PRE-BUDGET MEMORANDUM FOR UNION BUDGET 2020 - 21

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EXECUTIVE SUMMARY

SL no.	Section	Suggestion	Pg Ref
INDIRECT TAXES			
SERVICE TAX			
1	Service Tax on Cost Petroleum Service Tax on Cost Recovery (Cost Petroleum) recovered by upstream oil and gas companies under Production Sharing Contracts (PSC)	Clarification should be issued under the Service Tax Law (Finance Act 1994) confirming that Service Tax is not applicable on such Cost Petroleum Similar to clarification issued under the GST regime.	1
2	Service Tax on Profit Petroleum	An urgent clarification is requested to clarify that contractors share of profit petroleum is not a payment against any service and therefore not subject to service tax.	2
3	Service Tax on Cash Calls	A circular specific to the upstream companies may be issued clarifying that pooling of funds by participants for petroleum operations is not a service.	3
4	Service Tax on Royalty	Clarification required under service tax Law that Royalty payments to the GOI does not constitute supply of services.	3
EXCISE DUTY			
Upstream			
5	Reduction in the OID cess Rate.	To subsume the Oil Cess paid by Oil and Gas companies on “production or extraction of crude oil” under the GST provisions in the spirit of “one tax” and to achieve fungibility of taxes.	5

		If not possible, Cess rate to be capped to 8 to 10% of the realized price of oil.
		
		• Government of India (GOI) earns ~ 14,000 crore every year through Cess
		• GOI headline revenue loss due to reducing Cess (to 8 – 10%) would be ~ 7,000 crores
		• However, GOI earns back ~ 50% of its estimated headline revenue loss from reducing Cess rate because lower outgo on Cess:
		    o Increases profit petroleum
		    o Increases profits of private & PSU Oil & Gas companies who in turn will now pay higher income tax, dividend & dividend distribution tax.
		• More importantly, at an industry level, halving the Cess rate makes more than 200 mmboe of production viable, which when brought to production will earn additional revenues to the GOI.	

6	Reduction in Rate of OID Cess on Crude Oil to 8-10%	It is requested to review the present rate of OID Cess of 20% and to moderate it to 10% of realized crude oil price.	6
7	Excise Registration	E&P operations are carried out across the field area granted by the DGH and production takes places across various producing wells scattered across. Department earlier exempted manufacturer of Compressed Natural Gas vide Notification no. 35/2001-Central Excise dated 26.06.2001,	7

		benefit on similar line may be extended for E&P Industry also.	
8	Levy of Excise Duty	It is recommended that for E&P Industry excise duty should be collected on the quantity received at the refinery gate as per the provisions contained in the OIDB Act'1974.	8
Downstream			
9	Introduction of Specific rate of excise duty on Aviation Turbine Fuel (ATF)	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.	8
10	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.	9
11	Rationalization of excise duty on premium diesel	It is recommended to significantly reduce the excise duty differential between branded and regular diesel, bringing it close to or at par with excise duty on regular diesel. This will help create a market for an efficient branded fuel which will help reduce the environmental impact of vehicular emissions, and help improve the efficiency and performance of the vehicles.	10

12	To restore the exemptions from the duties of excise (Basic Excise Duty, Special Excise Duty & additional duty of excise) on the HSD procured for the petroleum operations under ICB conditions	Upfront exemption of duties of Excise on HSD	13
Natural Gas			
13	Exemption to CNG from payment of excise duty to the extent of blended CBG	It is suggested that CNG to the extent of blended CBG be exempted from Central Excise Duty in line with ethanol blended petrol (refer Notification No. 11/2017-C.E., dated 30-6-2017). This will make CNG more economical and will promote use of this environment friendly fuel in domestic and commercial transportation sectors.	13
General			
14	Exemption from mandatory fixed pre deposit	Since tribunal is the final fact finding authority, it is suggested that mandatory pre deposit may be exempted.	14
15	Cross utilization of GST Input Tax Credit against Excise duty/Sales Tax	The ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be carried out in the CENVAT Rules and respective State VAT laws to allow the tax credit of GST paid inputs against the output tax liability of Excise / VAT on the products excluded from GST. Since, the credit was already available in the CENVAT & VAT laws; there would not be additional outgo on the Govt. by allowing cross utilization.	14

16	Concessional rate of 5% on project imports, renovation / modernization of renewable energy projects	In a bid to promote the use of clean and non-polluting fuel, concessional rate of 5% on project imports, renovation / modernization of renewable energy projects be allowed.	15
17	Processing of Excise Duty refund claims	It is suggested that access should be given to online refund application for quick processing with online Real Time Gross Settlement (RTGS) refund.	15
CUSTOMS DUTY			
Downstream			
18	Removal of NCCD for import of Crude oil	The levy of NCCD @ Rs. 50 / MT on import of crude oil was introduced in the year 2003 to meet the emergency situation that arose due to the natural calamity that struck Maharashtra in the form of an earthquake. However, the NCCD element still continues even after a period of 15 years, although at the time of such levy it was indicated that it was only for a period of 1 year.	16
19	Rationalization of customs duty on import of petroleum products viz Motor Spirit (MS) and High Speed Diesel) HSD	It is recommended that the Social Welfare surcharge should be abolished and import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported.	16
Natural Gas			
20	Full exemption to be granted on Liquid and Gas pipelines projects covered under chapter 98	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	19

		Natural gas pipeline projects laid in specified states such as north east states, J&K etc.	
21	Exemption of Customs Duty on import of Liquefied Natural Gas (LNG)	Request to grant exemption of Basic Customs Duty (BCD) on import of Liquefied Natural Gas (LNG)	20
General			
22	Removal of National Calamity Contingent Duty on Crude Oil levied @ Rs.50/MT	It is suggested that this additional burden of NCCD imposed on the Oil Refineries may be withdrawn.	20
23	Net Duty Protection to Oil refining Industry	The duty structure and pricing policy should be stable and consistent to enable investment decisions based on sound economic principles. The threats of changes in the above significantly cloud the investment perspectives thereby rendering the growth stunted.	21
24	Disposal of Obsolete/ Surplus goods procured at concessional or Nil rate of Customs Duty, as Scrap	It is requested that: a. Since DGH is finding difficulty in issuing certificate as prescribed under the amendment Notification No. 25/2019-Cus dated 06.07.2019, certificate to this effect issued by Chartered Engineer / MMTC may be considered for which the notification needs to be suitably amended and, b. The condition of mutilation may be withdrawn as there is already a condition on certification by appropriate authority that the goods are not usable.	21
CENTRAL SALES TAX			
Downstream			
25	Removal of CST (Irrecoverable taxes in the	It is requested that the CST rate may be made 0%, Central Sales Tax (CST) for inter-state trade	23

	hands of standalone refineries)	could not be taken as credit and hence was a cost that was added to the value of goods. Further, on compliance angle we are faced with “C” Form collection and issue with various States which can be done away with, whereby minimum governance can be implemented, if IGST can be made applicable, whereby seamless credit mechanism can be in place.	
		General	
26	Continuation of C form for purchase of excluded products	It is suggested that suitable clarification may be issued in this regards that customers of these excluded petroleum products would be allowed to purchase such products against C form as is allowed earlier considering the fact there is not additional financial outgo on part of states. We have also requested to CBEC vide our letter dated 7.8.2017.	23
27	E-Wallet Scheme shall be introduced for exporters soon	E-wallet facility has been deferred by GST Implementation Committee (GIC) till 31.03.2020, with a condition that if new return system is rolled out smoothly and e-Wallet scheme is ready at an earlier date, then it could be rolled out before 31.03.2020. Implementation of E-wallet facility will help exporters in less manual documentation and better governance and compliance.	24
28	Export obligation (EO) under EPCG schemes	It is suggested that the mechanism of export obligation can be in the form of any average tonnage basis or any other physical quantitative basis rather than economic basis.	24

DIRECT TAXATION			
INCOME TAX			
Upstream			
1	Deduction under Section 35AD to crude oil pipelines	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.	26
2	Section 42 - Deduction in case of business of prospecting of mineral oil	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.	26
3	TDS rate on payments covered under section 44BB of the Income Tax Act, 1961	It is requested to provide preferential rate of 4% (Foreign Company)/3% (Non being a company)	27

	(Act) - Amendment to Part II of First Schedule to the Finance Act	for deducting TDS on persons covered under section 44BB of the Act	
4	Amendments pursuant to Supreme Court decision in ONGC on section 44 BB	In view of the above, it is recommended that CBDT should consider issuing directions that the ratio decidendi of the aforementioned ruling of Supreme Court must be adhered to by the field officers in all cases where the subject issues are involved.	28
5	Dichotomy in methods of grossing-up of income subject to tax u/s. 44BB for TDS and assessment purposes	It is, therefore, suggested that suitable amendment may be made in section 195A of the Income-tax Act, 1961 so as to provide that where income of the non-resident is taxable u/s. 44BB of the Act, the same would be subject to single stage grossing-up for TDS purposes also.	28
6	Deduction for Exploration and Development expenditure u/s 42	Weighted deduction of 200% of Exploration expenditure and 150% of Development expenditure for the new blocks awarded under OALP.	29
7	TDS on cash call	Suitable clarification is required that cash call is in the nature of capital contribution and no TDS is applicable on the same.	29
8	Ceiling on profits for Site Restoration Fund (SRF) contribution	It is recommended that the deduction should be based on full contribution without any ceiling.	30
9	Overseas E&P Projects should be included under Section 35AD	Capital Investment in overseas E&P projects may be included as a specified Business for the purpose of section 35AD of the Act to encourage investments of risk capital in overseas E&P projects by Indian E&P companies.	30

		This will help Indian E&P industry to make more investments in overseas E&P Assets to ensure the energy security.	
Downstream			
10	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.	30
11	Benefit of Section 32AD to be extended to existing undertaking and extension thereof Background	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. Further, it is suggested to remove/extend the sun set clause to promote the make in India campaign.	31
12	Classifying Euro VI project under Pollution Control category for 100% depreciation benefit	Refineries in India have incurred huge capital expenditure on Euro-VI projects. The expenditure incurred will not result in any additional revenue generation to the refineries. Since the objective of Euro – VI project is to reduce the content of Sulphur and other pollutants in the petroleum products, these machineries are to be classified as Pollution control Equipment and depreciation @100% may be allowed on such equipment as against the existing normal rate of depreciation of 15% applicable to plant & machinery.	31
13	Special exemption to Refineries for waiver of penal interest for deferment of advance tax	It is suggested that, the waiver of penal interest for deferment of advance tax, which is now given as a discretionary power to the Chief Commissioners of Income tax by CBDT circular	32

		No.F No 400/234/95 dated 23.05.1996, may be allowed as a specific exemption for the oil industry. In case of the others, a time limit for the disposal of waiver petitions may also be fixed since it is experienced that the genuine waiver petitions of assessee are kept pending for a very long period of time.	
	Natural Gas		
14	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 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.	32
15	Safe harbour allowances for LNG import prices under Transfer Pricing should be based on the actual dispersion of custom import prices for the year and not on ad-hoc basis. [Transfer Pricing]	Safe harbour rules for LNG imports should be introduced which are based on actual dispersion of custom import prices. This is of utmost importance and will avoid litigation costs involved.	33
16	Obtainment of secret comparables from corporates under Sec 133(6) of Income Tax Act should not be applicable for	As secret comparison analysis is not accurate, this practice should not be applicable for non-commodities like LNG.	34

	non-commodities like LNG. [Transfer Pricing]		
	General		
17	Set-off of Dividend Distribution Tax (DDT) under Section 115-O	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"	34
18	Multiple levy of income tax on dividend – S. 115-O	The below are suggested: • The levy of Dividend Distribution Tax (DDT) at multiple levels has been a subject matter of grievance of corporate. It is suggested that dividends which have suffered DDT be treated as pass through and be not subjected to levy of DDT again. • The existing provision should be amended to provide uniform and simplified taxation regime so as to provide for the DDT credit, irrespective of the stipulating condition that one company should hold 51% or more of the share capital of the company declaring, distributing or paying the dividend • The existing provisions should be further rationalized, so as to reduce the cascading impact of taxes in case of multiple subsidiary structure (i.e. subsidiary of a subsidiary).	35

19	Section 115-O not to be applicable in respect of dividend payable by a Government company to the President of India	It is suggested that Section 115-O should not be made applicable to Government companies, to the extent of dividend payable on shares held in the name of President of India.	36
20	Dividend Distribution Tax	It is time we reverted back to the pre-1996 position and tax dividend in the hands of its recipient, which is one of the cardinal principles of taxation. DDT was touted as a tool to end escapement of tax on dividend. Since, dividend is paid out of tax paid profits of companies it is unfair to tax the companies again. The truth is while shareholders have been spared of tax liability on this account; the company itself is taxed twice over – corporate tax and DDT. The real solution lies in allowing dividend as genuine business expenditure on par with interest.	36
21	Climate Change, Environment Conservation & Conservation of natural resources	At least 100% deduction of expenditure, revenue or capital, on efforts in mitigating climate change and environment conservation on the lines of section 35 “Expenditure on scientific research” may be provided. Similar provisions existed earlier under section 35CCB of IT Act with sunset clause of March, 2002. Though environment conservation is covered under the Schedule VII of CSR provision of Companies Act, 2013 but expenditure in respect of that is not allowed under the proviso to section 37(1) of the Income Tax Act, 1961.	37

		Considering the commitments of India to Paris Agreement on climate change, UN Sustainable Development Goals (SDGs) on climate action and (India) as a signatory to Convention on Biological Diversity (CBD), it is of utmost importance to encourage the entities to contribute in achievement of such commitments of the nation by providing tax incentive to entities incurring expenditure directly or indirectly by paying sum to research association, university, college, or other institution engaged in such activity on the lines of Section 35 of Income tax act, 1961.	
22	Clarification that loss on Sale of Oil bonds is a revenue loss	It is suggested that Section 37(1) needs to be suitably amended to provide deduction for business loss arising from sale of such bonds.	37
23	Section 35 (2AB) and 35(2AA)– Restoration of weighted Deduction on R&D Activities and inclusion of expenditure incurred on Bio-fuels	Currently India is a technology importing country. In order to promote innovation in technology through research activities and to support Make in India, deduction under these section should be restored to 200%. It is further suggested that any expenditure incurred on Bio- Fuel activities should also qualify for a deduction of 200% under Section 35(2AB) in order to promote investment/ R&D initiatives for renewable/ non-conventional energy sources.	38
24	TDS on Transportation payment under section 194C	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	39

		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.	
25	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 be extended to JVs/associate companies	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.	39
26	Consideration of interest for granting refunds u/s. 244A	It is suggested that a suitable clarificatory provision may be inserted in section 244A of the Act in this regard.	40
27	MAT Credit Entitlement u/s 115JAA	Allow the set-off of 2 times of the difference of the tax under normal tax and MAT provisions, in the year in which the normal tax liability exceeds tax liability under MAT provisions for Oil and Gas industry	41
28	MAT credit, adoption of financial statements under section 115JB and set off of unabsorbed losses or depreciation	In this regard, the below mentioned are suggested: a. Section 115JAA should be suitably amended to specifically provide that in case of amalgamation or merger the tax credit available with amalgamating company should be allowed to be utilized by the amalgamated company. b. Proviso to Section 115JB provides that where the company has adopted the financial year under the Companies Act 2013 which is different from the previous year under this Act – the accounting policies, the accounting	41

		standards and the method and rates adopted for preparing accounts shall correspond to the financial statements which have been adopted for preparing accounts under the Companies Act 2013. Similar exception should be provided where the special purpose financial statements are prepared viz. upon merger / amalgamation special purpose financial statements are prepared for tax purposes only which are not laid before the company at its AGM in accordance with the provisions of the Companies Act, 2013. c. Nowadays companies procure assets on lease (follow asset-light model). Restriction of set-off of brought forward loss or unabsorbed depreciation, whichever is less, causes genuine hardship as the companies are liable to pay despite having huge brought forward losses. Hence it is suggested that all carried forward losses (cash losses or depreciation) should be reduced from book profits while calculating MAT.	
29	Investment allowance u/s 32AC	Restoration of Investment allowance	42
30	Lowering of Income tax rate	Hence, either the lower rates are to be made available to the existing companies, which have planned significant expansion, say over 50%. Alternatively, extension of 32AD time limit and reinstatement of investment allowance u/s 32AC and reintroduction of Profit linked incentives like 80-IB (9) and option to convert to lower tax regime is recommended.	42

		Incentives available under Income tax for Capital Intensive Projects are as follows: 1. Section 32AD allows additional deduction of fifteen per cent of the actual cost of new plant and machinery for setting up a new undertaking in in any backward area notified by the Central Government. The period of investment has been specified as 1-4-2015 to 31-3-2020. 1. Section 32AC allowed an 2. Additional deduction of 15% on installation of new plant and machinery by a manufacturing company. The said deduction has been discontinued from AY 2018-19. 3. Section 80 IB (9) allows deduction to an undertaking at hundred per cent of the profits for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998 but not later than the 31st day of March, 2012; The economy has witnessed slowdown in the recent past and various government agencies have highlighted the need for higher investment by industry. Recently, Finance Ministry in its monthly economic report (March’19) has cited declining growth of private consumption, tepid increase in fixed investments and muted exports as main reasons for slowdown of economy in 2018-19. It is very essential to boost the investment by the industry to put back the economy on a path of rapid growth.	

