petroleum operations at their sole risk, cost and expenses. The costs so incurred are recovered from the revenues through cost recovery mechanism. Since Cost Petroleum is merely a recovery mechanism of the cost incurred by the Contractors there is no service much less a mining service rendered to any party. It is just only a formula to determine the GOI's share in the production. There is no activity carried out by the Contractors and hence it is not a consideration for any service being provided to GOI.

GOI and the Contractors are co-ventures under the PSC. Therefore the cost recovery mechanism cannot be treated as payment consideration for any service.

Cost of services availed by the Contractors for production of hydrocarbon has already suffered service tax. Levy of service tax on the Cost Petroleum will tantamount to double taxation which is not consistent with the objective and provisions of PSC. This will have negative impact on the E&P activity in India.

Suggestion

The Ministry of Finance (TRU) vide circular No. 32/06/2018-GST dated 12th February' 2018 at Para-6 has clarified that Cost Petroleum is not a consideration for service to GoI and thus not taxable per se.

It is requested that a similar clarification be issued stating that service tax is not payable on Cost Petroleum being not a consideration for any service.

Downstream

1. Non-issuance of Form-C under CST Act

Background

Under pre-GST regime, on inter-state supply of crude oil, the concessional rate of sales tax (CST) @ 2% was payable on submission of Form-C by the refineries in terms of Sec. 8 of Central Sales Tax (CST) Act, 1956.

Under GST regime, the refineries are not able to provide Form-C, mainly due the following reasons:

- The definition of 'Goods' u/s 2(d) of CST Act has been amended to include only six products viz. Crude Oil, Natural Gas, HSD, MS (Petrol), ATF and Alcoholic Liquor. Besides HSD, MS (Petrol) & ATF, the refineries also produce Naphtha, LPG, SKO etc. which are not covered under such amended definition as these products are subject to levy of GST.
- As per Sec 8(3)(b)/(c), the benefit of concessional rate of 2% CST is available only if goods purchased are for manufacture and sale of goods covered under amended definition of Goods u/s 2(d) of CST Act.

Accordingly, such refineries are not getting Form-C from the State VAT Authorities and E&P Sector being seller of crude oil is bound to pay higher rate of 5% CST on such supply instead of 2% payable under pre-GST regime.

In terms of the pricing arrangement under the offshore Crude Oil Sales Agreement (COSA) in most of the cases, the VAT/CST burden is shared equally between ONGC and Refineries. Thus, any increase in VAT/sales tax burden would result into increase in cost of both E&P Sector & Refineries and would also have adverse implication on investment in E&P projects.

Suggestion

A clarification/amendment is requested under CST Act, to the effect that inter-state supply of Petroleum Products kept out of GST including supply of crude oil to the refineries would continue to be eligible for concessional rate of 2% CST against Form-C for manufacture of GST as well as Non-GST products by such refineries.

General

1. Continuation of C form for purchase of excluded products

Background

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

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

Suggestion

It is suggested that suitable clarification may be issued in this regards that customers of these excluded petroleum products would be allowed to purchase such products against C form as is allowed earlier considering the fact there is not additional financial outgo on part of states.

DIRECT TAXES

Upstream

1. **Deduction under Section 35AD to crude oil pipelines**

Background

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

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

Suggestion

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

2. **Section 42 - Deduction in case of business of prospecting of mineral oil**

Background

Under section 42(1)(a) of the Income Tax Act, deduction for expenditure by way of infructuous or abortive exploration expenses is available in respect of any area surrendered prior to the beginning of commercial production.

As a result of requirement of surrender of the area prior to the beginning of commercial production, the tax payer is not able to avail deduction from taxable income, of expenses on account of abortive exploration expenses until the certificate of area surrender is obtained from the appropriate authority. Further, even after giving intimation of area surrender to appropriate authority, getting certificate of area surrender from the authority takes very long time.

Further, on reading of section 42 along with the Model Production Sharing Contract, it is not clear whether tax payer is eligible to claim deduction for exploration expenses (including survey expenditure) and drilling expense in the year of incurrence against other business income even though no commercial production has been started.

Moreover, in the event of a farm-in, payment is made towards expenditure incurred on exploration operations in the past (i.e. past costs) along with a premium. The tax authorities deny the deduction by taking a view that, exploration expenses have been incurred by earlier participant (i.e. the seller) and not by buyer of the participating interest and therefore, in section 42 the acquisition costs in India are not deductible.

Suggestion

Considering the genuine hardship of the assessee, an explanation may be inserted in section 42(1)(a) that an intimation by the assessee for surrender of area to appropriate authority will be construed as area surrendered for allowing the deduction of infructuous or abortive exploration expenses. It may also be clarified by inserting proviso in Section 42 that tax payer will be eligible to claim deduction for exploration drilling expenses (including survey expenditure) in the year of incurrence against other business income irrespective of fact that commercial production has started or not.

