FIPI

Federation of Indian Petroleum Industry

PRE-BUDGET MEMORANDUM

UNION BUDGET 2026-27

A. Direct Tax

I) Income Tax

Upstream

New Provisions

1. **Tax Holiday u/s 80IB (9)**

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

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

Government has now brought Open Acreage Licensing Policy (OALP) on revenue sharing contract basis, wherein total 105 blocks have been awarded till date.

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

2. **Deduction for EOR expenditure: Weighted deduction of 150% of Enhanced Oil Recovery (EOR) expenditure**

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

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

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

3. **Investment allowance (Section 32AC)**

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

Oil and Gas industry invests in high value Plant & Machinery every year for oil production. Tax incentive is required to boost these investments. Validity of deduction u/s 32 AC may thus be restored.

Suggestion
In order to sustain the existence and to be a part of the inclusive growth plans of the nation, refineries are required to reinforce their infrastructure in terms of capacity augmentation & fuel-quality upgradation in line with Environmental norms. Commensurate investments will be required for supporting such expansion which would require a large amount of funds by Refineries.

Accordingly, in order to incentivize investments, the claim of deduction under section 32AC may be restored.

4. **Deduction for Exploration and Development expenditure u/s 42**

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

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

Amendment

1. **Impact of amendment to Section 9 Significant Economic Presence (SEP) (Section 9 of the New Income Tax Act 2025)**

Background
A non-resident shall have a significant economic presence (SEP) in India owing to the following

(a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds Rs. 20 Million; or
(b) systematic and continuous soliciting of business activities or engaging in interaction with 3 lakh users in India.

Further, SEP would be triggered irrespective as to whether (i) the agreement for such transactions or activities is entered in India; or (ii) the non-resident has a residence or place of business in India; or (iii) the non-resident renders services in India. As regards the attribution of income, only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.
Prior to enactment of SEP provisions, mere export of goods by a non-resident to an Indian importer will not create any tax liability in India, in the absence of a nexus with Indian soil.

While, a plain reading of the SEP provisions suggests that if a non-resident has exported goods to an Indian importer worth more than Rs. 2 Million in the previous year, then such a transaction will create a SEP of the non-resident in India. Consequently, such non-resident

shall have a business connection in India and to the extent income is attributable to such transactions, shall be taxable in India.

Accordingly, the conventional import of goods is also covered within the ambit of Significant Economic Presence. However, the intent of law seems to cover only transactions carried out in India through digital modes like downloading of data, and software etc.

Suggestion

A suitable clarificatory amendment may be provided to the Act or by way of a circular wherein the scope of SEP should be well defined to cover only digital transactions and not physical import of goods

2. **Withdrawal and Utilization of amount deposited as per Site Restoration Fund Scheme (Section 33ABA read with Site Restoration Fund Scheme, 1999). (Section 49 under the New Income Tax Act 2025)**

Background

Sub section 3 of section 33ABA provides that "Any amount standing to the credit of the assessee in the special account or the Site Restoration Account shall not be allowed to be withdrawn except for the purposes specified in the scheme or, as the case may be, in the deposit scheme."

Scheme as referred in section 33ABA means "Site Restoration Fund Scheme, 1999".

Para 8 of the Site Restoration Fund Scheme, 1999, provides that " 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 equipment 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."

As per the safety norms and the current practice in industry, abandonment activities which inter-alia includes site restoration, removal of all equipment and installations are being carried out regularly which in practice may or may not be coupled with the condition of expiry or termination of the agreement or relinquishment of part of the contract area.

However, Directorate General of Hydrocarbon i.e. the agency authorized by the Ministry of Petroleum & Natural Gas in this behalf, is denying the bona fide request for withdrawal of Site Restoration Fund for carrying out the planned abandonment activities on the plea that the abandonment activities proposed to be carried out are not followed/coupled by the expiry or termination of the agreement or relinquishment of part of the contract area.

Suggestion

It is, therefore, suggested that, para 8 of the Site Restoration Fund Scheme, 1999 may be modified as follows-

" 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 either on the expiry or termination of the agreement or relinquishment of part of the contract area or otherwise, 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."

3. **Rationalization of allowances in respect of Exploration & Production expenditure under Section 42**

Background

Section 42 of the Income-tax Act, 1961 provides for special allowances in the case of business for prospecting, extraction or production of mineral oils.

The section inter alia allows deduction in respect of:

a. Expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee.
b. After the beginning of commercial production, expenditure incurred by the assessee, whether before or after such commercial production, in respect of drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for depreciation is admissible under section 32.

The scope of deduction is restrictive and does not fully cover the spectrum of costs incurred in the oil & gas exploration sector, particularly in the context of **modern exploration technologies** and **production sharing contracts (PSCs)**.

Suggestion

In order to simplify and rationalise the allowance for E&P expenditure and provide tax certainty to upstream operators, it is suggested that **in addition to the existing clauses of Section 42**, the following allowance may be expressly included for computing income tax payable by an assessee (comprising the Contractor) on its profits and gains from the business of petroleum operations, in lieu of (and not in addition to) the allowances admissible under the Income-tax Act, 1961:

- **Exploration & Drilling Costs**
  The expenditure incurred, both capital and revenue, towards exploration and drilling activities in the contract area shall be allowed in the year in which it is incurred.
- **Development & Production Expenditure**
  The expenditure incurred towards development operations (other than drilling operations), production operations, and any other expenditure in respect of petroleum operations not covered in (i) above shall be treated as per the relevant provisions of the Income-tax Act, 1961.

Provided that, a participant may, at its option, set off any loss on account of such allowable expenses in the year in which such expenses are incurred against profits from any other source, in accordance with and subject to the provisions of sections 70 and 71 of the Income-tax Act, 1961.

Downstream

Amendment

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

   Background

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

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

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

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

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

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

   The above transactions or activities shall constitute SEP, whether or not the agreement for such transactions or activities is entered in India or the non-resident has a residence or place of business in India or the non-resident renders services in India. Further, once the non-resident triggers SEP in India, only so much of the income attributable to the transactions or activities referred above will be taxable in India.

   The language of the SEP provisions is broad and is likely to impact conventional transactions and activities even if they are not carried out in a digital form. If the SEP of the non-resident is constituted in India, the income attributable to the transactions or activities as indicated above (i.e.

purchase of goods, services, download of data etc.) would be deemed to be income accruing and arising in India and will be liable to tax in India.

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

Once taxation is triggered in India, the payer is required to withhold any tax due, and the non-resident is obligated to file a tax return. Non-compliance with the withholding obligations can trigger disallowance of deductions and assessee in default (interest and penalties for the Indian payer). Furthermore, the Indian payer can also run the risk of being regarded as a representative assessee of the non-resident.

It may be noted that there are no rules yet in place as to determine the income attributable to such a nexus or presence. In the absence of rule/guidance on the SEP income attribution principles, the payer may need to liaise with the tax authorities to determine the appropriate sum which should be regarded as taxable to comply with the withholding provisions.

Suggestion

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

2. Rationalization of applicability of curtailed depreciation under the second proviso to Section 32 of the Income-tax Act, 1961

Background

The second proviso to Section 32 of the Income-tax Act, 1961 provides that where an asset is acquired in the previous year and is put to use for less than 180 days in that previous year, the deduction under section 32 shall be restricted to 50% of the amount calculated at the prescribed rates.

In other words, the restriction of depreciation to 50% applies only in the year of acquisition of the asset, if such asset is put to use for less than 180 days. From the subsequent year onwards, full depreciation at the prescribed rates is allowable, regardless of the number of days the asset is put to use.

Issue

- ITR forms require the assessee to classify additions to block of assets into: i) additions for a period of 180 days or more in the previous year, or ii) additions for a period of 180 days or less in the previous year.
- Further, the Tax Audit Report (Form 3CD) requires reporting of the date on which the asset is put to use. Based on such reporting, the depreciation is automatically restricted to 50% if the asset is used for less than 180 days, even when the asset was acquired in a year earlier to previous year.

- This compliance design does not align with the statutory provisions, leading to situations where depreciation is incorrectly curtailed in subsequent years.
- Judicial precedents, including the decision of the Punjab & Haryana High Court in CIT v. Parkash Industries Ltd. (ITA No. 291 of 2004), have clarified that curtailment of depreciation to 50% applies only in the year of acquisition. If the asset is put to use in any subsequent year (even for less than 180 days), the assessee is entitled to full depreciation at prescribed rates.
- Despite such judicial clarity, the present ITR and audit reporting mechanism mechanically applies the 50% restriction, creating avoidable disputes and litigation.

Suggestion

It is suggested that the ITR forms and Tax Audit Report formats be aligned with the provisions of Section 32(1), especially second proviso, so as to facilitate computation of eligible allowance towards depreciation, when put to use for less than 180 days, in following manner

- Curtailment of depreciation to 50% only in the year of acquisition of asset
- full allowance of depreciation in case of asset acquired in year earlier to the previous year

General

New Provisions

1. **Suggestion on improvement in Income Tax Audit Report - GST Related Reporting - Clause 44 of Form 3CD:**

Background

Vide Notification No. 33/2018 dated 20.07.2018, CBDT notified revised Form 3CD (Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961) with effect from 20.08.2018. The said revised Form 3CD contains clause 44 seeking 'Break-up of total expenditure under the GST '. There is 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 duplicity of compliance work.

Suggestion

This requirement of GST related reporting in Income Tax Audit Report may be dropped.

2. **Weighted deduction for R&D Expenditure under Sec. 35(2AB)- (New Income Tax Bill Section No: 45)**

Background

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

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

Suggestion

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

3. **TDS credit to be allowed irrespective of the Assessment Year**

Background

Credit for TDS deducted is available to the deductee in the year in which the corresponding income is offered to tax. If, for any reason, credit for TDS is not claimed in the relevant year, the same would get lapsed and would not be available against tax payable by the deductee on income of any subsequent year.

Suggestion

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

4. **Consideration of interest for granting refunds u/s. 244A (Section 437 of the New Income Tax Act 2025)**

Background

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

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

Suggestion

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

5. **Section 80LA (1A) of the Income Tax Act, 1961 (Section 437 of the New Income Tax Act 2025)**

Background

Section 80LA (1A) of the Income Tax Act, 1961 provides for a deduction of 100% of income for any ten consecutive assessment years out of fifteen years for a unit of an IFSC. This benefit may be extended to 25 years.

Suggestion

In Section 80LA, subsection (1A), for the words "for any ten consecutive assessment years", the words "for any twenty five consecutive assessment years" shall be substituted. Further, for
the words "out of fifteen years", the words "out of thirty years, or up to the assessment year relevant to the financial year 2046-47, whichever is earlier," shall be substituted.

6. **Tax deduction u/s 37 of the Act**

Background
An obligation to incur restoration, rehabilitation and environmental costs arises by the development or ongoing production of an oil field. Such costs, discounted to net present value, are provisioned by oil & gas companies and a corresponding amount is capitalized at the start of each project, as soon as the obligation to incur such costs arises. These costs are charged to the statement of profit and loss over the life of the operation through the depreciation of the asset and the unwinding of the discount on the provision.

- Under the new regime (S 115BAA), deduction of site restoration (S 33ABA) is not available.
- Abandonment charge as charged to P&L account is also added back while computing taxable income also not excluded while computing depreciation under section 32 of the Act
- Expense to be allowed at the time of incurrence i.e. restoration of block. This will result in a business loss as no income will be available to the taxpayer for set off.

Suggestion
Provision made for site restoration is a contractual obligation made on a scientific basis and should be allowed as an allowable expenditure u/s 37 of the Act.

7. **Rationalizing the provisions of TDS under section 193 on Securities. (Section 393 of the New Income Tax Act 2025)**

Background
As per the provisions of section 193 of the Act, any person responsible for paying to a resident any income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax at the rates in force on the amount of the interest payable.

Explanation to section 193 further provides that for the purposes of this section, where any income by way of interest on securities is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

The Finance Act, 2023 has withdrawn the exemption of withholding tax requirement under the aforesaid section in respect of interest payable on specified listed securities.

Accordingly, TDS is now deductible on interest on securities at the time of credit of such income to the payees or at the time of actual payment thereof whichever is earlier.

As per the accounting requirements, interest liability on debentures which has accrued but not due is required to be provided while finalization of accounts for a period. Accordingly, companies are providing interest accrued but not due liability in the books of accounts at the time of quarterly/annual closing of accounts which may not be the actual date on which the interest needs to be paid to the debenture holders and where they are not certain about the actual recipient of the interest provided in the books of accounts the debentures are listed and tradeable on market and may pass hands before the actual payment of interest is made.

Accordingly, companies are not clear in whose PAN TDS credit needs to be booked while filing the TDS returns for the period.

Suggestion
It is, therefore, suggested that, a new clause (x) may be provided in proviso 1 to section 193 of the Act as follow:

"any interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the rules made thereunder wherein payee is not ascertainable."

Justification
The amendment to the Act has created an ambiguity regarding withholding of taxes where the identity of debenture holders is not confirmed at the time of accrual of such income.

The ITAT has also decided that TDS shall not be deductible under section 193 at the time of accrual of such income where the identity of the payee is not known.

8. Modernization of Depreciation appendix (New Income Tax Bill Section No: 33)

Background
The existing depreciation framework under the Income Tax Act does not adequately reflect the technological evolution, digitalization, or the green transition that modern businesses are undergoing. Currently, the prescribed rates of depreciation are based on legacy asset categories—such as traditional machinery, vehicles, and buildings—and fail to account for the shorter useful lives, faster obsolescence, and rapid innovation cycles that characterize today's capital assets.

For example, electric vehicles (EVs) are eligible for higher depreciation but their supporting infrastructure (such as charging stations and battery packs) are not specifically covered in depreciation schedule even though they also depreciate faster than conventional facilities due to both technological innovation and battery wear. Similarly, AI systems, cloud-based IT infrastructure, and networking hardware lose commercial value much faster than physical plant and equipment. Yet these assets continue to be subject to depreciation rates originally framed for slower-evolving industries. As a result, businesses investing heavily in digital and sustainable assets face a mismatch between accounting realities and tax allowances, leading to increased cost of capital, cash flow inefficiencies, and reduced incentive to invest in future-ready infrastructure.

Suggestion:
Depreciation appendix to be revised to modernize the depreciation framework in line with the evolving asset profiles. Specifically, separate depreciation rates should be introduced for green and digital assets such as EV charging stations, battery swapping infrastructure, hydrogen dispensers, smart retail kiosks, cloud-based fuel management platforms, and AI-driven logistics systems. These rates should be significantly higher—preferably in the 30% to 60% range—reflecting the reduced economic life of these assets.

9. **Certain deduction to be restored for the taxpayers opted to pay tax u/s 115BAA**

(A) -Deduction u/s 35AD in lieu of depreciation for cross-country pipelines

Background

Section 35AD provides benefit of 100% deduction (in lieu of depreciation) 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, such deduction has been done away with the introduction of new tax regime.

