PRE BUDGET MEMORANDUM FOR UNION BUDGET 2019-20

(Resubmitted on **10 May, 2019** for consideration in General Budget 2019 – 20)

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EXECUTIVE SUMMARY

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Upstream			
2	Inclusion of Upstream Sector under GST	• Include Crude Oil and Gas under GST along with other excluded products viz HSD, MS & ATF to ensure that GST paid on input goods and services can be set-off against the Output GST on Crude oil & Natural Gas • This will rectify the current situation where the "strategically important" segment of Petroleum is being made to bear high taxes • In view of provisions u/s 9(2) of CGST Act, 2017, a suitable notification would be required to be issued to include these excluded petroleum products from specified date under CGST Law and corresponding State/UT Laws along with IGST Law	1
3	Difficulty in availing Credit of Capital Goods being used for Taxable as well as Exempted Supplies	Rule-43(1)(h) of CGST Rules, 2017 may be amended suitably so that interest is not levied on reversal of ITC on monthly basis in case of	3

		Capital Goods commonly used for taxable and exempted supplies	
4	Rationalization of GST rate on goods and services for construction of cross country petroleum and gas pipeline	Since the goods and services purchased for construction of cross country petroleum and gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services etc. are not eligible for input tax credit (ITC) under GST regime, high rate the rate of GST on such goods will increase the cost of pipeline projects. Therefore, it is requested that applicable GST rate on such goods and services should be rationalized and be exempted or considered at lower rate of 5%	4
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7	IGST exemption on all goods required to be transferred from onshore to offshore / one state to another in same block or one block	Such transfer should be exempted	5

	to another for petroleum operations		
8	GST Rate reduction for works contracts relating to oil and gas exploration and production (E&P) in the onshore area including offshore area up to 12 nautical miles	• Reduction of the GST rate for Onshore works contract relating to oil and gas exploration and production (E&P) from 18% to 12% • Reduction of the GST rate for works contract relating to oil and gas exploration and production (E&P) in the onshore area including offshore area up to 12 nautical miles to 12%	6
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10	Clarification required for non-levy of Service Tax/GST on Operator's own share on provision of services through its own resources to the Unincorporated Joint Ventures (UJV)	A clarification may be issued in this regard that Service Tax/GST would not apply on Operator's own share in UJV on provision of services through operator's internal resources	7
11	Availment of Concessional Rate of 5% GST against EC	An instruction is required to be issued to DGH for issuance of EC in eligible cases without any restriction on value of procurement	8
12	Input Tax Credit (ITC) not eligible on goods / services used for construction of Pipelines	• Considering that GST is applicable on the output supply of services from such Natural Gas / LPG pipelines,	9

		Input Tax Credit (ITC) on goods / services used for construction of Natural Gas / LPG pipelines may be allowed under GST laws to avoid cascading and inflationary effect • The definition of term "factory" may be provided under the GST law in line with definition under the Central Excise Act	
13	Clarification required under GST Law that Royalty and Dead Rent payments to the GOI do not constitute supply of services	• A clarification be issued stating that Royalty and Dead Rent payments to the GOI do not constitute supply of services	10
14	Registration Requirement in case of Foreign Supplier	A clear guideline may be issued on requirement of obtaining Registration by such Non-Resident Supplier/contractors	11
15	Clarification on Scope of Services of Exploration, Mining or Drilling of Petroleum Crude or Natural Gas or both.	The clarification on scope of services of Exploration, Mining or Drilling of Petroleum Crude or Natural Gas or both should be expedited to avoid dispute on applicability of concessional rate of 12% GST.	11
16	Modification in the Site Restoration Fund Scheme 1999 (SRF Scheme)	• A suitable clarification/ amendment may be issued in SRF Scheme to the effect that funds withdrawn from the SFRS account can be utilized for site restoration expenditure incurred, whether before or at the time of expiry	12

		/ termination of agreement or relinquishment of part of the contract area. • Rule 9 and Form E may also be suitably amended to `permit the depositor to withdraw any amount from SRF account in installments during the same/ subsequent financial year up to a maximum of the amount authorized by the Ministry	
Downstream			
1	Relief by way of exemption /lower rate of GST on input used in refining and marketing of petroleum products	Grant exemption / lower GST rate on procurement of major Capital Goods, input and input services for use in Refining, Marketing & Distribution of petroleum products in order to minimize the impact of GST, like • BS-VI MS & HSD projects • Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD • Regasification of LNG – from 18% to 5% • Procurement for setting up ethanol production facility	14
2	Levy of GST on the LPG and SKO based on indenting	Suitable clarification may be inserted in the GST law that applicability of rate of GST on LPG and SKO between OMCs, Stock transfer from one state to another and import would	14

		depend upon ultimate use of the LPG and SKO	
3	Clarification for supply of Aviation Turbine Fuel (ATF) to foreign going aircraft as Exports / Zero Rated supply	Till the time ATF is included under the GST, we would like to request for insertion of suitable explanation as per following alternatives to amend the definition of export of goods or zero rate goods under the IGST Act to enable us to avail ITC treating the supply as export: • Amendment sought in export of goods definition u/s 2(5) of IGST Act • "export of goods'', with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes supply of Aviation Turbine Fuel to a foreign going aircraft • Alternatively, the definition of Zero-Rated supply, explained under Section 16 of IGS Act, may be amended to include the following supplies • Export of goods or services or both, or • Supply of goods or services or both to a Special Economic Zone developer SEZ unit • Supply of Aviation Turbine Fuel to a foreign going aircraft	15

4	Clarification on documentation for supplies to Special Economic Zone (SEZ) units under GST	Clarification circular to be issued for the documentation required for supplies to SEZ for establishing the proof of export to avoid any litigation at a later date	15
5	Admissibility of Input tax credit in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export	In view of above, Input tax credit to be allowed in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export , when the factory and export ware house are situated in different political states. This would provide relief to the exporters from burden of incurring GST taxes involved in positioning of the goods in the export warehouse as per the fundamental principles that taxes and duties are not to be loaded in case of exports	16
6	Exemption/ Rationalization of GST rate on: • Sea transportation of LNG by vessel, and • LNG regasification activity	In order to promote gas-based industry in India, it is suggested that transportation of LNG by a vessel / Ship from a place outside India to India under voyage charter basis as well as time charter basis may be exempted from levy of GST. Similarly, the activity of regasification of LNG also may also be exempted from levy of GST. In case, it is not possible to fully exempt GST on such services, it is requested that GST rates on regasification and transportation services relating to Natural Gas may be reduced to 5%	17

7	Clarification regarding GST Rate on Liquefied Petroleum Gases (LPG) supplied to OMCs for onward supply to household domestic consumers	Suitable clarification may be issued that GST rate @ 5% on domestic LPG is applicable on LPG supplied by refiners/fractionators (like GAIL/ONGC) to OMCs for ultimate supply to household domestic consumers, in line with MOPNG letter ref. No. P 20023/2/2011-PP dated 23.07.2013	17
8	Formula for reversal of Input Tax Credit	Formula currently prescribed for reversal of credit may be changed for LNG sector	18
9	Tax reversal under Section 17(2) of CGST Act	Since the exclusion of specified taxes is via rules, alteration of rules by adding entry 92A of List I in explanation to rule 7 & 8 of Input Tax Credit rules will correct the anomaly and no amendment would be required to the Act	19
10	Request for suitable tax relief under GST to compensate the 50% Excise duty benefit available to North East refineries	Since, scheme formulated by the Central Govt. was part of the overall policy framework of industrialization of north east; it is expected that Central Govt. would come out with some scheme to ensure that same benefit is made available to refineries for GST products to boost the long-term sustainability and viability of the North East refineries	20
11	Non Availability of procedure to avail ISD credit of the ITC received by an Input Service Distributor post 27th December 2017 in line	Appropriate procedure to avail ISD credit of the ITC received by an Input Service Distributor post 27th December 2017 in line with	20

	with Section 140(7) of the CGST Act	Section 140(7) of the CGST Act to be provided	
12	Levy of nominal GST on excluded petroleum products or include under Zero rated	In order to remove stranding of taxes in the hands of petroleum industry, it is pertinent that either these excluded product are also levied nominal GST parallel with levy of Excise duty /VAT. Alternatively, these products may be included under zero rated good in GST to allow the full availment of input tax Credits under GST	21
13	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 further processing	Intermediate feed transferred by one refinery to another, sale to other OMCs and import of intermediate stream for further processing / manufacturing of finished goods may be exempted or kept at lower rate of 5%.	22
14	Rationalization of GST rate on goods and services for use in refinery units	Relief to downstream oil sector by way of granting exemption / lower GST rate on procurement of major Capital Goods, input and input services used in oil refineries for production of petroleum products.	22
15	Loss of credit due to exclusion of major petroleum products under GST	• Either cross utilisation of GST credits with Excise & Sales Tax liability may be provided with suitable amendments in CENVAT and respective VAT / Sales Tax laws • Alternatively, these excluded product are also levied nominal GST parallel with levy of Excise duty /VAT.	23

16	Clarification on documentation for supplies to Special Economic Zone (SEZ) units under GST	Clarification circular be issued for the documentation required for supplies to SEZ for establishing the proof of export to avoid any litigation at a later date.	23
17	Admissibility of Input tax credit in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export	Input tax credit be allowed in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export, when the factory and export ware house are situated in different political states.	24
18	Supply of Furnace Oil 380 CST i.e. Bunker Fuel to Foreign Vessels Zero Rated in GST	Necessary amendments are to be introduced in GST Act for treating the supply of Furnace Oil 380 CST i.e. Bunker Fuel to foreign going vessel as zero rated.	24
19	Loss of Input Tax Credit on setting up of Ethanol Plants	• Provision to be made under the GST law for allowing refund to manufacturers of Ethanol out of agricultural waste on all the inputs, capital goods & services used for the manufacture of Ethanol. • The procedure and condition to be outlined vide a separate notification. • Ethanol manufactured through agri-waste and supplied to be treated “NIL” rated under the GST.	
20	Remission of GST for storage loss, handling loss and transit loss for petroleum products covered under 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 due to the losses.	27
21	GST input tax credit on storage tanks	A necessary clarification should be issued in relation to this Explanation to provide: ‘It is hereby clarified that for the	28

		purposes of Chapter V and Chapter VI, the expression "plant and machinery" also includes storage tanks and LPG storing spheres fixed to earth by foundation or structural support'	
Natural Gas			
1	Rationalization of GST rate on services of transportation of Natural Gas through pipeline	• GST @ 5% applicable on the services of transportation of goods by pipeline may be provided with ITC Benefit • This will lead to lower cost of transportation of Natural Gas and will help in promotion of cleaner source of energy for Power and CNG sector where ITC of GST paid on transportation of Natural Gas is not available. This will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc	29
General			
1	Amendment in explanation inserted to Chapter V- Input Tax Credit of CGST Rules, 2017 to determine the value of Non-GST supply	Value of these non-GST petroleum products should be included in the Non-GST turnover of only in the manufacturing State and suitable amendment to be made in clause 2 of Explanation inserted to the end of Chapter 5-Input Tax Credit of CGST Rules, 2017	30
2	Exemption from TDS provisions on transactions between notified entities	The TDS provisions should not be made applicable for supplies of goods and services between PSUs since there would not be any	30

		revenue implication on such supplies and it will ease in compliance of tax deduction from other suppliers	
3	GST Registration by Non-Resident Taxable Person	The foreign service providers do not register themselves under GST even though there is statutory obligation for registration. Oil companies are dependent on these service providers due to the proprietary nature and expertise of the services. While GST at the applicable rate is paid by the oil companies under reverse charge mechanism it is suggested that a clarification may be issued whether registration or reverse charge is mandatory in such cases	31
4	Treatment of Corporate Office under GST	A clarification or exemption may be issued to the effect that costs incurred by Corporate Office on various accounts such as manpower, infrastructure etc. would not be subject to GST	31
5	Exemption from levy of GST on Renewable Energy Certificate (REC)	There should be no GST on transfer of REC for own use.	32
6	Movement of goods from one State to another	Exemption to E&P Companies on movement of goods from one state to another till the petroleum products are outside levy of GST.	33
7	Break-up of total expenditure of entities registered or not registered under the GST	Clause 44 of the new Form 3CD on GST expenditure should be deleted.	33

