PRE-BUDGET MEMORANDUM FOR UNION BUDGET 2021-22

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EXECUTIVE SUMMARY

S No.	Section	Suggestion	Page No
INDIRECT TAX – Goods and Services Tax (GST)			
1	**Request for inclusion of Crude oil, natural gas, MS, HSD and ATF under GST**	Earliest inclusion of petroleum products such Crude oil, natural gas, MS, HSD and ATF under GST regime	31
Upstream			
1	**Inclusion of Petroleum Products in GST**	Petroleum crude (crude oil) should be leviable to GST.	31
2	**(I) GST on Royalty** **(II) GST on Royalty under PSCs in Upstream**	(I) Suitable clarifications may be issued to exempt Royalty paid on crude oil and Natural Gas from applicability of GST (II) Govt. may issue a circular clarifying that royalty paid under PSC is not service per se	31
3	**GST on LSTK Contracts**	Request to allow concessional GST rate of 5% on the LSTK contracts awarded in the E&P Sector also.	32
4	**Works Contract**	GST on on-shore works contracts relating to oil and gas exploration and production (E&P) should also be reduced to 12%, in line with works contract used in Offshore.	33
5	**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.	33
6	**Increase in Cost of other Services**	It is requested that the rate may be reduced to 12% for all services used for petroleum operations by the upstream sector	33
7	**Uniformity in merit rates between Onshore and Offshore Rigs**	Requested that both may be brought under the uniform rate of GST at 5% to maintain uniformity in the Offshore and onshore Drilling Rigs.	33

8	**Taxation of Joint Venture**	(I) 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 of the UJV. (II) Clarifications requested on the taxability of profit petroleum for the period from 01.07.2017 to 24.01.2018 in view of the Notification no 05/2018 - CT(Rate) dated 25.01.2018, which exempts Govt.'s share of profit petroleum w.e.f. 25.01.18 to avoid different interpretation by fields officers and to avoid possible litigation.	34
9	**E Way Bill requirement**	Exemption from e-Way Bill requirement on Movement of goods from one location to another location of the same entity within the same State	34
10	**Tapering of Royalty rates**	Tapering of Royalty rates as proposed in Resolution dated 17 Mar'03 should be implemented and royalty on production from onland nominated blocks should be brought to the level of 12.50% that is equal to Royalty rates applicable to crude produced from NELP Blocks	34
11	**Deemed Export Benefit for empaneled technically qualified bidders** **Para 7.02 B.(f)(i) of FTP 2015-20**	As the empanelment of such technically qualified bidders is based on procedure of ICB which would be valid for a period of 3-5 years, a clarification to this effect is required to be issued by Ministry of Commerce that the proposed procedure to obtain price bid only from technically qualified empaneled bidders would be eligible for deemed export benefits as specified in para 7.03 of FTP 2015-20.	35
12	**Relaxation from Condition of ICB for Deemed Export Benefit**	Requested to relax the condition of ICB under Para-7.02(f)(i) of FTP as well for petroleum operations so that domestic manufacturer can continue to avail the benefit of deemed export on supply with tender value upto Rs. 200 Cr. as well as for procurements through GeM Portal.	36

13	**Clarification under Service Tax to the effect that consortium members including operator and the consortium formed under PSC are not two distinct persons**	Clarification, may please be issued that the transactions between members and the consortium (under PSC) for carrying out E&P activities in terms of PSC should not be treated as service provided by one person to another for levy of Service Tax.	37
14	**Service Tax on Cost Recovery (Cost Petroleum)**	Clarification under Service Tax may also be issued to the fact that cost petroleum is not a consideration for any services to GOI and therefore not leviable to service tax. This would avoid litigation.	38
15	**The Oilfield (Regulation& Development) Act, 1948**	The rate of Royalty may be reduced under the Act so as to give some relief to the upstream sector which is already under pressure due to non-availability of ITC and lower crude oil price.	38
16	**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.	38
		Downstream	
1	**Levy of nominal GST on excluded petroleum products or include under Zero rated**	In order to remove stranding of taxes in the hands of petroleum industry, it is pertinent that either these excluded product are also levied nominal GST parallel with levy of Excise duty /VAT. Alternatively, these products may be included under zero rated good in GST to allow the full availment of input tax Credits under GST.	39
2	**Relief by way of exemption /lower rate of GST on input used in refining and marketing of petroleum products**	In this regard, we suggest for granting exemption / lower GST rate on procurement of major Capital Goods, input and input services for use in Refining, Marketing & Distribution of petroleum products in order to minimize the impact of GST, like a. BS-VI MS & HSD projects b. Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD	40

		c. Regasification of LNG – from 18% to 5% d. Procurement for setting up ethanol/CBG/Bio Diesel production facility e. Lower Rate of 5% on input services used in Research Activities like notification no 45/2017 Central Tax (Rate) applicable for inputs	
3	**Rationalization of GST rate on goods and services for construction of cross-country petroleum and gas pipeline**	Requested that applicable GST rate on such goods and services should be rationalized and be exempted or considered at lower rate of 5%.	40
4	**Clarification for supply of Aviation Turbine Fuel (ATF) to foreign going aircraft as Exports / Zero Rated supply**	Till the time ATF is included under the GST, we would like to request for insertion of suitable explanation as per following alternatives to amend the definition of export of goods or zero rate goods under the IGST Act to enable us to avail ITC treating the supply as export: ➢ Amendment sought in export of goods definition u/s 2(5) of IGST Act: "export of goods'', with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes supply of Aviation Turbine Fuel to a foreign going aircraft" ➢ Alternatively, the definition of Zero-Rated supply, explained under Section 16 of IGS Act, may be amended to include the following supplies: ✓export of goods or services or both, or ✓supply of goods or services or both to a Special Economic Zone developer SEZ unit ✓supply of Aviation Turbine Fuel to a foreign going aircraft"	41

5	**Allow EDI shipping Bill for ATF supplies**	It is suggested to allow the filing of EDI shipping bills based on the actual supply of the quantity of ATF and get away with the customs assessment for ATF supply to foreign bound airlines to bring more transparency and accuracy in data and ease of doing business	41
6	**Permit Oil Marketing Companies (OMC) to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation**	OMCs should be permitted to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation as this would eliminate the cascading effect of tax and facilitate availment of the input tax credit (ITC) for the Carrier. Upfront exemption to GST on throughput fees pertaining to supply of ATF to foreign bound aircrafts may be notified. Another option is Government may also consider issuing a notification for exclusion of through put charges and storage charges component for the purpose of valuation under the state VAT/sales tax laws.	42
7	**Uniformity in classifying ATF for Sales Tax/VAT and ATF to be brought under GST**	It is suggested that Centre should work with states to include ATF under the proposed Goods and GST (GST) regime when applicable, else may be brought under Essential Commodities to have uniform taxation.	42
8	**Amendment in explanation inserted to Chapter V- Input Tax Credit of CGST Rules, 2017 to determine the value of Non-GST supply**	Suggested that value of these non-GST petroleum products should be included in the Non-GST turnover of only in the manufacturing State and suitable amendment to be made in clause 2 of Explanation inserted to the end of Chapter 5- Input Tax Credit of CGST Rules, 2017	43
9	**Admissibility of Input tax credit in the manufacturing state incurred by the exporter for positioning of the Non-GST goods for Export**	In view of above, Input tax credit to be allowed in the manufacturing state incurred by the exporter for positioning of the Non-GST goods for Export, when the factory and export warehouse are situated in different political states	44

10	**Matching of Inward supplies**	Necessary notification to be issued by Govt removing the condition of upload of invoice by supplier for availment of ITC by the recipient for ease of compliance.	44
11	**Cross utilization of GST Input Tax Credit against Excise duty/Sales Tax**	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.	45
12	**Clarification on goods for Tariff classification covered under Motor Spirit (commonly known as petrol) and High-Speed Diesel**	Clarity to be provided with regards to tariff covered in GST and not covered within the ambit of GST by suitable modification to fourth Schedule so as cover only those products namely petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel which are outside the ambit of GST as per provision of section 9(2) of CGST Act 2017 as per the 101st Constitutional Amendment Act.	45
		Natural Gas	
1	**Inclusion of Natural Gas under GST**	Proposed that Natural Gas may be brought under GST ambit as it will have positive impact on the Natural gas-based industries and will avoid stranding of taxes.	46
2	**Input Tax Credit (ITC) not eligible on goods / services used for construction of Pipelines**	a. Considering that GST is applicable on the output supply of services from such Natural Gas / LPG pipelines, Input Tax Credit (ITC) on goods / services used for construction of Natural Gas / LPG pipelines may be allowed under GST laws to avoid cascading and inflationary effect. b. The definition of term “factory” may be provided under the GST law in line with definition under the Central Excise Act.	46
3	**Rationalization of GST rate on services of transportation of Natural Gas through pipeline**	a. It is proposed that GST @ 5% applicable on the services of transportation of goods by pipeline may be provided with ITC Benefit.	47

		b. This will lead to lower cost of transportation of Natural Gas and will help in promotion of cleaner source of energy for Power and CNG sector where ITC of GST paid on transportation of Natural Gas is not available. This will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc.	
4	**Rationalization of GST on the service of regasification of LNG**	In order to promote gas-based industry in India, it is suggested that suitable amendment/ clarification may be made so that activity of regasification attracts GST @ 12% on job work basis.	48
5	**Supply of LPG (Domestic) / NDEC at concessional rate of 5% GST**	Clarification needs to be issued to provide such concessional rate of 5% GST is applicable for all Transactions of LPG meant for ultimate supply to household domestic consumers & NDEC for the period 01.07.2017 to 24.01.2018.	49
6	**Clarification regarding GST Rate on Liquefied Petroleum Gases (LPG) supplied to OMCs for onward supply to household domestic consumers**	It is requested that suitable clarification may be issued to Deptt. to not initiate disputes, demanding GST @ 18% on domestic LPG supplied by refiners/fractionators (like GAIL/ONGC) to OMCs for ultimate supply to household domestic consumers for the period from 01.07.2017 to 25.01.2018, on similar lines as given by council recently on levy of interest on delayed payment of GST on net basis, retrospectively with effect from 01.07.2017.	50
7	**Double impact of GST on procurement and subsequent transfer of Pipes procured for laying other cross-country Pipeline network**	In order to avoid double taxation under GST regime, it is suggested that an amendment / suitable clarification may be provided to the effect that: i. Since input tax credit is specifically denied on goods purchased for construction of pipeline, any subsequent stock transfer of such goods by one registered unit to another registered unit of same entity will not be liable to payment of GST.	51

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		ii. Alternatively, a mechanism may be provided to allow Input Tax Credit (ITC) to the transferor unit of same entity at the time of Stock Transfer of such goods to another unit of same entity in line with the mechanism provided for airline industry. It is submitted that in the similar circumstances vide Circular reference no. 16/16/2017 dated 15.11.2017, the input tax credit (ITC) of aircraft engines/Parts has been explicitly allowed on inter-state transfer of these goods by airline industry.	
8	**Clarification regarding non-applicability of GST on any component of sale price of goods not covered under GST**	In order to reduce unwarranted hardship on dealer of non GST goods like Natural Gas on account of disputes, suitable clarification may be issued that various components of sale price considered in the invoicing as per the terms of the sale contract will not be liable to GST as these are the part of composite supply.	52
9	**Taxation on the net delivered quantity after accounting for the pre-estimated process losses for regasification.**	It is clarified that the Service Tax / GST charges for regassification of LNG being a volatile product are always on the net delivered quantity after considering the pre-estimated process losses during the regassification process.	52
10	**Taxation on LNG fuelled vehicles to be made comparable to Electric Vehicles**	GST rate on LNG fueled vehicles, and, import duty on components like LNG Fuel tank be reduced to 5% and 15% respectively in line with taxation on EVs.	53
11	**No reversal of input credit relating to Non-GST supplies like NG from the common credit pool of Taxable and Non-taxable supplies.**	Exclusion of petroleum products from GST renders them ineligible to avail input credit which were availed under the extant VAT & Excise laws. Under these laws (i.e. Gujarat VAT) regasification of LNG to RLNG constituted 'manufacture' and therefore VAT on sale of LNG was offset against VAT purchases used for conversion of LNG to RLNG. This hitherto available input tax credit is not only available under the existing GST regime, but also denied the input tax credit of	54

		common credits used in the business of a non-GST and GST revenue streams. It is therefore earnestly requested for the GST Council to take note of this inadvertent error in the drafting of the GST Rules and kindly correct the same by excluding the petroleum goods (being taxed separately) from the purview of exempt and total turnover under the Clause 7 (i) of the Input Tax Credit Rules.	
12	**Removal of Tax on Freight Charges for LNG import**	The GST on import freight for all LNG cargoes should be withdrawn to promote the usage of environmentally clean fuel in the country.	56
13	**LNG loaning and borrowing of in-tank quantity, at LNG terminals handling co-mingled goods with virtual segregation of title stocks, should be specifically kept out of purview of taxable transactions**	It is sought to seek exemption from any taxing provision for Loan / Borrow transactions of In Tank LNG to enable optimum utilisation of LNG Terminal facilities in India and facilitate higher trade and consumption of this carbon efficient fuel by India entities.	56
14	**Final Assessment of imported LNG cargoes**	The necessary changes in the EDI to incorporate the MMBTU is not available as one of the UQC in the drop-down menu of EDI system. Option to manual assessment of LNG cargo may be extended till the time above modifications are done in the system.	57
		General	
1	**Non-payment of GST on "Ocean freight" (as an importer)**	In case of procurement of goods on CIF basis, the importer of goods is liable to pay GST under reverse charge on Ocean Freight. Further, while calculating the customs duty, assessable value includes the freight cost. Thus, there is double taxation on the ocean freight.	58
2	**Canteen Services**	Pre GST, exemption from Services Tax was provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act,1948 (63 of 1948),	58

		having the facility of air-conditioning or central air heating at any time during the year. Similar exemption may be provided under GST regime.	
3	**Amendment in Supplies reported in GSTR-1**	Necessary facility may be provided on GSTN portal to amend the B2CL transactions as B2B. Further, amendment in B2C transaction to B2B may be allowed for more than once for a period till annual returns are filed.	58
4	**Proportionate reversal of credit on "Capital goods" for every tax period**	It is suggested that interest payable is to be waived in cases where surplus GST ITC is availed by the taxpayer in case of common capital goods.	58
5	**Inclusion of Electricity production and transmission in GST regime**	Electricity generation, transmission and distribution should be brought under the ambit of the GST regime.	59
6	**All Drop in Bio-fuels (intermediate & finished - from advanced biofuel processes) such as bio-petrol, bio-jet, bio-char, etc. to be classified under HSN and be brought under the ambit of GST at a uniform rate of 5%**	HSN codes should be assigned to all the bio-products including bio-petrol, bio-jet, bio-char, etc. Further, all bio-fuels such as bio-petrol, bio-jet, bio-char and others should be brought within the ambit of GST at a uniform rate of 5%.	59
7	**Clarification regarding GST Rate on Compressed Biogas (CBG)**	Clarification regarding GST rate on CBG may be issued so as to avoid any future dispute that CBG industry may face. Further, in case 'Biogas'/ CBG (Compressed Biogas) is supplied and transported through a common carrier pipeline or any other common transport or distribution system and becomes co-mingled and fungible with other gas in the pipeline/transportation/storage system and such gas is taken out from the system in the equal energy terms, or supplied through common dispensing unit, it may be considered as supply of	60

