FIPI

Federation of Indian Petroleum Industry

PRE-BUDGET MEMORANDUM
UNION BUDGET 2023-24

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A. Direct Tax

I) Income Tax

Upstream

1 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 105 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.

2 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.

3 Investment allowance (Section 32AC)

Background

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

Suggestion

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

4 Deduction for Exploration and Development expenditure u/s 42

Background

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

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.

5 Climate Change, Environment Conservation & Conservation of natural resources

Background

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

Suggestion

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

- 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.

6 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 2022-23. This will incentivize investments in new plant and machinery and support the Atmanirbhar Bharat Abhiyaan

Downstream

1 Introduction of 194Q and overlap with Section 206C (1H) and unintended consequence of Rule 31AA :

Background
In case of purchase of goods on which the purchaser is obliged to deduct TDS u/s. 194Q the seller is still required to incorporate the details of such sale under Rule 31AA (Return) along with the details of TDS deducted on purchase for the purpose Sec. 206C(1H). In order to incorporate the details of TDS the seller has to collect the details of TDS. It would be difficult for the seller to collect the related information with regards to TDS applied by the buyer and then incorporate the same in TCS return under Rule 31AA. Even if, the seller is not responsible for collection of TCS on sale of goods u/s. 206C(1H) he will have to update in the return.

Suggestion:
Therefore, it is requested to make suitable amendments in Income Tax Rules, 1962 to exempt such requirement as per Rule 31AA.

2 Reduction of TDS rate u/s 194LC

Background
TDS u/s 194LC @5% is to be deducted in case of payment of interest by an Indian Company or a business trust in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond). This TDS is to be paid by oil companies as the interest payment is done on net of tax basis.

In the finance bill 2020, TDS u/s 194LC was reduced from 5% to 4% in case where interest is payable in respect of Long-term Bond or Rupee Denominated Bond listed on recognized stock exchange located in IFSC.

Suggestion
It is requested to please reduce the rate from 5% to 4% for all types of borrowings covered u/s 194LC to have a uniform single rate.

3 Deduction for Expansion and Up-gradation of Refineries

Background
Plans for faster and inclusive growth will result in higher consumption of energy/fuel which will entail infrastructural preparedness by the Oil Marketing Companies (OMCs) and Standalone Refineries

Given the large, expected step-up in fuel demand, the OMCs/Standalone Refineries are required to reinforce their infrastructure in terms of capacity augmentation & fuel-quality Upgradation in line with Environmental norms. Needless to say, commensurate investments

will be required for supporting such expansion which would require a large amount of funds by OMCs/Standalone Refineries have substantial interest costs, etc.

Suggestion
In order to sustain the existence and to be a part of the inclusive growth plans of the nation, either a profit-based or investment-based incentive should be provided to Refineries for expansion and up-gradation of their refineries.

Natural Gas

1 Exemption of storage income on natural gas

Background
Income of a foreign company on account of storage of crude oil in India and sale of crude oil there from to any person resident in India is exempt.

Suggestion
It is recommended to extend this exemption to Indian Companies which are engaged in the business of storage of natural gas in India. This will assist Indian Companies to expand their LNG storage facilities and will promote Natural Gas usage in the Country. It will also bring tax equilibrium among the Indian counterparts as compared to the foreign counterparts.

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

Background
The 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.

3 Secret comparable from corporates under Sec 133(6) of Income Tax Act should not be applicable for non-commodities like LNG. [Transfer Pricing]

Background
The term ’secret comparable’ denotes a comparable whose data is not available in the public domain but is known only to the tax authority which is making the transfer pricing adjustment. The determination of LNG pricing is highly complex, due to international price changes, varying cost of intermediary logistic services etc. Thus, the secret comparables obtained from corporates are usually far from accurate and hence should not be applicable. The arms-length

price for LNG needs to account for functional differences. Thus, allowing the 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 Availability of deduction under new tax regime in respect 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.

Suggestion
It is, therefore, suggested that, 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)."

Justification

Since section 115BAA or section 33ABA of the Act 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.

2 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 employer 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.

Suggestion: -

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

Justification: -

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 trust's substantial amounts by way of contribution. Some of these trusts have been set up as discretionary trusts with absolute discretion to the trustees to utilize 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"

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.

3 Restriction on adjustment of demands exceeding 20%, pending disposal of appeal filed against the order

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 number 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: -

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.

Justification

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.

4 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.

Suggestion

The Central Board of Direct Taxes has, vide circular no. 03/2010 dated 02-03-2010, clarified that there is no need for banks to deduct tax at source on provisioning of interest since no constructive credit to depositor's/payee's account takes place. 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.

Justification

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 assesses to avoid any adverse comment from auditors to the effect that the accounts do not reflect a true and fair view. In most of these cases, even the identity of the payees is not known and a consolidated liability is provided on an entirely ad-hoc basis such as the amount which had been paid on a particular account in the preceding years. Owing to such ad-hoc nature of such liabilities, they are mostly reversed at the start of the succeeding year and whenever identity of the payees and amounts payable to them becomes clear, liability for the same is provided subsequently. In circumstances where the identity of the payee and the amount payable to that payee are not known and only an ad-hoc liability is provided, the requirement to deduct tax at source causes hardship to assesses. Thus, there is a need to revise the provisions in view of practical difficulties.

5 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.

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

Background

Section 234C of the Act 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 and Justification

It is suggested that upstream oil & gas companies may be exempted from the rigors of section 234C or the rigors 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.

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

Background

i) Section 195A of the Income-tax Act, 1961 requires multi-stage grossing up of income for TDS purposes if tax on the income of the payee is to be borne by the payer.
ii) Section 44BB of the Act is a deeming provision which provides that income of a non-resident engaged in the business of providing services and facilities in connection with prospecting for, or extraction or production of mineral oils, shall be deemed to be 10% of the amounts specified in sub-section (2) thereof. Sub-section (2) of section 44BB would include any tax payable in respect of the sums payable to the non-resident. It has been held by the Hon'ble Uttarakhand High Court that the provisions of section 44BB admit of only single stage grossing up and the Hon'ble Supreme Court has dismissed Special Leave Petition filed by the Revenue against the Hon'ble High Court's judgment. Thus, the issue has attained the finality.

Suggestion

In order to remove the aforesaid dichotomy in the methods of grossing up for TDS and for assessment purposes, suitable amendment may be made in section 195A of the Act 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.

Justification

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.

8 Rationalizing the provisions of section 239A of the Act

Background

As per the provisions of section 239A of the Income-tax Act, 1961, inserted by the Finance Act, 2022, 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, then, the payer may, within a period of 30 days from the date of payment of such TDS, file an application before the Assessing Officer for refund of such TDS in such form and such manner as may be prescribed.

If the aforesaid application for refund is rejected by the Assessing Officer, then, an appeal may be filed before the Commissioner of Income-tax (Appeals) u/s 246A of the Income-tax Act against the order rejecting the refund application.

Suggestion
Provisions of section 239A may be suitably amended to also cover the cases where the payer does not claim that no TDS was required to be deducted but is of the view that TDS was applicable at a rate lower than the rate at which the same has been deducted/deposited.

Justification
The aforesaid section provides an opportunity to file an application by the payer (who bears the applicable TDS) if such payer, after having deposited TDS, claims that no TDS should have been applicable. However, section 239A does not cover a situation where the payer feels that TDS should have been deducted/deposited at a rate lower than the rate at which the same has been deducted/deposited.

There could be instances where TDS is deposited @10% on gross sums payable to the non-resident considering the receipts of the non-resident to be taxable as "fees for technical services" u/s 115A of the Act and 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 239A of the Act and the language employed therein, the application for refund of excess TDS deposited may not be entertained by the Assessing Officer.

9 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 of the Act, 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 and Justification
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.

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

Background
Section 154(7) of the Act 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
Sub-section (8) of section 154 may be amended to provide 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.

Justification
The aforesaid amendment would ensure promptness in disposal of applications under section 154 and would avoid undue harassment to the taxpayers.

11 Exemption of Interest U/S 234B and 234C to Oil Companies

Background
As per the provisions of Income Tax Act, interest under Section 234B is applicable in case, when an assessee who is liable to pay advance tax, has failed to pay such tax or an assessee who has paid advance tax, but the amount of advance tax paid by him is less than 90% of the assessed tax. Interest u/s 234C is chargeable when the assessee defers the payment of Advance Tax.

Presently, oil industry is determining the prices of the products on the basis of the Market Driven Pricing Mechanism, which is now-a-days facing a wide fluctuation of the prices of input material such as crude oil and resulting in volatility of prices of the products. So, it is very difficult for Oil Marketing companies to determine the projected profits for the financial year although every effort is made to estimate the profits near to the actual.

Therefore, the shortfalls that are occurring in respect of payment of Advance Tax are not an intentional one, but it is as a result of fluctuation of profits due to various reasons beyond the control of the Oil Companies.

Suggestion
Relaxation is provided from levy of interest u/s 234C in case of capital gains, winning from lottery, etc. Similarly, the Government is requested to provide the specific exemption to Oil Companies from applicability of provisions of these Sections or provide some other relaxation in payment of Advance tax so that undue hardship which the Oil Companies are facing now can be reduced to some extent.

12 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 Act, meaning thereof has been interpreted differently by different courts of law. While some courts of law have 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 have interpreted the meaning of month as 30 days' period reckoned on date-to-date basis.

Justification and 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".

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

Background
Section 244A of the Act 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.

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

14 Exclusion of non-residents from the ambit of sections 206AB and 206CCA

Background
As per the provisions of section 206AB of the Act, if any TDS is deductible from a "specified person", then, TDS would be deducted at higher of the following rates-

(a) at twice the rate specified in the relevant provision of the Act;
(b) at twice the rate or rates in force;
(c) at the rate of 5%.

For the above purpose, "specified person" means a person-

- who has not filed Return of Income for the assessment year relevant to the previous year immediately preceding the financial year in which TDS is deductible (for which time limit for filing Return of Income u/s 139(1) has expired);and

- the aggregate of TDS deducted and TCS collected in the case of such person is Rs. 50,000 or more in the said previous year.

Similar provisions have been introduced in the context of TCS by insertion of section 206CCA. Apart from the resident deductees/collectees, the provisions of section 206AB and 206CCA are also applicable in the cases of sums payable/receivable to/from a non-resident having a Permanent Establishment (PE) in India. The applicability of sections 206AB and 206CCA in the cases of non-residents payees/payers may lead to certain issues to be faced by the resident deductor/collector in complying therewith.

Suggestion
The provisions of sections 206AB and 206CCA may be suitably amended to exclude the non-resident payees/payers from the ambit thereof.

Alternatively, if status of a non-resident deductee/collectee, as shown by the system of the Income-tax Department, is a "specified person", an opportunity may be provided to the deductor/collector to submit/upload a no PE conformation (obtained from the non-resident) at the time of filing quarterly TDS Statement and, upon submission thereof, the higher rates envisaged by sections 206AB and 206CCA should not be invoked.

Justification
The Central Board of Direct Taxes (CBDT) has provided a functionality for carrying out compliance check to ascertain whether or not a person is covered within the meaning of "specified person" for the purpose of sections 206AB and 206CCA of the Act. The functionality apparently checks the status of a person with reference to the conditions enumerated in (i) and (ii) above as per the records of the Income-tax Department, and does not take care of existence or otherwise of a non-resident's PE in India. In fact, it does not seem to be feasible by the Income-tax Department to ascertain/maintain the status of a non-resident's PE in India on a year-to-year basis especially for a financial year for which no Return of Income has been filed by the non-resident.

Accordingly, there could be instances where a non-resident, despite having satisfied the conditions (i) and (ii) above, is not covered within the ambit of section 206AB/206CCA of the Act by virtue of not having a PE in India. However, the status of such a non-resident may still be shown as "specified person" by system of the Income-tax Department which will result in deduction of TDS at higher rate(s). In cases where tax is to be borne by Payer, it will come as an additional financial burden on the payer. In such cases, not deducting/collecting TDS/TCS at the higher rates specified by sections 206AB/206CCA may result in defaults being shown by TRACES portal and may lead to the avoidable litigation.

15 Rationalizing the provisions of section 194-O dealing with TDS by e-commerce operators

Background
As per the provisions of section 194-O(1) of the Act, where sale of goods or provision of services is facilitated by an e-commerce operator through its digital or electronic facility or platform, the e-commerce operator is required to deduct tax at source (TDS) on the amount of sale or services at the time of crediting the same to the account of e-commerce participant (i.e., the seller) or at the time of payment thereof, whichever is earlier.

Explanation to the aforesaid section clarifies that, any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for sale of goods or provision of services facilitated by e-commerce operator, shall be deemed to be the amount credited or paid by e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale and services for the purpose of deduction of TDS under the above section. The instant issue pertains to the non-availability of ample clarity on various aspects arising from the aforesaid provisions.

Suggestions
Following is suggested in this regard-

(i) The provisions of section 194-O may be suitably amended to clarify as to when sale of goods or provision of services would be construed to have been “facilitated” by an e-commerce operator so as to cover within the ambit of TDS thereunder. Such a clarification may have a specific reference of the cases where e-auction platform is used only for the purpose of identifying the prospective buyers and sale is affected outside the platform.

(ii) From the bare provisions of section 194-O(1) especially from the phrase *“at the time of crediting the sums to the account of the seller or at the time of actual payment thereof”* appearing therein, the legislative intent appears to be to cover the cases where payment of sale consideration is routed through e-commerce operator. However, the deeming fiction of the Explanation to section 194-O(1) apparently intends to also cover the cases where payments are made directly by the buyer to the seller. Explanation is meant to explain the main provisions. However, in the instant case, since the language employed by the Explanation is in apparent contradiction of the provision, the same may lead to differential interpretation.

If it is interpreted that, by virtue of the Explanation, the cases of direct payments by the buyer to the seller are also covered within the ambit of section 194-O, the implementation and compliance of section 194-O would pose serious challenges on the part of e-commerce operator as he would not be in a position to monitor and to keep track of the payments made by the buyer to the seller and, accordingly, to ensure deduction of TDS thereon.

It is, therefore, submitted that, the provisions of section 194-O may be appropriately amended to provide specific dispensation from TDS in respect of the cases where payment of sale consideration is made directly by the buyer to the seller without any intervention of the e-commerce operator.

Justification

Section 194-O covers the cases where sale of goods or provision of services is facilitated by an e-commerce operator. It has, however, not been clarified as to when sale of goods or provision of services would be construed to have been “facilitated” by an e-commerce operator. To be specific, it is not clear whether the cases where sale agreement is made outside e-platform and payment is also made directly by the buyer to the seller would also be covered within the ambit of section 194-O of the Act.

Further, section 194-O(1) casts an obligation on an e-commerce operator to deduct TDS on sums payable towards, inter-alia, sale consideration of goods to the seller at the time of crediting the sums to the account of the seller or at the time of actual payment thereof, whichever happens earlier. On a literal interpretation of the aforesaid provision, it may be inferred that, only the cases where payment of sale consideration is routed through an e-commerce operator are covered within the ambit thereof.

However, Explanation to section 194-O(1) of the Act, brings out a deeming fiction by providing that, where payment is made directly by the buyer to the seller, such payment would be deemed to be the amount paid or credited by e-commerce operator to the seller and would be included in gross amount for goods/services for the purpose of deduction of TDS under the above section. The aforesaid Explanation sounds in contradiction with the main provisions of section 194-O(1) of the Act and the legislative intent.

16 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.

17 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)

18 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.

19 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).

20 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 Aatmanirbhar Bharat , benefits of this section should also be extended to mining companies.

21 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.

22 Section 194- TDS on Pass Through Dividend

Background

It is recommended that pass-through dividend should be allowed to be distributed without deduction of TDS provided the holding company files declaration/ undertaking with its subsidiary company that dividend will be further declared. If holding company does not declare dividend before the stipulated time period, then holding company should be liable to pay TDS amount with applicable interest to subsidiary company.

Pass-through dividends shall be allowed as a deduction from the Gross Total Income (GTI) of the Company receiving the dividend, provided the dividend received is up-streamed to its shareholders within the stipulated time period.

Suggestion

- Pass-through dividend should be allowed to be distributed without deduction of TDS provided the holding company files declaration/ undertaking with its subsidiary company that dividend will be further declared.

- If holding company does not declare dividend before the stipulated time period, then holding company should be liable to pay TDS amount with applicable interest to subsidiary company.