		It is recommended that the sunset period of 31-3-2020 for Sec32AD must be extended by atleast by 5 years. It is also recommended to bring back the investment allowance u/s 32AC to boost the capital investment thereby creating economic value and social value through sustainable livelihoods by employment generation. It is also recommended that the sunset period of tax holidays under section 80 IB(9) for profit earned on new refinery engaged in refining of mineral oil should be reintroduced with sunset clause of upto 31-3-2025 to promote the highly captive intensive oil refining industry and also make the project " Make in India" to have sustainable industrial growth and to attract investment which are more viable. Oil Refining industry being a capital intensive sector , option to shift to lower tax regime (Section 115BAA) should be given for companies making significant investment in its capacity say more than 75%	
31	Allowance of Provision for Post-Retirement Medical Scheme	A separate sub section under section 36 to be introduced to allow provision for post-retirement medical benefits in line with the judgment of honorable High Court or suitable clarification to that effect may be issued by CBDT.	45
32	Issue of Withholding Tax Certificate u/s 195(3)	It should be clarified that for the purpose of Section 195(3) of the income tax act, branch includes a Project Office to avoid a situation where field formations deny the benefit of Section 195(3).	45

33.	Corporate Social Responsibility Expenditure to be allowed as deduction for payment of Income Tax	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.	46
34	Corporate Social Responsibility Expenditure[Explanation 2 to Section 37(1)	As Companies Act, 2013 has made it mandatory to spend at least 2% of last 3 years' average net profit towards CSR, the same may be treated as an eligible Business expenditure u/s37(1) like any other business expenditure. Allowance of expenditure on CSR activities as business expenditure u/s 37(1) would lead to motivation to the company to incur more than the minimum prescribed percentage towards CSR activities.	47
35	Insertion of specific definition of "month"	Absence of specific definition of "month" leads to differential interpretation thereof and, hence, the avoidable litigation. It is, therefore, suggested the provisions of section 2 of the Act may be amended so as to incorporate therein definition of "month".	47
36	TDS if amount is credited unilaterally	Considering somewhat similar situation faced by banks wherein provision of liability for interest is made without any constructive credit to depositors' accounts, the Central Board of Direct Taxes has, vide circular no. 03/2010 dated 02-03-2010, clarified that there is no need for banks to deduct tax at source on provisioning of interest	48

		since no constructive credit to depositor's/payee's account takes place. As this is a problem faced by all assessees and not just the banking fraternity, it is suggested that similar dispensation may be provided to all assessees by making suitable amendments in the provisions of the relevant sections contained in Chapter XVII-B of the Income-tax Act, 1961, dealing with deduction of tax at source. At the same time, to safeguard the interests of the revenue, it may be provided that the requirement not to deduct tax at source from sums so credited to any account shall apply only if the credit is afforded unilaterally i.e., without any invoice having been received from the payee, the amount is not credited to any particular payee's account, and the entire amount of the credit so afforded at the end of an accounting period is reversed at the beginning of the succeeding accounting period by the payee.	
37	Tax Holiday u/s 80IB(9)	Restoration of provision of Tax holiday for new blocks awarded under OALP.	49
38	Section 32 – Amortisation of Goodwill	Given that the matter has attained certainty at the level of Supreme Court and has become the law of land, it would be in the best interests of the taxpayers and the tax administrators that 'goodwill' is specifically inserted within the scope of Explanation 3(b) of section 32 of the Act to codify the law. This would eliminate unnecessary litigation in the matter.	49
39	Clarification on impact of lease accounting as per Ind AS 116 applicable w.e.f. 01.04.2019	Necessary clarification is required as to whether for the purposes of income-tax, both under normal provisions and MAT, such leases will be included in the block of assets as Intangible	50

		assets with depreciation being allowed thereon, or will be continued to be treated as operating leases, with the rental and other related expenditure being allowed as deductible expenditure.	
40	Taxation on distribution of dividends (DDT)	In case of all investors, in particular, foreign investors, DDT should be restricted to 10% considering that most treaties for avoidance of double taxation entered into by India restrict rate of tax on Dividends to 10%.	51
41	Delay in issuance of refund	Refunds, if any, determined pursuant to the processing of return of income under section 143(1) by CPC should be made mandatory for all assesses, including corporates. Withholding of refunds should be an exception to the rule, restricted to cases where there is a clear case of likely adverse impact for the Revenue consequent to the pending assessment..	51
42	Business connection/ PE implications	In case of purchase of raw material/finished goods where title/ risk gets transferred outside India, the income from such transaction does not comes under the purview of 'deemed to accrue or arise in India' under section 9 of the Act. Hence, the same is not taxable in India. Clarification in this matter is required as part of 'Make in India' initiative of the Government of India.	52
43	Disallowance u/s.14A r.w. Rule 8D	It is suggested that a clarification is to be issued under the Act taking into consideration the following: a. Normal computation of income - No disallowance under section 14A r.w. Rule 8D is to be made if the assessee has not earned any exempt income in a given	52

		year. At any rate, disallowance should not exceed the exempt income earned, if any. Hon'ble Supreme Court and various High courts have held that section 14A will not apply in the absence of exempt income earned during the year b. MAT computation of income -Section 115JB is a self-contained code and starts with a non-obstante clause which gives the section an overriding effect. The expenditure to be added back is that which is relatable to exempt income to which sections 10, 11 and 12 apply, as specified. This corresponds with the requirement under section 115JB of reducing from the book profit such income if credited to the profit and loss account. Clearly, therefore, for the expenditure to be added back: • it should be relatable to income actually earned and credited to the Profit & Loss account, and • the related expenditure refers to those actually incurred and accounted for in Profit & Loss statement. In other words, section 115JB is based purely on book profits, subject to certain additions and reductions of income and expenditure included in the book profit as shown in the profit and loss account, determined in accordance with relevant provisions of the Indian Companies Act.	

		Rule 8D which provides for disallowance of a notional amount has no relevance for section 115JB and is not applicable for the purpose of MAT calculation, which is based on book profits alone.	
44	Carry forward of business losses and unabsorbed depreciation (UAD) on merger under section 72A of the Act	With the advancement in technology, more and more service undertakings have been set up and evolved. Likewise, business prefers to import goods rather than manufacture the same to survive in a competitive market. Basis above, the definition of 'Industrial Undertaking' should be either done away with, so that all mergers are eligible for carry forward of losses; or else, it should be widened to include companies owning infrastructure/ trade undertakings or providing capital intensive / logistics services.	53
45	Exemption under section 10(48) of the Act on income received in India in INR terms by residents of Russia, Venezuela etc. (countries affected by US sanctions) similar to Iran	CBDT vide Notification dated 28 December 2018, having regard to national interest, notified National Iranian Oil Company as a foreign company under section 10(48) of the Act. Consequently, income received by National Iranian Oil Company in India in Indian currency will be exempt from tax in India pursuant to the bilateral trade payments entered between the Government of India and Government of Iran subject to the condition that the said foreign company shall not engage in any activity in India, other than the receipt of income under the aforesaid arrangement	53

		The above notification only provides exemption to Iranian Company and not to other countries such as Russia, Venezuela etc which have been affected by sanctions imposed by United States of America.	
46	TDS on year end provision entries in books of account	Relief from deduction of tax at source should be given to the payee on payments that are accrued but are not due and represents only a provision made for reporting purpose that are reversed on the first day of the subsequent year. Further, the relief should also be given from deduction of tax at source on payments for which the payees are not identifiable as held by the Tribunal in certain cases.	54
47	Fast-track APAs	For the new potential investors who intend to invest into the country and who need clarity on their transfer pricing model, the government could create a parallel process of obtaining a fast-track APA solution that would aid companies with respect to their investment decisions. A six-month time frame for APA for a prospective investor, would help in furthering the 'Make in India' agenda.	54
48	Rationalization of newly introduced secondary adjustment provisions	• A clarification is required on whether the secondary transaction in the form of interest would be included for MAT purposes. • Clarifications are requested for cases where the AE ceases to exist i.e. AE has been liquidated. Also, clarification may be provided for a scenario, where if at the time of making secondary adjustment, the AE relationship ceases to exist	55

		• It is recommended that section 92CE(2) of the Act be amended to clarify that the section applies only in case where the primary adjustment is made in the hands of the Indian AE • Clarity should also be provided with regard to non-applicability of provisions of section 2(22)(e) of the Act where any sum is treated as an "advance" by virtue of the secondary adjustment.	
49	Inclusion of expenditure incurred on Bio-fuels – Section 35(2AB)	Any expenditure incurred on Bio- Fuel activities should also qualify for a deduction of 200% under Section 35(2AB) in order to promote investment/ R&D initiatives for renewable/ non-conventional energy sources.	58
50	Statutory Dues not to be included in the gross receipts for the purpose of section 44BB of the ITA	Section 44BB of the ITA should be amended to provide that statutory taxes and dues (such as service tax) recovered by the non-resident service provider from the Indian residents would not form part of gross receipts for computing deemed income under the Section. This will be fair and will eliminate unnecessary litigation on the issue.	59
51	No disallowance for the domestic company, for charges paid to a PE in India of a foreign company	It is recommended that the expense claims (in such a scenario) should not be subject to transfer pricing assessment and disallowance.	59
52	Phasing out of Deductions and Exemptions vis-à-vis Industry Needs (Sunset clause for 10AA should be	It is submitted that the sunset date be extended from 31 March 2020 to 31 March 2025.	60

	extended for another 5 years)		
53	Clarification to prevent erosion of Indian tax base through Transfer Pricing adjustments in hands of Foreign Companies	We request you to clarify either by making necessary amendments in the provisions of section 92 of the Act; or by issuance of a circular, ideally being the latter, to prevent the unintended application of the TP provisions of India in the manner, as aforesaid; and also obviate the hardship faced by foreign companies in India.	60
54	Section 139(5) – Reduction in time limit for filing revised return – Request to bring back erstwhile time limit for filing of revised tax return at least in cases of claim of foreign tax credit	There is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. Therefore, the earlier time limit may be brought back at least in respect of revision required for claiming foreign tax credit.	63
55	Expenditure on In-house R&D facilities u/s 35(2AB)	The deduction for Expenditure on in-house R&D facilities may be restored to earlier 200% to incentivize more expenditure on in-house R&D activities. This would encourage companies to make more investment in R&D related activities.	64
56	Depreciation provisions (Section 32)	The industry is hopeful of an incentive package to maintain the growth momentum and support to achieve its targets. Early recovery of capital cost will lead to more investment in the sector resulting in faster growth of the renewable energy sector.	64
57	Movement of goods between blocks (located in different states/UT)	Subsequent movement of goods which is intrinsic to E&P operations should be exempt from GST.	65

		Moreover, It is requested that once goods have been previously imported or procured under EC/DGH certificate, further movement of such goods within the same PAN No. should not require any EC/DGH certificate. This will help to avoid extra cost burden due to subsequent levy of GST on each movement as no input tax credit is available to the sector.	
58	Increase in Cost of other Services	Since no input credit is available to E&P Sector, It is requested that the rate may be reduced to 12% for all services used for petroleum operations by the upstream sector. This will help encourage risk capital in exploration & investments to increase production.	65
59	Taxation of Joint Venture	GST Council may be requested to provide clarifications in the lines of Petroleum Tax Guide, 1999 exempting UJVs from taking separate registrations in GST in view of non-availability of PAN No. To avoid different interpretation by fields officers and to avoid possible litigation.	65
60	E Way Bill requirement	It is requested that exemption may be given to E&P Companies from generation of e-way bill on movement of goods from one location to another location of the same entity within the same state for E&P operational purpose on the ground of ease of doing business.	66
61	Availability of Unclaimed Additional Depreciation in	The provisions of section 115BAA specifically restrict set off of carried forward losses while calculating tax liability thereunder if such losses	66

	respect of new Plant and Machinery	are attributable to any of the deductions referred to in section 115BAA (the deductions which would not be available for calculating tax liability under section 115BAA). However, there is no such restriction in respect unclaimed depreciation u/s. 32(1)(iia) pertaining to the immediately preceding financial year. Accordingly, it is understood that the deduction in respect of unclaimed depreciation u/s. 32(1)(iia) would be available while computing tax liability under the newly inserted section 115BAA of the Act. However, to bring clarity on the issue and to avoid unnecessary litigation, a suitable certificatory provision may be inserted in section 115BAA of the Act in this regard.	
62	Providing Consequences of Non-disposal of Rectification Applications under section 154 of Income-tax Act, 1961	It is suggested that it should also be provided in the said sub-section (8) of section 154 that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed. This would ensure promptness in disposal of applications under section 154 and avoid undue harassment to the taxpayers.	67
63	Availability of deduction u/s. 36 in respect of contribution made to Trusts etc., set up for employees' welfare	It is suggested that suitable amendments may be made in section 36 and/or section 40A(9) of the Act so as to provide that deduction would be available in respect of contribution made by an employer towards a Fund/Trust/Scheme set up for the welfare of employees if such Fund/Trust/Scheme is	68

		registered/recognized/approved under the provisions of the Income-tax Act, 1961.	
64	Removing cap on non-taxable employer contribution to approved superannuation fund	It is suggested the amount of any contribution to an approved superannuation fund by the employer in respect of the assesse may be made fully non-taxable. Without prejudice, if the aforesaid suggestion is not agreed to, then the amount of one lakh fifty rupees specified in section 17(2) (vii) of the Income-tax Act, 1961, may be raised to at least two lakh fifty thousand rupees to allow accumulation of sufficient corpus to meet post retirement needs of employees in the scenario of increased life expectancy and high inflation.	69
65	Revision of thresholds applicable in respect of taxability of perquisites	It is suggested that the threshold limit for the aforesaid perquisite value to be taxed in the hands of employees may be revised upwards keeping in view the cost inflation.	70
66	Exclusion of Dividend Exempt u/s 10(34) from the scope of Section 14A	Amendments may be made to Section 14A to exclude dividend exempt u/s 10(34) from the operation of this section.	70
67	Abolition of MAT provisions	• Companies that are recovering from losses and turnaround from losses to profits should be exempt from the provision of MAT. • Deduction available under sections 80-IA and 80-IB should be excluded from the ambit of MAT provisions and hence it is suggested that the book profit definition should exclude the profit from 80-IA and 80-IB respectively. It may please be noted that the profits computed u/s 80HHC were allowed a deduction from Book Profits. Similar treatment	70

		may please be extended to Profits computed u/s 80-IA and 80-IB	
68	Tax Loss Carry back	Tax loss carryback is a concept similar to the tax loss carry forward. The principle difference is that a year in which a loss is noted is not carried forward to a subsequent year. Instead, the tax loss carry back is applied to a previous year in which the assessee has paid large sum of taxes, and allows you to reduce taxes already paid, which usually results in a refund of some of the taxes paid by the assessee. This system is widely practiced in United States by the Internal revenue service (IRS) of United States Federal Government. Under this system, the assessee will have to refile the tax return of previous year for the carry back year, and request a refund accordingly, if the assessee have filed its tax return on time in the past. There is a specific provision in the US tax law system which allows them to carry back upto three immediate proceeding years in order to avoid unlimited time for reopening an assessment related to previous years. With the Indian Tax laws, aligning with global tax laws, this concept can be introduced in India also. This would go a long way in incentivising commodity sectors that are badly affected by pricing cycles like Oil & gas and other commodities that are exposed to extreme volatility in International prices.	71

		Thus in a business that had terrifically profitable years, an extremely bad business year might prompt an attempt to recoup some of the taxes paid in profitable years through a tax loss carry back .The above provision would also be attractive for Foreign funds and institutions which are exposed to such environment globally but denied in Indian Taxation laws.	
69	Treatment of Profit from Derivative Transactions	It is suggested that the clarification should be issued to the effect that the profit/loss from the Derivative Transactions should be treated in the same manner as any other securities and accordingly would be chargeable to Capital Gain Tax or Business Income based on the well-accepted principles.	72
70	Interest on Refunds paid to the assesse	The interest rate on the refunds due to the assessee and on the amount payable by the assessee to the government should be same on the ground of equity.	72
71	Deduction under section 43B – to cover only statutory deductions	Employee obligation liability provided as per accounting standards (AS15) should be allowed by decalring mandatory accounting standard as per section 145A	73
72	Payment to non-residents	The tax withholding in respect of non-residents scope is widened in the section 195. Section 195 contemplates that in the case of composite payments made to a non-resident, which have an element of income embedded or incorporated in them, the payer is under an obligation to deduct TDS in respect of such income attributable to the composite payments.	73

		In the case of purchase of indigenous crude oil, the price payable is determined based on International markets and hence it would not be possible to determine the profit element embedded in the total payment made towards purchase. It is also to be noted that the prices of crude are independent of cost associated for exploration and production of crude oil. Hence section 195 making it obligatory to on the part of the assessee to withhold tax in respect of the whole or part of the income attributable of the other income. In view of the divergence of opinions under the existing tax regime for example, royalty would be subject to withholding tax while copy righted materials and goods are not subject to withholding tax, clarifications need to be issued by CBDT specifying the nature of payments which attract withholding tax. It should be noted that the following phrase, “any other sum chargeable under the provisions of the Act” should be removed from the section 195 of the income tax act to bring in more clarity on the payments which are subjected to TDS.	
73	TDS Credit to be allowed irrespective of the Assessment Year	In respect of Tax deducted at source, TDS certificate issued by the deductor would reflect in Form 26AS statement .If the income in respect of such TDS was booked and offered to tax in one particular year and the amount of deduction is made in any subsequent year by the deductor, then such TDS credit is not provided to the benefit of the assessee stating that the income has not	73

		been offered for tax in that relevant year. Hence, it is suggested that the TDS Credit to be allowed irrespective of the Assessment Year.	
74	Applicability of Section 35AD to be extended to dedicated pipelines which are not used on common carrier basis	Benefit of weighted deduction of 1.5 times of expenditure incurred towards common carrier pipelines approved by Petroleum and Natural Gas Regulatory Board. The same benefit should also be extended to crude oil pipeline and petroleum product pipeline which are dedicated for supply to a specific consumer. Section 73A should also be amended such that the loss computed under section 35AD can be set off against profits of other business inter-alia involved in oil and gas industry.	74
75	Removal of Surcharge & Education Cess	In order to bring alignment with the proposed Direct Tax code, removal of Surcharge & Education Cess is to be done.	74
76	Dividend distribution tax u/s 115-O to be extended to Companies other than subsidiaries	The facility of reduction of dividend paid by the subsidiary company to parent company for the purpose of calculation of declared dividend by the parent company u/s 115-O should be extended to Joint Venture/SPV in which there is a substantial holding.	74
77	Impairment of Assets	Clarity has to brought in the Act by referring that the Impairment of Assets are not provision for diminution in value of assets as they are guided by Ind AS 36 and since the profit and loss account has to be prepared in accordance with provisions of Schedule III of companies Act, 2013 , impairment of assets cannot be treated as amount set aside as provision for diminution in value of asset.	74