Further non allowable of deduction for farm in cost (past cost plus premium), reduces the activity in this market and is clearly against the interests of expediting exploration. This is despite the fact that income arising out of farming out any interest in the block is taxable in the hands of assignor under Section 42(2). Thus, it is suggested that Section 42 is amended suitably to add a provision for deduction of acquisition (farm-in) expenses.

Downstream

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

Background

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

This issue was also taken up by MOP&NG with MOF in earlier year's Union Budget proposals to extend the sunset clause from 31.03.2012 to 31.03.2017. Non availability of such benefit under section 80-IB(9) have adversely affect on the project economics.

Suggestion

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

2. Benefit of Section 32AD to be extended to existing undertaking

Background

The Section 32AD provides for an additional investment allowance of 15% of the actual cost of new plant and machinery acquired and installed by an assessee setting up an undertaking or enterprise for manufacture or production of any article or thing in any notified backward area in the State of Andhra Pradesh or Telangana or Bihar or West Bengal, subject to satisfaction of the specified conditions. Assessee shall acquire and install any new asset for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April, 2015 and ending before the 1st day of April, 2020.

However, there is an ambiguity that whether the deduction of 15% is available to the assessee where investment is made for upgradation in existing manufacturing unit in the notified area.

Suggestion

It is requested that conditions under Section 32AD is to be suitably amended to include new investment in existing manufacturing unit for expanding capacity or meeting environmental requirement.

3. Deduction in respect of expenditure on specified business under Section 35AD be extended to City Gas Distribution Entities

Background

Section 35AD has been inserted with effect from A.Y 2010.11 to provide the investment – linked tax incentive wherein any or whole of capital expenditure in allowed as deduction in the year in which it is incurred.

Currently benefit under section 35AD is allowed to 14 specified businesses including 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 is allowed subject to fulfilment of specified conditions.

However presently the city gas distribution (CGD) pipelines and related facilities do not fall under the purview of section 35AD as same is not classified as cross country pipeline.

Suggestion

CGD business is a capital intensive business wherein heavy capital investments are necessary before the commencement of business. Bringing the CGD business within section 35AD will help to reduce the tax outflows in period of capital expenditure and promote growth and investments in CGD sector. Further this will also provide a big push to government's intentions of increasing number of PNG connections and help phase out the current LPG subsidy.

City Gas distribution entities are duly authorized by Petroleum and Natural Gas Regulatory Board (PNGRB) to lay, build and operate City Gas Distribution Network in various cities. Since CGD pipeline are integral part of the pipeline infrastructure and vital for India to become a gas based economy it is requested to include CGD within the ambit of section 35AD.

Natural Gas

1. **Benefit of Section 80-IA to be extended to 'Gas projects'**

Background

In order to cater the nation's energy requirement of numerous industries like CGD, Power sector, refineries etc., Natural Gas is very much needed in India. In Union Budget speech of 2012-13, Oil and Gas / LNG storage facilities and oil and gas pipelines have been recognized as 'Infrastructure' and declared eligible for Viability Gap Funding (VGF) under PPP. Similar eligibility should be given to PSUs for undertaking oil and gas pipelines projects for captive use.

The definition of Infrastructure facility under explanation to section 80-IA(4) includes a port. Department vide circular no. 793/2000 dated 23.06.2000 has specified that structures at ports for storage, loading and unloading etc. will fall under the definition of "port" subject to the conditions that the concerned port authority has issued a certificate that the said structures form part of the port, and such structures have been built under BOT or BOLT schemes and there is an agreement that the same would be transferred to the said authority on the expiry of the time stipulated in the agreement. Natural Gas is imported in liquefied form for which storage and/or unloading facility is built at the port.

Suggestion

The word “loading and unloading facility”, may be substituted by “the loading or unloading facility” for the purpose of definition of “Port” for section 80-IA and the condition of transferring the structure to port authority may be removed. Further benefit of Section 80-IA (4) has been restricted to any infrastructure facility starts operation up to 31.03.2017. It is suggested to remove/extend the sun set clause to promote the make in India campaign.

2. **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)**

Background

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:

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

Background

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

Suggestion

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

2. **Corporate Social Responsibility Expenditure**

Background

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 programs 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.

3. **Relaxation given to 100% subsidiary companies from applicability of the provisions of deemed Gift Income u/s 56(2)(x) of the Income Tax Act may be extended to JVs/associate companies**

Background

The Finance Act, 2017 has introduced section 56(2)(x), under which, any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by any person is chargeable to income-tax under the head "Income from other sources" subject to certain exceptions.