23 Section 194R- FAQ

Background

1. FAQ 1 states that section 194R applies to a benefit or perquisite irrespective of whether such benefit is chargeable to tax and irrespective of the provision under which it is chargeable to tax.
   FAQ 1 may be reconsidered and it may be clarified that TDS under section 194R is applicable only to payment of benefit or perquisite which is taxable under section 28(iv). Appropriate consequential amendments/clarifications are also required to provide that deductor is required to check if the benefit or perquisite is taxable in the hands of recipient.
2. Waiver/write off/one time loan settlement by banks/financial institutions whether or not under insolvency resolution process may be clarified to be outside the scope of TDS under section 194R. it may be specifically clarified that any write off of debt whether unilateral or through negotiated settlement or under IBC is not a benefit or perquisite arising from business or exercise of profession and hence not liable to TDS under section 194R.
3. Reimbursement of out-of-pocket expenses to service providers for expenses incurred in rendering of services is not a benefit or perquisite. Inconsistencies created in this regard needs to be clarified.

Suggestion

It is requested that appropriate amendments are introduced in section 194R to remove inconsistency created by the Circular with correct legal position and/or practical challenges in application of FAQs.

Some of the FAQs and/or illustrations provided therein need to be reconsidered by CBDT having regard to inconsistency with correct legal position and/or practical challenges in application of FAQs.

24 100% deduction of capital expenditure under Section 35 AD for specified projects which include Solid Waste Management – to be extended to 'Drop in' Biofuels

Background
The catalytic thermochemical technology converts municipal solid waste including plastics, agricultural and forest waste into drop-in bio-fuels. It is very much in sync with the Swatch Bharat mission of the Government and also contributes to energy security. Hence certain tax benefits are needed to make this sustainable in the long run while also ensuring that it is able to compete with similar technologies.

Suggestion
In the interest of a level playing field, 100% deduction of capital expenditure under Section 35 AD which is available for specified projects including those relating to Solid Waste Management should be extended to 'Drop in' Biofuels. This will make Drop-in Biofuels more competitive with other similar technologies

25 Electronic filing of Form 10F

Background
Section 90 of the Act allows a non-resident payee to claim the benefits of a DTAA if such provisions are more beneficial than those under the Act.

The notification mandating filing of Form 10F ultra vires and beyond Rule 37BC which provides relaxation from higher withholding tax rate while making payment to non-resident deductees in the absence of PAN, subject to fulfillment of prescribed conditions namely, name, email id, phone number, address, TRC and Tax identification number.

Mandating a non-resident payee to obtain a PAN in India creates an unnecessary compliance burden, especially in situations where, after tax deduction at source under section 195 by the resident payer, there is no further compliance required to be undertaken by the such payee.

Suggestion
- Do away with the mandatory electronic furnishing of Form 10F - for non-residents who do not have PAN.
- Alternatively, such form should be allowed to be undertaken electronically without creating a PAN-based login id on the Income tax portal
- Clarify that e-filing of Form 10F is required only for remittances to non-residents and not for claiming relief during the filing of tax returns by the non-residents.

26 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 taxpayer 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.

Furthermore, the deduction of infructuous or abortive exploration expenses, drilling or exploration activities and depletion of mineral oil in the mining area are available only under the agreement of Central Government or any person authorized by it in such business (which agreement has been laid on the Table of each House of Parliament) are allowed. In our case, Coal India Ltd (CIL) has issued a Letter of Acceptance to a CBM developer to extract coal bed methane (CBM) within its leasehold area. CBM is the unconventional form of natural gas found in coal seams. Therefore, as per literal reading of section 42, the expenses incurred on the block awarded by Coal India, the exemption u/s 42 shall not allowed.

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.

Further, the provision of section 42 may be modified to include the contracts entered into by Coal India or its subsidiaries shall be covered for the purpose of deduction u/s 42 of Income Tax Act.

27 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. 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.

a) Faceless Assessments:

Steps should be taken to mitigate following difficulties:

a. Number of Attachments and size per attachment is the major constraint while uploading details. Number of errors are thrown by system, which includes error in file name, repeat document (some reply needs repetitive attachments).
   The attachments accepted are only in pdf, excel, csv format. Zip files and videos should also be accepted, to enable better explanation of queries

b. Number of Attachments and size per attachment is the major constraint while uploading details. Number of errors are thrown by system, which includes error in file name, repeat document (some reply needs repetitive attachments).

The attachments accepted are only in pdf, excel, csv format. Zip files and videos should also be accepted, to enable better explanation of queries

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

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

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

29 Section 43B

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

Suggestion:

To mitigate the hardship, it is suggested that an Explanation be inserted in Section 43B to the effect that payment to the fund would be equivalent to payment to employees. It is suggested that suitable provision be inserted in the Act whereby prior period expenses are allowed as deduction in the current year under section 37(1) of the Income Tax Act, 1961. A limit (say not exceeding 1% of the turnover) can be prescribed for such expenditure. It will obviate administrative difficulties in claiming the deduction in respect of previous years and rectifications proceedings etc. There will not be any revenue loss to the government from this clarification, since corporate tax rates over a period of years have remained more or less the same.

30 The Exemption limits for various allowances

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

31 Abolition of Fringe Benefit Tax vide Finance (No.2) Act 2009

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

Suggestion

It is recommended that, the threshold limit for perquisite value to be taxed in the hands of employees, needs to be revised keeping in view the cost of inflation.

32 Pay commission recommendation

With implementation of successive pay commission recommendations, the leave salary of both Public and Private Sector employees has substantially increased. Whereas, a threshold exemption u/s 10(10AA) fixed at Rs.3 lakhs in the year 2002 hasn't undergone any revision over the years.

Suggestion

Accordingly, it is suggested to revise the limit from Rs.3 lakhs to Rs.20 lakhs in line with the revised salaries.

33 Interest u/s 234B/234C

Currently, interest u/s 234B/234C charged on the Assessee is 1% per month whereas interest u/s 244A payable to Assessee is 0.5%.

Suggestion

It is suggested to bring parity in the rates and further the rate be linked to any 'reference rate' thereby making it dynamic.

34 The Direct Tax Vivad Se Vishwas scheme

The Direct Tax Vivad Se Vishwas scheme had given option to the assesses for settlement of pending litigations with Income Tax Department by paying specified % of disputed tax amounts and interest, subject to terms and conditions specified therein. The scheme had specified forms to be filed by the assesses and the forms to be issued by the Income Tax Department in order

to facilitate the process of opting for the scheme, acceptance by dept. and withdrawal of the litigation. However, it is seen in many cases that dept. has not withdrawn the cases in various forums in which it is litigated, resulting in assesses not being able to file form 4 and conclude the process despite of the department earlier accepting the declaration made by the assesses by issuing Form-3.

Suggestion
Expediting withdrawal of cases from litigation forums by the department in respect of cases where Form-3 have been issued by the Dept. and facilitating completion of the process by issuing Form-5 wherever Form-4 has been furnished by the assesses.

35 CSR expenditure mandated under the Companies Act, 2013

CSR expenditure mandated under the Companies Act, 2013 are towards fulfilling Government's social and developmental agenda. By inserting a specific explanation (Explanation 2 to Section 37(1) of the Act) to the effect that CSR expenditure is not deemed to be incurred wholly and exclusively for the purposes of carrying on business, Companies do not get tax break on such expenditure. Since Corporates support the social and developmental agenda of the Government, especially during adversities like pandemic, natural disasters etc. it is imperative that the said expenditure be permitted as a deduction while computing the business income.

Suggestion
Accordingly, it is requested to revisit the said provision.

36 Allowance of Deduction under section 80G for the purpose of Section 115BAA and 115BAB

Background
The Taxation Laws (Ordinance), 2019 introduced two new corporate tax rates, i.e., at 15% (Section 115BAB) and 25% (Section 115 BAA) for the domestic companies. However, the benefit of reduced tax rate is available only when total income of the company is computed without claiming specified deductions, incentives, exemptions and additional depreciation available under the Income-tax Act.

Under both the sections, it is mentioned that total income of the company will be computed without any deduction Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA.

Chapter VI-A under the heading C mainly covers the profit linked deductions. Deduction under chapter VI-A under the heading ''A'' and ''B'' such as deduction under section 80G i.e. donations to charitable trust, institutions etc was allowed under both the sections.

However, by the Act no 20 of 2020, effective from AY 2021-22, Chapter VI-A under the heading "C shall be substituted by Chapter VI-A other than the provisions of section 80JJAA or section 80M".

As per the amendment, no deduction will be allowed under section 115BAA and 115BAB for entire Chapter VI-A except Section 80M and 80JJAA. It may be worthwhile to note that deduction under section 80G even for contribution made to charitable trust and institutions, which are of national importance such as Prime Minister National Relief Fund, Prime Minister Drought Relief fund etc. will not be allowed as deduction u/s 115BAA and 115BAB.

Suggestion
It is suggested that deduction under section 80G of Chapter VI-A should be allowed while computing the total income under section 115BAA and Section 115BAB.

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

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

Suggestion
Some Companies are spending even more than the statutory limit of 2% of last 3 years' average net profit towards CSR in order to promote social welfare. Deduction should be allowed at least for amount spent in excess of statutory limit of 2% under the company's Act as normal business expenditure by making suitable amendment in the Income Tax Act,1961.
Further amounts spent on awareness programmes and public outreach campaigns regarding the covid-19 vaccination drive are also permitted by MCA to be classified as CSR activity. It is expected that deduction for such expenditure may be allowed regardless of whether it is for employees or for public at large.

This will provide more incentive to companies to spend additional amount on CSR and will ultimately accelerate social wellness and improve public health.

38 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 rate of depreciation should be restored to at least 60%. This will encourage companies to invest more capital in renewable energy capacity addition.

39 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. The due date for filing of return u/s 139(1) for a company who is required to furnish a Report u/s 92E for international transactions with Associated Enterprises or specified domestic transactions, is 30th November of the relevant Assessment year. Thus the existing provision allows such assessees only 1 month time to file revised return after filing of the original return, which is practically not adequate.

40 Rectification of mistake u/s 154 of the Income Tax Act, 1961

Background
Section 154(7) of the Income-tax Act, 1961, allows a time limit of four years for making amendments to orders for rectification of mistakes apparent from records. It is reckoned from the end of the financial year in which the order sought to be amended was passed. However, in a large number of cases, the assessing officers do not dispose of an assessee's application under section 154 for years together.

In order to overcome the above 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 of failure to dispose of the application within the six months have not been spelt out.

Suggestion
It is suggested that sub-section (8) of section 154 may be amended to provide 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 hardship to the taxpayers

41 Section 208 – Reducing slabs for Advance Tax payment

Background
Under Section 208, advance tax in case of corporate assessee is payable as follows:

- On or before June 15th of previous year - 15%
- On or before Sept. 15th of previous year - 45%
- On or before Dec. 15th of previous year - 75%
- On or before Mar. 15th of previous year - 100%

In present competitive market scenario, it is difficult to make the realistic estimate of taxable income on 15th of Dec. and 15th of Mar. of the previous year by a large Corporate.

Suggestion
The slab of advance payment of tax may be changed to 65% for payment to be made by 15th Dec and 90% for payment to be made by 15th Mar in place of the current 75% and 100% respectively. The balance tax may be allowed to be paid by 30th April of the assessment year. This will help the assesses to accurately determine the amount of Advance Tax Payable and reduce imposition of interest 234C.
As per the existing statute, no interest u/s 234C is leviable if the amount of advance tax payment is at least 12% in 1st Quarter and at least 36% in 2nd Quarter. It is proposed to extend the same benefit for 3rd and 4th Quarter in the following manner-

- - At least 60% in the 3rd Quarter
- - At least 85% in the 4th Quarter

This will result into administrative convenience for Corporate and tax authorities without any loss of government revenue.

42 Employees' contribution to Provident Fund - Section 36(1) (va)

Background
Section 43B of the Act allows deduction towards employer contribution to PF/ any other fund for the welfare of the employees if the same is deposited up to the date of filing the return of income. However, deduction for employees' contribution to PF/ ESI or any other fund is governed by section 36(1) (va) of the Act which mandates that the employees' contribution

should be credited to the relevant fund by the due date specified under the relevant Act, rule, order or notification governing that fund.

Suggestion
It is hereby suggested that suitable amendment should be made in the Act so as to bring the provisions relating to the Employees' contribution to provident fund and other employee welfare funds in line with the employer's contribution towards such funds.

43 Increase in Limits for employer contribution to NPS Account of Employees from 10% to 14%

Background
As per Section 36(1)(iv), amount contributed by employer to recognised provident fund or an approved superannuation fund is allowed as a deduction to the employer. Rule 87 of Income-tax Rules prescribes the upper limit for employer contribution to approved superannuation fund as 27% of salary reduced by employer contribution to provident fund. As per Section 36(1)(iva), amount contributed by employer to NPS Account of employee to the extent it does not exceed ten per cent of the salary; is allowed as a deduction to the employer.

As per Section 80CCD(2), employee is allowed a deduction for employer's contribution to his NPS Account up-to —

a. 14% of salary, where contribution is made by the Central Government;
b. 10% of salary, where contribution is made by any other employer,
c.

With respect to employer's contribution to NPS Account, deduction to both employer [Section 36(1)(iva)] and employee [Section 80CCD2)] is restricted to 10% of salary. In case contribution exceeds the said threshold, it results in double taxation, i.e., the excess amount is neither available as a business expenditure to the employer nor is it allowed as a deduction from Gross Total Income to the employee. In case employer contribution towards pension fund of employees is above 10%, contribution up-to 10% is contributed to NPS Account and balance contribution has to be contributed to the SABF Trust to avoid double taxation.

For Central Government employees, employer's Contribution to their NPS Account is deductible up-to 14% percent of salary under Section 80CCD(2). Vide GOI Press Release dated 25th August 2021, proposal to increase employer's contribution under the New Pension Scheme to 14% from the existing 10% has also been approved for employees of PSU Banks.

Suggestion
It is requested that Section 36(1)(iva) be amended to increase the limit for employer contribution to pension scheme, as referred to in section 80CCD, from the current 10% per cent of the salary of the employee to 14% percent of salary. Also, the amount of deduction admissible under Section 80CCD(2)(b) for employer's contribution to NPS Account be enhanced from the current 10% per cent of the salary of the employee to 14% percent of salary.

44 Relaxation in rule 6DD for payment of more than Rs. 10,000 in cash in foreign country - section 40A(3)

Background
Section 40A(3) of the Act disallows cash payments made in excess of Rs. 10,000 subject to payments made in those cases and circumstances as mentioned in Rule 6DD. Section 40A(3) does not restrict itself to transactions in Indian rupees but also covers cash payment in foreign currency.

Companies send their employees on business trips or for short duration assignments outside India. In such scenario, companies provide their employees with foreign currency travel card to meet their daily expenses abroad. While the intention is not to evade tax or make payments in cash only, due to unavoidable circumstances, expenses may be incurred in cash by the employees on behalf of the company and such amount could easily exceed Rs. 10,000 on account of stronger foreign currency. Triggering section 40A(3) disallowance in the hands of company in such a case causes undue hardship resulting in multiple disallowances amounting to a huge figure.

Suggestion
It is hereby suggested that relaxation may be provided in Rule 6DD where cash exceeding Rs. 10,000 is used in foreign country by employees on behalf of the company having regard to factors such as high cost of living, risk of online fraud etc., subject to terms and conditions as per RBI and Foreign Exchange Management Act.

45 Amortization of capital expenditure

Background
Presently, there is no provision in the Act for amortization of capital expenditure such as fees paid for increase in authorized share capital and payment made towards elimination of competition or premium paid on acquisition of leasehold rights in land etc. Such expenditure being capital in nature cannot be charged to revenue as there is no provision for claiming these expenses in computing the income.

Suggestion
It is suggested that provisions may be incorporated in the Act to allow deduction for the entire amount or allow for amortization of such capital expenditures which are essential to run the business.

46 Overall Limit on contribution to Retirement Funds

Background
As per rule 87 of the Income Tax Rules, the employer is permitted to make a total contribution not exceeding 27% of the employee's salary in respect of Provident Fund and Superannuation.

Further, as per schedule IV of Part A rule 6 of the Income Tax Act, the employer is permitted to contribute up to 12% of the employee's salary in respect of Recognized Provident Fund. In other words, the Income Tax Law permits contribution up to 15% for Superannuation and 12% for PF.

Suggestion
In the context of the current rates of interest and the high cost of annuities and considering that pensions are in any case taxable in the hands of the employees at the time of receipt, it is suggested that the overall limit for PF and Superannuation contributions (in line with the current stipulations in the Income Tax Rules) be increased to 35%.

47 Amount paid for increase in authorized capital – Section 35D

Background
Currently, amount paid for increase in authorized capital is not allowed as deduction. After a company is incorporated with a minimum paid up capital (for which there is no minimum limit

now), and it wishes to increase its authorized capital, the company is required to pay registration fee to Registrar of Companies.

Fee on incorporation of a company is allowed as per specified limits in 5 installments u/s 35D, however amount paid for increase in authorized capital is not allowed as deduction at all, though the amount is paid to government as a fee.