		'Biogas'/ CBG (Compressed Biogas) and may be taxable under GST.	
8	**Customs duty and GST exemption for all Capital Equipment on initial setting up of waste to energy plants and on project imports, renovation / modernization of renewable energy projects**	Exemption should be provided from Customs duty and GST on import of equipment required for setting up of waste to bio-fuel plant and on project imports, renovation / modernization of renewable energy projects.	61
9	**Fiscal incentives in development of offshore wind farm**	In order to encourage a kickstart to the industry, the GoI may consider exempting offshore wind turbine models from GST/customs duty till Indian manufacturing is geared to meet the large requirements locally.	61
10	**Exemptions related to GST/ excise/ customs for port development related to offshore wind**	Supporting development of OFW ports/ port infrastructure on BOO/BOT models in partnership with private player is recommended. Exemptions related to GST/ excise/ customs recommended vis-à-vis ordinary port development.	62
11	**Waiver of interstate transmission system (ISTS) charges and losses**	It is recommended to extend waiver of interstate transmission system (ISTS) charges and losses to the offshore wind projects.	62
12	**Exempt GST on sale of lubricants to foreign bound vessels**	It is requested that supply of lubricants to foreign bound vessels be treated as exports and exempt from tax as the recipeint of the goods is situated outside India, the destination of the vessel is outside India and the revenue for such supplies results in a positive NFE. If not exempt, it is requested that lubricants be treated on par with bunker fuel and be given the same benefit of lower GST rate as bunker fuel to boost exports.	62
13	**Payment under Reverse Charge Mechanism (RCM) by Input Service Distributor**	Necessary notification to be issued by Govt. to allow the payment of RCM under ISD registration.	63
14	**Review of Domestic Gas Pricing formula**	A remunerative gas price would incentivize domestic producers leading to	63

		increased domestic exploration and production resulting to direct savings in the country's import bill.	
INDIRECT TAX – Excise Duty			
Upstream			
1	**Abolition/ Review of rate of OIDB cess on oil production in the Pre-NELP Exploration Blocks /Nomination regime**	(I)Request for abolition of OID Cess in respect of nomination / pre-NELP blocks is well justified. Exemption of Cess will improve the techno-economics of these Fields for further production. (II)In case, Cess is not abolished, considering the minimum price required to meet its cost of production and to sustain the operations	64
2	**Additional levy of Basic Excise Duty (BED) on Domestic Production of Petroleum Crude in addition to NCCD**	NCCD along with BED on production of domestic crude oil should be removed with immediate effect which would facilitate the compliance as well as ease of doing business.	65
3	**Levy of Excise Duty**	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.	66
4	**Excise Registration**	Exemption benefit on similar line as given to Coal Mining vides Notification no. 10/2011-Central Excise (N.T.) dated 24.03.2011 should be extended for E&P Industry also.	66
Downstream			
1	**Upfront exemption of duties of Excise on HSD**	To provide boost and incentive to the upstream sector, it is requested 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.	67
2	**Ethanol Blended Motor Spirit - Section 11D demand**	Clarification or 11C notification may be issued by CBIC that in case of Ethanol Blended Petrol sold at the same price that of Motor Spirit would not be subjected to	67

		provision section 11D of Central Excise Act.	
3	**Introduction of Specific rate of excise duty on Aviation Turbine Fuel (ATF)**	Requested that ATF should also be levied specific rate of duty in place of ad-valorem duty	67
4	**Concessional Rate of Duty – ATF for RCS flights**	A uniform date can be provided for the validity of the exemption for all supplies under RCS category to avoid disputes w.r.t to validity dates due to possible different interpretations	68
5	**2710 12 49 - M15 conforming to IS 17026 (correct IS 17076)**	Request for product specs of M15 petrol as non-GST product and for exemption from the Special Additional Duty (SAED) and Additional duties of excise (Road and Infrastructure Cess- RIC) on M-15 and E 20 fuels also is required to avoid double duty implications.	69
6	**2710 12 42 - E 20 Fuels conforming to IS 17021**	Request for product specs of E20 petrol as non-GST product and for exemption from the Special Additional Duty (SAED) and Additional duties of excise (Road and Infrastructure Cess- RIC) on E 20 fuels also is required to avoid double duty implications.	69
7	**Amendment to existing excise tariff for blending of More than 10% Ethanol with normal Petrol**	Suitable amendment needs to be undertaken in IS specification and under excise tariff / notification for covering the various ethanol blending ratios proposed.	70
8	**Duty Credit on MS and HSD brought to refinery for reprocessing**	It is suggested that Non-Cenvatable products like MS and HSD when received in the Refinery for re-processing should either be exempted from payment of duty at the time of clearance after re-processing or Cenvat Credit should be allowed on these products at the time of receipt in the Refinery by suitably amending the definition of 'Input' contained in the Cenvat Credit Rules'2017 for re-processing of such products in the refinery.	70
9	**Rationalization of excise duty on premium diesel**	It is recommended to significantly reduce the excise duty differential between branded and regular diesel, bringing it	71

		close to or at par with excise duty on regular diesel.	
		Natural Gas	
1	**Exemption to CNG from payment of excise duty/GST**	In view of the above, the conversion of Natural Gas into CNG may be exempted either from levy of Central Excise Duty or GST. This will make CNG more economical and will promote use of this environment friendly fuel in domestic and commercial transportation sectors.	72
		General	
1	**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.	72
		INDIRECT TAX – Custom Duty	
		Downstream	
1	**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.	73
2	**Social welfare surcharge (SWS) on MS and HSD**	In order to remove this anomaly of the input being subject to higher tax without corresponding levy on the output, resulting in losses to the refineries, the exemption of SWS to MS and HSD is required to be withdrawn.	73
		Natural Gas	
1	**Custom duty exemption on import of Liquefied Natural Gas (LNG)**	It is suggested that LNG Import may be exempted from payment of custom duty (present rate @ 2.5% plus SWS @10%) to provide relief to gas based industries and domestic consumers.	73
		General	
1	**Rationalization of suspension of deferred duty payment benefit in Customs**	Suitable guidelines may be issued for rationalizing such suspension of benefits by enabling a threshold limit of pending demands for such suspension, so that the	74

		industry can utilize the benefit extended by the Government in true spirit	
2	**Disposal of Obsolete/ Surplus goods procured at concessional or Nil rate of Customs Duty as Scrap**	Provide relaxation from the condition of mutilation for disposal	74
	INDIRECT TAX – Central Sales Tax		
	Upstream		
1			
	Downstream		
1	**Removal of CST**	It is requested that the CST rate may be made 0%	75
2	**Removal/Reduction in VAT on Crude & Natural Gas**	VAT Rate can be reduced considering Nil Revenue implications for the Centre and negligible revenue implications for state Governments (Many offshore crude fields, do not suffer VAT/CST)	76
	General		
1	**Amendment in CST Law regarding inter-state sale of non-GST goods to Dealers handling GST products**	Necessary notification may be issued to include Goods and Service Tax law within the definition of state law in section 2(i) of the CST Act.	76
2	**E-Wallet Scheme shall be introduced for exporters soon**	Implementation E-wallet facility will help exporters in less manual documentation and better governance and compliance	77
3	**Mandatory E-invoicing for all B2B businesses**	It is suggested that all B2B suppliers irrespective of their turnover may be mandatorily covered for the e-invoicing provisions so as to avoid any ineligible credits.	77
4	**Export obligation (EO) under EPCG schemes**	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 monetary basis.	78
	DIRECT TAX		
	Upstream		
1	**Climate Change, Environment Conservation**	1) At least 100% deduction of expenditure, revenue or capital, on efforts in mitigating climate change and	78

	& Conservation of natural resources	environment conservation on the lines of section 35 "Expenditure on scientific research" may be provided. 2) Sunset Clause in Section 35CCB of Income Tax Act, 1961 may be increased from 31st march, 2002, to conserve the natural resources	
2	**Deduction for Exploration and Development expenditure u/s 42**	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. Weighted deduction of 200% of Exploration expenditure and 150% of Development expenditure for the new blocks awarded under OALP.	79
3	**Investment in new Plant & Machinery (Section 32AC)**	Validity of deduction u/s 32 AC should be restored w.e.f. Assessment year AY 2021-22.	79
4	**Changes in section 234C of the Income-tax Act, 1961, (Interest for deferment of advance tax)**	It is suggested that upstream oil & gas companies may be exempted from the rigours of section 234C or the rigours may be relaxed by providing that no interest shall be leviable on shortfall of installment of advance tax	80
5	**Tax Holiday u/s 80IB(9)**	In order to boost the oil production, it is recommended to restore tax holidays for new blocks awarded under OALP	80
6	**Deduction for EOR expenditure**	To make these capital intensive and risky projects commercially viable, weighted deduction on EOR expenditure is recommended.	80
7	**Section 42 - Deduction in case of business of prospecting of mineral oil**	Considering the genuine hardship of the assessee, an explanation may be inserted in section 42(1)(a) that an intimation by the assessee for surrender of area to appropriate authority will be construed as area surrendered for allowing the	81

		deduction of infructuous or abortive exploration expenses.	
		Downstream	
1	**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.	82
2	**Waiver of Interest under section 234B and 234C**	It is imperative to pass on necessary administrative instructions by the Board for disposal of waiver applications in a time bound manner.	82
		Natural Gas	
1	**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.**	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.	83
2	**Obtainment of secret comparables from corporates under Sec 133(6) of Income Tax Act should not be applicable for non-commodities like LNG**	As secret comparison analysis is not accurate, this practice should not be applicable for non-commodities like LNG.	83
		General	
1	**Clarification regarding Vivad Se Vishwas Scheme**	The scope of the VsVs scheme be clarified and the specified date be suitably extended.	84
2	**Specific clarification under VSVs on coverage of certain issues settled before the Hon'ble High Court (HC)**	It is requested that a suitable direction/ clarification be issued such that matters settled before HC are aligned in terms of FAQ-37 issued by CBDT and NIL tax could be considered on issues where appellant has got a favorable decision from HC and matters stand settled (despite not reaching SC)	85
3	**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 or suitable clarification to that effect may be issued by CBDT	86

4	**Corporate Social Responsibility Expenditure to be allowed as deduction for payment of Income Tax**	To encourage the application of CSR in letter & spirit, expenditure incurred beyond statutory limit of 2% should be allowed under business expenditure to the assessee paying tax under normal provision as well as to assessee paying tax u/s 115BAA	86
5	**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**	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	87
6	**Clarification on Provision of section 31(1) (va) Employees' Contribution Towards Staff Welfare Schemes**	Suggested to give clarity of law in the particular section for uniformity in the deduction under this section	88
7	**Deemed acceptance of rectification application if rectification is not carried out in 6 months' time**	It is recommended that where action on rectification application is not carried out within a period of six months, such application should be deemed to have been allowed. It is also requested that in cases of tax refunds due to the assessee, the time-limit of four years for rectification should be waived off, more particularly in cases where the assessee is not at fault for the delay in disposal of an application for rectification	88
8	**Deduction u/s 80G may be allowed to the assessees opting to pay tax u/s 115BAA for FY 2020-21**	To encourage the values of bestowment, deduction u/s 8G may be allowed to the assesses opting to pay tax u/s 115BAA for the contributions made towards PM & CM funds at least	88
9	**Prescription of exemption from deeming of fair market value of shares for certain transactions**	It is suggested that in order to enable the benefit of the amendment introduced in Finance Bill 2019, CBDT should prescribe such transactions undertaken by certain class of persons where the consideration for transfer of shares is approved by certain authorities and the person	89

		transferring the share has no control over such determination, to which the provisions of section 56(2)(x) and 50CA shall not be applicable	
10	**Exemption for transactions relating to PSU from TCS u/s Sec 206C(1H)**	It is suggested that exemption may be granted from TCS to PSUs for (i) inter PSU sale/purchase transactions and (ii) purchase transactions of PSUs from private entities, by way of inclusion of PSUs in the exclusion list of the definition of "Buyer" u/s 206C(1H) as has been provided to PSUs under GST TDS	89
11	**Disallowance under section 14A (read with rule 8D)**	Such adhoc disallowance should be removed by amending Rule 8D of the Income Tax Rules,1962 as it results in notional disallowance in case of investments that are long term in nature and do not entail any activity/monitoring on a regular basis and as such does not involve any expenditure in the earning of annual exempted income in the form of dividend/interest	90
12	**Request for Clarifications under section 206C(1H) - TCS on Sale of Goods**	Suitable Explanation to Section 206C(1H) of the Income Tax Act 1961 may be added stating that 'goods exported out of India' shall include transaction involving re-fuelling of foreign bound Aircraft, Ship or Vessel on their foreign run originating from Airport / Port in India with a foreign destination, with or without an intermediate destination in India	91
13	**Relaxation from Faceless Assessment -Section 143(3A) and 143(3B)**	Suitable exception may be made in the Faceless Assessment Scheme specifying that Faceless Assessment shall not be applicable in case of Assessee being a very large Company with turnover above a certain monetary threshold, say Rs. 1 Lakh crores. Assessment for such entities would continue to be conducted by Jurisdictional Assessing Officer	92
14	**Lowering of Income tax rate**	Tax rate be reduced for all domestic companies to 25% and remove surcharge and education cess on it.	92

15	**Lower corporate tax rate for new manufacturing companies**	Suggested that lower tax rates may be allowed for all investment above threshold of say Rs.10000 Crore, which involve substantial construction time	93
16	**Social and community welfare expenses – allowance under section 37(1) as business expenditure**	Expenditure on Social and community welfare expenses may be made as allowable business expenditure.	93
17	**Clarification to prevent erosion of Indian tax base through Transfer Pricing adjustments in hands of Foreign Companies**	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	93
18	**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**	Earlier time limit may be brought back at least in respect of revision required for claiming foreign tax credit	97
19	**Section 80JJAA – Deduction of additional employee cost for 3 years – Relaxation of upper cap on total emoluments which is Rs 25000 p.m. currently**	To bring consistency in policy, the government should change the upper cap from Rs 25000 p.m. to those whose Net Total Income exceed Rs 5 lakhs	97
20	**Transfer pricing compliances should also be exempted for Non- Residents when tax has been deducted at rates as per section 115A of the Income Tax Act**	If the Transfer pricing compliances are also exempted it would be encouraging to the assessee by removing the compliance requirement totally and beneficial to the assessee who is offering the relevant income to withholding as per the provisions of the Act.	98

21	**Special exemption to Refineries for waiver of penal interest for deferment of advance tax**	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.	98
22	**Treatment of Profit from Derivative Transactions**	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 traded in the recognized stock exchanges and accordingly would be chargeable to Capital Gain Tax or Business Income based on the well-accepted principles	99
23	**Interest on Refunds paid to the assessee**	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.	99
24	**Deduction under section 43B – to cover only statutory deductions**	Employee obligation liability provided as per accounting standards (AS15) should be allowed by declaring mandatory accounting standard as per section 145A	99
25	**Payment to non-residents**	Clarifications need to be issued by CBDT specifying the nature of payments which attract withholding tax	99
26	**TDS on Transportation payment under section 194C**	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	100

27	**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	101
28	**Lower tax rates to be extended to Manufacturing Companies with substantial expansion**	Hence, benefit available under section 32AD, 32AC and 80IB(9) which available only to new manufacturing companies may be extended to existing manufacturing companies doing substantial capacity additions.	101
29	**Abolition of MAT provisions**	Companies that are recovering from losses and turnaround from losses to profits should be exempt from the provision of MAT	101
30	**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	102
31	**Tax Loss Carry back**	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.	102
32	**Applicability of Section 35AD to be extended to**	Section 73A should also be amended such that the loss computed under section	102

	dedicated pipelines which are not used on common carrier basis	35AD can be set off against profits of other business inter-alia involved in oil and gas industry	
33	**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	103
34	**Scrapping of ICDS**	Suggested that the entire ICDS may be scrapped altogether and erstwhile system may be put in plac	103
35	**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**	Provide preferential rate of 4% (Foreign Company)/3% (Non being a company) for deducting TDS on persons covered under section 44BB of the Act	104
36	**TDS on cash call**	Clarification is recommended to be issued to avoid such unnecessary litigations	104
37	**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)	104
38	**15% corporate tax rate for new mining companies**	Please extend the benefits of Sec 115BAB to new mining companies also. With effect from 1ST April 2020, government has introduced new section 115BAB for new manufacturing companies and exclude the mining from it	105
39	**Section 80 M**	Intercompany dividends eligible for 80 M deduction should be treated as exempt for the purpose of MAT calculation as well as setting of such dividend income with business losses/unabsorbed depreciation	105

40	**No disallowance for the domestic company, for charges paid to a PE in India of a foreign company**	It is, therefore, recommended that the expense claims (in such a scenario) should not be subject to transfer pricing assessment and disallowance	106
41	**Depreciation provisions (Section 32)**	The industry is hopeful of an incentive package to maintain the growth momentum and support to achieve its targets	106
42	**Clarity on equalization levy and need for a FAQ on e-commerce activities and operators**	During these unprecedented times, it is recommended that the Government issues FAQ to provide clarity on the coverage of EL which would come as respite for ensuring compliance	106
43	**Revised return u/s 139(5)**	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 (applicable upto AY 2017-18) may be brought back.	107
44	**Rectification of mistake u/s 154 of the 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 within six months, the same shall be deemed to have been accepted by the AO and resulting impact should be given by passing the necessary order within time bound manner	107
45	**Rationalizing TDS Provisions - 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 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	108

		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	
46	**TDS credit to be allowed irrespective of the Assessment Year**	TDS credit may be allowed to the deductee irrespective of the Assessment Year in which the corresponding income is offered to tax	109
47	**Availability of deduction u/s. 36 in respect of contribution made to Trusts etc., set up for employees' welfare**	Suitable amendments may be made in section 36 and/or section 40A(9) of the Act so as to provide that deduction would be available in respect of contribution made by an employer towards an irrevocable 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	109
48	**Dichotomy in methods of grossing-up of income subject to tax u/s. 44BB for TDS and assessment purposes**	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	110
49	**Rationalizing the provisions of section 248**	Suggested that the provisions of section 248 may be suitably amended to also cover the cases where the payer does not deny the liability of TDS but is of the view that TDS is applicable at a rate lower than the rate determined pursuant to the order u/s. 195(2).	111
50	**Interest on Refunds paid to the assesse to be at par with interest charged by the revenue on short payment of Income tax**	Interest rate on the refunds due to the assessee and on the amounts payable by the assessee to the Government should be same on the ground of equity	112
51	**Providing Consequences of Non-disposal of**	Suggested that it should also be provided in the said sub-section (8) of section 154	112

	Rectification Applications under section 154 of Income-tax Act, 1961	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	
52	**Insertion of specific definition of "month"**	Suggested the provisions of section 2 of the Act may be amended so as to incorporate therein definition of "month".	113
53	**Consideration of interest for granting refunds u/s. 244A**	Suggested that a suitable clarificatory provision may be inserted in section 244A of the Act in this regard	113
54	**Restriction on adjustment of demands pending disposal of appeal**	Certain exceptions to the aforesaid general rule may also be provided in line with the ones contained in CBDT's Office Memorandum dated 29-02-2016.	114
55	**Adjustment of written down value in respect of unclaimed additional depreciation allowance**	Suggested that, the proviso to section 115BAA(3) may be suitably amended to repeal the references of AY 2020-21 therefrom. It may provide on generic terms that- "Where, at the time of exercising the option as referred to in section 115BAA(5), there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year from which the option is exercised, corresponding adjustment would be made to the written down value of such block of asset as on 1st day of April of the assessment year immediately preceding the assessment year from which the option is exercised in the prescribed manner	114
56	**Deducibility of expenditure incurred on abandonment and site restoration activities in accordance with Site Restoration Fund Scheme, 1999**	Suggested that to bring clarity in this regard to avoid unnecessary litigation	116
57	**MAT Credit Entitlement u/s 115JAA**	As per the provisions of section 115JAA of the Income Tax Act, 1961, if, during a year, a company has paid tax liability as	117

		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	
58	**Restoration of weighted Deduction on R&D Activities and inclusion of expenditure incurred on Bio-fuels -Section 35 (2AB) and 35(2AA)**	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%	117

PRE-BUDGET MEMORANDUM FOR UNION BUDGET 2021-22

INDIRECT TAX

Goods and Services Tax (GST)

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

Background

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

Suggestion

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

Upstream

1. Inclusion of Petroleum Products in GST

Background

Presently Five Petroleum Products are kept outside GST till it is notified for inclusion on the recommendation of the Goods and Services Tax Council. Crude Oil is an Industrial Input for production of petroleum products [MS (petrol), HSD, ATF etc]. Hence, petroleum crude (crude oil) should be leviable to GST. Likewise, Natural gas, which is primarily an Industrial fuel, should also come within GST. This will allow E&P Companies to utilize the credit for GST paid on Inputs and avoid stranding of taxes. Further this will also help in reducing the cost of production of MS, HSD and ATF etc.