78	Demerger	Section 115JAA of the Act should also be amended to provide that successors in case of amalgamation, demerger or any other form of reorganization should be eligible to claim benefit of MAT Credit.	74
79	Scrapping of ICDS	It is suggested that the entire ICDS may be scrapped altogether and erstwhile system may be put in place.	75
80	Section 115BAB allows new manufacturing company which commences operations before 31/03/2023 will be taxed at 15%. Large Manufacturing Units Requires 5-6 years to build and commence operations. The current section will encourage only small units and not big manufacturing or integrated complex. It is therefore requested to extend the sunset clause to March 2026.		76
81	The weighted deduction for R&D Expenditure under Sec. 35(2AB) not available in case Section 115BAA is opted. The expenditure on R&D was allowed as weighted deduction with a vision to the strengthen R&D Activities in India which directly related to "Make in India" concept. R&D is the back bone for industrialization of any country and linked to development and growth of the economy. Further India's expenditure on R&D as a percentage of GDP is very dismal as compared to World Average. Reinstating of R&D weighted deduction, would help in further development of new technology and avoiding brain drain and continuous dependence on foreign technology. We suggest to delink the R&D Deduction with the Option of 115BAA/115BAB by allowing "Weighted Deduction on R&D @ 200% of expenditure.		76
82	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		76

	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.	
83	Under the Companies Act, P&L Accounts of the Company has to be in compliance with certain mandatory accounting standards, one of which is AS-15(Revised). As per the Standard, it is mandatory to provide for long term employee benefits such as post- retirement medical benefits, death benefit, leave encashment etc., based on actuarial valuation. While the Books cannot reflect true and fair view unless complied with the Accounting Standards, the Assessing Officer treats these expenditure as a contingent liability and disallows deduction, primarily because of Section 36(1) that permits only few of the chosen retirement benefits, namely, PF, Gratuity and Pension. After all, in Public Sector Organizations, Department of Public Enterprises has mandated providing a portion of their salary to its employees in the form of 'Retirement Benefits'. In a Going Concern, there would get accumulated, substantial expenditure towards Long Term Employee Benefits, incurred year after year, that gets allowed under the current Income Tax provisions. As a result, 'tax cost' as a % of profit before tax goes higher and higher with consequent piling up of Deferred Tax Assets. Considering the genuineness of the Business Expenditure and disallowance by the Assessing Officer leads only to delaying the deduction under Income Tax Act, suitable amendments are to be brought in Section 36(1) of the Act, permitting the deduction while transferring of the money to the welfare fund namely, 'Post-Retirement Medical Benefit Fund' and 'Death Benefit Fund' in addition to PF & Gratuity, currently specified in the said section.	76
84	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	77

	allow all dividends received by the company on which DDT is paid is allowed for netting off against the Dividend declared.	
85	It is suggested that suitable provision be inserted in the Act whereby prior period expenses are allowed as deduction in the current year under section 37(1) of the Income Tax Act, 1961. A limit (say not exceeding 1% of the turnover) can be prescribed for such expenditure. It will obviate administrative difficulties in claiming the deduction in respect of previous years and rectifications proceedings etc. There will not be any revenue loss to the government from this clarification, since corporate tax rates over a period of years have remained more or less the same.	77
86	The Exemption limits for various allowances (eg: Children's Education Allowance, Hostel Allowance etc.) mentioned in Rule 2BB r.w.s. 10(14) was fixed in 1995. This needs to be revised keeping in view the cost inflation.	77
87	After the abolition of Fringe Benefit Tax vide Finance (No.2) Act 2009, Perquisite tax in the hands of employees was reintroduced vide Notification No. 94/2009 dt. 18/12/2009 from FY 2009-2010 by inserting new Rule 3 basis which, few perquisites like Free food and non-alcoholic beverages, is taxable if the cost per meal per employee exceeds Rs. 50/- and Gift from employer is taxable if the value exceeds Rs.5000 p.a etc. We wish to recommend that, the threshold limit for perquisite value to be taxed in the hands of employees, needs to be revised keeping in view the cost inflation.	77
88	With implementation of successive pay commission recommendations, the leave salary of both Public and Private Sector employees has substantially increased. Whereas, a threshold exemption u/s 10(10AA) fixed at Rs.3 lakhs in the year 2002 hasn't undergone any revision over the years. Accordingly, it is suggested to revise the limit from Rs.3 lakhs to Rs.20 lakhs in line with the revised salaries.	77
89	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. As per the Provisions of section 195 and as per Rule 37BB, any payment made to Non-residents requires payer to obtain a No Objection Certificate from Assessing officer or a Certificate from a Chartered Accountant in Form 15CB before making payment to the concerned party. In order to avoid inordinate delay in obtaining these certificates, it is suggested that an outer limit of say, 30 days	78

	shall be fixed for issuance of such certificates, failing which the rate sought in the Application shall be deemed to have been approved. Further a clarification may also be issued on Rule 37BB, so as to exempt the Trade payments for imports made from Non-resident parties, wherever they do not have any Permanent Establishment in India. This will reduce the administrative difficulty with regard to the volume of transactions involved vs. tedious compliance procedures as per New Rule 37BB.	
90	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.	78
91	CSR expenditure mandated under the Companies Act, 2013 are towards fulfilling Government's social and developmental agenda. By inserting a specific explanation (Explanation 2 to Section 37(1) of the Act) to the effect that CSR expenditure is not deemed to be incurred wholly and exclusively for the purposes of carrying on business, Companies do not get tax break on such expenditure. Since Corporates supports the social and developmental agenda of the Government, especially, 'Swatch Bharat Abhiyaan' it is imperative that the said expenditure be permitted as a deduction while computing the business income. Accordingly, it is request to revisit the said provision.	78

PRE-BUDGET MEMORANDUM FOR UNION BUDGET 2020-21

INDIRECT TAX

Service Tax

Upstream

1. **Service Tax on Cost Petroleum Service Tax on Cost Recovery (Cost Petroleum) recovered by upstream oil and gas companies under Production Sharing Contracts (PSC)**

   Background

   The Government of India introduced the New Exploration & Licensing Policy (NELP), to boost the production of oil and natural gas and providing level playing field for both public and private players.

   Under NELP, the Government of India signed several PSC with Private & Public companies, each of these PSC's are placed in the Parliament. A PSC is a Public Private Partnership between the Government of India and the Oil & Gas Companies for exploration, development & production of petroleum resources and sharing of profits from such operations, if there is production of hydrocarbon. To provide impetus to the Oil and Gas companies, NELP/PSC provided for exemption from customs duty and excise duty.

   In addition, the NELP also provides for fiscal stability during the entire period of the contract.

   PSC is an economic sharing agreement and not a service contract. Government is a partner in the venture it is entitled to receive royalty and its share of any profit petroleum either in cash or in kind if revenue is generated from sale of hydrocarbon. Similarly, the Oil & Gas Companies are also entitled to their share of profit petroleum and a recovery of cost (cost petroleum) as agreed in the PSC.

   Under the PSC arrangement, the Companies spend costs relating to Petroleum Operations ie exploration, development & production of hydrocarbon. To manage the inherent risk of exploration, the PSC includes a provision to recover cost and capital spent in exploring and developing the field, if revenue is generated.

   This is just a mechanism (formula) to determine the share of petroleum which will belong to Companies and to the Government. This is not linked to any service.

The CBIC has already issued a circular clarifying that Cost Petroleum is not a service rendered to the Government.

As this is a clarificatory circular it should be equally applicable to the service tax regime. Despite circular in the GST regime, the field formations are confirming levy of Service Tax on this cost recovery which is a matter of grave concern for the industry.

Note that the underlying services or supplies from vendors have already suffered appropriate taxes. The field formations are confirming levy of Service Tax on the cost recovery (Cost Petroleum).

Suggestion

Clarification should be issued under the Service Tax Law (Finance Act 1994) confirming that Service Tax is not applicable on such Cost Petroleum Similar to clarification issued under the GST regime.

2. **Service Tax on Profit Petroleum**

Background

Profit petroleum is the share in petroleum after recovery of cost which is shared between the Contractor and the Government.

This is not a consideration for any service. VAT is already paid at the time of sale of the petroleum products (crude/ natural gas) by the Contractors.

Recently, field formations have indicated their intention to issue notices seeking to levy service tax on Contractors share of profit petroleum which will result in unnecessary litigation.

The Contractor's share of profit petroleum is an entrepreneur revenue from sale of Crude Oil/ Natural Gas and not a consideration for any service.

Field formations have indicated their intention to issue notices seeking to levy service tax on Contractors share of profit petroleum which will result in unnecessary litigation

Suggestion

An urgent clarification is requested to clarify that contractors share of profit petroleum is not a payment against any service and therefore not subject to service tax.

3. Service Tax on Cash Calls

Background

One of the partners to the PSC is designated as Operator who is responsible to pool funds and incur cost for the Petroleum Operations (Exploration, Development and Production).

Such pooling of funds is termed as “Cash Calls” which are funding arrangements in the nature of capital contributions by participating Companies.

These Cash Calls are transaction in money and not a service. The Operator has already paid applicable taxes on the underlying transactions.

Further, there is already a circular (179/5/2014-ST dated 24.09.2014) confirming that capital contributions under UJV structures are not service.

Field formations have indicated their intention to issue notices seeking to levy service tax on Cash calls which will result in unnecessary litigation.

Field formations have indicated their intention to issue notices seeking to levy service tax on Cash calls which will result in unnecessary litigation.

Suggestion

A circular specific to the upstream companies may be issued clarifying that pooling of funds by participants for petroleum operations is not a service.

4. Service Tax on Royalty

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.

The CBIC in FAQ on Government services mentions that royalty paid to the government for assignment of right to use natural resources is treated as a supply of services and licensee is required to discharge tax on the royalty paid under reverse charge mechanism.

There is no quid pro quo specified in this legislation under which royalty is levied that Government is required to fulfill obligation in lieu of royalty received.

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

Clarification required under service tax Law that Royalty payments to the GOI does not constitute supply of services.

Excise Duty

Upstream

5. Reduction in the OID cess Rate.
(HSN: 2709)

Background

Prevalent framework for OIDB Cess:

NELP & HELP blocks: Cess not applicable.
26 identified fields under Production Sharing Contracts: Frozen rate of Cess

- OID Cess is levied on crude oil produced as a duty of excise under The Oil Industries (Development) Act, 1974.
- OID Cess is being levied on crude oil from nominated blocks and Pre-NELP Exploratory Blocks.
- High Cess disincentives production, incremental investments.
- It further increases tax burden, which is high vis-à-vis other importing countries
- It is also against "Make in India" vision of GOI as imports are tax exempt.
- Given India's geological landscape hence it is important to reduce Cess.

Suggestion

To subsume the Oil Cess paid by Oil and Gas companies on "production or extraction of crude oil" under the GST provisions in the spirit of "one tax" and to achieve fungibility of taxes. If not possible, Cess rate to be capped to 8 to 10% of the realized price of oil.

- Government of India (GOI) earns ~ 14,000 crore every year through Cess.
- GOI headline revenue loss due to reducing Cess (to 8 – 10%) would be ~ 7,000 crores.
- However, GOI earns back ~ 50% of its estimated headline revenue loss from reducing Cess rate because lower outgo on Cess:
    - Increases profit petroleum.
    - Increases profits of private & PSU Oil & Gas companies who in turn will now pay higher income tax, dividend & dividend distribution tax.

- More importantly, at an industry level, halving the Cess rate makes more than 200 mmboe of production viable, which when brought to production will earn additional revenues to the GOI.

6. Reduction in Rate of OID Cess on Crude Oil to 8-10%
(HSN: 2709)

Background

OID Cess is levied on crude oil produced domestically as a duty of excise under u/s 15(1) of Oil Industries Development Act (OID Act), 1974. In exercise of the power conferred under this section, the Ministry of Petroleum & Natural Gas (MoP&NG) notifies the rate of OID Cess from time to time. OID Cess was made 20% ad-valorem w.e.f. 01.03.2016 from earlier specific rate of Rs. 4,500/MT. OID Cess @ 20% is levied on crude oil produced from nominated blocks and Pre-NELP Exploratory Blocks only. OID Cess at specific rate of Rs. 900/MT is levied for Pre-NELP discovered blocks. OID Cess has been abolished for NELP/ HELP blocks.

It is submitted that before making Cess @ 20% as ad-valorem with effect from 1st March 2016, OID Cess was Rs. 2,500/MT till 16th March 2012 and revised to Rs. 4,500/MT w.e.f. 17.03.2012, when the price of Indian Basket of crude oil was in the range of US$ 110/bbl. Keeping in view unprecedented reduction in crude prices starting mid 2014, representations were made by Upstream Oil Companies including ONGC with the Government to review and reduce the rate of OID Cess and make it 8% to 10% ad-valorem.

However, as decided in the Union Budget 2016-17 and in terms of the Notification dated 28.03.2016, Government of India, amended Oil Industries (Development) Act, 1974 and made OID Cess as “20 percent ad-valorem” effective from 01.03.2016.

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

The revised rate of 20% ad-valorem is negatively impacting oil companies once oil prices start moving northwards. Moreover, as OID Cess has been levied historically in range of 8-10% of crude price, there appears to be little rationale in making it 20% ad valorem. It is also worth mentioning here that In March, 2012, when OID Cess was revised from Rs. 2,500/MT to Rs. 4,500/MT, the price of Indian basket of crude was in the range of US$ 110/bbl. However, under the revised rate of 20% ad valorem, at a crude price of US$ 110/bbl, OID Cess works out to more than double of pre-revised rate of Rs. 4,500/MT.

In addition to OID Cess, other statutory levies viz royalty (@ 10% and 20% on crude oil production from offshore & onshore areas respectively), VAT (@ 5%) are also payable on production/ sale of crude oil. Govt. has also levied Basic Excise Duty on Crude Oil w.e.f. 06.07.2019. At prevailing crude oil prices, with the revised rate of 20% for Cess, ONGC would end up paying a major portion of crude price towards statutory levies. Moreover, since both royalty and OID Cess are production levies and not pass through to Buyers, it adds up in cost of production of crude oil.

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

It is pertinent to mention that OID Cess is not applicable on oil being produced/to be produced from NELP Blocks. OID Cess is also not payable under Marginal Field Policy and HELP notified by Government on 14.10.2015 and 30.03.2016 respectively. It is understood that these incentives have been extended under relevant schemes to augment domestic oil production. So, on the same lines, there is case for Govt. to exempt totally or at least reduce OID Cess to 8-10% to enable upstream oil companies to harness full production potential of its nomination/ Pre-NELP Exploratory blocks.

Suggestion

In view of above, various Representations are made by Industry including ONGC to MoP&NG to review the OID Cess and revise to 8% to 10% of realized crude price. Based on these representations, MoP&NG has also recommended to Ministry of Finance vide letter dated 11.04.2016 to review the existing rate of 20% and make it 10%-12% ad-valorem.

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

7. Excise Registration

Background

Excise registration is required to be obtained each factory wise.

Suggestion

E&P operations are carried out across the field area granted by the DGH and production takes places across various producing wells scattered across.

However, taking registration each producing wells is not practically.

Department earlier exempted manufacturer of Compressed Natural Gas vide Notification no. 35/2001-Central Excise dated 26.06.2001, benefit on similar line may be extended for E&P Industry also.

8. Levy of Excise Duty

Background

Excise Duty is required to be paid on quantity removed from the factory.

Suggestion

For E&P Industry excise duty should be collected on the quantity received at the refinery gate as per the provisions contained in the OIDB Act'1974.

To help in ease of doing business

Downstream

9. 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.

10. 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.***

11. Rationalization of excise duty on premium diesel

Background

It is an acknowledged fact that premium fuel reduces environmental impact by cleaner burning of the fuel and enhances the life of the engine, thereby improving the overall efficiency. Inspite of the fact that such offerings are there in the Indian market for more than a decade, the market for branded diesel is practically non-existent. The key reason for this is higher taxation on branded diesel thereby making the product too expensive for the diesel market. Please refer to **Annexure 2.**

The excise duty on branded diesel is INR 2.36/Ltr higher as compared to regular diesel. After incorporating the impact of state and local levies (sales tax/VAT, Entry Tax, LBT etc.) the difference in taxation between branded diesel and regular diesel is more than INR 3/Ltr. Hence, the higher excise duty on branded diesel makes the fuel commercially unviable for a highly price sensitive diesel market in India. This is very much evident from the fact that even after more than a decade of introduction of branded diesel the penetration of branded diesel is less than "0.01%" of the total diesel market in India.