Suggestion

Considering the vision of government towards gas-based economy, it is requested to reinstate deduction u/s 35AD for laying of pipeline asset as these projects take substantial time and are not viable during the initial stage of its commencement. Through 35AD there is only deferment of deduction and this will encourage PSUs to go for more CAPEX over the year. Moreover, the government has brought in PLI Scheme for Promotion of Domestic Manufacturing of critical Key Starting Materials (KSMs)/ Drug Intermediates and Active Pharmaceutical Ingredients (APIs) and has not considered the infrastructural development requirement for Cross Country Pipeline.

It is therefore suggested to provide 35AD deduction pipeline wise to PSUs undertaking specific pipeline for the development of cross-country pipeline as a whole.

(B) - Deduction u/s 80G when donation is made to Prime Minister or Chief Minister Fund

Background

According to the Finance Act, 2020, any domestic company opting for Concessional Tax Regime under section 115BAA of the Act cannot claim deduction under any provisions of Chapter VI-A other than section 80JJA or section 80M effective from AY 2021-22. Thus, the Government while enacting the Finance Act, 2020 has deferred the condition of not claiming any deduction falling under Chapter VI-A other than section 80JJA or section 80M to next financial year i.e. FY 2020-21.

Suggestion

To encourage the values of bestowment, deduction u/s 80G may be allowed to the assessees opting to pay tax u/s 115BAA for the contributions made towards PM Relief /CARES & CM Relief funds at least.

10. **Reinstatement of beneficial tax rates under Section 115BAB for businesses aligned with India's Net Zero commitment**

Background

Section 115BAB of the Income-tax Act, 1961 was introduced to provide a concessional tax rate of 15% (plus surcharge and cess) to new domestic manufacturing companies incorporated on or after 01.10.2019 and commencing manufacturing operations before 31.03.2024. The objective was to boost "Make in India" and attract fresh investments in the manufacturing sector.

This provision has now sunset with effect from 01.04.2024, and new companies incorporated thereafter are not eligible for the concessional tax rate.

Suggestion

It is suggested that Section 115BAB be **reinstated in a targeted manner** to support India's Net Zero agenda by extending the concessional tax rate to:

- Companies incorporated on or after 01.04.2024 which are engaged in manufacturing, production, or generation activities relating to **renewable energy, low carbon energy, storage solutions, sustainable technologies, and allied infrastructure**.
- Newly created SPVs (including subsidiaries of existing eligible companies) engaged in such businesses, even if incorporated after 31.03.2024.

The above may be implemented either by:

- **Amending Section 115BAB** to extend the time limit for commencement of eligible business at least till **31.03.2030**, or
- Introducing a **new concessional tax provision** specific to industries aligned with India's Net Zero carbon targets.

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

Background:

As per Chapter XVII-B of Income Tax Act, 1961 TDS is required to be deducted on specified payments and TDS certificate will be issued by the deductor. Later on, deductee will claim the tax credit for the TDS deducted by the deductor at the time of filing Income tax return. As per section 197 of Income Tax Act, an assessee can apply for nil/lower rate of TDS certificate in form 13 with the Assessing officer in certain circumstances.

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

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

Suggestion:

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

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

Background

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

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

Amendments

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

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

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

2. **Personal Income Tax Incentives**

Background
Currently, there is no special tax regime for foreign nationals who become Indian tax residents to work in GIFT City. They are taxed at applicable slab rates, which can exceed 30%.

Suggestion
To insert a new section providing a concessional tax regime. Suggested Text (New Section):
"115BBK. Tax on income of certain individuals in an IFSC. (1) Notwithstanding anything contained in this Act, where the total income of an assessee, being an individual who was a nonresident and becomes a resident of India for the sole purpose of undertaking employment in a unit of an IFSC, includes any income from such employment, the income-tax payable shall be the aggregate of— (a) the amount of income-tax calculated at the rate of XX per cent. on such income;

and (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the income referred to in clause (a)."

3. **Dividend Taxation Policies**

Background
Dividends distributed by an IFSC unit are taxable in the hands of the shareholders at applicable rates (e.g., 10% for dividends to non-residents under Section 115A, or slab rates for residents).

Suggestion
To exempt such dividends from tax by inserting a new clause in Section 10.
Suggested Text (New Clause): In Section 10 of the Income Tax Act, after the existing clauses, the following clause shall be inserted:

"(XX) any income by way of dividend, referred to in section 115-O, received from a unit of an International Financial Services Centre."

4. Dividend Taxation Policies

Background
Dividend income received by an IFSC unit from its investments in foreign countries is taxable in India at the applicable corporate tax rate, subject to credits under Double Taxation Avoidance Agreements (DTAAs).

Suggestion
To introduce a concessional tax rate for foreign-sourced dividends.

Suggested Text (New Section):
"115BBL. Tax on dividends received from foreign companies by a unit of an IFSC. Where the total income of an assessee, being a unit of an IFSC, includes any income by way of dividends received from a company which is not a domestic company, such dividends shall be taxable at the rate of XX per cent."

5. Perpetual Offshore Income Exemption for IFSC Units

Background
Global financial centres such as the Singapore, Netherlands, Luxembourg, etc. maintain zero-tax regime for indefinite period on qualifying offshore income and levy no withholding taxes, attracting substantial foreign investment and high-value financial services activity. The existing 10-year limitation under Section 80LA (1A) places Gujarat International Finance Tec-City (GIFT City) at a competitive disadvantage, undermining investor confidence for long-gestation projects and large-scale fund managers. Removing time constraints and broadening exemptions will deliver policy certainty, stimulate FDI inflows, spur job creation, and establish India's IFSC as a permanent global hub for cross-border finance. Comparative Tax Regimes of Leading Global Financial Centres is as under:

Financial Center	Offshore Income Tax	Dividend Tax	Capital Gains Tax	WHT on Dividend Repatriation	Key Features
Singapore	0% (Territorial System)	0% (from taxed profits)	0%	0%	Extensive treaty network
Dubai/UAE	0% (Free Zones)	0%	0%	0%	Free zone benefits
Netherlands	Participation Exemption	0% (qualifying holdings)	0% (qualifying holdings)	0-5%	Extensive treaty network
Luxembourg	0% (Free Zones)	0% (participation exemption)	0%	0%	Free zone tax exemptions
Hong Kong	0% (Foreign Source Income Exemption)	0%	0%	0%	Territorial taxation system
Bermuda	0%	0%	0%	0%	No corporate income tax

Cayman Islands	0%	0%	0%	0%	No direct taxation
GIFT City	100% exemption for 10/15 years	Limited exemption	Limited exemption	Applicable rates	Time-limited benefits

Suggestion

1. Permanent Offshore Income Exemption
    - Full exemption on profits derived outside India
    - Dividends received from foreign entities
    - Capital gains arising from overseas investments
2. Removal of Time Limit
    - Abolish the existing 10-year restriction under Section 80LA(1A)
    - Provide indefinite exemption to match Netherlands, Luxembourg, Jersey, Guernsey and Isle of Man
3. Withholding Tax Waiver
    - Zero withholding on dividend repatriation, interest and royalties to non-residents.
4. Tax-Neutral Restructuring
    - Permit one-time, tax-neutral transfer of assets and operations from domestic entities in India to IFSC units

5. Section 80JJAA of the Income-tax Act, 1961 (New Income Tax Bill Section No: 146)

Background

Currently, Section 80JJAA of the Income-tax Act, 1961 allows for a deduction of 30% of additional employee cost incurred for 3 assessment years each in respect of the total emoluments paid to additional employees employed during a previous year. However, additional employees only cover new employees whose total emoluments are up to Rs 25000 p.m.. The existing threshold need to bring it in line with threshold provided in new employment Linked incentive (ELI) announced by Government of India.

Suggestion

The government has practically exempted individuals with Net taxable Income (NTI) up to Rs. 12 lakhs from paying any tax as small taxpayers or new earners. This NTI threshold is in line with maximum salary limit set under new employment Linked incentive (ELI) announced by Government of India. To bring consistency the upper cap of Rs. 25000 p.m. u/s 80JJAA should be enhanced to NTI not exceed Rs. 12 lakhs i.e., Salary upto Rs. 1 Lac per month. This will allow a meaningful deduction for industry which will incentivize creation of additional jobs especially for young skilled youth.

6. Faceless assessment scheme under Income tax

Background

Govt. had introduced faceless assessment scheme through various notifications to streamline the process of assessments. However, certain practical difficulties are faced by the assesses due to very high volume of data and documents being sought with strict timelines for filing the replies such as basic accounting details /documents are sought again by the Dept. even without placing reliance on Published Annual Reports uploaded by the Companies as per MCA requirements. This results in hardship and unnecessary generation of documents adding to costs and defeating ease of business.

Suggestion

Assessment units may be directed to simplify the process by adopting qualitative approach in assessment. They may seek specific information in relation to assessment and rely on sampling techniques instead of seeking all the documents in respect of all the transactions entered into by the assesses. Further documentation and information if needed can be sought on case to case basis in case warranted. Sufficient time to be given to assesses in order to file the reply commensurate with the volume of data and documentation being sought.

7. **Requirement of TDS certificates:**

Background:

As per the provisions of the act a deductor is required to issue the TDS certificates within 15 days from the date of filing of return and the deductee is required to maintain these certificates and the same may be called upon by the AO during assessment.

With the provisions of 194Q applicable the number of TDS certificates received are huge and it becomes practically impossible for the large corporates to maintain the list of certificates received and the efforts for follow up is huge considering the magnitude of transactions.

Suggestion:

The income tax Department has brought in a very robust system wherein the TDS credit is made available in 26AS/ Annual Information Statement. This being an authenticated proof for availability of credit, income tax can amend the act to do away with the need for TDS certificates. This will bring lot of saving in time and manpower for the industries and there is also no loss to the income tax department as the data is clearly available in the 26AS/Annual information statement.

8. **Changes in section 234C of the Income-tax Act, 1961 (Interest for deferment of advance tax) (Section 425 of the New Income Tax Act 2025)**

Background:

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

Suggestion / Justification:

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

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

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

9. **Allow Payment of Premium of Leasehold Land as a Revenue Expenditure**

Background

Under the Ind AS 16, the upfront premium paid on leasehold land held under operating lease are being treated as prepaid expenses and would need to be charged to the Profit and Loss statement under the head "rentals" on a proportionate basis over the life of the lease period. These upfront lump sum premium lease payments for leasehold land are essential business expenditure and do not generate any capital asset and hence are purely revenue in nature. These are just like payments made under any operating lease to utilise the leased property for the purposes of the business of the lessee and hence should be allowed just like any business expenditure for tax purposes.

Suggestion

Appropriate clarity should be provided to the effect that upfront premium payments for leasehold land, shall be allowed as deductible expenditure under the Act in the year of its debit to the statement of Profit and Loss.

10. **Taxability of Payments to nominee/legal heir of the deceased salaried employees (either in service or after superannuation) (Section 15 of the New Income Tax Act 2025)**

Background

Section 15 of the Income Tax Act, 1961 (herein after referred as "Act") which provides the basis of charge for any income to be taxed under the head salary, provides that income shall be chargeable under the head salary only if it's due to an employee from employer or former employer i.e., relationship of master and servant is a pre-condition for any income to be taxed under the head salary.

As per the extent practices and employee's welfare polices/ schemes being followed/ implemented by the companies, many of the payments such as medical facilities/reimbursements, financial assistance etc. are being made to the dependent nominees of the employees after demise of the employee. As there is no specific mention of such payments in section 17 of the Act, which defines the terms "Salary", Perquisite" and "Profit in lieu of Salary", different practice, as regard TDS thereon, is being followed by the employers/companies.

Suggestion

It is, therefore, suggested that, a new clause may be provided in section 10/56 of the Act to provide for suitable taxability of such incomes to nominees/legal heirs.

11. **Availability of deduction u/s. 36 in respect of contribution made to Trusts etc., set up for employees' welfare. (Section 29 of the New Income Tax Act 2025)**

Background

Section 36 of the Act 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, even though the contributions/ expenditure are eligible for deduction as per section 37 of the Act, disputes are getting created as regards eligibility of contributions/expenditure made to trust, created for the purpose of employees welfare, as being not funds/schemes specified in section 36 of the Act.

Further, as per the pay revision guidelines for Public Sector Undertakings (PSU), issued by Department of Public Enterprises, PSU's are allowed to contribute to certain superannuation benefits to their employees and to make their own schemes to manage these funds. One of such superannuation benefit is Post-Retirement Medical Benefits (PRMB). To provide better security as regards PRMB, Companies in industry are creating Trust and funds allocated for PRMB is being managed by these Trusts. However, Assessing Officers, applying the provision of the section 40A(9) are disallowing the same being funds/scheme not mentioned u/s 36 of the Act.

Suggestion: -
It is, therefore, suggested that, clause (9) of section 40A may be modified as follows-

"No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 (21 of 1860), or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under clause (iv) or clause (v) of sub-section (10 of section 36, or as required by or under any other law for the time being in force or in order to comply with pay revision guidelines issued by Department of Public Enterprises."

Justification: -
The aforesaid section 40A(9) was inserted by the Finance Act, 1984 (with retrospective effect from 01-04-1980) as a measure to combat tax evasion. While explaining the rationale for insertion of section 40A(9), the Memorandum to the Finance Bill, 1984 had brought out that:-
"Instances have come to notice where certain employers have created irrevocable trusts, ostensibly for welfare of employees, and transferred to such 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 utilize the trust property in such a manner as they may think fit for benefit of employees, without any scheme or safeguards for the proper disbursement of these funds. Investment of trust funds has also been left to the complete discretion of trustees. Such trusts are, therefore, intended to be used as a vehicle for tax avoidance by claiming deduction in respect of such contributions, which may even flow back to the employer in the form of deposit"

It further states that, with a view to discourage creation of such trusts, the Finance Bill seeks to make the amendments (i.e., to insert section 40A(9)]. Thus, going by the aforesaid rationale, deduction in respect of contribution to a Fund/Trust should be disallowed only if such Fund/Trust has been created as a measure for tax evasion. Consequently, if a Fund/Trust is formed with a bona fide intention for welfare of employees or in order to comply with the government guidelines, 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.

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

Background
The Central Board of Direct Taxes had, vide Office Memorandum dated 29-02-2016 and 31-07-2017, issued guidelines for granting stay of demands pending disposal of appeals by first

appellate authority. As per the aforesaid guidelines, where the outstanding demand is disputed before the CIT(A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 20% of the disputed amount.

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

Suggestion

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

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

Justification

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

13. Dichotomy in methods of grossing-up of income subject to tax u/s. 44BB for TDS and assessment purposes (Section 61 of the New Income Tax Act 2025)

Background

I. Section 195A of the Income-tax Act, 1961 requires multi-stage grossing up of income for TDS purposes if tax on the income of the payee is to be borne by the payer.

