STANDING CONFERENCE OF PUBLIC ENTERPRISES

(An apex body of Public Enterprises)

PRE- BUDGET MEMORANDUM

RECOMMENDATIONS for UNION BUDGET 2020

December 2019

Standing Conference of Public Enterprises
(An apex body of Public Enterprises)
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PUBLIC SECTOR AT A GLANCE

Total Central Public Sector Enterprises: 339

Particulars	As at 31st March 2018
Investment	INR 13,73,412 crores
Gross Revenue	INR 21,55,948 crores
Net Profit	INR 1,28,374 crores
Reserves and Surplus	INR 9,42,295 crores
Central Exchequer Contribution	INR 3,50,052 crores
Dividend Declared	INR 76,578 crores
Foreign Exchange Earnings	INR 86,980 crores
CSR Expenditure	INR 3,442 crores
52 listed PSEs market capitalisation	INR 15,22,041 crores
Formal Employment (in persons)	10.88 Lakh

Source: Public Enterprises Survey, 2017-18

INTRODUCTION

STANDING CONFERENCE OF PUBLIC ENTERPRISES (SCOPE)

SCOPE is the apex body of central government owned enterprises. It has all the central government public enterprises, a few state government enterprises and some nationalized banks and financial institutions and insurance companies as its members. Public Sector Enterprises (PSEs) have been set up to serve the broad macro-economic objectives of higher economic growth, self-sufficiency in production of goods and services, long term equilibrium in balance of payment and low and stable prices.

SCOPE has been pro-actively spearheading the cause of public sector India. Its activities are focused on supporting and strengthening the PSES in becoming globally competitive enterprises.

With the government's continuous support to strengthen the public sector, SCOPE has taken upon itself to actively engage with the government, regulatory bodies and policy makers for creating conducive policy framework to safeguard interests of PSEs and promoting excellence for higher growth.

SCOPE takes its pleasure to bring to attention certain issues and suggestions specific to the public sector enterprises which need to be considered in the Union Budget 2020.

INDEX

Section –A **Direct Tax**

S No.	Subject	Pages	
		From	To
1.	Tax Rates	3	11
2.	Income Under The Head Salary	11	14
3.	Profit And Gains From Business And Profession	14	25
4.	Income Under The Head Capital Gain	26	26
5.	Transfer Pricing	26	28
6.	Assessment Procedure	28	32
7.	TDS/TCS Provisions	33	38
8.	Foreign Taxation	39	40
9.	Deductions And Exemptions	41	49
10.	Miscellaneous	49	62

Section –B **Indirect Tax**

S. No.	Subject	Pages	
		From	To
I	GOODS & SERVICE TAX		
	1. Taxability	63	71
	2. Gst Rate	71	82
	3. Exemption	82	89
	4. Point Of Taxation	89	89
	5. Input Tax Credit - Itc	90	104
	6. Return Related	105	106

	7. TDS	106	107
	8. Miscellaneous	107	119
II	**CUSTOM DUTY**	120	127
III	**CENTRAL EXCISE**	128	130
IV	**CENTRAL SALES TAX - CST**	131	131

SECTION A:

DIRECT TAX

1. TAX RATES

1.1 Issue

Increase in exemption limit

Present Position

The maximum amount not chargeable to tax is Rs. 250,000/-.

Proposed changes

The maximum amount not chargeable to tax should be increased to Rs. 500,000/-.

1.2 Issue

Set-off of dividend distribution tax (DDT) under section 115-O

Present position

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

Proposed changes

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

1.3 Issue

Dividend declared, distributed or paid is subject to additional tax i.e. Dividend distribution tax. Dividend tax is an additional cost to the company u/s 115(O).

Present position

Dividend tax @20.555294 (dividend tax @17.64706 surcharge @12% and HEC @4%)

Proposed changes

Dividend paid out of the profits after tax which means the profits have already suffered income tax 34.94%. Again penalising the companies on dividend by levying dividend distribution tax is neither reasonable nor justifiable. Hence at least govt. Companies may be exempted from dividend distribution tax.

It will reduce impact on cash flow, working capital and cost of output of company.

1.4 Issue

Review in income tax rates

Present position

Presently, there are various income tax rate slabs for individual, HUF, AOP etc. And separate rates are for domestic company. In addition there is surcharge and cess on the tax liability. These rates are not based on the present population, income structure and cost of various items. Hence, these rates require harmonization. The hon'ble finance minister has proposed rate reduction for domestic companies but the steps have not yet been initiated to make it effective.