2. GST on Royalty

Background (I)

In the Sectoral series on Government Services, CBIC has clarified that Royalty payment made for assignment of Right to use natural resources is to be treated as consideration for supply of services and GST is to be charged.

The Royalty payment made by E&P companies to State Governments under the provisions of Section 6A of the ORD Act, 1948 is in the nature of taxes and not consideration for any services received/receivable from the Government.

Suggestion (I)

Suitable clarifications may be issued to exempt Royalty paid on crude oil and Natural Gas from applicability of GST. This will provide relief to E&P sector which is already stressed by the increasing burden of stranding of taxes and also avoid any future litigation.

Background (II)

Govt. of India has ownership rights over the crude and natural gas contained in the exploration area. Even if it is assumed that government has granted the right to extract the crude and gas to a distinct person represented by UJV, since the mining lease is a right vested in immovable property, it is a contract for transfer of immovable property. Then at best it may be subject to stamp duty if applicable, on transfer of immovable property.

Besides the above, the upstream sector mainly regulated by the Production Sharing Contract (PSC). The true nature of the PSC is that each PSC is an entrepreneurial venture where there is an element of risk and uncertainty, wherein each of the parties to the PSC contribute resources, time and effort in an entrepreneurial stream to maximize their profits from the co-venture, in which profits are reflected in the form of the Profit Petroleum. The O&G entities and the Government are joint ventures / co-ventures under the PSCs, and the relationship between the parties is not that of service provider and service recipient.

Thus, royalty paid to the Government under the PSC is economic profit shared under the PSC. As royalty is a part of profit share of the Government, it is not a service, so not taxable under the erstwhile service tax law or under the GST law.

Suggestion (II)

Govt. may issue a circular clarifying that royalty paid under PSC is not service per se.

3. GST on LSTK Contracts

Background

Concessional GST rate @5% is available for the materials used in E&P operations as per the Notification no. 03/2017 Integrated Tax (Rate) dated 28.06.2017 subject to issue of Essential Certificate from DGH. However, LSTK contracts has been classified as Works Contracts as per Schedule II of the GST Act and accordingly taxable at 18% GST. Since no input credit is available to the E&P Sector, request to allow concessional GST rate of 5% on the LSTK contracts awarded in the E&P Sector also. Otherwise sector is not able to avail the intended benefit of the

notification no 03/2017 - Integrated Tax (Rate) dated 28.06.2017 even in those cases where materials consists more than 50% of the total contract cost. This will help in providing the intending benefit to the E&P Sector.

4. Works Contract

Background

GST rate applicable to on shore and off shore works contract initially was 18%. The GST council has decided in its 22nd meeting held on 6th October,2017 to reduce the GST on works contract services to 12% in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles. GST on on-shore works contracts relating to oil and gas exploration and production (E&P) should also be reduced to 12%, in line with works contract used in Offshore to maintain uniformity between Offshore and onshore operations.

5. 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. 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.

6. 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%. 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.

7. Uniformity in merit rates between Onshore and Offshore Rigs

Background

Offshore Rigs are classified under HSN 8905 which is chargeable to merit rate of GST at 5%. Whereas Onshore rigs are classified under HSN 8430 which is presently chargeable to merit rate of GST at 18%. To avoid such wide disparity of rate it is requested that both may be brought

under the uniform rate of GST at 5% to maintain uniformity in the Offshore and onshore Drilling Rigs.

8. Taxation of Joint Venture

Background (I)

Unincorporated Joint Venture (UJV) – Registration under GST requires PAN No. 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 of the UJV to avoid different interpretation by fields officers and to avoid possible litigation.

Background (II)

Unincorporated Joint Venture – Profit Petroleum. Clarifications requested on the taxability of profit petroleum for the period from 01.07.2017 to 24.01.2018 in view of the Notification no 05/2018 -CT(Rate) dated 25.01.2018, which exempts Govt.'s share of profit petroleum w.e.f. 25.01.18 to avoid different interpretation by fields officers and to avoid possible litigation.

9. 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. 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.

10. Tapering of Royalty rates

Background

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

(i) Royalty will be fixed on Ad valorem basis.
(ii) Royalty will be calculated on cum-royalty basis

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

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

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

Suggestion

Tapering of Royalty rates as proposed in Resolution dated 17 Mar'03 should be implemented and royalty on production from onland nominated blocks should be brought to the level of 12.50% that is equal to Royalty rates applicable to crude produced from NELP Blocks.

11. Deemed Export Benefit for empaneled technically qualified bidders Para 7.02 B.(f)(i) of FTP 2015-20

Background

Various facilities such as Well-platform, Process Platforms, pipelines etc in offshore and onshore for extraction and production of hydrocarbons are constructed. For construction of such facilities, invites are sent to international competitive bid (ICB) under two-bid system i.e. technical bid and price bid. Accordingly, companies shortlist technically qualified bidders at first stage and price bids are opened subsequently in respect of technically qualified bidders alone. The contracts are awarded to lowest price bidder who is technically shortlisted. Considering the high value tenders and complexities of technical criteria, the shortlisting of technically qualified bidders is a time-consuming process which takes 8 – 10 months. In order to minimize the tendering process and accelerate domestic production of hydrocarbon, one of the option available is to short list & empanel technically qualified bidder for each category of service through ICB and price bids will be sought from such short listed & empanelled bidders only.

It is pertinent to mention that under Sl. No. 404 of Customs Notification 50/2017-Cus dated 30.06.2017, the import of specified goods required for petroleum operation attracts 5% customs duty (BCD-Nil, IGST-5%).

Further, as per para 7.02 B.(f)(i) of FTP 2015-20, the deemed export benefit is allowed to domestic supplier (manufacturer) on supply of goods to any project or for any purpose in respect

of which the Ministry of Finance, permits import of such goods under Customs Notification No. 50/2017-Cus dated 30.06.2017 with Zero Basic Customs Duty. However, such supply should be under procedure of ICB. Accordingly, domestic manufacturers supplying goods under ICB for construction of facilities for petroleum operations are eligible for deemed export benefits.

Since procedure of ICB is neither defined under Foreign Trade Policy nor Customs/GST Law, it is apprehended that field formation may deny the Deemed export benefit to the eligible domestic manufacturer supplying goods for the contract awarded based on price bids obtained from bidders already empanelled based on technical criteria on ICB basis.

Suggestion

As the empanelment of such technically qualified bidders is based on procedure of ICB which would be valid for a period of 3-5 years, a clarification to this effect is required to be issued by Ministry of Commerce that the proposed procedure to obtain price bid only from technically qualified empaneled bidders would be eligible for deemed export benefits as specified in para 7.03 of FTP 2015-20.

12. Relaxation from Condition of ICB for Deemed Export Benefit (Para 7.02 B.(f)(i) of FTP 2015-20)

Background

Supply of goods to any project or for any purpose in respect of which the Ministry of Finance, by erstwhile Notification No. 12/2012 –Customs dated 17.3.2012, as amended from time to time, had permitted import of such goods at zero customs duty (with exemption of both BCD and CVD) subject to conditions specified therein and which are continued under the Customs Notification No. 50/2017-Customs dated 30.6.2017 with exemption of zero basic customs duty and subject to conditions mentioned in the said new notification. Benefits of deemed exports shall be available only if the supply is made under procedure of ICB.

Now, the Govt. of India, Ministry of Finance (Dept. of Expenditure) vide F.No. 12/17/2019-PPD dated 15.05.2020 has amended the General Financial Rules, 2017, inter-alia, that no Global Tender Enquiry (GTE) shall be invited for tender upto Rs. 200 Crore.

In view of above, under procedure of National Competitive Bidding (NCB) or through GeM, the domestic manufacturer would not be eligible for deemed export benefit due to mandatory requirement of ICB under Para-7.02(f)(i) of FTP.

Here, it is pertinent to mention that, there is relaxation from condition of procurement of goods under procedure of ICB for setting up of Mega Power Projects and for Nuclear Power Project at Para-7.02(f)(iii) & 7.02(h)(iv) respectively of extant FTP.

Suggestion

In this regard, it is requested to relax the condition of ICB under Para-7.02(f)(i) of FTP as well for petroleum operations so that domestic manufacturer can continue to avail the benefit of deemed export on supply with tender value upto Rs. 200 Cr. as well as for procurements through GeM Portal.

13. Clarification under Service Tax to the effect that consortium members including operator and the consortium formed under PSC are not two distinct persons

Background

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

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

Suggestion

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

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

14. Service Tax on Cost Recovery (Cost Petroleum)

Background

The term "Cost Petroleum" is nothing but recovery of investment, made for exploration and production of hydrocarbon, from its sales revenue in terms of Production Sharing Contract (PSC). In case of there being no production, there would neither be any recovery nor the Govt. would repay for such investment/expenditure and as such it would become loss to the consortium member/contractor. Further, PSC is not a service contract but a contract for production of hydrocarbon.

Therefore, Service Tax should not be leviable on Cost Petroleum/Investment as the same is not a provision of Service. Further, it is to mention that the operator has already paid Service Tax on hiring of various services such as drilling, survey & exploration services etc. while incurring such costs. The cost-petroleum being recovery of investment as specified under PSC signed with Govt. of India, it should not be treated as provision of Service.

Under GST regime, Govt. vide circular no. 32/06/2018-GST dated 12.02.2018 clarified that cost petroleum is not a consideration for service to GoI and thus not taxable per se. However, such clarification has not been issued under service tax law and industry has received SCNs demanding service tax on cost petroleum.

Suggestion

It is therefore, requested that a clarification under Service Tax may also be issued to the fact that cost petroleum is not a consideration for any services to GOI and therefore not leviable to service tax. This would avoid litigation.

15. The Oilfield (Regulation& Development) Act, 1948

Background

Royalty is charged on the pre-discounted Price at 20% on Crude Oil and 10% on Natural Gas. The maximum Royalty that can be levied as per the Act is 20%. The rate of Royalty may be reduced under the Act so as to give some relief to the upstream sector which is already under pressure due to non-availability of ITC and lower crude oil price. This will help E&P sector to lower the burden of stranding of taxes.

16. Service Tax on Cash Calls

Background

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

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.

Downstream

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

Background

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

Since the inputs/input services procured by the petroleum industry post GST scenario is liable to tax under GST whereas the major final products of the petroleum industry continue to be liable under the existing excise and sales tax/VAT laws, etc. Thus, credit of input GST is not allowed when used in supply of these non-GST goods, such exclusion is resulting into higher stranding of taxes in the hands of the petroleum industry. It is against the objective of introducing stability and uniformity in taxation of goods and services all over the country. Also, it has resulted in more compliance work for the Petroleum Industry and Government as well.

Suggestion

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

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

Background

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

Suggestion

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

a. BS-VI MS & HSD projects
b. Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD
c. Regasification of LNG – from 18% to 5%
d. Procurement for setting up ethanol/CBG/Bio Diesel production facility
e. Lower Rate of 5% on input services used in Research Activities like notification no 45/2017 Central Tax (Rate) applicable for inputs

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

Background

The goods and services purchased for construction of cross country petroleum and natural Gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services, etc. are not eligible for input tax credit (ITC) under GST regime and will attract GST up to 28% (on Gas compressors). Applicability of high GST rate on goods and services required for laying the pipeline without benefit of ITC will substantially increase the cost of such projects.

Suggestion

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

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

Background

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

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

Suggestion

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

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

5. Allow EDI shipping Bill for ATF supplies

Background

Currently Non-EDI shipping bills (i.e. manual shipping bills) are filed for supply of ATF to foreign bound airlines, this results in additional work to the airport in charge at the locations. Further this data is not getting captured fully as the records are maintained manually. It is also increasing the burden to the customs officials to verify the data filled in the manual shipping bills.

Suggestion

It is suggested to allow the filing of EDI shipping bills based on the actual supply of the quantity of ATF and get away with the customs assessment for ATF supply to foreign bound airlines to bring more transparency and accuracy in data and ease of doing business.

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

Background

ATF is currently stored under the custody of Storage/ fuelling operators located at the airports. GST is levied and collected by on such storage charges and into plane charges. As per the current provisions of the VAT/sales tax laws for the purpose of valuation both the components (i.e. through put charges and into plane charges and GST thereon) shall be considered, which is resulting in double taxation of the same transaction twice once under the GST and second time under the relevant state VAT/sales tax laws.

Suggestion

OMCs should be permitted to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation as this would eliminate the cascading effect of tax and facilitate availment of the input tax credit (ITC) for the Carrier. Upfront exemption to GST on throughput fees pertaining to supply of ATF to foreign bound aircrafts may be notified. Another option is Government may also consider issuing a notification for exclusion of through put charges and storage charges component for the purpose of valuation under the state VAT/sales tax laws.

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

Background

ATF is currently stored under the custody of Storage/ fuelling operators located at the airports. GST is levied and collected by on such storage charges and into plane charges. The General rate of sales tax / value added tax on ATF charged by various states in India goes up to up to 30% approx. No uniformity is there in classifying ATF. Some states classify under Sales tax and some under VAT. India being an ATF surplus country, disparate and relatively high rate of sales tax/ VAT is impacting the competitiveness of Indian ATF supplying companies vis-à-vis Imports.

Suggestion

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

Local taxes such as Entry Tax, Octroi, resale tax act as an Entry barrier for the ATF suppliers and the Government may connect with states to enable abolition of these taxes. States may be given guidelines to provide Form H benefits to Penultimate buyers.

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

Background

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

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

The above provision is resulting into reversal of ITC on account of same goods in multiple states. Since, this product has already suffered ITC reversal in the manufacturing State, the same should not be included in turnover of the subsequent states. It is worth mentioning here that Under Cenvat Credit Rules, 2004 also, the value of traded goods was considered at only 10% value of traded goods for calculating reversal ratio for common input services.

Suggestion

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

*"**Explanation. -** For the purpose of this Chapter, -*
(1)
(2) 17-
(a) (b) ***(c)***
.... for determining the value of an exempt supply as referred to in sub-section (3) of section
...
...
the value of non-taxable goods i.e. MS (Petrol), HSD, ATF, Crude Oil and Natural Gas shall be included in the exempt turnover of only in the state where such goods is manufactured"
or, in case of traded excluded petroleum goods, value will be considered @ 10%

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

Background

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

Suggestion

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

10. Matching of Inward supplies

Background

Section 16 of CGST Act, 2017 read with section 42 and rule 36(4) of CGST Rules, 2017 provides for restriction on availment of input tax credit based on the upload of invoices by the corresponding suppliers in their outward supply return (GSTR-1).

As a recipient once service/goods are received, credit is availed against tax invoice and payment along with tax charged therein is made to the supplier, making the recipient responsible for tracking the invoices of respective supplier on portal and providing restriction on availment of input tax credit (ITC) in case of non-upload by supplier, is an additional burden on the recipient. Further, reversal of ITC due to non-upload by supplier also leads to double financial implication on the recipient as payment for the same has already been made to supplier. In case, payment of tax is not made by supplier, necessary action needs to be taken against the respective supplier under the provisions of CGST & SGST Act or IGST Act as the case may be, instead of putting additional financial burden on legitimate recipient through disallowance of ITC. Further, considering the PAN India presence of oil marketing companies and such voluminous transactions, the exercise of matching for each transaction is cumbersome and time consuming.

Suggestion

Once the original tax invoice has been received along with receipt of supply, buyer should not be penalized for noncompliance by the seller. Necessary notification to be issued by Govt removing

the condition of upload of invoice by supplier for availment of ITC by the recipient for ease of compliance.

11. 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.