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

Suggestion

In order to remove the aforesaid dichotomy in the methods of grossing up for TDS and for assessment purposes, suitable amendment may be made in section 195A of the Act so as to provide that, where income of the non-resident is taxable u/s. 44BB of the Act, the same would be subject to single stage grossing-up for TDS purposes also.

Justification

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

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

Background

As per the provisions of Income Tax Act, interest under Section 234B is applicable in case, when an assessee who is liable to pay advance tax, has failed to pay such tax or an assessee who has paid advance tax, but the amount of advance tax paid by him is less than 90% of the assessed tax. Interest u/s 234C is chargeable when the assessee defers the payment of Advance Tax. Earnings estimates of oil companies are based on the prices and projections of crude oil and product prices in international markets. These prices are very difficult to predict as these are dependent on various geopolitical factors, world demand supply positions, policy decisions announced by major oil producing countries, economic trend of major world economies etc.

Earnings estimates at a point may completely go haywire due to any of the international event. Furthermore, pricing of major petroleum products sold domestically can't be predicted due to various reasons and at times, there are huge under-recovery on sales of LPG. For which OMCs seek financial support from Government. So, it is very difficult for Oil Marketing companies to determine the projected profits for the financial year although every effort is made to estimate the profits near to the actual. Therefore, the shortfalls, if any that occur in respect of payment of Advance Tax is not an intentional one, but it is as a result of fluctuation of profits due to various reasons beyond the control of the Oil Companies.

Suggestion

Government is requested to provide the specific exemption to Oil Marketing Companies(OMC) from applicability of provisions of these Sections or provide some other relaxation in payment of Advance tax so that undue hardship which the Oil Companies are facing now can be reduced to some extent.

15. Time limit to file revised return:

As per section 263(5) of the income tax Act 2025, the time limit for furnishing of the revised return is 31.12.2XXX. The normal due date for companies covered under transfer pricing is 30.11.2XXX, thus giving only one month time for the assessee to file a revised return. Considering that large corporates conducts a process of review, there is a requirement for the companies to have sufficient time for the same. Hence the time limit for filing of revised return shall be restored to earlier time lines i.e. Before one year from the end of the relevant AY or before completion of assessment whichever is earlier.

16. Reflection of PAN in Form 26AS (Annual Information Statement).

Background

Reconciliation of tax credits as reflected in Form 26AS with the corresponding entries in the books of accounts is a complex and time-consuming task, particularly for corporate entities

dealing with voluminous data. This complexity often results in mismatches and enquiries by issuing notices from the Income Tax Department.

Suggestion / Justification

Tax Authorities require reconciliation of income and TDS as per F-26AS during Assessment To facilitate a smoother and more accurate reconciliation process, it is proposed that the PAN of the deductor be included as an additional field in the Form 26AS (Annual Information Statement). This enhancement would enable taxpayers to effectively identify the deductor and match TDS entries with the relevant transactions in their books of accounts, thereby minimizing discrepancies and reducing the incidence of tax notices arising from such issues.

17. Section 194- TDS on Pass Through Dividend

Background

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

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

Suggestion

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

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

18. Online Filing of Form 10F:

Background

a. CBDT has mandated online filing of Form 10F. Same is required to be filed by non-resident to claim benefit under DTAA's. For filing of Form 10F, payee should either have PAN or verify form through OTP which will be sent to mobile number of non-residents. Requirement of PAN and OTP in India for non-resident payee creates an unnecessary compliance burden.

b. Some jurisdictions/ countries issue Tax Residency Certificate (TRC) only the year end. Also, TRC is mandatory attachment for Form 10F..

Suggestion / Justification:

Do away with the mandatory electronic furnishing of Form 10F - for non- residents. Physical Form 10F should also be made acceptable.

In view of the TRC issues, suitable relaxations should be allowed if TRC is provided at year end or declaration from payee should be made acceptable.

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

Background

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

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

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

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

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

Suggestion

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

20. Allow deduction for Corporate Social Responsibility Expenditure – Section 37 Issues

Background

Corporate Social Responsibility expenditure has become part and parcel of business operations of any 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.

21. Section 17(2)(vii) of Income Tax Act (New Income Tax Bill Section No: 17)

Background

Currently the deduction to company & also exemption to employee for contribution to PF is restricted to 12% of salary. This limit for NPS is 10% of salary & SBFS is Rs. 1.50 Lacs per annum. Section 17(2)(vii) provides an overall ceiling of Rs. 7.50 Lacs per year towards contribution to PF, SBFS & NPS (retiral funds).

Suggestion

Since now overall limit is introduced, the sub limit can be removed. This will help employees to choose the contribution between PF/SBFS/NPS as per their requirements and government intention to tax contribution beyond Rs. 7.50 Lacs will also remain intact. Employees can make retirement plan as per their requirements / risk appetite. Further the limit required upward revision in view of inflation impacting real value of tax benefit extended in past.

22. Section 17(2) (viia) of Income Tax Act- annual accretion by way of interest, dividend, or any other amount

Background

As per the earlier provision (sub-clause (vii) of Section 17(2)) of the Income-tax Act employer's contribution to superannuation fund, in excess of Rs.1.5 lacs was to be treated as perquisite, hence made taxable.

The above said clause has been amended by the Finance Act, 2020 wherein exempt contribution which an employer can make towards recognized Provident Fund (PF), National Pension scheme (NPS) and Superannuation Fund (hereinafter collectively referred to as 'employee welfare schemes') is capped at Rs. 7.5 lacs. The clause provides contribution to 'employee welfare schemes' if in excess of Rs. 7.5 lacs, the differential shall be taxed as perquisite in the hands of the employee.

Further, insertion of new sub-clause (viia) provides that interest/dividend accrued on any contribution to employee welfare schemes made by the employer, exceeding Rs. 7.5 lacs shall also be taxed as perquisite in the hands of the employees.

Background

- There is a challenge in identifying the interest relevant to the excess contribution from the total interest getting credited to an employee's account. Interest accumulation is on the opening balance and monthly contributions on a cumulative basis, hence deriving interest accrued on excess contribution will vary for different companies as it will be based on assumptions and the Returns being generated by individual funds.
- Further PF and SABF interest rates are declared after the close of the financial year, hence it is not very clear as to how the same would be taken for salary TDS computation in the previous year.
- Income on NPS account is a notional gain on a year-on-year basis as there is change only in net asset value of the fund. It is not clear as to how income on NPS for employer's contribution exceeding the specified limit will be taxed annually as no real income gets credited to the employee's account.
- If employer starts recovering TDS on estimated accrual it will complicate matter as the determination of income is ambiguous.

Suggestion

The concept of Exempt-Exempt-Exempt (EEE) for social security schemes such as PF, SAF and NPS is being diluted for the high-income group. This may discourage long term investment and may even be contradictory to the principles of good tax governance. It is therefore requested to review section 17(2)(vii) i.e. on taxing Employer contribution beyond Rs 7.5 Lakhs and interest accretion thereon u/s 17(2) (viia). It is submitted that contributions to approved superannuation fund and NPS be kept out of the scope of the provision considering that they are already under EET regime (partially).

The employer should be relieved of the obligation to do salary TDS on the interest portion in view of the difficulties for the employer to get the information in timely manner. The responsibility to pay self-assessment tax thereon be cast on the employee.

23. Minimum Alternate Tax – Allow MAT credit for companies availing beneficial rate of tax under section 115BAA.

Background

As per the Taxation Laws (Amendment) Ordinance / Act, 2019, option was provided to existing domestic companies to pay income tax at a lower rate from A.Y. 2020-21 onwards subject to certain conditions under section 115BAA with non-applicability of MAT under section 115JB.

CBDT, vide its Circular dated 02.10.2019, clarified that as provisions of section 115JB of the Act are not applicable to a domestic company which exercises the option of lower income tax rate u/s. 115BAA of the Act, the carry forward and set off MAT Credit shall not be available to such domestic companies opting for lower income tax rate u/s. 115BAA of the Act.

Suggestion

It is suggested to allow carry forward and utilization of MAT Credit already generated for domestic companies opting for lower tax regime as a transition benefit.

24. Higher Rate of Depreciation on Assets resulting in reduction of emission

Background

Rate of depreciation on Plant and Machinery is 15% p.a. The accelerated depreciation ranging mostly between 80-100% was available for certain block of assets such as renewable energy devices, air pollution control equipment, energy saving devices, etc. up to AY 2016-2017. CBDT vide notification no. 103/2016, dated, November 7, 2016, has restricted the highest rate of depreciation to 40% with effect from 1 April 2017.

There is no special incentive available to assessee on investments to be made on projects resulting into reduction of emission. The only incentive available to assessee is the higher rate of depreciation of 40% (as against general rate of 15% on Plant and Machinery) on certain specified assets as mentioned in appendix I w.e.f. AY 2006-07 under the category of Air Pollution Control Equipment, Energy Saving Devices, Renewable Energy Devices etc.

Accelerated depreciation on assets like renewable energy devices, air pollution control devices, energy saving devices, computers, computer software, etc. was provided not as an incentive but considering their fast obsolescence due to rapidly changing technology.

Further, the list of equipment's eligible for higher rate of depreciation of 40% is very restrictive and has not been amended since long. It doesn't include many assets which help in reduction of emission. For example, Vapor Recovery Unit (Unit designed to remove unwanted

vapors present in crude oil or distillate tanks allowing operators to comply with prevailing emission regulations), 2G and 3G ethanol Plants etc.

Suggestion

- The Current rate of depreciation on Plant and Machinery is 15% p.a. which is very low. Considering the fact that the companies who have adopted new tax regime under section 115BAA are not eligible for any capex-based incentive, it is suggested that the normal rate of depreciation on Plant and Machinery should be increased to 25% p.a.
- To incentivize the net-zero mission of the country, it is suggested that rate of depreciation on renewable energy devices, air pollution control devices, energy saving devices etc. should be increased from 40% p.a. to 60% p.a.
- List of equipment's under the category of renewable energy devices, air pollution control devices, energy saving devices, water pollution control equipment etc. should be amended to include Vapor recovery unit, 2 G and 3G ethanol plants, Effluent Treatment Plant, VOC Control System and all other equipment's and devices which result into reduction of emission whether directly or indirectly and contributing in achieving the Net Zero mission of Country.

25. Delegation of power to file return/appeals u/s 265/358:

Background

Section 265/358 of the income tax act 2025 makes a stringent requirement for the MD of the company to verify/sign the income tax return/ appeal to CIT(A)/ITAT. The same creates lot of administrative difficulties for large corporates. The large corporate give Power of Attorney to the employees of the company, accordingly the act should allow for delegation of such powers to either any other director or such other person authorized by the board.

Suggestion

The power to file ITR and appeals should be allowed to the person who holds POA from chairman of the company to perform such functions.

26. Inclusion of Profits chargeable to Tax under section 41 and certain interest income in first proviso to section 234C

Background

Under the Income-tax Act, different types of interests are levied for various kinds of delays/defaults. One of its kind is section 234C, dealing with interest levied for non-payment or short payment of quarterly instalment or instalments of advance tax. The advance tax is calculated on the expected profit of the business and such projection is being made in normal course of business. Sometimes unpredictable and windfall profits as mentioned under section 41 and Interest income leads to difficulty in reasonable estimation of taxable profit and under estimation of advance tax results in levy of interest u/s 234C. The intention of this section is to ensure that assessee should discharge its advance tax liability in the manner prescribed without any delay. However, by virtue of first proviso to section 234C, certain uncontrolled / unpredictable sources of income were already taken into consideration by providing exclusions for capital gains, dividend income, etc.

Suggestion

Considering the hardship as faced by all the assesses because of unpredictable nature of income other than those mentioned in first proviso to section 234C, it is suggested to also

consider the profits as mentioned under section 41 and Interest income on Tax refunds in the exclusion list under first proviso of section 234C.

27. Creation of PAN sub user login in case of big corporates

Background

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

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

Suggestion

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

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

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

Background

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

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

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

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

Moreover, once the demand outstanding gets cleared then exist a major question in front of assessing officer to test the likelihood of demand which may arise in next six months, this then becomes the major haul in proving the uncertain things to the authority. Also, it may be considered that with the introduction of faceless assessment and dismantling of LTU there exists multiple sources of demand say TPO, Faceless Assessment, CPC, etc. and envisaging the expected demand in six months is practically not possible for the Assessee as well as the Assessing Officer. The hardship as being encountered defeats the government's ease of doing business initiative.

Suggestion

The objective of the section of safeguarding the interest of the revenue against any fraudulent charge. Therefore, without altering the intension of the said section, it is suggested to provide some relaxation by fixing some quantum of default/pending demands/blanket demand (in absolute or percentage term with respect to total asset) and amount exceeding the quantum fixed would require assessee to pay off or clear the pending demands. Such amendment will streamline the process for Bonafide assessee and provide ease of business.

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

Background

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

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

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

Suggestion

It is suggested that in order to enable the benefit of the amendment introduced in Finance Bill 2019, CBDT should prescribe such transactions undertaken by certain class of persons where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination, to which the provisions of section 56(2)(x) and 50CA shall not be applicable. Transaction such as (a) Assets acquired through bidding process, (b) Transaction of Government companies or PSUs may be kept outside of its purview.

30. Interest on Education Loan from Employer to be covered u/s 80E (Income Tax Bill Section No: 129)

Background

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

Suggestion

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

31. Taxability of interest on PF contribution in excess of Rs. 2,50,000/- (New Income Tax Bill Section No: Schedule II(Table: S. No. 3)

Background

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

Suggestion

There are only a few investment opportunities which operate in a complete Exempt-Exempt-Exempt Category (EEE) and PF was one of them. The removal of exemption from interest income earned on PF contribution PF will adversely affect the retirement corpus of individuals.

Since, the contribution by the employee should match with contribution of the employer i.e., 12%. The employee has no option but to mandatorily contribute to the Provident Fund, it is therefore the Limit of Rs. 2.5 lakhs may be increased to

a. upto Rs. 5 lakhs or
b. 12% of salary
whichever is higher.

32. Income Tax depreciation rate for motor cars

Background

The Income Tax depreciation rate for motor cars is 15%, while it is 40% for electrically operated vehicles. However, under Rule 3(7)(viii), which governs the valuation of perquisites for movable assets sold by an employer to an employee at a nominal price, the prescribed rate for normal wear and tear is 20% using the reducing balance method. This does not provide any benefit to employees in cases where they buy back electric vehicles.
New Income Tax Bill Section No: 17

Suggestion:
The normal wear and tear rate prescribed for calculation of perquisite should be increased to 40% for electric vehicles.