8	Reversal of Input Tax Credit on Inputs and Input Services.	Provisions be made in the CGST Act so that the input tax credit is not restricted in the case of duty paid sale of MS/ HSD and ATF.	34
9	Reversal of Input Tax Credit on Capital Goods.	Capital goods credit be allowed in full as per the erstwhile Excise regime. If the same is not possible, the cenvatibility of capital goods credit be determined as per turnover ratio on monthly basis and reversal be effected accordingly on monthly basis not over a period of 60 months. Further provisions be made in the CGST Act so that the input tax credit on capital goods is not restricted in the case of duty paid sale of MS/ HSD and ATF	34
10	Payment of IGST on reverse charge on Sea Freight / Demurrage	This provision should be removed as it is a case of double taxation.	34
11	Meaning of Associated Services	Suitable clarification to define the scope of 'associated services' which as per our understanding would include any service which is required in relation to execution of such works contract services (i.e. in offshore area beyond 12 NM) such as survey, inspection etc. whether covered under same contract of works contract or any other contract.	35
12	Double impact of GST on procurement and subsequent transfer of Pipes procured for laying other cross country Pipeline network	In order to avoid double taxation under GST regime, it is suggested that an amendment / suitable clarification may be provided to the effect that: • Since input tax credit is specifically denied on goods	35

		purchased for construction of pipeline, any subsequent stock transfer of such goods by one registered unit to another registered unit of same entity will not be liable to payment of GST. • Alternatively, a mechanism may be provided to allow Input Tax Credit (ITC) to the transferor unit of same entity at the time of Stock Transfer of such goods to another unit of same entity in line with the mechanism provided for airline industry. It is submitted that in the similar circumstances vide Circular reference no. 16/16/2017 dated 15.11.2017, the input tax credit (ITC) of aircraft engines/Parts has been explicitly allowed on inter-state transfer of these goods by airline industry.	
INDIRECT TAX – Excise Duty			
Upstream			
1	Reduction in Rate of OID Cess	Rate of OID Cess to be reduced to 8% - 10% of the realized price of oil	37
Downstream			
1	Introduction of Specific rate of excise duty on Aviation Turbine Fuel (ATF)	Presently MS & HSD are levied specific rate of excise duty whereas ATF is levied ad-valorum rate of duty. MS, HSD and ATF have been kept out from GST levy and continue to be levied under the levy of Excise duty & VAT.	38

		Since, MS & HSD both are levied specific rate of excise duty, thus it is requested that ATF should also be levied specific rate of duty in place of ad-valorem duty. This would ensure correct payment of duty at the initial clearance stage itself and will eliminate complexities and difficulties in re-determination of duty on further stock transfers which sometime result in avoidable litigation	
2	Review of exemption granted to Ethanol Blended Petrol (EBP) and Bio-Diesel blended HSD after GST implementation w.e.f. July 2017	Suitable amendment may be carried out in the above referred notification no. 11/2017-CE dated 30.06.17, 14/2017-CE dated 30.06.2017 and 20/2017-CE dated 3.7.2017 by amending the meaning of appropriate duties/taxes that Ethanol or Bio-diesel on which the appropriate duty of excise or central tax, State tax, Union territory tax or integrated tax, as the case maybe, have been paid	39
3	Request of exemption granted to Ethanol Blended Petrol (EBP) and Bio-Diesel blended HSD after imposition of Road & Infrastructure CESS (REC) w.e.f. 01.02.2018	The referred notifications may be amended suitably clarifying the meaning of appropriate duties of excise to include both RIC and AED (Road Cess) to avoid any litigation with regards to stock of MS (Petrol) and HSD as on 1.2.2018 which have been blended with Ethanol or Bio-Diesel, as the case may be, on or after 2.2.2018	39
4	Exemption to CNG from payment of excise duty	CNG may be exempted from levy of Central Excise Duty. This will	41

		make CNG more economical and will promote use of this environment friendly fuel in domestic and commercial transportation sectors	
5	Reduction in Social Welfare Surcharge on import of Crude Oil	Increase in levy of Customs duty on crude oil is an additional burden on Oil companies due to not Cenvatable or pass through levy, therefore, it is suggested that SWS on import of Crude Oil to be reduced to 3% of Customs duty on the line of levy of SWS on import of MS & HSD	41
6	Levy of Excise duty on NIL duty stock (GST Product cleared from Export Warehouse after 01.07.2017	Suitable amendment are brought to clarify that warehouse (to which product was removed from the factory of production / Refinery) is deemed as factory of production for the purpose of Notification No.12/2017-CE and hence exemption is applicable to product lying in stock as on 30.6.2017	42
7	Duty Credit on Contaminated MS and HSD brought to refinery for reprocessing	Suitable clarification should be issued to treat contaminated MS and HSD as Non-GST Product i.e. MS and HSD attracting VAT when sold to Refinery for re-processing.	43
8	Clarification on invocation of section 11 D(1A) of Central Excise Act, 1944 on Ethanol Blended Motor Spirit	• It is recommended that a suitable clarification be issued that “Blending of GST paid Ethanol with Central Excise Duty paid MS” shall not be treated as amounting to manufacture for the purposes of Central Excise Act, 1944.	43

		• It is also recommended to clarify that since 5% Ethanol Blended Petrol and 10% Ethanol Blended Petrol are exempted from Central Excise duty as per Notification No. 11/2017 dated 30.06.2017, the provisions of Section 11D(1A) of the Central Excise Act, 1944 shall not be applicable. • It may further be clarified that provisions of Section 11D(1A) of the Central Excise Act, 1944 shall not be applicable when the element of central excise duty has not been shown in the sales invoices.	
		General	
1	Exemption/Concessional rate of Social Welfare Surcharge	To provide an exemption or concessional rate of SWS on import of LNG	45
2	Exemption from mandatory fixed pre-deposit	Mandatory pre-deposit may be exempted	45
3	Cross utilization of GST Input Tax Credit against Excise duty/Sales Tax	The request for levy of nominal GST is not practical, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be 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 &	46

		VAT laws; there would not be any additional outgo to the Govt. by allowing cross utilization	
4	Duty Credit on MS and HSD brought to refinery for reprocessing	Non-Cenvatable products like MS and HSD when received in the Refinery for re-processing should either be exempted from payment of duty at the time of clearance after re-processing or Cenvat Credit should be allowed on these products at the time of receipt in the Refinery by suitably amending the definition of 'Input' contained in the Cenvat Credit Rules'2017 for re-processing of such products in the refinery	46
5	Removal of National Calamity Contingent Duty on Crude Oil levied @ Rs.50/MT	The additional burden of NCCD imposed on the Oil Refineries may be withdrawn	47
6	Disposal of Scrap	The amendment/clarification should be issued that no Customs Duty or GST would be payable on disposal of used items as well as unused surplus items which have become scrap and are no longer required for petroleum operations.	47
INDIRECT TAX – Custom Duty			
Downstream			
1	Exemption on import of LNG	Nil rate of customs duty should be made applicable on import of LNG	49
2	Double payment of custom duty on import of LNG under FOB supplies due to inclusion of value of LNG used by	Issue suitable clarification that in case of import of LNG on FOB basis, the Boil-off gas arising out of LNG and utilized as fuel during the course of transportation	49

	the ship during the transportation of LNG in CIF value of imports where Custom Duty is paid on full Bill of Lading quantity based on suppliers' invoice	should not be added to the cost of freight as such quantum of LNG has already suffered customs duty in the FOB value	
3	Specific clarification under Customs to provide exemption on LNG consumed for SEZ operations by ONGC C2-C3 Dahej Plant post GST regime	Issue clarification in line with clarification issued under pre-GST regime so that exemption can be claimed on import of LNG	50
Natural Gas			
1	Full exemption to be granted on Liquid and Gas pipelines projects covered under chapter 98	The present customs duty being levied at the rate of 5% should be reduced to Nil on Liquid as well as Gas pipelines projects covered under chapter 98.01. Alternatively, an exemption from custom duty may be provided to Liquid (crude oil & petroleum products) and Natural gas pipeline projects laid in specified states such as north east states, J&K etc.	51
General			
1	Clarification on applicability of Condition No. 48 under Sl. No. 404 of Customs Notification No. 50/2017-Cus dated 30.06.2017 on disposal of scrap	Considering ease of doing business, a clarification is requested under Customs Law as well as GST Law to the effect that the condition 48 of notification no. 50/2017-Cus dated 30.06.2017 and similar condition under GST Notification No. 3/2017-(Rate) would not apply on	51

		disposal of unused & surplus items as well as the used items which are no longer required for petroleum operations and have become scrap	
2	Custom duty on import of Hydrogen especially from SEZ unit to DTA.	Hydrogen movements locally especially SEZ to DTA may be charged with ZERO Custom Duties to have Nationwide synergies.	52
INDIRECT TAX – Central Sales Tax			
Upstream			
1	Clarification required under the erstwhile Service Tax Law to the effect that Cost Petroleum under the Production Sharing Contract (PSC) is not a consideration for service to GOI and thus not taxable per se	The Ministry of Finance (TRU) vide circular No. 32/06/2018-GST dated 12th February' 2018 at Para-6 has clarified that Cost Petroleum is not a consideration for service to GoI and thus not taxable per se A similar clarification be issued stating that service tax is not payable on Cost Petroleum being not a consideration for any service	53
Downstream			
1	Non-issuance of Form-C under CST Act	A clarification/amendment is requested under CST Act, to the effect that inter-state supply of Petroleum Products kept out of GST including supply of crude oil to the refineries would continue to be eligible for concessional rate of 2% CST against Form-C for manufacture of GST as well as Non-GST products by such refineries	54

General			
1	Continuation of C form for purchase of excluded products	Suitable clarification may be issued in this regards that customers of these excluded petroleum products would be allowed to purchase such products against C form as is allowed earlier considering the fact there is not additional financial outgo on part of states	55
DIRECT TAX			
Upstream			
1	Deduction under Section 35AD to crude oil pipelines	Conditions under Section 35AD to be amended suitably to remove the requirement of approval of PNGRB for crude oil Pipelines	56
2	Section 42 - Deduction in case of business of prospecting of mineral oil	An explanation may be inserted in section 42(1)(a) that an intimation by the assessee for surrender of area to appropriate authority will be construed as area surrendered for allowing the deduction of infructuous or abortive exploration expenses. It may also be clarified by inserting proviso in Section 42 that tax payer will be eligible to claim deduction for exploration drilling expenses (including survey expenditure) in the year of incurrence against other business income irrespective of fact that commercial production has started or not.	56

3	Overseas E&P Projects should be included under Section 35AD	Capital Investment in overseas E&P projects may be included as a specified Business for the purpose of section 35AD of the Act to encourage investments of risk capital in overseas E&P projects by Indian E&P companies.	57
Downstream			
1	Deduction under Section 80IB(9) on Refining business	Considering that the delay in the project completion is due to unavoidable circumstances which were beyond the control of the company, the benefit of section 80-IB(9) may be reintroduced for the said project by allowing for project completion date from 31.03.2012 to 31.03.2017	58
2	Benefit of Section 32AD to be extended to existing undertaking	Conditions under Section 32AD is to be suitably amended to include new investment in existing manufacturing unit for expanding capacity or meeting environmental requirement	58
Natural Gas			
1	Benefit of Section 80-IA to be extended to 'Gas projects'	The word "loading and unloading facility", may be substituted by "the loading or unloading facility" for the purpose of definition of "Port" for section 80-IA and the condition of transferring the structure to port authority may be removed. Further benefit of Section 80-IA (4) has been restricted to any infrastructure facility starts operation up to 31.03.2017. It is suggested to remove/extend the sun set clause	59

		to promote the make in India campaign	
2	Amendment in section 73A and 72A of the Income Tax Act for set off and carry forward of the loss on account of deduction claimed u/s 35AD for growth of cross country Gas pipeline network and building the National Gas Grid (NGG)	Set-off of loss computed under section 35AD may be allowed against profits of any other business carried on by the assesse by suitably amending section 73A of the Income Tax Act in line with the provision under section 70 of the Act. Section 72A needs to be amended so that carried forward loss of business of laying and operating a cross country natural gas pipeline network. (u/s 35AD) of a demerged company or amalgamating company is allowed to be carried forward and set off in the hands of the resulting company in case of demerger or amalgamation	60
General			
1	Set-off of Dividend Distribution Tax (DDT) under Section 115-O	Such set-off of DDT may also be allowed for dividend received from companies other than subsidiaries. Since, at times JV may be incorporated with 50%-50% shareholding between two JV partners and in such a situation the benefit will not be available even though the investment in such JV is quite significant and where holding interest is quite substantial but only not being a subsidiary company. Alternatively, the word "subsidiary" may be substituted	61

		by the words “holding more than twenty percent”	
2	Corporate Social Responsibility Expenditure	To insert an amendment under Income Tax Act allowing deduction of CSR expenditure. Some of the companies are spending even more than the mandatory limit of 2%, to encourage the application of CSR in letter & spirit, expenditure incurred should be allowed under business expenditure	61
3	Relaxation given to 100% subsidiary companies from applicability of the provisions of deemed Gift Income u/s 56(2)(x) of the Income Tax Act may be extended to JVs/associate companies	Although, section 56(2)(x) was primarily introduced for Anti abuse measure to curb malafide transaction without any commercial substance. However, when the section was actually implemented, the same covers all the business transactions entered by an entity without having regard to genuineness of the transaction This is particularly applicable in case of acquisition of securities either via subscription of initial capital or purchase from a strategic investor. This is leading to increased compliance cost and time to complete such transaction. Therefore, it is requested to exempt acquisition of shares of foreign subsidiaries, domestic subsidiaries (other than 100% subsidiaries), Joint ventures and Associates from purview of section 56(2)(x) in line with exemption to transaction	62