Further, Finance Act, 2018 has exempted transactions between holding & wholly owned Indian Subsidiaries from purview of this section.

Suggestion

Although, section 56(2)(x) was primarily introduced for Anti abuse measure to curb malafide transaction without any commercial substance. However, when the section was actually implemented, the same covers all the business transactions entered by an entity without having regard to genuineness of the transaction.

This is particularly applicable in case of acquisition of securities either via subscription of initial capital or purchase from a strategic investor. This is leading to increased compliance cost and time to complete such transaction. Therefore, it is requested to exempt acquisition of shares of foreign subsidiaries, domestic subsidiaries (other than 100% subsidiaries), Joint ventures and Associates from purview of section 56(2)(x) in line with exemption to transaction between holding company and 100% subsidiary via Finance Act 2018.

4. **Beneficial rate of corporate tax (25%) to the newly incorporated companies**

Background

In the Finance Act 2016, the Government introduced a lower tax rate (29%) for domestic companies whose turnover does not exceed INR 5 crores in FY 2014-15. In Finance Act 2017,

the tax rate was reduced to 25% for companies having a turnover of INR 50 crores or less in FY 2015-16.

In the Finance Act 2018, the Government extended this benefit to more companies by increasing the turnover threshold to INR 250 crores in FY 2016-17.

However, there was an ambiguity for the companies which are newly incorporated in a particular year or who have not commenced its business operations in the prescribed year. In such cases, whether they can avail the benefit of lower tax rate in the year of incorporation or commencement of business is not clear.

Suggestion

It is recommended that the benefit of lower rate of corporate tax (25%) should be allowed to newly incorporated companies based on the turnover threshold in the year of incorporation.

5. Interest on refunds u/s.244A

Background

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. 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.

Suggestion

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.

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

Background

As per existing s.115-O, any Domestic Company distributing dividend out of its already taxed profit is required to pay tax @ 20.56% on Dividend distributed to its shareholders.

Considering that a Domestic Company has already paid tax @ 34.94% on its total income, further payment of DDT @ 20.56% 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 specified assesses in excess of Rs.10 lacs, tax is effectively levied on dividend for the third (3rd) time.

Suggestion

- 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
- 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 assesses

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

Background

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).

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.

Suggestion

- 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
- 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

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

Background

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

Suggestion

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.

9. Phasing out of exemptions

Background

The Finance Minister while introducing the Finance Bill, 2015, proposed to reduce the rate of corporate tax from 30 per cent to 25 per cent over the next 4 years. It was also stated that the process of reduction has to be necessarily accompanied by rationalization and removal of various kinds of tax exemptions and incentives for corporate taxpayers, which incidentally account for a large number of tax dispute.

Further, the Finance Act, 2016 initiated the process of phasing out of various deductions and reduced the tax rate in case of a domestic companies. The same been continued in Finance Act, 2017 and 2018.

Suggestion

The process of phasing out of exemptions and deductions should not be done across sectors. There are various sectors where the turnaround time for the companies to reach a break even and start earning profits takes longer than some other industries.

10. Carry forward of Foreign Tax Credit (FTC)

Background

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. Many of the foreign countries have provisions for carry forward of FTC and in line with international practices, the same should be introduced.

Suggestion

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

11. Corporate Tax Rate from All Companies be Moderated

Background

During the 2018 Budget, the rates have been reduced to 25% for companies having turnover upto 250 Crs. With this, the Government has reduced tax rate for 99% of the companies in India. Now only 7000 companies are under higher tax incidence. The reduction in tax rate to 25% being one of the priority areas, will increase investible surplus for the companies and help in creation of job. It will also act as an incentive for foreign capital inflow in India.

Suggestion

Intent of the Govt. is to reduce effective corporate tax rate from 30%to 25%, Corporate tax rate from all companies may be moderated.

12. Section 32 AD must be extended to 2023-24

Background

Section 32 AD provides for additional deduction of 15% for new projects in backward areas. The benefit is available till 2020. Since the project takes 3-4 years to complete, the benefit of 32AD cannot be availed by Oil Companies. In order to achieve the true intent to incentivizing the industry, promote make in India, it is suggested to amend Section 32 AD with following amendments.

- Extension and expansion of existing projects
- Further Section 32 AD is limited to year 2020, the same may be extended to FY 2023-24
- The same may be extended to whole of India instead of notified backward area

Suggestion

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 2023-24 and should be expanded to include substantial expansion.

13. Reinstatement of Section 32 AC

Background

Section 32 AC which provided an investment allowance of 15 % of commissioning of new assets is upto AY 17-18. The government intent is to incentivize capital formation, more jobs, more investible surplus, accelerated growth rate, thrust towards make in India. In view above, Section 32AC may be extend for another 5 years say till 2023-24.