Proposed position

Presently, direct taxes base is very small and the rates are higher. Higher rates are the main reasons for tax evasion, poor revenue collection. Hence, it is suggested that reduction of tax rates may be made substantially along with robust measures like abolition of exemption to increase the tax base to cover at least 20% of the population.

This modification will not only increase the tax base as well as increase the tax revenue. This is also in line with the budget speech of Hon'ble finance minister on rationalization of tax structure**.**

1.5 Issue

Exemption to power sector companies from applicability of minimum alternate tax (MAT) u/s 115JB of income tax act, 1961.

Present position

If income tax under the normal provisions (section 28) is less than 15% of company's book profit, such book profit shall be deemed to be total income and income tax (minimum alternate tax i.e. MAT) at the rate of 15% +Surcharge @ 12% + Cess @ 3% is payable on such book profit. [effectiveMAT rate at present is 17.472%].

Proposed changes

Before introduction of section 115JB from the financial year 2000-2001, MAT was not applicable to power generating companies. It is requested that same status may be restored in the case of companies engaged in business of power generation.

Exemption from mat will reduce the cost of electricity to consumers. During financial year 2018-2019, NHPC limited has paid rs.696 crore mat as against its "nil" normal tax act, 1961. Liability due to availment of deduction under section 80-IA of income tax act, 1961. As such, impact of tax is 696 crore on the present scale of income.

1.6 Issue

Rate of interest charged by income tax department on default in payment of advance tax/deferment of advance tax as per section 234B/234C of income tax act, 1961.

Present position

Income tax department charge interest @1% for every month or part month in case of default in payment of advance tax/deferment of advance tax. On the other hand, in case of refund due to the assesse, interest is allowed @1/2% for every month or part of a month under the provision of section 244A of Income Tax Act, 1961.

Proposed changes

Interest in case of refunds may also be allowed to the assessee, @ 1% per month or part of month on the same rate as being charged by the income tax department. Above provision would result into parity between interest paid and interest by the department as NHPC Ltd. has various refund pending with income tax department.

1.7 Issue

Section 87A

Present position

An assessee, being an individual resident in India, whose total income does not exceed **[***five hundred\ thousand***]** rupees, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred per cent of such income-tax or an amount of **[***twelve thousand and five hundred***]** rupees, whichever is less.

Proposed change

An assessee, being an individual resident in India, whose total income does not exceed **[***eight hundred\ thousand***]** rupees, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred per cent of such income-tax or an amount of **[***seventy two thousand and five hundred***]** rupees, whichever is less.

The constitution (one hundred and third amendment) act, 2019 dated 12th January, 2019 introduced the concept of economically weaker section among the citizens of India other than classes mentioned in clause (4) & (5) of article 15 of the constitution of India.

The gazette notification read as under

> *"In article 15 of the constitution, after clause (5), the following clause shall be inserted, namely:—*

‘(6) nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the state from making,—
(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. Of the total seats in each category.
Explanation.—for the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the state from time to time on the basis of family income and other indicators of economic disadvantage
In article 16 of the constitution, after clause (5), the following clause shall be inserted, namely:—
"(6) Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. Of the posts in each category".

As per the above amendment a reservation of maximum up to 10% in admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions referred to in clause (1) of article 30, in addition to the existing reservations of the total seats in each category.

In this regard DOPT vide office memorandum dated 31-01-2019 mentioned the eligibility criteria for economically weaker section of the society which is exhibited below:

“criteria of income & assets:

4.1 persons who are not covered under the scheme of reservation for SCS, STS and OBCS and whose family has gross annual income below Rs 8.oo lakh (rupees eight lakh only) are to be identified as EWSS for benefit of reservation. Income shall also include income from all sources i.e. Salary, agriculture, business, profession, etc. For the financial year prior to the year of application.

Also persons whose family owns or possesses any of the following assets shall be excluded from being identified as EWS, irrespective of the family income:-

i. 5 acres of agricultural land and above;
ii. Ii. Residential at of 1000 sq ft. And above;
iii. Iii. Residential plot of 100 sq. Yards and above in notified municipalities;

iv. Iv. Residential, plot of 200 sq. Yards and above in areas other than the notified municipalities.

4.2. The property held by a "family" in different locations or different places/cities would be clubbed while applying the land. Or property holding test to determine EWS status.
4.3 the term "family" for this purpose willinclude the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years."

Hence in order to support the general public at large who belong to economically weaker section of the society in terms of DOPT guidelines may be given, the benefit of relief under section 87a from payment of tax , if their total income does not exceed [95]**[***eight hundred\ thousand***]** rupees,

1.8 Issue

Taxes on dividend received from foreign subsidiaries

Present position

The income tax rate on dividend received from foreign company is 15% and no deduction is allowable from such dividend income in respect of interest, etc., on funds borrowed for investment in foreign subsidiaries. There is no provision in law for providing any underlying credit for taxes paid by the foreign subsidiary company.