12. Clarification on goods for Tariff classification covered under Motor Spirit (commonly known as petrol) and High-Speed Diesel

Background

Presently, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel are outside the ambit of GST as per the section 9(2) of the CGST Act 2017. However, the GST law does not define Motor Spirit (commonly known as petrol) and High-Speed Diesel. Various interpretations may be there what is covered under petrol and High- Speed Diesel (HSD) depending upon the sources. Accordingly, clarity is required as to which tariff would be covered under GST and which would be outside the ambit of GST. Further the Fourth schedule to the Central Excise Act 1944 covers various goods which are covered under GST with blank against rate of duty column.

Under the IS specification (i.e. IS 2796 / IS 1460) - BS IV and BS VI grades are covered. However, BS II & BS III grades of Petrol and Diesel are not covered in any of the IS specification. Hence inter refinery transfer of BS II / BS III may have issues on classification as Motor Spirit / Diesel.

Suggestion

Further, clarity to be provided with regards to tariff covered in GST and not covered within the ambit of GST by suitable modification to fourth Schedule so as cover only those products namely petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and

aviation turbine fuel which are outside the ambit of GST as per provision of section 9(2) of CGST Act 2017 as per the 101st Constitutional Amendment Act. In other words, schedule IV may specify the only products covered for levy of Central Excise duty and not the products covered under GST law to bring clarity across board.

Natural Gas

1. Inclusion of Natural Gas under GST

Background

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

The VAT rate on Natural Gas is very high in different states (viz. UP/AP-14.5%, Gujarat 15%, MP 14%, etc.). Since Gas based industries do not get benefit of tax credit of VAT paid on purchases of Natural Gas, it is resulting in increase in cost of production of such industrial consumers and would have inflationary effect on the economy.

Suggestion

In view of above that it is proposed that Natural Gas may be brought under GST ambit as it will have positive impact on the Natural gas-based industries and will avoid stranding of taxes.

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

Background

a. As per the extant provisions of GST laws, Input Tax Credit (ITC) is not eligible on goods / services used for construction of immovable property (other than plant and machinery). Further, the definition of Plant & Machinery specifically excludes 'Pipelines laid outside the factory premises'.
b. In view of aforesaid provision of GST law, it may be interpreted that ITC is not available on goods/services received for construction of Natural Gas / LPG pipeline networks being immovable property and not covered in the definition of plant & machinery.
c. It is submitted that under the erstwhile provisions of Cenvat Credit Rules, input tax credit (CENVAT Credit) was eligible, in general, on the goods/services received for construction of pipeline.
d. It is also submitted that the GST is applicable on the services of transportation of goods through such Natural Gas / LPG pipeline and GAIL is making payment of GST on the

transportation of entire Gas being transported through Natural Gas / LPG pipelines. The non-availability of ITC on the goods/services received for construction of pipeline has substantially increased the costs of pipeline projects resulting in higher transmission tariff and will lead to cascading and inflationary effect which is against the basis spirit and concept of GST.

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

i. Plant & Machinery is defined as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes following:
   a) Pipelines laid outside the factory premises
   b) Land, building or any other civil structures
   c) Telecommunication towers
   ii. Construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization.
   f. It may not be out of place to mention that Natural gas is mainly (around 70%) used in priority sectors like Power and fertilizer, non-availability of ITC on the GST paid on procurement on goods and services required for construction of pipeline would lead to increase in the transmission tariff and will in turn make Natural Gas costlier for power and fertilizers sectors. This may result in an adverse effect on many thrust sectors including the priority agricultural sector and may increase the subsidy burden on the Government for such sectors.

Suggestion

a. Considering that GST is applicable on the output supply of services from such Natural Gas / LPG pipelines, Input Tax Credit (ITC) on goods / services used for construction of Natural Gas / LPG pipelines may be allowed under GST laws to avoid cascading and inflationary effect.
b. The definition of term "factory" may be provided under the GST law in line with definition under the Central Excise Act.

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

Background

a. It may be observed that presently GST rate on the services of 'transportation of Natural gas through pipeline' is applicable @12% (with ITC benefit) and @5% (without ITC benefit).

b. Further, as per GST Laws, two different registered units of an entity are considered distinct persons and inter-unit billing for supply of goods/ services between such units is required to be carried out with applicable GST. Considering such provisions under GST Laws, the lower GST rate @5% (without ITC Benefit) could not practically be implemented so far, as

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

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

Suggestion

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

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

4. Rationalization of GST on the service of regasification of LNG

Background

a. Since the domestic production of Natural Gas is not enough to cater the increasing demand, import of LNG at large scale is required to augment the supply of Natural Gas for use in priority sectors such as Fertilizer, CNG, LPG, PNG etc.

b. The imported LNG has to be re-gasified and converted into Natural Gas (known as RLNG - Regasified Liquefied Natural Gas) for transportation and consumption in India. The activity of regasification of LNG presently attracts high GST @ 18%.

c. The levy of GST at higher rate of 18% on the regasification of LNG increases the landed cost of imported LNG for domestic industrial consumers. 'Natural Gas' is being kept outside the ambit of GST till the recommendation of GST council. Regasification of LNG is under GST ambit resulting in stranding of taxes, and a higher rate of tax owing to limited clarification is reducing the competitiveness of RLNG with other polluting fuels.

d. The activity of regasification may be considered as manufacturing, going by the definition of manufacture as per Sec 2(72) of the CGST Act and the transaction of regasification under job work will attract GST @ 12% vide notification no. 20/2019 Central Tax Rate

dated 30.09.2019, instead of present rate of 18%. However presently the industry is not considering the said definition due to lack of clarity and continues to charge GST @ 18%.

Suggestion

In order to promote gas-based industry in India, it is suggested that suitable amendment/ clarification may be made so that activity of regasification attracts GST @ 12% on job work basis.

5. Supply of LPG (Domestic) / NDEC at concessional rate of 5% GST

Background

Entry 165 to Schedule I of Notification No. 1/2017 - Central Tax dated 28.06.2017 provides that Liquefied Propane, Butane & LPG for supply to household domestic consumers or to NDEC Customers by IOCL, HPCL & BPCL are taxable at 5% GST. Vide notification dated, 06/2018-CT dated 25.01.2018, entry 165 was amended and entry 165A was inserted as under:

Entry 165- Liquefied Propane, Butane & LPG for supply to NDEC Customers by IOCL, HPCL & BPCL is taxable at 5% GST.

Entry 165A- Liquefied Propane, Butane & LPG for supply to household domestic consumers is taxable at 5% GST.

Further, CBIC vide circular dated 31.12.2018 has clarified that supply of LPG Dom by refiners/fractionators to OMCs for ultimate supply to household domestic consumers will attract 5% GST w.e.f. 25.01.2018. However, ambiguity with regards to applicability of GST rate on transaction undertaken during 01.07.2017 to 24.01.2018 remains under dispute.

Intention of the Govt is clear that LPG, Butane and Propane for supply to household domestic consumers should suffer the concessional rate of GST @ 5%. Even though intention is clear, however, there is possibility of dispute on the eligibility of such exemption for transactions between IOCL, BPCL & HPCL with other Refinery, fractionators & private oil companies and between the PSU OMCs for the period 01.07.2017 to 24.01.2018.

The language of the notification granting exemption to LPG (Dom) prior to the amendment is the exact replica of the language used for grant of exemption from central excise duty. During period prior to 01.07.2017, PSU OMCs were purchasing LPG for the specified end use without payment of central excise duty by such SARs/Fractionators and also from other PSU OMCs. The above was settled proposition of the law for given specified transactions and the same has never been disputed by the Central Excise Authorities. Any dispute in this regard under the GST regime now may have repercussions in the pre-GST regime under Central Excise law as entries in both regimes are identical. It is learnt that enquiry has been initiated by the department in the state of Gujarat.

Suggestion

Clarification needs to be issued to provide such concessional rate of 5% GST is applicable for all Transactions of LPG meant for ultimate supply to household domestic consumers & NDEC for the period 01.07.2017 to 24.01.2018. Such clarification is required to avoid any possible litigation at field units due to interpretation.

6. Clarification regarding GST Rate on Liquefied Petroleum Gases (LPG) supplied to OMCs for onward supply to household domestic consumers

Background

a. Under GST regime, GST @ 5% is applicable on LPG for supply to household domestic consumers or to non-domestic exempted category (NDEC) customers by IOCL, HPCL and BPCL at entry no 165 of schedule 1 of the notification no. 1/2017-Cenral Tax (Rate) dated 28.06.2017. In other cases, the GST is payable @ 18% on supply of LPG

b. As per industry practice, GST @ 5% is applicable on the manufacture of LPG supplied to OMCs for ultimate supply to household domestic consumers. Accordingly, after introduction of GST Laws, the manufacturers of LPG are supplying LPG to OMCs @ 5% based on the end use certificates given by OMCs for domestic use.

c. During Pre-GST regime, VAT was levied on LPG in similar manner and LPG for domestic use was attracting concessional rate of VAT. LPG for domestic use was included in the category of declared goods under section 14 of the CST Act 1956 under which there was upper ceiling of State VAT rate of 4% / 5%. The MoPNG had also clarified vide letter ref. No. P 20023/2/2011-PP dated 23.07.2013 to the effect that the LPG supplied in bulk as well as in cylinders by refiners/fractionators to OMCs for ultimate sale for domestic use will qualify as supply of LPG for domestic use by such refiners/ fractionators.

d. Subsequently, a new entry no. 165A had also been inserted w.e.f. 25.01.2018 to expand the scope of the concessional rate of GST @ 5% on LPG for supply to household domestic consumers by suppliers of LPG which was intended for private suppliers who were not covered under entry 165.

e. The CBIC vide Circular No. 80/54/2018-GST dated 31.12.2018 again clarified at para 6 that GST @ 5% would be applicable to LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 25.01.2018 onwards i.e. date of notification whereby entry 165A. Since entry 165A was inserted with effect from 25.01.2018 to cover the LPG domestic supplied by private manufacturers, the clarification contained in para 6 is not proper and can-not be applicable to LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 01.07.2017 to 24.01.2018.

f. However, the GST authorities have viewed that concessional GST rate @ 5% is not applicable on domestic LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 01.07.2017 to 24.01.2018 even when such supply was meant for ultimate supply to domestic household consumers and accordingly notices have been issued for the same in Gujarat. GAIL and ONGC both have filed in Gujarat High court against the notices issued by Gujarat authorities

Suggestion

It is requested that suitable clarification may be issued to Deptt. to not initiate disputes, demanding GST @ 18% on domestic LPG supplied by refiners/fractionators (like GAIL/ONGC) to OMCs for ultimate supply to household domestic consumers for the period from 01.07.2017 to 25.01.2018, on similar lines as given by council recently on levy of interest on delayed payment of GST on net basis, retrospectively with effect from 01.07.2017.

7. Double impact of GST on procurement and subsequent transfer of Pipes procured for laying other cross-country Pipeline network

Background

Under GST Laws, the input tax credit (ITC) is specifically denied on goods purchased for construction of pipeline laid outside factory premises. Thus, the goods required for construction of cross country pipeline such as pipes, pipe fittings, metering instruments etc. are not eligible for input tax credit (ITC) under GST regime.

In most cases, such pipe, pipe fittings, metering instruments etc. are procured in bulk in one State and thereafter stock transferred to other State for laying of pipeline network. Under the GST regime, such stock transfer of goods by one registered unit to another registered unit of same entity is a taxable supply and is subject to GST @ 18%. Thus, at each such stock transfer of goods, GST is applicable @ 18% at every stage. This result in double taxation on the same goods and increases the capital cost of Pipeline network.

Suggestion

In order to avoid double taxation under GST regime, it is suggested that an amendment / suitable clarification may be provided to the effect that:

i. Since input tax credit is specifically denied on goods purchased for construction of pipeline, any subsequent stock transfer of such goods by one registered unit to another registered unit of same entity will not be liable to payment of GST.

ii. Alternatively, a mechanism may be provided to allow Input Tax Credit (ITC) to the transferor unit of same entity at the time of Stock Transfer of such goods to another unit of same entity in line with the mechanism provided for airline industry. It is submitted that

in the similar circumstances vide Circular reference no. 16/16/2017 dated 15.11.2017, the input tax credit (ITC) of aircraft engines/Parts has been explicitly allowed on inter-state transfer of these goods by airline industry.

8. Clarification regarding non-applicability of GST on any component of sale price of goods not covered under GST

Background

In sectors not covered under GST such as Natural Gas, the GST authorities have started demanding GST on various components of sale price as per the terms of the contract, on which applicable VAT/CST is being charged at appropriate rate. Recently, the department has raised show cause notices on the components of Reimbursement of input taxes/expenses, Marketing Margin etc. on sale of Natural Gas.

Suggestion

In order to reduce unwarranted hardship on dealer of non GST goods like Natural Gas on account of disputes, suitable clarification may be issued that various components of sale price considered in the invoicing as per the terms of the sale contract will not be liable to GST as these are the part of composite supply.

9. Taxation on the net delivered quantity after accounting for the pre-estimated process losses for regasification.

Background

Gasoline or LNG, which are naturally volatile and evaporating, are susceptible to continuous erosion of quantity. LNG is NG that has been cooled to a liquid state at -160 degrees centigrade and compressed by 600 times. LNG will be converted to gaseous form and evaporate on its own when it is exposed to ambient conditions.

The usable form of LNG is its regasified state as NG. The process of regasification of LNG involves the passing of the liquid through heat exchangers, compressors and pipelines in a controlled manner.

Due to the intrinsic nature of losses of the product that is inherent to its handling and processing, it is a standard global practice to pre-agree on a percentage of such process losses of LNG / gas while contracting for the regasification of LNG. This loss is pre-agreed between the parties and not a consideration. This is done with a view to bring certainty to the contractually deliverable quantities and the ad valorem price per unit for the same. However, due to misunderstanding of the process there are claims on taxability on such pre-agreed process loss tolerance.

Suggestion

It is clarified that the Service Tax / GST charges for regassification of LNG being a volatile product are always on the net delivered quantity after considering the pre-estimated process losses during the regassification process.

10. Taxation on LNG fuelled vehicles to be made comparable to Electric Vehicles

Background

India is transitioning from the long-standing model of oil as the fuel of choice for transportation to a mosaic of fuels including relatively cleaner fuels such as CNG, LNG and EVs to meet the emerging mobility needs. Out of these alternative fuels, LNG is a suitable fuel for Heavy Duty transport and for inter-state bus travel from the multi-pronged parameter of environment and economics.

LNG, is gas compressed 600 times, this high energy density makes long distance travel and transportation possible. LNG is cleaner than other liquid fuels that it would replace; LNG fueled vehicles have comparably lower emissions for CO2, and for SOx and PM that affect local air quality. As such LNG should be promoted as a transport fuel for long distance travel and transportation.

At present, large scale commercial production, and, adoption of LNG fuelled vehicles is muted due to the incremental capex ask from fleet operators. LNG fuelled vehicles, and critical components like LNG fuel tank, are taxed at the same rate as Diesel and Petrol vehicles. As LNG is a cleaner fuel, to support its prompt adoption, a tax rate equivalent to that of EVs should be applicable. GST rate on EVs' and EV chargers has been reduced to 5%, similarly customs duty on EV imports has been reduced to 15%. In addition, enabling policies would facilitate faster adoption of LNG vehicles esp. as replacement for the BS-III/IV which will be phased out progressively in the near-future as per the extant polices.

Suggestion

GST rate on LNG fueled vehicles, and, import duty on components like LNG Fuel tank be reduced to 5% and 15% respectively in line with taxation on EVs. The vehicle scrapping policy may be amended to provide incentives to vehicle owners for switching to LNG vehicles. Replacement of old Diesel vehicles by LNG vehicles can be encouraged by levying GST @ ZERO rate on new LNG vehicles against a scrapped Diesel vehicle under the 'voluntary vehicle fleet modernization plan,' which is expected to be launched shortly.

Additionally, the Government may consider grants towards the incremental vehicle cost, and / or waiver of registration charges to encourage the switch

11. No reversal of input credit relating to Non-GST supplies like NG from the common credit pool of Taxable and Non-taxable supplies.

Background

As NG/RLNG is yet to brought under the ambit of GST, the prevalent indirect laws of VAT as per the CST and State VAT Act would continue to apply. Under this dual indirect tax regime, the mechanism of allocating common credits used by companies engaged in both GST services and (non-GST) trading turnovers has not been correctly defined. The said mechanism has categorised income from both revenue streams of service and trade as 'turnover'. However, under the prevailing Cenvat Credit Rules trading turnover was clarified vide an explanatory note to mean the 'value add' or difference between cost and sales for comparing with a service income. This difference or margin alone constitutes income for a trading entity.

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

To explain further, a GST enabled service income stream like 'regasification tariff' consists of less than a Dollar per unit measure. However, the price of a traded NG can be up to $10-15 per unit measure based on global demand-supply environment. Hence a business entity engaged in regasification service and trading of a petroleum product like LNG would have an adverse ratio due to the high turnover values of traded goods, and therefore lose its entire common credit due to the reversal mechanism being based on gross turnover which includes the price paid for a purchased trade stock(LNG). This is akin to comparing the price of an air conditioner with the installation charges of an Air Conditioner by an AC dealer to its customer and denial of common credits on business costs of the AC Dealer. What is more reasonably comparable is the margin made by the dealer on the sale of the Air Conditioner with the installation charges for the Air Conditioner. This was correctly contained in the Cenvat Credit Rules under an Explanation 1 of sub rule 3 (D) of Rule 6 which stated that:

'Value' for the purpose of sub rules (3) and (3A)

c. 'in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten percent of the cost of goods sold, whichever is more. In the absence of such an explanation as part of the GST Rules there is an apparent lacuna in the draft of Clause 7 (i) of the Input Tax Credit Rules which warrants immediate correction.