		between holding company and 100% subsidiary via Finance Act 2018	
4	Beneficial rate of corporate tax (25%) to the newly incorporated companies	The benefit of lower rate of corporate tax (25%) should be allowed to newly incorporated companies based on the turnover threshold in the year of incorporation	62
5	Interest on refunds u/s.244A	S.244A of the Act should be amended to increase the rate of interest on refunds due to the taxpayer from 0.5%p.m. to 1% p.m. Further, the interest on refund under s. 244(1A) is granted additional interest @ 3% where refund arises out of an appellate order and such refund is not granted within 3 months from the end of the month in which such appellate order was passed. It is recommended that such interest should be linked with the personal liability of the tax officers	63
6	Multiple levy of income tax on dividend – S. 115-O	• Tax on distribution of dividend is outside the purview of the charging Section of the Act, since it is a tax not on income but on application of income • Without prejudice to the above, the Grossing-up Provisions resulting into Additional Tax outgo of approx. 3% should be	64

		withdrawn since it is causing undue hardship to assesses	
7	S.115-O – Clarification on absolute removal of cascading effect of Dividend Distribution Tax (DDT)	• The levy of Dividend Distribution Tax (DDT) at multiple levels has been a subject matter of grievance by corporates. It is suggested that dividends which have suffered DDT be treated as pass through and be not subjected to levy of DDT • The existing provision should be amended to provide uniform and simplified taxation regime so as to provide for the DDT credit, irrespective of the stipulating condition that one company should hold 51% or more of the share capital of the company declaring, distributing or paying the dividend	65
8	S.14A r.w. R.8D – Amendment with respect to dividend income exempt u/s. 10(34)	CBDT may come up with an amendment in s.14A of the Income Tax Act that the said section is not made applicable to dividend income exempt u/s. 10(34) as the same has been subject to dividend distribution tax in the hands of the company	66
9	Phasing out of exemptions	The process of phasing out of exemptions and deductions should not be done across sectors. There are various sectors where the turnaround time for the companies to reach a break even and start earning profits	66

		takes longer than some other industries	
10	Carry forward of Foreign Tax Credit (FTC)	The Assessee be permitted to carry forward (say for five years) such unutilized credit for adjustment in future years	67
11	Corporate Tax Rate from All Companies be Moderated	Intent of the Govt. is to reduce effective corporate tax rate from 30% to 25%, Corporate tax rate from all companies may be moderated	67
12	Section 32 AD must be extended to 2023-24	Section 32 AD provides for additional depreciation of 15% for new projects in backward areas. The benefit is available till 2020. Section 32 AD is applicable for notified backward region. Section 32 AD must be extended to 2023-24 and should be expanded to include substantial expansion	67
13	Reinstatement of Section 32 AC	The sunset clause for Section 32AC should be extended to reasonable period say upto 2024. This will help achieve higher capital formation, job creation, higher economic growth, thrust to make in India initiative	68
14	Amendment in clause (f) of Section 43B	Section 43B(f) allows leave encashment only on payment. Wherever Employer has opted for a dedicated fund and contributes a sum based on actuarial valuations, the spirit behind Section 43B is complied with. Litigations can be avoided if clause (f) of Section 43B is amended to state that payment	68

		includes contribution to a dedicated fund	
15	Weighted average deduction under section 35(2AB), 35(2AA) to be retained at 200%	Weighted average deduction under section 35(2AB), 35(2AA) to be retained at 200%: The deduction on Scientific research and contribution to National Laboratories have been reduced from 200% to 150%. With the vision of the Government for strengthening the R&D Activities, it should retain the weighted average deduction to 200%	69
16	Clarification that loss on Sale of Oil bonds is a revenue loss	The Section 37(1) needs to be suitably amended to provide deduction for business loss arising from sale of such bonds	69
17	TDS on Transportation payment under section 194C	The discussed provision is resulting into unnecessary huge compliance. Exemption from TDS deduction may be provided to all as was available till 31st May 2015 on the condition of furnishing of the PAN by contractor to deductor. Condition of obtaining the self-declaration form, from the deductee and updating every time in ERP system is a very cumbersome & time consuming process	70
18	Profits & gains of shipping business of non-resident	An explanation should be inserted in section 44B of the Act clarifying that for the purpose of section 44B(2)(ii) where the amounts specified are received by the non-resident by way of Telegraphic Transfer or SWIFT etc., in his account outside India, then the	71

		same is not received or not deemed to be received in India by the non-resident shipping company, with retrospective effect from 01.04.1976, for the purpose of reducing avoidable disputes and litigations.	
19	Corporate Social Responsibility Expenditure	Insert an amendment under Income Tax Act allowing deduction of CSR expenditure. Further to encourage corporates to take initiatives towards CSR, it is also suggested that a weighted deduction of 150% or 200% may be provided on CSR expenditure over and above the limit prescribed under the Companies Act, 2013, by amendment to Income Tax Act.	71
20	Sum payable by the employer in lieu of any leave at the credit of his employee	Delete the clause (f) of Sec 43B in view of the Calcutta High Court decision striking down this provision being arbitrary, unconscionable and de hors Apex Court decision in case of Bharat Earth Movers vs. CIT [2000] 245 ITR 428 – Exide Industries Ltd vs. Union of India [2007] 164 Taxman 9 (Cal).	72
21	Expenditure incurred in relation to income not includible in total income	• Exemption in respect of dividend income received from equity investment or from mutual fund is provided under the Income Tax Act u/s. 10(34) & 10(35) respectively. • The maximum disallowance under section 14A should be restricted to the total amount of exempt income to which section 14A applies i.e. exempt	73

		income other than dividend income.	
22	Allowance for investment in new plant & machinery	To incentivize higher capital formation, job creation, higher economic growth and as an impetus to Make in India initiative, the benefit u/s. 32AC may be extended by another five years i.e. till AY 2024-25.	73
23	Allowance for expenditure on retirement benefits to employees of PSUs	It is imperative to amend Section 36(1) to include other retirement benefits existing in vogue in PSUs, namely, Post-Retirement Medical Benefit Fund and Death Benefit Fund.	74
24	Rate of Minimum Alternate Tax	Considering the proposed reduction in corporate tax rate from 30% to 25% it is suggested to reduce the Minimum Alternate Tax Rate also proportionately.	74
25	Interest on deferment of Advance Tax	Relaxation should be given to Oil & Gas Companies by providing that no interest shall be leviable on shortfall of installment of Advance Tax to the extent that such shortfall is due to fluctuations in the global prices of Crude Oil and Foreign Exchange Rate fluctuation.	75
26	Interest on refunds	Rate of interest on refunds u/s. 244A should be amended from 0.5% p.m. to 1% p.m.	75
27	Exemption Threshold for certain allowances to employees	Suitably increase the exemption threshold provided under sec. 10(14) of the Act r.w.r. 2BB of the Rules for allowances such as children education allowance, Hostel Education allowance in line with inflation.	75

28	Valuation of Perquisites	valuation of perquisites as per Rule 3 in respect of perquisites such as free food, gift from employer as also provision of motor car, accommodation also needs to be revised keeping in view the cost inflation.	76
29	Exemption in respect of Leave Salary	Increase the monetary ceiling to Rs. 20 lakhs (considering the maximum of the scale of E9 Grade for CPSEs i.e. Rs. 3,00,000 plus DA at the rate of 100% for 300 days).	76
30	Oil and Gas companies availing specific incentives covered under section 42, should be exempted from MAT provisions under section 115JB of the Income Tax Act, 1961.	• 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 extended from 31st march, 2002, to allow deduction for expenditure incurred to conserve natural resources	77
31	Expenditure on In-house R&D facilities u/s 35(2AB)	The deduction for Expenditure on in-house R&D facilities may be restored to earlier 200% to incentivize more expenditure on in-house R&D activities.	77
32	Depreciation provisions (Section 32)	Incentive package should be offered to maintain the growth momentum and support to achieve its targets towards the green energy.	77

33	Disallowance under section 14A (read with rule 8D)	Adhoc disallowance should be removed by amending Rule 8D of the Income Tax Rules, 1962	78
34	Investment in new Plant & Machinery (Section 32AC)	Validity of deduction u/s 32 AC should be restored w.e.f. Assessment year AY 2019-20 again.	78
35	MAT provisions for payment of tax on Book profit (Section 115JB)	Oil and Gas companies availing specific incentives covered under section 42, should be exempted from MAT provisions under section 115JB of the Income Tax Act, 1961.	79
36	Phase out plan for Tax holiday under section 80-IB(9)	Cut-off criteria for the phasing out of tax holiday u/s. 80-IB (9) may be kept as the intimation of discovery on or before 31.03.2017 rather than the start of commercial production by that date.	79
37	Amendment/Removal of Anomaly in Section 42 of the Income-tax Act, 1961	The word "surrendered" may be deleted from section 42(1)(a) as brought out in the table below:	80
38	Availability of deduction u/s. 36 in respect of contribution made to Trusts etc., set up for employees' welfare	Suitable amendments may be made in section 36 and/or section 40A(9) of the Act so as to provide that deduction would be available in respect of any 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.	81
39	Changes in section 234C of the Income-tax Act, 1961, (Interest for	upstream oil & gas companies may be exempted from the rigours of section 234C or the requirements may be relaxed by	83

	deferment of advance tax)	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: • Fluctuations in the international prices of Crude Oil • Movements in the Exchange Rates for foreign currencies • Government directives on subsidy sharing,	
40	Underlying Tax Credit	Allow underlying tax credit. Suitable provisions may, therefore, be inserted in the Act at appropriate place(s) to permit the allowance of underlying tax credit.	83
41	Making section 14A inapplicable to dividend received by companies from Debt Mutual Funds.	Section 14A may be suitably amended to provide that the same shall not apply to expenditure incurred by a company in relation to dividend received by it from a debt mutual fund on which DDT has been paid as per the provisions of section 115R	84
42	Dichotomy in methods of grossing-up of income subject to tax u/s. 44BB for TDS and assessment purposes	Suitable amendment may be made in section 195A of the Income-tax Act, 1961 so as to provide that where income of the non-resident is taxable u/s. 44BB of the Act, the same would be subject to single stage grossing-up for TDS purposes also.	85
43	Interest on Refunds paid to the assesse to be at par with interest	The interest rate on the refunds due to the assessee and on the amounts payable by the assessee	86

	charged by the revenue on short payment of Income tax	to the Government should be same on the ground of equity.	
44	Providing Consequences of Non-disposal of Rectification Applications under section 154 of Income-tax Act, 1961	It should also be provided in the said sub-section (8) that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed. Simultaneously, the assessee may also be given the right to appeal against an order in respect of which he had filed an application under section 154 but which is lying undisposed for more than six months.	86
45	Section 115-O not to be applicable in respect of dividend payable by a Government company to the President of India	Section 115-O should not be made applicable to Government companies, to the extent of dividend payable on shares held in the name of President of India.	87
46	Removing cap on non-taxable employer contribution to approved superannuation fund	The amount of any contribution to an approved superannuation fund by the employer in respect of the assessee may be made fully non-taxable.	87
47	Revision of thresholds applicable in respect of taxability of perquisites	The threshold limit for the aforesaid perquisite value to be taxed in the hands of employees may be revised upwards keeping in view the cost inflation.	88
48	Issue of Withholding Tax Certificate u/s 195(3) of the Income Tax Act	It should be clarified that for the purpose of Section 195(3) of the income tax act, branch includes a Project Office.	88
49	Depreciation on expenditure incurred on purchase of Participating	It should be clarified that such Farm in costs are an intangible asset eligible for depreciation under section 32 of the income	89

	Interest in Oil and Gas fields	tax act read with section 293A of the Income Tax Act.	
50	Multiple levy of income tax on dividend – S. 115-O	• The levy of Dividend Distribution Tax (DDT) at multiple levels has been a subject matter of grievance of corporate. It is suggested that dividends which have suffered DDT be treated as pass through and be not subjected to levy of DDT again. • The existing provision should be amended to provide uniform and simplified taxation regime so as to provide for the DDT credit, irrespective of the stipulating condition that one company should hold 51% or more of the share capital of the company declaring, distributing or paying the dividend • The existing provisions should be further rationalized, so as to reduce the cascading impact of taxes in case of 2 layer subsidiary structure (i.e. subsidiary of a subsidiary).	90
51	Interest under section 234B & 234C when Section 89 (1) relief is claimed	Definition of "Tax Due on Returned Income" should be amended, to reduce relief under section 89 (1) so that no interest in charged under section 234B & 234C.	92
52	Allowance of Provision for Post-Retirement Medical Scheme	A separate sub section under section 36 to be introduced to allow provision for post retirement medical benefits in line with the judgment of hon'ble	93