Proposed changes

Since the business of mineral oil and gas already suffers significant taxation in the host countries, it may be considered to exempt the dividends received by an Indian company from its overseas subsidiary to the extent that the dividends are attributable to income from the business of mineral oil and gas.
Alternatively, it is for consideration that "underlying credit" for taxes suffered on dividend income be provided, including credit for "dividend distribution tax" payable by foreign subsidiary in the host country.
In principle, the Indian tax policy is to avoid double taxation of foreign income. Double taxation is avoided generally by "credit method" rather than "exemption method". Income-tax paid by subsidiary company is not allowed as tax credit while determining

the tax liability of Indian tax-payer. Hence, there is a genuine difficulty faced by Indian tax-payers when they invest in a foreign country through a subsidiary company instead of a branch. The profits of the branch are taxed as profits of Indian tax-payer and taxes paid by the branch are treated as taxes paid by Indian tax-payer. On the other hand, if the investment is made by setting up a subsidiary in the foreign country, the dividend income is taxed in Indian without affording a credit for income-taxes paid by the subsidiary on its profits. In this regard, it is pertinent to mention that subsidiaries are required to be established in many of the cases due to regulatory requirement of host country to hold licence for exploration and development of mineral resources.

Accordingly, necessary amendments be made to exempt any income (whether received as dividends through subsidiaries or earned directly overseas) which has been subjected to normal corporate taxes overseas in host jurisdictions at not less than a pre-specified rate (say 15%).

1.9 Issue

Carry forward of current MAT credit under section 115JB.

Present position

Whether current mat credit is available for carry forward, is ambiguous.

Proposed change

MAT credit should be allowed to be carried forward indefinitely on migration to newly inserted sections 115BAA and 115BAB.

1.10 Issue

Non-payment of interest for deferment of advance tax on gain/ loss due to foreign exchange variation

Present position

The proviso provides that underestimation of income pertaining to capital gain and winning from lotteries, horse races, etc. would not attract interest u/s 234C. Income tax department charge interest @1% for every month or part month in case of default in payment of advance tax/deferment of advance tax. On the other hand, in case of refund

due to the assesse, interest is allowed @1/2% for every month or part of a month under the provision of section 244A of Income Tax Act, 1961.

Foreign exchange rates in recent past are highly volatile due to which it is not possible to correctly estimate the taxable income for the year for payment of advance tax. Insertion of new clause in proviso will lead to non-levy of interest u/s 234C on underestimation of income due to exchange rate variations.

Proposed changes

The gain or loss due to exchange rate variations merits inclusion in said proviso. It is recommended that sub clause (e) may be inserted in the said proviso as under:-

'gains or losses (accrued as well as settled) due to exchange rate variations on foreign currency loans and other liabilities.'

1.11 Issue

Section 115JAA – carry forward of minimum alternate tax (mat) credit to 15 assessment years to be made applicable for balances prior to AY 2018-19.

Present position

Vide Finance Act 2017, section 115JAA was amended to allow companies to carry forward mat credit to 15 assessment years w.e.f. AY 2018-19 only however, the balances of MAT credit, prior to this amendment can be carried forward to 10assessment years only

Proposed changes

Steel industry made huge capital investment on green field and brown field projects in last decade. Though, such expansion units have commenced production but curtailing the production levels and operating at less than installed capacities due to less off take or lack of demand and slowdown in economic growth .due to projected slow growth rate in coming 3-4 years, set off of MAT credit available is not possible to the corporates, within the limit of 10 assessment years prescribed. Hence, the MAT credit available prior to AY 2018-19 may be extended to 15 years.

The amendment will help sustain the domestic steel industry performance. Since, the tax under MAT has been paid in earlier years, there would not be any revenue loss to the exchequer. It will be a booster to steel industry to make it possible to achieve 300MT productions by 2030-31as per national steel policy 2017.

2. Salary

2.1 Issue

Perquisites – valuation of rent free accommodation u/s 17(2)

Present position

The valuation rule for the PSU employees are different from the rule applicable to employees of the central and state government.

Proposed changes

The following suggestions are made for valuation of perquisites on account of rent free accommodation:

A. The valuation rules for PSU employees should be same as applicable to the central & state government employees.

B. For the purpose of valuation only basic salary of the employee should be considered and not all taxable allowances / payments made in cash / any monetary payments.