Suggestion

Categorisation of petroleum products under the GST Laws:

Clause 7 – Manner of determination of input tax credit in certain cases and reversal thereof:
EXCERPTS FROM INPUT TAX CREDIT RULE
(i) The amount of input tax credit attributable towards exempt supplies, be denoted as 'D1' and calculated as:
D1= (E÷F) × C2; where,
'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero-rated supplies, during the tax period, and 'F' is the total turnover of the registered person during the tax period:
(112) "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union

- From the definition of the CGST / SGST Act

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

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

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

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), NG and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
From a combined reading of the various provisions of the GST Act it is evident that

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

Incorrect Classification of Petroleum Goods as 'Exempt"

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

Exclusion of petroleum products from GST renders them ineligible to avail input credit which were availed under the extant VAT & Excise laws. Under these laws (i.e. Gujarat VAT) regasification of LNG to RLNG constituted 'manufacture' and therefore VAT on sale of LNG was offset against VAT purchases used for conversion of LNG to RLNG. This hitherto available input tax credit is not only available under the existing GST regime, but also denied the input tax credit of common credits used in the business of a non-GST and GST revenue streams.

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

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

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

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

12. Removal of Tax on Freight Charges for LNG import

Background

With effect from 22nd January 2017, the new Notification on service tax imply that Prepaid Ocean Freight (OFR) at Origin on Imports into India by way of Vessel is subject to Service Tax (now GST). This law applies to all Cargo that arrives India on Vessels. Therefore, Tax is payable on import freight for Container Cargo, Bulk Cargo, RORO and even LNG. This additional tax on import freight of LNG cargo has resulted in increase in cost of LNG for the importer.

Suggestion

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

13. LNG loaning and borrowing of in-tank quantity, at LNG terminals handling co-mingled goods with virtual segregation of title stocks, should be specifically kept out of purview of taxable transactions

Background

NG is liquefied to -160 Degrees for ease of transportation and handling. This liquefied NG or LNG is transported and stored in special vessels and storage tanks that are heavily insulated in order to maintain the temperature of LNG. NG is sold in energy units of the contents thereby making it widely tradable without determination of its physical characteristics or source of supply etc. However, due its transmission over high seas from countries around the world, the supply happens in ship loads and the schedule of which cannot be accurately determined. LNG Storage Tanks are also expensive to build and maintain due to the storage requirements of NG.

These LNG storage tanks are used to store the goods of various entities with virtual segregation of title stocks. However, due to the limited storage space, varying ship schedules, there are situations where demand exists with a certain entity while the title of LNG stock in the Tank is held by another entity resulting in mismatch and restriction of free trade and commerce of LNG in India, i.e. LNG is available in the Tank, there are willing customers at the gate, but the LNG cannot be supplied to them.

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

Suggestion

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

14. Final Assessment of imported LNG cargoes

Background

In the Customs EDI system, the final assessment of cargoes is pending due to the issue of commercial Unit Quantity Code (UQC). At present, the Bill of Entry for import of LNG is filed online in the EDI system in Cubic Meter (CBM) terms. Thereafter, the Bill of Entry is provisionally assessed by customs authorities in the EDI system, based on the transaction value in the provisional invoice. Measurement and invoicing of the quantity of LNG is in Million Metric British Thermal Units (MMBTU). However, this UQC of MMBTU is currently not available under EDI system.

This has resulted in an inordinate delay in carrying out the final assessment due to UQC constraint (MMBTU is not available as one of the UQC in the drop-down menu of EDI system).

Suggestion

The necessary changes in the EDI to incorporate the MMBTU is not available as one of the UQC in the drop-down menu of EDI system. Option to manual assessment of LNG cargo may be extended till the time above modifications are done in the system.

General

1. Non-payment of GST on "Ocean freight" (as an importer)

In case of procurement of goods on CIF basis, the importer of goods is liable to pay GST under reverse charge on Ocean Freight. Further, while calculating the customs duty, assessable value includes the freight cost. Thus, there is double taxation on the ocean freight.

2. Canteen Services

Pre GST, exemption from Services Tax was provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act,1948 (63 of 1948), having the facility of air-conditioning or central air heating at any time during the year.

Similar exemption may be provided under GST regime.

3. Amendment in Supplies reported in GSTR-1

Background

Certain times amendments are required for correction in supplies reported in GSTR-1 under B2C and B2CL category as B2B due to incorrect data uploads. GSTN portal allows amendment from B2C to B2B only once whereas amendment of B2CL supplies as B2B are not allowed, which have implication on input tax credit to the recipient.

Suggestion

Necessary facility may be provided on GSTN portal to amend the B2CL transactions as B2B. Further, amendment in B2C transaction to B2B may be allowed for more than once for a period till annual returns are filed.

4. Proportionate reversal of credit on "Capital goods" for every tax period

Background

In respect of capital goods used in the production of GST and Non-GST goods ITC on capital goods will be reversed along with 18% interest. Further, the formulae for reversal of credit are also very

complicated due to which taxpayers are having unnecessary compliance and administrative hassle.

Suggestion

It is suggested that interest payable is to be waived in cases where surplus GST ITC is availed by the taxpayer in case of common capital goods.

5. Inclusion of Electricity production and transmission in GST regime

Background

Electricity generation does not come under Excise, and there is no Service Tax on sale of Electricity either. Tax on consumption or sale of electricity (Electricity Duty) is levied by States through specific legislations and is based on the value or the units of electricity. This tax is charged by the electricity distributors to consumers. Electricity needs to be subsumed into GST, for the energy sector be able to avail credits of GST paid on inputs, services and capital goods used in sale of electricity.

This mismatch of tax structure on input / raw material vs electricity sold breaks the tax credit value chain adding to the burden on either the electricity generation / distribution companies or on the end consumers.

Suggestion

Electricity generation, transmission and distribution should be brought under the ambit of the GST regime.

6. All Drop in Bio-fuels (intermediate & finished -from advanced biofuel processes) such as bio-petrol, bio-jet, bio-char, etc. to be classified under HSN and be brought under the ambit of GST at a uniform rate of 5%

Background

All Drop in Biofuels (intermediate & finished -from advanced biofuel processes) should be brought under GST at a uniform rate of 5% on the lines of Ethanol and Bio-CNG. Drop in bio-fuels are directly produced using catalytic thermochemical processes from biomass residues/waste derived from

1. the forestry sector (sawdust, slash, forest litter, pre-commercial thinnings, etc.),
2. the agricultural sector (bagasse, corn stover, cotton straw, castor stalks, paddy straw, cane tops/trash, mulberry sticks, jatropha cuttings, etc.) and
3. the municipal sector – Municipal Solid Waste (solid mixed organic waste including select plastics).

A drop-in fuel can be used "as is" in currently available engines either in pure form and/or blended in any amount with other drop-in neat, drop-in blend, or conventional fuels. India can reduce crude imports by a significant amount besides addressing the problem of pollution to some extent if all the MSW and agricultural waste are converted into fuels. Some other benefits of drop-in biofuels is as follows:

- Benefits expected to farmers on account of agricultural waste being procured from them at competitive prices and in a sustainable manner. Potential solution for eliminating the issues around burning of agricultural waste.
- Use of mixed organic municipal solid and other kinds of waste (MSW) will greatly help in achieving objectives of the Swachh Bharat Mission on a large scale. The process will also help in contributing to climate change mitigation, creating new employment opportunities and leading to environmentally sustainable development.
- Significantly reduces land required for landfills – only inerts and sweeping wastes sent to landfills; gives an impetus to Green India while also reducing reliance on polluting fuels.

Since Biofuels are seen as non-polluting and clean with several benefits as enumerated in the preceding paragraphs, it is important in the interest of a level playing field that all biofuels/products should be brought under the ambit of GST.

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

Suggestion

HSN codes should be assigned to all the bio-products including bio-petrol, bio-jet, bio-char, etc. Further, all bio-fuels such as bio-petrol, bio-jet, bio-char and others should be brought within the ambit of GST at a uniform rate of 5%.

7. Clarification regarding GST Rate on Compressed Biogas (CBG)

Background

'Bio Gas' is covered under GST regime and is taxable at the rate of 5% [sl.no. 127 of Schedule I of Notification No. 1/2017-CT (Rates)]. However, GST rate for CBG (Compressed Biogas) is not prescribed under GST law. It is understood that in absence of any separate GST rate for CBG (Compressed Biogas), taxation at the rate of 5% (i.e. the rate which is applicable on supply of 'Biogas') may be challenged by the GST authorities. 'Biogas'/ CBG (Compressed Biogas) can be transported and supplied in equal energy terms in a common pipeline network along with existing Natural Gas in the pipeline network.

Suggestion

In view of above, it is proposed that a clarification regarding GST rate on CBG may be issued so as to avoid any future dispute that CBG industry may face. Further, in case 'Biogas'/ CBG (Compressed Biogas) is supplied and transported through a common carrier pipeline or any other common transport or distribution system and becomes co-mingled and fungible with other gas in the pipeline/transportation/storage system and such gas is taken out from the system in the equal energy terms, or supplied through common dispensing unit, it may be considered as supply of 'Biogas'/ CBG (Compressed Biogas) and may be taxable under GST.

8. Customs duty and GST exemption for all Capital Equipment on initial setting up of waste to energy plants and on project imports, renovation / modernization of renewable energy projects

Background

Setting up a waste of waste to energy bio-fuel plant involves substantial capital requirement for the main processing plant, renovation and modernization of renewable energy projects and initial sourcing of certain equipment from outside India. Investment in such plants aligns with the Government's ambition for import substitution of crude/fuels, energy security and reduction in pollution thereby promoting a clean energy eco-system.

Suggestion

Exemption should be provided from Customs duty and GST on import of equipment required for setting up of waste to bio-fuel plant and on project imports, renovation / modernization of renewable energy projects.

9. Fiscal incentives in development of offshore wind farm

Background

The GoI plans to withdraw customs duty concessions for wind-turbine components to encourage the use of local equipment, Currently all turbines installed in India are onshore models. Indian manufacturers are capable of manufacturing OFW turbine models as well, it is expected that initial models will be fully imported or may have major proportion of imported components.

Suggestion

In order to encourage a kickstart to the industry, the GoI may consider exempting offshore wind turbine models from GST/customs duty till Indian manufacturing is geared to meet the large requirements locally.

10. Exemptions related to GST/ excise/ customs for port development related to offshore wind

Background

GoI has announced targets of 5 GW offshore wind by 2022 and 30 GW by 2030. To achieve these targets and to carry out EPC activities related to offshore wind, specialised port infrastructure is required. The existing ports may not be fully capable to handle the requirements emerging from this large renewable energy generation expansion.

Suggestion

Supporting development of OFW ports/ port infrastructure on BOO/BOT models in partnership with private player is recommended. Exemptions related to GST/ excise/ customs recommended vis-à-vis ordinary port development.

11. Waiver of interstate transmission system (ISTS) charges and losses

Background

The Ministry of Power (MoP) has waived interstate transmission system (ISTS) charges and losses on all onshore solar and wind projects commissioned before June 30, 2023. This would apply to solar, wind, and hybrid projects with or without storage.

Suggestion

It is recommended to extend waiver of interstate transmission system (ISTS) charges and losses to the offshore wind projects.

12. Exempt GST on sale of lubricants to foreign bound vessels

Background

Before the implementation of GST, lubricants supplied to foreign -bound vessels were exempt from tax as the sales was a "deemed export" and hence, no tax was attracted on the sale. However, under the GST regime, the "place of supply" for sale of lubricants is the location where the goods are onboarded on the vessel. As the goods are on-boarded at Indian ports, the destination of the vessel become immaterial and the transaction is subject to GST as the place of supply is India. The change in tax treatment of such transaction has hugely impacted the Oil and Gas Industry, making bunkering at Indian ports a less-preferred option in comparison to other ports where the supply is tax free. After considerable representations made by the Industry bodies, GST rate was reduced from 18% to 5% for bunker fuel supplied at Indian ports. This concession, however is not applicable to lubricants and lubricants supplied to vessels at Indian ports continue to attract GST at 18%, making the Indian market uncompetitive for refueling.

Suggestion

It is requested that supply of lubricants to foreign bound vessels be treated as exports and exempt from tax as the recipeint of the goods is situated outside India, the destination of the vessel is outside India and the revenue for such supplies results in a positive NFE. If not exempt, it is requested that lubricants be treated on par with bunker fuel and be given the same benefit of lower GST rate as bunker fuel to boost exports.

13. Payment under Reverse Charge Mechanism (RCM) by Input Service Distributor

Background

As per CGST Rules, in case Input service distributor (ISD) wants to take RCM supplies, a separate normal registration is required. Further, rule 54 (1A) provides that such common RCM supplies can be transferred to ISD by raising an invoice. Accordingly, following three documents are prepared for a common RCM inward supply received by ISD:

a. Payment of tax under RCM by normal registration and generation of tax invoice as recipient in case of unregistered supplier.

b. raising an invoice under rule 54(1A) of CGST Rules, 2017 from normal registration for such common RCM on ISD registration.

c. raising an ISD invoice on respective recipient from ISD registration. Generation of three documents for a single transaction is leading to unnecessary additional compliance. In case ISD is allowed to make the payment of RCM supplies, the requirement to raise tax invoice under 54(1A) can be removed.

Suggestion

Necessary notification to be issued by Govt. to allow the payment of RCM under ISD registration.

14. Review of Domestic Gas Pricing formula
(HSN 2711)

Background

Effective from 01 Nov'14, Domestic Natural Gas prices are being determined in accordance with the pricing formula of guidelines dated 25.10.2014 and notified by MoP&NG on half-yearly basis.

However, concerns have been raised by the industry on existing pricing formula citing arguments like

(a) India being a gas deficient country, consideration of prices of gas in surplus hubs like Canada, US and Russia in the pricing formula does not truly reflect domestic gas market dynamics;

(b) averaging of benchmark prices over the past year with a lag of a quarter mean that the domestic gas price movement is often out of sync with ground realities of price movements;
(c) non-consideration of prices of LNG imported into India in the gas pricing formula; and
(d) deduction of US$ 0.50/mmbtu towards the cost of transportation and treatment (T&T), despite the fact that ONGC is supplying treated gas at landfall point.

It is also expected that if the existing pricing formula continued, expected domestic gas price effective from 01 Oct'20 would be all time low to the order of $ 1.80/mmbtu. At these prices, expected losses from gas business during 2020-21 could be to the order of Rs. 8,000 Crore.

Suggestion

Industry has been representing to the Government for review of existing domestic gas pricing formula. A remunerative gas price would incentivize domestic producers leading to increased domestic exploration and production resulting to direct savings in the country's import bill. Needless to mention that an MMBTU of natural gas not produced domestically (being economically not viable at existing price) would be substituted by imported LNG, resulting into foreign exchange outgo for the country. Further, domestic production also result in additional contribution to exchequer by way of payment of statutory levies to Govt. besides economically positive multiplier effect of capex spending and job creation within the country.

Excise Duty

Upstream

1. Abolition/ Review of rate of OIDB cess on oil production in the Pre-NELP Exploration Blocks /Nomination regime

Background

OID Cess is levied on crude oil in terms of The Oil Industries (Development) Act, 1974. Till Feb'16, OID Cess was levied at specific rate (Rs./ MT) and revised from time to time keeping in view crude oil prices. Considering unprecedented reduction in crude prices, OID Cess was reviewed and revised from Rs. 4,500/MT to ad-valorem 20% w.e.f. 01 Mar'16. Though, in the Budget, introduction of ad-valorem OID Cess rate was envisaged by the Government as relief for the industry, its unduly high rate at 20% has impacted industry adversely. As, historically OID Cess has been levied in range of 8-10% of crude price, Industry including ONGC has been making representation to Govt. for review and reduce the rate of OID Cess.

OID Cess is levied @ 20% only on crude oil produced from nominated blocks and Pre-NELP Exploratory Blocks. Most of the Fields of the Pre-NELP and nomination regime are already in the decline stage and need more initiatives and expenditure to maintain/enhance the existing production level. **It is pertinent to mention that OID Cess is not applicable in NELP, OALP and**

DSF blocks. It is understood that cess exemption has been extended under relevant schemes to augment domestic oil production.

Further OID Cess is levied only on crude oil produced domestically. Thus it places domestic crude oil producers at a significant disadvantage vis-à-vis imported crude oil. This levy, thus, is against the very spirit of "Make in India" and needs an amendment.

Besides OID Cess, other statutory levies viz. royalty (@ 10% and 20% on offshore & onshore production respectively) and VAT (@ 5%) are also paid. Both royalty and OID Cess are production levies and not pass through to Buyers and form part of cost of production. It makes many new development projects economically unviable. During low crude oil price regime, it also results into significant amount of impairment loss of upstream assets.

Suggestion

(a) Request for abolition of OID Cess in respect of nomination / pre-NELP blocks is well justified. Exemption of Cess will improve the techno-economics of these Fields for further production. The increased liquidity will encourage the contractor for continuous investment in these fields for maintaining/enhancing the production. This would make more projects viable and with increased production, any balance revenue gap will be more than compensated.