33. Rationalization of the deduction limit for perquisites in respect of motor car

In terms of section 17(2) of the Income Tax Act, 1961 ('the Act') read with Rule 3(2A) [Table II-(2)(ii)] of the Income Tax Rules, 1962 ('the Rules') which provides for taxability of running and maintenance expenses of motor vehicle owned by the employee, which is reimbursed by employer, when such vehicle is used partly for official purpose and partly for personal purposes of the employee or any of his household i.e. where the employee owns a motor car but the actual running and maintenance charges are met or reimbursed by the employer and such reimbursement is for the use of the vehicle partly for official purposes and partly for personal purposes of the employee or any of his household.

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

34. Increase the limit of deduction of interest on housing loan

Under the existing provision of the Act, a taxpayer may claim deduction of interest on housing loan while computing income from house property up to a limit of INR 2 lakh only. This threshold was fixed by the Finance (No.2) Act, 2014 by substituting the erstwhile threshold of INR 1.5 lakh. Further, in case of self-occupied no carry forward of unabsorbed interest in not allowed.

In view of rising prices of properties limit of Rs. 2,00,000/- is inadequate amount. It is suggested to revise the amount of Rs. 200000/- and also allow the carry forward of unabsorbed interest in case of self-occupied property.

Clarification

1. Set Off of Refunds against Tax remaining Payable

Background
Adjustment of refunds due to assessee against erroneous demands shown outstanding in their cases causes great heartburn. Even where the assessee lodges his objection on the CPC portal pointing out that the demand sought to be adjusted against the refund was not outstanding and therefore is being erroneously adjusted, there is no remedy by which the CPC can take note of the same.

It is settled by several judicial pronouncements that where any demand outstanding against the assessee relates to a point which stands squarely covered by a decision in the assessee favour, such demand cannot be adjusted against any refund due to the assessee. Courts have logically explained in this regard that the assessee in such a case would have been undisputedly entitled to stay on recovery of such demand, and merely because the department is in possession of the assessee funds due to him as legitimate refund, it cannot be adjusted against such a demand.

Suggestion

It is suggested to amend the section so as to provide that no set-off of refund under this section shall be made by any income-tax authority without giving intimation in writing to such person of the action proposed to be taken under this section, and without dealing with the objections, if any, filed by such person in response to such intimation served on him. Systems should be amended/put in place to stop assessee funds being adjusted without authority of law. It is further suggested that proper guidelines be laid to introduce accountability and further avoid overlapping of responsibility between TRACES/CPC officers vis-à-vis the jurisdictional officers in such cases. It is further suggested that refund struck with the department due to adjustment against erroneous demand, non-grant of due TDS credit etc. be made eligible for interest @ 12% per annum.

2. Clarifications wrt TDS on E-Commerce Operator u/s 402 of Income Tax Act 2025

Background:

In case a website/portal is used to ensure smooth business and convenience to customers of the companies' dealers/ distributors and the intention is just to facilitate booking of orders like booking of LPG cylinders in the portal of oil companies, the same is not for e-commerce but only a facility to place an order. Various Companies sell their products to dealers and dealers in turn sell it to the end customers. These companies provide a website facility so that their own dealers and customers can connect through a common portal. The main aim is to improve convenience to the customers so that orders can be placed in the portal rather than placing it physically. Further in certain utility services like LPG customers are linked to Dealership and online bookings facilitated by the Oil Companies through various online modes of booking facility. These portals are not operating as an e-commerce operator. Section 402(13) and 402(14) is widely worded, hence these transactions are unintentionally may get covered under the section.

Suggestion:

Suitable clarification may be brought in the section 402(13) and (14) defining Digital e commerce and e commerce operator so as to carve out digital solution for placing orders managed by the Corporate Entity for their dealers and existing linked customers particularly refill/repeat orders to avoid unnecessary litigations in future.

3. Clarifications w.r.t. TDS on perquisite &benefits

Background

TDS on perquisite is leviable u/s 393(1) (Table: S.No. 8(iv)) of Income Tax Act 2025. TDS on perquisite has been introduced with effect from July 2022. Also, CBDT has issued two clarifications on the same. However, there is lack of clarity in some of the transactions and clarifications may be brought out by CBDT, especially on the following transactions:

i. Bad debts / write off

Background

vide circular number 18 of 2022 dated 13 Sep 2022, it has been clarified that waiver or settlement of loan / receivable by various categories of banks/ financial institutions shall not attract 194R. However, restricting the clarification to these categories of banks/ financial institutions would imply that waiver / settlement of receivable by other than these categories shall attract 194R. In normal business, all sort of businesses provide waiver of receivable from their customers as per business and economic needs. Th rational provided in the clarification equally applies to these businesses as well. Also, clarification is limited to waiver / settlement of receivables,

however, no clarification has been provided whether write off / bed debts shall be treated as benefit or not.

Suggestion
Suitable clarification to be brought in to exclude TDS applicability on write off and bad debts.

ii. **Office / IT assets provided to independent director / IEMs etc.:**
Background
Companies provide IT / office assets such as laptop / iPad etc. to the independent director / IEMs who are not employee of the company. Depending on the nature of assets / company policy, these assets may or may not be returnable.

Suggestion:
Clarification may be issued exempting provision of these assets from being treated as perquisite.

4. **Amendment in Sec 148 of ITA 2025 – Deduction of certain inter-corporate dividends:**

Background
Section 148 allows deduction to a domestic company for dividend received from domestic company or a foreign company or a business trust. The same may be extended to all trusts/ companies.

Suggestion:
Necessary amendments/ clarifications to be brought for extending benefit u/s. 148 to all trusts/ companies

5. **Rationalizing TDS Provisions - TDS if amount is credited unilaterally.**

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

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

amount payable to that payee are not known and only an ad-hoc liability is provided, the requirement to deduct tax at source causes hardship to assessee.

Suggestion

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

6. Section 194R- FAQ

Background

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

Suggestion

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

7. Double Taxation of Employer's Contribution in NPS (National Pension Scheme)

Contribution in NPS (National Pension Scheme) account of the employee is includible in the taxable income of an employee-assessee as 'salary' in view of provisions of section 17(1)(viii) of the Act and even thereafter, by the Finance Act, 2020, an amendment has been made in the definition of 'perquisite' so as to include such contribution therein also in certain circumstances. Therefore, the said amendment is apparently capable of leading to double taxation in the hands of employee-assessee of very same amount of employer's contribution to his NPS account first, as salary and then again as perquisite.

Further, a perusal of memorandum to the Finance Bill, 2020 shows that intention for enacting substituted section 17(2)(vii) was only to bring to tax that part of the contribution made by employer to the NPS account of the employee which was exempt from tax and that too only when such contribution exceeds the specified limit of Rs. 7.50 lakh along with contribution to other two specified funds.

To avoid double taxation, the amount of contribution made by employer in the NPS account of employee, can be included in total income of such an employee either as salary under section 17(1)(viii) or as perquisite under section 17(2)(vii). Since both are legally permissible, one which is more beneficial to the assessee is to be adopted and the same shall be at the option of the assessee. In such circumstances, the provisions of section 17(2)(vii) of the Act, that is to treat the employer's contribution in NPS as perquisite will be more beneficial for the assessee and as such the assessee will opt for that. As a consequence of the same, unintended double benefit may also flow to the assessee in form of non-inclusion of amount of employer's contribution in NPS to the extent of Rs. 7,50,000/- under section 17(2)(vii) in the gross total income of the employee assessee, but still deduction under section 80CCD(2) in respect of the very same amount being allowed to him. The above double benefit is possible as because the provisions of section 80CCD falls in part B of chapter VI-A of the Act. The ambiguity inserted by the Finance Act, 2020 in the law will also discourage employees for opting for NPS where it is not mandatory in the fear of double taxation or unnecessary litigation and in turn, will defeat the social objective of the Government for which NPS has been framed by it.

B. Indirect Tax

I) Excise Duty

Upstream

Amendments

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

Background

OID Cess is levied on Crude Oil in terms of The Oil Industries (Development) Act, 1974. Till Feb'16, OID Cess was levied at specific rate (Rs./ MT) and revised from time to time keeping in view crude oil prices.

Considering unprecedented reduction in crude prices, OID Cess was reviewed and revised from Rs. 4,500/MT to ad-valorem 20% w.e.f. 01 Mar'16. Though, in the Budget, introduction of ad-valorem OID Cess rate was envisaged by the Government as relief for the industry, its unduly high rate at 20% has impacted industry adversely. As, historically OID Cess has been levied in range of 8-10% of crude price, Industry including ONGC has been making representation to Govt. for review and reduce the rate of OID Cess.

OID Cess is levied @ 20% on crude oil produced from nominated blocks and Pre-NELP Exploratory Blocks. Most of the Fields of the Pre-NELP and nomination regime are already in the decline stage and need more initiatives and expenditure to maintain/enhance the existing production level. It is pertinent to mention that OID Cess is not applicable in NELP, OALP and DSF blocks. It is understood that these incentives have been extended under relevant schemes to augment domestic oil production.

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

Besides OID Cess, other statutory levies viz. royalty (@ 10% and 20% on offshore & onshore production respectively), at the rate notified on fortnightly basis, NCCD at Rs50/MT, Basic Excise duty at Re1/MT and VAT (@ 5%) are also paid on crude oil produced from Nomination and Pre-NELP Exploratory blocks. Royalty and OID Cess are production levies and not pass through to Buyers and form part of cost of production. It makes many new development projects economically unviable. During low crude oil price regime, it also results into significant amount of impairment loss of ONGC's Assets.

Recommendation

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

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

Crude Oil Prices ($/bbl)	OID Cess (Ad-valorem)	Clarification
Upto 25	NIL	NIL
25 to 50	5%	5% of crude oil price above USD 25/bbl (A)
50 to 70	10%	(A)+10% of crude oil price above USD 50/bbl = (B)
70 and above	20%	(B)+ 20% of crude oil price above USD 70/bbl

2. Tapering of Royalty rates

Background

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

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

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

Suggestion

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

3. Removal of Basic Excise Duty (BED) and National Calamity Contingent Duty (NCCD) on Domestic Production of Petroleum Crude

Background

NCCD was introduced by Ministry of Finance @ Rs 50 per MT on indigenous crude oil. This duty was to be valid for one year i.e. upto 29.02.2004 so as to replenish the National Calamity Contingency Fund, but it is still continuing. Accordingly, Oil Industry has been representing from time to time for removal of NCCD. Further, Basic Excise Duty (BED) @ Rs. 1 per MT was introduced through Finance Bill, 2019, leading to avoidable hardship of compliance of Excise Law.

Suggestion

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

4. **Upfront Exemption of Duties of Excise on HSD**

Background

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

Post introduction of GST, the said exemption notification was withdrawn and thus, the exemption under ICB conditions was no longer applicable. Specified rates were prescribed for Excise Duty on High-Speed Diesel (HSD) vide a new Notification No. 11/2017-CE dated 30 June 2017.

Recently the cost of operations for upstream companies have significantly increased. The exemption will bring the upstream sector at par with the pre-GST regime.

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

Suggestion

To provide boost and incentive to the upstream sector and to bring it at par with pre-GST regime, it is requested to restore the exemptions from the duties of excise (Basic Excise Duty, Special Excise Duty & additional duty of excise) on the HSD procured for the petroleum operations under ICB conditions.

Downstream

Amendments

1. **Supplementary Note to Chapter 27- Customs Tariff Act**

Background

Vide Finance Act, 2019, Supplementary Note to Chapter 27 has been substituted as under:

"(17) in Chapter 27, —

(i) for the Supplementary Note, the following Supplementary Note shall be substituted, namely: —

'Supplementary Note:

In this Chapter, reference to any standard of the Bureau of Indian standards refers to the last published version of that standard.

Illustration: IS 1459 refers to IS 1459: 2018 and not to IS 1459: 1974"

However, the Supplementary Note to Chapter 27 as available in the CBIC portal has not substituted the amended Supplementary Note as provided in Fifth Schedule to Finance Act, 2019, instead, has appended the new entry (In this Chapter, reference to any standard of the Bureau of Indian standards refers to the last published version of that standard. Illustration: IS 1459 refers to IS 1459: 2018 and not to IS 1459: 1974) in Supplementary Note along with the erstwhile entries provided prior to 01.01.2020.

Further, in the erstwhile Supplementary Note, HSD has reference to IS 1460:2005, however, as per tariff table, HSD has reference to IS 1460, 16861, 16531.

Explanation to Notification no. 01/2017- Central Tax (Rate) provides that:

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

Suggestion
To avoid the unwarranted litigations due to ambiguity and interpretational issues, it is suggested to amend the Supplementary Note in line with the amendment of Finance (no 2) Act, 2019.

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

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

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

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

3. Sr. No 10 of Notification 11/2017- CE dt 30.06.2017

Background
Sr no. 2 and 2A of the notification provides for effective rate of excise duty for Motor Spirit, commonly known as petrol for blended and unblended respectively. Sr. no 10 of the notification provides for Nil rate of basic excise duty for products falling under 2710 12 41 (Motor Gasoline conforming to standard IS2796) other than goods which are mentioned at Sr. no. 2,4 and 5.

Products falling under S.no. 2,4 and 5 only have been excluded from the S.no. 10 which technically implies that products falling under Sr. no. 2A of the notification i.e. unblended MS, commonly known as petrol may also attract "Nil" basic excise duty which is contradictory to the specific entry as provided for the said product and also defeating the intent of the Government to levy additional basic excise duty @ Rs. 2/ ltr on unblended MS, intended for retail sale to boost the blending program.

Suggestion
Since separate effective rates have already been provided for Unblended Motor spirit intended for retails sale and 5%/10% Ethanol Blended Motor spirit, the entry at S.no 10 of the said notification may be suitably amended to include Sr. no. 2A to remove ambiguity.

4. **Different excise duty prescribed for unblended HSD intended for retail customers.**

Background

Govt. of India increased the basic excise duty of Rs 2 per liter on the Unblended HSD intended for retail sale w.e.f. 01.10.2022 vide Central Excise notification no 01/2022 dated 01.02.2022. This notification was superseded by notification no-31/2022-CE dt 30.09.2022 providing effective date of implementation of higher basic excise duty of Rs. 2/ ltr for unblended HSD intended for retail sale being 01.04.2023. The date has been further extended to 01.04.2026 vide notification no 04/2025-CE dated 01.02.2025.

Suggestion

In view of the non-availability of bio diesel and various operational/commercial issues, the said notification may be withdrawn, and end use based different excise duty to be negated.

Further, the requirement of certification by Statutory auditor for clearances of MS/ HSD may also be dispensed.

5. **Concessional Rate of Duty – ATF for RCS flights**

Background

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

Suggestion

Necessary amendment to be carried out in the exemption notification no. 11/2017 to provide exemption from Central Excise duty rates based on commencement of RCS routes as notified rather than commencement of RCS airports.