Suggestion
It is suggested that fee paid to Registrar of companies for increase in authorized capital may be allowed as revenue expenditure in 5 equal installments u/s 35D.

48 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. Further no proceedings u/s 147 and 263 should be applicable in such cases.

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.

49 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 incentivize creation of additional jobs especially for young skilled graduates.

50 Applicability of Significant Economic Presence (SEP) under Income Tax Act to digital businesses only

Background
To address Base Erosion and Profit Shifting (BEPS) arising from the rapidly digitalizing economy, Finance Act 2018 expanded the concept of business connection to include a new nexus rule based on SEP to tax the digital economy, which hitherto enabled entities world over to carry out business in India without an actual physical presence, and thereby escape taxation in India.

Memorandum explaining the Finance Bill 2018 also mentioned that ''The scope of existing provisions of clause (i) of sub-section (1) of section 9 is restrictive as it essentially provides for physical presence-based nexus rule for taxation of business income of the non-resident in India. Explanation 2 to the said section which defines 'business connection' is also narrow in its scope since it limits the taxability of certain activities or transactions of non-resident to those carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of clause (i) of sub-section (1) of section 9 of the Act. In view of the above, it is proposed to amend clause (i) of sub-section (1) of section 9 of the Act to provide that 'significant economic presence' in India shall also constitute 'business connection'.

Under the SEP provisions, a "business connection" will be created in India based on either of the following conditions:

- **Revenue-linked condition:** Any transaction in respect of any goods, services or property carried out by a nonresident with any person in India, including the provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed.
- **User-linked condition:** Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users in India, as may be prescribed.

In this regard, CBDT by insertion of Rule 11UD through Notification No. 41 dated 3 May 2021 prescribed revenue and user thresholds as below thereby putting SEP provisions into application from FY 2021-22.

- For revenue-linked condition stated above, a revenue threshold of INR 2 crores (INR 20 million) shall be applicable;
- For user-linked condition stated above, a user threshold of 3 lakhs (0.3 million) shall be applicable

The above transactions or activities shall constitute SEP, whether or not the agreement for such transactions or activities is entered in India or the non-resident has a residence or place of business in India or the non-resident renders services in India. Further, once the non-resident triggers SEP in India, only so much of the income attributable to the transactions or activities referred above will be taxable in India. The language of the SEP provisions is broad and is likely to impact conventional transactions and activities even if they are not carried out in a digital form. If the SEP of the non-resident is constituted in India, the income attributable to the transactions or activities as indicated above (i.e. purchase of goods, services, download of data etc.) would be deemed to be income accruing and arising in India and will be liable to tax in India.

The above provisions are although subject to DTAA's entered by India with various countries and does not alter actual taxability under the DTAA's as it follows the traditional permanent establishment definition. ***However, this development is of significant relevance to non-resident taxpayers who are resident in a jurisdiction which does not have a bilateral or***

multilateral tax treaty with India or the non-resident taxpayer is not eligible for tax treaty benefits.

Once taxation is triggered in India, the payer is required to withhold any tax due and the non-resident is obligated to file a tax return. Non-compliance with the withholding obligations can trigger disallowance of deductions and assessee in default (interest and penalties for the Indian payer. Furthermore, the Indian payer can also run the risk of being regarded as a representative assessee of the non-resident.
It may be noted that there are no rules yet in place as to determine the income attributable to such a nexus or presence. In the absence of rule/guidance on the SEP income attribution principles, the payer may need to liaise with the tax authorities to determine the appropriate sum which should be regarded as taxable to comply with the withholding provisions

Suggestion

a) Considering the intent of the Government to tax digital business carried out by nonresident entities in India, Section 9 may be amended to ensure that the provisions related to significant economic presence are limited to digital commerce (i.e., business carried through digital medium) rather than commerce involving physical goods (import of goods) with traditional system of contract entering etc.
b) Till the rule relating to attribution of income component to the SEP are in place there should not be any obligation to deduct tax if such deduction obligation arises from this SEP provisions.

51 Valuation of unquoted shares – Rule 11UA

Background

As per rule 11UA, the fair market value of the unquoted equity shares shall be determined by a merchant banker. The cost of hiring a merchant banker is quite high, and it may not be feasible for a company who is trying to raise funds through an IPO.

Suggestion

It is suggested that rule 11UA may be amended to also allow registered IBBI valuer to determined fair market value of unquoted shares.

52 Relaxation from ICDS

Background

ICDS introduces a significant element of complexity and, more importantly, it is inconsistent with the concept of real income. For example: Concept of capitalizing 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 assesses are mandatorily required to follow method of accounting as per the Indian Accounting Standards (IndAS) applicable in India, which is prescribed by the ICAI. However, in order to comply with ICDS, assessee may need to again prepare its profit & loss accounts which is simply duplication of effort.

Suggestion

Companies who are following IndAS and are getting their books audited as required under Companies Act, 2013 and rules may there under, may be exempted from following ICDS.

53 Ambiguity in definition of professional services and technical services leading to ambiguity in TDS rates

Background
Rate of TDS under section 194J in case of fees for technical services (other than professional services) is 2 per cent while the rate of TDS on professional services is 10 per cent.

Suggestion
It is recommended that rate of TDS w.r.t professional services should also be reduced to 2 per cent. This will reduce ambiguity in interpretation w.r.t to classification and will reduce litigations on the TDS matter.

54 Extension of sunset clause under Sec115BAB on concessional tax rate option for new manufacturing Companies.

Background
The sunset clause under Sec 115BAB for concessional tax rate for Companies which commenced manufacturing or production of an article is 31st March, 2023.

Suggestion
It is recommended to extend sunset clause under Sec 115BAB for 4-5 years to enable the industry to plan their expansions. This will promote more manufacturing activities and investments in the Country and will bring clarity to the Companies which have expansion plans.

55 Timelines for disposal of CIT(A) level
Currently there is no timeline prescribed for disposal of appeals at CIT(A) forum

Suggestion
It is proposed to prescribe timelines at the CIT(A) forum. It will clear backlogs of pending cases at the respective forum of CIT(A).

56 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.

57 Reduction of Period of Holding for Units of InvIT to 12 months from 36 months

Background

The definition of "business trust" has been provided in clause (13A) of section 2 of the Act, which includes a trust registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations made under the Securities and Exchange Board of India (SEBI) Act, 1992 and the units of which are required to be listed on a recognized stock exchange in accordance with the relevant regulations. Later, referring the notification no. SEBI/LAD- NRO/GN/2019/10 of Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 the section was suitably amended through Finance Bill, 2020 after considering non-requirement of mandatory listing requirement for InvITs. However, no distinction was made in respect of period of holding defining the category of capital asset.

Bifurcating the units of listed InvITs, which are in the nature of securities listed in Recognized Stock Exchange, has not attained same status for defining its period of holding as defined in first and third proviso to the section 2(42A) for categorizing it as short-term or long-term Capital Asset.

Suggestion

Considering the investor hardship and keeping it more exposed, it is suggested to consider the period of holding for units of Business Trust including InvIT units same as considered for listed securities under section 2(42A). Moreover, such change will help investor to go for listed units and on the other side this will propel unlisted InvITs to go for its listing. Accordingly, 1st & 3rd proviso of section 2(42A) to be suitably amended to cover period of holding for Units of Business Trust including InvIT units as 12 months and 24 months for listed and unlisted units respectively.

58 Creation of PAN sub user login in case of big corporates

Background

At present, only single login is allowed (PAN/TAN) for logging in to Income Tax E filing portal https://www.incometax.gov.in by the Tax Payer at a time. As a result, large corporates/assesses having branches/locations spread across India, facing hardships in accessing, using and submitting various responses like E-proceedings etc which requires login by various users (of same PAN/TAN) from various locations.

Further, the new filing procedure for form 15CA after introduction of new Income Tax portal w.e.f 07-06-2021 do not provide facility to bulk upload of Form 15CA (Like in old Income Tax e-filing portal). Online filling of Form 15CA by entering values field by field for large assesses (having single PAN/TAN) from one login is creating hardships for timely compliance.

Suggestion

Considering the hardship faced by large assessee, multiple login may be allowed in the form of Sub-user for single PAN/TAN may be enabled for the benefit and ease of compliance of various activities by the tax payers

Similar facility is also available for GST login wherein multiple logins can be used for single GST registration.

59 Delegation of power to Functional Director or to any other authorized person u/s 140 for signing and verifying certain forms and declarations

Background

Section 140 deals with the verification of return of income for different types of assessee and the amendment in the provisions of Act relating to verification of the return of income was done in Finance Bill 2020 i.e. in case of company, the return is required to be verified by the managing director (MD) thereof or where the MD is not able to verify for any unavoidable reason or where there is no MD, any director thereof **(or any other person as may be prescribed for this purpose)** can verify the return. This amendment though has extended a bit relaxation but till date, nothing has been prescribed under section 140.

Suggestion

Provision of the section 140 may be suitably amended on the stringent requirement of the Act of verification/signing of the Income tax return by MD. Board of Directors of the Company may be allowed to delegate such power to any authorized person for this purpose. That would certainly help corporate houses to function well in each and every scenario as big corporate are facing difficulties in getting all the documents signed by their MD.

60 Relaxation in provision of section 281: Prior permission to create a charge on the asset of the business

Background

Section 281 of the IT Act requires an assessee to obtain the permission of the assessing officer before creating a charge on certain assets or transfer of certain assets in the event there are ongoing tax proceedings or pending claims/demands against such assessee. The main objective of section 281 is to safeguard the interests of the revenue against assessees who may fraudulently part with their assets to avoid payment of taxes.

Thus, if any person transfers or alienates any property while any proceedings under the Income-Tax Act is pending, such transfer/alienation is void as against demand from income-tax unless (a) the transaction is for adequate consideration and without notice of pending proceedings/demand; or (b) with previous approval of the tax officer.

Further, referring to circular C**IRCULAR NO. 4/2011 [F. NO. 402/69/2010-ITCC], DATED 19-7-2011**, where requisites have been prescribed before granting of permission u/s 281. One of the conditions as prescribed is **"If there is no demand outstanding and there is no likelihood of demand arising in the next six months"**.

The above circumstance as mentioned in the circular has created significant inconvenience to the assessee in obtaining certificates from the concerned authority. It is pertinent to note that Some returns are recurring and periodical in nature and TDS return being voluminous, default may be witnessed on account of technical/clerical errors. Further such error correction takes uneven time to get processed and adds on the time of getting the clearance letter from the department.

Moreover, once the demand outstanding gets cleared then exist a major question in front of assessing officer to test the likelihood of demand which may arise in next six months, this then

becomes the major haul in proving the uncertain things to the authority. Also, it may be considered that with the introduction of faceless assessment and dismantling of LTU there exists multiple sources of demand say TPO, Faceless Assessment, CPC, etc. and envisaging the expected demand in six months is practically not possible for the Assessee as well as the Assessing Officer. The hardship as being encountered defeats the government's ease of doing business initiative.

Suggestion
The objective of the section of safeguarding the interest of the revenue against any fraudulent charge. It is therefore suggested to provide some relaxation by fixing some quantum of default/pending demands/blanket demand (in absolute or percentage term with respect to total asset) and amount exceeding the quantum fixed would require assessee to pay off or clear the pending demands. Such amendment will streamline the process for Bonafide assessee and provide ease of business.

61 An option of Nil deduction of TDS u/s 197 for Large Tax Payers

Background
In case of large corporates especially for Public Sector undertakings (PSUs), reconciliation of TDS deducted by various customers with the tax credit appearing in Form 26AS is cumbersome and consuming many man hours due to large volume of transactions and many customers spread across India. For some instances, due to mismatch of TDS deducted with form 26AS, assessee may not avail tax credit for the same in ITR which results in loss of benefit.

Further, at present, application for nil rate of TDS certificate u/s 197 is allowed only for specified circumstances like Loss making company, nil tax liability etc.

Suggestion
Considering the above, suitable provisions may be inserted u/s 197 for PSUs or any other large taxpayer by providing an option to apply of Nil rate of TDS certificate by depositing lumpsum amount on the basis of previous TDS liability. This will provide ease to the assessee from TDS reconciliation and generate upfront revenue to the department.

62 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. Transaction such as (a) Assets acquired through bidding process, (b) Transaction of Government companies or PSUs may be kept outside of its purview.

63 Deduction of Interest on Certain loans from Employers to Salaried Person, which otherwise is deductible if taken from Bank/financial Institution

Tax Deduction on interest affordable housing u/s 80EEA for Loan from Employer

Background

In order to provide an impetus to the 'Housing for all' objective of the Government and to enable the home buyer to have low-cost funds at his disposal, a new section 80EEA in the Act was inserted in Finance Bill, 2019 so as to provide a deduction in respect of interest up to **One Lakh Fifty Thousand** rupees on loan taken for residential house property from **any financial institution** subject to the following conditions:

- Loan has been sanctioned by a financial institution during the period beginning on the 1st April, 2019 to 31st March 2022. (Extended)
- The stamp duty value of house property does not exceed forty-five lakh rupees;
- Assessee does not own any residential house property on the date of sanction of loan.

Suggestion

For the sustenance of the Government's objective, it is proposed to normalize the conditions as imposed for availing the benefit of the said section by inserting loan from Employers also as the valid source along with the financial institution. Housing for all is the great mission that our government is focusing on and therefore providing another source of loan to the assessee will outspread the zeal towards the mission of the government.

64 Tax incentive for electric vehicles u/s 80EEB for Loan for Employer

Background

With a view to improve environment and to reduce vehicular pollution, a new section 80EEB was inserted in the Act so as to provide for a deduction in respect of interest on loan taken for purchase of an electric vehicle from any financial institution up to one lakh fifty thousand rupees subject to the following conditions:

- The loan has been sanctioned by a financial institution including a non-banking financial company during the period beginning on the 1st April, 2019 to 31st March, 2023;

- The assessee does not own any other electric vehicle on the date of sanction of loan.

Suggestion

Condition as inserted by the section that the loan from financial institution and NBFC would only qualify for the deduction narrows down the sources of fund available to the assessee. The said section has failed to appreciate the other sources which are available to assessee for financing the Vehicle. It is therefore suggested to open up the other source of fund i.e. Loan

from Employer also, such will provide ease to the assesses in making the investment and such will be conducive to rapidity of the intend of the government to improve environment and reducing vehicular pollution.

65 Interest on Education Loan from Employer to be covered u/s 80E

Background

As per section 80E, In computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, any amount paid by him in the previous year, out of his income chargeable to tax, by way of interest on loan taken by him from **any financial institution or any approved charitable institution** for the purpose of pursuing his higher education

Suggestion

Condition as inserted by the section that the loan from financial institution and approved charitable institution would only qualify for the deduction narrows down the sources of fund available to the assessee. The said section has failed to appreciate the other sources which are available to assessee for sourcing Education Loan. It is therefore suggested to open up the other source of fund i.e. Loan from Employer also as this will provide ease to the assesses in availing loan for the education purposes.

66 Taxability of interest on PF contribution in excess of Rs. 2,50,000/-

Background

The Finance Act 2021 inserted Proviso to Sections 10(11) and 10(12) providing that the provisions of these clauses shall not apply to the interest income accrued during the previous year in the account of the person to the extent it relates to the amount or the aggregate of amounts of the contribution made by the person exceeding Rs. 2,50,000 in a previous year. This amendment shall apply only to the contribution made on or after 01-04-2021. Thus, any interest corresponding to the employee's contribution in excess of Rs. 2,50,000 shall be taxable from the assessment year 2022-23.

This interest income will become part of the total taxable income of the taxpayer. There are no special rates for taxability of this interest. Hence, such income shall be taxed at the prevailing income tax rates.

Suggestion

There are only a few investment opportunities which operate in a complete Exempt-Exempt-Exempt Category (EEE) and PF was one of them. The removal of legacy of EEE category of mandatory contribution to PF would not be intention of The Finance Act, rather it was introduced to curb the cases of exorbitant contributions made by few of the assesses.

Since, the contribution by the employer to the account of an employee in a recognized provident fund is chargeable to tax if such contribution exceeds 12% of salary, an equivalent contribution made by an employees i.e., 12% should also earn a tax free interest income and should not be taxable on accrual basis.

67 Rationalization of the deduction limit for perquisites in respect of motor car

In terms of section 17(2) of the Income Tax Act, 1961 (‘the Act’) read with Rule 3(2A) [Table II-(2)(ii)] of the Income Tax Rules, 1962 (‘the Rules’) which provides for taxability of running and

maintenance expenses of motor vehicle owned by the employee, which is reimbursed by employer, when such vehicle is used partly for official purpose and partly for personal purposes of the employee or any of his household i.e. where the employee owns a motor car but the actual running and maintenance charges are met or reimbursed by the employer and such reimbursement is for the use of the vehicle partly for official purposes and partly for personal purposes of the employee or any of his household.