(b) In case, Cess is not abolished, considering the minimum price required to meet its cost of production and to sustain the operations, it is proposed to levy OID Cess based on a fair graded system linked to crude oil prices to calibrate volatility in prices:

Crude Oil Prices ($/bbl)	OID Cess (Ad-valorem)
Upto 25	NIL
25 to 50	5%
50 to 70	10%
70 and above	20%

2. Additional levy of Basic Excise Duty (BED) on Domestic Production of Petroleum Crude in addition to NCCD

Background

The Hon'ble Finance Minister in her budget speech 2019 stated that tobacco products and crude attract National Calamity & Contingent Duty (NCCD). In certain cases this levy has been contested on the ground that there is no BED on these items. To address this issue, a nominal basic excise duty has been imposed.

Accordingly, Fourth Schedule to Central Excise Act has been amended to levy BED at the rate of 'Rs. 1 per tonne' on domestic production of petroleum crude. This additional levy of BED has created hardship in compliance of Excise Law in respect of each producing assets. In addition to BED, the OID Cess, a duty of excise is being discharged through centralised concept by obtaining single Excise Registration in view of Circular No. 18/88 dated 20.05.1988 issued by Ministry of Finance.

Further, the NCCD was introduced by Ministry of Finance @ Rs 50 per MT on indigenous crude oil. This duty was to be valid for one year i.e. upto 29.02.2004 so as to replenish the National Calamity Contingency Fund, but it is still continuing. Accordingly, Oil Industry has been representing from time to time for removal of NCCD.

GST has been introduced since 1st July 2017 subsuming most of the indirect tax levies including Excise duty, Service Tax, VAT, Central Sales Tax etc. However, Crude Oil, Natural Gas in addition to Petrol (MS), Diesel (HSD), ATF are still kept out of GST. Hence, there is substantial stranding of taxes in the hands of company effecting cash flow negatively. Further, Company is burdened with dual compliance of GST law as well as Central Excise & VAT laws.

Suggestion

In view of above, the NCCD along with BED on production of domestic crude oil should be removed with immediate effect which would facilitate the compliance as well as ease of doing business.

3. Levy of Excise Duty

Background

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

Suggestion

To help in ease of business doing

4. Excise Registration

Background

Excise registration is required to be obtained for each factory. E&P operations are carried out across the field area granted by the DGH and production takes places across various producing wells scattered across. Taking registration for each producing well is not practical. Exemption benefit on similar line as given to Coal Mining vides Notification no. 10/2011-Central Excise (N.T.) dated 24.03.2011 should be extended for E&P Industry also. To help in ease of business doing.

Downstream

1. Upfront exemption of duties of Excise on HSD (HSN: 2710)

Background

Excise duty was exempt for High Speed Diesel (HSD) procured under ICB conditions for the E&P sector vide Notification No. 12/2012-CE dated 17.03.2012. Post introduction of GST, exemptions were withdrawn and rates were prescribed for Excise Duty w.e.f. 01.07.2017 on High Speed Diesel (HSD) vide Notification No.11/2017-CE. E&P Companies pay excise duty on procurement of diesel that is used for petroleum operations.
Under the Foreign Trade Policy 2015-20, goods procured under ICB are eligible for benefits applicable to 'Deemed Export'. Accordingly, the excise duty paid on diesel procurement for petroleum operations is eligible for refund.

Suggestion

To provide boost and incentive to the upstream sector, it is requested 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.

2. Ethanol Blended Motor Spirit - Section 11D demand

Background

Oil companies are blending Ethanol / bio diesel with MS / HSD in the prescribed ratio for selling Ethanol Blended MS (EBMS) / Diesel blended with Bio Diesel (B5 HSD). Excise law provides for exemption of duty on such blending activity. As per ministerial direction the sale price of these products is kept same as that of non-blended MS / HSD. Department is raising issue with regard to the recovery of the excise duty through price by the oil companies on the ethanol / bio diesel portion of the blended product on the ground that price is the same.

Suggestion

Clarification or 11C notification may be issued by CBIC that in case of Ethanol Blended Petrol sold at the same price that of Motor Spirit would not be subjected to provision section 11D of Central Excise Act.

3. 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.

4. Concessional Rate of Duty – ATF for RCS flights

Background

Notification no - 11/2017-CE as amended by notification 7/2019-CE dated 22/08/19 extends the concessional rate of excise duty @ 2% to Aviation Turbine Fuel (ATF) supplied to RCS airline operators for Regional Connectivity Services (RCS) flight from RCS airport subject to conditions as stated therein (Normal rate of Excise duty on ATF currently is 11%). In terms of one of the conditions for the concessional rate of excise duty, such concessional rate is applicable up to 3 year from date of commencement of operations of RCS- UDAN airport or heliport or waterdrome as notified by Ministry of Civil Aviation or till the end of scheme period whichever is earlier (Sunset clause for the exemption).

Suggestion

A uniform date can be provided for the validity of the exemption for all supplies under RCS category to avoid disputes w.r.t to validity dates due to possible different interpretations.

5. 2710 12 49 - M15 conforming to IS 17026 (correct IS 17076)

Background

M15 would be a blend of 15% Methanol + 3% Additive (Isobutyl Alcohol) + 10 ppm CI + 82% Motor Spirit. This blended product is being understood as M-15 Petrol and is expected to be sold in market. The blending process is to be proposed to be undertaken at Terminals / Depots (other than refineries) wherein the blending of Methanol (covered under GST) with normal petrol cleared from refinery on payment of duties. Blending of ethanol with normal petrol is considered as manufacturing activity by the authorities and accordingly they have provided duty exemption for 5% Ethanol blended Motor Spirit (EBMS) and 10% EBMS. Since M15 would also be blend of Methanol with Petrol, the same would also be considered by the authorities as manufacture under the Central Excise law and would attract duties of excise on the M15 also in the absence of exemption notifications.

Basic excise duty is exempt by virtue of sl. no 10 of the notification 11/2017-CE dated as amended by 09/2019 –CE.

However, there is no exemption notification available on date for other duties like Special Additional Duty (SAED) and Additional duties of excise (Road and Infrastructure Cess- RIC). Hence OMC would be required to pay duties on M15 quantities blended by them. Further the CENVAT credit rules also does not provide for relief on the duties paid on clearance of normal MS.

Suggestion

Request for product specs of M15 petrol as non-GST product and for exemption from the Special Additional Duty (SAED) and Additional duties of excise (Road and Infrastructure Cess- RIC) on M-15 and E 20 fuels also is required to avoid double duty implications. Further suitable of Corrigendum for IS specification for M-15 to be amended from IS 17026 to IS 17076.

6. 2710 12 42 - E 20 Fuels conforming to IS 17021

Background

E 20 would be a blend of 20% Ethanol with 80% of normal Petrol. The blended product E 20 is expected to be sold in market as Motor Spirit. The blending process is to be undertaken at Terminals / Depots (other than refineries) wherein the blending of Ethanol (covered under GST) with normal petrol cleared from refinery on payment of duties. Blending of ethanol with normal petrol is considered as manufacturing activity by the authorities and accordingly they have provided duty exemption for 5% Ethanol blended Motor Spirit (EBMS) and 10% EBMS.

Since E 20 would also be blend of Ethanol with Petrol, the same would also be considered by the authorities as manufacture under the Central Excise law and would attract duties of excise on the

E20 also in the absence of exemption notifications.

Basic excise duty is exempt by virtue of sl. no 10 of the notification 11/2017-CE dated as amended by 09/2019 –CE. However, there is no exemption notification available on date for other duties like Special Additional Duty (SAED) and Additional duties of excise (Road and Infrastructure Cess-RIC). Hence OMC would be required to pay duties on E20 quantities blended by them. Further the CENVAT credit rules also does not provide for relief on the duties paid on clearance of normal MS.

Suggestion

Request for product specs of E20 petrol as non-GST product and for exemption from the Special Additional Duty (SAED) and Additional duties of excise (Road and Infrastructure Cess- RIC) on E 20 fuels also is required to avoid double duty implications.

7. Amendment to existing excise tariff for blending of More than 10% Ethanol with normal Petrol

Background

IOCL is proposing to blend 12 % of Ethanol with MS. Currently the excise tariff and notification provides only for 5% and 10 % EBMS. The tariff also provides for 20% EBMS under E20 category. However, the IS and excise tariff does not cover the E 12.

Suggestion

Suitable amendment needs to be undertaken in IS specification and under excise tariff / notification for covering the various ethanol blending ratios proposed.

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

Background

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

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

Suggestion

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

9. 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.

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.

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.

Natural Gas

1. Exemption to CNG from payment of excise duty/GST

Background

Presently, Central Excise duty is applicable on CNG due to Chapter Note 3 of Chapter Note to Chapter 27 of CETA. It may also be observed that after introduction of GST, the process of compression of Natural Gas into CNG is also exigible to GST. Thus, the conversion process is now suffering with double taxation i.e. Central Excise and GST, thereby increasing the overall cost of CNG leading to inflated pricing. It is desirable that conversion of Natural Gas into CNG be exempted either from Central Excise Duty or GST, at least to avoid the double taxation. This will promote usage of this environmental friendly fuel in domestic and commercial transportation sectors.

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

Suggestion

In view of the above, the conversion of Natural Gas into CNG may be exempted either from levy of Central Excise Duty or GST. This will make CNG more economical and will promote use of this environment friendly fuel in domestic and commercial transportation sectors.

General

1. 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

1. Net Duty Protection to Oil refining Industry

The net duty protection available at present is only around 0.5 % which is inadequate as compared to around 4% in FY 2004-05. The refining margin has 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.

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.

2. Social welfare surcharge (SWS) on MS and HSD

Background

When Social Welfare Surcharge was introduced by the union budget in 2018, MS and HSD was specifically excluded from the levy. When all the inputs imported by the refineries are subject to SWS, exemption of MS/HSD creates an inequitable situation of non-recovery of cost in the import parity component of MS and HSD.

In order to remove this anomaly of the input being subject to higher tax without corresponding levy on the output, resulting in losses to the refineries, the exemption of SWS to MS and HSD is required to be withdrawn. This will also have the impact of making the imports costlier and further incentivize domestic production and procurement.

Natural Gas

1. Custom duty exemption on import of Liquefied Natural Gas (LNG)

Background

a. Import Duty (Basic Customs Duty) @ 2.5% plus Social Welfare surcharge @10% is applicable on import of Liquefied Natural Gas (LNG), the effective Customs duty comes to 2.75%.
b. Import of LNG for exclusive consumption in generation of electric energy for public distribution is exempt from custom duty subject to certain conditions. However, other important sectors like fertilizer, LPG, CNG, PNG, and Petrochemical bears the burden of effective Custom duty @ 2.75%.
c. The Custom duty increases the landed cost of imported LNG for domestic and industrial consumers. Since the domestic production of Natural Gas is not enough to cater the

increasing demand, import of LNG at large scale is required to augment supply of Natural Gas for priority sectors such as Fertilizer, CNG, LPG, PNG etc.

d. Natural Gas is an environment friendly fuel and it is desirable that import of LNG is exempted from custom duty to enable cost effective supply of gas to major industries like fertilizer, LPG, CNG, PNG, Petrochemical and power.

Suggestion

It is suggested that LNG Import may be exempted from payment of custom duty (present rate @ 2.5% plus SWS @10%) to provide relief to gas based industries and domestic consumers. This will also promote usage of this environmental friendly fuel in industrial and domestic sectors.

General

1. Rationalization of suspension of deferred duty payment benefit in Customs

Background

Customs is providing benefit of deferred duty payment to different categories of Importers/Exporters through schemes such as AEO, in line with the larger Government objective of Ease of Doing Business. However, the impugned benefits sometimes get suspended due to pending duty demands, irrespective of the amount involved in demand. Such blanket suspension of benefits on account of small disputes defeats the larger objective of Government of supporting businesses.

Suggestion

It is suggested that suitable guidelines may be issued for rationalizing such suspension of benefits by enabling a threshold limit of pending demands for such suspension, so that the industry can utilize the benefit extended by the Government in true spirit.

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

Background

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.

In Oil & Gas Industry, import of material are on estimated basis where due to technical difficulties (like drill plan change, data from exploratory phase, well construction contingencies, design change etc.), there is accumulation of such unused material for long time.

The requirement to mutilate goods will significantly increase the cost for companies as the goods are spread across different parts of the country. Therefore, it is requested to provide relaxation from the condition of mutilation for disposal.

Suggestion

It is therefore, requested to provide relaxation from the condition of mutilation for disposal.

Central Sales Tax (CST)

Upstream

Downstream

1. Removal of CST

Background

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

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 12 years. CST continues to be levied on Non- GST products, viz, Crude, Natural Gas, MS, HSD and ATF. This has the effect of inefficiencies in logistics, straining the infrastructure facilities and incurrence of unproductive avoidable costs.

Further, CST incidence is only on standalone refineries having little revenue implications but significantly impairs the financial ability as the standalone refineries are required to absorb the CST on interstate sale of petroleum products without any offsetting recovery mechanism.

Suggestion

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.

2. Removal/Reduction in VAT on Crude & Natural Gas

Background

Crude & Natural Gas continues to suffer VAT at 5% or CST of 2%.
While the import duty on crude is Nil (except for NCCD) and Natural gas is 2.5%, VAT results in inverted duty structure and hence domestic crude is costlier than imported crude and is against the principle of supporting of domestic production. Hence there is a strong case for reduction in VAT/CST on crude Oil. With the implementation of GST, the entire VAT is required to be absorbed as a cost, as no input Tax credit is available.

While the margins in the petroleum industry is around 2% to 3%, absorption of 5% cost on crude is unsustainable

Suggestion

VAT Rate can be reduced considering Nil Revenue implications for the Centre and negligible revenue implications for state Governments (Many offshore crude fields, do not suffer VAT/CST).

General

1. Amendment in CST Law regarding inter-state sale of non-GST goods to Dealers handling GST products

Background

With the implementation of GST Law w.e.f. 01.07.17, entry 54 of List II of the seventh schedule of The Constitution was amended to define goods to means, goods not falling under GST i.e. Motor Spirit (commonly known as petrol), High speed diesel, natural gas, aviation turbine fuel and crude oil. Accordingly, definition of good provided u/s 2(d) of CST Act was amended restricting the meaning of goods as mentioned above 6 goods. Similarly, State Sales Tax/VAT Acts were amended by the respective State Government.

With such amendments various State Govt. are of the view that procurement of these goods against Form C is allowed only to those dealers who are dealing with such non-GST goods and dealers dealing in GST products are not provided Form C for procurement of non-GST products as they are not qualify for registration under section 7(1) & 7(2) of the CST Act.

Issue is under litigation under various High Courts. In the case of M/s Carpo Power Ltd vs State of Haryana {reported in 2018 (4) TMI 146} Hon'ble High Court of Punjab and Haryana has allowed the petitioner to purchase Natural Gas against form C for the generation of electricity. SLP filed by State Govt. has also been dismissed by Apex Court. Even after the judgment, industries dealing with GST product are struggling to get Form C from the State Govt.

OMCs are facing difficulty in day to day operations as customers are obtaining final order / interim orders from High Courts directing refund of differential tax from 01.07.17. Since such differential tax has already been discharged by OMCs, refund of the same leads to financial burden on the OMCs as obtaining refunds of the same from supplying State Govt. is a long-drawn process and usually takes larger period.

Suggestion

Necessary notification may be issued to include Goods and Service Tax law within the definition of state law in section 2(i) of the CST Act.

Further, explanation may be added in section 8(3)(b) of the CST Act to provide that manufacturing or processing of goods for sale to also include manufacturing or processing of goods covered under CGST Act, 2017, IGST Act, 2017, UTGST Act, 2017 or respective State GST Act, besides goods in mining, goods used for generation and distribution of power and telecommunication network.

2. 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 was 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. This has further been postponed to 31st March 2021 in the 39th GST Council Meeting.

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

3. Mandatory E-invoicing for all B2B businesses

Government has provided for mandatory generation of e-invoice from common e-invoice portal from 1st October 2020 for persons having aggregate turnover of more than Rs. 500 crore. It is suggested that all B2B suppliers irrespective of their turnover may be mandatorily covered for the e-invoicing provisions so as to avoid any ineligible credits.

4. 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 Industry, 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

Therefore, 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 monetary basis.

Direct Taxes

Upstream

1. 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

1) 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.

2) Sunset Clause in Section 35CCB of Income Tax Act, 1961 may be increased from 31st march, 2002, to conserve the natural resources

Though environment conservation is covered under the Schedule VII of CSR provision of Companies Act, 2013 provides 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 on expenditure incurred 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.

Further, to conserve the natural resources it is imperative to extend the sunset clause so that entity can make concerted effort in saving natural resources.

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

Background

Currently, 100% deduction u/s 42 is available to the entities.

Suggestion

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

This will help encourage companies to invest capital in the efforts to boost domestic hydrocarbon production and reduce dependence on imported crude.

3. Investment in new Plant & Machinery (Section 32AC)

Background

Section 32 AC provided for a deduction of 15% of the actual cost of new assets acquired and installed by a company, if the amount of investment exceeded Rs.25 crores. No deduction under this section shall be allowed for any Assessment Year commencing on or after the 1st day of April, 2018.