Since the accommodation provided by public sector undertakings to their employees is in very old buildings, the valuation of perquisites @15% of the salary of the employees creates huge hardships on them as against the value of the license fee determined by central government or state government. Relief of 50% of the perquisite tax is not much of the help to the officers of the company. This amendment would be a huge relief to them. There should not be two different sets of rules for perquisite valuation.

2.2 Issue

Valuation of LTC u/s 10(5).

Present position

Presently LTC for going outside India is taxable.

Proposed changes

LTC for going outside India should also be exempt from income tax.

2.3 Issue

Leave salary u/s 10(10AA)(ii)

Present position

During the tenure of service, the leave encashment is taxable. Moreover, leave encashment after retirement whether such retirement is on superannuation or otherwise exempt only up to a specified limit i.e. Rs. 3,00,000/-the said limit was revised vide notification no.so 588(e) dated 31.05.2002, employees who retire after 01.04.1998.

Proposed changes

Leave encashment to employees during the service should be exempt from income tax. All types of leave encashment after retirement should also be exempt from tax and there should not be any ceiling on the exemption limit for leave encashment as in the case of the central /state government employees under sec. 10(10AA)(i).

2.4 Issue

Valuation of perquisite in r/o interest-free loan.

Present position

If aggregate amount of interest free/concessional loan does not exceed Rs 20,000, the perquisite is not taxable.

Proposed changes

The existing exemption limit of rs.20,000 for interest free loans for the purpose of computing perquisites be increased to rs 2,50,000. The limit should be increased in view of the inflationary trend.

2.5 Issue

Interest on provident fund balance.

Present position

In case of companies having recognized provident fund, it is common practice that the employee keeps balance in PF account even after retirement. As per the provisions of income tax act, in case of recognized provident fund, the interest on PF balance is exempt only for the period ending with the date of retirement of the employee. Any interest credited in respect of period after retirement on the balance in pf account, the same is not exempt from income tax. However, the interest on PPF and GPF is exempt even in respect of the period after retirement.

Proposed changes

The interest on PF balance should be fully exempt irrespective of the fact that the same is given even for the period after retirement.

2.6 Issue

Valuation of perquisite on account of reimbursement of medical expenditure u/s 17(2).

Present position

The current exemption limit is nil.

Proposed changes

The exemption limit for reimbursement by employer of amounts spent by the employee on medical treatment for himself or any member of his family should be restored and revised to Rs.1,00,000 per financial year. The limit should be restored and increased considering the high cost involved in medical treatment.

2.7 Issue

Standard deduction (with reference to salaried employees)

Present position

The limit of standard deduction is Rs.50,000/-.

Proposed changes

The limit of standard deduction should be enhanced from Rs 50,000 to Rs 1,00,000. The limit should be increased in view of the inflationary trend and better tax compliance

2.8 Issue

Introduction of deduction on account of depreciation for calculation of tax under the head-salary

Present position

The deduction is allowed under the head-Business and Profession. No tax benefit is accrued to the salaried employees when they add assets nor on depreciation of such assets. Though the assets get depreciated when owned by an employee, tax laws do not recognize this.

Proposed changes

Appropriate provision to allow depreciation on assets of the assesse procured with money sourced from salary income.

Benefit to the salaried employees.

3. Profit and gains from business and profession

3.1 Issue

Leave encashment

Present position

As per section 43B of income tax act, the deduction on account of liability of leave is allowed only if the same has been paid. Accordingly, the liability which has not been discharged is not an allowable expenditure from taxable income. Hence to get a deduction on account of liability for leave debited in accounts, it is necessary that the same is discharged by the company. One way of discharging the liability by the company is actual payment on account of leave encashment liability due to employees.
Alternatively, the company may form a trust for discharging the liability on account of leave encashment liability due to the employee. This trust can be either managed by the

company or any outside professional body / company / corporation. The company will contribute funds for creation of the trust and further annual contribution will also be made to this trust.

However, at present no deduction is allowable to a company for making any contribution to any other trust / fund other than approved PF trust, gratuity trust & superannuation fund.

Proposed changes

Provision should be made in the Income Tax Act for allowability of initial contribution as well as annual contribution to approved trust or by way of taking a leave liability policy for discharging the leave encashment liability in respect of employees of the company.

At present deduction is allowable to a company for the contribution to approved PF trust, gratuity trust & superannuation fund. Accordingly, a provision should be incorporated in the income tax act for allowability of initial contribution as well as annual contribution to an approved trust specifically established for the purpose of leave encashment liability of employees of the company.