The limit with respect to such deductions is not in consonance with the present fuel cost and needs to be adjusted for inflation and accordingly, enhanced. Further, the exemption limit of Rs. 1800/2400 was last revised in 2007 and thus, an upper revision in the same is long overdue. Such exemption limit may be hiked considering the inflation in last 15 years.

68 Restriction of deduction against income u/s 56

Background
Pursuant to discontinuation of tax on distribution of dividend of companies and tax on distribution of income of Mutual Funds, and consequent loss of exemption of such income in the hands of the recipients, some income other than which is taxable as Business Income may be taxable under the head Income from Other Sources u/s. 56 of the Act.

The Finance Act, 2020 has inserted a new proviso in section 57 of the Act, restricting deduction from such income to only 25% of interest expense.

Suggestion
The provisions of section 57 of the Act may suitably be amended to allow any expenditure including collection charges, interest etc. incurred for earning such income taxable under the head Income from Other Sources with ceiling of the actual income, not restricting to any arbitrary percentage.

B. Indirect Tax

I) GST Tax

Upstream

1 Inclusion of Petroleum Products under GST

Background
Goods and Services tax (GST) has replaced the erstwhile taxes of Excise Duty, Service Tax, VAT etc., and is made effective in India w.e.f. 01.07.2017. However, as per the existing law, GST on supply of five specified petroleum products viz. Crude oil, Natural Gas, High Speed Diesel (HSD), Petrol (MS) and Aviation Turbine Fuel (ATF) would be levied from a later date on the recommendation of GST Council. This has severe negative impact on the bottom-line of upstream oil companies as GST paid on input materials/services remains stranded and increases our cost of production besides dual compliances.

Suggestion
It is requested to include Crude Oil and Natural Gas under levy of GST to allow seamless credit across the value chain. Further, in order to provide immediate relief to E&P Sector, at least inclusion of Natural Gas should be considered as a first step towards it.

Justification
Government of India's mission of One Nation One Tax is not complete without bringing all the products under GST. As Crude Oil and Natural Gas are outside GST, the chain of Input Tax Credit breaks due to which upstream companies are losing substantial amount of input tax credit on input material and services.
This would enable some relief to Oil Marketing Companies through some reduction of under recovery on account of non-inclusion of such petroleum products under GST. At the same time this move would benefit the Airline industry (which is just recovering from the pandemic effect but is adversely hit by the abnormal rise in prices of Aviation Turbine Fuel due to the geo political facts) and the various User industries where Natural Gas is being used as India progresses towards a Gas based economy.

2 Clarification required on non –applicability of Service Tax/GST on Royalty payments to Government

Background
Royalty is a statutory levy on the mining activity and is payable on production of crude oil and natural gas u/s 6A of the Oil Field (Regulation and Development) Act, 1948 (ORD Act) read with Rules 13 and 14 of the Petroleum & Natural Gas Rules, 1959 (PNG Rules). Royalties are payable on commencement of production as per the provisions of ORD Act, 1948. It is not a consideration for assignment of the right of extraction of mineral oil or natural gas but is itself in the nature of a tax.

Suggestion
A clarification may be issued by the CBIC that, since there is no rendition of services involved by the State or Central Govt., the Service Tax/GST should not be applicable on royalty being paid in terms of Sec 6A of the Oil Field (Regulation and Development) Act, 1948.

Justification
A statutory levy should not be treated as 'consideration' for the 'supply of services' as there is no rendition of service involved in it. Further, unlike other industries, in case of Oil and Gas

Industry, there is no input tax credit available for GST paid on such Royalty. Royalty is a part of overall economic share of Government. Hence, such a statutory levy should not be made liable to Service Tax/GST.

3 Continuance of concessional rate of GST for goods used in upstream petroleum operations

Background
Concessional rate of GST @ 5% was available to the goods specified in list annexed in Notification no. 3/2017-Central Tax Rate dated 28 June 2017 required in connection with Petroleum operations undertaken under specified contracts or New Exploration Licensing Policy or Marginal Field Policy ('MFP') or Coal bed methane policy or Petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP). The Concessional rate of 5% has been reinstated to a higher 12% withdrawn vide Notification No. 08/2022- Central Tax Rate dated 13 July 2022. This should be reinstated at 5%.

Petroleum products are a direct input into many economic activities (e g, transportation, and electricity generation and fertilizer production) as well as several indirect uses. Therefore, increase in the taxes on the inputs used in the petroleum products would have a significant impact on the economy both through direct as well as indirect or cascading routes. The cascading overall impact on the other core sectors which are critical will be such that it would seriously impact the competitiveness of India.

Thus, increase in tax incidence will not only increase the capital costs of the Oil and Gas Sector but will also have an inflationary impact on the economy. The cascading of GST for E&P companies has already gone up post implementation of GST and any further cost absorption will be detrimental for the industry.

Curtailing the GST exemption for projects after large-scale investments have been committed will not only make the projects riskier and reduce the share of the Government but will also undermine investors' confidence in government policy. This also violates contract sanctity and increases barriers to investments.

Suggestion
GST exemptions originally provided to Oil & Gas companies for all the goods specified in list annexed in Notification no. 3/2017-Central Tax Rate dated 28 June 2017 required in connection with Petroleum operations undertaken under specified contracts or New Exploration Licensing Policy or Marginal Field Policy ('MFP') or Coal bed methane policy or Petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP) should be reinstated at 5%.

4 Input Credit on Imported and domestic leasing/renting/hiring of Vessels/ Rigs

Background
The upstream service providers (i.e., service contractors of E&P companies) provide services for petroleum operations through imported vessels and rigs for a temporary contractual period. At the time of import of such vessels and rigs required for petroleum operations, the importer (buying such vessels & rigs) has to pay GST @ 5% on full value of vessels/rigs. Further, in case of import on lease/rental basis, GST@5% is payable on such periodical lease/rental charges.

Subsequently, on domestic provision of services through such vessels and rigs, upstream service providers charge GST on their services as per GST Law.

Earlier, such upstream service providers used to take input credit of GST paid while importing the vessels/ rigs towards discharging their output i.e. drilling or mining services to E&P companies. However, by subsequent amendment in GST legislation, the GST paid on such imports has been put in negative list u/s 17(5)(aa) of CGST Act. Consequently, there is serious issue for the entire industry as the service providers will have to pay the GST twice resulting into cascading effect despite being part of GST chain.

Suggestion:
A suitable clarification may be issued clarifying the position for availability of ITC.

Justification
Since the navigation is secondary in case of Rig and Vessels being used for providing output services, there is a merit in the instant case to clarify in favor of the availability of the ITC in order to remove the avoidable disputes with Department. Further, unless the input credit is allowed, the service providers would load GST on such import of rigs/vessels on their service charges which will indirectly increase the cost of operation of E&P companies.

5 GST on Specified goods used E&P Operations

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. However, vide notification no. 08/2022-Central Tax (Rate) this rate has been increased to 12% Similar increase was made for imports of such goods vide Notification No. 40/2022-Customs.
Moreover, vide notification no 02/2022 -Cus dated 01.02.2022 the list-33 of Sr No 404 of the Customs Notification no 50/2017-Cus has been truncated.

Justification
The exemption under GST, on procurement of specified goods in connection with petroleum operation would augment the domestic E&P operations due to availability of more fund towards exploration activities. Hence exemption to be continued to upstream sector for all procurement of goods (whether imports, inter-state, or intra-state) similar to one provided under pre-GST regime.

Suggestion
It is requested that the items which are not manufactured in India or where there are capacity constraints in the country, should be re-added to the revised list

6 GST on Specified goods used in LSTK Contracts in E&P Sector

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, LTSK contracts has been classified as Works Contracts as per Schedule II of the GST Act and accordingly taxable at 18% GST.

Suggestions
Since no input credit is available to the E&P Sector, request concessional GST rate of 5% on the LTSK contracts awarded by the E&P Sector.

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 consist more than 50% of the total contract cost. This will help in providing some relief to the E&P Sector

7 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

Suggestions
It is requested that 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 Offshore works contract. This will help in minimising the impact of stranding of taxes on Onshore E&P operations.

8 Allowing of GST credit on "Works Contract Services used for construction of an immovable property"

Background
Section 17(5) of the CGST/SGST Act provides that 'Input tax credit shall not be available in respect of the:

- works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Input Tax Credit on works contract and construction services are not allowable except in case where similar service is provided. This is causing a genuine hardship to the persons who are using such goods/services for construction of their factory or constructing a property for letting it out.

Suggestion
It is suggested that credit of goods/services acquired in the construction of immovable property which are being used in the course or furtherance of Business should be allowed without any restrictions.

9 Increase in Cost of other Services

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

Suggestion

Since no input credit is available to E&P Sector, it is requested that the rate may be reduced to 12% for all services used for petroleum operations by the upstream sector. This will help encourage risk capital in exploration & investments to increase production.

10 Suggestion for changes in Notification No. 50/2017-Customs dated 30th June 2017 amended vide Notification No 25/2019-Customs dated 6th July 2019

Background

Petroleum Industry is actually not able to avail the benefit of duty concession due to ambiguous nature of the notification.

1. Transferee is not defined in the Notification or Customs Law, Hence, its open for interpretation.
2. For Transaction Value referred in the Proviso, Customs is referring to the definition from section 14 of customs law 1962 which says price paid or payable at the time of import. However, the intention of the amended Proviso is to collect duty on scrap value of non-serviceable goods at the time of disposal of goods (cut-off and removed from installations) and not on the original value at the time of import. This needs to be made clearer and unambiguous.
3. The Proviso mentions rate of duty of 7.5%. However, it is not clear whether 7.5% is only the Basic Duty OR inclusive of other duties of customs e.g. IGST, Social Welfare Charges (SWC), etc. It is also not clear whether the rate of IGST should be 5% or 18%.
4. The Proviso mentions DGH to certify that said goods have been mutilated before disposal.

There is a practical difficulty to certify for large structures coming from offshore that the goods have been mutilated at the time of issue of the certificate by DGH because the decommissioned structures would be cut-off and removed from installations offshore and brought onshore for further disposal as scrap after customs clearance on payment of duty after the issue of certificate by DGH.

Suggestion

1. Issue a notification with appropriate changes in the wordings to reflect the actual intention of the amended proviso to address these issues/challenges.
2. Also, in the Tax Research Unit (TRU) notes to Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners include an example of duty levy (including IGST and other applicable Customs duties) to avoid any misinterpretation.
3. Update the Electronic Data Interchange (EDI) so that it automatically calculates the duty as soon as the Notification no. is entered so as to avoid any ambiguity.
4. DGH to only certify that the goods are non-serviceable and would be cut-off and removed from original installations for disposal as scrap at the time of assessment of custom duty.
5. Against Condition No. 48, in clause (e), the following proviso shall be inserted at the end, namely: -

"Provided that where the said goods so imported are sought to be disposed of in non serviceable form, after mutilation, the importer or the transferee, as the case may be, may at his option, pay duty at the rate of 7.5 per cent. on transaction value of such goods subject to production of a certificate from a duly authorized officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, having jurisdiction over the port of import, to the effect that the said goods are non-serviceable and have been mutilated before disposal."

11 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%.

Suggestion
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.

12 Taxation of Joint Venture

Background (I)
Unincorporated Joint Venture (UJV) – consortium members including operator and the consortium formed under PSC are not two distinct persons.

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/GST

Background (II)
Unincorporated Joint Venture – GST/Service Tax on operator's own share under UJV on supply of services through its own resources

CBIC vide circular dated 24.09.2014 at para-3 has clarified that cash calls are capital contributions made by the members of JV to the JV and are not subject to Service Tax. Similarly, clarifications has been issued under GST regime also that there is no GST on Cost Petroleum, Profit Petroleum and Cash Calls. However, under GST law, the department considers operators and UJV as distinct person and demands GST on such cash calls in kind. Show cause has been issued at many places.

Since UJV is not a distinct person, the Service Tax/GST is not payable to the extent of Operator's own share in such UJV as same is service provided/supplied to same person. A clarification may be issued in this regard that Service Tax/GST would not apply on Operator's own share in UJV on provision of services through operator's internal resources

13 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.

14 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.

This will help E&P sector to lower the burden of stranding of taxes.

15 Relaxation from Condition of ICB under Para-7.02(f)(i) of Foreign Trade Policy

Background:
The Deemed Export Benefit is available on supply of specified goods by a domestic manufacturer to E&P companies for petroleum operations in terms of Para-7.02(f)(i) of Foreign Trade Policy- 2015-20 (FTP) which states as under:

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.

In terms of said provisions at Para-7.02(f)(i) of FTP, the domestic manufacturer avails the benefit of deemed export under Para-7.03 read with Para-7.04 on supply of specified goods to E&P companies for petroleum operations undertaken under PEL/ML/under specified contracts/NELP/MFP/CBM, where contract has been awarded under procedure of ICB.

However, 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. Further, it has also been advised to mandatorily procure specified goods through Government e-Marketplace (GeM) Portal even in cases where tender value is above Rs. 200 Crore.

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

Justification

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. Thus, there is basis to consider the instant proposal for Oil & Gas Projects / Petroleum operations also.

16 Abolish/Review rate of Oil Industry Development (OID) cess on oil production in the Pre-NELP Exploration Blocks/Nomination regime

Existing Law

OID Cess is levied on crude oil in terms of "The Oil Industries (Development) Act, 1974. Till February 2016, OID Cess was levied at specific rate (Rs. / MT) and revised from time to time keeping in view prevailing 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 March 2016.

Background

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. 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. 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. Recently, w.e.f. 01.07.2022, Special Additional Excise Duty (SAED) of Rs.23,250/- per MT (revised to Rs.17,000/- per MT w.e.f. 20.07.2022 and to Rs.17,750/- per MT w.e.f. 03.08.2022) has also been imposed on domestically produced crude oil. Royalty, OID Cess and SAED 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.

Recommendation

It is requested that OID Cess be abolished in respect of nomination/pre-NELP blocks.

Justification

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 compensated. In case, Cess is not abolished, considering the minimum price required to meet its cost of production and to sustain the operations, it is recommended 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)	Clarification
Upto 25	NIL	Nil
25 to 50	5%	5% of crude oil price above USD 25/bbl (A)
50 to 70	10%	(A)+10% of crude oil price above USD 50/bbl = (B)
70 and above	20%	(B)+ 20% of crude oil price above USD 70/bbl

17 Tapering of Royalty rates

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

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

Subsequently, the scheme of royalty was issued by Government vide notification dated 16.12.2004, wherein it was decided that the royalty on production from nomination blocks shall be levied @ 20% and 10% of well head price in respect of onland and offshore areas respectively.

The convergence process, which was envisaged from 2007-08 with tapering rate/s of royalty @ 1.5% each year so as to facilitate convergence with NELP royalty rate of 12.5% by 2011-12 did not happen and royalty on production from onland nominated blocks are still being paid @ 20% of well head price.

Suggestion

Tapering of Royalty rates as proposed in Resolution dated 17.03.2003 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.

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

Background

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

- Under the PSC arrangement, the Companies spend costs relating to Petroleum Operations ie exploration, development & production of hydrocarbon. To manage the inherent risk of exploration, the PSC includes a provision to recover cost and capital spent in exploring and developing the field, if revenue is generated.
- This is just a mechanism (formula) to determine the share of petroleum which will belong to Companies and to the Government. This is not linked to any service.
- The CBIC has already issued a circular clarifying that Cost Petroleum is not a service rendered to the Government.
- As this is a clarificatory circular it should be equally applicable to the service tax regime. Despite circular in the GST regime, the field formations are confirming levy of Service Tax on this cost recovery which is a matter of grave concern for the industry.
- Note that the underlying services or supplies from vendors have already suffered appropriate taxes

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

19 Service Tax on Profit Petroleum

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

- Profit petroleum is the share in petroleum after recovery of cost which is shared between the Contractor and the Government.
- This is not a consideration for any service. VAT is already paid at the time of sale of the petroleum products (crude/ natural gas) by the Contractors.
- Recently, field formations have indicated their intention to issue notices seeking to levy service tax on Contractors share of profit petroleum which will result in unnecessary litigation.
- The Contractor's share of profit petroleum is an entrepreneur revenue from sale of Crude Oil/ Natural Gas and not a consideration for any service.
- Field formations have indicated their intention to issue notices seeking to levy service tax on Contractors share of profit petroleum which will result in unnecessary litigation

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

20 Service Tax on Royalty

Background
Royalty is a share of the Government revenue in the production of hydrocarbons and is success based i.e., not payable on exploration failure. It is part of overall economic share of the Government & not against any service.