6. **Compressed Natural Gas blended with Biogas/Compressed Biogas**

Background

Exemption Notification for Compressed Natural Gas blended with Biogas/Compressed Biogas (CBG) has created an ambiguity in the industry. As per the notification, blending of Biogas or CBG with CNG is treated as manufacture under Excise.

As per the current understanding of the exemption notification, the quantum of GST Paid on Biogas/CBG used in the blending process is allowable against the quantum of excise duty leviable on blended CNG.

Suggestions

The interpretation of the notification as stated above is not in line with what has been provided in case of Ethanol when blended with MS. A clarification in this regard is sought from the government. A detailed representation on this issue has also been provided by the industry.

7. **Tariff 2710 12 90 Other in Central Excise Fourth Schedule -**

Background

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

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

Suggestion

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

Clarifications

1. **Classification of Sustainable Aviation Fuel (SAF) under Excise Tariff**

Background

Neat SAF can be blended up to 50% with Fossil based Aviation Turbine Fuel (ATF)- IS 1571 as per various ASTM approved methodologies. Initially, it is proposed for 1% blending of neat SAF with normal ATF which will increase progressively over the years.

IS 17081:2019 provides specification for Aviation Turbine Fuel (Kerosene Type, Jet A-1) Containing Synthesized Hydrocarbons. Part-1 of Table I of IS speaks about Basic Requirements of Aviation Turbine Fuels Containing Synthesized Hydrocarbons which is similar to ATF falling under IS 1571. Part-2 of Table I provides for Extended Requirements.

Annexure-E of IS 17081 provides for the specifications of ALCOHOL-TO-JET SYNTHETIC PARAFFINIC KEROSENE (ATJ-SPK) as one of the ways to blend synthetic component with conventional ATF.

Suggestion

Vide Finance Act (No. 2) Act, 2024, entry for "Blended Aviation Turbine Fuel" has been provided under First Schedule to Customs Tariff along with suitable Supplementary Note under Chapter-27, however, necessary entry to be introduced under Central Excise Tariff.

Further, exemption may be provided from Excise duty from blending of Neat SAF with ATF on similar line as that for bio diesel blended HSD. The condition of GST paid SAF may also be removed for indigenous SAF as SAF will be produced by OMCs themselves. In addition, separate HSN Code may be prescribed for neat SAF along with concessional rate of 5%.

2. **Demand of basic excise duty on supply of ATF as fuel to foreign going aircraft disregarding the exemption notification**

Background:

Basic excise duty on supply of ATF as fuel to foreign going aircraft is exempted vide notification 08/2024-dated 30th June 2024.

From July 2022 rule 18/19 of central Excise rules, 2017 are not applicable on supply of ATF. It was under rule 19 of CER where the procedure for movement of petroleum products using CT-2 was prescribed.

In the absence of any procedure post the amendment in rule, the erstwhile process of movement under bond i.e. CT-2 is followed.

Now, at our refineries, department is issuing SCN asking us to pay BED on supply of ATF as fuel to foreign going aircraft from July 2022 saying that ATF cannot be moved under CT-2. This is disregarding the exemption notification 08/2022-CE dated 30th June 2022.
Notification 08/2024 CE dated 30th June 20222 is clearly exempting BED on ATF supplied as fuel to foreign going aircraft. Hence department cannot seek BED on such supplies.

Suggestions:
Requesting CBIC to issue instruction to excise officers to not create frivolous litigations.

The amount of ATF supplies as fuel to foreign aircraft is huge for Indian Refiners and duty demand of 11% will run into hundreds of crores.

3. **Clarification with respect to period of excise exemption to Aviation Turbine Fuel (ATF) drawn by the selected airline operators or cargo operators for the RCS flights from RCS-UDAN airport/heliport/water drome.**

Background:
Sl.No.7 of Notification 11/2017-CE dated 30.06.2017 as amended by Notification 07/2019-CE dated 22.08.2019 allows Basic Excise Duty (BED) exemption in excess of 2% to Aviation Turbine Fuel (ATF) drawn by the selected airline operators or cargo operators for the RCS flights from RCS-UDAN airport or heliport or water drome. However, the exemption is valid up to the expiry of a period of three years from the date of commencement of operations of the Regional Connectivity Scheme (RCS) – Ude Deshka Aam Nagrik (UDAN) airport or heliport or water drome as notified by the Ministry of Civil Aviation or till the end of scheme period whichever is earlier.

In this regard, various notifications are issued by the Ministry of Civil Aviation to notify the date of commencement of RCS routes by RCS flights for the purpose of above referred excise exemption. These notifications issued by the Ministry of Civil Aviation refer to the excise exemption notification issued by the Ministry of Finance while laying down the dates of commencement of operations of RCS route, thus confirming that these dates are being notified for the purpose of the said exemption.

Hence, due to language used in the Excise exemption notification a confusion lies as to whether the 3-year period of exemption starts from the date of commencement of operations of RCS airport or date of commencement of operations of each RCS flight.

Moreover, Airport Authority of India being the nodal agency for RCS scheme has also clarified the Notification No:7/2019 dated 22.08.2019 vide approval letter no: F.No.AAI/Excise Duty/ATF/2019-RCS Cell dated 14.10.2019 that "period of three years for each RCS flight shall be calculated from the date of commencement of RCS flight from the airport."

Suggestions:
A suitable clarification in this regard may please be issued by the Ministry of Finance on similar lines as issued by the Airport Authority of India. Alternatively, the wording in notification 11/2017 may be changed to:

"Provided that nothing contained in this notification shall apply to goods specified against Sl. No. 7 of the said table after the expiry of a period of three years from the date of commencement of operations of the each Regional Connectivity Scheme (RCS)- Ude Deshka Aam Nagrik (UDAN) flight as notified by the Ministry of Civil Aviation or till the end of scheme period whichever is earlier"

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

Background
Presently, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel are outside the ambit of GST as per the section 9(2) of the CGST Act 2017.

However, the GST law does not define Motor Spirit (commonly known as petrol) and High-Speed Diesel. Various interpretations may be there what is covered under petrol and High-Speed Diesel (HSD) depending upon the sources. Accordingly, clarity is required as to which tariff would be covered under GST and which would be outside the ambit of GST.

Further the Fourth schedule to the Central Excise Act 1944 covers various goods which are covered under GST though rate of duty column is kept blank.

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

Suggestion
Clarity to be provided with regards to tariff covered in GST and not covered within the ambit of GST by suitable modification to fourth Schedule so as cover only those products namely petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel which are outside the ambit of GST as per provision of section 9(2) of CGST Act 2017 as per the 101st Constitutional Amendment Act.

In other words, schedule IV of excise may specify the only products covered for levy of Central Excise duty and not the products covered under GST law to bring clarity across board.

II) Customs Duty

Upstream

Amendments

1. Insertion of HSN in List-33 of Customs Notification 50/22017 and Pruning of List-33

Background

E&P companies historically enjoyed customs duty exemption and concessional rate of IGST on imports of capital goods and supplies under Government policies (NELP, HELP etc.) as well as Contracts signed with GoI (Customs Notification 50/2017 - List 33).

Finance Act 2022 amended the customs notification as follows:

- Customs HSN Codes was incorporated in the list along with the description of goods.
- The list of eligible items was significantly pruned.

A) Issue due to insertion of HSN Code against Description of Items:

— Prior to the amendment, there was no HSN Code specified for availing customs duty benefit on import of specified goods;

— The items specified under revised list despite having wider coverage gets restricted due to corresponding HSN.

B) Pruning of List of Items eligible for Customs Duty Exemption:

— The revised list has been prepared considering availability of domestic goods in view of Make in India Policy of the Govt. However, in certain cases such goods are domestically not manufactured or there is capacity constraint of domestic suppliers to fulfil the requirement of E&P Industry. Also, several items not available in India are kept out of the New List.

— As a result, merit rate of duty is being charged (BCD, SWS & IGST) at the time of customs clearance on import of goods which have now been removed or there is inconsistency in the description and HSN code.

It is pertinent to mention that the said concessional rate of IGST on such imports has been increased from 5% to 12% vide Customs N/No.40/2022 dt.13.07.2022 dt.13.07.2022. Further, as per the recent decision of the 56th GST Council meeting, such existing GST rate of 12% applicable to the E&P sector has been proposed to be increased to 18%, as per Press Release dated 03.09.2025.

Suggestion

The reference of HSN Code under Revised List should be removed or should be maintained at Chapter Level i.e. upto 2 digit instead of 4-8 digit level. This suggestion is in line with all other lists (List 1 to 32 & 34) pertaining to other Industries in the same customs notification. Items which are not manufactured in India or where there are capacity constraints in the country, should be re-added to the revised list.

Further, it is requested that concessional rate of IGST at 5% be restored till Crude Oil and Natural Gas are brought under GST regime.

2. **Removal of Sunset clause from Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017 (as amended)**

Background

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

However, in the Union Budget 2024-25, vide Customs Notification no. 30/2024 dt.23.07.2024, the Customs Notification No.50/2017 was amended to impose sunset of this concession, post 31st March 2026.

Suggestion

It is, therefore, requested to remove the Sunset Clause from Sl.No.404 of Customs Notification 50/2017.

Continuation of exemption without a sunset clause for all the goods in List 33, under Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017 will provide stability to the E&P sector and ensure that there is no further cost burden imposed on such companies ultimately affecting the investment in this sector.

Clarifications

1. **Disposal of unused and surplus items to be covered along with scrap sale under notification 02/2022-customs**

Background

As per pre-amended condition 48 (earlier condition 40A) read with TRU clarification D.O.F. no. 334/7/2017-TRU dated 01.02.2017, as per which the condition of disposal of goods on payment of customs duty was applicable for unused, surplus, condemned and obsolete items as well.

However, the amended condition 48 vide notification no. 02/2022-customs read with associated explanation, the industry is of view that effective from 02.02.2022, such disposal condition is applicable only in respect of goods which are sought to be disposed off after their use in unserviceable / scrap form. Thus, the surplus generated from imports cannot be disposed of unless it is put to use in petroleum operations.

Suggestion

E&P activities are highly probabilistic where the exact quantity of items required for various petroleum operations such as exploration, mining or drilling cannot be predicted in advance, resulting in generation of surplus items due to various reasons such as variation in initial estimation, advancement of technology etc.

Since the amended condition allows disposal of goods as scrap, it is requested to clarify/ amend even surplus/ obsolete items can be cleared upon payment of 7.5% duty on transaction value, in manner as prescribed under condition 48(d) to notification 02/2022-customs.

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

Background

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

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

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

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

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

Suggestion

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

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

Downstream

Amendments

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

Background

Import Duty (Basic Customs Duty) @ 2.5% plus Social Welfare Surcharge @10% is applicable on import of Liquefied Natural Gas (LNG), the effective Customs duty comes to 2.75%.

Import of LNG for exclusive consumption in generation of electric energy for public distribution is exempt from custom duty subject to certain conditions. However, other important sectors like fertilizer, LPG, CNG, PNG, and Petrochemical bears the burden of effective Custom duty @ 2.75%.

The Custom duty increases the landed cost of imported LNG for domestic and industrial consumers. Since the domestic production of Natural Gas is not enough to cater the increasing demand, import of LNG at large scale is required to augment supply of Natural Gas for priority sectors such as Fertilizer, CNG, LPG, PNG etc.

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

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

2. Customs duty concession for laying of product and gas pipeline

Background:
Oil companies are building large number of cross-country pipelines for supplying the products to consumer at a reduced cost. In order to build such facility, Government is requested to waive the applicable customs duty on all materials required for building cross-country pipeline meant for Product and Gas movement.

Suggestion
It is suggested that the customs duty on import of materials viz. pipes; valves; flanges; data communication system for laying of petroleum products and gas pipelines falling under the Customs Tariff headings 72, 73, 74, 75, 76, 78, 79 should be exempted from payment of customs duty. The pipeline transportation is environment friendly with NIL pollution and is very cost effective. It shall also result in reduction of consumption of fuel in road transportation (replaced by pipeline transportation) which in turn helps in conserving precious foreign exchange towards import of crude used in producing the fuel.

3. Anti-dumping duty on petrochemicals

Background:
Huge quantity Bitumen is getting imported in the country from sources in the middle east. Bitumen is also imported in Bags and Drums and subsequently converted into bulk post landing in India. This practice results into bitumen imported being non confirming to quality and specifications. The rampant dumping of bitumen into the country is causing margin erosion for Bitumen manufacturers like BPCL.

Further, Iso Nonyl Alcohol (INA) which is a substitute to 2 Ethyl hexanol (2EH), is expensive than 2EH in international market. In India, antidumping Duty exist on 2EH from major countries and manufacturers, however, absence of Anti-dumping duty on INA makes it a cheaper alternate in Indian Market and hence it is being dumped by Manufacturers from abroad. This has impacted 2EH manufacturers like BPCL.

Suggestion
It is suggested to impose Anti-Dumping Duty on Bitumen and INA imports through Ministry of Finance, DGTR in order to incentivise Indian producers.

4. Customs duty on Base Oil

Background:
The import of base oil (specifically 65N and 70N) has increased significantly in recent times leading to higher overall inventories in India.

The imported base oil is hampering make in India initiative and hindering Indian producers of base oil. The current custom duty (including SWS) is 5.50% of assessable value.

Suggestions
An increase in the customs duty rate can help boost local production of base oil, leading to fair competition and supporting the Make in India initiative; or Antidumping Duty may be imposed on Import of base oil.

5. **Exemption from the purview of Section 65A of Customs Act.**

Background
Section 65A has been inserted in the Customs Act, vide Finance Act 2023, which provides for payment of IGST and Compensation cess while depositing goods in a licensed warehouse for carrying out manufacturing and other operations under Section 65. The effective date of coming in force of provisions of Section 65A has not yet been notified.

If the amended provision (Section 65A) is given effect as such, taxpayers would be liable to discharge IGST and GST Compensation cess on imported goods and the benefit of duty deferment would be substantially curtailed. The same may result in substantial cash flow issue and may also affect the project viability to companies like IOCL who have committed to heavy capex in Capacity expansions. The taxpayers may be compelled to revalidate the feasibility and merit in the continuation under the MOOWR scheme.

However, the Central Government has power to exempt certain categories of goods, importers or exporters or industry from the purview of Section 65A of the Customs Act.

Suggestion
It is requested to exempt petroleum refining & petrochemicals industry from the purview of Section 65A of the Customs Act.

6. **All Industry Rate (AIR) of Duty Drawback for Petroleum Products**

Background
The Customs and Central Excise Duties Drawback Rules, 2017 allow exporters to claim drawback either at the All-Industry Rate (AIR) notified by CBIC or, in the absence of AIR, at the Brand Rate determined for each exporter individually.

At present, CBIC has specified AIR for certain petroleum products. However, key products such as Motor Spirit (MS), High Speed Diesel (HSD), Aviation Turbine Fuel (ATF), Liquefied Petroleum Gas (LPG), Furnace Oil, Light Diesel Oil (LDO) etc. are not covered under the AIR schedule.