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

1. Reduced environmental impact of vehicular emissions by cleaner/complete burning of fuels
2. If the Excise duty differential is reduced significantly even without bringing it completely at par with regular diesel, it will increase the government revenues by developing the market for branded diesel. Please refer to **Annexures 2 & 3**

Suggestion

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

<u>Annexure 2: Analysis of historical trends in excise duty on branded fuels and its impact on market for premium fuels.</u>

** An analysis of historical trends in the excise duty rate difference between regular and branded for both petrol and diesel and its impact on the market for premium fuels is shown below.*

Retail Sales taken	Apr-Sept 12	Oct 12-Mar 13	Apr 13-Mar 14	Apr-Jun 14	July 14-Mar 15	Apr 15-Mar 16
Total **Petrol** Sale (tonne)	7670073	7945653	16962231	4767733	14190821	16297455
Branded Petrol (tonne)	238495	76931	83243	15361	106840	550016
Branded Penetration	3.1%	1.0%	0.5%	0.3%	0.8%	3.4%
ED Difference between regular and premium petrol (Rs/litre)	1.18	6.49	6.49	6.49	1.18	1.18
An increase in excise duty differential for petrol by 5 fold in 2012 resulted in a 10 fold drop in branded petrol penetration within 2 years thereby effectively hurting the market for such fuels and the government revenues. In July 2014 government rolled back the excise duty differential for branded petrol by decreasing it 5 fold, and this saw an increase in branded MS penetration by 10 fold.						
Total **Diesel** Sale (tonne)	28163895	29832827	61423490	16842277	43539682	63679419
Branded Diesel (tonne)	56250	4579	4792	1009	4117	7327
Branded Penetration	0.20%	0.02%	0.01%	0.01%	0.01%	0.01%
ED Difference between premium and regular Diesel (Rs/litre)	1.18	2.36	2.36	2.36	2.36	2.36
An increase in excise duty differential for diesel by 2 fold in 2012 resulted in a 20 fold drop in branded diesel penetration within 2 years thereby effectively hurting the market for branded diesel and the government revenues. It also highlighted the price sensitive nature of premium diesel market. Given the price sensitive nature of premium diesel and advantages of premium fuels, it will be beneficial for the government revenues, consumer and the environment to promote the market for premium diesel by significantly reducing the excise duty differential for branded diesel. The benefits of reducing the excise duty difference towards government revenues can be seen in case of petrol where reducing the difference between premium and branded petrol in July 2014 significantly increased the market penetration of branded petrol as illustrated above.						

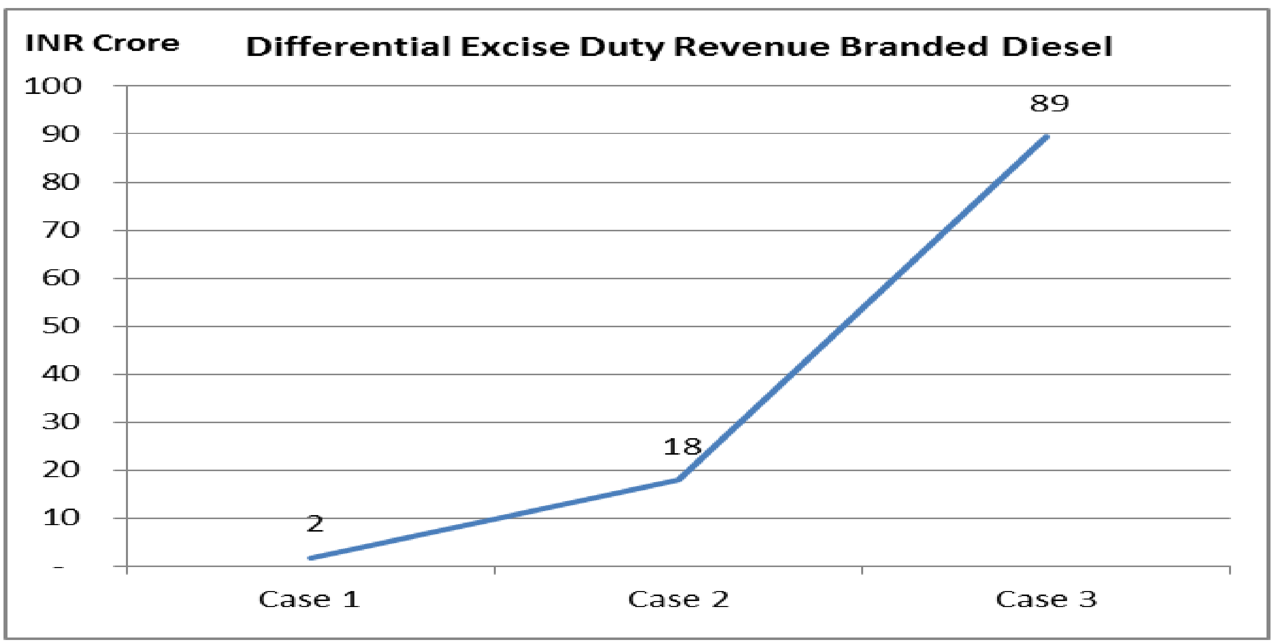
The above analysis highlights that how increasing the excise duty differential between branded and regular fuel in 2012 (for both petrol and diesel) had a significant impact on the market for branded fuels and the drop in the market penetration of the branded fuels was many folds compared to the increase in excise duty. This highlights that the Government revenues actually suffered due to increase in excise duty.

The above analysis also highlights that how reducing the excise duty on branded petrol in 2014 increased the penetration of petrol by many folds more than the reduction in excise duty differential. This had a positive impact on the government revenues.

Hence it is expected that a significant reduction in the excise duty differential for branded diesel will have a multi-fold impact on the penetration of branded diesel and will have a positive impact on the government revenues.

Annexure 3: An illustration of reduction in the Excise Duty differential between branded diesel and regular diesel and its impact on excise duty revenues.

** As illustrated below, decreasing the excise duty on branded diesel should increase the government revenues by giving a strong boost to the market for branded diesel. In addition to increase in the additional excise duty revenue, there will be some increase in the taxes collected at the state level.*



Diesel volume base (FY 2015-16)	**Case 1**	**Case 2**	**Case 3**
Volume (Mln Ltr)	75,774	75,774	75,774
Branded Penetration (%)	0.01%	0.20%	2%
Penetration Assumption	Actual (FY 2015-16)	Actual (Apr-Sept 12)	Assumed 2%
Excise Duty Difference (INR/ltr)	**2.36**	**1.18**	**0.59**

Differential ED Revenue (Crore)	**2**	**18**	**89**

12. To restore the exemptions from the duties of excise (Basic Excise Duty, Special Excise Duty & additional duty of excise) on the HSD procured for the petroleum operations under ICB conditions

Background

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

Post introduction of GST, exemptions were withdrawn and rates were prescribed for Excise Duty w.e.f June 30 , 2017 on High Speed Diesel(HSD) vide notification no.11/2017-CE.

Levy of Excise duties on HSD is adversely affecting the cash flows of the companies and increasing the burden of documentation on both E&P companies & DGFT.

- Basic Excise Duty: Rs 4.83 per litre
- Special Additional Duty of Excise: Rs 2 per litre
- Additional Duty of Excise: Rs 9 per litre.

Suggestion

Upfront exemption of duties of Excise on HSD

Natural Gas

13. Exemption to CNG from payment of excise duty to the extent of blended CBG

Background

'Biogas'/ CBG (Compressed Biogas) are taxable under GST at the rate of 5% and compression of 'Biogas' into CBG (Compressed Biogas) is not liable to Excise Duty. 'Biogas'/ CBG (Compressed Biogas) will be supplied and transported to CGD companies through a cascade and will be sold to consumers in co-mingled form with CNG. Central Excise duty is applicable on CNG due to Chapter Note 3 of Chapter Note to Chapter 27 of CETA. Thus Central Excise Duty will be paid on the entire CNG including quantity of CBG blended in CNG.

Suggestion

In view of the above, it is suggested that CNG to the extent of blended CBG be exempted from Central Excise Duty in line with ethanol blended petrol (refer Notification No. 11/2017-C.E., dated 30-6-2017). This will make CNG more economical and will promote use of this environment friendly fuel in domestic and commercial transportation sectors.

General

14. 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.

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

Background

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

Suggestion

In case our request for levy of nominal GST is not acceded, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products.

Therefore, suitable amendment may be carried out in the CENVAT Rules and respective State VAT laws to allow the tax credit of GST paid inputs against the output tax liability of Excise / VAT on the products excluded from GST.

Since, the credit was already available in the CENVAT & VAT laws; there would not be additional outgo on the Govt. by allowing cross utilization.

16. Concessional rate of 5% on project imports, renovation / modernization of renewable energy projects

Background

There is a lot of capital requirement with respect to renovation and modernization of renewable energy projects. Setting up of this plant shall help in meeting the energy requirements of the country that too without polluting the environment.

Suggestion

In a bid to promote the use of clean and non-polluting fuel, concessional rate of 5% on project imports, renovation / modernization of renewable energy projects be allowed.

17. Processing of Excise Duty refund claims

Background

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

Suggestion

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

Customs Duty

Downstream

18. Removal of NCCD for import of Crude oil

Background

Alternatively, NCCD credit may be made available under Advance authorization scheme, whereby the NCCD liability can be discharged against fulfillment of exports obligations in line with the extant Foreign Trade Policy

Suggestion

The levy of NCCD @ Rs. 50 / MT on import of crude oil was introduced in the year 2003 to meet the emergency situation that arose due to the natural calamity that struck Maharashtra in the form of an earthquake. However, the NCCD element still continues even after a period of 15 years, although at the time of such levy it was indicated that it was only for a period of 1 year.

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

Background

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

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

As consequence of revisions in basic excise duty and additional duty of excise for MS and HSD, Countervailing Duty (CVD) and additional customs duty were also revised. While the rate rationalization was done primarily for excise duty thereby fully exempting education cess and secondary and higher education cess, for the purpose of customs duty, education cess and secondary and higher education cess continue to apply on imports of petroleum products, that is, MS and HSD. Consequently, overall effective customs duty on import of petroleum products is higher as compared to effective duty of excise as applicable on indigenous procurement of such products. Historically the government has always maintained parity and uniformity in both duty rates and duty structure between the Central Excise and Customs. Please refer to **Annexure 1.**

Impact:

In terms of additional duty impact, the effect has been that imports of MS & HSD have become expensive by approximately INR 0.54/litre for Diesel and by INR 0.67/Litre for Petrol, when compared to effective excise duty when procured indigenously. Also this additional impact is now dependent upon excise duty which the Government changes from time to time therefore creating an uncertainty about the effective landed cost of the product for an importer. Please refer to **Annexure 1.**

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

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

Budget 2018 abolished the Education Cess and Secondary and Higher Education Cess on imported goods and in its place imposed a Social Welfare Surcharge at the rate of 10% of the aggregate duties of Customs, on imported goods, to provide for social welfare schemes of the Government. The imposition of cess has been a long-standing anomaly with respect to import of petrol and diesel as the corresponding cess on excise duty had been abolished a few years ago. Doing away with this cess and imposing a surcharge makes no change at the ground level as imports continue to be burdened with an additional liability as compared to indigenous production. Removal of this anomaly would be in tune with the spirit of level playing field to companies which are importing petrol and diesel for distribution in India.

Suggestion

It is recommended that the Social Welfare surcharge should be abolished and import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported.

Annexure 1: Historical changes to Excise duty and Customs duty

Excise Duty on Petrol (in INR per Litre)								
		Effective date of duty revision						
		14.09.2012	02.12.2014	17.01.2015	Post Budget 2015	17.01.2015	31.01.2016	11.06.2019
1	Basic Excise Duty	1.20	4.95	8.95	5.46	7.06	9.48	2.98
2	Additional Duty	2.00	2.00	2.00	6.00	6.00	6.00	8.00
3	Special Addl Duty	6.00	6.00	6.00	6.00	6.00	6.00	7.00
4	Edu Cess (2%)	0.18	0.26	0.34				
5	SHE Cess (1%)	0.09	0.13	0.17				
a	Total (1+2+3+4+5)	9.48	13.34	17.46	17.46	19.06	21.48	17.98
Customs Duty on Petrol (in INR per Litre)								
6	Basic Customs Duty (2.5% on price of 30/ltr)	0.75	0.75	0.75	0.75	0.75	0.75	0.75
7	CVD	1.20	4.95	8.95	5.46	7.06	9.48	9.98
8	Additional Duty	2.00	2.00	2.00	6.00	6.00	6.00	8.00
9	Special Addl Duty	6.00	6.00	6.00	6.00	6.00	6.00	
10	Edu Cess (2%)	0.20	0.27	0.35	0.36	0.4	0.44	0.37
11	SHE Cess (1%)	0.10	0.14	0.18	0.18	0.2	0.22	0.19
b	Total (7+8+9+10+11)	9.50	13.36	17.48	18.01	19.66	22.15	18.54
a-b	Difference	-0.02	-0.02	-0.02	-0.55	-0.60	-0.67	-0.56

Excise Duty on Diesel (in INR per Litre)								
		Effective date of duty revision						
		14.09.2012	02.12.2014	17.01.2015	Post Budget 2015	17.01.2015	31.01.2016	11.06.2019
1	Basic Excise Duty	1.46	3.96	7.96	4.26	4.66	11.33	4.83
2	Additional Duty	2.00	2.00	2.00	6.00	6.00	6.00	8.00

3	Special Addl Duty	0.00	0.00	0.00	0.00	0.00	0.00	1.00
4	Edu Cess (2%)	0.07	0.12	0.20				
5	SHE Cess (1%)	0.03	0.06	0.10				
a	Total (1+2+3+4+5)	3.56	6.14	10.26	10.26	10.66	17.33	13.83
Customs Duty on Diesel (in INR per Litre)								
6	Basic Customs Duty (2.5% on price of 30/ltr)	0.75	0.75	0.75	0.75	0.75	0.75	0.75
7	CVD	1.46	3.96	7.96	4.26	4.66	11.33	5.83
8	Additional Duty	2.00	2.00	2.00	6.00	6.00	6.00	8.00
9	Special Addl Duty	0.00	0.00	0.00	0.00	0.00	0.00	0.00
10	Edu Cess (2%)	0.08	0.13	0.21	0.22	0.23	0.36	0.29
11	SHE Cess (1%)	0.04	0.07	0.11	0.11	0.11	0.18	0.15
b	Total (7+8+9+10+11)	3.59	6.16	10.28	10.59	11.00	17.87	14.27
a-b	Difference	-0.02	-0.02	-0.02	-0.33	-0.34	-0.54	-0.44

Note: Historically the overall difference between Excise Duty and Customs Duty has been the 2.5% Basic Customs duty and all other components of Excise and Customs have moved in line with each other every time the government has announced a change in the duty structure.

The difference in cost due to customs cess as of 11.06.2019 stands at INR 0.56/ltr for petrol and INR 0.44/ltr for HSD.

Natural Gas

20. 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.

21. Exemption of Customs Duty on import of Liquefied Natural Gas (LNG)

Background

Liquefied Natural Gas (NG) is a clean fuel and mainly used in fertilizer and Power sector. Recognizing the shortage of Gas, Government has encouraged import of LNG. Presently, import of LNG attracts BCD @2.5% + SWS Cess @ 10%. However, Basic Customs Duty levied on import of Crude Oil is only Rs 1 per MT. Since LNG falls in the same logical category as Crude Oil, they must have the same level of taxation as applied to Crude Oil.

Suggestion

Request to grant exemption of Basic Customs Duty (BCD) on import of Liquefied Natural Gas (LNG)

General

22. 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.

23. Net Duty Protection to Oil refining Industry

Background

The net duty protection available at present is only around 1% which is inadequate as compared to around 4% in FY 2004-05.The refining margin h as been hovering around $ 2 / bbl as against an average of around $ 5 / bbl till 2007-08.Hence standalone refineries have to be compensated by way of higher duty protection to generate sufficient resources to fund modernisation and growth oriented projects.

Suggestion

The duty structure and pricing policy should be stable and consistent to enable investment decisions based on sound economic principles. The threats of changes in the above significantly cloud the investment perspectives thereby rendering the growth stunted.

24. Disposal of Obsolete/ Surplus goods procured at concessional or Nil rate of Customs Duty, as Scrap

Background

Recently, the Govt. vide Customs Notification No. 25/2019-Cus dated 06.07.2019 has inserted a proviso under condition no. 48(e) of Sl. No. 404 of Customs Notification No. 50/2017-Cus., whereby an option has been provided to pay Basic Customs Duty (BCD) @ 7.50% of transaction value of such imported goods to be disposed off in non-serviceable form, after mutilation, subject to submission of a certificate from DGH to the effect that the said goods are non-serviceable and have been mutilated before disposal.

However, DGH is not able to issue certificate as prescribed in Notification No. 25/2019- Cus dated 06.07.2019. Further, mutilation of equipments which are declared unserviceable & scrap is practically difficult.

Suggestion

It is therefore requested as under:

i) Since DGH is finding difficulty in issuing certificate as prescribed under the amendment Notification No. 25/2019- Cus dated 06.07.2019, certificate to this effect issued by Chartered Engineer / MMTC may be considered for which the notification needs to be suitably amended and,

ii) The condition of mutilation may be withdrawn as there is already a condition on certification by appropriate authority that the goods are not usable.

Central Sales Tax (CST)

Downstream

25. Removal of CST (Irrecoverable taxes in the hands of standalone refineries)

Background

Petroleum products have to be brought within the ambit of GST. Only if petroleum products are included, Oil refining companies can claim tax credit, without breaking the input credit chain.

Pending the inclusion of other petroleum product under GST, In the interim, the CST rate which was poised to be reduced from 4%, progressively to 0% within a span of 4 years before the implementation of VAT, continues to be 2% for more than 10 years. CST continues to be applicable only to the Non- GST products, viz, Crude, Natural Gas, MS, HSD and ATF only. This has the effect of inefficiencies in logistics, straining the infrastructure facilities and incurrence of unproductive avoidable costs.

Further, CST incidence is only on the standalone refineries having little revenue implications but significantly impairs the financial ability as the same cannot be recovered from the consumer.

Suggestion

Hence, it is requested that the CST rate may be made 0%,

Central Sales Tax (CST) for inter-state trade could not be taken as credit and hence was a cost that was added to the value of goods. Further, on compliance angle we are faced with "C" Form collection and issue with various States which can be done away with, whereby minimum governance can be implemented, if IGST can be made applicable, whereby seamless credit mechanism can be in place.

General

26. 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. We have also requested to CBEC vide our letter dated 7.8.2017.