Suggestion

The sunset clause for Section 32AC should be extended to reasonable period say upto 2024. This will help achieve higher capital formation, job creation, higher economic growth, thrust to make in India initiative.

14. Amendment in clause (f) of Section 43B

Background

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. 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.

Suggestion

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.

15. Weighted average deduction under section 35(2AB), 35(2AA) to be retained at 200%

Background

The deduction on Scientific research and contribution to National Laboratories u/s 35 (2AB), 35 (2AA) have been reduced from 200% to 150% from AY 2018-19. With the vision of the Government for strengthening the R&D Activities, it should retain the weighted average deduction to 200%.

Suggestion

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%.

16. Clarification that loss on Sale of Oil bonds is a revenue loss

Background

As per the Government's directives petrol, diesel, SKO through Public Distribution System (PDS) and LPG for domestic use are sold to the consumers at the price fixed by the Govt. of India. The selling prices of such products are lower than the cost and therefore, resulting into operating losses. To compensate these operating losses suffered by OMCs, the GOI issues Special Oil Bonds to the OMCs. Entire amount is offered to tax on receipt of intimation for issue of such special oil bonds by GOI. The Special Oil Bonds issued by GOI have long redemption period ranging from 7 to 17 years. The bonds are issued only in the paper format bearing specified rate of interest and no cash is getting transferred in this regard. Further these special oil bonds do not have any statutory liquidity ratio status thus Banks and Financial Institution are unwilling to buy such bonds and therefore, market demand of these bonds are limited.

GOI Special bonds so received are shown under current asset (current investment) and valued at cost or market price whichever is lower in line with valuation of stock-in-trade. Accordingly the provision for diminution in bonds value i.e. investment is added back in the computation of total income. Loss incurred at the time of sale of such GOI special Bonds are claimed as revenue loss. However, the Assessing authority is of the view that loss on sale of GOI special Oil Bonds is capital loss as the same is incurred on sale of investment.

Suggestion

It is suggested that Section 37(1) needs to be suitably amended to provide deduction for business loss arising from sale of such bonds.

17. TDS on Transportation payment under section 194C

Background

No deduction of TDS if deductee provides a self-declaration that he owns or likely to own ten or less goods carriage at any time during the Previous Year. Based on the declaration, deductor provides the exemption from TDS u/s 194C towards payment of transportation. Relevant extract of the Act is as under:

"(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying,

hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum".

In our Petroleum industry, where transportation of goods across India is being carried out by transport contractors, PSUs receive the thousands of self-declaration (mainly from Proprietor/ HUF) from their transporters, keeping the record of the same and providing the exemption from TDS through system becomes a challenging and tough task. These certificates are obtained on annual basis from the transporter and to be uploaded in system for non-deduction of TDS.

Suggestion

It is requested that the above provision is resulting in to unnecessary huge compliance. Exemption from TDS deduction may be provided to all as was available till 31st May 2015 on the condition of furnishing of the PAN by contractor to deductor. Condition of obtaining the self-declaration form, from the deductee and updating every time in ERP system is a very cumbersome & time-consuming process.

18. 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), clause (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.
19. Clauses iv, iv-a & v of Section 36(1) permits deduction from income under the head, income from business or profession on long term retirement benefits, namely, recognized PF, approved superannuation fund, pension scheme and approved gratuity fund. Any contribution of the Employer beyond these benefits is disallowed u/s 40A(9) of the Act. Considering that PSUs are governed by DPE Guidelines for fixation of Salaries/ Perquisites, it is imperative to amend Section 36(1) to include other retirement benefits existing in vogue in PSUs, namely, Post-Retirement Medical Benefit Fund and Death Benefit Fund.
20. Relief is provided to holding company under section 115-O (1A) if subsidiary declares dividend and the holding also declares dividend. The DDT in such case is paid on net additional Dividend paid by holding company. It is requested to allow all dividends received by the company on which DDT is paid is allowed for netting off against the Dividend declared.
21. 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.

22. 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.

23. 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 pa etc.

24. It is suggested to suitably increase the threshold limit for exemption u/s 10(10AA) towards leave salary paid at the time of superannuation or otherwise, currently fixed at Rs. 3 lakhs (fixed vide notification dated 31/05/2002) to Rs.10 lakhs.

25. 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 of the Act. At least in cases involving remittance to Non Residents, 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.

26. 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.

27. It is suggested that Explanation 2 to Section 37 inserted vide Finance (No.2) Act, 2014 be withdrawn so as to facilitate deduction towards expenditure incurred under Corporate Social Responsibility.

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