3.2 Issue

Weighted deduction u/s 35(2AB) and 35(2AA)

Present position

As per the provisions of section 35(2AB) and 35(2AA) of the Income tax act, the company was entitled for deduction equivalent to 200% of the expenditure incurred on scientific research on in house research and development facility (not being expenditure in the nature of cost of any land and building) till F.Y.2016-17. The in-house research and development facility is required to be approved by the prescribed authority, i.e. Secretary, department of scientific and industrial research (DSIR). The said weighted deduction has been reduced from 200% to 150% for the financial years 2017-18 to 2019-20 and it has been further reduced to 100% w.e.f. FY 2020-21 onwards.

Proposed changes

Increase the weighted deduction from 150% to 200% for R&D spend. The section 35 should be allowed even when an assessee claims the benefit of lower corporate tax rate u/s 115BAA. Currently India is a technology importing country. In order to promote innovation in technology through research activities and to support make in India, deduction under these section should be restored to 200%. It is further suggested that any expenditure incurred on bio- fuel activities should also qualify for a deduction of 200% under section 35(2AB) in order to promote investment/ R&D initiatives for renewable/ non-conventional energy sources.

Due to change in technologies, product, reduction of cost, international competitiveness and other factors, many companies are involved in research in various fields wherein substantial amount is incurred as expenditure

3.3 Issue

Deduction u/s 35AC

Present position

Deduction for expenditure incurred on eligible projects or schemes approved by the national committee was available u/s 35AC till F.Y.2016-17.

Proposed changes

The deduction u/s 35AC should be restored w.e.f. F.Y. 2019-20 onwards.

It will also encourage companies to spend on eligible projects or schemes approved by the national committee for promoting the social & economic welfare.

3.4 Issue

Deduction for CSR activities

Present position

Expenditure debited in the books of accounts on account of CSR activities.

Proposed change

In the case of PSUs / govt. Companies, the expenditure debited in the books of accounts should be fully allowed as business expenditure u/s 37(1), in order to encourage CSR activities.

It will encourage PSUs / Govt. Companies to spend on CSR activities, since it is mandated by GOI guidelines and companies act 2013.

3.5 <u>Issue</u>

Increase in rate of depreciation of plant and machinery.

<u>Present position</u>

As per new appendix I of income tax rules, 1962rate of depreciation for plant and machinery is 15%.

<u>Proposed changes</u>

The earlier rates of depreciation on plant and machinery may be restored at 25%.

The rate of depreciation for general machinery and plant has been reduced from 25% to 15%, along with the enhancement of additional depreciation rate from 15% to 20%. The increase in the additional depreciation has not gone far enough to neutralize the impact of decrease in normal depreciation. Further, it needs to be appreciated that in the case of capital-intensive industries, the tax liability has gone up due to reduction in depreciation rates despite reduction in corporate tax rates and allowability of MAT credit.

3.6 <u>Issue</u>

Income derived by a foreign enterprise by leasing of aircraft or aircraft engine should be extended to include the license fee paid for obtaining technology for manufacturing/ overhauling/ repairing of aircraft and engines/ parts u/s 10(6BB).

<u>Present position</u>

Income/ license fee derived by the government of a foreign state or a foreign enterprise from the leasing of aircrafts or aircraft engines are exempt from tax, subject to certain conditions.

Proposed changes

The scope of exemption to also include income/ license fee derived by a foreign enterprise/ government of a foreign company for providing technology for manufacturing/ overhauling/ repairing of aircrafts and engines/ parts/ components by the Indian public sector undertaking.

As most of the licence agreements are on net of tax contracts, it results in higher outlay towards defence purposes by the ministry of defence / public sector undertakings.

3.7 Issue

Section 42 - deduction in case of business of prospecting of mineral oil

Present position

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

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

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

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

Proposed changes

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

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

3.8 Issue

Interest paid to its department

Present position

Disallowed by department u/s 37.

Proposed changes

Should be allowed as an expenditure. This will bring interest received and paid at par with the point of taxability.

3.9 Issue

Investment allowance u/s 32AC company engaged in the business of manufacture or production of any article or thing, acquires and installs new assets and the amount of actual cost of such new assets.

Present position

Deduction of a sum equal to fifteen per cent of the actual cost of such new assets for the assessment year relevant to that previous year ends on the 31st day of march, 2017.

Proposed changes

Period of deduction shall be extended for further years. Tax benefit to the corporate assesse & provides an opportunity to make huge investments.

3.10 Issue

Climate change, environment conservation & conservation of natural resources.

Present position

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

Proposed changes

At least 100% deduction of expenditure, revenue or capital, on efforts in mitigating climate change and environment conservation on the lines of section 35 “expenditure on scientific research” may be provided. Similar provisions existed earlier under section 35CCB of it act with sunset clause of march, 2002.Though environment conservation is covered under the schedule VII of CSR provision of companies act, 2013 but expenditure in respect of that is not allowed under the proviso to section 37(1) of the income tax act, 1961.