27. E-Wallet Scheme shall be introduced for exporters soon

The GST council has decided that the government will be introducing the facility of an e-wallet. The e-wallet is a concept where on a provisional basis; the government will credit duty to the accounts of an exporter. This will enable exporters to pay off the duty directly from their e-wallet at the time of importing capital goods or raw materials for exports.

E-wallet facility has been deferred by GST Implementation Committee (GIC) till 31.03.2020, with a condition that if new return system is rolled out smoothly and e-Wallet scheme is ready at an earlier date, then it could be rolled out before 31.03.2020.

Implementation of E-wallet facility will help exporters in less manual documentation and better governance and compliance.

28. Export obligation (EO) under EPCG schemes

Background

EO under the scheme shall be, over and above, the average level of exports achieved by the applicant in the preceding three licensing years for the same and similar products

It may be noted that in Oil Industries, all petroleum products are subject to high volatility in the International markets and foreign currency fluctuations.

Due to this, the export target which is fixed based on the average turnover of preceding three licensing periods will be an aberration in certain years where the crude prices are at all-time high and in subsequent years crude prices have touched new lows. Hence, export obligations cannot be met unless there has been substantial capacity expansion.

Suggestion

Thus, it is suggested that the mechanism of export obligation can be in the form of any average tonnage basis or any other physical quantitative basis rather than economic basis.

DIRECT TAXES

Income Tax

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, *interalia,* that such pipeline network to be approved by PNGRB and has common carrier capacity as per PNGRB regulations.

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

Suggestion

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

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.

3. **TDS rate on payments covered under section 44BB of the Income Tax Act, 1961 (Act) - Amendment to Part II of First Schedule to the Finance Act**

Background

Section 44BB was introduced within the ambit of Income Tax Act, 1961 (Act) with the object of simplifying the provisions relating to taxation of entities (non-resident) engaged in the business of providing services and facilities used in connection with exploration and production of mineral oil and provides effective tax rate of 4% (Foreign Company)/3% (Not being a company) (plus applicable surcharge and cess) on gross receipts.

However , Part II of First Schedule to the Finance Act, which provide rates of TDS, does not provide any specific rate for payments covered under section 44BB of the Act and therefore subject to TDS at 40%/30% (plus applicable surcharge and cess)

Suggestions

Provide preferential rate of 4% (Foreign Company)/3% (Non being a company) for deducting TDS on persons covered under section 44BB of the Act

4. Amendments pursuant to Supreme Court decision in ONGC on section 44 BB

Background

There has been a considerable legal debate on applicability of the section 44BB of the ITA with respect to technical services provided in relation to E&P activities. This issue was recently analysed and discussed in detail by the Supreme Court (SC) in the case of Oil and Natural Gas Corporation Limited v/s. CIT in Civil Appeal No. 731 of 2007 (SC) and has been held in favour of the service providers.

Suggestion

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

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

Background

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

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

As a consequence of the aforesaid, in tax protected contracts with non-residents (where corporate tax liability is to be borne by the payer), if income of the non-resident is taxable u/s. 44BB of the Act, then, for TDS purposes, the same is subject to multi-stage grossing up whereas for assessment purposes, the income can be grossed-up using single stage grossing-up only. As a consequence, TDS is always higher than the tax rightfully chargeable in such cases.

Suggestion

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

6. Deduction for Exploration and Development expenditure u/s 42

Background

In order to boost the oil production by the awardees of OALP, who are investing millions for the extraction of oil, weighted deduction for Exploration and Development expenditure is recommended to be allowed for the new blocks awarded under OALP.

Suggestion

Weighted deduction of 200% of Exploration expenditure and 150% of Development expenditure for the new blocks awarded under OALP.

7. TDS on cash call

Background

For the purpose of extracting oil, company is required to enter into a Profit Sharing Contract (PSC) with Government of India. Parties to the PSC are called as the “Co-ventures” and one of them, making all the expenditure on behalf of the venture is called as the “operator”. To meet the expenditure made by the operator on behalf of other co-ventures, the contribution of the other co-ventures are taken by way of “Cash call”.

Cash call paid by co-ventures in a Block to “operator”, who control over day-to-day operations is a capital contribution. Thus, TDS is not applicable. The Hon’ble Supreme Court in CIT vs Enron Oil & Gas Ltd., 305 ITR 75 already held that cash call is an investment. However, for some of the Companies, unwarranted tax litigations are going on for non-deduction of TDS on cash call payments.

Clarification is recommended to be issued to avoid such unnecessary litigations.

Suggestion

Suitable clarification is required that cash call is in the nature of capital contribution and no TDS is applicable on the same.

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

Background

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

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

Suggestion

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

9. Overseas E&P Projects should be included under Section 35AD

Background

Section 35AD provides for 100% deduction for capital expenditure incurred on specified businesses.

Suggestion

Capital Investment in overseas E&P projects may be included as a specified Business for the purpose of section 35AD of the Act to encourage investments of risk capital in overseas E&P projects by Indian E&P companies.

This will help Indian E&P industry to make more investments in overseas E&P Assets to ensure the energy security.

Downstream

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

Background

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

IOC's 15 MMTPA capacity mega refinery project at Paradip, Orissa has commissioned in Nov 2015. The above project of IOC was prescribed for the benefit of section 80-IB(9) vide Notification No. 66/2008 dated 30.05.2008. Project was initially envisaged to be commissioned before 31.03.2012, however, delayed due to various reasons beyond the control of IOC.

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

11. Benefit of Section 32AD to be extended to existing undertaking and extension thereof

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 Telengana 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. IOCL is making investment for upgradation of Barauni Refinery, Bihar being a 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. Further, it is suggested to remove/extend the sun set clause to promote the make in India campaign.

12. Classifying Euro VI project under Pollution Control category for 100% depreciation benefit

Refineries in India have incurred huge capital expenditure on Euro-VI projects. The expenditure incurred will not result in any additional revenue generation to the refineries.

Since the objective of Euro – VI project is to reduce the content of Sulphur and other pollutants in the petroleum products, these machineries are to be classified as Pollution control Equipment and depreciation @100% may be allowed on such equipment as against the existing normal rate of depreciation of 15% applicable to plant & machinery.

13. Special exemption to Refineries for waiver of penal interest for deferment of advance tax

Background

The profits of the oil industry is integrally linked to:

a) International Crude Oil and product prices
b) Government policy on duty structure, Pricing of products, subsidy –sharing etc.

Changes in both these factors significantly affect the refining margins and cannot be foreseen or reasonably estimated. Therefore, a correct estimation of profits for the year and remitting the correct amount of the advance tax installments is not possible.

Suggestion

Therefore, it is suggested that, the waiver of penal interest for deferment of advance tax, which is now given as a discretionary power to the Chief Commissioners of Income tax by CBDT circular No.F No 400/234/95 dated 23.05.1996, may be allowed as a specific exemption for the oil industry.

In case of the others, a time limit for the disposal of waiver petitions may also be fixed since it is experienced that the genuine waiver petitions of assessee are kept pending for a very long period of time.

Natural Gas

14. 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 like IOCL 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.

15. Safe harbour allowances for LNG import prices under Transfer Pricing should be based on the actual dispersion of custom import prices for the year and not on ad-hoc basis. [Transfer Pricing]

Background

The LNG sector like much of the global energy industry today is such that practically every company will have to engage in intercompany trade to a greater or lesser extent. In India, specifically, as the reliance on imported LNG increases, there is bound to be intercompany trade. With this trade comes a need to determine prices which adhere to relevant transfer pricing legislation, which normally reflects arms-length pricing.

Increasingly, long term pricing for LNG is being replaced by spot prices which are largely determined by a number of instantaneous factors. Nearly 25% of LNG globally is now traded on the spot market. This involves identification of potential spot purchasers, agreement with potential counterparties, negotiation for logistics services, re-gasification and trading prices; wherein determining safe harbour ad hoc can be extremely challenging.

Suggestion

Considering the above challenges, safe harbour rules for LNG imports should be introduced which are based on actual dispersion of custom import prices. This is of utmost importance and will avoid litigation costs involved.

16. Obtainment of secret comparables from corporates under Sec 133(6) of Income Tax Act should not be applicable for non-commodities like LNG. [Transfer Pricing]

Background

The term secret comparable denotes a comparable whose data is not available in the public domain but is known only to the tax authority which is making the transfer pricing adjustment. Determination of LNG pricing is highly complex, due to international price changes, varying cost of intermediary logistic services etc. Thus, secret comparables obtained from corporates are usually far from accurate and hence should not be applicable. Arms-length price for LNG needs to account for functional differences. Thus, allowing use of secret comparables for non-commodities, where pricing isn't as straight forward as commodities, leads to a high number of disputes and unnecessary protracted litigations between both government and corporates.

Best Practices

Developed countries, such as the US & UK have an official policy of not using secret comparables for any Arm's Length Principle (ALP) evaluation. In Australia and Netherlands, under specific judicial pronouncements, secret comparables are not allowed.

Suggestion

As secret comparison analysis is not accurate, this practice should not be applicable for non-commodities like LNG.

General

17. 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”

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

Background

The provisions of Section 115-O (1A) were inserted to remove cascading impact of dividend distribution tax paid by a subsidiary co. to holding co. and thereafter by holding co. to its shareholders. However such relief has been restricted only to transactions between holding and subsidiary company and further 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).

However as per the language of the relief provided, the interpretation leads to a conclusion that such benefit is allowed in one layer holding subsidiary structure and DDT will be applicable in case of step down subsidiary of a subsidiary thereby having a cascading impact in such transactions.

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. 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 of corporate. It is suggested that dividends which have suffered DDT be treated as pass through and be not subjected to levy of DDT again.
- The existing provision should be amended to provide uniform and simplified taxation regime so as to provide for the DDT credit, irrespective of the stipulating condition that

one company should hold 51% or more of the share capital of the company declaring, distributing or paying the dividend

- The existing provisions should be further rationalized, so as to reduce the cascading impact of taxes in case of multiple subsidiary structure (i.e. subsidiary of a subsidiary).

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

Background

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

Suggestion

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

20. Dividend Distribution Tax

Background

The issue of taxing of income twice (i.e. corporate tax and dividend distribution tax) still continues. This has to be rationalized.

Suggestions

It is time we reverted back to the pre-1996 position and tax dividend in the hands of its recipient, which is one of the cardinal principles of taxation. DDT was touted as a tool to end escapement of tax on dividend. Since, dividend is paid out of tax paid profits of companies it is unfair to tax the companies again.

The truth is while shareholders have been spared of tax liability on this account; the company itself is taxed twice over – corporate tax and DDT. The real solution lies in allowing dividend as genuine business expenditure on par with interest.

21. Climate Change, Environment Conservation & Conservation of natural resources

Background

At present, there is no provision in income tax act, 1961 for providing Tax benefits to entities making expenditure (whether research and development or otherwise) towards efforts in mitigating climate change and environment conservation.

Suggestion

At least 100% deduction of expenditure, revenue or capital, on efforts in mitigating climate change and environment conservation on the lines of section 35 “Expenditure on scientific research” may be provided.

Similar provisions existed earlier under section 35CCB of IT Act with sunset clause of March, 2002.

Though environment conservation is covered under the Schedule VII of CSR provision of Companies Act, 2013 but expenditure in respect of that is not allowed under the proviso to section 37(1) of the Income Tax Act, 1961.

Considering the commitments of India to Paris Agreement on climate change, UN Sustainable Development Goals (SDGs) on climate action and (India) as a signatory to Convention on Biological Diversity (CBD), it is of utmost importance to encourage the entities to contribute in achievement of such commitments of the nation by providing tax incentive to entities incurring expenditure directly or indirectly by paying sum to research association, university, college, or other institution engaged in such activity on the lines of Section 35 of Income tax act, 1961.

22. 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.

GOI Special bonds are based on the scheme as framed by GOI. IOCL has not *suo-moto* invested in it. Further, had GOI given cash compensation in time or allowed IOCL to charge price and not the subsidized rate, the borrowings would have been reduced to the great extent. GOI Special Bonds are sold primarily to meet the working capital and/ or curb the borrowings.

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.

23. Section 35 (2AB) and 35(2AA)– Restoration of weighted Deduction on R&D Activities and inclusion of expenditure incurred on Bio-fuels

Background

The Finance bill 1997 introduced a sub section (2AB) in Section 35 of Income Tax Act 1961 allowing a deduction of 200% of the expenditure to encourage Research & Development (R&D) initiatives by the Industry and to make R&D an attractive proposition. Though, such expenditure needs to be approved by the prescribed authority (Secretary, DSIR).

However, the weighted deduction on in-house R&D expenditure under section 35 (2AB) and on contribution to National laboratory, University or IIT etc. under section 35(2AA) has been reduced from 200% to 150% by Finance Act 2016 effective from FY 2017-18 to 2019-2020 and thereafter no weighted deduction would be available.

Suggestion

Currently India is a technology importing country. In order to promote innovation in technology through research activities and to support Make in India, deduction under these section should be restored to 200%.

It is further suggested that any expenditure incurred on Bio- Fuel activities should also qualify for a deduction of 200% under Section 35(2AB) in order to promote investment/ R&D initiatives for renewable/ non-conventional energy sources.

24. 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, We in IOCL receive the thousands of self declaration (mainly from Proprietor/ HUF) from our 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 our 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.

25. 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 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.

26. Consideration of interest for granting refunds u/s. 244A

Background

Section 244A deals with interest payable on refunds due to an assessee. Sub-section (1) of section 244A starts with the phrase "Where refund of any amount becomes due to the assessee…..".

On a literal construction of the aforesaid, it may be inferred that the phrase "..any amount…" occurring in section 244A(1) refers to the total amount of refund due to an assessee not just the tax component thereof. Thus, the interest should be calculated on the amount of tax, interest, penalty etc., comprising the total amount of refund.

However, the provisions of section 244A does not contain any clarificatory clause as to whether or not interest and other components of refund would also form part of "any amount of refund" as mentioned above.

Suggestion

Absence of ample clarity as to whether the interest u/s. 244A is payable only on the amount of tax refund OR interest, penalty and other components of refund would also be covered within the ambit thereof leads to avoidable litigation. It is, therefore, suggested that a suitable clarificatory provision may be inserted in section 244A of the Act in this regard.

27. MAT Credit Entitlement u/s 115JAA

Background

As per the provisions of section 115JAA of the Income Tax Act, 1961, if, during a year, a company has paid tax liability as per MAT provisions u/s 115JB, it is entitled to claim credit of excess of MAT paid over the normal tax liability in the following year(s). MAT credit can be carried forward for 15 years following the year of credit generation.

Suggestions

Allow the set-off of 2 times of the difference of the tax under normal tax and MAT provisions, in the year in which the normal tax liability exceeds tax liability under MAT provisions for Oil and Gas industry

28. MAT credit, adoption of financial statements under section 115JB and set off of unabsorbed losses or depreciation

Background

a) MAT credit on merger - Provisions of section 115JAA relating to carried forward and set-off of MAT credit does not specify a situation related to merger although the credit is akin to advance tax and is allowable to the amalgamated company

b) Adoption of financial statements for application of MAT provisions – there is no specific provision dealing with the financials prepared for tax purposes that need to be adopted in the case of a merger having retrospective effect

c) Explanation 1 to section 115JB(2) provides that while computing book profit the amount of brought forward loss or unabsorbed depreciation whichever is less is allowed to be reduced

Suggestion

a) Section 115JAA should be suitably amended to specifically provide that in case of amalgamation or merger the tax credit available with amalgamating company should be allowed to be utilized by the amalgamated company.

b) Proviso to Section 115JB provides that where the company has adopted the financial year under the Companies Act 2013 which is different from the previous year under this Act – the accounting policies, the accounting standards and the method and rates adopted for preparing accounts shall correspond to the financial statements which have been adopted for preparing accounts under the Companies Act 2013. Similar exception should be provided where the special purpose financial statements are prepared viz. upon merger / amalgamation special purpose financial statements are prepared for tax purposes only which are not laid before the company at its AGM in accordance with the provisions of the Companies Act, 2013.

c) Nowadays companies procure assets on lease (follow asset-light model). Restriction of set-off of brought forward loss or unabsorbed depreciation, whichever is less, causes genuine hardship as the companies are liable to pay despite having huge brought forward losses. Hence it is suggested that all carried forward losses (cash losses or depreciation) should be reduced from book profits while calculating MAT.

29. Investment allowance u/s 32AC

Background

In the past, the government has incentivized the oil and gas industry with the allowance under section 32AC on capital expenditure made on Plant & Machinery. Investment allowance has discontinued on such investments made after 31.03.2017.

Oil and Gas industry invests in high value Plant & Machinery every year for oil production. Tax incentive is required to boost these investments.

Suggestions

Restoration of Investment allowance

30. Lowering of Income tax rate

Background

New provision has been inserted by way of ordinance into the income tax act with effect from fiscal year 2019-20, that allows any domestic company:

i. to pay income tax at the rate of 25.17% subject to the condition they will not avail any incentive or exemptions.
ii. Manufacturing companies set up after October 1, 2019 to get option to pay 17.16% inclusive of surcharge & cess.
iii. MAT rates have been slashed from 18.5% to 15% for companies availing of concessions and benefits and no MAT for companies opting for new tax rate at 25.17%

<u>Claiming of Additional Depreciation</u>

However, the additional depreciation being claimed by manufacturing companies is treated as incentives and such manufacturing companies have to forego the additional depreciation in order to opt for lower tax regime. It may be noted that the manufacturing industries are capital intensive in nature and to get the benefit of lower tax regime the provisions of additional depreciation also has to be extended. Only then, the real benefit of lower tax regime will be reaped by the Manufacturing sector.

With all the above impacts leading to higher effective tax rate from the AY 2020-21 , it is high time that the tax rate is reduced to all domestic companies to 25% and remove surcharge and education cess on it.

MAT Credit

The availability of carried forward MAT credit is another issue in respect of existing domestic companies who now opt to pay tax at concessional rate of 25.17% under section 115BAA,.