		High Court or suitable clarification to that effect may be issued by CBDT.	
53	Disallowance of expenditure incurred in relation to exempt income	Section 14A may be amended to provide that if the investments in assets which yield tax free income are made out of own funds such as share capital, free reserves etc. then the addition under this Section should not be made. Further, without prejudice to above even if rule 8D is applicable, there should be an upper limit based on certain percentage of exempt income and not the total expenditure claimed by Assessee.	93
54	Amendment in Section 35AD, Deduction in respect of expenditure on specified business	Approval of PNGRB for the common carrier principle may please be waived off. Further these pipelines are capital intensive projects and the revenue generation for break even from this project will require substantial time. Therefore it is also requested to remove the condition imposed in Section 73 for carry forward and setoff of losses from specified business	94
55	Tax Department is interpreting treatment for perquisite tax borne on behalf of employees to be added to book profit to increase profit u/s 115JB as same is considered as income tax paid falling under Section 115JB(2), clause (a) of Expl. (1). However, industry believes that tax paid on perquisites under section 17(2)is on behalf of employees and not of the Company. A clarification on above would put to rest the issue involved		94
56	Clauses iv, iv-a & v of Section 36(1) permits deduction from income under the head, income from business or profession		95

	on long term retirement benefits, namely, recognized PF, approved superannuation fund, pension scheme and approved gratuity fund. Any contribution of the Employer beyond these benefits is disallowed u/s 40A(9) of the Act. Considering that PSUs are governed by DPE Guidelines for fixation of Salaries/ Perquisites, it is imperative to amend Section 36(1) to include other retirement benefits existing in vogue in PSUs, namely, Post-Retirement Medical Benefit Fund and Death Benefit Fund	
57	Relief is provided to holding company under section 115-O (1A) if subsidiary declares dividend and the holding also declares dividend. The DDT in such case is paid on net additional Dividend paid by holding company. It is requested to allow all dividends received by the company on which DDT is paid is allowed for netting off against the Dividend declared.	95
58	Suitable provision be inserted in the Act whereby prior period expenses, not exceeding 1% of the turnover shall be allowed U/s. 37(1) of the Act, without adjusting earlier year's Return of Income	95
59	Suitably increase the threshold exemption provided under Rule 2BB r.w.s 10(14) of the Act were fixed in 1995. Limits like children education allowance, Hostel Education allowance needs to be revisited in line with inflation	95
60	Suitably increase the threshold limits for calculation of taxable value of perquisite under Rule 3 like meal allowance more than Rs. 50/day, and Gifts from employer more than 5000 pa etc.	95
61	Suitably increase the threshold limit for exemption u/s 10(10AA) towards leave salary paid at the time of superannuation or otherwise, currently fixed at Rs. 3 lakhs (fixed vide notification dated 31/05/2002) to Rs.10 lakhs	95

62	Under existing Income tax provisions, there are no time limits defined for disposal of application, seeking No Objection Certificate for remittance of TDS u/s 195 of the Act. At least in cases involving remittance to Non Residents, it is suggested that an outer limit of say, 30 days shall be fixed for issuance of such certificates, failing which the rate sought in the Application shall be deemed to have been approved	95
63	Currently, interest u/s 234B/234C charged on the Assessee is 1% per month whereas interest u/s 244A payable to Assessee is 0.5%. It is suggested to bring parity in the rates and further the rate be linked to any 'reference rate' thereby making it dynamic	95
64	The Explanation 2 to Section 37 inserted vide Finance (No.2) Act, 2014 be withdrawn so as to facilitate deduction towards expenditure incurred under Corporate Social Responsibility	96

PRE-BUDGET MEMORANDUM FOR UNION BUDGET 2019-20

INDIRECT TAX

Goods and Services Tax (GST)

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

Background

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

Suggestion

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

Upstream

2. Inclusion of Upstream Sector under GST

Background

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

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

Levy	Pre-GST Era	Under GST (Petroleum Sector Outside GST)	Remarks
CVD & SAD on imports	Exempted	IGST - 5%	Negative
Excise Duty on Domestic Goods	Exempted (if under ICB)	IGST or CSGT+SGST (5%)	Negative
Service Tax	15%	18%/12% (exploration, drilling & mining services)	Negative coupled with levy of GST on Royalty
CST	2% against C form	IGST - 5%	Negative
Stock Transfer	NIL	IGST-5%	Negative

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

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

Exploration Phase

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

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

Suggestion

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

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

Background

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

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

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

Suggestion

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

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

Background

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

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

Suggestion

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

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

Background

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

Suggestion

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

6. IGST Exemption on Imports of Goods for Petroleum Operations

Background

- Under Pre-GST regime, goods required for petroleum operation whether under pre & post-NELP or CBM Policy or under nominated blocks were exempt from whole of Basic customs duty (BCD) and CVD vide notification No.12/2012-Cus as amended by notification No.12/2016-Cus Sl-357A (List-34).

- SAD was also not payable for the said imported goods (notification No.21/2012-Cus Sl-1) in view of exemption from BCD & CVD

- Similarly excise duty exemption had been allowed vide notification No.12/2012-CE dated 17.3.2012 Sl-336 as amended by notification No.12/2015-CE to goods supplied for use in petroleum operation including CBM and marginal field, if such supplies were under ICB Tenders

- These provisions have been introduced to give effect to sovereign promise as provided in the Production Sharing Contracts ("PSC") executed with Government of India that all imports should attract NIL duty of tax

- Currently, imports are subject to 5% IGST as per the concessional notification issued for the goods to be imported for petroleum operations.

Suggestion

Thus, considering the commitment under PSC and NELP regime, it is prayed that exemption to be continued to upstream sector for all procurement of goods (whether imports, inter-state or intra-state) similar to one provided in Pre-GST regime.

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

Background

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

Suggestion

It is humbly requested that such transfer to be exempt.

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

Background

- The contracts entered into by E& P operators in the nature of onshore works contracts are currently taxed @18% which is significantly higher as compared to pre-GST era

- In the pre-GST era, the effective rate of tax on such works contracts which were composite in nature and where vendors were registered in composition scheme of their respective states was ranging between 11% to 12% which has been substantially increased to 18%. Please refer state wise rates below:

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

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

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

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

Suggestion

- We request for reduction of the GST rate for Onshore works contract relating to oil and gas exploration and production (E&P) from 18% to 12%

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

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

Background

- Royalty is paid on production of Crude Oil & Natural Gas as per provisions of Oilfields (Regulation & Development) Act, 1948 (ORD Act). In case of non-payment of such Royalty as imposed u/s 6A of ORD Act, there is provision for imposition of penalty and imprisonment as well like any other statutes enacted for levy of taxes and duties. Thus, royalty as being paid is in the nature of tax

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

- Treating right to use natural resources as supply of services & levying tax is a step backward & further increase the tax burden with adverse consequences on project profitability & incremental investments

Suggestion

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

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

Background

In terms of PSC, one of the consortium members is designated as an operator who has to carry out E&P activity on behalf of other partners based on work plans and budget duly approved by

Management Committee which includes Government Nominee as well. The Operator incurs expenditure from the contribution received by way of Cash Call from the partners.

In this context, the CBIC Circular dated 24.09.2014 at para-3 has clarified that cash calls are capital contributions made by the members of JV to the JV and are not subject to Service Tax. Similar clarification has been issued under GST regime also.

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

Suggestion

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

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

Background

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

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

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

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

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

Suggestion

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

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

Background

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

- In view of aforesaid provision of GST law, it may be interpreted that ITC is not available on goods/services received for construction of Natural Gas / LPG pipeline networks being immovable property and not covered in the definition of plant & machinery

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

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

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

- Plant & Machinery is defined as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes following:
    - Pipelines laid outside the factory premises
    - Land, building or any other civil structures
    - Telecommunication towers

- Construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization - It may not be out of place to mention that Natural gas is mainly (around 70%) used in priority sectors like Power and fertilizer, non-availability of ITC on the

GST paid on procurement on goods and services required for construction of pipeline would lead to increase in the transmission tariff and will in turn make Natural Gas costlier for power and fertilizers sectors. This may result in an adverse effect on many thrust sectors including the priority agricultural sector and may increase the subsidy burden on the Government for such sectors

Suggestion

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

- The definition of term "factory" may be provided under the GST law in line with definition under the Central Excise Act

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

Background

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

- Central Board of Excise & Customs, in FAQ on Government Services states "The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism"

- It may be noted that same FAQ mentions that "Royalty paid under the Oil Field (Regulations and Development) Act, 1948 for extraction of crude oil and natural gas is not in the nature of 'consideration"

- Treating right to use natural resources as supply of services & levying tax is a step backward & further increase the tax burden with adverse consequences on project profitability & incremental investments

Suggestion

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

14. Registration Requirement in case of Foreign Supplier

Background

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

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

Suggestion

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

15. Clarification on Scope of Services of Exploration, Mining or Drilling of Petroleum Crude or Natural Gas or both.

Background

As per amendment to Sl. No. 24 of Notification No. 8/2017-IGST (Rate) dated 28.06.2017, the Services of Exploration, Mining or Drilling of Petroleum Crude or Natural Gas or both attracts 12% GST Rate. However, GST rate on Support service to mining other than above is 18%. The relevant entry is reproduced below:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
24	Heading 9986	(i) …….		
		(ii) Service of exploration, mining or drilling of petroleum crude or natural gas or both	12	-
		(iii) Support service to mining, electricity, gas	18	-

		and water distribution other than (ii) above		

Since the scope of term Exploration, Mining or Drilling has not been defined under GST Law, it is apprehended that field formations may raise demand @18% on various petroleum operations carried out by E&P Sector treating such activities as Support Services to Mining. As for example, exploration starts from survey, data acquisition, data interpretation etc. Similarly, Mud Services, Cementing Services, Logging Services are the integral part of drilling activities. In order to avoid litigation, the scope of Exploration, Mining and Drilling activities should be defined.

Suggestion

As desired by TRU, MoF vide Letter F.No.354/303/2018-TRU dated 13.08.2018, a detailed list of services which would attract 12% GST under the scope of Exploration, Mining or Drilling Services was prepared based on understanding of E&P Sector and same has been submitted to TRU-II, MoF vide our letter dated 25.09.2018. The clarification on scope of services of Exploration, Mining or Drilling of Petroleum Crude or Natural Gas or both should be expedited to avoid dispute on applicability of concessional rate of 12% GST.

16. Modification in the Site Restoration Fund Scheme 1999 (SRF Scheme)

Background

Finance (No. 2) Act, 1998 had introduced Section 33ABA “Site Restoration Fund (SRF)” which provides for deduction of sum deposited under the SRF Scheme of MoPNG (including interest accrued on such deposits).

Under the provisions of the Income Tax Act, when funds from SRF deposit is withdrawn in future and utilized for site restoration, no Deduction shall be allowed for such expenditure. Alternatively, if the withdrawn funds couldn’t be utilized for site restoration in future then such unutilized funds are taxable in year of withdrawal.

Accordingly, the scheme provide for deduction on deposit made (in initial years) and make it tax-neutral for assessee and income-tax department (in later years) under both scenarios of utilization or non-utilization of funds.

Issues Involved:

Substantial funds of ONGC are blocked unproductively in SRF Deposit. As on 31st March 2019, the total funds deposited under SFRS (including interest accrued) by ONGC stands at a staggering figure of Rs. 15,903 Crore.

Article 8 of the SRFS scheme, provided as under:

"A depositor shall be entitled to withdraw from the amount standing to the credit of the account only such amount as is necessary to meet any expenditure to be incurred by him on the expiry or termination of the agreement or relinquishment of part of the contract area, towards removal of all equipments and installations, in a manner agreed with the Central Government pursuant to an abandonment plan or towards all necessary site restoration in accordance with modern oilfield and petroleum industry practices and towards meeting all other expenses necessary to prevent hazards to life or property or environment consequent on such expiry, termination or relinquishment." (Emphasis supplied by us)

As may be perused from above Article, withdrawal is allowed on expiry or termination of the agreement or relinquishment of part of the contract area and no such expiry/termination/ relinquishment is expected to happen in nomination areas in near future.

Suggestion

Since ONGC has to restore the well and facilities even if the field is in production stage, the SRF fund is required to complete the said restoration activity. Therefore, a suitable clarification/ amendment may be issued in SRF Scheme to the effect that funds withdrawn from the SFRS account can be utilized for site restoration expenditure incurred, whether before or at the time of expiry / termination of agreement or relinquishment of part of the contract area.

Rule 9 and Form E may also be suitably amended to `permit the depositor to withdraw any amount from SRF account in installments during the same/ subsequent financial year up to a maximum of the amount authorized by the Ministry

Downstream

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

   Background

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

   Suggestion

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

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

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

   Background

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

   Suggestion

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

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

Background

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

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

Suggestion

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

- Amendment sought in export of goods definition u/s 2(5) of IGST Act

- "export of goods'', with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes supply of Aviation Turbine Fuel to a foreign going aircraft"

- Alternatively, the definition of Zero-Rated supply, explained under Section 16 of IGS Act, may be amended to include the following supplies:
  - export of goods or services or both, or
  - supply of goods or services or both to a Special Economic Zone developer SEZ unit
  - supply of Aviation Turbine Fuel to a foreign going aircraft"

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

Background

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

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

Suggestion

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

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

Background

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

Suggestion

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

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

   a. Sea transportation of LNG by vessel, and

   b. LNG regasification activity

Background

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

- Presently GST @5% is applicable on the transportation of LNG by vessel / Ship from a place outside India to the first customs station of landing in India

- Further, the imported LNG has to be re-gasified and converted into Natural Gas (known as RLNG – Re-gasified Liquefied Natural Gas) for transportation and consumption in India. The activity of regasification of LNG attracts GST @ 18%

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

Suggestion

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

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

Background

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

- Subsequently a new entry no. 165A has also been inserted w.e.f. 25.01.2018 which seems to expand the scope of the concessional rate of GST @ 5% on LPG for supply to household domestic consumers of LPG

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

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

- Under the GST regime also, the GST authorities have recently started raising objections on the ground that concessional GST rate @ 5% is not applicable on domestic LPG supplied by GAIL to OMCs due to the reason that GAIL itself is not supplying LPG to domestic consumers. The issue is being raised by the GST authorities in-spite of insertion of new entry no 165A by Notification no. 6/2018 dated 25.01.2018. It may be appreciated that the issue is relevant not only for GAIL but for the entire oil and gas industry

Suggestion

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

8. Formula for reversal of Input Tax Credit

Background

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

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

Suggestion

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

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

Background

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

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

Suggestion

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

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

Background

The North-East Refineries are having uneconomic operations due to a number of factors like limited demand, limited crude availability, sub-economic size, location disadvantage etc. In order to support their operations and to make it economic viable after de-regulation of petroleum products, Central Govt. formulated a scheme whereby all NE refineries were exempted from payment of Central Excise duties to the extent of 50% vide Notification No.29/2002-CE dated 13.5.2002.