Exporters of the above petroleum products are currently required to claim drawback only through the **brand rate fixation route.** This process is highly cumbersome and time-consuming. The absence of AIR increases compliance burden, restricts operational flexibility, and delays drawback claims, thereby impacting cash flows.

Suggestion
To provide ease of doing business and improve efficiency in export operations, it is recommended that CBIC may notify All Industry Rates (AIR) of duty drawback for the above petroleum products (MS, HSD, ATF, LPG, Furnace Oil, LDO, LCO, etc.) after conducting the necessary data collection and industry consultations.

7. **GST on Excise Duty Element (Jobwork)**

Background
Presently Excise duty in applicable on CNG. The process of compression of Natural Gas into CNG is also exigible to GST (third party Jobwork Charges). Thus, the conversion process is now suffering with double taxation i.e., Central Excise and GST on Jobwork Charges including Excise Duty component.

Suggestion:
The Excise Duty component may be excluded from the Jobwork charges for GST valuation purpose.

8. **Continuation of IGST deferment under MOOWR scheme to petroleum refineries**

Background
Section 65A has been inserted in the Customs Act, vide Finance Act 2023, which provides for payment of IGST while depositing goods in a licensed warehouse for carrying out manufacturing and other operations under Section 65. The effective date of coming in force of provisions of Section 65A has not yet been notified.

It is requested to exempt petroleum refining & petrochemicals industry from the purview of Section 65A of the Customs Act.

9. **Notification no 12/23-Custom dated 1st Feb. 2023**

Background
Vide Notification No 12/23-custom dated 01.02.2023, original notification (51/96 dated 23rd July 1996) is withdrawn w.e.f. 1st April 2024, resulting in withdrawal of benefit of concessional rate of custom duty on import of R&D equipment.

Suggestion
It is suggested to continue the notification no 51/96 dated 23rd July 1996 as amended time to time for the benefit of the industry in whole.

10. **Rationalization of Stamp Duty**

Background
Presently, there are fragmented state-wise stamp duty rates: Range from 0.5% to 7%, driving deal structures on tax rather than business logic.
The Indian Stamp Act, 1899 is outdated. Section 3(2) refers to repealed statutes (Merchant Shipping Act, 1894 etc.), creating uncertainty about exemptions under the Merchant Shipping Act, 1958.
There is lack of digital processes and central oversight. Manual filings, varied state procedures, and absence of a unified database cause delays, litigation, and increased transaction costs cause delays for businesses.

Suggestion
It is earnestly requested as follows:

1. Stamp Duty
   - Amend Indian Stamp Act, 1899 to harmonize rates across states (0.1–0.25%).
   - Update Section 3(2) to read:

- "...any ship or vessel registered under the Merchant Shipping Act, 1958, or transferred as part of a business reorganization (demerger, merger, amalgamation, etc.), or within a wholly owned group structure as approved by the National Company Law Tribunal."

2. Exemption Notification
   - Insert a new Section 11A providing:
     "All instruments, deeds, and documents executed pursuant to a scheme of merger, demerger, amalgamation, or reconstruction under Sections 230–232 of the Companies Act, 2013, where the transferor and transferee are parent and subsidiary or hold ≥90% common equity, shall attract nil stamp duty."

3. Digital & Administrative Reforms
   - Mandate a central e-stamping portal integrated with NCLT and ROC systems for automatic duty assessment, exemption certification, and real-time reporting.
   - Establish a Stamp Duty Coordination Committee under the Ministry of Law & Justice to issue uniform guidelines, monitor state compliance, and resolve disputes within 90 days.

III) Central Sales Tax

Downstream

Amendments

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

Background

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

Quote- Entry 92A-

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

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

Quote Entry 54-

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

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

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

'motor spirit', can be referred as-

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

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

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

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

Suggestion

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

2. **Abolition of Central Sales Tax Act for Petroleum Products**

Under the CST Act, registered dealers are eligible to certain concessions and exemptions of tax on inter-state transactions on submission of prescribed declarations in forms 'C', 'E-I' / 'E-II' and 'F'. The State Governments grant these incentives to dealers for furtherance of trade and commerce, on production of these declaration forms.

As part of implementation of Value Added Tax (VAT) and introduction of Goods and Service Tax (GST) in the country, the Centre and the States had agreed to phase out CST through one per cent annual cut starting 1st April 2007, over a period of four years and it was planned to be completely abolished by 2010-11. Accordingly, rate of CST against declaration form 'C' was reduced from four per cent to three per cent in 2007-08, and further to two per cent in 2008-09 after the introduction of VAT. It was scheduled to be reduced by another one per cent, starting 1st April 2009.

In a significant departure from original plan, the Centre and States decided not to reduce the CST rate further in 2009-10 and instead, decided that the tax will be completely withdrawn once the proposed GST is introduced.

The original roadmap for implementation of GST was 1st April 2011 which was subsequently shifted and finally GST was implemented w.e.f. 1st Jul 2017.

While, petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel are constitutionally included under GST, the date on which GST shall be levied on such goods, shall be as per the decision of the GST Council. As per the section 9(2) of the CGST Act, inclusion of all excluded petroleum products, including petrol and diesel in GST will require

recommendation of the GST Council. In other words, major petroleum products, MS, HSD and ATF, being manufactured and marketed by OMCs are outside GST and are subjected to Excise, VAT and CST.

Oil Companies are responsible for positioning sensitive petroleum products across the length and breadth of the country. For this purpose, petroleum products are moved from refineries and port locations to depots at demand centers. Placement of petroleum products involves lot of logistic costs, apart from tax costs on account of CST.

The Tax cost of product placement has increased with implementation of GST since inter-state movement of MS, HSD & ATF is being considered as non-taxable turnover for the purpose of reversal of Input Tax Credit.

Levy of CST is impacting the bottom-line of Oil Companies as also causing environment concerns in following ways–

a. Under-recovery of CST in case of supplying to retail outlet from outside State
b. Increased logistic cost to avoid incurrence of CST, which involves movement of products through Tank Trucks for longer route and thereby increased emissions.

Suggestion

As originally planned, phase out CST on petroleum products, which are outside GST ambit, by reducing rate from 2% to NIL.

Clarification

1. **Clarification on Implementation of Amendment in Section 8(3)(b) of CST Act on Inter-state Procurement of Crude Oil and Natural Gas by Petroleum Refineries**

Background

Section 8(3)(b) of the CST Act in its present form is pursuant to the amendment made vide the Finance Act. The intent and purpose behind the amendment can be further understood from 'Notes on Clauses' which was appended to the Finance Bill, 2021. It reads as:

"Clause 141 of the Bill seeks to amend sub-section (3) of section 8 of the Central Sales Tax Act, 1956 by substituting clause (b) thereof, so as to exclude therefrom the goods used in the telecommunication network or in mining or in generation or distribution of electricity or any other form of power"

From the foregoing, it is evident that the only purpose of amending the provision was to restrict the scope of concessional rate against C-Form to re-sale or for use in the manufacture/ processing of goods specified under clause (d) of section 2, i.e. non-GST goods.

However, one of the unintended consequences of this amendment is incorrect interpretation of same by the tax authorities that even for goods which are still covered under CST (Crude & NG), C form eligibility will be proportionate to the extent of manufacture of only NON-GST goods (MS, HSD & ATF), from processing of these inputs.

It is submitted that the refining is an integrated process wherein crude oil of various grades purchased is refined in a holistic manner and other than MS, HSD & ATF, some other petroleum products which are subject to GST also emerges as a result of the inherent nature of the refining process.

Thus, since each molecule of Crude Oil is being subjected to process which result into manufacture of non-GST goods, there is no reason to limit the benefit of concessional rate of CST against C-Form on proportionate quantity based on final production of non-GST & GST goods.

Suggestion

A clarification may be issued to the effect that Refiners will be eligible to purchase crude oil/Natural Gas against C-Form for manufacture of non-GST goods, irrespective of the fact that during such manufacturing process some joint/by products may also emerge, which may be subject to GST.

2. **Issuance of C Form for interstate sale of Petroleum products (Natural Gas, Crude, Petrol, Diesel and ATF)**

Background

Vide the Union Budget 2021-22, Section 8(3)(b) of Central Sales Tax (CST) Act has been amended, whereby, the benefit of concessional rate of 2% CST against Form-C on the inter-state procurement of Non-GST goods (Crude Oil, Natural Gas, and HSD, MS, ATF together referred as 'petroleum products') would not be available unless the buyer is a trader of same goods or manufactures/produces such Non-GST Goods.

Thus, the benefit of 2% CST against Form-C would not be available on inter-state sale of gas and petroleum products to the power generating companies, mining companies and manufacturing companies like fertilizers, Petrochemical etc.

Since there is no credit of CST available, the cost on purchase of Natural Gas and other fuel will increase significantly (increase by up to 25%) for such industries and the customers.

This change will reduce the competitiveness of domestic gas vis-à-vis alternate sources as the domestic taxes on Natural Gas will become higher than the alternatives. Natural gas is outside of GST. As a result, tax rates (VAT /CST) on natural gas vary in different states across the country ranging from 3% to 26%. Issuance of C form was a key lever towards a uniform taxation for various gas customers and addressed the issue of tax distortion to an extent.

Any move to block issuance of C forms will increase cost burden across key economic sectors including power generation, fertilizers, petrochemical, steel etc. reducing their competitiveness.

Suggestion

Provision for issuance of C Form for inter-state gas sale even if it is for use in manufacture of GST goods till these products are included in the GST should be restored and necessary clarification in this regard should be issued.

Reinstatement of C form will restore the competitiveness of domestic gas and other petroleum products and will reduce the cost burden on consuming industries which has increased due to discontinuation of C form.

3. **One time settlement / Amnesty scheme under VAT and CST for Union territories**

Background

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

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

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

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

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

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

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

IV) GST Tax

Upstream

New Provision

1. **Inclusion of Petroleum Products under GST**

Background
Goods and Services tax (GST) has replaced the erstwhile taxes of Excise Duty, Service Tax, VAT etc., and is made effective in India w.e.f. 01.07.2017. However, as per the existing law, GST on supply of five specified petroleum products viz. Crude oil, Natural Gas, High Speed Diesel (HSD), Petrol (MS) and Aviation Turbine Fuel (ATF) would be levied from a later date on the recommendation of GST Council.

This has severe negative impact on the bottom-line of upstream oil companies as GST paid on input materials/services remains stranded and increases our cost of production besides dual compliances of tax laws.

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

Justification

Government of India's mission of One Nation One Tax is not complete without bringing all the products under GST. As Crude Oil and Natural Gas are outside GST, the chain of Input Tax Credit breaks due to which upstream companies are losing substantial amount of input tax credit on input material and services.

Amendments

1. **Concessional rate of GST for goods used in upstream petroleum operations under Notification no. 3/2017-Central Tax (Rate)**

Background

Concessional rate of GST @ 5% was available to the goods specified in list annexed in Notification no. 3/2017-Central Tax (Rate) dated 28 June 2017 required in connection with Petroleum operations undertaken under specified contracts or New Exploration Licensing Policy or Marginal Field Policy ('MFP') or Coal bed methane policy or Petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP). The Concessional rate of 5% has been increased to a higher 12% vide Notification No. 08/2022- Central Tax Rate dated 13 July 2022. Further, as per the recent decision of the 56th GST Council meeting, such existing GST rate of 12% applicable to the E&P sector has been proposed to be increased to 18%, as per Press Release dated 03.09.2025.

Suggestion

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

2. **Need of amendment in Condition to GST-Rate Notification No. 03/2017 similar to Customs Notification no.02/2022**

Background

Under GST-Rate Notification No. 03/2017 on procurement of specified goods domestically whereby 5% GST is applicable, subject to compliance of conditions which is akin to the pre-amended condition no. 48 of Customs Notification No. 50/2017-Cus. Accordingly, as per extant GST-Rate Notification on procurement of specified goods domestically which are required in connection with petroleum operations, a certificate from DGH is required.

Justification

As relaxation from certificate of DGH has been provided under Customs Notification no.02/2022 dt.01.02.2022, there is a need of similar relaxation under the said GST-Rate notification 03/2017 as well with respect to domestically procured specified goods to be used for petroleum operation. Such an amendment would result in uniformity of procedure for procuring goods at concessional rate under Custom Law and GST Law and would facilitate ease of doing business for E&P sector.

Suggestions

As relaxation from certificate of DGH has been provided under Customs Notification no.02/2022 dt.01.02.2022, there is a need of similar relaxation under the said GST-Rate notification 03/2017 as well with respect to domestically procured specified goods to be used for petroleum operation.

3. Concessional rate of GST on Support Service to Exploration, Mining or Drilling and need for Clarity on Scope of Support Service to Exploration, Mining or Drilling

Background

The Govt. has levied concessional rate of 12% GST instead of 18% on Support Services to exploration, mining or drilling of petroleum crude or natural gas or both.

However, GST rate on Support service to mining other than above is 18%. There is overlapping of the word "mining" in above cases. Since scope of exploration, mining or drilling are not defined anywhere under GST Law, it is apprehended that the field formations may take restricted interpretation and may cover such Services under 'Support services to Mining Services' which attracts 18% GST.

Further, it is pertinent to make reference to the recent decision of the 56th GST Council meeting, wherein the GST rate of 12% on the aforementioned services as applicable to the E&P sector has been proposed to be increased to 18%, as per Press Release dated 03.09.2025.

Suggestion

It is earnestly requested that GST@5% may be considered on procurement of exploration, mining and drilling services required for petroleum operations.

Further, it is requested that a suitable clarification may be please issued on applicability of 5% GST on the services availed by the E&P sector which are required for 'Petroleum Operations' as defined under the Petroleum Tax Guide issued by Ministry of Petroleum & Natural Gas, Govt. of India.

Clarifications

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

Background

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

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

Suggestion

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

Justification

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

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

Background

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

Suggestion

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

Justification

Presently, as per the provisions of Income Tax Act, the constituent members of the PSC are not taxed as Association of Persons (AoP) but are taxed in their individual capacity. Therefore, the consortium members including operator and the consortium should not be treated as distinct persons under GST Law as well. This would also avoid the dispute of levy of Service Tax/GST on Operator's own share in such UJV which equates to service provided/supplied to self through operator's internal resources.

3. **Clarification under GST/Service Tax on operator's own share under UJV on supply of services through its own resources**

Background

In terms of Production Sharing Contract (PSC), one of the consortium members is designated as an operator who has to carry out E&P activity on behalf of other partners. The operator incurs expenditure from the contribution received by way of Cash Call from the partners. Though such cash calls are clearly in the nature of capital contributions made by Participating Interest (PI) Holders, however, under GST law, the department considers operators and UJV as distinct person and demands GST on provision of services for petroleum operations for the UJV through operator's internal resources.