As per the existing provision of section 115JAA, credit is allowed of tax paid under MAT i.e. section 115JB of the difference between the tax payable by the assessee on his total income and the MAT liability of that year.

It was clarified by CBDT through a notification, that since the provisions of **section 115JB** (relating to MAT) itself shall not be applicable to the domestic company which exercises the option for lower taxes, MAT credit shall not be available consequent to exercising of such option.

However, it is submitted that, if the MAT Credit is not made available to the companies opting for lower tax rate, effectively, it has the following implications

i. Immediate de recognition of MAT credit in the books of accounts, leading to lower profits, networth depletion and ability to finance new projects.

ii. Effectively, considering the cash flows, the assesse would be forced to remain in the higher tax bracket, thereby nullifying the intention of the GoI to provide incentives to the manufacturing sectors and hence would be a non- starter.

Further, since this clarification is not backed by suitable modification in the ordinance and hence it can also be interpreted that due to the non-applicability of MAT provision, there will be no MAT liability in subsequent year and hence such company who opt for this new provision shall be in a position to claim credit of brought forward MAT against its entire current tax liability. Thus, it can be zero tax for such companies which are having substantial amount of brought forward MAT credit. Hence, there should be clarity established in the Act to state that the MAT credit should be allowed for the companies which opts for lower tax regime by making suitable amendments in section 115 JAA. Without such clarity in the Act, there would be uncertainty on the tax liability and would lead to significant litigations.

It is also to be noted that amendment has been made only in section 115JB to provide that this section will not be applicable and there is no amendment in section 115JAA under which credit of brought forward MAT is allowed against regular tax liability.

<u>Lower tax rates to be extended to Manufacturing Companies with substantial expansion</u>

New companies registered after 01.10.2019 would be taxed at a lower rate of 15%. This is being done in line with the Hon‟ble Prime Minister‟s call for qualitative and sustainable industrial growth in the form of "Make in India" and there is a strong need to encourage and incentivise the immense transformational capacity of corporates in innovating business models that can synergistically deliver economic and social value simultaneously.

If the benefit of lower taxes is only made applicable to new companies, this would unfairly and inequitably disincentives the existing companies, which have planned substantial expansion.

If two different tax rates are mandated for companies incorporated before 01.10.2019 and after 01.10.2019, it would lead to registration of multiple companies, involving transactions between old companies and new companies, leading to transfer pricing litigations.

Suggestion

Hence, either the lower rates are to be made available to the existing companies, which have planned significant expansion, say over 50%. Alternatively, extension of 32AD time limit and reinstatement of investment allowance u/s 32AC and reintroduction of Profit linked incentives like 80-IB (9) and option to convert to lower tax regime is recommended.

Incentives available under Income tax for Capital Intensive Projects are as follows:

Section 32AD allows additional deduction of fifteen per cent of the actual cost of new plant and machinery for setting up a new undertaking in in any backward area notified by the Central Government. The period of investment has been specified as 1-4-2015 to 31-3-2020.

1. Section 32AC allowed an
2. additional deduction of 15% on installation of new plant and machinery by a manufacturing company. The said deduction has been discontinued from AY 2018-19.
3. Section 80 IB (9) allows deduction to an undertaking at hundred per cent of the profits for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998 but not later than the 31^{st} day of March, 2012;

The economy has witnessed slowdown in the recent past and various government agencies have highlighted the need for higher investment by industry. Recently, Finance Ministry in its monthly economic report (March'19) has cited declining growth of private consumption, tepid increase in fixed investments and muted exports as main reasons for slowdown of economy in 2018-19. It is very essential to boost the investment by the industry to put back the economy on a path of rapid growth.

It is recommended that the sunset period of 31-3-2020 for Sec32AD must be extended by atleast by 5 years. It is also recommended to bring back the investment allowance u/s 32AC to boost the capital investment thereby creating economic value and social value through sustainable livelihoods by employment generation.

It is also recommended that the sunset period of tax holidays under section 80 IB(9) for profit earned on new refinery engaged in refining of mineral oil should be reintroduced with sunset clause of upto 31-3-2025 to promote the highly captive intensive oil refining industry and also make the project " Make in India" to have sustainable industrial growth and to attract investment which are more viable.

Oil Refining industry being a capital intensive sector , option to shift to lower tax regime (Section 115BAA) should be given for companies making significant investment in its capacity say more than 75%

31. Allowance of Provision for Post-Retirement Medical Scheme

Background

Usually all PSU's provide post-retirement medical benefit for its employees and expenses for same are provided in accounts annually on basis of actuarial valuation in accordance with Ind AS-19.
The income tax authorities have been taking a view from a long period that any expenses on account of post-retirement medical benefit booked is not a crystallized liability and same will be disallowed. Thereby such expenses are only allowed on actual payment only.

However the Hon'ble High Court of Calcutta in the recent judgment of CIT vs. Eveready Industries has allowed provision for Post-Retirement Medical benefits. The Hon'ble High Court has categorically held that such provision is not contingent in nature and should be allowed on basis of actuarial valuation.

Even after the said judgment, the income tax authorities are disallowing provision for post-retirement medical expenses.

Suggestion

A separate sub section under section 36 to be introduced to allow provision for post-retirement medical benefits in line with the judgment of honorable High Court or suitable clarification to that effect may be issued by CBDT.

32. Issue of Withholding Tax Certificate u/s 195(3)

Background

Every foreign company operating through branch/ project office etc. must procure a Withholding Tax certificate to determine the rate of withholding for the receipts from customers. The withholding tax certificate may be obtained under section 195(3) for a company which has a track record of filing tax returns in India or under section 197.

Recently, the application made to the department u/s 195(3) by companies operating in India through a Project Office is being rejected on the grounds that section 195(3) applies only to foreign companies operating through "Branch Office" and not through "Project Office".

It may be noted that the concept of Branch Office, Project Office and Liaison Office is prescribed under the Foreign Exchange Management Act, 1999 ('FEMA') for non-resident companies planning to set up an office in India. This distinction should be restricted only to FEMA and cannot be imported into the Income tax laws.

A project office is nothing but a branch office of a foreign company for the purpose of Income Tax Act, 1961 and accordingly, the project office should not be denied the right to make an application under section 195(3).

Section 195 (3) states that - Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorizing him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

Suggestion

It should be clarified that for the purpose of Section 195(3) of the income tax act, branch includes a Project Office to avoid a situation where field formations deny the benefit of Section 195(3).

33. Corporate Social Responsibility Expenditure to be allowed as deduction for payment of Income Tax

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 programmes like development of schools for poor children, roads & bridges in rural areas, financial assistance to NGOs engaged in helping poor by providing employment are carried out.

Suggestion

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

34. Corporate Social Responsibility Expenditure[Explanation 2 to Section 37(1)

Background

As per Explanation 2 to Section 37(1), any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in Section 135 of the Companies Act,2013 shall not be deemed to be an expenditure incurred for Business purposes.

Suggestion

As Companies Act, 2013 has made it mandatory to spend at least 2% of last 3 years' average net profit towards CSR, the same may be treated as an eligible Business expenditure u/s37(1) like any other business expenditure.

Allowance of expenditure on CSR activities as business expenditure u/s 37(1) would lead to motivation to the company to incur more than the minimum prescribed percentage towards CSR activities.

35. Insertion of specific definition of "month"

Background

Under the Income-tax Law, the term "month" has been mentioned in a number of provisions. However the same has not been specifically defined thereunder.

In absence of specific definition of "month" under the Income-tax Act, 1961, meaning thereof has been interpreted differently by different courts of law. While some courts of law has adopted the meaning of "month" as defined in General Clauses Act i.e., the calendar month reckoned according to the British calendar, the other courts of law has interpreted the meaning of month as 30 days' period reckoned on date to date basis.

Suggestion

Absence of specific definition of "month" leads to differential interpretation thereof and, hence, the avoidable litigation. It is, therefore, suggested the provisions of section 2 of the Act may be amended so as to incorporate therein definition of "month".

36. TDS if amount is credited unilaterally

Background

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

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

Suggestion

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

37. Tax Holiday u/s 80IB(9)

Background

In the past, the government has incentivized the high risk and capital intensive Oil and gas industry through tax holiday granted for 7 years. This benefit was available for undertaking started commercial production till 1st April, 2017.

Recently, government has brought Open Acreage Licensing Policy (OALP) on revenue sharing contract basis, wherein total 87 blocks have been awarded till date. In order to boost the oil production, it is recommended to restore tax holidays for new blocks awarded under OALP

Suggestions

Restoration of provision of Tax holiday for new blocks awarded under OALP.

38. Section 32 – Amortisation of Goodwill

Background

Section 32 of the Income tax Act (the Act) lays down the provisions relating to depreciation on tangible/intangible assets for the purpose of computing 'Profits and gains from business or profession'.
Relevant extract of section 32 is provided hereunder:
"(1) In respect of depreciation of—

i) ……………..
ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—
……………."
Explanation 3 to Section 32(1) is mentioned hereunder:
"Explanation 3.—For the purposes of this sub-section, the expression "assets" shall mean—

a) ……………………..
b) intangible assets, being know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature."

Controversy with respect to inclusion of 'goodwill' as an intangible assets in Explanation 3(b) to section 32(1) of the Act reached up to the Hon'ble Supreme Court in the case of Smifs Securities Ltd wherein, it was held by Hon'ble Supreme Court that 'goodwill' qualifies to be an intangible covered within the expression 'any other business or commercial rights of similar nature.'.

The following extracts of Supreme Court judgment may be referred to:

"………Explanation 3 to section 32(1) states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. A reading of the words 'any other business or commercial rights of similar nature' in clause (b) of Explanation 3 indicates that goodwill would fall under the expression 'any other business or commercial rights of a similar nature'. The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation
3 (b).
In view of the above, it is opined that 'Goodwill' is an asset under Explanation 3(b) to section 32(1)………"

Suggestion

Given that the matter has attained certainty at the level of Supreme Court and has become the law of land, it would be in the best interests of the taxpayers and the tax administrators that 'goodwill' is specifically inserted within the scope of Explanation 3(b) of section 32 of the Act to codify the law. This would eliminate unnecessary litigation in the matter.

39. Clarification on impact of lease accounting as per Ind AS 116 applicable w.e.f. 01.04.2019

Background

The Companies preparing financial statements in accordance with the Indian Accounting Standards (Ind AS) prescribed under section 133 of the Companies Act 2013 read with Rule 3 of the Companies (Indian Accounting Standards) Rules, 2015 are required to account for leases as per the newly prescribed Ind AS 116 with effect from April 1, 2019 (i.e. FY 2019-20).

Pursuant to the adoption of Ind AS 116, the Company is required to capitalize in the books as 'right-of-use' assets and 'lease' liabilities in respect of those leases/contracts which were previously classified as operating leases/contracts and charged to the Profit & Loss account, except in the case of short-term leases and leases of low-value assets.

Suggestion

Necessary clarification is required as to whether for the purposes of income-tax, both under normal provisions and MAT, such leases will be included in the block of assets as Intangible assets with depreciation being allowed thereon, or will be continued to be treated as operating leases, with the rental and other related expenditure being allowed as deductible expenditure.

40. Taxation on distribution of dividends (DDT)

Background

DDT when introduced initially was pegged at a low rate of 10%. Over the years DDT has increased to 20.55%. DDT significantly impacts return on investments for foreign investors.

DDT levied in excess of treaty rates significantly increases the cost of making investment in India and makes India less competitive as compared to other countries.

Suggestion

In case of all investors, in particular, foreign investors, DDT should be restricted to 10% considering that most treaties for avoidance of double taxation entered into by India restrict rate of tax on Dividends to 10%.

41. Delay in issuance of refund

Background

The issue of refunds determined pursuant to the return of income having been processed under section 143(1) of the Act is invariably held back on the grounds that the notice under section 143(2) for scrutiny assessment has been issued. This is despite the law providing that such withholding of refund can be done only in cases where the grant of refund is likely to adversely affect the Revenue, to be supported by reasons recorded in writing and the previous approval of the Principal Commissioner/Commissioner..

Suggestion

Refunds, if any, determined pursuant to the processing of return of income under section 143(1) by CPC should be made mandatory for all assesses, including corporates. Withholding of refunds should be an exception to the rule, restricted to cases where there is a clear case of likely adverse impact for the Revenue consequent to the pending assessment..

42. Business connection/ PE implications

Background

In the absence of specific guidelines, purchase of raw material by subsidiary from its parent/AE mainly for manufacturing purposes is being considered to create business connection/PE for the parent/ AE in India.

Suggestion

In case of purchase of raw material/finished goods where title/ risk gets transferred outside India, the income from such transaction does not comes under the purview of 'deemed to accrue or arise in India' under section 9 of the Act. Hence, the same is not taxable in India. Clarification in this matter is required as part of 'Make in India' initiative of the Government of India.

43. Disallowance u/s.14A r.w. Rule 8D

Background

Currently, section 14A of the Income-tax Act, 1961 (the Act) r.w. Rule 8D of the Income-tax Rules, 1962 (the Rules) lead to ad hoc disallowance of expenses irrespective of the following:

- Whether any exempt income has at all been earned during the year; and
- Whether any expenditure having nexus with the exempt income has been incurred

Suggestion

It is suggested that a clarification is to be issued under the Act taking into consideration the following:

a) Normal computation of income -
   No disallowance under section 14A r.w. Rule 8D is to be made if the assessee has not earned any exempt income in a given year. At any rate, disallowance should not exceed the exempt income earned, if any. Hon'ble Supreme Court and various High courts have held that section 14A will not apply in the absence of exempt income earned during the year.

b) MAT computation of income -
   Section 115JB is a self-contained code and starts with a non-obstante clause which gives the section an overriding effect. The expenditure to be added back is that which is relatable to exempt income to which sections 10, 11 and 12 apply, as specified. This corresponds with the requirement under section 115JB of reducing from the book profit such income if credited to the profit and loss account. Clearly, therefore, for the expenditure to be added back:

(a) it should be relatable to income actually earned and credited to the Profit & Loss account, and
(b) the related expenditure refers to those actually incurred and accounted for in Profit & Loss statement.

In other words, section 115JB is based purely on book profits, subject to certain additions and reductions of income and expenditure included in the book profit as shown in the profit and loss account, determined in accordance with relevant provisions of the Indian Companies Act.

Rule 8D which provides for disallowance of a notional amount has no relevance for section 115JB and is not applicable for the purpose of MAT calculation, which is based on book profits alone.

44. Carry forward of business losses and unabsorbed depreciation (UAD) on merger under section 72A of the Act

Background

Carry forward of business losses and UAD on merger is limited to companies owning 'Industrial undertakings". The definition of Industrial Undertaking is extremely narrow and restricted. Several sectors are negatively impacted, as their ability to carry forward losses is significantly compromised.

Suggestion

With the advancement in technology, more and more service undertakings have been set up and evolved. Likewise, business prefers to import goods rather than manufacture the same to survive in a competitive market.

Basis above, the definition of 'Industrial Undertaking' should be either done away with, so that all mergers are eligible for carry forward of losses; or else, it should be widened to include companies owning infrastructure/ trade undertakings or providing capital intensive / logistics services.

45. Exemption under section 10(48) of the Act on income received in India in INR terms by residents of Russia, Venezuela etc. (countries affected by US sanctions) similar to Iran

CBDT vide Notification dated 28 December 2018, having regard to national interest, notified National Iranian Oil Company as a foreign company under section 10(48) of the Act. Consequently, income received by National Iranian Oil Company in India in Indian currency will be exempt from tax in India pursuant to the bilateral trade payments entered between the Government of India and Government of Iran subject to the condition that the said foreign company shall not engage in any activity in India, other than the receipt of income under the aforesaid arrangement

The above notification only provides exemption to Iranian Company and not to other countries such as Russia, Venezuela etc which have been affected by sanctions imposed by United States of America.

46. TDS on year end provision entries in books of account

Background

Year-end provisions are made by taxpayers to follow accrual system of accounting. Very often provision for expenses at the year-end are made based on best estimates available with the taxpayer even if the supporting invoice is received subsequently. In certain instances, even the payees are not identifiable, however the year-end provisions are made by the taxpayers.

As per the current tax regime, tax is required to be deducted on such provisions which often leads to excess deduction and deposit of tax, disputes with the vendor and unnecessary burden casted on the payer in carrying extensive reconciliations.

Suggestion

Relief from deduction of tax at source should be given to the payee on payments that are accrued but are not due and represents only a provision made for reporting purpose that are reversed on the first day of the subsequent year. Further, the relief should also be given from deduction of tax at source on payments for which the payees are not identifiable as held by the Tribunal in certain cases.

47. Fast-track APAs

Background

Despite the growing number of APAs which are being concluded, potential investors into India seek clarity for their investment decisions given the current level of pendency of APA applications.

Suggestion

For the new potential investors who intend to invest into the country and who need clarity on their transfer pricing model, the government could create a parallel process of obtaining a fast-track APA solution that would aid companies with respect to their investment decisions. A six-month time frame for APA for a prospective investor, would help in furthering the 'Make in India' agenda.

48. Rationalization of newly introduced secondary adjustment provisions

Background

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

Suo moto by the taxpayer in the return of income;

- By the Assessing Officer (AO) during assessment proceedings, and has been accepted by the taxpayer;
- Adjustment determined by an Advance Pricing Agreement entered into by the taxpayer;
- Adjustment made as per the Indian safe harbour rules; or
- Adjustment arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into for avoidance of double taxation.

'Secondary adjustment' has been explained as an adjustment in the books of account of the taxpayer and its associated enterprise (AE) to reflect that the actual allocation of profits between the taxpayer and its AE are consistent with the arm's length price as may be determined under one of the above five situations.

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

The above requirements for repatriating the amount of TP adjustment into India and imputing a notional interest, are triggered if the primary TP adjustment exceeds Rs. One crore. The time limit for repatriation and manner of computation of interest has been prescribed by CBDT vide Notification No. 52/2017, dated 15 June 2017.