Considering the commitments of India to paris agreement on climate change, un sustainable development goals (sdgs) on climate action and (India) as a signatory to convention on biological diversity (cbd), it is of utmost importance to encourage the entities to contribute in achievement of such commitments of the nation by providing tax

incentive to entities incurring expenditure directly or indirectly by paying sum to research association, university, college, or other institution engaged in such activity on the lines of section 35 of income tax act, 1961.

3.11 Issue

Overseas E&P projects should be included under section 35AD

Present position

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

Proposed changes

Capital investment in overseas E&P projects may be included as a specified business for the purpose of section 35AD of the act to encourage investments of risk capital in overseas E&P projects by Indian E&P companies. This will help Indian E&P industry to make more investments in overseas E&P assets to ensure the energy security.

3.12 Issue

Limitation of interest deduction in certain cases.

Present position

Finance Act 2017 introduced new section 94B w.e.f. 01.04.2018 which, briefly stated, provides that interest expenditure incurred by a company in excess of 30% of its earnings before interest, tax, depreciation and amortization (**EBITDA**) will be disallowed if such interest expenditure pertains to loans from non-resident associate of the borrower. This section principally covers loans provided by related parties ("**associated enterprises**") where such related party is a non-resident. However, by a deeming fiction, borrowings raised from sources outside India and guaranteed by an associated enterprise are treated the same as loans provided by a non-resident associated enterprise. The deeming fiction as currently worded does not distinguish between guarantees by non-resident and resident associated enterprises. The interest expenses of a resident company on external commercial borrowings, guaranteed by a resident

associated enterprise, is not resulting in any base erosion In India. Moreover, a proviso cannot extend the scope of main section. It, therefore, appears that the section needs review/amendment to achieve the intended objective and avoid unintended hardship to Indian companies genuinely raising capital from overseas markets with the guarantee from resident associated enterprises.

Proposed changes

May be amended to specifically provide that the deeming fiction applies to loans guaranteed by *"a non-resident associated enterprise"* and not to *resident associates enterprises*. Further, it is also for consideration that the provisions of section 94B be grandfathered to exclude financing arrangements entered into prior to march 31, 2017.

Fiction will not be applicable for the interest expenses of a resident company on external commercial borrowings, guaranteed by a resident associated enterprise, which is not resulting in any base erosion in India. Moreover, a proviso will be aligned to the scope of main section.

3.13 Issue

The term "general reserve" under the proviso to section 36(1)(viii) may be replaced by the term "free reserves".

Present position

As per proviso to section 36(1)(viii) of the income tax act, 1961 the specified entities are eligible to claim deduction of special reserve subject to the overall cumulative cap of 200% of the paid- up share capital and general reserves.

Proposed changes

It is submitted that the profit earned during the year / earlier years are normally retained in the balance sheet as "surplus" which is also a free reserve like general reserve. Further under the erstwhile companies act, 1956 the companies were mandatorily required to transfer a prescribed % of current profits to the general reserve for the

purposes of declaration of dividend. However, this requirement has been dispensed with under the companies act, 2013 and as per section 123 of the said act there is no requirement to transfer the current profits to general reserve for declaring dividend. Further the definition of free reserves may be inserted in section 36(1)(viii) as to be as per the section 2(43) of the companies act, 2013.

As the "surplus" is also a free reserve like general reserve and in view of the fact that it is no longer necessary for the companies to create general reserve as per companies act, 2013 it is proposed that the term "general reserve" as stated in proviso to section 36(1)(viii), should be replaced by the term "free reserve" which will lead to non- creation of general reserves just for the purpose of this section.

3.14 Issue

Provisions of 36(1)(viia) of the income tax act

Present position

The banks are required to make loan loss provision in respect of non-performing asset (NPAs) strictly as per RBI guidelines which are mandatory in nature. Provision so made is debited to the profit and loss account. However under the provisions of 36(1)(viia) of the income tax act provision so made is allowed only to the extent of 8.5% of the total income and an amount not exceeding 10% of the aggregate average advances made by the rural branches of the bank computed in the prescribed manner.

Proposed changes

We suggest that the banks should be allowed the deduction of full amount of provision of NPAs so made as per RBI guidelines without any cap as the same is mandatory in nature. Beneficial to all industry.