Suggestion

Validity of deduction u/s 32 AC should be restored w.e.f. Assessment year AY 2021-22. This will incentivize investments in new plant and machinery and lead to faster growth in manufacturing sector.

4. Changes in section 234C of the Income-tax Act, 1961, (Interest for deferment of advance tax)

Background

Section 234C of the Income-tax Act, 1961, provides for levy of interest where there is shortfall in any installment of advance tax actually paid vis-à-vis the installment of advance tax payable as per the returned income.

Suggestion

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

(a) Fluctuations in the international prices of Crude Oil.
(b) Movements in the Exchange Rates for foreign currencies,
(c) Government directives on subsidy sharing,

since such unpredictable factors lead to difficulty in reasonable estimation of taxable profit and under estimation results in levy of interest u/s. 234C for no fault of the upstream oil & gas companies.

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

Background

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

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.

Suggestion

In order to boost the oil production, it is recommended to restore tax holidays for new blocks awarded under OALP

6. Deduction for EOR expenditure

Background

Weighted deduction of 150% of Enhanced Oil Recovery (EOR) expenditure

Enhanced Oil Recovery, a stage of hydrocarbon production that involves use of sophisticated techniques to recover more oil than would be possible by utilizing only primary production techniques or waterflooding. These new techniques require heavy investment in Oil and Gas business.

On 10th October, 2018, GOI notified policy framework to promote and incentivize Enhanced Recovery Method for Oil and Gas which provides various incentives on account of Indirect Taxes, such as, waiver of 50% in OIDA cess, waiver of royalty on incremental production on gas, etc. However, there is no incentive announced under Income Tax for the expenditure incurred in relation to EOR.

Suggestion

To make these capital intensive and risky projects commercially viable, weighted deduction on EOR expenditure is recommended.

7. 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 taxpayer 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.

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 taxpayer 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.

Downstream

1. 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.

2. Waiver of Interest under section 234B and 234C

Background

Oil Companies have not been able to estimate their profits with any accuracy due to pricing mechanism currently in vogue and sensitivity of pricing of petroleum products. Whereas, the Industry has been subjected to 234B/234C like any other Assessee without a special dispensation. The statute provides enough powers with Chief Commissioner of Income Tax for waiver of interest. However, the waiver applications are not disposed off.

Suggestion

It is imperative to pass on necessary administrative instructions by the Board for disposal of waiver applications in a time bound manner.

Natural Gas

1. **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.**

Background

The entities engaged in the LNG sector typically engage in intercompany trade to varying degrees as per their business requirements to facilitate trade, and this practice is in line with the global energy industry. In India, the intercompany trade is also likely to witness an uptick as the reliance on imported LNG increases. This warrants determination of arms-length prices which adhere to relevant transfer pricing legislation. Additionally, as the long-term LNG contracts are increasingly being replaced by spot contracts, which are largely determined by several instantaneous factors. Nearly 35% of LNG globally is now traded on the spot/short-term 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.

2. **Obtainment of secret comparables from corporates under Sec 133(6) of Income Tax Act should not be applicable for non-commodities like LNG**

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

1. Clarification regarding Vivad Se Vishwas Scheme

Background

During the recent budget presented on 1st Feb 2020, the Finance Minister has introduced the Vivad Se Vishwas Scheme (VsVs) in order to resolve pending litigation under the Income Tax Act, 1961 (ITL). The bill on the VsV Scheme was introduced in the lower house of parliament on 5th February 2020 and the President has provided assent on the said bill on 17th Mar 2020.

As per the Act the specified date is 31st January, 2020 and the due date for application was kept as 31.03.2020.

There were cases pending as on 31st January, 2020 many of which were heard but order or judgment was not passed till 31st January, 2020. Therefore, these cases are eligible under scheme even if an order or judgment is passed on or after 1st February 2020. This needs a clarification about the effect of these orders for consideration under VsVs scheme.

There may be many assessment orders/ appealable orders / judgments passed or can be passed after specified date (presently 31.01.2020) but before closure of the present scheme, against which appeal can be filed by assessee or revenue. In such cases, there may not be point that first of all litigation should be initiated by revenue or assesse for being eligible under the scheme. In such cases the assesse can be permitted to avail the scheme even without filing an appeal himself or without waiting revenue to file a further appeal before higher forum.

Therefore, the scheme should also be open in cases where:

(a) Where appeal was pending as on 31.01.2020, but order or judgment has been passed after 31.01.2020, e.g. say judgment is pronounced by Tribunal or High Court or order is passed by CIT(A) on or after 01.02.2020 but before the last date for filing of declaration under the scheme, the benefit of filing declaration for settlement under the scheme should be extended.

(b) Assessment order or Appealable order or judgment is passed after 31.01.2020, but before last date for filing of declaration, in such cases declaration for settlement under the scheme should be allowed , even without filing of appeal by assessee himself or further appeal by revenue.

This will be a case of Vishwas because assesse will pay due amount under scheme with confidence that he need not to indulge in further litigation and he also need not to file an appeal but can pay tax under the scheme to keep his liability restricted.

Suggestion

Therefore, the scope of the VsVs scheme be clarified and the specified date be suitably extended. The appellant and specified date can be re-defined on the following lines for the purpose:

"appellant" includes the following;

(i) the person or the income-tax authority or both who has filed appeal before the appellate forum and such appeal is pending on the specified date;

(ii) the person who has received any appealable order but has not yet filed appeal but can file an appeal, or tax authority can file further appeal before higher forum, within originally allowed limitation to file such appeal by the person or tax authority.

"specified date" means the 31st day of January, 2020 in relation to case pending as on that day before any appellate forums, and

The last date for making a declaration under this Act, in relation to appealable orders against which assesse has time available to file appeal or the concerned tax authority has time available to file further appeal.

Further, there should be clarity in law in respect to, the assessees opting for settlement of more than one year, the net amount payable should be net of refund due in any particular year/years. In other words, if assessee is entitled to get refund in any year, the refund amount should be allowed to adjust in a year where assesse is required to pay tax and the assesse would be required to pay only the net amount considering all Assessment Years together.

2. Specific clarification under VSVs on coverage of certain issues settled before the Hon'ble High Court (HC)

Background

Any taxpayer opting for settlement of appeal matter(s) under DTVSV Act is required to file a specified declaration/ undertaking with the designated authority and pay a specified percentage of disputed tax towards final settlement. For this purpose, the taxpayer is required to cover all issues forming part of an appeal proposed to be settled under DTVSV Act and does not have an option to pick and drop specific issues among multiple issues involved in such appeal.

Specific clarificatory FAQs released by CBDT, do not on an overall basis cover all issues for effective implementation of the Scheme, especially issues wherein finality has been received at HC level without any appeal ever being preferred before the Supreme Court (SC) or where the matter has not been admitted by the HC citing absence of substantial question of law.

Under the existing provisions of DTVSV Act read with relevant FAQs, where appellant opts for settlement of an appeal covering multiple issues including such issues settled before the HC, in absence of any specific clarification, 50% of disputed tax may still be required to be paid for settlement. This may lead to gross injustice for the appellant considering the issue(s) stands settled in favor of appellant as revenue's appeal did not and cannot reach SC under any circumstances for failing to raise substantial question of law. This is also in contrast with FAQ no. 37 released by CBDT wherein the taxpayer is permitted to settle an issue ruled in favor by the Hon'ble SC considering NIL tax payable on such issue.

Suggestion

It is requested that a suitable direction/ clarification be issued such that matters settled before HC are aligned in terms of FAQ-37 issued by CBDT and NIL tax could be considered on issues where appellant has got a favorable decision from HC and matters stand settled (despite not reaching SC).

3. 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.

Suggestion

A separate sub section under section 36 to be introduced to allow provision for post-retirement medical benefits or suitable clarification to that effect may be issued by CBDT.

4. 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. Normally, entire CSR expenditure is disallowed in the hands of assessee. Some of the companies are spending even more than the mandatory limit of 2%.

Suggestion

To encourage the application of CSR in letter & spirit, expenditure incurred beyond statutory limit of 2% should be allowed under business expenditure to the assessee paying tax under normal provision as well as to assessee paying tax u/s 115BAA. 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 beyond statutory limit of 2%.

5. 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.

6. Clarification on Provision of section 31(1) (va) Employees' Contribution Towards Staff Welfare Schemes

Background

Deduction in respect of any sum received by the taxpayer as contribution from his employees towards any welfare fund of such employees is allowed only if such sum is credited by the taxpayer to the employee's account in the relevant fund on or before the due date. Due date for the purpose of this section means the due date of relevant act.

If employees contribution towards provident fund is credited by the employer after due date, it is not deductible under section 36(1)(va), even if it is credited/paid on or before the due date of submission of return on or before due date of submission of return of income u/s 139(1).

Suggestion

Referring some of the rulings where the due date for payment of employees contribution of provident fund under section 36(1)(va) has been treated same as contemplated under section 43B, therefore, payment made before due date of filing return has been treated allowable. Hence it is suggested to give clarity of law in the particular section for uniformity in the deduction under this section.

7. Deemed acceptance of rectification application if rectification is not carried out in 6 months' time

Background

Section 154(8) provides that where an application for rectification is made to an Income-tax authority, the authority shall pass an order within a period of six months from the end of the month in which the application is received.

Suggestion

It is recommended that where action on rectification application is not carried out within a period of six months, such application should be deemed to have been allowed. It is also requested that in cases of tax refunds due to the assessee, the time-limit of four years for rectification should be waived off, more particularly in cases where the assessee is not at fault for the delay in disposal of an application for rectification.

8. Deduction u/s 80G may be allowed to the assessees opting to pay tax u/s 115BAA for FY 2020-21.

Background

According to the Finance Act, 2020, any domestic company opting for Concessional Tax Regime under section 115BAA of the Act cannot claim deduction under any provisions of Chapter VI-A other than section 80JJA or section 80M effective from AY 2021-22. Thus, the Government while

enacting the Finance Act, 2020 has deferred the condition of not claiming any deduction falling under Chapter VI-A other than section 80JJA or section 80M to next financial year i.e. FY 2020-21.

Suggestion

To encourage the values of bestowment, deduction u/s 8G may be allowed to the assesses opting to pay tax u/s 115BAA for the contributions made towards PM & CM funds at least.

9. Prescription of exemption from deeming of fair market value of shares for certain transactions

Background

The existing provisions of the section 56(2)(x) of the Income-tax Act, inter alia, provide for chargeability of income in case of receipt of money or specified property for no or inadequate consideration. For determining the amount of income for receipt of certain shares, the fair market value of the shares is taken into account. Similarly, section 50CA provides for deeming of fair market value of unquoted shares for computing the capital gains from the transfer of such shares. For both these provisions, the fair market value is determined based on the prescribed method.

Determination of fair market value based on the prescribed rules may result into genuine hardship in certain cases where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination.

In order to provide relief to such types of transactions from the applicability of sections 56(2)(x) and 50CA, it was proposed in Finance Bill 2019 to amend these sections to empower the Board to prescribe transactions undertaken by certain class of persons to which the provisions of section 56(2)(x) and 50CA shall not be applicable.

Suggestion

It is suggested that in order to enable the benefit of the amendment introduced in Finance Bill 2019, CBDT should prescribe such transactions undertaken by certain class of persons where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination, to which the provisions of section 56(2)(x) and 50CA shall not be applicable.

10. Exemption for transactions relating to PSU from TCS u/s Sec 206C(1H).

Background

As per the newly introduced Sec 206C(1H), with effect from 01-Oct-2020, it is mandatory for seller to levy TCS on sale on all goods @0.10 % (1.00% in case of no PAN/Aadhar of buyer) on the total sale consideration and deposit the same with Government after collection from the buyer,

it is applicable for sale consideration exceeding Rs.50 lakhs for each buyer in a financial year. Under the said provision, however, the following authorities are kept out of purview of definition of "Buyer" which means that TCS will not be levied on any sale to these authorities/agencies.

a) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
b) a local authority as defined in the Explanation to clause (20) of section 10.
c) Any other agency to be notified by Government from time to time

However, PSUs are not excluded from the definition of "Buyer" implying that inter PSU sale/purchase transactions and purchase transactions of PSUs from private entities are subject to TCS. The impugned transactions may be exempted from TCS as PSUs in general are tax compliant Assessees and there are very stringent checks and controls including CAG audit etc which ensure transparency and accountability in its functioning. Similar type of exemption has been granted to PSUs w.r.t GST TDS.

Suggestion

It is suggested that exemption may be granted from TCS to PSUs for (i) inter PSU sale/purchase transactions and (ii) purchase transactions of PSUs from private entities, by way of inclusion of PSUs in the exclusion list of the definition of "Buyer" u/s 206C(1H) as has been provided to PSUs under GST TDS.

11. Disallowance under section 14A (read with rule 8D)

Background

Presently section 14A read with rule 8D of the Income Tax Rules provides for disallowance of expenditure incurred in earning exempted incomes. Rule 8D (2)(ii) has a deeming provision which provides for disallowance of 1% of the annual average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income.

Suggestion

Such adhoc disallowance should be removed by amending Rule 8D of the Income Tax Rules,1962 as it results in notional disallowance in case of investments that are long term in nature and do not entail any activity/monitoring on a regular basis and as such does not involve any expenditure in the earning of annual exempted income in the form of dividend/interest.

This will result in eliminating disallowance of genuine business expenditure. Further due to the inclusion of the expression "income from which does not or shall not form part of total income" in the amended Sub rule (2) (ii) of Rule 8D of the Income Tax Rules, 1962 the Income Tax Department also takes into account investments, income from which is not includible in the total income in spite of the fact that there may not be any income from such investments earned/accrued during the year. This is an undue burden on assesses which needs to be removed.

12. Request for Clarifications under section 206C(1H) - TCS on Sale of Goods

Background

With an objective to widen and deepen the tax net, Government has introduced section 206C(1H) vide Finance Act 2020. As per the newly inserted sub-section (1H) to section 206C, a specified seller receiving consideration for sale of any goods of the value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India, is required to collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax (TCS).

However, there are certain issues that arises in interpreting terms “export out of India” on which the taxpayer requires clarity. The said issue arises particularly in case of oil marketing companies. IOC undertakes the following sale transactions in course of its business:

a. Sale of aviation fuel to Indian Airlines Company on their foreign run i.e. flight originating from airport in India with foreign destination, with or without an intermediate destination in India.
b. Sale of bunker fuel to a foreign shipping company on their foreign run i.e. voyage originating from port in India with foreign destination, with or without an intermediate destination in India.
c. Sale of bunker fuel to an Indian shipping company on their foreign run i.e. voyage originating from port in India with foreign destination, with or without an intermediate destination in India.

Though a circular has been issued dated 29thSept., 2020 clarifying various issues, however the clarity on above issues is still required.
Accordingly, Oil Marketing Companies have sought for exemption for the following transactions

a) Whether the referred transactions would be treated as ‘goods exported out of India’ and shall accordingly be excluded from the purview of sub-section (1H) of section 206C of the Income-tax Act, 1961.

b) Whether the provisions of section 206C(1H) of the Income-tax Act, 1961 would not be applicable to the non-resident buyers whose income is not liable to tax in India. IOC sells bunker fuel to foreign shipping companies. The status of such foreign shipping companies is a non- resident in India. India has entered in to tax treaty with various Countries. Generally, as per tax treaty, profits derived by foreign shipping companies from the operation of ships in international traffic is not taxable in the source country i.e. India.

Suggestion

Suitable Explanation to Section 206C(1H) of the Income Tax Act 1961 may be added stating that 'goods exported out of India' shall include transaction involving re-fuelling of foreign bound Aircraft, Ship or Vessel on their foreign run originating from Airport / Port in India with a foreign destination, with or without an intermediate destination in India.

13. Relaxation from Faceless Assessment -Section 143(3A) and 143(3B)

Background

Finance Act 2019 introduced 3 sub-section to section 143(3) of the Income tax Act, 1961 empowering CBDT to notify a new scheme of Faceless Assessment to impart greater efficiency, transparency and accountability. CBDT vide order dt. 13th August 2020 has directed that all assessment orders shall henceforth be passed by National e-Assessment Centre (NeAC) through Faceless Assessment Scheme failing which it shall be treated as void.

Suggestion

Suitable exception may be made in the Faceless Assessment Scheme specifying that Faceless Assessment shall not be applicable in case of Assessee being a very large Company with turnover above a certain monetary threshold, say Rs. 1 Lakh crores. Assessment for such entities would continue to be conducted by Jurisdictional Assessing Officer.

14. Lowering of Income tax rate

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 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 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%

Claiming of Additional Depreciation

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 if the lower tax regime has to be benefited the same has to be extended by providing additional depreciation also. 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 2018-19, it is high time that the tax rate is reduced to all domestic companies to 25% and remove surcharge and education cess on it.

15. Lower corporate tax rate for new manufacturing companies

As per section 115BAB, domestic company will be entitled to the benefit of lower corporate tax rate i.e. base rate of 15% (effective tax rate @ 17.16%), if the company has been set up and registered on or after 1 October 2019 and has commenced manufacturing on or before 31 March 2023.

Large projects, like new refineries and petrochemical plants, with substantial capex involve long gestation period., But they have the potential for large direct and indirect employment besides triggering further industrial development and further employment opportunities and support the Government Vision of Atma Nirbhar and boost domestic manufacturing with high compounding potential. It may be noted that the CPCL is proposing to invest around Rs 30,000 crore towards new 9 MMTPA refinery at Cauvery Basin, Nagapattinam.