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

Suggestion

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

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

Background

Following is the extract of Section 140(7):

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

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

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

Suggestion

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

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

Background

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

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

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

Suggestion

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

13. 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 further processing

Background

During the process of refining, certain semi-finished goods (intermediate streams) are produced which are transferred from one refinery to another or imported for further processing at refinery in order to sustain refinery throughput and value-addition at both dispatching and receiving refinery.

Some of such major feed like Reformate/ SRGO / Isomerate / Alkalyte/ VGO etc. are used for manufacturing of MS & HSD. These feeds are taxed under GST at the rate of 18%, but due to being used in manufacturing of non-GST goods the credit is not available. Thus, there are huge loss of input tax credit to the refining sector, which affects the economic viability of processing of these feed and production of refinery. It is a nation loss if production is curtailed due to stranding of taxes.

Suggestion

Intermediate feed transferred by one refinery to another, sale to other OMCs and import of intermediate stream for further processing / manufacturing of finished goods may be exempted or kept at lower rate of 5%.

14. Rationalization of GST rate on goods and services for use in refinery units

Background

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

Refineries are making huge investments in BS-VI projects, refinery expansions, ethanol production facility, City Gas distribution (CGD) projects, etc. however, till the excluded petroleum products are not brought under the GST, the major input taxes paid on procurement of input, capital goods and

Suggestion

As refineries are not able to avail input tax credit on procurements of inputs and services due to exclusion of major petroleum products, thus in line with concessional GST rate prescribed for

Exploration & Production projects of upstream oil sector, it is requested that relief may be granted to downstream oil sector by way of granting exemption / lower GST rate on procurement of major Capital Goods, input and input services used in oil refineries for production of petroleum products.

15. Loss of credit due to exclusion of major petroleum products under GST

Background

Goods & Services Tax (GST) has been implemented in the country July, 2017. Under the present form of GST, our major petroleum products viz. MS, HSD, ATF, Crude Oil and Natural Gas have been kept out from GST ambit till the GST councils recommend it while other petroleum products are covered under the GST. These excluded petroleum products are continue to be liable under the existing excise and sales tax/VAT laws. As per GST provisions, input tax credits can be claimed only if the output is also under GST.

Introduction of GST law in part is having adverse impact on the on petroleum sector because of substantial stranding of taxes of the GST paid on inputs, input services and capital goods proportionate to turnover of the excluded products. Turnover of the excluded petroleum products (MS, HSD & ATF) comprises around 70% of total refinery production.

Suggestion

In order to remove stranding of taxes in the hands of petroleum industry, it is pertinent that either cross utilisation of GST credits with Excise & Sales Tax liability may be provided with suitable amendments in CENVAT and respective VAT / Sales Tax laws.

Alternatively, these excluded product are also levied nominal GST parallel with levy of Excise duty /VAT.

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

Background

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

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

Suggestion

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

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

Background

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

Suggestion

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

18. Supply of Furnace Oil 380 CST i.e. Bunker Fuel to Foreign Vessels Zero Rated in GST

Background

All the OMCs are engaged in supplying of Furnace Oil 380 CST i.e. Bunker Fuel to the Foreign vessels which is used to run the vessel. The product Furnace Oil 380 CST 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 in Sri Lanka, Singapore or Fujairah (UAE) etc. diminishing the bunker fuels demand at Indian ports. This fact is clearly evident from the fact that as against 64,801 MT sold in April-June 2017, bunker fuel sales in July-August, 2017, stood at 35,886 MT as reported in The Economic Times, 23.09.2017.

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 with a GDP growth rate of around 7.5% 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. It is important to note that 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.

Suggestion

In order to ensure above, it is requested that necessary amendments are to be introduced in GST Act for treating the supply of Furnace Oil 380 CST i.e. Bunker Fuel to foreign going vessel as zero rated.

19. Loss of Input Tax Credit on setting up of Ethanol Plants

Background

- Ethanol is being blended into Motor Spirit (MS), generally referred to as Petrol as part of the mandate of Government of India to improve automobile emissions, reduce Green House Gases and reduce dependency on fossil fuels.

- As part of Govt. of India's initiative to develop alternate fuels, BPCL, is setting up three 2G Ethanol plants (each of approx. 100 KL per day production capacity of Ethanol from 400 MT per day of Lignocellulosic Biomass as the Feedstock) at Bargarh in Odisha, Bina in Madhya Pradesh & one plant in Maharashtra. . The ethanol produced from the subject plant will be used for blending with Motor Spirit (MS) either in the respective state or supplied to its own locations in nearest states or will be supplied to other OMCs.

- The Refineries would not be able to avail ITC on purchase of Ethanol since the final product, i.e., MS is out of GST. Therefore, it will lead to increase in cost of production for OMCs. It is pertinent to note the impact of input tax credits for three supply scenarios

    - Ethanol captively used in same state for making motor spirit: No GST is paid on clearances against delivery challans. Thus, no input credit on input / input services / capital goods would be available to the Ethanol manufacturing plant.

    - Ethanol supplies to BPCL refinery outside the state: CGST / IGST would be paid on clearances against Invoice. The Input Tax Credit will be available to Ethanol Plant. However, the receiving locations cannot avail any GST credit as MS is non- GST good. Thus, it becomes a cost to BPCL.

    - Ethanol sold to other OMCs: CGST / IGST would be paid on clearances against Invoice. The Input Tax Credit will be available to Ethanol Plant. However, the receiving OMCs cannot avail any GST credit as MS is non- GST good. Thus, it becomes a cost to OMCs.

    - The approximate GST involved in setting up of Ethanol Plant are Rs. 158 Crores. There shall also be additional impact on account of GST when operations are actually undertaken.

    - In light of this, as the benefit of GST credit on inputs / capital goods/ services used for the manufacture of Ethanol is not available substantially, it would increase the cost of manufacture of Ethanol and would render the project unviable.

Suggestion

It is suggested that:

- Provision to be made under the GST law for allowing refund to manufacturers of Ethanol out of agricultural waste on all the inputs, capital goods & services used for the manufacture of Ethanol.
- The procedure and condition to be outlined vide a separate notification.
- Ethanol manufactured through agri-waste and supplied to be treated "NIL" rated under the GST.

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

Background

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

- During the transmission of the petroleum products, either by direct pipeline or vessel or tank wagon or tank lorry, the company incurs loss due to variation in temperature and / or density. This 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.

- The current GST law does not provide any dispensation on account of loss of petroleum products which occurred either during transit or during storage.

- Under GST law, tax is payable based on the supply from the refineries on the basis of quantities dispatched and BPCL 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.

Suggestion

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 due to the losses.

21. GST input tax credit on storage tanks

Background

Explanation to Section 17(6) of the CGST Act, 2017 reads as follows:
"For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus. Equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

(iii) land, building or any other civil structures;
(ii) Telecommunication towers; and
(iii) Pipelines laid outside the factory premises."

As per the GST provisions, input tax credit is not available for immovable property other than plant and machinery. The above Explanation explicitly defines the expression "plant and machinery" but is ambiguous about availability of credit in respect of large petroleum tanks (LPG Spheres) and storage tanks that are underground erected on the ground forming part of the filling unit.

Non-availability of credit for LPG spheres and storage tanks would significantly increase the cost of oil distribution and will adversely affect economics of petroleum distribution business. Absence of clarity in the GST regime would trigger litigation.

Suggestion

It is unique to the business of oil industry to build huge storage tanks for storage and distribution of petroleum products. It is a huge capital expenditure and requires status of plant and machinery. A necessary clarification should be issued in relation to this Explanation to provide: 'It is hereby clarified that for the purposes of Chapter V and Chapter VI, the expression "plant and machinery" also includes storage tanks and LPG storing spheres fixed to earth by foundation or structural support'

Natural Gas

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

Background

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

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

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

Suggestion

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

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

General

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

   Background

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

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

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

   Suggestion

   Considering the above, it is suggested that value of these non-GST petroleum products should be included in the Non-GST turnover of only in the manufacturing State and suitable amendment to be made in clause 2 of Explanation inserted to the end of Chapter 5- Input Tax Credit of CGST Rules, 2017, by insertion of a new sub-clause as per follows:
   *"**Explanation.-** For the purpose of this Chapter,-*
   (1)   ....
   (2)   for determining the value of an exempt supply as referred to in sub-section (3) of section

2. **Exemption from TDS provisions on transactions between notified entities**

   Background

   As per section 51 of CGST Act, 2017, the notified entities are required to deduct tax at the rate of 2% (CGST-1% & SGST-1% or IGST-2%) on payments made or credited to supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two

lakh and fifty thousand rupees. No deduction of Tax is required when the location of supplier and place of supply is different from the State of the registration of the recipient.
Public Sector undertakings (PSUs) have been notified as person responsible for deduction of tax vide Notification No. 50/2018-GST, under Section 51(1) (d). TDS provisions are applicable to transactions between notified entities also.

Suggestion

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

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

Background

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

Suggestion

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

4. Treatment of Corporate Office under GST

Background

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

The upstream sectors have its operations across India including Offshore and has Registered Office in one of the States. The Corporate Offices such as Office of Company Secretary who primarily interacts with stake holders, regulatory authorities for compliance purposes. Similarly, the Offices of Board of Directors primarily executes its functions entrusted by Govt. of India such as fixation of MoU targets, internal controls, decision on business policies etc. There are other corporate offices such as Corporate Accounts, Corporate Taxes etc. who discharge their functions centrally at registered office.

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

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

Suggestion

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

5. **Exemption from levy of GST on Renewable Energy Certificate (REC)**

Background

IOC has commissioned 3 Wind Power Projects in Rajasthan. In return for supply of Power to Grid IOC gets Tariff as well as REC. REC's can either be Sold or utilized to meet RPO obligations by Refinery, therefore, REC received in Rajasthan is beind sent to IOC’s refineries situated in other States. As per GST provisions, GST @12% is applicable on these REC when endorsed / transferred to refinery. However, refineries are able to avail ITC only to the extent of 30% due to exclusion of petroleum products.

Suggestion

Considering that REC is the Green initiatives of Govt., there should be no GST on transfer of REC for own use.

6. Movement of goods from one State to another

Background

Initially the goods are procured for usage under particular block in a State, however as and when there is urgent requirement, the same material are transferred to other locations. Under pre-GST regime, the transfer of goods from one state to another were exempted from levy of VAT/CST on submission of Form-F as per provisions of CST Act. However, under GST regime, such transfer is subject to GST.

Suggestion

It is therefore requested that this issue may be taken up with appropriate authority for providing exemption to E&P Companies on movement of goods from one state to another till the petroleum products are outside levy of GST.

7. Break-up of total expenditure of entities registered or not registered under the GST

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 contained a new clause 44 seeking 'Break-up of total expenditure of entities registered or not registered under the GST'. Subsequently, vide Circular No. 6/2018 dated 17.08.2018, the CBDT kept clause 44 of the new Form 3CD in abeyance till 31.03.2019.

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 assessees with additional compliance work. Further, the details sought to be reported under the clause 44 of the new Form 3CD, prima facie, does not have any bearing or relevance in the assessment of the assessee, apart from being an additional time consuming exercise for the assessees as well as the tax auditors. In view of the above, it is suggested that clause 44 of the new Form 3CD on GST expenditure should be deleted.

8. **Reversal of Input Tax Credit on Inputs and Input Services.**

Background

The amount of the input tax credit is reversed of account of effecting exempted supplies namely MS/ HSD and ATF

Suggestion

Provisions be made in the CGST Act so that the input tax credit is not restricted in the case of duty paid sale of MS/ HSD and ATF. Currently a major part of the input tax credit gets reversed on account of the excise duty paid sales of MS/HSD and ATF which affects the profitability of the business

9. **Reversal of Input Tax Credit on Capital Goods.**

Background

Currently the provision entails proportionate monthly reversal in the ration of turnover of GST and Non-GST goods for a period of 60 months from the month of availing credit along with interest @24%.