3.15 Issue

Section 32(2)-ambiguity due to multi-fond amendments to 32(2) of the act w.r.t. carry forward & set off of depreciation allowance and carry forward & set off business losses:

Present position

As per section 32(2) of the income tax act, 1961 the unabsorbed depreciation is allowed to be set off against the business income of subsequent years without any period restriction. This legal provision exists in the statue book till ay 1996-97. However, vide amendment to the it act, 1961 w.e.f. 01.04.1997, set off of unabsorbed depreciation is limited to a maximum of 8 subsequent assessment years. Subsequently, section 32(2) was further amended to the effect that the restriction of 8 years was removed and the law prevailing before 01.04.1997 was restored. These multi-fold amendments caused ambiguity and led to litigation, the revenue in many cases argued that the amendment is in prospective in nature, to clear the air, the honorable Gujarat high court in General Motors India Pvt. Ltd. V. DCIT, 354 ITR 244 (Guj) observed that "had the intention of the legislature been to allow the unabsorbed depreciation allowance only for eight sub-sequent assessment years even after the amendment of section 32(2) by the finance act, 2001, it would have incorporated a provision to that effect. However, it does not contain any such provision. Hence keeping in view the purpose of the amendment of section 32(2) of the act, a purposive and harmonious interpretation has to be applied, giving fair and reasonable construction to the language of the section without leaning to the side of the assesse or the revenue. But if the legislature fails to express clearly and the assesse becomes entitled for a benefit within the ambit of the section by the clear words used in the section, the benefit accruing to the assesse cannot be denied."

Proposed changes

Amendment brought through Finance Act, 2001 is to remove the restriction imposed on Keeping in view of ambiguity and to settle the disputes lying at various high courts it is suggested to insert a clarificatory explanation in section 32(2) of the act, stating the purpose of carry forward of allowance and the amendment is not prospective in nature. More number of long pending cases can be settled and the aim of government to make India for ease in business can be met.

3.16 Issue

Section 43A –foreign currency liability – change in rate of exchange

Present position

Prior to finance act, 2002, liability towards import of plant and machinery is required to be restated at the foreign exchange rate prevalent at end of the relevant previous year, and adjusted against the cost of the assets as per section 43A. However, as per amendment in finance act, 2002, such foreign exchange fluctuations are allowed to be adjusted only when payment is made this has resulted in moving away from mercantile system to cash accounting and also brought unnecessary deviation between the financial records and income tax records and income tax records resulting to maintain separate documentation and complexity in compiling of information. As per IND-AS 21 the exchange difference shall be recognised in profit & loss account to simplify the process and to avoid maintaining separate records' the amendment to section 43A needs to be done.

<u>Proposed changes</u>

Suggested to amend section 43A either to allow the companies to recognise the exchange difference in profit & loss account or to restore the earlier provision (i.e. Prior to finance act, 2002) of section 43A.No need to keep track on liabilities created towards foreign suppliers at year in subsequent years.

3.17 <u>Issue</u>

Section 32(1)(iia) - availment of balance 50% of additional depreciation.

<u>Present position</u>

In finance act, 2015 a proviso was inserted after the second proviso to sub section (1)of section 32 so as to provide that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assesse during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year then the deduction under subsection (1) in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year and the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under subsection (1) in the immediately succeeding previous year in respect of such asset. However, the

amendment made effective from A.Y 2015-16 and subsequent assessment years. Though, there are various judicial pronouncements in favour of assesses, revenue is pursuing the issue before appellate authorities.

Proposed changes

An explanatory note may be brought out to section 32(1)(iia) by stating that the provision introduced in Finance Act, 2015 should be made applicable from AY 2006-07 retrospectively. The above may be done in line with various pronouncement by tribunals and Hon'ble High courts in favour of assesses for the assessment years prior to the amendment to said section in Finance Act,2015.Reduces lot of pending cases before appellate authorities.

4. Capital gain

4.1 Issue

Increase in investment limit u/s 54EC

Present Position

As per section 54EC of income tax act, exemption can be availed in respect of long-term capital gains (arising from the sale of land or building or both) by investing in 54EC bonds. The current limit of investment in such bonds is Rs. 50 lakhs.

Proposed changes

As total annual market size for such bonds is around rs.12,000 - 15,000 crore, it is proposed that current limit of investment in 54EC may be removed. This would help in expanding the 54EC bond market.

5. Transfer pricing

5.1Issue

Transfer pricing – applicability of provisions of section 40(A)(2) (b) relating to disallowance/ computation of arm's length price in respect of specified domestic transactions covered u/s 92BA

Present position

Section 92BA (specified domestic transaction): - for the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:

(i) - omitted w.r.e.f. F.Y.2016-17

(ii) any transaction referred to in section 80A;

(iii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;

(iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;

(v) any transaction, referred to in any other section under chapter vi-a or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or

(vi) any other transaction as may be prescribed

And where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of twenty crore rupees.