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

- There is no quid pro quo specified in this legislation under which royalty is levied that Government is required to fulfill obligation in lieu of royalty received.
- Treating right to use natural resources as supply of services & levying tax is a step backward & further increase the tax burden with adverse consequences on project profitability & incremental investments

Suggestion

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

Downstream

1 Supply of Furnace Oil i.e. Bunker Fuel to Foreign Vessels to be zero rated in GST

Background

All the OMCs are engaged in supplying of Furnace Oil i.e. Bunker Fuel to the Foreign vessels The product Bunker fuel is a GST product which initially attracted GST rate of 18% from 01.07.2017 to 12.10.2017 and with effect from 13.10.2017, it attracts GST rate of 5% whereas the supply of Bunker Fuel, in the earlier regime, attracted Nil Central Excise Duty as it was termed as deemed export.

Our Country has approximately 7,500 km long coastline, 14,500 km of potentially navigable waterways and strategic location on key international maritime trade routes. There are about 32,000 nos. of Foreign vessels come across these routes and procure Bunker Fuel. The charge of GST on supply of Bunker Fuel, has led the Foreign vessels to avoid refueling in India and to opt out to other countries located en-route like Sri Lanka, Singapore or Fujairah (UAE) etc. diminishing the bunker fuels demand at Indian ports.

The GST rate of 5% has threatened to wipe out the nascent Indian bunker trade which was beginning to show signs of growth over the last couple of years as the nation sought to leverage the port visits of thousands of cargo ships into Asia’s third biggest economy. The steep fall in bunker sales is having a cascading effect on foreign exchange earnings, logistics, barge operations and ancillary services and has severely impacted the business of Bunker Fuel as the market share is shifting to other nearby countries.

India is one of the fastest growing large economies in the world and ports play an important role in the overall economic development of the country. Approximately 95 % of India’s merchandise trade (by volume) passes through sea ports. In this connection, Ministry of Shipping, Government of India has also launched flagship Programme “Sagarmala” which interalia aims at unlocking the full potential of India’s coastline and waterways and improving export competitiveness.

Suggestion

Therefore, a timely action would not only help in restoring the Bunker fuel sales and improved collection of foreign exchange but also bring back the India’s position amongst International Ship owners and traders. In view of this, it is suggested that necessary amendments are to be introduced in GST Act for treating the supply of Bunker Fuel zero rated.

2 Remission of GST for storage loss, handling loss and transit loss for petroleum products covered under GST

Background

a) The weight and volume of petroleum products by its inherent nature is dependent upon the temperature and density.

b) The transmission process of the petroleum products, either by direct pipeline, vessel, tank wagon, tank lorry etc. the company incur loss due to variation in temperature and / or density. This loss in commonly understood and termed as "transit loss". This fact of handling or storage loss or transit loss is well recognized within the petroleum industry for petroleum products and variation tolerance within 1% to 2% is also well accepted.

c) In the Excise law, there were various Government notifications in this regard.
d) The current GST law does not provide any dispensation on account of loss of petroleum products which occurred either during transit or during storage.

e) Under GST law, tax is payable based on the supply from the refineries on the basis of quantities dispatched, OMCs will not be able to take the ITC of GST for quantities lost as the receiving location will not have such quantity of physical stock.

Suggestions

It is recommended that considering the inherent nature of petroleum products covered within GST, GST paid on loss should be allowed as ITC or a mechanism to be put in place to compensate Oil companies on such stranded taxes.

3 Exemption from GST on Ethanol/Bio Diesel used in blending with MS/HSD

Ethanol is blended into Motor Spirit (MS), to improve automobile emissions, reduce Green House Gases and reduce dependency on fossil fuels. Ethanol is covered under GST regime and is subjected to CGST/SGST or IGST as the case may be and Ethanol blended Petrol (EBP) is covered under Central Excise & State VAT. There is an exemption under Central Excise for not treating the blending as manufacture, thus no additional excise amount needs to be paid on blending of Ethanol. Since Petrol and Diesel being exempted supplies under GST, credit with respect to Ethanol and Bio diesel is not available when blended with Petrol and Diesel respectively. Thus, the GST paid on additives Ethanol/Bio diesel is a cost to companies.

Suggestion

Ethanol/Bio Diesel meant for blending with petrol/diesel should be exempt from GST as to incentivize OMCs.

Further, appropriate amendment be brought out in excise notification no. 11/2017- CE so that exemption from Excise duty continues to be available on blending of Ethanol/Bio Diesel.

4 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 practical, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be carried out in the CENVAT Rules to allow the tax credit of GST paid inputs against the output tax liability of Excise on non-GST products since the credit was earlier available under CENVAT & VAT laws.

5 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 in 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. This will result in higher penetration of gas as an energy option would also mean lesser pollution, reduced oil dependency.

6 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 Celsius 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. This will enable optimum utilization of LNG Terminal facilities in India and facilitate higher trade and consumption of this carbon efficient fuel by India entities.

7 Relief by way of exemption of GST on intermediate streams in process industry like Refinery

Background
Intermediate streams on processing of crude oil can be further refined to MS/HSD etc.

Suggestion
In order to reduce environment pollution, oil industry is undertaking major capital investment to introduce cleaner fuels in the Country. Major Capital Goods, input and input services are used in setting up of process units required for Refining of crude oil that produces Intermediate streams. In order to leverage the refinery capabilities which are located in different States, inter unit transfer of Intermediate streams for manufacture of MS/HSD will result in optimum utilization of the refineries which is in the best interest of the oil industry as well as the Country. Providing exemption on transfer of intermediate products from one refinery to another would without any loss to the exchequer will result in optimum refinery utilization and which would also result in better resource mobilization to both Central and State Governments.

8 Availability of Input Tax Credit on Inputs for construction of cross-country petroleum and gas pipeline/ Rationalization of GST rates on Inputs used 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 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 substantially increase the cost of such projects .

Suggestion
Pipeline transfer is a very important means of environmentalist protection as it saves major fuel consumption in logistics.

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), GST on such goods will increase the cost of pipeline projects .Therefore, it is requested that input credit of applicable GST on such goods and services should be permitted, alternatively they should be exempted or considered at lower rate of 5 ,Further .%exclusion of “pipelines laid outside factory premises” from the definition of “Plant & Machinery”, should be removed.

9 Interest on account of rule 42 (2) CGST rules:

Background

- As per CGST rules 42 (2), yearly calculation of ITC reversals needs to be done by 30th September of the following year for the previous financial year. While calculating the annualized ratio with monthly ratio, if any excess credit is found, same has to be paid along with 18% interest.
- Previously in Cenvat Credit Rules (rule 6) also, reversal of excess credit has to be done by 30th June for previous year without any interest implication.

Suggestion

The need of reversal arises only due to change in the ratio of taxable and non-taxable supply. Since there is no intention to evade ITC, accordingly no Interest should be imposed. In line with the erstwhile Excise/ Cenvat rule reversal of credit, it is proposed to waive the provision for levy of interest as specified in Rule 42 (2)(a) of CGST rules.

10 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, it is suggested 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

- Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD
- Regasification of LNG – from 18% to 5%
- Transportation of Natural Gas through Pipeline-from 12% to 5% (with ITC benefit)
- Procurement for setting up ethanol/CBG/Bio Diesel production facility
- Works Contract Services-from 18% to 12%
- Restoration of Lower Rate of 5% on input services used in Research Activities (notification no 45/2017) Central Tax (Rate) applicable for inputs

11 Entry 164 of Schedule I of GST [Notification 1/2017-CT(rate) dt. 28.06.2017, as amended from time to time]- Supply of Furnace Oil falling under HSN 2710 for use as bunker

Background

The prevailing rate of tax on supply of following FO grades as bunker fuel for use in ships or vessel is 5%.

(b) The following bunker fuels for use in ships or vessels, namely,

i. IFO 180 CST
ii. IFO 380 CST
iii. Marine Fuel 0.5% (FO)"

Furnace Oils are produced at refineries and thereafter transferred to supply points, which may be situated in state different to the state of said refineries, for onward supplies to ships or vessels for use as bunker fuel.

Further, there is no process undertaken by such supply points and FO is supplied as such to ships/vessels as bunker fuel.

Therefore, the initial leg of such FO supplies, which is ultimately supplied as bunker fuel, from refineries to supply points situated in different state also to be covered under the principal entry 164 and applicable tax on the same to be 5% GST.

Suggestion
Clarification from CBIC that the entire chain of supply of FO for use as bunker fuel including supply from refineries to supply locations, situated in other states, are also covered under entry 164 of Schedule I of GST.

12 Refund due to Inverted Duty Structure-Formula under rule 89(5) of CGST Rules, 2017

Background
Section 54- Clause (ii) of proviso to section 54(3) Provide for Refund of accumulated ITC on account rate of tax on input being higher than rate of tax on output supplies (other than nil rated or fully exempt supplies).

Further, rule 89(5) of CGST Rule, 2017, provide for refund of ITC for inverted rated supply as per following formula-

> Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.
> Explanation: - For the purposes of this sub-rule, the expressions –
> “Net ITC” shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
> “Adjusted Total turnover” and “relevant period” shall have the same meaning as assigned to them in sub-rule (4).
> The prevailing provision of rule 89(5) regarding computation of refund for ‘inverted duty structure’ is over-simplification of refund formula and is restrictive in nature as it provides the refund of ‘net ITC’ in proportion of supply of inverted supply to the total turnover of the GSTIN.

Suggestion
Formula provided under rule 89(5) for refund of accumulated ITC to be amended to provide the refund of accumulated ITC equal to the value of inverted tax amount i.e. difference of ITC availed on direct inputs related to inverted rated supply and tax liability on outward inverted rated supply. Further, the prevailing formula may be continued for refund of accumulated ITC towards common inputs for inverted rated supply.

13 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, it is requested for insertion of suitable explanation as per following alternatives to amend the definition of export of goods or zero-rated 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 IGST 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 in SEZ unit
- supply of Aviation Turbine Fuel to a foreign going aircraft.
-

14 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.

- Currently for the purpose of Common Input Tax reversal the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A] of List I of the Seventh Schedule to the Constitution. Entry 84 includes " Duties of excise on the following goods manufactured or produced in India, namely:— (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products"

This Entry covers excise duty on manufacture of petroleum products in India, which are paid when petroleum products are removed from the place of removal. This entry does not include duties, which the product suffers as Customs Duty [Entry No. 83 of List I of the Seventh Schedule to the Constitution.] on Import, which is equivalent to the amount of total excise duty which would have been levied if the same product was manufactured in India.

View above the exempt turnover for the purpose of Rule 42 & 43 will include the amount of excise duty paid as Customs duty on Import and subsequently sold in India. This will adversely affect the common credit available on GST products.

Suggestion:
For a) Since, the 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.

For b) Entry No. 83 (excluding BCD) of List I of the Seventh Schedule to the Constitution to be included by amending the explanation under Chapter V- Input Tax Credit of CGST Rules, 2017 to determine the value of non-GST supply excluding such duties.

15 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.

16 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:

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

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

17 Non availability of Input Tax Credit on transfer of intermediate stream viz. Reformate/ DHDT/ SRGO /VGO and other feeds from one refinery unit to another for the manufacture of non-GST goods i.e., MS/HSD

Background
Many intermediate products or feeds are either transferred by one refinery unit to another or imported for further processing at refinery unit, to utilize the capacities available in secondary units in the other refineries & to increase the output of premium petroleum products.
Some of major feed like Naphtha/ Py-Gas/Reformate etc. used for manufacturing of MS (petrol) & HSD are taxed under GST at the rate of 18%, but due to being used in manufacturing of non-GST goods, the input tax credit is not available.

Suggestion
Considering that refineries are not able to avail input tax credits on such intermediate stream used for production of non-GST goods, thus, it is requested that intermediate feed transferred by one refinery to another, sale to other OMCs and import of such intermediate stream for further processing / manufacturing of finished goods may be exempted or kept at lower rate of 5%.

Merit of this proposal is based on the concept of procurement of goods for further manufacturing by issuing concessional rate of tax Form (Say Form-C, Concessional rate of tax of 2% during pre-GST era).

18 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 are 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%.

19 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 recipient 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.

Natural Gas

1 Supply of LPG by standalone Refineries/ Fractionators to PSU Oil Marketing Companies (OMCs) for the period 1/07/2017 to 24/01/2018.

- In order to meet the LPG Demand and improve the logistics efficiency PSU OMCs procure LPG from other PSU OMCs, Stand Alone Refineries (SARs) like Reliance Industries Ltd (RIL), Nayara Energy etc. and fractionators like ONGC and GAIL.
- Based on the GST notifications issued by CBIC, LPG procured from SARs, fractionators like ONGC/GAIL and OMC's for onward intended supply of same by PSU OMCs to household domestic consumers/NDEC customers though their distributors are being levied at concessional rate of 5% GST. Further, OMC distributors are also charging 5% GST on supply to household domestic consumers/NDEC customers.
- CBIC issued Circular No. 80/54 /2018-GST dated 31st December, 2018, where it is clarified that LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use will fall under the S. No. 165A of the notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 and shall, accordingly, attract a GST rate of 5%, with effect from 25.1.2018.
- The above circular has raised concerns on the GST rate of LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use for the period 1.7.17 to 24.1.2018 (prior to 25.1.2018) .
- Subsequent to issue of the aforesaid clarification Show cause notices have been issued during November 2018 by Commissioner of GST, Gujarat on M/s Nayara Energy, Reliance Industries Limited, Gujarat, GAIL and ONGC demanding differential GST of 13% for sales effected by it during the period 01.07.2017 to 24.01.2018 on the ground that supplies of LPG by these companies to PSU OMCs for onward supply to household domestic customers/NDEC customers is not entitled for concessional rate of tax of 5%. Also GST Audit Cell of Madhya Pradesh has issued Audit Memo observing short payment of GST of 13% for the said period on GAIL .
- The clarification has resulted in an unintended consequence as the LPG so purchased is always used for domestic purposes only, omitting only a period from 01.07.2017 to 24.01.2018 appears unintended and is not justified.

Suggestion

In view of the above it is submitted that suitable clarification may be issued so that transactions between PSU OMCs, SARs/Fractionators with PSU OMCs, inter-state stock transfers of PSU OMCs, and PSU OMCs to the retailers for specific end use for LPG are covered under entry no. 165 & 165A of the Schedule I for the levy of 5% GST right from 1st July 2017 and disputes raised by the field formation are avoided.

2 Amendment in GST Rate for Inputs and Services related to Domestic LPG

Supply of LPG domestic to domestic household consumers /Non Domestic Exempted Categories (NDEC) customers, is taxable at 5% GST in terms of entry 165A/165 of Schedule I of GST notification no. 1/2017-CT(rate) dt. 28.06.2017. Supply chain of LPG Domestic involves regular procurement of certain capital goods and services of which mainly consist of empty cylinders, blending services, bottling services and transportation services. Prevailing rate of tax on almost all of these supplies is 18%. There exists an anomaly in tax structure for the business of marketing LPG Domestic (supply to household domestic consumers / NDEC customers) as tax rate on finished product is 5% whereas related capital/inputs are taxable at higher rate of tax.

Though, Input tax credit (ITC) for the aforesaid items is admissible to OMCs, however, there has been considerable increase in ITC due to anomaly in rate structure i.e. higher tax structure for inward supplies and lower tax structure for its related outward supplies resulting in accumulation. This has also been increased due to spending by OMCs for increased demand and new connection under Govt. of India's flagship programme of Pradhan Mantri Ujjawala Yojana (PMUY) which is likely to continue for few more years.

Accordingly, there is an urgent requirement to re-align the rate structure for major inward supplies related to LPG Domestic supply chain at par or at least closer to the rate of tax applicable for LPG Domestic product. In this regards, suggested rate of tax for the aforesaid major regular inward supplies being used for marketing of LPG Domestic for supply to household domestic consumers / NDEC customers, is appended as under-

Particulars	HSN/SAC	Prevailing rate of GST	Suggested rate of GST	Justification
14.2 KG Empty LPG Cylinders for supply of LPG Domestic	7311	18%	12%	Major constituent for LPG Cylinders manufacturing are taxable at 18%, therefore, 5% GST rate may result into inverted structure for cylinder manufacturer. Accordingly, 12% GST is suggested which would be revenue neutral rate.
Services of LPG Domestic Blending (i.e. Propane and Butane blending)	9988	12%	5%	Blending activity does not involve much inputs, therefore, it suggested to reduce the rate of tax at par with LPG (Dom i.e. 5%.
Services of LPG Domestic Bottling (Bulk LPG to cylinders)	9985	18%	5%	Bottling activity does not involve much inputs, therefore, it suggested to reduce the rate of tax at par with LPG (Dom i.e. 5%.
Services of LPG Domestic Transportation thru Pipeline	9965	18%	5%	The rate of tax on other mode of transportation such as rail, vessel and road are taxable at 5% in terms of sr. 9(i), 9(ii) & 9(iii). Therefore, it suggested to reduce the rate for transportation of LPG Domestic by pipeline at par with other mode of transportation i.e. 5%.