Suggestion

This provision of reversal of a period of 60 month is highly impractical for capital intensive projects where it takes anywhere between 12-36 months to get projects started. Further there are more complication when project get abandoned/ calculation of IRR of the projects. It is suggested Capital goods credit be allowed in full as per the erstwhile Excise regime. If the same is not possible, the cenvatibility of capital goods credit be determined as per turnover ratio on monthly basis and reversal be effected accordingly on monthly basis not over a period of 60 months. Further provisions be made in the CGST Act so that the input tax credit on capital goods is not restricted in the case of duty paid sale of MS/ HSD and ATF

10. **Payment of IGST on reverse charge on Sea Freight / Demurrage**

Background

Importer as Sec 2(26) of the Customs Act 1962 has to pay IGST on reverse charge on the transportation of goods by vessal from place outside India up to the customs station clearance in India.

Suggestion

This provision should be removed as it is a case of double taxation. The Importer pays custom duty/ IGST on the clearance of goods at custom port which includes the freight amount. Again paying IGST on the freight amount is pay tax twice on the same amount. Also it is revenue neutral as the importer gets the cenvat benefit. Moreover in case of High Sea Sales there is lack of clarity of who pays the IGST on the freight / Demurrage amount- more so when the products are sold to an SEZ unit.

11. Meaning of Associated Services

Background

As per Notification No. 39/2017-IGST (Rate) the Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles from the nearest point of the appropriate base line would attract 12% GST.

On perusal of above, the scope of 'associated services' is not clear which may lead to litigation.

Suggestion

We request for a suitable clarification to define the scope of 'associated services' which as per our understanding would include any service which is required in relation to execution of such works contract services (i.e. in offshore area beyond 12 NM) such as survey, inspection etc. whether covered under same contract of works contract or any other contract.

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

Background

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

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

Suggestion

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

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

- Alternatively, a mechanism may be provided to allow Input Tax Credit (ITC) to the transferor unit of same entity at the time of Stock Transfer of such goods to another unit of same entity in line with the mechanism provided for airline industry. It is submitted that in the similar circumstances vide Circular reference no. 16/16/2017 dated 15.11.2017, the input tax credit (ITC) of aircraft engines/Parts has been explicitly allowed on inter-state transfer of these goods by airline industry.

Excise Duty

Upstream

1. **Reduction in Rate of OID Cess**

Background

- The OID Cess is levied only on crude oil produced domestically. Thus, it places domestic crude oil production vis-à-vis imported crude oil at a significant disadvantage as imported crude does not attract such duty. This levy, thus, is against the very spirit of "Make in India" and needs an amendment

- In March 2015, Hon'ble Prime Minister's gave a clarion call to reduce energy imports by 10% by 2022. A committee constituted by Hon'ble Minister of State (I/C), P&NG, to follow up on 'Reduction in import by 10% in energy sector by 2022, and for preparing a roadmap to reduce the import dependency, has among others recommended the following as a way forward, which are relevant from the point of view of proposal hereunder:
    - Increase in domestic oil/ gas production and Asset acquisition abroad
    - Requisite policy changes including exemption from Oil Cess for marginal and small fields developments nominated to National Oil Company (NOCs) in line with the resolution on marginal field policy approved by Cabinet
    - Additional fiscal incentives such as reduction in Cess to offset higher per unit cost in respect of IOR/ EOR oil
    - Sliding scale of Royalty / Cess or certain dispensation may be allowed to incentivize production of difficult‖ oil (such as IOR/EOR, HP-HT, Deep/Ultra Deep water)

Suggestion

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

Downstream

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

Background

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

Generally ATF is received at AFSs through intermediate storage locations (Depot/Terminal) instead of directly from Refinery. At the point of removal, the excise duty is paid on destination assessable value by following the principle of Normal Transaction Value under Section 4 of the Central Excise Act read with Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In case of further stock transfers by the intermediate storage locations, the duty payable is again determined based on the value applicable to the final receiving locations i.e. AFSs which result in payment of differential duty. This creates problem in re-ascertaining the correct transaction value for payment of differential excise duty at Refinery. The extension of same rule for payment of duty on account of further stock transfer of products from one depot to another depot, makes the compliance of valuation rule very difficult for the oil companies.

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

Suggestion

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

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

Background

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

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

Suggestions

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

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

Background

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

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

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

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

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

a. Meaning of "appropriate duties of excise" has been amended / issued in the BED and RIC exemption notification to include only RIC. The words "Additional Excise duty", levied up to 1.2.2018, has been omitted / not inserted in the meaning of appropriate duties of excise.
b. Notification No. 28/2002-CE dated 13.05.2002 exempting SAED has not been modified to include even RIC in the meaning of "appropriate duties of excise".
   In this regard, we would like to submit that OMCs were having closing stocks of MS (Petrol) and HSD (including in transit) as on 1.2.2018 which were blended and supplied on or after 2.2.2018. Such closing Stocks (including in transit) of MS (Petrol) and HSD have suffered Additional Excise duty (Road Cess) cleared on or before 1.2.2018.

Suggestion

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

4. Exemption to CNG from payment of excise duty

Background

Presently, Central Excise duty is applicable on CNG due to Chapter Note 3 of Chapter Note to Chapter 27 of CETA. It is desirable that CNG (conversion of Natural Gas into CNG) be exempted from Central Excise Duty. This will promote usage of this environmental friendly fuel in domestic and commercial transportation sectors.

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

Suggestion

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

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

Background

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

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

Suggestion

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

6. Levy of Excise duty on NIL duty stock (GST Product cleared from Export Warehouse after 01.07.2017

Background

- The petroleum product were covered under Central Excise on or before 30.06.2017 and w.e.f. 01.07.2017, certain petroleum product such as Furnace Oil etc are covered under GST product

- As per Central Excise provisions, the petroleum product were cleared without payment of duty from the manufacturing plant to the export warehouse. As on 30.06.2017, the NIL duty paid product remained in the warehouse, and post 01.07.2017, the product are cleared under GST provisions after charge of GST

- The Central Government issued Notification No.12/2017-CE dated 30.6.2017 to exempt all excisable goods from whole of the "duty of excise" leviable thereon under the erstwhile Central Excise Act, 1944 which are manufactured on or before 30th June 2017 and not cleared from the factory of production before the 1st July 2017. The exemption was subject to condition that the excisable goods manufactured on or before 30th June 2017 and not cleared from the factory of production before the 1st July 2017 and shall be cleared/removed/supplied on payment of GST leviable at applicable rate.

- The field formation are of the view that the above notification will not be applicable for the goods lying in export warehouse as it is not factory of production and central excise duty would be payable on the product in stock as on 30.06.2017

- It is important to note that above position creates double taxation on the same product which can never be the intention of law.

Suggestion

It is suggested that suitable amendment are brought to clarify that warehouse (to which product was removed from the factory of production / Refinery) is deemed as factory of production for the purpose of Notification No.12/2017-CE and hence exemption is applicable to product lying in stock as on 30.6.2017

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

Background

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

After clearance on payment of duty from manufacturing plant, sometimes petroleum products such as MS and HSD become contaminated and have to be brought back to the Refinery for re-processing so as to make them marketable. Such contaminated product is considered as GST product for the purpose of taxes and hence, Refinery is not eligible to get any ITC of GST paid at the time of bringing contaminated MS and HSD, and also, duty has to be paid again at the time of their clearance after re-processing, resulting in double payment of duty. Thus, the entire exercise results into tax on the product three times.

Suggestion

It is suggested that suitable clarification should be issued to treat contaminated MS and HSD as Non-GST Product i.e. MS and HSD attracting VAT when sold to Refinery for re-processing.

8. Clarification on invocation of section 11 D(1A) of Central Excise Act, 1944 on Ethanol Blended Motor Spirit

Background

Considering the energy a critical input for the socio-economic development of Country, growing environmental concerns and with an intention to conserve the Foreign exchange, The Government of India had decided to launch the ethanol blended programme (EBP) in January 2003 and the Ministry of Petroleum & Natural Gas vide its notification dated 20.09.2006 also directed Public Sector OMCs to sell Ethanol Blended Petrol. For implementation of EBP and bio-diesel, the Standing Committee on Ministry of Petroleum and Natural Gas was formed to promote the use of ethanol in Motor Spirit (MS) to reduce the consumption of crude. As per the directives, the PSU OMCs have been procuring the ethanol from factory of ethanol producer and transport it to their depots/terminals for blending with Motor Spirit (MS).

Since both normal Motor Spirit (MS) and Ethanol Blended Motor Spirit (EBMS) are sold as Motor Spirit only in the market and so far as the final consumer is concerned, MS and EBMS are one and the same. Since MS (Petrol) is continue to be governed by the Central Excise Act, 1944, the blending of ethanol (GST product) with MS (Non-GST Product) requires clarification for the following:-

- Whether provisions of Section 11D(1A) of Central Excise Act, 1944, inserted from 10.5.2008, can be invoked, when there is practice of charging uniform sales price for both Motor Spirit and Ethanol Blended Motor Spirit on the ground that the assessee was charging central Excise duty equivalent to MS on the quantity of ethanol contained in EBMS ?

- Whether central excise duty as applicable on MS can be demanded on the quantum of ethanol contained in EBMS when EBMS is exempt from Central Excise duty on blending of excise duty paid MS and GST paid ethanol ?

- Whether the provisions of Section 11D(1A) of Central Excise Act, 1944, would be applicable when the element of central excise duty has not been shown in the sales invoices, as composite price is charged for sale of EBMS, with a separate mention of only Value Added Tax (VAT) ?

Suggestion

- It is recommended that a suitable clarification be issued that “Blending of GST paid Ethanol with Central Excise Duty paid MS” shall not be treated as amounting to manufacture for the purposes of Central Excise Act, 1944.

- It is also recommended to clarify that since 5% Ethanol Blended Petrol and 10% Ethanol Blended Petrol are exempted from Central Excise duty as per Notification No. 11/2017 dated 30.06.2017, the provisions of Section 11D(1A) of the Central Excise Act, 1944 shall not be applicable.

- It may further be clarified that provisions of Section 11D(1A) of the Central Excise Act, 1944 shall not be applicable when the element of central excise duty has not been shown in the sales invoices.

General

1. Exemption/Concessional rate of Social Welfare Surcharge

Background

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

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

Suggestion

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

2. Exemption from mandatory fixed pre-deposit

Background

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

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

Suggestion

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

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

Background

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

Suggestion

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

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

Background

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

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

Suggestion

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

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

Background

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

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

Suggestion

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

6. Disposal of Scrap

Background

The Condition No. 40A under Sl. No. 357A of the Customs Notification No. 12/2012-Cus dated 17.03.2012 (Now, Condition 48 under Sl. No. 404 of Customs Notification No. 50/2017-Cus dated 30.06.2017) was amended vide Notification No. 6/2017-cus dated 02.02.2017 to allow the disposal of goods imported for petroleum operation by availing of the benefit of the exemption, which are no longer required for the said purpose, on payment of applicable customs duties on depreciated value. On plain reading of notification, we are of the view that the amendment covers disposal of un-used imported items which are no longer required for petroleum operation and declared as condemned and obsolete.

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

Suggestion

The amendment/clarification should be issued that no Customs Duty or GST would be payable on disposal of used items as well as unused surplus items which have become scrap and are no longer required for petroleum operations. However, GST would be payable on transaction value of such disposed items.

This proposal is also in line with provisions under GST Law, where disposal of capital goods after 5 years of usage, attracts GST on Transaction Value only.

Customs Duty

Downstream

1. **Exemption on import of LNG**

   Background

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

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

   Suggestion

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

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

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

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

Suggestion

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

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

Background

Under pre-GST regime, Liquefied Natural Gas (LNG) imported for consumption in the C2-C3 Plant of ONGC located in the Dahej Special Economic Zone through Petronet LNG Limited for the purposes of authorized operations in the SEZ unit was exempted vide Sl. No. 138A of Notification No. 12/2012-Cus dated 17.03.2012 if the importer produces a certificate from the jurisdictional Specified Officer of the SEZ unit certifying that the quantity of LNG for which exemption is being claimed has actually been consumed in terms of equivalent quantity by the SEZ unit for the purposes of authorized operations during the preceding month. However, field formations raised objection in exemption claim in August 2015 for period prior to preceding month. The matter was represented and TRU, MOF vide Circular D.O.F No. 334/8/2016-TRU dated 29.02.2016 (at Sl. No. 3 of pg 32) clarified as under:

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

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

Suggestion

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

Natural Gas

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

   Background

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

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

   Suggestion

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

General

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

   Background

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

   In this regard, it is submitted that E&P Sector has constructed various Onshore & Offshore facilities including platforms, pipelines through Lump Sum Turnkey (LSTK) Contracts since 1980.

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

Suggestion

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

2. Custom duty on import of Hydrogen especially from SEZ unit to DTA.

Background

Hydrogen produced by some Industry is not practicable to be either sold to small suppliers or exported. Thus becomes a National waste but can be used by other large industrial units, who will otherwise have to make huge capital investments for captive generation. Hydrogen is not technically tenable for extensive transportation except local pipeline transfers.

Suggestion

Hydrogen movements locally especially SEZ to DTA may be charged with ZERO Custom Duties to have Nationwide synergies.

Central Sales Tax (CST)

Upstream

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

   Background

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

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

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

   Suggestion

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

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

Downstream

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

Background

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

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

- The definition of 'Goods' u/s 2(d) of CST Act has been amended to include only six products viz. Crude Oil, Natural Gas, HSD, MS (Petrol), ATF and Alcoholic Liquor. Besides HSD, MS (Petrol) & ATF, the refineries also produce Naphtha, LPG, SKO etc. which are not covered under such amended definition as these products are subject to levy of GST.