The additional amount receivable from the AE as a result of the primary adjustment should be repatriated by the taxpayer into India within 90 days from the due date of filing return of income under section 139(1) of the Act or from the date of the order of AO or the appellate authority, as the case may be (in situation 2 mentioned above). If the same is not received by the taxpayer within 90 days, then a notional interest on the outstanding amount receivable from the AE (deemed as an advance) should also be offered to tax as an income of the taxpayer.

The above requirement for repatriating the adjustment amount into India and imputing a notional interest are triggered if the primary adjustment exceeds Rs. one crore and pertains to only primary adjustments made in respect of FY 2016-17 and subsequent years.

The Indian regulations under section 92CE of the Act on secondary adjustment require the taxpayer and the AE to make adjustment in the books of account. However, the books of account of taxpayer and its overseas AE would be closed by the time such an adjustment is determined and it would not be practically possible to record it in the books of the relevant financial year. Also, it may not be within the control of the taxpayer to enforce recording of an adjustment in the books of accounts of the AE. Moreover, it would be beyond the jurisdiction of the Indian regulations to mandate such an action on part of the AE located outside of India.

The delay in repatriation may arise due to reasons not attributable to taxpayer i.e. on account of application of other legal and regulatory requirements such as application of exchange control regulations, Goods and Services Tax, customs regulations and applicability of thin capitalisation rules in the tax jurisdiction of the AE. If the deemed loan cannot be repaid by the non-resident AE to the Indian taxpayer, due to commercial, legal or regulatory issues, the loan would remain in existence indefinitely, leading to notional interest imputations.

Making an accounting entry may have an impact on 'Book Profit' for calculations under section 115JB of the Act in the year of passing of such entry and may have some further implications if the taxpayer's Minimum Alternate Tax (MAT) liability exceeds the computation under normal tax provisions.

The phrase "secondary adjustment" has been defined in clause (v) of Sub-section (3) of section 92CE of the Act to mean an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price as determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. Sub-section (2) lays down the requirement for excess monies to be repatriated to India and for interest to be levied thereon, if not repatriated within the prescribed time. However, sub-section (2) does not refer to 'secondary adjustment' as envisaged under Sub-section (1) and defined in Clause (v) of Sub-section (3). The absence of references to sub-section (1) and/or 'secondary adjustment' in Subsection (2) results in an apparent disconnect between Sub-sections (1) and (2) which may have unintended consequences.

In case interest imputed is not paid in the year of imputation, it is unclear as to whether it will take the colour of a "primary adjustment" and interest will be levied on such unpaid interest of last year (treating it as an advance). This will lead to a cascading effect and unnecessary burden on the assessee.

The provisions, as presently worded, may give rise to an interpretation that even where the primary adjustment is made in the hands of non-resident, secondary adjustment follows. As a consequence, it may be interpreted as allowing repatriation of funds outside India, which may not be permitted even in terms of FEMA/RBI regulations.

Section 92CE of the Act deems the difference between the transaction price and arm's length price as an advance (which is to be recorded in the books) and provides for imputation of interest on such advances. However, there is no specific provision to reverse the advances appearing in the books even in case where the AE relationship ceases to exist or in case where the excess money is repatriated.

Suggestion

Sub-Sections (1), (2) and (3) of section 92CE of the Act need to be revisited to streamline and appropriately link up the three sub-sections to provide adequate clarity as to the specific requirements from the taxpayers.

Further, bilateral APAs and MAPs shall be excluded from the purview of the section 92CE of the Act since the terms of bringing money into India would already have been decided by the competent authorities of the two countries and such terms should prevail over a domestic law. It should be further clarified that the APA signed prior to insertion of section 92CE of Act should not be covered by the secondary adjustment provisions.

The computation mechanism for levy of interest under Sub Section (2) should be clearly prescribed with detailed examples to obviate uncertainty including the trigger for such secondary adjustment or interest levy and the start date for levy of interest. Appropriate safeguards by way of clarificatory provisions/Rules should be brought in to obviate an interest on interest situation and cascading effect.

Necessary clarifications on accounting treatment and adjustment in books of accounts of the AE to be provided. Clarifications are also sought in cases where delay in repatriation is due to reasons not attributable to taxpayer.

It is unclear as to how the secondary adjustment will be allocated where transactions are with Multiple AEs and are benchmarked using overall Transaction Net Margin Method (TNMM) on an aggregated basis. Clarification is requested to explain the basis on which the quantum of secondary adjustment can be distributed to different AEs for adjustment made to the overall net margin of the taxpayer w.r.t. multiple AEs transactions.

A clarification is required on whether the secondary transaction in the form of interest would be included for MAT purposes.

The Government should clarify the term 'has been accepted by the taxpayer' in order to provide certainty on the applicability of these provisions in situations e.g. where the taxpayer is in appeal against the assessment order to Tribunal, whether will secondary adjustment provisions be applicable only after the Tribunal proceedings are completed or the same will become applicable after Court proceedings are completed, i.e. what happens if the taxpayer further appeals to High Court/Supreme Court. Further, there could be situations where the assessee may not have appealed against the primary adjustment considering the cost of litigation vis-à-vis the quantum of primary adjustment. It is suggested that no secondary adjustment should be made in such cases and suitable amendment be made in the provisions of section 92CE of the Act.

Clarifications are requested for cases where the AE ceases to exist i.e. AE has been liquidated. Also, clarification may be provided for a scenario, where if at the time of making secondary adjustment, the AE relationship ceases to exist.

It is recommended that section 92CE(2) of the Act be amended to clarify that the section applies only in case where the primary adjustment is made in the hands of the Indian AE.

Under regulations of few other countries like South Africa, draft regulations in UK, intercompany setting off of accounts is allowed for deemed loans arising out of secondary adjustments provisions, however the same has not been provided for under Indian regulations, which make the Indian regulations more onerous. Permitting such netting off may ensure that the outstanding loan balances do not remain so till perpetuity and the interest on the same does not keep accumulating endlessly.

It may be specifically provided that the advances appearing in the books of the parties be reversed in cases where AE relationship ceases to exist or excess money is repatriated.

Clarity should also be provided with regard to non-applicability of provisions of section 2(22)(e) of the Act where any sum is treated as an "advance" by virtue of the secondary adjustment.

49. Inclusion of expenditure incurred on Bio-fuels – Section 35(2AB)

Background

Any expenditure incurred on Bio- Fuel activities should also qualify for a deduction of 200% under Section 35(2AB) in order to promote investment/ R&D initiatives for renewable/ non-conventional energy sources.

Suggestion

Any expenditure incurred on Bio- Fuel activities should also qualify for a deduction of 200% under Section 35(2AB) in order to promote investment/ R&D initiatives for renewable/ non-conventional energy sources.

50. Statutory Dues not to be included in the gross receipts for the purpose of section 44BB of the ITA

Background

Section 44BB of the ITA provide for taxation of non-residents on a presumptive basis. This section deems a specified percentage of the amounts received by the non-residents for the activities covered by the provisions as income under the ITA. In the past there has been considerable litigation on whether Government dues, such as service tax, recovered by the non-residents from the Indian parties would constitute part of gross receipts as these statutory dues are to be paid over by the non-resident taxpayers to the Government, there is no income element therein.

Suggestion

In view of the above, section 44BB of the ITA should be amended to provide that statutory taxes and dues (such as service tax) recovered by the non-resident service provider from the Indian residents would not form part of gross receipts for computing deemed income under the Section. This will be fair and will eliminate unnecessary litigation on the issue.

51. No disallowance for the domestic company, for charges paid to a PE in India of a foreign company

Background

Often, domestic companies' expenditure includes fees / charges in respect of services / facilities availed from foreign companies. If the services / facilities are availed from an associated enterprise, the expense claim is scrutinized in detail and is often the subject matter of disallowance.

Unless the associated enterprise is subject to gross basis of taxation in India, or presumptive taxation resulting in a lower effective tax rate than the domestic company, such transactions result in the following tax effect:

- Tax break, at 30% (plus surcharge and cess), in the hands of the domestic company
- Income in the hands of the foreign company, to be included while computing taxable income – which would be taxable at 40% (plus surcharge and cess)

Thus, there is no tax loss to the exchequer.

Suggestion

It is, therefore, recommended that the expense claims (in such a scenario) should not be subject to transfer pricing assessment and disallowance.

52. Phasing out of Deductions and Exemptions vis-à-vis Industry Needs (Sunset clause for 10AA should be extended for another 5 years)

Background

Section 10AA (SEZ) benefit is under a sunset clause and is expiring on 31 March 2020

To accelerate the growth of investments in the economy and to promote employment, it is submitted that the sunset date be extended from 31 March 2020 to 31 March 2025.

Suggestion

It is submitted that the sunset date be extended from 31 March 2020 to 31 March 2025.

53. Clarification to prevent erosion of Indian tax base through Transfer Pricing adjustments in hands of Foreign Companies

Background

Issues

- There are many cases where Indian taxpayers may receive loans, services or licenses of intangibles from their overseas associated enterprises (AEs), with respect to which, the overseas AEs may decide either not to charge any consideration; or charge moderate consideration, which may otherwise be less than the market driven or arm's length price (ALP).

- Any receipt of interest, fees or royalty on such loans, services and licenses respectively, would attract income tax in the hands of the overseas AEs in India @ 10% under Indian domestic tax laws and/ or tax treaties, where the overseas AEs do not have permanent establishments in India.

- On the other hand, any payment of such consideration would obtain tax breaks in the hands of the Indian taxpayers @ 30%, through deduction or allowance while computing business profits.

- Thus, in other words, the Indian taxpayers, either by not paying any such consideration; or paying any consideration less than the arm's length price, the Indian exchequer would have only benefitted in the form of tax savings @ 20% thereof. This is generally referred to as the "base erosion" theory or concept.

- In the background of identical facts, a TP adjustment was made by the Indian Revenue in the hands of a foreign company in the case of Instrumentarium Corporation Ltd v ADIT [2016] 49 ITR(T) 589 (Kolkata - Trib), by disregarding the concept of "base erosion". The TP adjustment ultimately reached the Hon'ble Income Tax Appellate Tribunal (the

Tribunal) for resolution. Being a matter having nationwide ramification, the erstwhile Hon'ble President of the Tribunal had constituted a Special Bench of the Tribunal in Kolkata in 2009 for deciding the matter. The case was finally heard and disposed of by the Special Bench of the Tribunal in the month of July, 2016, by dealing with the matters arising in the hands of the aforesaid assessee and another intervener.

- The Special Bench had decided the issue in favour of the Revenue, by disregarding the concept of "base erosion".

- Incidentally, while doing so, the Special Bench had seemingly misinterpreted the provisions of section 92(3) of the Income-tax Act, 1961 (the Act) read with Circular No. 14 of 2001 issued by the Central Board of Direct Taxes (CBDT) in the year 2001 to explain the newly introduced provisions of TP (Circular). Section 92(3) of the Act reads as under (inserted the context, wherever required):

- "The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or sub-section (2A) or the determination of the allowance for any expense or interest under sub-section (1) or sub-section (2A), or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) or subsection (2A) (all these subsections provides for determination of value o international transaction at arm's length price), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into."

- Though it is not very explicitly coming out from the above mentioned provisions of section 92(3) of the Act, the Central Board of Direct Taxes (CBDT) at paragraph 55.5 of the said Circular explained as under:

- "The new provision is intended to ensure that profits taxable in India are not understated (or losses are not overstated) by declaring lower receipts or higher outgoings than those which would have been declared by persons entering into similar transactions with unrelated parties in the same or similar circumstances. The basic intention underlying the new transfer pricing regulations is to prevent shifting out of profits by manipulating prices charged or paid in international transactions, thereby eroding the country's tax base. The new section 92 is, therefore, not intended to be applied in cases where the adoption of the arm's length price determined under the regulation would result in a decrease in the overall tax incidence in India in respect of the parties involved in the international transactions."

- The Revenue Officers and the Special Bench of the Tribunal have actually applied TP provisions in a reverse manner, which again, defeats the whole purpose of introducing TP. You may note that the concept of "base erosion", under identical circumstances, has been approved by the Australian Tax Office (ATO) vide one of its rulings, being equivalent to circulars issued by the CBDT. However, the Special Bench of the Tribunal had refused to be persuaded by the ruling of the ATO on grounds, not appealing to logic.

- The main logic applied by the Special Bench of the Tribunal in taking the aforesaid view, is that since the Indian TP regulations do not contain the provisions of compensatory downward adjustment in the hands of the paying company upon a TP adjustment being made in the hands of the payee company, by virtue of the restrictions contained in section 92(3) of the Income-tax Act, 1961 (Act) as in the aforesaid cases, the concept of "base erosion" could not be applied in the context of Indian TP provisions.

- The aforesaid ruling of the Special Bench of the Tribunal is likely to have far reaching negative tax consequences in the hands of several foreign companies in India, who might not have charged either any consideration of the above nature; or charged less than arm's length consideration, from their Indian AEs, under a bona fide and correct belief that by not charging such consideration, the Indian exchequer was not getting impacted in any way, being the very object of introducing TP regulations in India.

- Further, if the said interpretation of the Special Bench of the Tribunal is to be accepted, then all foreign companies would, most likely, start charging interests, royalties and fees from their Indian AEs, even under situations, where, for various commercial reasons, they would not have charged so, as a result of which, the Government exchequer would be actually losing to the extent of 20% of all such charges, in the form of income tax, being a reverse form of "base erosion", which one finds difficult to comprehend. This will significantly erode the tax base of India, which perhaps could be only the country in the world to be applying the provisions of TP to its disadvantage.

- In the case of Cummins Inc. v. ADIT [2016] 73 taxmann.com 207 (Pune), the assessee had provided services to the Indian entities and had received charges in respect of desktop/laptop software licence and internet mail and had determined the value of transactions by allocating cost based on cost estimates. However, the TPO did not accept the same and made the adjustment. The Pune Tribunal held that where the assessee is a foreign company and is a recipient of internet mail charges and desktop /laptop service charges from the Indian entities and in case the assessee have to charge higher amounts from the Indian entities, then the same would result in reduction of overall tax base of India. In such circumstances, the Indian Transfer Pricing provisions are not to be applied. The Pune Tribunal observed that during the subsequent Assessment Years, the DRP and the AO have not made any similar adjustment in the hands of assessee on account of internet mail service charges and desktop/laptop service charges though identical international transactions were carried out in those years.

- The said intention of the TP provisions is also clear from the introduction of section 92CE providing for secondary adjustment vide Finance Act, 2017 wherein it is provided that "where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed."

- The above clearly demonstrates that intention of the TP provisions is to bring back excess money eroded from India rather than allowing foreign companies to take excess money out of India. If upward TP adjustment in the hands of the foreign company is sustained, as per the provisions of section 92CE, foreign company is required to bring money, however, since they have earned this income they will be required to remit this money out of India, this will create an absurd situation, not intended by the law.

Suggestion

Considering the above, we request you to clarify either by making necessary amendments in the provisions of section 92 of the Act; or by issuance of a circular, ideally being the latter, to prevent the unintended application of the TP provisions of India in the manner, as aforesaid; and also obviate the hardship faced by foreign companies in India.

54. Section 139(5) – Reduction in time limit for filing revised return – Request to bring back erstwhile time limit for filing of revised tax return at least in cases of claim of foreign tax credit

Background

The Finance Act 2017 amended section 139(5) to provide that the time for furnishing of revised return shall be available upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier. This particularly impacts claims for any Foreign Tax Credit (FTC) in respect of the taxes paid by the individual assessee(s) in the overseas tax jurisdiction. Generally the information/ final payment of foreign taxes/ tax return is unlikely to be available within the timeline for filing the revised tax return i.e. by the end of the relevant assessment year.

As an example, USA follows calendar year as their tax year and the first due date of filing a USA income-tax return is April 15th of the following calendar year, meaning thereby, the USA income-tax return for calendar year 2018 will be required to be filed by 15th April, 2019. In a case of Indian income tax return for tax year 2017- 18, the due date to file a revised return as per the said amendment will be 31st March, 2019. In the above situation, the assessee may not have his final tax return available with him till 15th April 2019, hence, such assessee will not be able to claim the FTC of the final USA taxes paid by him in his Indian Income Tax return as he may not have the final USA tax details by 31 March 2019.

Suggestion

Keeping in mind the aforesaid hardship of double taxation which may arise to the individual assessee as he may not be able to claim foreign tax credit in the absence of overseas income-tax return, there is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. Therefore, the earlier time limit may be brought back at least in respect of revision required for claiming foreign tax credit.

55. Expenditure on In-house R&D facilities u/s 35(2AB)

Background

Section 35(2AB) allowed for a deduction of 200% of the expenditure incurred on in-house R&D Facilities (other than expenditure on Land & Building). Finance Act,2016 has reduced the deduction from 200% to 150% w.e.f. 01.04.2018 and to 100% w.e.f. 01.04.2021.

Suggestion

The deduction for Expenditure on in-house R&D facilities may be restored to earlier 200% to incentivize more expenditure on in-house R&D activities.

This would encourage companies to make more investment in R&D related activities.

56. Depreciation provisions (Section 32)

Background

The Accelerated Depreciation (AD) available to wind and Solar power plants was 80 per cent till Assessment year 2017-18 which has been reduced to 40 per cent starting from April 2017.

Suggestion

The industry is hopeful of an incentive package to maintain the growth momentum and support to achieve its targets.

Early recovery of capital cost will lead to more investment in the sector resulting in faster growth of the renewable energy sector.

57. Movement of goods between blocks (located in different states/UT)

Background

Transfer of goods from one block to another(located in different State/UT) is presently charged GST@ 5% subject to EC from DGH. Otherwise such transfer is chargeable at merit rate.

Suggestion

Subsequent movement of goods which is intrinsic to E&P operations should be exempt from GST.