Justification

CBIC vide Circular No.179/5/2014-ST 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. 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 it equates to service provided/supplied to self.

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.

Downstream

Amendments

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 are kept outside the GST regime, the input taxes paid on input, capital goods and input services is not available for set off to downstream sector of Oil & Gas. This has become an under-recovery to this sector.

   Suggestion

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

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

2. **Taxability of supply of Ethanol (E-IOO)**

   Bioethanol (E-100) sold as Standalone fuel or blended with MS/Additives denaturant wherein Ethanol is more than 30%, would be classified as GST product under HSN 22072000. Since, States are having their own definition of MS/Petrol under respective State VAT/Sales Tax laws and it appears that bioethanol (E-IOO), is sold as Standalone fuel or blended with MS/Additives as denaturant, State Authorities may on their own wisdom classify the same as MS/Petrol.

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

3. **Relief for huge Input Tax Credit Accumulation**

   There are various common Inputs, Capital Goods and input services, which are covered under GST and used for supply of Non-GST products [MS (Petrol), HSD (Diesel) and ATF] as well as GST Products [LPG, SKO, Furnace Oil and other GST product]. As per the provision of GST Act, input tax credits can be claimed only if the output is also under GST.

There is huge Input Tax accumulation amounting to over Rs.700 crores approximately till August 2024 in majority of the states where BPCL has taken GST Registration because of following main reasons: -

- Major proportion of Final Product [MS (Petrol), HSD (Diesel) and ATF] is outside GST.
- Furthermore, input service/Capital Goods used for supply of GST Goods is taxed at higher rates, however, the outward taxable supply is taxed at lower rate, for instance, LPG Domestic & SKO PDS.

This ITC Accumulation results in blockage of huge amount of working capital to the Corporation.

Suggestion
In view of the above, it is suggested that OMCs

a. Should be granted refund of ITC accumulation because the OMCs are still under dual tax regime. Therefore, suitable amendments in refund provisions under section 54 of GST Act and Rule 89 of CGST Rules, 2017 may be carried out so that these accumulated ITC can be refunded to OMCs or
b. Should be allowed to cross utilize the accumulated ITC among its other states to offset the GST liability of other state to reduce fund borrowing.

4. Lower rate of GST on inter- refinery transfer of intermediate products

Background
Intermediate products are shared between Refineries to ensure full capacity utilization of secondary units of the refineries, to take care of the situation arising due to shutdown/technical interruption and ensure production of BIS compliant petroleum products to maintain marketing demand. These streams are taxed under GST at 18% (ITC is ineligible to the extent of Non-GST Goods ratio).

Suggestion
Supply of intermediate streams amongst refineries/OMCs for further manufacturing of non-GST goods may be kept at lower GST Rate of 0.1% to minimize the impact of loss of input tax credit to downstream sector.

5. Amendment in definition of 'Exports' under GST

Background
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/HFHSD is supplied to a foreign going aircraft/vessel 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:
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/HF HSD to a foreign going aircraft/vessel".

Alternatively, the definition of Zero-Rated supply, explained under Section 16 of IGST Act, may be amended to include the following supplies:

1. export of goods or services or both, or
2. supply of goods or services or both to a Special Economic Zone developer in SEZ unit
3. supply of Aviation Turbine Fuel/HF HSD to a foreign going aircraft/vessel.

6. Non-GST Turnover – Exemption for subsequent stock transfers

Background

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

Suggestion

Since, the product has already suffered ITC reversal in the manufacturing State, the same should not be included in turnover of the subsequent States

7. Non-GST Turnover -CVD/RIC (equivalent to Excise Duty) in case of Imports

Background

Currently for the purpose of Common Input Tax reversal the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A] of List I of the Seventh Schedule to the Constitution. This Entry covers excise duty on manufacture of petroleum products in India, which are paid when petroleum products are removed from the place of removal. This entry does not include duties, which the product suffers as Customs Duty [Entry No. 83 of List I of the Seventh Schedule to the Constitution.] on Import, which is equivalent to the amount of total excise duty which would have been levied if the same product was manufactured in India. View above the exempt turnover for the purpose of Rule 42 & 43 will include the amount of excise duty paid as Customs duty on Import and subsequently sold in India.

Suggestion

Since, the product has already suffered ITC reversal in the manufacturing State, the same should not be included in turnover of the subsequent States

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

Background

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

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

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

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

Suggestion

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

HFHSD which is used as bunker fuel should also be brought under GST regime to boost Bunker Fuel business. Currently, it is leviable to excise duty of Rs. 15.80 per litre, causing difference in pricing compared to neighboring countries.

9. **Transfer of Crude Oil (raw material) from Port States to Refineries in different states, should not be deemed as Exempt/Non-Taxable Supplies for the purpose of Rule 42/43 of CGST Rules.**

Background

IOCL is having 9 refineries units spread across the country. Crude oil for all these refineries is imported/sourced primarily at Ports in Gujarat and Odisha States. To ensure lowest crude & shipping/logistic costs, Crude Oil requirement of all the Refineries is pooled together and sourced at these 2 ports. Subsequently, such crude is transferred to respective refinery through captive shared crude oil pipelines at east & west coast, from Vadinar port in Gujarat, crude oil is transferred to Panipat, Gujarat & Mathura Refineries and from Paradip port in Odisha, to Paradip, Haldia, Barauni, Guwahati & BGR refineries.

However, because of provisions of Section 7 read with Schedule I, transfer of such crude oil from Vadinar & Paradip Ports to Refineries in different states (distinct persons in GST), such transactions, may be deemed as exempt supply, within the meaning of the term as per section 2(47) and thus, and negatively impact the GST Input Tax credit of transferring state applying Rule 42.

It is submitted that crude oil is raw material for refineries and such transfers from port state to refineries are undertaken because of operational & logistic constraints. This transfer should not be deemed as exempt/non-taxable supply for the purpose of Rule 42/43 of CGST Rules.

Suggestion

Necessary amendments may be made in CGST Act/Rules so that such transfer of crude oil, is not deemed at Exempt/non-taxable supplies for the purpose of Rule 42/43 of CGST Rules.

10. 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 . Hence, this will lead to double taxation of same products, and thus, will have cascading effect of tax.

Suggestion

The ITC of CGST/IGST and respective SGST paid on purchases should be allowed to utilise against output liability of excise duty and sales tax on these products respectively. Therefore, suitable amendment may be carried out in the CENVAT Credit Rules, 2017 and respective State VAT laws to allow the tax credit of GST paid inputs against the output tax liability of Excise / VAT on the products excluded from GST.

11. Input tax credit to be allowed for construction of cross-country petroleum and gas pipeline

Background

The input tax credit (ITC) provisions under GST provides that ITC of pipeline laid outside the factory premises shall not be available. In view of this, the goods and services procured for construction of cross country petroleum and natural gas pipeline, input tax credit (ITC) is not available under GST regime.

Suggestion

GST law should be amended appropriately to allow ITC on goods and services used in construction of cross-country petroleum and gas pipeline. This will help OMCs to claim Input tax credit on huge capital expenditures.

12. Supply of LPG by refiners/fractionators to OMC during 01.07.2017 to 24.01.2018 for ultimate supply to Domestic Household and NDEC customers

Background:

This is with reference to the Circular No. 80/54/2018-GST dated 31.12.2018 clarifying applicability of GST rate of 5% on supply of Liquefied Petroleum Gas (LPG) by refiners/fractionators (like GAIL / ONGC) to Oil Marketing Companies (OMC) for ultimate supply to household domestic consumers in terms of Ministry of Petroleum and Natural Gas (MoP&NG) letter No. P 20023/2/2011-PP dated 23:07.2013.

In this regard, it is submitted as under :-

- OMCs have to procure the quantity of Domestic LPG, not only from own refineries but also from standalone refineries including private refineries, fractionators, from other OMCs as well as through direct imports.

- The entire chain for supply of LPG for domestic use starts from the procurement of bulk LPG through imports or from the refineries/fractionators/OMCs to the bottling plant and thereafter sale of LPG for domestic use in cylinders to the consumers.

- Applicability of GST rate of 5% on supply of Liquefied Petroleum Gas (LPG) to household domestic consumers or to Non-domestic Exempted Category (NDEC) customers is covered under entry at S.No. 165 and 165A respectively of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. However, it is worth mentioning that S.No. 165A was inserted w.e.f. 25.1.2018 and earlier supply of LPG by OMC to both household domestic consumers

or to NDEC customers was covered under entry at S.No. 165 during 1.07.2017 to 24.01.2018 only.

- There was an ambiguity on applicability of GST rate on supply by refiners /fractionators to OMCs for ultimate supply to household domestic consumers or to NDEC customers. Therefore, Oil industry has requested for issuance of clarification that such supply should also attract 5% GST.

- Though Govt. has issued above mentioned circular dated 31.12.2018 clarifying that supply of LPG by refiners /fractionators to OMCs for ultimate supply to household domestic consumers will attract 5% GST w.e.f. 25.01.2018, however, an ambiguity has arisen regarding applicability of GST rate on such transactions taken place during 01.07.2017 to 24.01.2018.

- Similarly, supply by refiners/fractionators to OMCs for ultimate supply to NDEC customer under S.No. 165 has not been covered under this circular.

Suggestion

Therefore, in order to resolve above said ambiguity, the suggestive amendments further required in the subject circular are summarized below for your kind consideration:

S.No.	Issue	Status	Amendments sought
1.	Supply by refiners/fractionators to OMC during 01.07.2017 to 24.01.2018 to Domestic Household and NDEC customers	W.e.f. 1.7.2017 to 24.01.2018, supply of LPG by OMCs (IOC,BPC,HPC) to NDEC and Domestic Household Consumers were attracting GST at the rate of 5% in terms of entry in S.No. 165 of Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017.	Circular No. 80/54/2018- GST doesn't include supply of LPG to OMCs under S.No. 165 for ultimate supply to both NDEC and domestic consumers upto 24.01.2018. Hence, S.No. 165 to be included in the circular w.e.f. 01.07.2017 itself.
2.	Supply by refiners /fractionatorss to OMC w.e.f. 25.1.2018 for supply to NDEC customers	Consequent to insertion of S.No.165A, Notification No. 1/2017- Central Tax (Rate), the S.No.165 was amended to omit the supply to household consumers. Thus, w.e.f. 25.01.2018, S.No. 165 is applicable for supply to only NDEC consumers. S.No. 165A is applicable w.e.f. 25.01.2018 for Supply to household consumers.	S.No. 165 is still applicable for supply of LPG to NDEC consumers, as amended by Notification No. 06/2018 – Central Tax (Rate) dated 25.01.2018, thus Circular No. 80/54/2018-GST should include S.No. 165.

In view of the above ambiguity, it needs to be appreciated that issuing notice/ demand by field force to supplier refiners /fractionators for differential tax cannot be ruled out and such demand would finally be passed on the OMCs even though the LPG purchased by OMC was supplied for household consumers only.

Considering above, it is requested that the aforesaid **Circular No. 80/54/2018-GST** dated **31.12.2018** may be amended suitably as under:

'It is being clarified that LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply to NDEC and Domestic Household consumers will attract a GST rate of 5%, under S.No. 165 and S.No. 165A retrospectively w.e.f. 01.07.2017'.

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

Background

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

- Petroleum products manufactured in oil refineries are stock transferred out of the State to other States in order to cater the demand in those States and to maintain un-interrupted supply of these essential commodities across the Country. In some cases, goods are further stock transferred to another State due to change in mode of transportation like pipeline to railway/road and other logistic requirement. Since, GST is a State specific levy, every State has to apply its reversal ratio based on taxable & exempted turnover of that State.
- The above provision is resulting into reversal of ITC on account of same goods in multiple States. Since, this product has already suffered ITC reversal in the manufacturing State, the same should not be included in turnover of the subsequent states.
- It is worth mentioning here that Under Cenvat Credit Rules, 2004, the value of traded goods was considered at only 10% value of traded goods for calculating reversal ratio for common input services.

Suggestion

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

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

(1) ....

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

(a) ...

(b) ...

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

or,

in case of traded excluded petroleum goods, value will be considered @ 10%.

14. Exemption of GST on Ethanol/Bio Diesel used in blending with MS/HSD

Background

Ethanol is blended into Motor Spirit (MS), to improve automobile emissions, reduce Greenhouse Gases and reduce dependency on fossil fuels. Ethanol is covered under GST regime and is subjected to CGST/SGST or IGST as the case may be and Ethanol blended Petrol (EBP) is covered under Central Excise & State VAT. There is an exemption under Central Excise

for not treating the blending as manufacture, thus no additional excise amount needs to be paid on blending of EBP. Since Petrol and Diesel being exempted supplies under GST, credit with respect to ethanol and bio diesel is not available when blended with petrol and diesel respectively. Thus, the GST paid on additives Ethanol/Bio diesel is a cost to companies.

Suggestion

Ethanol/Bio Diesel meant for blending with petrol/diesel should be levied to minimum rate of GST as to incentivize OMCs and not create unnecessary pressure on prices of petrol and diesel. Appropriate amendment be brought out in excise notification so that blending of non GST paid ethanol also does not attract Excise duty.

15. GST on Ethanol manufactured from Captive Plants for blending with MS in the same state

Background:

Many OMCs have set up their own 2G ethanol manufacturing plant. Currently, stock transfers of ethanol within state is not leviable to GST, however exemption under Excise is available to EBMS if GST paid ethanol is blended in MS.

Suggestions

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

16. LPG Cylinders - Domestic/CVR Valves/Regulators -GST Rate Suggestion

Background

Domestic Cylinders/CVR Valves/Regulators (GST@18%) are used for supplying domestic LPG. Domestic LPG attracts concessional GST rate at 5%. The Cylinders/CVR Valves/Regulators are used in the supply of Domestic LPG and are not supplied as such. GST rate 18% on inputs is used for supply of output attracting GST rate 5%, results in accumulation of ITC and blockage of working capital. Reduction in GST rate on these items will help in reduction of GST ITC accumulation.

Suggestion

It is proposed to maintain GST rate at 5% for LPG cylinders.

17. Safety Equipment (flameproof suits, gas leak detectors, fire suppression systems)

Background

Safety equipment (currently at GST 18%) is mandatory under Oil industry. Reducing GST incentivizes companies to invest more in safety compliance and reduces the cost of ensuring worker safety in hazardous environments.

Suggestion

It is proposed to maintain GST rate at 5%.

Clarifications

1. **Value of Taxable Supplies not to include grant received from Government.**

Background

As per section 2(31) of CGST Act 2017- "consideration" in relation to the supply of goods or services or both excludes subsidy given by the Central Government or a State Government.

Further, sec 15 also exclude subsidies provided by the Central & State government for the value of Taxable supply.