- As per Sec 8(3)(b)/(c), the benefit of concessional rate of 2% CST is available only if goods purchased are for manufacture and sale of goods covered under amended definition of Goods u/s 2(d) of CST Act.

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

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

Suggestion

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

General

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

   Background

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

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

   Suggestion

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

DIRECT TAXES

Upstream

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

   Background

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

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

   Suggestion

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

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

   Background

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

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

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

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

Suggestion

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

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

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

Background

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

Suggestion

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

Downstream

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

Background

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

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

Suggestion

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

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

Background

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

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

Suggestion

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

Natural Gas

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

Background

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

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

Suggestion

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

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

Background

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

- Section 70 provides that in case of loss under any head of income (other than head of Capital gain), assesses are entitled to set off such loss from any other source of income under the same head. Therefore loss from one business can be set off from profits of other businesses. However section 73A provides that loss computed under sec 35AD will be set off only against profits & gains of Specified Business. This restricts the claim for adjustment of 35AD loss against the profits of other pipelines laid prior to 1st April 2007 and other businesses of the company, which is allowed otherwise in all other cases. This discrimination needs to be removed and set off of loss computed under section 35AD may be allowed against profits of any other business carried on by the assesse as provided under section 70 of the Act.

- Section 72A needs to be amended suitably so that in case of amalgamation or demerger of a company, accumulated losses in specified business (u/s 35AD) of amalgamating company or demerged company shall be allowed to be carried forward and set off in the hands of the resulting company where such loss of specified business (u/s 35AD) is directly related to the undertakings transferred to the resulting new company.

Suggestion

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

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

General

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

Background

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

Suggestion

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

2. Corporate Social Responsibility Expenditure

Background

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

Suggestion

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

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

Background

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

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

Suggestion

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

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

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

Background

In the Finance Act 2016, the Government introduced a lower tax rate (29%) for domestic companies whose turnover does not exceed INR 5 crores in FY 2014-15. In Finance Act 2017, the tax rate was reduced to 25% for companies having a turnover of INR 50 crores or less in FY 2015-16.

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

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

Suggestion

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

5. Interest on refunds u/s.244A

Background

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

In majority of the cases, the tax authorities do not grant refund to the assessee even where relief has been granted from the appellate authorities. This causes genuine hardships to the assessee as even after obtaining a favourable decision of the appellate authority the assessee is left at mercy of the tax authorities who would give effect to such appellate order and grant refund to the assessee. Therefore, it is recommended that the tax authorities are held accountable for such delay by recovering the interest on of refund payable to the assessee pursuant to an appellate order in order to ensure grant of refund to the assessee in a timely manner.

Suggestion

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

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

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

Background

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

Considering that a Domestic Company has already paid tax @ 34.94% on its total income, further payment of DDT @ 20.56% is excessive. After introduction of "Grossing-up Provisions", the effective tax on dividend distribution is higher by 3%.

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

Suggestion

- Tax on distribution of dividend is outside the purview of the charging Section of the Act, since it is a tax not on income but on application of income

- Without prejudice to the above, the Grossing-up Provisions resulting into Additional Tax outgo of approx. 3% should be withdrawn since it is causing undue hardship to assesses

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

Background

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

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

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

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

Suggestion

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

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

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

Background

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

Suggestion

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

9. **Phasing out of exemptions**

Background

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

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

Suggestion

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

10. Carry forward of Foreign Tax Credit (FTC)

Background

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

However, in case of loss/inadequate profits, no set off may be possible. Many of the foreign countries have provisions for carry forward of FTC and in line with international practices, the same should be introduced.

Suggestion

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

11. Corporate Tax Rate from All Companies be Moderated

Background

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

Suggestion

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

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

Background

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

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

Suggestion

Section 32 AD provides for additional depreciation of 15% for new projects in backward areas. The benefit is available till 2020. Section 32 AD is applicable for notified backward region. Section 32 AD must be extended to 2023-24 and should be expanded to include substantial expansion.

13. Reinstatement of Section 32 AC

Background

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

Suggestion

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

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

Background

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

Suggestion

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

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

Background

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

Suggestion

Weighted average deduction under section 35(2AB), 35(2AA) to be retained at 200%: The deduction on Scientific research and contribution to National Laboratories have been reduced from 200% to 150%. With the vision of the Government for strengthening the R&D Activities, it should retain the weighted average deduction to 200%.

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

Background

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

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

Suggestion

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

17. TDS on Transportation payment under section 194C

Background

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

"(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum".

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

Suggestion

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

18. Profits & gains of shipping business of non-resident

Background

Section 44B(1) deems seven and a half percent of amounts mentioned in section 44B(2) as profits & gains of non-resident engaged in the business of operation of ships. In the case of carriage of passengers, livestock, mail or goods shipped at any port outside India (e.g. crude oil shipped at a port in Saudi Arabia and received at a port in India i.e. import into India), the non-resident is taxable only on the amounts received or deemed to be received in India as per section 44B(2)(ii). However, the Assessing Officers are treating the freight amounts on account of import, received by the non-resident outside India vide Telegraphic Transfer, as taxable in India and disallowing the freight or/and demurrage charges u/s. 40(a)(i) in the hands of the refinery for alleged non deduction of tax at source u/s. 195 of the Act.

Suggestion

It is suggested that an explanation should be inserted in section 44B of the Act clarifying that for the purpose of section 44B(2)(ii) where the amounts specified are received by the non-resident by way of Telegraphic Transfer or SWIFT etc., in his account outside India, then the same is not received or not deemed to be received in India by the non-resident shipping company, with retrospective effect from 01.04.1976, for the purpose of reducing avoidable disputes and litigations.

19. Corporate Social Responsibility Expenditure

Background

Corporate social responsibility expenditures have become part of business operations of a company, particularly in case of PSU. The Companies Act 2013 also provides for mandatory CSR expenses to the extent of 2% of average Net profit of a company in last 3 preceding years. Further, CSR expenditure is also one of the parameters of evaluation of the performance of the

PSU by DPE. In order to promote development of the country, CSR expenses need to be promoted. Under CSR various development programmes like development of schools for poor children, roads & bridges in rural areas, financial assistance to NGOs engaged in helping poor by providing employment are carried out. However, Explanation 2 to Section 37(1) of the Income Tax Act, 1961 inserted by the Finance (No. 2) Act, 2014, w.e.f. 01.04.2015 deems CSR expenditure mandated by the Companies Act, 2013 to not be an expenditure incurred by the assessee for the purposes of the business.

Suggestion

In view of mandatory nature of CSR expenses under the Companies Act, 2013, it is suggested to insert an amendment under Income Tax Act allowing deduction of CSR expenditure. Further to encourage corporates to take initiatives towards CSR, it is also suggested that a weighted deduction of 150% or 200% may be provided on CSR expenditure over and above the limit prescribed under the Companies Act, 2013, by amendment to Income Tax Act.

20. Sum payable by the employer in lieu of any leave at the credit of his employee

Background

Section 43B of the Act 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

It is suggested to delete the clause (f) of Sec 43B in view of the Calcutta High Court decision striking down this provision being arbitrary, unconscionable and de hors Apex Court decision in case of Bharat Earth Movers vs. CIT [2000] 245 ITR 428 – Exide Industries Ltd vs. Union of India [2007] 164 Taxman 9 (Cal). Alternatively, the provision of clause (f) of sec 43B may be amended to include the contribution made by employer based on actuarial valuation etc. to a dedicated fund, as actual payment thereby avoiding litigations.

21. Expenditure incurred in relation to income not includible in total income

Background

Disallowance towards expenditure incurred in relation to exempt income is provided in Section 14A of the Income Tax Act, 1961. In March 2008, Rule 8D was inserted in the Income Tax Rules which provides for the method of determining the amount of expenditure in relation to exempt income, in case, the Assessing Officer is not satisfied with the correctness of the claim of the assessee or in case, the Assessing Officer is not satisfied with the claim of the assessee that no expenditure has been incurred in relation to earning the exempt income. Subsequently, the method prescribed under Rule 8D has been amended with effect from 02.06.2016. Section 14A of the Act and Rule 8D of the Income Tax Rules are interpreted and applied mechanically by the Assessing Officers in a manner whereby they take recourse to the method prescribed under Rule 8D even in cases where there is no objective non-satisfaction of the AO being recorded, resulting in huge amounts getting disallowed and in some cases disallowance even exceeds the exempt income.

Suggestion

Exemption in respect of dividend income received from equity investment or from mutual fund is provided under the Income Tax Act u/s. 10(34) & 10(35) respectively. Dividend income is taxed at the time of distribution itself and tax is collected directly from the distributing domestic company u/s. 115-O or from the Mutual Fund u/s. 115-R, as the case may be, and accordingly, the dividend income cannot be equated with other exempted income. Hence, It is suggested that dividend income on which Dividend Distribution Tax has been charged at the time of distribution should be kept outside the purview of section 14A. In addition to the above, it is also suggested that, the maximum disallowance under section 14A should be restricted to the total amount of exempt income to which section 14A applies i.e. exempt income other than dividend income.

22. Allowance for investment in new plant & machinery

Background

Section 32AC of the Income Tax Act provided for an allowance of 15% on new assets installed during the year upto AY 2017-18. This provided as incentive for new capital formation and as an impetus to the Make in India initiative.

Suggestion

It is suggested that, to incentivize higher capital formation, job creation, higher economic growth and as an impetus to Make in India initiative, the benefit u/s. 32AC may be extended by another five years i.e. till AY 2024-25.

23. Allowance for expenditure on retirement benefits to employees of PSUs

Background

Clauses iv, iv-a & v of Section 36(1) permits deduction from income under the head, profits & gains of business or profession on long term retirement benefits, namely, recognized PF, approved superannuation fund, pension scheme and approved gratuity fund. Any contribution of the Employer beyond these benefits is disallowed u/s 40A(9) of the Act.

Suggestion

Considering that PSUs are governed by DPE Guidelines for fixation of Salaries/ Perquisites, it is imperative to amend Section 36(1) to include other retirement benefits existing in vogue in PSUs, namely, Post-Retirement Medical Benefit Fund and Death Benefit Fund.

24. Rate of Minimum Alternate Tax

Background

The Rate of Minimum Alternate Tax has been gradually increased over the period - from 7.5% in the Assessment Years 2001-02 to 2006-07 MAT rate has gone up to 18.5% for the Assessment Years from 2012-13. While presenting the Budget 2015 the Hon'ble Finance Minister had proposed that the Corporate Income Tax rate would be reduced from the 30% to 25% over next four years. Further, the Finance Act, 2016 initiated the process of phasing out of various deductions and reduced the tax rate in case of certain domestic companies. The same been continued in Finance Act, 2017 and 2018.

Suggestion

Considering the proposed reduction in corporate tax rate from 30% to 25% it is suggested to reduce the Minimum Alternate Tax Rate also proportionately.

25. Interest on 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.

The operations and profit & loss of the Oil & Gas Companies are vastly impacted by the movements or fluctuations in the global prices of Crude Oil and Foreign Exchange Rate. Hence, it may not be practicable to determine accurately the advance tax payable by such companies.

Suggestion

It is suggested that relaxation should be given to Oil & Gas Companies by providing that no interest shall be leviable on shortfall of installment of Advance Tax to the extent that such shortfall is due to fluctuations in the global prices of Crude Oil and Foreign Exchange Rate fluctuation.

26. Interest on refunds

Background

The Act charges interest from the assessee for delay in filing of return, delay in deposit of advance tax instalments etc. at the rate of 1% p.m. u/s. 234A, 234B, 234C etc. of the Act. However, the rate of interest granted on refund u/s. 244A is kept at 0.5% p.m. This disparity in rate of interest payable by the assessee and the Department causes additional interest on working capital for the assessees.

Suggestion

It is suggested that the rate of interest on refunds u/s. 244A should be amended from 0.5% p.m. to 1% p.m.

27. Exemption Threshold for certain allowances to employees

Background

Sec. 10(14) of the Act r.w.r. 2BB of the Rules prescribe threshold for exemption on certain allowances etc. paid to employees, has not been revised over so many years.

Suggestion

It is suggested to suitably increase the exemption threshold provided under sec. 10(14) of the Act r.w.r. 2BB of the Rules for allowances such as children education allowance, Hostel Education allowance in line with inflation.

28. Valuation of Perquisites

Background

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 are taxable.

Suggestion

It is suggested that valuation of perquisites as per Rule 3 in respect of perquisites such as free food, gift from employer as also provision of motor car, accommodation also needs to be revised keeping in view the cost inflation.

29. Exemption in respect of Leave Salary

Background

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

Suggestion

It is suggested to increase the monetary ceiling to Rs. 20 lakhs (considering the maximum of the scale of E9 Grade for CPSEs i.e. Rs. 3,00,000 plus DA at the rate of 100% for 300 days).

30. 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 extended from 31st march, 2002, to allow deduction for expenditure incurred to conserve natural resources

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

Background

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

Suggestion

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

32. Depreciation provisions (Section 32)

Background

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

Suggestion

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

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

Background

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

Suggestion

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

34. 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 2019-20 again.