Moreover, It is requested that once goods have been previously imported or procured under EC/DGH certificate, further movement of such goods within the same PAN No. should not require any EC/DGH certificate.

This will help to avoid extra cost burden due to subsequent levy of GST on each movement as no input tax credit is available to the sector.

58. Increase in Cost of other Services

Background

Presently GST is levied commonly at 18% on majority of the services, which is higher than the previous regime i.e. 15%.

Suggestion

Since no input credit is available to E&P Sector, It is requested that the rate may be reduced to 12% for all services used for petroleum operations by the upstream sector.

This will help encourage risk capital in exploration & investments to increase production.

59. Taxation of Joint Venture

Background

Unincorporated Joint Venture (UJV) – Registration under GST requires PAN No.

Suggestion

GST Council may be requested to provide clarifications in the lines of Petroleum Tax Guide, 1999 exempting UJVs from taking separate registrations in GST in view of non-availability of PAN No.

To avoid different interpretation by fields officers and to avoid possible litigation.

60. E Way Bill requirement

Background

Exemption from e-Way Bill requirement on Movement of goods from one location to another location of the same entity within the same State

Suggestion

E&P companies are required to move Rigs, Casings & Tubings, pipes and other stores and capital items from one well/drilling site to another for the purpose E&P operations on a regular basis. It is therefore, requested that exemption may be given to E&P Companies from generation of e-way bill on movement of goods from one location to another location of the same entity within the same state for E&P operational purpose on the ground of ease of doing business.

61. Availability of Unclaimed Additional Depreciation in respect of new Plant and Machinery

Background

As per the provisions of section 32(1)(iia) of the Income-tax, Act, 1961, an additional depreciation at the rate of 20% is available in respect of new plant and machinery acquired or installed during the relevant financial year. If, however, such plant or machinery is put to use for the purposes of business for a period less than 180 days during the relevant previous year, the deduction in respect additional depreciation would be restricted to 50% of the amount calculated at the aforesaid rate of 20%. Deduction in respect of the balance 50% of the amount of depreciation is allowable in immediately succeeding previous year.

It has not been specifically provided in section 115BAA whether or not the balance amount of the aforesaid depreciation pertaining to the immediately preceding previous year would be available as deduction while computing tax liability u/s. 115BAA in the first year in which the company exercises the option to be covered thereunder.

Suggestion

The provisions of section 115BAA specifically restrict set off of carried forward losses while calculating tax liability thereunder if such losses are attributable to any of the deductions referred to in section 115BAA (the deductions which would not be available for calculating tax liability under section 115BAA). However, there is no such restriction in respect unclaimed depreciation u/s. 32(1)(iia) pertaining to the immediately preceding financial year.

Accordingly, it is understood that the deduction in respect of unclaimed depreciation u/s. 32(1)(iia) would be available while computing tax liability under the newly inserted section 115BAA of the Act.

However, to bring clarity on the issue and to avoid unnecessary litigation, a suitable certificatory provision may be inserted in section 115BAA of the Act in this regard.

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

Background

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

Suggestion

Therefore, it is suggested that it should also be provided in the said sub-section (8) of section 154 that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed. This would ensure promptness in disposal of applications under section 154 and avoid undue harassment to the taxpayers.

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

Background

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

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

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

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

Suggestion

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

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

Background

Section 17(2)(vii) of the Income-tax Act, 1961, provides that the amount of any contribution to an approved superannuation fund by the employer in respect of the assesse, to the extent it exceeds one lakh fifty thousand rupees, is treated as a taxable perquisite in the employees' hands. Approved superannuation funds are governed by the provisions of Schedule IV to the Income-tax Act, 1961, and Rules 82 to 97 of the Income Tax Rules. As per Rules 87 and 88, a cap of 27% of an employee's salary (including the 12% contribution to provident fund) has been prescribed for employer's contribution to an approved superannuation fund. Thus, an employer's contribution to an approved superannuation fund is capped at 15% of an employee's salary. Employer's contribution to superannuation funds is, in the case of Public Sector Enterprises, also restricted by guidelines of the Department of Public Enterprises.

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

Suggestion

Hence, it is suggested the amount of any contribution to an approved superannuation fund by the employer in respect of the assesse may be made fully non-taxable. Without prejudice, if the aforesaid suggestion is not agreed to, then the amount of one lakh fifty rupees specified in section 17(2) (vii) of the Income-tax Act, 1961, may be raised to at least two lakh fifty thousand rupees to allow accumulation of sufficient corpus to meet post retirement needs of employees in the scenario of increased life expectancy and high inflation.

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

Background

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

Suggestion

It is suggested that, the threshold limit for the aforesaid perquisite value to be taxed in the hands of employees may be revised upwards keeping in view the cost inflation.

66. Exclusion of Dividend Exempt u/s 10(34) from the scope of Section 14A

Section 14A provides that no expenses shall be allowed in respect of expenses incurred in relation to the income which do not form part of total income. The section provides that the amount of expenditure, which is deemed to have been incurred, shall be computed in the prescribed manner.

One major income, which is exempt from total income, is dividend earned from investments from domestic companies. This dividend is distributed by the companies out of the Profit After Tax and after payments of dividend distribution tax. Thus the amounts earned and distributed by the domestic companies are taxed in the hands of the domestic company twice namely in the form of corporate tax and Dividend distribution tax. Over and above this, a deemed expenditure is disallowed in the hands of the recipient of the dividend by virtue of provisions of Section 14A and the provisions of Rule 8D.

This leads to an anomalous situation of a tax-free income getting taxed in the hands of the recipient indirectly by way of disallowances. The extension of section 14A to be applicable to dividend income earned is not equitable especially in the light of levy of dividend distribution tax and safeguards built in the act to avoid dividend stripping.

Suitable amendments may be made to Section 14A to exclude dividend exempt u/s 10(34) from the operation of this section.

67. Abolition of MAT provisions

It is welcome move that the MAT provisions are not applicable to domestic companies that opt for lower tax rates.

However, the same should also be extended to taxpayers at the higher tax rates also.

The profits of the oil industry are integrally linked to:

a) International Crude Oil and product prices and Foreign exchange
b) Government policy on duty structure, Pricing of products, subsidy –sharing etc.

Changes in both these factors significantly affect the refining margins and cannot be foreseen or reasonably estimated. Therefore, a correct estimation of profits for the year and remitting the correct amount of the advance tax instalments is not possible.

The existing MAT provisions adversely impact the oil companies that are on the path of recovery from losses.

The objective of MAT is to tax companies that have earned book profits but do not pay taxes by availing tax exemptions. Extending MAT to companies recovering from losses is not in consonance with the objectives of MAT. Accordingly, it is suggested that MAT may be abolished.

At the least, Companies that are recovering from losses and turnaround from losses to profits should be exempt from the provision of MAT.

Computation of Book profit u/s 115JB to exclude Profits eligible for deduction U/s 80-IA/80-IB.

Deduction available under sections 80-IA and 80-IB should be excluded from the ambit of MAT provisions and hence it is suggested that the book profit definition should exclude the profit from 80-IA and 80-IB respectively. It may please be noted that the profits computed u/s 80HHC were allowed a deduction from Book Profits. Similar treatment may please be extended to Profits computed u/s 80-IA and 80-IB

68. Tax Loss Carry back

Tax loss carryback is a concept similar to the tax loss carry forward. The principle difference is that a year in which a loss is noted is not carried forward to a subsequent year. Instead, the tax loss carry back is applied to a previous year in which the assessee has paid large sum of taxes, and allows you to reduce taxes already paid, which usually results in a refund of some of the taxes paid by the assessee. This system is widely practiced in United States by the Internal revenue service (IRS) of United States Federal Government.

Under this system, the assessee will have to refile the tax return of previous year for the carry back year, and request a refund accordingly, if the assessee have filed its tax return on time in the past. There is a specific provision in the US tax law system which allows them to carry back upto three immediate proceeding years in order to avoid unlimited time for reopening an assessment related to previous years.

With the Indian Tax laws, aligning with global tax laws, this concept can be introduced in India also.

This would go a long way in incentivising commodity sectors that are badly affected by pricing cycles like Oil & gas and other commodities that are exposed to extreme volatility in International prices.

Thus in a business that had terrifically profitable years, an extremely bad business year might prompt an attempt to recoup some of the taxes paid in profitable years through a tax loss carry back .The above provision would also be attractive for Foreign funds and institutions which are exposed to such environment globally but denied in Indian Taxation laws.

69. Treatment of Profit from Derivative Transactions

The Finance Act, 2006 amended the definition of speculative transaction u/s. 43(5) to treat the transactions of derivatives (including commodity derivatives used as hedging contract as per proviso (a) of section 43(5)) on the recognized stock exchange as normal business transaction. However, there is no clarity as to whether the profit/loss made from the derivatives transactions should be treated as Capital Gain or a Business Income. This creates number of issues and invites litigations.

It is therefore suggested that the clarification should be issued to the effect that the profit/loss from the Derivative Transactions should be treated in the same manner as any other securities and accordingly would be chargeable to Capital Gain Tax or Business Income based on the well-accepted principles.

70. Interest on Refunds paid to the assesse

Background

At present the rate of interest payable on refunds (0.5% per month) by department is less than the rate of interest charged by the department from the assessee i.e 1% per month. Further, the interest on refunds is subject to tax by the assessee, where as the interest paid by the taxpayer is not allowable as deduction. This further creates inequity and makes the effective interest on excess payment of tax (refund) is less than 4% p.a on a post tax basis as against any long term infrastructure government bonds yield a commoner a tax abatement in the year of investment and above 6% p.a on post tax basis.

Suggestion

The interest rate on the refunds due to the assessee and on the amount payable by the assessee to the government should be same on the ground of equity.

71. Deduction under section 43B – to cover only statutory deductions

Background

The scope of section 43B should not be extended to contractual payments, such as leave encashment, but should be restricted to statutory payments only as the intention of Revenue department is that the deduction in respect of payment to statutory authority is to be made only on payment basis.

Suggestion

Employee obligation liability provided as per accounting standards (AS15) should be allowed by decalring mandatory accounting standard as per section 145A

72. Payment to non-residents

The tax withholding in respect of non-residents scope is widened in the section 195. Section 195 contemplates that in the case of composite payments made to a non-resident, which have an element of income embedded or incorporated in them, the payer is under an obligation to deduct TDS in respect of such income attributable to the composite payments.

In the case of purchase of indigenous crude oil, the price payable is determined based on International markets and hence it would not be possible to determine the profit element embedded in the total payment made towards purchase. It is also to be noted that the prices of crude are independent of cost associated for exploration and production of crude oil. Hence section 195 making it obligatory to on the part of the assessee to withhold tax in respect of the whole or part of the income attributable of the other income.

In view of the divergence of opinions under the existing tax regime for example, royalty would be subject to withholding tax while copy righted materials and goods are not subject to withholding tax, clarifications need to be issued by CBDT specifying the nature of payments which attract withholding tax. It should be noted that the following phrase**, "any other sum chargeable under the provisions of the Act"** should be removed from the section 195 of the income tax act to bring in more clarity on the payments which are subjected to TDS.

73. TDS Credit to be allowed irrespective of the Assessment Year

In respect of Tax deducted at source, TDS certificate issued by the deductor would reflect in Form 26AS statement .If the income in respect of such TDS was booked and offered to tax in one particular year and the amount of deduction is made in any subsequent year by the deductor, then such TDS credit is not provided to the benefit of the assessee stating that the income has not been offered for tax in that relevant year. Hence, it is suggested that the TDS Credit to be allowed irrespective of the Assessment Year.

74. Applicability of Section 35AD to be extended to dedicated pipelines which are not used on common carrier basis

Benefit of weighted deduction of 1.5 times of expenditure incurred towards common carrier pipelines approved by Petroleum and Natural Gas Regulatory Board. The same benefit should also be extended to crude oil pipeline and petroleum product pipeline which are dedicated for supply to a specific consumer.

Section 73A should also be amended such that the loss computed under section 35AD can be set off against profits of other business inter-alia involved in oil and gas industry.

75. Removal of Surcharge & Education Cess

In order to bring alignment with the proposed Direct Tax code , removal of Surcharge & Education Cess is to be done.

76. Dividend distribution tax u/s 115-O to be extended to Companies other than subsidiaries

The facility of reduction of dividend paid by the subsidiary company to parent company for the purpose of calculation of declared dividend by the parent company u/s 115-O should be extended to Joint Venture/SPV in which there is a substantial holding.

77. Impairment of Assets

For the purpose of calculation of book profit u/s 115 JB , clause (i) of explanation 1 to section 115 JB refers that " the amount or amounts set aside as provision for diminution in the value of any asset" has to be added to the profit and loss account.

Clarity has to brought in the Act by referring that the Impairment of Assets are not provision for diminution in value of assets as they are guided by Ind AS 36 and since the profit and loss account has to be prepared in accordance with provisions of Schedule III of companies Act,2013 , impairment of assets cannot be treated as amount set aside as provision for diminution in value of asset.

78. Demerger

Section 2(19AA) of the Act defining Demerger specifies conditions which are conflicting in nature. First condition requires that at least 75 percent shareholders of transferor should become shareholder of transferee. Second condition provides that shares should be issued to the shareholders of the transferor company on a proportionate basis. If one logically reads the two conditions, it means that shares should be issued on a proportionate basis to the shareholders of demerged company to whom shares are issued under First condition. However, to avoid litigation, clarity needs to be provided

It is suggested that the section 2(19AA) be amended to provide that the shares of the transferee company should be issued on a proportionate basis to the shareholders of demerged company to whom shares are issued under First condition. It should be clear that proportionate basis does not apply provided that the shares of the transferee company should be issued on a proportionate basis to the shareholders of demerged company to whom shares are issued under First condition. It should be clear that proportionate basis does not apply to all shareholders.

It is also suggested that a new section be inserted in chapter IV providing that in case of reorganization/demerger, deduction in relation

a) to expenditures incurred in pre-reorganization period but allowable during post-reorganization period eg: deduction u/s35DDA and
b) Expenditures incurred during the previous year but allowable on certain criteria for e.g. payment basis under Section 43B, etc. will be allowed to successor as it would have been allowed to the predecessor.

Section 115JAA of the Act should also be amended to provide that successors in case of amalgamation, demerger or any other form of reorganization should be eligible to claim benefit of MAT Credit.

79. Scrapping of ICDS

Background

Conceptually, tax should be paid on income; logically, income should be as per the books of accounts, especially if they are audited and maintained in accordance with generally accepted accounting principles, except to the extent of fair value accounting adjustments that neither cause income nor create losses in a recognised sense, as required under IFRS or Ind AS.
ICDS introduces a significant element of complexity and, more importantly, it is inconsistent with the concept of real income for example : Concept of capitalising borrowing costs irrespective of whether the funds utilised or not for the capital project , concept of materiality not recognised by ICDS by which small amounts have to be reconciled and taxed accordingly.

Various assessees are mandatorily required to follow method of accounting as per the Accounting Standards (AS) applicable in India, which is prescribed by the ICAI. However section 145A deviates from the AS to certain extent. As per Guidance Note issued by ICAI in respect of method of accounting with regards to inclusive method as per S.145A, or exclusive method as per AS-2/Ind AS 2, there is no impact on the assessee's profit. Though there is no impact on profit and loss account, whether the assessee follows inclusive method or exclusive method, to comply with s.145A, the assessee needs to prepare profit and loss account following inclusive method, which is duplication of effort. Further, ICDS also requires that the valuation of inventories should be based on inclusive method of accounting.

Suggestion

Therefore, it is suggested that the entire ICDS may be scrapped altogether and erstwhile system may be put in place.

80. Section 115BAB allows new manufacturing company which commences operations before 31/03/2023 will be taxed at 15%. Large Manufacturing Units Requires 5-6 years to build and commence operations. The current section will encourage only small units and not big manufacturing or integrated complex. It is therefore requested to extend the sunset clause to March 2026.

81. The weighted deduction for R&D Expenditure under Sec. 35(2AB) not available in case Section 115BAA is opted. The expenditure on R&D was allowed as weighted deduction with a vision to the strengthen R&D Activities in India which directly related to"Make in India" concept.

R&D is the back bone for industrialization of any country and linked to development and growth of the economy. Further India's expenditure on R&D as a percentage of GDP is very dismal as compared to World Average. Reinstating of R&D weighted deduction, would help in further development of new technology and avoiding brain drain and continuous dependence on foreign technology.

We suggest to delink the R&D Deduction with the Option of 115BAA/115BAB by allowing "Weighted Deduction on R&D @ 200% of expenditure.

82. 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.

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

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

84. 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.

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

86. The Exemption limits for various allowances (eg: Children's Education Allowance, Hostel Allowance etc.) mentioned in Rule 2BB r.w.s. 10(14) was fixed in 1995. This needs to be revised keeping in view the cost inflation.

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

88. With implementation of successive pay commission recommendations, the leave salary of both Public and Private Sector employees has substantially increased. Whereas, a threshold exemption u/s 10(10AA) fixed at Rs.3 lakhs in the year 2002 hasn't undergone any revision over the years. Accordingly, it is suggested to revise the limit from Rs.3 lakhs to Rs.20 lakhs in line with the revised salaries.

89. 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. As per the Provisions of section 195 and as per Rule 37BB, any payment made to Non-residents requires payer to obtain a No Objection Certificate from Assessing officer or a Certificate from a Chartered Accountant in Form 15CB before making payment to the concerned party. In order to avoid inordinate delay in obtaining these certificates, it is suggested that an outer limit of say, 30 days shall be fixed for issuance of such certificates, failing which the rate sought in the Application shall be deemed to have been approved. Further a clarification may also be issued on Rule 37BB, so as to exempt the Trade payments for imports made from Non-resident parties, wherever they do not have any Permanent Establishment in India. This will reduce the administrative difficulty with regard to the volume of transactions involved vs. tedious compliance procedures as per New Rule 37BB.

90. 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.

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

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