Such a large investment would entail long construction period of more than 4 years and a long gestation period. Certainty of lower tax rate, will help in supporting the economics of the project. Uncertainty of tax rates, will hamper the investments. Hence, it is suggested that lower tax rates may be allowed for all investment above threshold of say Rs.10000 Crore, which involve substantial construction time. Also present COVID situation justifies extension/removal of sun set Clause of 31st March 2023.

16. Social and community welfare expenses – allowance under section 37(1) as business expenditure

Social and community welfare expenses are incurred by assessees in fulfillment of their Corporate Social Responsibility (CSR). Specifically, the Public Sector Enterprises expend these sums under the Special Component Plan/ Tribal Component plan under the directions of the administrative Ministry. These expenses are incurred with the noble intention of helping the socially and economically weaker sections of the society. In doing so, the assessees share the duties of the Government in this regard. However, such expenses are being disallowed on the ground that they do not relate to the business of the assessee. This serves as a disincentive to the assessee in fulfilling their CSR. In order to encourage, such expenses may be allowed as business expenditure u/s 37(1). Being recognized as a good corporate citizen serves the business of the assessee in creating a favorable business environment and branding of the business. Moreover, inasmuch as the expenses are incurred under the directions of the administrative Ministry, they also partake the character of Business expenditure.

Accordingly, expenditure on Social and community welfare expenses may be made as allowable business expenditure.

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

Background

- 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.

18. 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.

19. Section 80JJAA – Deduction of additional employee cost for 3 years – Relaxation of upper cap on total emoluments which is Rs 25000 p.m. currently

Background

Currently, Section 80JJAA of the Income-tax Act, 1961 allows for a deduction of 30% of additional employee cost incurred for 3 assessment years each in respect of the total emoluments paid to additional employees employed during a previous year. However, additional employees only cover new employees whose total emoluments are up to Rs 25000 p.m.

Suggestion

The intention of this section is to promote creation of new jobs which is especially critical in today's macro environment and at least for a foreseeable future. The government has practically exempted individuals with NTI up to Rs 5 lakhs from paying any tax as small taxpayers or new

earners. To bring consistency in policy, the government should change the upper cap from Rs 25000 p.m. to those whose Net Total Income exceed Rs 5 lakhs. This will allow a meaningful deduction for industry which will incentivise creation of additional jobs especially for young skilled graduates.

20. Transfer pricing compliances should also be exempted for Non- Residents when tax has been deducted at rates as per section 115A of the Income Tax Act

Background

Finance Act 2020, amended the provisions of section 115A to the extent that, where the income in a previous year of the Non-resident, consisted only of income in the nature of Royalty or Fees for technical services and withholding tax thereon has been deducted at a rate not less than the rate as per the provisions of the Act, then it shall not be necessary for the Assessee to furnish return of income under section 139(1) of the Income Tax Act. However, similar exemption is not available for Transfer Pricing compliances.

Suggestion

The Finance Act 2020, while exempting Non- Residents on the requirement to file the Return of income, based on the criteria mentioned in the overview above, the assessee has to continue with the Transfer pricing compliances as a similar amendment has not been made in the Transfer pricing provisions. If the Transfer pricing compliances are also exempted it would be encouraging to the assessee by removing the compliance requirement totally and beneficial to the assessee who is offering the relevant income to withholding as per the provisions of the Act.

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

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 instalments is not possible.

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.

22. 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 traded in the recognized stock exchanges and accordingly would be chargeable to Capital Gain Tax or Business Income based on the well-accepted principles.

23. Interest on Refunds paid to the assessee.

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.

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.

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

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.

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

25. 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.

26. TDS on Transportation payment under section 194C

Background

There will not be any deduction of TDS under section 194C 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 into unnecessary huge compliance. Exemption from TDS deduction may be provided to all as was available till 31st May 2015 on the condition of furnishing of the PAN by contractor to deductor. Condition of obtaining the self- declaration form, from the deductee and updating every time in ERP system is a very cumbersome &time consuming process.

27. 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.

28. Lower tax rates to be extended to Manufacturing Companies with substantial expansion

Background

In line with the Hon‟ble Prime Minister‟s call for qualitative and sustainable industrial growth in the form of "Make in India", 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.

Suggestion

Hence, benefit available under section 32AD, 32AC and 80IB(9) which available only to new manufacturing companies may be extended to existing manufacturing companies doing substantial capacity additions.

29. 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 is 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.

30. 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

31. Tax Loss Carry back

Tax loss carry back 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.

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

Background

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.

Suggestion

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.

33. Impairment of Assets

Background

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.

Suggestion

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.

34. Scrapping of ICDS

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 recognized 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 utilized or not for the capital project, concept of materiality not recognized 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.

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

35. 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

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

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)

36. TDS on cash call

Background

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

Suggestion

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

37. 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). 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).

38. 15% corporate tax rate for new mining companies

Please extend the benefits of Sec 115BAB to new mining companies also. With effect from 1ST April 2020, government has introduced new section 115BAB for new manufacturing companies and exclude the mining from it . In order to promote Aatam nirnbhar bharat , benefits of this section should also be extended to mining companies.

39. Section 80 M

Intercompany dividends eligible for 80 M deduction should be treated as exempt for the purpose of MAT calculation as well as setting of such dividend income with business losses/unabsorbed depreciation.

As per section 80M, any dividend received from body corporate used further to declare divided to its shareholder is not taxable and eligible for deduction. Though this amount is eligible for deduction but still taxable for MAT purpose and will generate MAT credit which is not the intention of this section after abolishment of DDT provision.

Even under normal tax provision where the company has business loss, instead of claiming the deduction under Sec 80 M dividend income has to first set off against with business loss which results in tax loss to the company as same can be set off in future years with business income. Thus, whole purpose of non-taxing the dividend income in case used to distribute it further is defeated.

40. 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.

41. 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.

42. Clarity on equalization levy and need for a FAQ on e-commerce activities and operators

Background

Finance Act, 2020 included within the ambit of Equalisation Levy ('EL'), consideration received by foreign e-commerce operators from e-commerce supply or services made, provided, or facilitated extending the initial coverage of digital advertisement arena. The EL proposes to levy

2 per cent tax on all non-residents engaged or facilitating the online sale of goods or services subject to certain conditions.

The definition of the terms 'e-commerce operator' and 'e-commerce supply or services' are fairly wide in scope and not clear in terms of its applicability to various transactions (viz., intra-group services/ software related payments, etc) which might lead to their interpretation in a broad sense, leading to coverage of unintended transactions.

The EL is outside the ambit of income tax and is therefore not covered by double taxation avoidance agreements (DTAAs). Consequently, non-residents subjected to EL cannot claim relief under DTAAs and will not be entitled to credit for EL paid in India in their country of residence. Further, a unilateral EL not having the backing of international consensus will have a domino effect on Indian consumers. E-commerce operators will inevitably look to pass the additional costs of the new tax to sellers or consumers.

Suggestion

During these unprecedented times, it is recommended that the Government issues FAQ to provide clarity on the coverage of EL which would come as respite for ensuring compliance.

43. Revised return u/s 139(5)

Background

As per Section 139(5) a revised return may be filed by the assessees at any time before the end of the relevant assessment year or before the assessment is made, whichever is earlier

Suggestion

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 (applicable upto AY 2017-18) may be brought back.

This will be helpful in reviewing the last years position in the light of new information/developments taking place while furnishing return for the next financial year.

44. Rectification of mistake u/s 154 of the 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 relief that would be available to an assessee in case the application made u/s 154 is not disposed of within six months has not been spelt out.

Suggestion

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 within six months, the same shall be deemed to have been accepted by the AO and resulting impact should be given by passing the necessary order within time bound manner.

This would ensure promptness in disposal of applications under section 154 and avoid undue harassment to the taxpayers.

45. Rationalizing TDS Provisions - 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 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. Thus, there is a need to revise the provisions in view of practical difficulties.

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.

46. TDS credit to be allowed irrespective of the Assessment Year

Background

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

Suggestion

It is, therefore, suggested that the TDS credit may be allowed to the deductee irrespective of the Assessment Year in which the corresponding income is offered to tax.

47. 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 an irrevocable 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.

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

Background

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

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

up and the Hon'ble Supreme Court has dismissed Special Leave Petition filed by the Revenue against the Hon'ble High Court's judgment. Thus, the issue has attained the finality.

As a consequence of the aforesaid, in tax protected contracts with non-residents (where 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.

49. Rationalizing the provisions of section 248

Background

As per the provisions of section 248 of the Income-tax Act, 1961, where under an agreement or arrangement, TDS applicable on any income (other than interest) payable to a non-resident is borne by the payer and, the payer claims that no TDS is required to be deducted from the income so payable as against the TDS directed in the order issued u/s. 195(2), then an appeal may be filed by the payer against such order u/s. 195(2) claiming that no TDS was deductible on such income.

The aforesaid section provides an opportunity to file an appeal by the payer (who bears the applicable TDS) who is aggrieved by TDS determined pursuant to the order issued by the Income-tax Department u/s. 195(2). The section, however, covers only the cases where the payer claims that no TDS is applicable on the income of the non-resident.

Section 195(2) of the Income-tax Act, 1961, is meant to determine the proportion of the income of the non-resident which is chargeable to tax in India and applicability of TDS is regulated accordingly. There could be instances where the payer does not deny the liability to effect TDS on income of the non-resident but is of the view that the proportion determined to be taxable by the Income-tax Department in the order u/s. 195(2) is erroneous.

For instance, the Income-tax Department directs that the income of the non-resident is taxable as "fees for technical services" u/s. 115A of the Act and, accordingly, gross income of the non-resident is subject to income-tax (TDS) @10% (plus applicable surcharge and health and education cess) whereas the payer is of the view that, the income is covered under the deeming provisions of section 44BB of the Act, and, hence, only 10% of total income of the non-resident is subject to income-tax at the rate of 40% (plus applicable surcharge and health and education cess) thereby arriving at an effective rate of 4% (plus applicable surcharge and health and education cess). In such a case, it is apprehended that, given the coverage of section 248 of the Act and the language employed therein, appeal filed by the payer u/s. 248 may be rejected by an appellate authority on the ground of maintainability.

Suggestion

It is, therefore, suggested that the provisions of section 248 may be suitably amended to also cover the cases where the payer does not deny the liability of TDS but is of the view that TDS is applicable at a rate lower than the rate determined pursuant to the order u/s. 195(2).

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

Background

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

Suggestion

It is, therefore, submitted that the interest rate on the refunds due to the assessee and on the amounts payable by the assessee to the Government should be same on the ground of equity.

51. 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.

52. Insertion of specific definition of "month"

Background

Under the Income-tax Act, 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".

53. 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.

54. Restriction on adjustment of demands pending disposal of appeal

Background

The Central Board of Direct Taxes had, vide Office Memorandum dated 29-02-2016 and 31-07-2017, issued guidelines for granting stay of demands pending disposal of appeals by first appellate authority. As per the aforesaid guidelines, where the outstanding demand is disputed before the CIT(A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 20% of the disputed amount.

However, in practice, it has been observed that, pending disposal of appeal by CIT (A), the amount of demands raised and collected by the assessing officers often exceed 20% of total disputed amount and in certain cases, the entire demand is collected by way of payment / adjustment of refunds arising in any other assessment year.

Suggestion

Pending disposal of appeal by the first appellate authority, deposit of substantial part of disputed demand (by way of payment or adjustment against the refunds due) causes undue hardship to the assessee. The same is also not in line with the guidelines issued by the Central Board of Direct Taxes.

It is, therefore, suggested that suitable provisions may be inserted in section 245 (which empowers the assessing officer to adjust refunds against the outstanding demands) or section 220 of the Act (which deals with payments of outstanding demands) restricting the assessing officers to raise and collect demands (by any mode) exceeding 20% of total disputed amount pending disposal of appeal by CIT(A). It may also be provided therein that the demand in excess of 20% of disputed amount may be raised and recovered by the assessing officer only with the prior approval of Chief Commissioner of Income-tax.

Further, to safeguard the Revenue's interest, certain exceptions to the aforesaid general rule may also be provided in line with the ones contained in CBDT's Office Memorandum dated 29-02-2016.

55. Adjustment of written down value in respect of unclaimed additional depreciation allowance

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 previous 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% and deduction in respect of the balance 50% of the amount of depreciation is allowable in immediately succeeding previous year.

In terms of section 115BAA(2) of the Act, the total income of a domestic company under the new tax regime would be computed without setting off of, inter-alia, depreciation from any earlier assessment year. Further, section 115BAA(3) provides that, under the new tax regime, depreciation as referred to above would be deemed to have been given full effect to and no further deduction would be allowed in respect thereof for any subsequent year.

A proviso has, however, been inserted to section 115BAA(3) which clarifies that, where there is a depreciation allowance in respect of a block of asset, which has not been given full effect to prior to the assessment year beginning on 1st April, 2020, corresponding adjustment would be made to the written down value of such block of asset as on 1st day of April, 2019, in the prescribed manner if the asesse opts for the new tax regime for a previous year relevant to the assessment year beginning on 1st day of April, 2020.

As per the provisions of section 115BAA(5), the option to calculate the income under the new tax regime can be exercised by a domestic company on or before due date for filing return of income for a previous year relevant to the assessment year 2020-21 and onwards, such option once exercised cannot be changed and would apply to subsequent assessment years. Thus, the law does not provide for any cut-off date/year to opt for the new tax regime after which the option cannot be exercised, the same would be available from AY 2020-21 onwards.

However, the aforesaid proviso to section 115BAA(3) restricts its applicability only in case of an assessee who opts for the new tax regime from AY 2020-21. This would put an assessee who opts for the new tax regime after AY 2020-21 to a disadvantageous position vis-à-vis an assessee who opts for the same from AY 2020-21.

When the provisions of section 115BAA provides ample flexibility to the assessee to choose the assessment year from which it can opt for the new tax regime, the legislative intent ought not to have been to prescribe a cut-off date/year only in respect of a particular benefit available thereunder.

Thus, the availability of benefit in respect of adjustment of written down value in respect of unclaimed additional depreciation allowance only in cases where the assessee opts for the new tax regime for AY 2020-21 onwards (under the proviso to section 115BAA(3) of the Act) does not seem to be in line with the legislative intent of bringing in the new tax regime. The same would also discourage assessee's to switch to the new tax regime who could not opt for the same for AY 2020-21.

Suggestion

It is, therefore, suggested that, the proviso to section 115BAA(3) may be suitably amended to repeal the references of AY 2020-21 therefrom. It may provide on generic terms that-

"Where, at the time of exercising the option as referred to in section 115BAA(5), there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year from which the option is exercised, corresponding adjustment would be made to the written down value of such block of asset as on 1st day of April of the assessment

year immediately preceding the assessment year from which the option is exercised in the prescribed manner.

56. Deducibility of expenditure incurred on abandonment and site restoration activities in accordance with Site Restoration Fund Scheme, 1999

Background

As per the provisions of section 33ABA of the Income-tax Act, 1961 (Act), any amount deposited in a separate and dedicated account, maintained in accordance with Site Restoration Fund (SRF) Scheme,1999, including interest accrued thereon is allowed as deduction in the year in which such deposit (including interest accrued as deemed deposit) is made. Further, the aforesaid section, inter-alia, provides that expenditure incurred for the purposes specified in the SRF Scheme, by withdrawing amount from the SRF account, shall not be allowed as deduction in the year in which such expenditure is incurred.

If a domestic company opts for the new tax regime u/s 115BAA of the Act, it would not be entitled to certain deductions and exemptions as specified therein which are otherwise available under the law to other assessees. Exemptions and deductions which would not be available under new tax regime include deduction under section 33ABA of the Act, in respect of amount deposited in an account maintained under SRF Scheme.

Under the Income-tax Act, deduction is allowable in respect of any expenditure incurred wholly and exclusively for the purpose of business. Thus, if under the new tax regime, deduction is not available at the time of depositing the sum in an account maintained under SRF Scheme (including interest credited thereon), the same should be available in the year in which the expenditure is incurred for the purposes specified in SRF Scheme by withdrawing the amount from SRF account.

However, since section 115BAA or section 33ABA does not provide the mechanism for claiming deduction in respect of expenditure which shall be incurred for abandonment and site restoration activities, out of amounts withdrawn from SRF account, which are/were deposited from the year in which the option for new tax regime is exercised, litigation would be imminent to occur

It is apprehended that, in absence of requisite clarity on the issue, the Income-tax Authorities may tend to disallow the expenditure incurred towards abandonment and site restoration activities even in respect of expenditure incurred for which deduction was not claimed in the year of deposit of amount in SRF Account, for the years for which new tax regime is opted.

Suggestion

It is, therefore, suggested that to bring clarity in this regard to avoid unnecessary litigation, a new sub-section (10) may be inserted in section 33ABA which may read as follows-

"Nothing contained in sub-sections (5), (6) and (7) shall apply in respect of such assessees who have exercised the option provided in section 115BAA, for such amount which have been deposited or credited by way of interest during the previous year in which such option is exercised or any subsequent previous year and for which deduction has not been allowed under sub-section (1)."

57. MAT Credit Entitlement u/s 115JAA

Background

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

Suggestion

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.

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

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 is 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%.

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