Accordingly, it is submitted that the rate of tax on aforesaid major regular capital / input services for LPG supply chain may be reduced, as suggested, which would further add values to the supply chain of LPG Domestic. This on the one hand is revenue neutral in nature and on the other hand would provide greater synergies to the entire supply chain of LPG (Dom) in the country by eradicating the prevailing anomaly including disproportionate ITC accumulation.

3 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.

4 Clarification to exempt CBG from payment of VAT/Excise duty on sale after blending mixing with Natural Gas/CNG

Background

Government is promoting production and use of Bio Gas and CBG which is presently attracting GST @ 5% unlike Natural Gas/CNG which attracts VAT/Excise duty. With a view to make the sale of Bio Gas/CBG commercially viable, it will have to be blended with Natural Gas /CNG for further sale. However, after its blending with Natural Gas/CNG, it will attract VAT/Excise duty as applicable to Natural Gas/CNG and Input Tax credit of GST paid on procurement of Bio gas/CBG will also not be available. This will result in significant increase in tax incidence of quantity of bio gas/CBG and make it difficult to market the same.

It may therefore be clarified that Bio Gas/CBG blended with Natural Gas/CNG will continue to attract GST on quantitative basis to bring clarity /certainty in the matter.

Suggestion

It is suggested that Bio Gas/CBG blended with Natural Gas/CNG may continue to attract GST on quantitative basis and will not be liable to levy of VAT/Central Excise Duty. This will promote usage of this Bio Gas/CBG on commercial basis in line with the policy of the government.

5 GST Schedule Entry for LPG

Background

Entry 165 & 165 A of Schedule I to notification ref. 1/2017-CT (rate) dt. 28.06.2017 provide HSN ‘2711 19 00’ for Liquified Petroleum Gas (LPG) Domestic

Similar entry also exists in sr. 165 and 165A of Schedule I to notification ref. 1/2017-IT (rate) dt. 28.06.2017 and notification ref. 1/2017-UTT (rate) dt. 28.06.2017

Explanation (iii) to the said notification provide that the "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Customs tariff entry for LPG Domestic was amended vide the Finance (No. 2), Act 2019 (notified effective 01.01.2020) as under-

2711 19 10 - LPG (for non-automotive purposes) conforming to standard IS 4576
Accordingly, effective 01.01.2020, the tariff entry in Customs Tariff is ‘2711 19 10’ however, under GST rate Schedules, the erstwhile entry i.e. ‘2711 19 00’ is still continued, which is not available in amended Customs Tariff, leading to anomaly in two tariff entries for same product.

Suggestion
HSN for ‘LPG Domestic’ in Entry 165 & 165A of Schedule I to GST notifications ref. /2017-CT (rate) dt. 28.06.2017, notification ref. 1/2017-IT (rate) dt. 28.06.2017 and notification ref. 1/2017-UTT (rate) dt. 28.06.2017, to be amended as ‘2711 19 10’ with retrospective effect from 01.01.2020.

6 Formula for reversal of Input Tax Credit

Background
Under GST law, the formula for reversal of credit is on the basis of turnover of the GST and Non-GST transactions. The formula prescribed under GST in case of reversal of input credit tax credit takes into account taxable as well as exempt supplies which includes non-GST supplies. Currently, since LNG is outside the purview of GST, the proportion of exempt supplies is larger than the non-exempt supplies due to which there is a huge loss of credit to LNG sector.

Suggestion
It is proposed that formulae for reversal should be based on volume or any other method which is justifiable for natural gas.

7 Reduced rate of tax for re-gasification services

Background
Recently the Gujarat Advance Ruling Authority in APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/40, passed an order on 11th Aug, 2021 that Petronet’s activity of re-gasification of LNG owned by its GST registered customers amounts to rendering of service by way of Job Work and merits to be covered at entry ‘id’ of Heading 9988 at Sl. No. 26 of Notification No. 11/2017-CT (rate) dated 28.06.2017, as amended, liable to CGST at 6%. However, there is the cumbersome compliance required for Job Work process for LNG.

Suggestion
In view of the above, there will be clarity in law, if there would be specific entry for LNG Regasification Service, to be subject to 6% CGST, instead of the current rate of 9% CGST. This will give relief to the industry w.r.t. the process of Job Work compliances. Reduction in cost to end users of Natural Gas, like Power, Fertiliser, City Gas Distribution, Petrochemical, Oil Refineries etc.

General

1 Payment to Supplier within 180 days (Section 16(2) of CGST Act, 2017)

Background

Second proviso to section 16(2) provides that in case recipient fails to pay the value of goods/service alongwith tax to the supplier within 180 days from the date of invoice, ITC availed needs to be reversed along with interest thereon.

The condition of payment to supplier is generally governed by the contractual agreement between the parties which depends on the various factors such as nature of work, credibility of the recipient etc.

Once the payment of tax has been made by the supplier to Govt., disallowance of ITC to the recipient where he is not contractually liable to release the payment within 180 days from the date of invoice is unfound and is unnecessary burden on the legitimate recipient.

Suggestion

Necessary notification/clarification to be issued by Govt. that condition of 'fails to make payment within 180 days' to be reckoned with contractual conditions between the supplier and recipient and not from the date of invoice.

2 Amendments u/s 8(3)(b) of CST Act in Union Budget 2021

Background

As per proposed amendment, benefit of concessional rate of 2% CST against Form-C on procurement of non-GST goods would not be available, unless buyer manufactures/processes to produce non-GST goods.

Suggestion

Continue providing the C-form benefit (2% CST rate) to non-GST goods.

Domestically produced crude oil, being sold on import parity model already bears the burden of non-reimbursement of CST (2%) as there is no sales tax on imported crude.

- Removal of C-form benefit will increase the burden from 2% to the merit rate (5%) adding to the cost of sales.
- Natural Gas sales attract 0-24.5% VAT (24.5% VAT in Andhra Pradesh) against 3%- 15% VAT for imported LNG. Non availability of C-Form puts a burden of ~10-20% more state VAT on domestic gas, thus hiking the cost of Natural gas. This would lead to more LNG imports, hampering India's plan for a Gas based economy & detrimental in meeting emission targets.

3 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.

4 Provide ITC benefits for non-GST exports/deemed exports as well

Background
Currently ATF is outside the ambit of GST and export of ATF is exempted however the corresponding input tax credit for such exports are not permitted under the present GST laws.

Suggestion
It is suggested to provide a mechanism for ITC benefit and lay down a procedure to claim refund of ITC on Non-GST supplies exported/ deemed exported to outside India.

5 Break-up of total expenditure of entities registered or not registered under the GST in Tax Audit Report

Background
Vide Notification No. GSR 666(E) [No. 33/2018 (F. No. 370142/9/2018-TPL)], dated 20.07.2018, the CBDT notified revised Form 3CD (Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961) with effect from 20.08.2018. The said revised Form 3CD contains a new clause 44 seeking 'Break-up of total expenditure of entities registered or not registered under the GST'.

Suggestion
Considering the extensive reporting and compliance mechanism with respect to GST framework in place, and GST being an Indirect Tax administered by CBIC under the same Ministry as the CBDT, reporting again the GST data in Tax Audit Report in Form 3CD overburdens the assesses with additional compliance work. It also results in practical difficulties in presenting the data in required fashion and also entail higher costs to the assesses for maintenance of such detailed data.

6 Corporate Environment Responsibility (CER) projects gets treated as Sponsorship.

Background
Person executing the Project (CER Project) charges GST thereon. Additionally same being treated as sponsorship, all sponsorship activities are subject to payment of GST under reverse charge once again.

Suggestion
Corporates are mandated to undertake projects under Corporate Environment. Responsibility. Such projects amount to sponsorship, additionally GST has to be discharged on reverse charge on the same. It is requested to exempt GST on all the CER projects on reverse charge basis.

7 One time settlement / Amnesty scheme under VAT and CST for Union territories

Background
After the transition to GST, taxpayers intend to settle the past litigations and assessments under the erstwhile VAT and CST Law.

Various State Governments have initiated various tax/administrative measures to ensure a seamless transition to the GST regime. One such measure is that several States like Rajasthan, West Bengal, Uttar Pradesh, Bihar, Maharashtra, Kerala, Himachal Pradesh, Gujarat & Haryana have rolled out Amnesty Schemes for tax payers to close past period litigations.

These schemes have helped the States in collecting additional tax revenue and in reducing the cost of litigations by clearing backlog of cases which would otherwise have consumed administrative time and cost.

This will enable the revenue authorities in the union territories to focus on robust GST administration and related compliances including revenue audit work etc.

The Central Government had announced Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 for the erstwhile Service Tax and Excise matters which shows the intent of the Government in enabling the resolution of past litigations of the tax payers in the best possible manner.

Further, it would be financially and operationally beneficial for the tax payers and help in overcoming practical challenges; especially since there has been a transition from the erstwhile Laws to GST.

Suggestion
In line with the amnesty schemes of the States as well as the Centre for the erstwhile Laws, it is requested that roll out of an Amnesty Scheme/One time settlement scheme for the Union Territories also should be considered under VAT and CST Laws.

8 Services between Head office and its Units situated in another state

Background
Section 7 read with schedule III provides applicability of GST for transactions amongst distinct persons of the same entity. Issue arises whether head office is providing services to its unit situated in other political state or whether units are providing services to head office.

The issue has further attained significance in case of AR ruling in the case of M/s Columbia Hospital wherein it was held that head office is providing services to units and employee cost is required to be included in the value of services.

Since, employees are for the company as a whole and not permanently mapped to any unit of the organization, cannot be considered as providing services among distinct persons.

Suggestion
Necessary notification to be issued by Govt providing exemption for deemed supply of services by head office to its units situated in another state and services by units to head office situated in another state. Such clarification would avoid unwarranted litigations at future date particularly in view of contrary AAR ruling in this regard.

9 Interest liability under rule 37 to be done away with

As per rule 37 of CGST rules, 2017, a registered person, who has availed input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within a period of 180 days shall reverse such credit along with applicable interest.
Sometimes in the event of dispute w.r.t. quality of products or services payment is kept on hold beyond 180 days and later payment is made on resolution of the dispute. The above provision regarding reversal with interest creates unnecessary burden on taxpayer, even when tax would have been rightfully paid by supplier to government and same is getting reflected in GSTR 2B as well. Also, there is no loss to revenue in the subject case.

In view of the above it suggested that interest should not be applicable on such reversal under rule 37 to remove the difficulty for compliant taxpayers.

10 Allowance of ITC on pipeline laid outside factory

Background
Section 17 of CGST Act, 2017 restricts the input tax credit on pipeline outside factory premise. Pipeline being the transport mode for transportation of GST products such as LPG, SKO, and disallowance of on the same is an additional financial burden on oil companies.

Suggestion
Notification may be issued amending the explanation provided in section 17 to provide that input tax credit on pipeline laid outside factory for transportation of GST petroleum product shall be admissible.

11 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.

12 Availability of download of GSTR-1, ITC-04, GSTR-6, GSTR-7

Background
Download of following returns in excel is not available on GSTN portal which leads to difficulties in reconciliation after submission of returns-

- Outward Supply Return (GST-1)
- ISD return (GSTR-6)
- GST TDS return (GSTR-7)
- Job-work return (ITC-04)

Suggestion
Excel download of GSTR-1, GSTR-6, GSTR-7 and ITC-04 returns filed may be made available on GSTN portal which would help to great extent in compliance.

13 Auto-population of invoice having valid IRN on GSTN portal

Background
GSTN portal is not accepting the cases where valid IRN generated and GSTIN is cancelled/inactive before flow of IRN information from E-invoice portal to GSTN portal in GSTR-1.

Suggestion
As at the time of invoice creation, GSTIN was valid and IRN is within the provisions of GST law, GSTN portal should accept such invoices.

14 Credit note distribution by ISD

Background
Section 34 was amended to provide for issuance of credit note for multiple invoices, considering the same, GSTR-1 return does not require reference of original invoice for credit note.

However, ISD return (GSTR-6) in Table 5 still requires reference of original ISD distribution invoice. As distribution of credit note by ISD registration may involve multiple original documents, the mandatory requirement of reference of original invoice in table 5 of GSTR-6 may be removed.

II) Excise Duty

Upstream

1 Removal of levy of Special Additional Excise Duty (SAED) on Petroleum Crude

Background
SAED has been introduced by Ministry of Finance @ Rs.23,250 per MT on production of Crude Oil with effect from 1st July, 2022. As per media reports, SAED has been imposed by the Govt. due to extraordinary increase in prices of Crude Oil and that the levy is to be reviewed on fortnightly basis. Accordingly, it was reduced to Rs. 8,000 per MT and presently stands at Rs. 11,000 per tonne Such levy in addition to all other existing levies, is significant considering that the Crude Oil prices are quite volatile averaging only USD 60/bbl in last five years.

Suggestion
In view of above, the SAED should be removed or if need is felt to continue the levy for some time as an extraordinary measure, then the rate be changed to an ad-valorem levy of 20% of incremental crude price over USD 100.

Justification
The levy is over and above heavy burden of royalty (20% onshore/10% offshore) and OID Cess (20% ad valorem). Further, the levy is calculated on per tonne of production rather than as a percentage of realized price, thereby causing hardship to oil producers when the prices get reduced. The levy has an adverse impact on exploration and development capex proposals.

2 Removal of levy of Basic Excise Duty (BED) and National Calamity Contingent Duty (NCCD) on Domestic Production of Petroleum Crud

Background
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., up to 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. Further, Basic Excise Duty (BED) @ Rs. 1 per MT was introduced through Finance Bill, 2019, and Special Additional Excise Duty (SAED) was introduced from 1st July, 2022 leading to avoidable hardship of compliance of Excise Law.

Suggestion
The NCCD along with BED on production of domestic crude oil may be removed with immediate effect which would facilitate the compliance as well as ease of doing business.

Justification
The levy adds to the complexity of dual compliance under the E&P Industry and hence removal of BED & NCCD would be a step towards ease of doing business.

Downstream

1 Upfront Exemption of Duties of Excise on HSD

Background
Excise duty was exempt on procurement of High-Speed Diesel (HSD) under procedure of ICB in connection with petroleum operations vide Notification No. 12/2012-CE dated 17.03.2012 as the HSD was covered as ‘specified goods.

Post introduction of GST, the exemptions were withdrawn and rates were prescribed for Excise Duty w.e.f 01.07.2017 on HSD vide Notification No.11/2017-CE. Therefore, E&P Companies started paying excise duty on procurement of such HSD procured for petroleum operations. However, since the import of HSD (i.e., specified goods) for petroleum operation was exempted from levy of BCD under Customs Law, the excise duty paid on domestic procurement of HSD was eligible for deemed export benefit by way of refund under Foreign Trade Policy (FTP). Accordingly, the E&P sector were claiming refund of excise duty in terms of FTP on procurement of HSD required for petroleum operations.

Recently, the list of ‘specified goods’ on import of which the exemption from BCD was available to E&P sector, got pruned vide Customs Notification No. 02/2022-Cus dated 01.02.2022, resulting into non-eligibility of HSD from exemption of BCD on its import. Consequently, the deemed export benefit in respect of excise duty paid on such HSD also became ineligible for refund under FTP w.e.f. 02.02.2022.

Suggestion
Upfront exemption on procurement of HSD required for petroleum operation may be provided without any condition.

Justification
This would provide boost and incentivize the upstream sector as this sector is already burdened with huge taxes due to non-availability of ITC of Duties paid on HSD (being Non-CENVATable

goods) as well as GST paid on other inputs, due to exclusion of its main products/output for levy of GST.

2 Ethanol from Captive Plants for MS blending

Background
Exemption for 10% EBMS from all duties of excise is subject to conditions i.e 10% of GST paid Ethanol is blended with 90% of Duty paid MS

OMCs are now putting up 2G plants for manufacturing ethanol to be used captively for blending with MS in order to produce EBMS.

Under GST law, goods supplied to itself for consumption within state, GST is not payable. Accordingly, Ethanol manufactured in 2G plants, if utilized for blending EBMS with in the same political state, GST is not payable

Exemption for EBMS would not be available, as the Ethanol manufactured by oil companies would not have suffered GST.

Suggestion
Suitable amendment to exemption required under the Central Excise law for exempting the blended EBMS produced from Ethanol manufactured from their own ethanol plants, by removing the condition of blending of GST paid ethanol in MS.