The term subsidy has not been defined under the act. In common parlance in relation to sale price of goods, it is understood that subsidy means the amount which a supplier is being compensated for the difference between original/open market sale value viz-a-viz price at which product was actually sold to end consumer.

At times, this compensation is also termed as grant by concerned ministries. However, tax authorities may dispute the interchangeable use of terms grant and subsidy.

Suggestion

It is suggested a suitable clarification specifying at par treatment of "Grants" with the term "Subsidy" may please be issued for exclusion from levy of GST.

2. **Services between Head office and its Units situated in another state.**

Background

Section 7 read with Schedule I provides applicability of GST for transactions amongst distinct persons of the same entity. In this context, issue arises whether functions performed by head office of a business enterprise, viz. accounting, advisory, treasury, legal etc., can said to be services provided to its unit situated in other political state or vice versa.
The issue attained significance as AR ruling in the case of M/s Columbia Hospital held that head office is providing services to units and employee cost is required to be included in the value of services.

Circular no. 199/11/2023 dated 17.07.2023 is issued by CBIC clarifying the valuation of internally generated services. As per the circular, employee cost need not be added to internally generated services provided by Head Office to branches. However, what constitute 'internally generated services' has not been clarified in the circular.

Since, employees are for the company as a whole and perform activities for whole enterprise, the services in the nature as mentioned above, are those provided by said employee to head office as well as to branches, which are constituent part of the enterprise. Accordingly, these services are covered under clause 1 to schedule III of CGST Act and are not liable to GST.

Though the circular has been issued to address the valuation issues in this regard and considering the principle enunciated in the circular, there won't be any financial impact on persons who are eligible for availing full ITC. However, registered persons, like those in Oil & Gas Sector, are very much impacted with the judgement in M/s Columbia Hospital matter as also with the circular.

Suggestion

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

Natural Gas

Amendment

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

Background

a. It may be observed that presently GST rate on the services of 'transportation of Natural gas through pipeline' is applicable @12% (with ITC benefit) and @5% (without ITC benefit).
b. Further, as per GST Laws, two different registered units of an entity are considered distinct persons and inter-unit billing for supply of goods/ services between such units is required to be carried out with applicable GST. Considering such provisions under GST Laws, the lower GST rate @5% (without ITC Benefit) could not practically be implemented so far, as Input Tax Credit (ITC) of GST payable on the inter-unit billing, for services of transportation of Natural Gas, will not be available to recipient unit of GAIL.
c. Further, Natural Gas a much cleaner source of energy than other alternative available and is primarily used in priority sectors like Power, CNG and fertilizer sector. The high rate of GST on the services of transportation of goods by pipeline will make Natural Gas costlier for power and CNG sector where Input Tax Credit of GST paid on transportation of Natural Gas is not available as the output product is not covered / exempted under GST. Further, this will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc.

Suggestion

a. It is proposed that GST @ 5% applicable on the services of transportation of goods by pipeline may be provided with ITC Benefit.
b. This will lead to lower cost of transportation of Natural Gas and will help in promotion of cleaner source of energy for Power and CNG sector where ITC of GST paid on transportation of Natural Gas is not available. This will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc.

Clarification

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

Background

a. Under GST regime, GST @ 5% is applicable on LPG for supply to household domestic consumers or to non-domestic exempted category (NDEC) customers by IOCL, HPCL and BPCL at entry no 165 of schedule 1 of the notification no. 1/2017-Cenral Tax (Rate) dated 28.06.2017. In other cases, the GST is payable @ 18% on supply of LPG
b. As per industry practice, GST @ 5% is applicable on the manufacture of LPG supplied to OMCs for ultimate supply to household domestic consumers. Accordingly, after introduction of GST Laws, the manufacturers of LPG are supplying LPG to OMCs @ 5% based on the end use certificates given by OMCs for domestic use.

c. During Pre-GST regime, VAT was levied on LPG in similar manner and LPG for domestic use was attracting concessional rate of VAT. LPG for domestic use was included in the category of declared goods under section 14 of the CST Act 1956 under which there was upper ceiling of State VAT rate of 4% / 5%. The MoPNG had also clarified vide letter ref. No. P 20023/2/2011-PP dated 23.07.2013 to the effect that the LPG supplied in bulk as well as in cylinders by refiners/fractionators to OMCs for ultimate sale for domestic use will qualify as supply of LPG for domestic use by such refiners/ fractionators.
d. Subsequently, a new entry no. 165A was also inserted w.e.f. 25.01.2018 to expand the scope of the concessional rate of GST @ 5% on LPG for supply to household domestic consumers by suppliers of LPG which was intended for private suppliers who were not covered under entry 165.
e. The CBIC vide Circular No. 80/54/2018-GST dated 31.12.2018 again clarified at para 6 that GST @ 5% would be applicable to LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 25.01.2018 onwards i.e. date of notification whereby entry 165A. Since entry 165A was inserted with effect from 25.01.2018 to cover the LPG domestic supplied by private manufacturers, the clarification contained in para 6 is not proper and can-not be applicable to LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 01.07.2017 to 24.01.2018.
f. However, the GST authorities have viewed that concessional GST rate @ 5% is not applicable on domestic LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 01.07.2017 to 24.01.2018 even when such supply was meant for ultimate supply to domestic household consumers and accordingly notices have been issued for the same in Gujarat and Madhya Pradesh. GAIL and ONGC both have filed Writ Petition in Gujarat / MP High court against the notices issued by GST authorities of respective states.

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

General

New Provisions

1. **Exemption from GST on supply of research and development services**

Background
GST council in its 54th meeting held dated 9th September 2024 recommended to exempt supply of research and development services by a Government entity; or a research association, University, College or other institution, notified under clause (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act,1961 using Government or private grants.

The R&D Centre of the company is instrumental in supporting the "Atmanirbhar Bharat" initiatives through the development of cost effective and eco-friendly technological solutions. The Centre's endeavors also extend to emerging fields such as Nano Technology, Solar, Bioenergy, Hydrogen, Fuel Cell, and Energy Storage, thus charting the course for the future.

Suggestion
To incentivize the research activities in Oil & Gas Sector, it is suggested that exemptions may be extended to Research institutions, registered with DSIR, and engaged in oil & gas related research activities.

2. **Non-availability of "Keep on Hold" option against credit note in the Invoice Management System (IMS)**

Background

Under the IMS portal implemented w.e.f. Oct 2024, Supplier's invoice/ debit note/ credit note details are made available to the recipient. The recipient has to take action on each invoice, debit note, or credit note by selecting Accept / Reject / Keep Pending. No action is treated as deemed acceptance.

For credit notes, only 'Accept' or 'Reject' options are available. In many cases, the credit note may not be received by the recipient or under verification due to quantity, rate disputes, return of goods under inspection, pending reconciliation of discounts or post-sale incentives, etc. An immediate Accept/Reject may not be possible in such cases.

A premature rejection might lead to incorrect reporting or disruption in supplier-recipient relationships. On the other hand, acceptance without proper validation may cause undue credit impact and complications in assessments or audits.

Suggestion

Considering the practical difficulties in immediate accepting or rejecting Credit Note, suitable amendment may be carried out on IMS portal with respect to receipt action on credit note by enabling a **"Keep on Hold"** option for credit notes, in addition to the existing Accept and Reject options.

3. **Credit note distribution by ISD**

Background

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

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

Suggestion

Mandatory requirement of reference of original invoice in table 5 of ISD return (GSTR-6) may be removed on GSTN portal.

Amendments

1. **GST Relief for Transfer of Undertakings**

Background

- Presently, as per Schedule II, Para 4, CGST Act, 2017:
  - (i) Clause (a) deems the transfer of goods forming part of business assets to be a supply.
  - (ii) Clause (c) provides that when a taxable person ceases business, transfer of business assets is deemed a supply unless the business is transferred as a "going concern."

Ambiguity in law: Notification No. 12/2017-CT (Rate) exempts the "transfer of a going concern," but the CGST Act does not provide a clear definition of this term. This lack of clarity has led to conflicting views in Advance Ruling (AAR) and Appellate Authority (AAAR) decisions. The issue is especially significant in the Oil & Gas sector, where unincorporated joint ventures and complex financial structures make GST treatment uncertain. A similar challenge exists in the Renewable Energy sector, where companies often hold multiple standalone projects within a single entity, and GST complications arise when one such project is sold in its entirety.

- Contradictory AAR decisions:
  - Some states have held that transfer of business is a going concern (hence exempt), while others have treated it as an asset sale (taxable at 18%).
  - Exemption Granted Cases (Going Concern Treatment): Uttarakhand AAR - Innovative Textiles Limited, Karnataka AAR - Rajashri Foods Private Limited, Karnataka AAR - Pico2Femto Semiconductor Services)
  - Exemption Denied Cases (Asset Sale Treatment): Andhra Pradesh AAR - SCV Sky Vision, AAAR Andhra Pradesh - Shilpa Medicare Limited
  - Oil & Gas Participating Interest Transfers case: NIKO (NECO) Limited - Andhra Pradesh AAR Application withdrawn, no definitive ruling
- High transaction costs: If taxed, a ₹500 crore Participating Interest in Oil & Gas block acquisition attracts ₹90 crores of GST.
- Litigation delays: Advance ruling processes add 6–12 months and significant legal costs.
- Investor hesitation: Lack of clarity discourages Investors and utilities from consolidating assets.

Suggestion

In Schedule II, Para 4 of the Central Goods and Services Tax Act, 2017, after clause (c), the following may be inserted to define "Going Concern":

"Explanation.—For the purposes of this paragraph, the expression "going concern" means the transfer of a business undertaking, transfer of participating interest (in unincorporated joint venture), whether wholly or partially, which is capable of being carried on by the transferee as a continuous business activity, and includes the transfer of assets, liabilities, goodwill, licenses, and other rights and obligations necessary for the operation of such business, but shall not include the mere transfer or disposal of individual assets without transfer of the business as a whole or substantially as a whole."

2. Restriction on Availability of Input Tax Credit (ITC) on supplies of motor vehicles

Background

Restriction on Availability of Input Tax Credit (ITC) on supplies of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver) – Motor vehicle Services are required to carry out transportation of employees for various official work requirement in the course of furtherance of business.

Suggestion

The restrictive provisions of blocked credit in respect of supplies of motor vehicle should be relaxed to enable seamless ITC which is the intent of the Law.

3. **Invoice Management System (IMS)**

Background

The recent proposal to implement Invoice Management System (IMS) with the option to accept, reject or keep pending the Invoices/debit notes and only accept or reject the credit notes, is a difficult compliance process. Many a times the invoice reversal are through credit notes as the time limit to reverse the e-invoice is 24 hours. Since the buyers would have not received the invoice, they will reject the credit notes as both invoice and credit notes are not issued to them. Rejection of credit notes will automatically increase the liability in GSTR 3B with no option to modify, whereas rejection of invoice will not reduce the liability.

Even as a buyer, there will be few purchase invoices which will be in transit or yet to be accounted. The credit notes related to these invoices are either to be accepted or rejected by the buyer. Also, there is no link or details of the invoice in the credit note.

Suggestion

1. Credit note should mandatorily have the details of original invoices.
2. Time limit for acceptance or rejection of credit should be one month instead of action within the current month
3. Time limit for reversal of e-invoice to be increased from 24 hours to 72 hours as invoicing are done throughout in shifts. This will reduce the reversal through credit notes.

4. **Requirement of GSTR 2B reconciliation for availment of Input Tax Credit (ITC)**

Background

ITC is eligible based on the criteria of invoices / debit notes being reflected in GSTR2B, a requirement post August 2023. It is observed that at times invoices / debit notes do not get reflected in GSTR2B, however, the same do get reflected in GSTR2A. Prior to August 2023, ITC was eligible based on same being reflected in GSTR2A.

Suggestion:

The credit be allowed to be taken on the basis of invoices / debit notes getting reflected in any of the

On-line registers i.e. GSTR2A / GSTR2B which will enable Ease of Doing Business as well as reduce burden on the Department by avoiding unwarranted notices.

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 section 16, 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 warehouse 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 to export warehouse.

Suggestion

In view of above, Input tax credit to be allowed in the manufacturing state incurred by the exporter for positioning of the non-GST goods for Export, when the factory and export

warehouse are situated in different political states. This would provide relief to the exporters from burden of incurring GST taxes involved in positioning of the goods in the export warehouse as per the fundamental principles that taxes and duties are not to be loaded in case of exports.

Clarifications

1. **Clarification on classification of entities associated with Government as "Government Authority", "Government Entity" or "Central/State Government/Local Authority" under GST**

As per Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 (as amended), services provided by the Central Government (CG), State Government (SG), Union territory or Local Authority (LA) to a business entity attract GST under RCM. Services provided by rest all authorities are under FCM only. Further, exemption notifications and tax treatment differ depending on whether the provider is classified as Government authority, Government entity, or CG/SG/LA.

However, in practice, a number of statutory bodies, boards, corporations, societies and undertakings, though established or substantially controlled by Government, claim themselves to be CG/SG/LA resulting in RCM on services supplied by them.
In such cases, these entities are not charging GST under FCM under the pretext that they CG/SG/LA while in fact recipient is not required to pay tax under RCM. This results in non-payment of tax by any party to the transaction in some case.

Suggestion
A clarification/representation is required on:

- The distinguishing parameters/criteria that may be applied while classifying an entity as CG/SG/LA, Government Authority, Government Entity.
- A specific list/compilation of recognized entities under each category can be notified/issued.
- The procedure taxpayers should follow where classification of a contracting entity is not clear.

This clarification will significantly reduce interpretational disputes, ensure correct discharge of GST under RCM, and promote ease of doing business.

2. **Availability of ITC to recipient upon Cancellation of GST Registration of supplier Retrospective**

Background
Based on invoices populated in GSTR2B, assessee is availing GST ITC subject to other compliances u/s 16 of the CGST Act, however, at times GST registration of supplier are cancelled with retrospective effect.

In such cases tax authorities are of the view that GST ITC should be reversed by the recipient despite the fact that various High courts have pronounced the issue in favor of assessee by ordering that the recipient has taken the valid GST ITC on the basis of return filling status of vendor and retrospective cancellation of suppliers GST registration cannot be envisaged by the assessee.

Suggestion

Issuance of suitable clarification confirming admissibility of such GST ITC to avoid undue hardship faced by assessee.

3. **Interest liability under rule 37 to be done away with**

Background

As per rule 37 of CGST rules, 2017, a registered person, who has availed input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within a period of 180 days shall reverse such credit along with applicable interest.

Sometimes in the event of dispute w.r.t. quality of products or services payment is kept on hold beyond 180 days. The above provision regarding reversal with interest creates unnecessary burden on taxpayer, even when tax would have been rightfully paid by supplier to government and same is getting reflected in GSTR 2B as well. Also there is no loss to revenue in the subject case.

Suggestion

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

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

Background

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

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

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

Suggestion

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