35. MAT provisions for payment of tax on Book profit (Section 115JB)

Background

Provisions of section 115JB is applicable when the tax calculated on taxable income computed under normal provisions of the Act is less than 18.5% of Book profit calculated under section 115JB.

Suggestion

Oil and Gas companies availing specific incentives covered under section 42, should be exempted from MAT provisions under section 115JB of the Income Tax Act, 1961.

36. Phase out plan for Tax holiday under section 80-IB(9)

Background

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

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

    - Section 80-IB(9), which provides a seven year tax holiday for profits derived by an undertaking from the commercial production of mineral oils in India. These provisions have witnessed a significant whittling down during the past few years

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

  "In recognition of the need to boost the production of Petroleum and Natural Gas, it is proposed to give tax incentives. The business of enterprises engaged in extraction, production and refinement of Petroleum & Natural Gas is of a unique nature and needs special tax provisions.…"

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

Suggestion

The commencement of commercial production of oil and gas is the culmination of a long series of exploratory and development activities which span over several years. Such exploratory and development activities entail investment of huge amounts of funds. An entity which has already committed huge funds for the exploration and development of an oil and gas block but is not able to commence commercial production by 31.03.2017 due to geological, regulatory, or operational factors would be hugely disadvantaged vis-à-vis another entity which is able to commence commercial production by 31.03.2017 owing to different geological, regulatory, or operational factors. It is, therefore, suggested that the cut-off criteria for the phasing out of tax holiday u/s. 80-IB (9) may be kept as the intimation of discovery on or before 31.03.2017 rather than the start of commercial production by that date.

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

Background

Section 42(1)(a) of the Income-tax Act, 1961, provides for deduction of "expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to beginning of commercial production” in computing the profits and gains of any business consisting of the prospecting for or extraction or production of mineral oils. The deduction for infructuous or abortive exploration expenses is not allowed till the surrender of the area, though the same are charged off in the books of account. Deduction in respect of expenditure incurred for a well which is declared as dry during a particular year should justifiably be allowed without the requirement of surrender of the PEL/ML area to smoothen appropriate phasing of expenditure by the assessee and revenue collections for the Government and to bring uniformity in tax treatment. However, the word “surrendered” in the above clause precludes allowability of deduction for expenditure incurred in an area which cannot be surrendered for any practical constraint.

Suggestion

It is therefore suggested that the word “surrendered” may be deleted from section 42(1)(a) as brought out in the table below:

Provision proposed to be amended	**Existing provision**	**Proposed provision**
Clause (a) of sub-section (1) of section 42 of the Income-tax Act, 1961	to expenditure by way of infructuous or abortive expenses in respect of any area **surrendered** prior to the beginning of commercial production by the assessee.	to expenditure by way of infructuous or abortive expenses in respect of any area prior to the beginning of commercial production by the assessee.

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

38. 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 employees, 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.

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

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

- 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 bonafide intention for welfare of employees, there ought not to be any bar on deduction in respect of contribution made towards such Fund, Trust, etc. Registration/recognition/approval of a Fund/Trust/Scheme under the provisions of the Income-tax Act, 1961 ought to be sufficient to establish the bona fides of creation of such Fund/Trust/Scheme for the benefit of employees.

Suggestion

It is, therefore, suggested that suitable amendments may be made in section 36 and/or section 40A(9) of the Act so as to provide that deduction would be available in respect of any 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.

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

Background

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

Suggestion

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

40. Underlying Tax Credit

Background

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

Suggestion

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

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

Background

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

- Section 10(35) of the Income-tax Act, 1961, provides that any income received in respect of the units of a Mutual Fund shall not form part of the Total Income. In other words, dividend from a Mutual Fund is exempt from tax in the hands of the recipient. However, u/s. 115R of the Income-tax Act, 1961, the Mutual Fund is required to pay Dividend Distribution Tax (DDT) @ 30% plus surcharge @ 12% plus Education Cess @ 4% resulting in an effective DDT rate of 34.944% when dividend is distributed to a company. As per sub-section (2A) of section 115R, DDT is to be calculated by further grossing up the amount of dividend.

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

Suggestion

Accordingly, it is suggested that section 14A may be suitably amended to provide that the same shall not apply to expenditure incurred by a company in relation to dividend received by it from a debt mutual fund on which DDT has been paid as per the provisions of section 115R. The Income

Tax Simplification Committee headed by Justice (Retd.) R.V. Easwar has also recommended that dividend received after suffering dividend-distribution tax should not be treated as exempt income and no expenditure should be disallowed as relatable to the same.

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

Background

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

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

- As a consequence of the aforesaid, in tax protected contracts with non-residents (where tax liability of the non-residents 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. The aforesaid dichotomy in methods of grossing-up of income leads to blockage of funds of the payer for a substantial period of time.

Suggestion

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

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

Background

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

Suggestion

It is, therefore, suggested 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.

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

Background

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

Suggestion

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

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

Background

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

Suggestion

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

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

Background

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

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

Suggestion

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

Without prejudice, if the aforesaid suggestion is not agreed to, then the amount of Rupees One Lakh Fifty Thousand specified in section 17(2)(vii) of the Income-tax Act, 1961, may be raised to at least Rupees Two Lakh Fifty Thousand to allow accumulation of sufficient corpus to meet post retirement needs of employees in the scenario of increased life expectancy and high inflation.

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

Background

After the abolition of Fringe Benefit Tax vide Finance (No.2) Act 2009, taxability of different perquisites in the hands of employees was reintroduced from FY 2009-10 by inserting new Rule 3. As per the aforesaid Rule 3, few perquisites like Free food and non-alcoholic beverages, is taxable if the cost per meal per employee exceeds Rs. 50/- and Gift from employer is taxable if the value exceeds Rs.5000 p.a etc.

Suggestion

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

48. Issue of Withholding Tax Certificate u/s 195(3) of the Income Tax Act

Background

Every foreign company operating through branch/ project office etc. must procure a Withholding Tax certificate to determine the rate of withholding for the receipts from customers. The withholding tax certificate may be obtained under section 195(3) for a company which has a track record of filing tax returns in India or under section 197. Recently, the application made to the department u/s 195(3) by companies operating in India through a Project Office is being rejected on the grounds that section 195(3) applies only to foreign companies operating through "Branch Office" and not through "Project Office".

It may be noted that the concept of Branch Office, Project Office and Liaison Office is prescribed under the Foreign Exchange Management Act, 1999 ('FEMA') for non-resident companies planning to set up an office in India. This distinction should be restricted only to FEMA and cannot be imported into the Income tax laws. A project office is nothing but a branch office of a foreign company for the purpose of Income Tax Act, 1961 and accordingly, the project office should not be denied the right to make an application under section 195(3).

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

Suggestion

It should be clarified that for the purpose of Section 195(3) of the income tax act, branch includes a Project Office.

49. Depreciation on expenditure incurred on purchase of Participating Interest in Oil and Gas fields

Background

With a view to make India an energy independent country and to meet the requirements of the economy, the Government of India (GoI) has adopted and liberalized several policies to promote the exploration and production industry. GoI offers exploration rights for global bidding for specified blocks in rounds under the New Exploration and Licensing Policy (NELP), Hydrocarbon Exploration & Licensing Policy (HELP) by signing the Production/Revenue Sharing Contracts (PRSC's) with the E&P companies.

The E&P companies are granted a licence to explore, develop and carry out production operations in oil block in India under a PRSC with the Government of India (GoI). Typically, owing to the large investments required and the risks involved, multiple E&P companies execute the PSC with the GoI which each member have its agreed and defined interest in the PRSC (called participating interest).

It is pertinent to note here that under section 293A, Notification 117E dated March 8, 1996 all parties entering a PRSC will not be assessed as an AOP and that each party will be assessed for its own share of income. Accordingly, all E&P companies have been reporting their share of income and expense in the PSC in their individual tax returns.

Over the life cycle of an oil and gas block, E&P companies generally buy (referred as farm in) and sell (referred as farm out) their participating interests in the PRSC. This is a practice followed globally by all E&P companies. The transaction of “farm in” essentially is in the nature of a “slump sale” wherein the exiting PRSC member sells their participating interest consisting of rights, license and obligations under the PRSC to a new E&P company for an agreed amount such company then, after the required approvals, becomes a new member of the PRSC.

As mentioned above, the participating interests are rights, licenses and obligations under the PRSC. Such acquisition of intangible rights is squarely covered under the ITAT judgement of ONGC Videsh Limited where in the Tribunal has held that the acquisition of interest being license is eligible for depreciation under section 32(1)(ii) of the Act.

The upstream industry follows this practice uniformly. There are similar provisions internationally where such farm in costs are depreciated (example Australia, UK). Further, the Institute of Chartered Accountants of India has issued a guidance note on accounting for oil and gas producing activities which states that the rights for exploration, development or production may also be acquired by entering into a farm-in arrangement and further classifies the said arrangement to be an acquisition activity and should be capitalized and depreciated.

Suggestion

In view of the jurisprudence and industry practice and in the interest of consistency, it should be clarified that such Farm in costs are an intangible asset eligible for depreciation under section 32 of the income tax act read with section 293A of the Income Tax Act.

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

Background

The provisions of Section 115-O (1A) were inserted to remove cascading impact of dividend distribution tax paid by a subsidiary co. to holding co. and thereafter by holding co. to its shareholders. However such relief has been restricted only to transactions between holding and subsidiary company and further the proviso to Section 115-O(1A) of the Act provides that the same amount of dividend shall not be taken into account for reduction more than once.

An explanation can be inserted clarifying that the benefit of DDT paid by a subsidiary company is available at each company level in a multi-tier corporate structure so as to avoid the cascading impact of DDT.

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

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

The principle applied for removing the cascading effect of DDT is 'tax should be paid only once on the same income'. But this has been applied in a limited context. Therefore, an amendment to provide uniform and simplified taxation regime would mitigate the adverse impact on growth of Indian companies.

Suggestion

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

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

- The existing provisions should be further rationalized, so as to reduce the cascading impact of taxes in case of 2 layer subsidiary structure (i.e. subsidiary of a subsidiary).

51. **Interest under section 234B & 234C when Section 89 (1) relief is claimed**

Background

While processing returns for the AY 2018-19 under section 143 (1) the CPC has charged interest under section 234B & 234C for employees who have claimed relief under section 89 in the return of income.As per section 234B & 234C interest is payable on short or non payment of advance tax due.

In this section, "tax due on the returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of,—

(i) any tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

(ii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;

(iii) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

(iv) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(v) any tax credit allowed to be set off in accordance with the provisions of section 115JAA [or section 115JD].]

A plain reading of the section would mean that any person who claims relief under section 89 (1) , will first have to deposit tax as advance tax and later claim refund from department as relief under section 89 (1) is not included in definition of tax due on returned income under section 234B & C. However, this is not in line with the intention of the act.

Further CBDT has in salary circular clarified that the employer shall provide for relief under section 89 before determining TDS deductible under section 89. Therefore charging interest on employees under section 234B & 234C is not justified when section 89 (1) relief in accepted by income tax department unopposed.

Suggestion

Definition of “Tax Due on Returned Income” should be amended, to reduce relief under section 89 (1) so that no interest in charged under section 234B & 234C.

52. Allowance of Provision for Post-Retirement Medical Scheme

Background

Usually all PSU's provide post-retirement medical benefit for its employees and expenses for same are provided in accounts annually on basis of actuarial valuation in accordance with Ind AS-19.

The income tax authorities have been taking a view from a long period that any expenses on account of post-retirement medical benefit booked is not a crystallized liability and same will be disallowed. Thereby such expenses are only allowed on actual payment only.

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

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

Suggestion

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

53. Disallowance of expenditure incurred in relation to exempt income

Background

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

- Expenditure directly attributable to exempt income.

- 1% of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income

Suggestion

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

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

54. Amendment in Section 35AD, Deduction in respect of expenditure on specified business

Background

Under the existing provisions of section 35AD of the Income-tax Act w.e.f. 01.04.2010, investment-linked tax incentive is provided by way of allowing 100% deduction in respect of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the "specified business". The 'specified business' include the business of laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. The incentive is available if the project of cross country pipeline is approved by Petroleum & Natural Gas Regulatory Board and is being operated on common carrier principle. The crude oil pipeline dedicated for the Refineries and also dedicated product and gas pipelines for customer are inadvertently getting excluded.

Suggestion

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

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

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

57. Relief is provided to holding company under section 115-O (1A) if subsidiary declares dividend and the holding also declares dividend. The DDT in such case is paid on net additional Dividend paid by holding company. It is requested to allow all dividends received by the company on which DDT is paid is allowed for netting off against the Dividend declared.

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

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

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

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

62. Under existing Income tax provisions, there are no time limits defined for disposal of application, seeking No Objection Certificate for remittance of TDS u/s 195 of the Act. At least in cases involving remittance to Non Residents, it is suggested that an outer limit of say, 30 days shall be fixed for issuance of such certificates, failing which the rate sought in the Application shall be deemed to have been approved.

63. Currently, interest u/s 234B/234C charged on the Assessee is 1% per month whereas interest u/s 244A payable to Assessee is 0.5%. It is suggested to bring parity in the rates and further the rate be linked to any 'reference rate' thereby making it dynamic.

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

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