3 Differential duty on unblended fuels

Background
Finance Minister in her budget speech announced that to encourage the efforts for blending of fuel, unblended fuel shall attract an additional differential excise duty of INR 2 per litre from October 1, 2022. Pursuant to this, Department of Revenue, Ministry of Finance has released Notification No. 01/2022-Central Excise dated Feb 1, 2022 wherein excise duty on MS and HSD not blended with ethanol and bio-diesel stands increased accordingly. While with respect to ethanol, there is a notification which mandates Oil Marketing Companies (OMC) to sell 10% ethanol blended petrol across the country, with respect to bio-diesel, the National Policy on Biofuels-2018 does specify an indicative target of 5% blending in diesel by 2030 but to our knowledge, no notification has been issued to enforce this. However, all those situations where the blending rate is less than 10% or 5% as the case may be, will attract the differential excise duty of INR 2 per litre.

The efforts of OMCs to increase the ethanol blending in petrol to 10% as per the regulation and directives of the Government led to India achieving this target five months before the deadline. However, with respect to bio-diesel, the situation is completely different with current blending in diesel is just about 0.1%.The indicative target of 5% blending in diesel is quite distant due to various challenges which have been listed below.

1. **Sourcing of Feedstock:** Bio-diesel is derived from long chain fatty acids obtained from vegetable/edible oils but is not a feasible option as most of the edible oil in the country is imported. Used Cooking Oil (UCO) is a more preferred feedstock option for bio-diesel. However, non-availability of UCO feedstock in sufficient quantities poses a big challenge to achieve 5% blending requirement.
2. **Lack of Infrastructure:** Currently, OMCs does not have required infrastructure to be able to safely blend biodiesel at its fuel terminals. Key elements of the required infrastructure are

bio-diesel storage tanks, blending system, pumps and other associated infrastructure. Putting up storage tanks and other infrastructure in existing terminals will require additional time.

Non-Availability of Bio-Diesel: Companies which do not have a refinery presence in the country are dependent on other players for sourcing the product. As such, these companies require additional time to discover multiple suppliers with the capability to provide 5% blended diesel and secure requisite supplies.

Suggestion

Under current circumstances it is not possible for the industry to achieve 5% blending in diesel by 1st October 2022. Given the inflationary pressure on the economy and already high oil prices, additional excise duty on the diesel will put consumers under burden especially the agriculture and commercial transport consumers.

Taking into consideration the challenges involved in achieving 5% diesel blending which would eventually result in additional burden on consumers, it is recommended to either repeal the notification on differential excise duty or the applicability of the notification should be based on the indicative target of 5% biodiesel blending by 2030 as specified in the National Policy on Biofuels-2018.

4 Ethanol Blending undertaken by Oil Marketing Companies (OMC)-Background

PSU OMCs are undertaking ethanol blending with MS (Motor Spirit Commonly known as Petrol) in terms of Central Govt guidelines for sale as Ethanol Blended Motor Spirit (EBMS). At present, ethanol blending is undertaken at 5% or 10%, as the case may be, by OMCs. Both EBMS as well normal MS are being sold at the same price to the end customers as MS.

Blending of ethanol with MS is considered as manufacturing activity under the Central Excise law. To avoid the dual duty implication on blending of GST paid Ethanol with Duty paid MS in the prescribed proportion namely 5% / 10%/12%/15%/20% ethanol with 95% / 90% /88%/85%/80% of MS, to produce EBMS, payment of duties of excise are exempt through the following notifications:

a. Basic Excise Duty (BED) vide notification 11/2017-CE dated 30.06.2017
b. Additional Excise Duty (Known as Road and Infrastructure cess – RIC) (Notification no 11/2018-CE, 12/2018-CE dated 02.02.2018)
c. Special Additional Duty of Excise (SAED) (Notification-28/2002-CE dated 13.05.2002.
d. Agriculture Infrastructure and Development Cess (AIDC) (Notification no. 03/2021 dated 01.02.2021.

EBMS is exempt from payment of excise duties only when duty paid MS and GST paid Ethanol are blended in the prescribed proportion only namely 5% / 10%/12%/15%/20% and blended MS meets the prescribed IS specifications. If it is decided to blend ethanol in any other ratio i.e. other than 5% / 10%/12%/15%/20%, then the excise duty exemptions as applicable will not be eligible for such blended MS. In such a situation, it would result in double duty implications which may make the entire EBMS program not feasible financially.

Suggestion

Condition for specific ratio of ethanol blending may be dispensed with and exemption similar to blended bio diesel product can be provided to ethanol blending where the exemption is applicable if the blending of bio-diesel is up to 20%.

5 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 directives, 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 / Bio Diesel blended Diesel sold respectively at the same price as that of Motor Spirit / Diesel would not be subjected to provision section 11D of Central Excise Act.

6 Gas Oil and oils obtained from gas oils: High Flash High Speed Diesel fuel conforming to standard IS 16861 2710 19 49 or Fuel (Class F) or marine fuels conforming to Standard IS 16731: Distillate oils 2710 19 61

Background

Presently the companies are classifying LSHF HSD and HFHSD under the category of Diesel and excise duty is being paid as applicable to Diesel.

It is understood that IS 16731 is the international standard for bunker fuel has two tables specifically for distillate fuel and residual marine fuel. The distillate would include HSD grade marine fuel.

The bunker fuel of HSD grade cleared from refinery would meet both IS 16861 & IS 16731 as both the IS have lot of parameters which are over lapping.

Suggestion

Entry prone to multiple interpretations as GST or Non-GST product. PSU oil companies are clearing HFHSD under the excisable goods.

Thus, classification of Distillate oil (under marine fuel) under non-excisable category may result in revenue loss to the Govt as well as business loss to PSU OMC.

7 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% ad valorem). In terms of one of the conditions for the concessional rate of excise duty, such concessional rate is applicable up to 3 years 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).

Also it is understood that Oil companies are required to supply concessional Excise duty ATF at RCS Airports only from their own refineries and cannot undertake procurement of the concessional duty paid ATF from other Oil Marketing Companies (OMC) / Stand Alone Refineries / Subsidiary etc. This is as per the settled judicial position by Hon'ble Supreme court in the case of Hindustan Petroleum Corp. Ltd v. Commissioner reported at 2015 (320) E.L.T. A344 (S.C.) wherein CESTAT Mumbai decision reported at 2014 (301) E.L.T. 554 (Tri. - Mumbai) was upheld . The Oil companies are interdependent on each other and Purchase/ Sale of petroleum products between Oil companies in various States cannot be avoided since none of the OMC has got their own refinery in all the States where they operate. It will be very difficult for the Oil Companies to meet the requirement of RCS flights at RCS Airports without such inter-Company sale/ Purchase of concessional duty paid ATF in view of the location of the Refineries and RCS Airports that need to be catered. The said condition is putting constraints on the logistics of the Oil Companies ultimately putting restriction on the quantities of ATF that are being supplied to RCS flights.

Suggestion

i. 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.

ii. Suitable amendment in notification is required stating that "Aviation Turbine Fuel procured by any Public Sector Oil Company from any other manufacturer of the said fuels and drawn by Operators or Cargo Operators from the Regional Connectivity Scheme (RCS) Airport" eligible for concessional excise duty @ 2%.

8 Changes in the rate of Basic Excise Duty on "Unblended MS/HSD for Retail sale w.e.f 01.10.2022

Background

Vide Notification No. 01/2022-CE dated 01.02.2022 the effective rate of Central Excise duty on unblended MS & HSD w.e.f. 01.10.2022 would be as under:

Product	Duty Rate effective 01.10.2022 (Rs/ ltr) for Unblended Product				
	BED	RIC	SAED	AIDC	Total
MS commonly known as Petrol (Unbranded) intended for retail sale	1.40+2.00=3.40	5.00	11.00	2.50	21.90
MS commonly known as Petrol (Branded) Intended for retail sale	2.60+2.00=4.60	5.00	11.00	2.50	23.10
HSD (Unbranded) intended for retail sale	1.80+2.00=3.80	2.00	8.00	4.00	17.80
HSD (Branded) intended for retail sale	4.20+2.00=6.20	2.00	8.00	4.00	20.20

Implementation of the higher duty based on the intended end use have following operational/ commercial challenges:

Operational Issue

- It would require earmarked movement by conveying the intent at the time of initial removal and tracking of the product throughout the supply chain from refinery/ place

of import or purchase till its final disposal to the ultimate customers. There is no mechanism available with OMCs to track the product in the entire supply chain.

- Availability of bio-fuels is seasonal and it may not be possible for OMCs to sell the blended products continuously w.e.f. 01.10.2022.
- There is no separate storage available for the identification of blended and unblended products at the Refineries, Marketing Terminals, Retail Outlets and its transportation through Tank Lorries, Railway wagons and Pipeline movement. The logistic cost to create new infrastructure for the separate storage of blended and un-blended product is enormous and will require several years.
- Any ad-hoc accounting will always be a subject matter of dispute with the Revenue officials and will generate unwanted litigation.

Commercial Issue:

- The proposed amendment may result into differential pricing of the same product (MS/HSD) at the same Retail Outlet (RO) / market depending on blending. System needs to be in place to avoid any diversion at RO.
- It is difficult to monitor on PAN India basis at the retail locations to ensure that no higher price is charged from the customers for the blended products. Since the duty is collected at the Refinery locations, it is difficult to introduce any mechanism for the Govt. to check the actions of unscrupulous dealers.

Suggestions

- Since the implementation of maintaining dual pricing system for the blended and unblended products is not practically workable due to difficulties cited above, it is requested to kindly continue with the existing mechanism of incentivizing Oil Marketing Companies giving exemption in the excise duty payment to the extent of blended quantity.
- Withdrawal/ amendment in the Central Excise Notification No. 01/2022-CE dated 01.02.2022.

9 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.

General

1 Exemption of Non-GST paid Ethanol/Bio diesel manufactured by Oil marketing Companies (OMC) and used for Ethanol Blended MS (Petrol) and Bio Diesel Blended HSD (Diesel)

Ministry of Petroleum and Natural Gas vide Notification No, F. No.P-13032(16)/18/2017-CC dated June 8, 2018 has notified National Policy on Biofuels 2018.

The Goal as specified in the said Policy is to improve availability of biofuels thereby increasing its blending percentage, which can be achieved through reinforcing ongoing ethanol/biodiesel supplies or through increasing domestic production by setting up Second Generation (2G) bio refineries. In addition, in order to prevent burning of crop stubble, which is one of the major reasons of environmental pollution, OMC's are in the process of Setting up of Second Generation Bio Diesel and Ethanol Plants.

Currently OMC's procure Ethanol and Bio Diesel from independent manufacturers for blending with MS (Petrol) and HSD (Diesel) to market Ethanol Blended MS (Petrol) & Biodiesel Blended HSD (Diesel)

In order to avoid double payment of excise duty, CBIC has exempted Ethanol Blended MS (Petrol) and Bio Diesel Blended HSD (Diesel) which is a blend of GST paid Ethanol/Bio Diesel and Excise paid MS/HSD from further levy of duties through various notifications.

Pursuant to the Govt.'s aim to reduce import dependence as well as to minimise pollution, OMC's are now in the process of setting up their own 2G Ethanol and Bio diesel manufacturing plants at various locations where raw materials for this would be available. Ethanol and Bio diesel manufactured by the OMC's will be used for blending. Since OMC's will themselves be producing these products, own consumption of ethanol/bio diesel produced will not be subject to GST. Thus exemption vide the aforesaid notifications will not be available as the self-produced ethanol/bio diesel used by OMC's themselves for blending will not be GST paid.

Manufacturing facilities proposed to be set up will become completely unviable if the exemption as is currently available to GST paid ethanol/bio diesel is not extended to OMC's who are setting up these plants and will be using the production captively and such captive use is not subject to GST.

Suggestion
It is therefore request that Ethanol Blended MS (Petrol) and Bio Diesel Blended HSD (Diesel) which is a blend of self-produced Non GST paid Ethanol/Bio Diesel (self-consumption will not attract GST) manufactured by OMC's and Excise paid MS/HSD similarly be exempted from further duties of excise as is currently being exempted for GST paid procurements.

2 Taxability of supply of Ethanol (E-100)

Background
Vide Order ref no. GSR 203(E) dated 22.03.2021 issued under Section 3 of the Essential Commodities Act, 1944, MoPNG has amended the Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 by inserting a new clause i.e. 6B, thereby allowing sale of Bioethanol (E100) by oil company for use as standalone fuel or blending with motor spirit, for compatible automobiles

As per explanation provided in the order, bioethanol (E100) means anhydrous alcohol recognized by BIS under "IS 15464: 2004" under the name "Anhydrous alcohol for automotive use.

BIS 15464:2004 provide specifications for Anhydrous Ethanol for use as automotive Fuel. The meaning of Anhydrous Ethanol under para 3.3 is provided as -"Anhydrous Ethanol is essentially ethyl alcohol, which is denatured and is meant for use as fuel in automobile engines."
Accordingly, E-100, would be sold as standalone or 93% Ethanol will be blended with 7% MS as denaturant and some additive to resolve safety issues.

Under the Customs Tariff, Anhydrous Ethanol (called Bioethanol or E-100) is covered under chapter heading 22072000 under the heading “Ethyl Alcohol and other spirits, denatured, of any strength. The present rate of GST on HSN 22072000 is 18%.

Further, in terms of Entry 84 of List I Union List to Seventh Schedule to the Constitution of India, Fourth Schedule of Central Excise, Tariff 22 of Custom Tariff and BIS 15464:2004 (subject to amendment), it may be inferred that bioethanol (E-100) sold as Standalone fuel or blended with MS/Additives denaturant wherein Ethanol is more than 30%, would be classified as GST product under HSN 22072000.

However, States are having their own definition of MS/Petrol under respective State VAT/Sales Tax laws and it appears that bioethanol (E-100), is sold as Standalone fuel or blended with MS/Additives as denaturant, State Authorities may on their own wisdom classify the same as MS/Petrol.

Suggestion
Clarification to be issued that sale of bioethanol (E-100) as Standalone fuel or blended with MS/Additives denaturant wherein Ethanol is more than 30%, would be classified as GST product under HSN 22072000.

3 Tariff 2710 12 90 Other in Central Excise Fourth Schedule

Background
As per notification ref. 8/2019-CE(T) dt. 31.12.2019, the tariff 2710 12 90 – Other, provide for tariff of 14% + Rs. 15.00 per litre. Though in terms of Sl. No. 10 of notification ref. 11/2017-CE dt. 30.06.2017 (amended vide notification ref. 9/2019-CE dt. 31.12.2019), the effective rate of tax is ‘nil’.

Thus, this entry gives impression that there could be certain products which may fall in this entry and leviable to Central Excise and not GST. However, in terms of 101st Constitutional Amendment Act and Section 9 of CGST Act, 2017, only five petroleum products i.e. MS (Commonly known as petrol), HSD (High Speed Diesel), ATF (Aviation Turbine Fuel), Natural Gas and Crude Oil are subject to levy of Central Excise Duty.

Suggestion
Notification ref. 8/2019-CE(T) dt. 31.12.2019 to be amended to remove the rate of excise duty prescribed for tariff 2710 12 90 as same is subject to GST

4 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
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 of excise 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.

5 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.

6 Refund of pre-deposits

Background
Where the appeal is decided in favour of the assessee, he is entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944/Section 129EE of the Customs Act 1962/ Section 115 of CGST Act 2017. Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944/ Section 27 of the Customs Act 1962/ Section 54 of CGST Act 2017.

Suggestion
It is suggested that in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not. If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest should be paid unless such order is stayed by a competent Appellate Authority.

III) Customs Duty

Upstream

1 Creation of Facility of Online Payment of Customs Duty on Disposal of Scrap which were Imported earlier at Concessional Rate of Customs Duty

Background

E&P Sector is eligible for concessional rate of Customs Duty (BCD-Nil & IGST@12%) in terms of Sl. No. 404 (Condition-48) to the Customs Notification No. 50/2017-Cus (as amended) on import of specified goods required in relation with petroleum operations.

Further, as per condition no. 48(d) of such notification, the imported goods which are sought to be disposed of, inter-alia, in non-serviceable form are permitted to be disposed of on payment of Basic Custom Duty (BCD) @ 7.5% as per the procedure prescribed therein. Accordingly, whenever there is a disposal of scrap by any oil company, pursuant to such condition, the BCD is required to be deposited.

In this regard, over a period of time it is experienced that though the ICEGATE (Customs Portal) has enabled facility of online payment (e-payment) for almost all Duties of Customs, there is no provision for making online payment directly at Customs Portal in case where duty becomes payable as a result of the said disposal of imported goods. As a result, the difficulties are being faced by Oil & Gas Industry whereby an official is required to visit the office of concerned Customs Commissionerate in person with TR-6/ GAR-7 Challans along with Demand Draft to deposit such duty in respect of each disposal.

Suggestion

Looking into the Ease of Doing Business initiative of Govt., it is requested to kindly consider the creation of facility of online payment of duty in the aforesaid cases of disposal of the goods as scrap which were imported earlier at concessional rate of duty in relation to Petroleum Operations.

Justification

The existing process of deposit of duty manually in such cases, is a time taking process and also not in line with the Digital India and Ease of Doing Business initiatives of the Govt.

2 Clarification required on unused obsolete goods on which import exemption was claimed under Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017

Background

The import exemption is available to the Oil & Gas companies on actual usage condition. The revised condition 48 to the said exemption entry prescribes that the goods so imported which are sought to be disposed after their use in unserviceable form or as scrap, customs duty shall be applicable on the transaction value of such goods. However, no clarification is provided on the treatment of imported goods under the exemption entry which remain unused and become obsolete.

Given the nature of business activities and the operations of Oil & Gas companies, certain goods are imported to meet contingencies and scheduling challenges.

Some of these goods do not get utilized during their lifecycle as they become obsolete, or the operations are closed down before the goods are put to use.

Since these involve high value investments, discharging Customs duty on original import value after the operations close down or after the goods become obsolete will have huge financial implications for the companies.

Accordingly, a clarification on treatment of such goods is necessary under the Customs Law.

Suggestion
Clarification should be provided that Customs duty on unused goods should also be applied on the Transaction Value if they are held for more than a specified number of years.

Alternatively, Customs Duty can be levied on disposal based on notional depreciated value. This is similar to the cenvat credit reversal provisions on capital goods as was applicable under the erstwhile cenvat Credit Rules which is also continued under the GST Law.

3 Restoration of pre-amended list 33 on goods imported for petroleum operations

Background
While the GST was introduced in India, petroleum products were kept outside the ambit of the GST till the date it gets notified. However entire goods and services procured for undertaking petroleum operations are subject to GST and the GST paid on such goods/services becomes non-creditable thus raising the cost of operations of the upstream sector.

Since inception of GST, upstream sector was entitled to concessional rate of 5% GST on the goods procured domestically for petroleum operations and similar concessional rate existed for imports of goods for petroleum operations vide Notification 03/2017-CGST(Rate) dated 28.06.2017 and No. 50/2017-Customs dated 30.06.2017 under Serial No. 404, Condition 48 respectively.

It is pertinent to mention that the import of such goods were fully exempt under Pre-GST regime.

- Recently, the erstwhile List-33 containing list of goods required for petroleum operations has been pruned and the concerned HSN Codes have been prescribed against the revised description of goods vide Notification No. 02/2022-Customs dated 01.02.2022.
- While the Government of India is far behind in achieving consensus to bring the petroleum products into GST, pruning the list leading to increase in rate for essential goods required for petroleum products like oilfield chemicals, completion equipment's, consumables, etc is a torment for the upstream sector.

Pruning of list for concessional rate of IGST on goods imported for petroleum operations in upstream Sector followed by increase in GST/IGST rate on domestic/imported goods to 12% (from 5%)

Suggestion
It is requested to kindly consider restoration of pre-amended List-33 with validity at least till inclusion of the Crude Oil and Natural Gas for levy of GST.

It is also requested to decrease the GST rate to 5% on domestic goods /IGST rate on the Imported goods required for petroleum operations in upstream sector with immediate basis to prevent upstream sector form falling miserably and stop increasing the import dependencies on Oil & Gas

Downstream

1 Withdrawal of exemption notification related to 'Social Welfare Surcharge' on custom duty on Petrol and Diesel in budget of 2021.

Background
Social Welfare Surcharge (SWS) was introduced by Finance Bill 2018 @ 10% on total Custom Duty. By an exemption notification (Notification No.12/2018-Customs dated 2nd February 2018) SWS on MS and HSD was reduced to 3%. This exemption has been rescinded by the Finance Bill 2021 (Notification No.12/2021-Customs dated 1st February 2021) thereby restoring the effective rate of SWS to 10% on MS and HSD vis a vis 3% earlier.

Total Aggregate Customs Duty on MS and HSD has a Counter Veiling Duty (CVD) component which is equivalent to excise duty (Rs 19.90 per litre for MS ad Rs 15.80 per litre for HSD). A 7% increase in custom duty due to withdrawal of the said exemption notification is amounting to an additional cost of around Rs. 1.40/Ltr. on MS and Rs.1.11/Ltr. on HSD on all MS/HSD imports.

Oil marketing Companies are required to import MS and HSD regularly to fulfill supply demand gap to meet domestic requirement. The demand supply gap occurs due to seasonal demand variations, planned/unplanned shutdowns in domestic refineries and mismatch between marketing and refining capacities of individual marketing companies and different manufacturing and consumption points.

The impact is not only restricted to imports but also percolating to purchase from domestic standalone refineries in private and public sector who regularly supply MS and HSD to OMCs. An increase in import duty component is providing an opportunity to the standalone refineries and the companies, having surplus products domestically, to negotiate a higher premium over and above RTPs for supply to marketing companies needing the products which is a current reality. It is also to be noted that private sector refiners who have substantial refining capacities and provide products to OMCs are guided by their own business imperatives to price the supply to domestic marketing companies depending on the opportunities and the alternatives available.

Due to continuously growing economy and rebound in demand post COVID, MS and HSD demand is growing and is expected to grow further. According to M/s IHS Markit, MS is expected to grow at CAGR 5% for the period up to 2030 and HSD is expected to grow at CAGR of 3.1%.

Financial implication of the under recovery on above account though different for different Companies depending on their supply demand gaps, is significant and is not getting absorbed in market price.

Suggestion/Requirement
It is requested that the exemption notification reducing SWS on MS and HSD from 10% to 3% may be restored.

2 Clarification on applicable Import duty rate on Import of Propane and Butane.

Background
Import of Propane and Butane meeting IS specs. 4576 for Non-Domestic Supplies by OMC's falls under specific Tariff Item 2711 1200 - Propane and specific Tariff Item 2711 1300 - Butane. as

per Sl. No.156 & 157 of Customs Notification no. 50/2017 dated 30th June 2017 which specifies a levy of Basic Customs Duty of 2.5% with Nil Conditions.

Recently Customs Authorities post amendment in Customs Tariff Schedule effective 01.01.2020 arising pursuant to changes as per Finance Act 2019 are insisting for clearance of Imported Propane and Butane under Tariff Item 2711 1910 LPG (for non-automotive purpose conforming to standard IS 4576) having Basic Customs Duty of 5%.

Suggestion
Ministry of Finance to intervene and provide clarification in this respect to avoid litigation in this matter.

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

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

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

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

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

4 Interstate purchase for supply of ATF to foreign going airlines to be classified as deemed export under section 5(3) of CST Act, 1956, and allow the benefit of Form H for such purchases

Background

Currently supply of ATF to foreign going airlines both designated Indian carrier and foreign carriers are exempted from levy of sales tax/VAT in the respective state, however the corresponding interstate purchases made for such sales are not exempted. This resulting in increased cost of ATF for supply to foreign going airlines when inter-state purchases made for supply.

Suggestions

It is suggested that the Govt. may pass an amendment notification classifying the sales to foreign going airlines both designated Indian carrier or foreign carrier as deemed export under section 5(3) of the CST Act and allow purchases without payment of CST under Form H and delete section 5(5) of the CST Act.

5 Inclusion of Definition of Motor Spirit (Commonly Known as Petrol) and High Speed Diesel under Section 2 CST Act, 1956

Background

With the implementation of GST effective 01.07.2017 and consequent to the Constitutional (101st) Amendment Act, 2016, Entry 92A of Union List Seventh Schedule to Constitution of India provide for levy of tax on inter-state sale by Central Govt.

Quote- Entry 92A-

Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

Further, Entry 54 of List II State List to Seventh Schedule to the Constitution of India provide for levy of taxes by State Govt. on intra-state sale of “motor spirit (commonly known as petrol)”. The relevant entry after amendment vide the Constitution 101st Amendment Act, 2016 is produced as under-

Quote Entry 54-

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

Therefore, effective 01.07.2017, State are having power to levy tax on sale of high speed diesel, motor spirit (commonly known as petrol), within the state.

However, the term Motor Spirit (Commonly Known as Petrol) and High-Speed Diesel (HSD) has not been defined under the CST Act, 1956. Whereas certain State VAT/Sales Tax laws are having varied meaning of term ‘Motor Spirit and HSD, classified into following broad categories-

‘motor spirit’, can be referred as-

- any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbons) which is capable of being used for providing reasonable efficient motive power for any form of motor vehicle.

- any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for a motor vehicle or stationary internal combustion engine.
- power alcohol, that is, ethyl alcohol of any grade (including such alcohol when denatured or otherwise treated), which is either by itself or in admixture with any such hydro-carbon, is capable of being used for providing reasonable efficient motive power for any form of motor vehicle or vessel of any kind of aircraft

Further, the definition of 'petrol', it can be inferred that -

- any inflammable hydrocarbon oil (excluding crude oil) which either by itself or in admixture with any other substance, is suitable for use as fuel in spark ignition engines.
- Petrol means dangerous petroleum as defined in the Petroleum Act 1934 (Central Act XXX of 1934) and includes a mixture of power alcohol, as defined in the Indian Power Alcohol Act 1948 (Central Act XXII of 1948) and Petrol.

Considering the above and in order to avoid ambiguities in classification of products as at field formation level, it is felt necessary that term Motor Spirit (Commonly Known as Petrol) and High-Speed Diesel (HSD) defined under CST Act, 1956.

Suggestion

Meaning of term 'Motor Spirit (Commonly Known as Petrol)' and 'High Speed Diesel (HSD)' to be provided under CST Act, 1956 to ensure uniformity in classification.

6 Introduce a mechanism of reporting in customs portal for supplies made to foreign going airlines and discontinue the present system of filing of Non-EDI shipping bills

Background

Currently filing of shipping bills are mandatory for supply of ATF to foreign going airlines and this process is manual and it is only increasing the additional work burden on the Airport Co-Ordinator's and others in doing the compliance without any benefit of reporting into the Customs Portal.

Suggestions

It is suggested to discontinue the present system of manual filing of shipping bills airport wise and introduce a mechanism of ATF supply reporting in customs portal Airport wise and airlines wise and will bring more transparency.

7 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.

8 Extension of RoDTEP scheme to entities registered under MOOWR

Background
Govt. vide notification no. 19/2015-20-Customs dated 17.08.2021 has announced scheme guidelines for Remission of Duties and taxes on exported products (RoDTEP).

Under the Scheme, a rebate would be granted to eligible exporters at a notified rate as a percentage of FOB value with a value cap per unit of the exported product, wherever required, on export of items which are categorized under the notified 8 digit HSN Code.

RoDTEP benefit is not available, if Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act, 1962 (52 of 1962) i.e. MOOWR

Suggestion
Some of the Petrochemical products manufactured in our refineries are covered in the RoDTEP Scheme. Our refineries are registered under section 65 of the Customs Act. Hence, no benefit of RoDTEP scheme is available on export of prescribed products from those refineries. RoDTEP Scheme was introduced with the intention to boost exports. Hence, it is suggested that benefit of RoDTEP scheme should be extended to entities registered under MOOWR also for boosting exports from India.

Natural Gas

1 Exemption from Custom Duty on import of LNG

Background
Import of LNG is subject to Custom Duty at 2.50%.

Natural Gas being a clean fuel is mainly used by important sectors like City Gas Distribution, power, fertilizer, petrochemical, refineries etc. Import of Gas in the form of LNG is imperative to meet the target set for the use of gas considering the shortage of domestic gas exploration in the country.

Suggestion
It is suggested that import of LNG may be exempted from customs duty (present rate @ 2.5%) on the lines of crude oil to provide relief to gas-based industries and domestic consumers. This will also promote usage of this environmentally friendly fuel in industrial and domestic sectors. Like Power Sector, this will especially boost the City Gas Distribution, where the Government aims to promote the clean fuel in a massive way.

2 Custom duty exemption on LNG import against Certificate of Origin from UAE

Background
With the intention of increasing trade with UAE under CEPA, the Govt. of India has issued Custom Notification no. 22/2022 dated 30.04.2022 making Nil customs duty on LNG produced in UAE and imported into India.

As per the Notification Certificate of Origin (CoO) to be issued by the proper authority in proper format who is authorized to sign and issue the CoO.

Considering the involvement of multiple traders in LNG import transactions and in view of requirement of signing by Ministry of Economy at UAE, the issuance of CoO as per format prescribed in CEPA takes substantial time.

Practically it is difficult to obtain Certificate of Origin at the time of Custom clearance of LNG cargos and to avoid delay in custom clearance and further operational issues, the oil companies are bound to pay custom duty and file refund claim subsequently which would take considerable time & efforts. It is defeating the intention of the Govt to facilitate and promote the import from UAE as per CEPA.

Suggestion
It would be appropriate if any of the following is allowed for implementation of the said notification:

- Nil customs duty is allowed based on the Certificate of origin in the earlier format which was applicable before this notification.
- Reasonable time of at least 3 months is provided for submission of CoO as per new format under CEPA and cargo should be cleared without payment of custom duty on the basis of available documents with a condition to provide CoO within stipulated time. As a security of the customs duty, Bank guarantee equal to custom duty amount may be accepted at the time of custom clearance, if required.

3 Inordinate delay in Final Assessment of BoE’s of Liquefied Natural Gas (LNG) resulting in undue financial hardship to LNG importers

Background

- Importers import Liquefied Natural Gas (‘LNG’) as classified under Custom tariff sub-heading 2711 1100 of the Customs Tariff Act, 1975 and pays basic customs duty ('BCD') at the rate of 2.5 percent as per Notification No. 12/2012-Customs, dated 17th March, 2012 at the time of clearance of LNG for home consumption.
- As per the provisions of Customs Law, the customs duty is payable on the actual quantity imported in India. However, in case of LNG, customs duty is paid provisionally, before actual discharge of LNG at port, on the quantity loaded in the vessel. Basis the provisional amount of customs duty paid before the actual discharge of LNG, the Bill of Entry is assessed provisionally.
- Under normal circumstances, actual custom duty payable remains lesser than the custom duty paid provisionally by LNG importer. Therefore, there remains an amount refundable to LNG importer on account of excess custom duty paid provisionally.
- As per the extant practice, the excess custom duty paid provisionally get refunded to other importers, only after the final assessment of Bill of Entry. However, inspite of rigorous follow up at respective jurisdictional custom office for final assessment of pending Bill of Entries, final assessment provisionally assessed Bill of Entries is pending for more than 5-6 years.
- Reference is also invited to Customs (Finalisation of Provisional Assessment) Regulations, 2018 issued vide Notification No.73/2018-Customs (N.T.) dated 14th August, 2018. The said regulation, inter-alia, provides the time-limit for finalization of provisional assessment by proper officer i.e. two months from the date of submission of the documents or information by importer. The regulation further provides that The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period

of three months in case the proper officer is not able to finalise the provisional assessment within the period of two months.

- However, the field formations are not adhering to the time limit prescribed under Customs (Finalisation of Provisional Assessment) Regulations, 2018.
- The amount of legitimate refund is getting piled up on arrival of each LNG cargo and thereby increasing the burden of excess custom duty paid provisionally by LNG importers. Thus, LNG importers is getting out of pocket to the extent of excess custom duty paid provisionally, till the time it gets back the refund of excess amount.

Suggestion

It is suggested that suitable provision may be inserted under existing Custom Act prescribing time limit for completion of final assessment in line with similar provision under various statute like VAT/CST/Income Tax. Further, with regard to the pending final assessment, necessary instructions/ circular may be issued by CBIC to the field formations to complete the final assessment of provisionally assessed Bill of Entries of LNG, within the timeline prescribed under Customs (Finalisation of Provisional Assessment) Regulations, 2018.

4 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.

5 Exemption/Concessional rate of Social Welfare Surcharge

Background

Social Welfare Surcharge ('SWS') has been made applicable on import of various goods (except few exemptions) after removal of Education Cess and Secondary & Higher Education Cess. The rate of such surcharge is as high as 10%. Under pre-GST regime, the rate of cess applicable on import of LNG was 3%. However, w.e.f. February 2018, on import of LNG, though the aforesaid cess was removed, however, the rate of SWS has impacted the sector as the same is 10% on

such imports. The same has increased the cost of procurement for LNG sector as such Surcharge is not adjustable with any other duty.

Suggestion
To lower the cost of LNG to the end users and promote cleaner fuel in India

6 PLI Scheme for OEMs manufacturing LNG vehicles and rationalization of tax on LNG fueled 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 CO_2, and for SO_x 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%.

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.
- Developing a production linked incentive scheme for OEMs manufacturing LNG vehicles and accelerated depreciation on investments by both OEMs and RO developers in LNG infrastructure.
- 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