Proposed position

PSU/govt. Companies should be exempted from the provisions of specified domestic transactions covered under section 92BA since –

i) PSU/govt. Companies are working strictly under the guidelines/framework suggested by concerned ministry, government Agencies and under the watchful eyes of CAG.

ii) All the methods adopted for purchase/sales/pricing/tendering/ entering into contracts etc are strictly according to policies and procedures specified by the company / government Agencies. Moreover all the transactions are under constant scrutiny of the govt. Auditors (CAG) and there is no intention to evade the taxes.

In case of domestic transactions, under-invoicing of sales & over-invoicing of expenses ordinarily will be revenue neutral in nature, except in two circumstances having tax arbitrage:

A) profit is shifted from one profit making company to related loss making concern; and

B) profit is diverted towards the unit on the lower side of tax arbitrage. For e.g. Sale from non-SEZ area to SEZ unit at a price below market price.

However, PSU/Govt. Companies are working strictly under the guidelines/framework suggested by concerned ministry, govt. Agencies and under the watchful eyes of CAG.

5.2 <u>Issue</u>

Section 92D read with rule 10D of income tax act

<u>Present position</u>

In the case of public sector banks, major share holding of the bank is with the central government. The objective of maintenance of records under section 92D read with rule 10D of income tax act (relating to international taxation) and submission of form 3CEB is to ensure income of the assesses is not shifted out of India. Non-compliance is not possible in case of PSBs. Further looking to the total volume of transactions of the public sector banks, the international transaction with associate enterprises is negligible.

<u>Proposed changes</u>

We suggest that in the case of Public Sector banks maintenance of records u/s 92D and submission of form 3CEB be exempted.

5.3 <u>Issue</u>

Transfer pricing regulations

<u>Proposed changes</u>

Transfer pricing have been extended vide finance act 2012 to include transactions entered into with domestic related parties under section 92ba of income tax act. The provision may not be made applicable for government companies including PSU. Most of the new projects in power sector are coming under TBCB route. Presently M/s Power Grid is having more than 20 subsidiaries and JVS and in time to come the number may increase many fold. Transfer pricing system makes the reporting system more complicated. In view of this, PSUs may be exempted from the compliance of transfer pricing mechanism.

6. Assessment Procedure

6.1 Issue

Reopening of assessment

Present position

At present the income tax act provides for re-opening of assessment even in such cases where the regular assessment has been completed. Further, even after completion of reopened assessment, the assessing officer can again reopen the already reopened assessment. Hence, there is no limit in reopening of assessment

Proposed changes

Provision should be made in the income tax act so that where the assessment has already been completed u/s 143(3), reopening of assessment should be allowed only once.

6.2 Issue

Additions in reopened assessments

Present position

As per the present practice in the income tax assessment relating to reopened assessments, the assessing officer takes permission for reopening of the assessment on the issue in respect of which the income has escaped assessment. However, while completing the reopened assessment the assessing officer makes additions for other items for which permission has not been taken. Further, additions are also made in respect of items which have already been considered and added to the taxable income by the assessing officer in the regular assessment.

Proposed changes

Amendment in the income tax act may be made to provide for:

A. The additions should be made only in respect of item of income/expenditure which has escaped assessment, for which the approval has been taken for reopening of the assessment.

B. The item of income/expenditure which has already been considered in original assessment should not be again considered for further additions.

6.3 Issue

E-assessment

Present position

Being made mandatory

Proposed changes

However, it is difficult for a big company to furnish all information & documents online and explain the same without personal appearance. Before making it mandatory, all stakeholders (AOS, CAS & Assessees) need to be consulted. Ease of doing assessments.

6.4 Issue

Handling issues in CPC

Present position

Presently, the CPC are updating demand frequently either by their own or on submission of the jurisdictional assessing officer without any consent of the assessee or giving him reasonable opportunity to be heard.

Proposed changes

Necessary provision is required so that demands shall only be uploaded upon availability of evidence that reasonable opportunity has been given to the assessees to be heard and speaking order has been passed.

The assessing officers are uploading the demand based on their requirements without disposing of the pending issues and the assessees are facing lot of difficulties. This requires serious attention to clean the system. This will reduce the grievances of sincere tax payers.

6.5 Issue

Providing consequences of non-disposal of rectification applications

Present position

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

Proposed changes

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

6.6 Issue

Revision of income tax return u/s 139(5)

Present position

As per section 139(5), from ay 2018-19 onwards assessee can revise income tax return before the end of relevant assessment year or completion of assessment, whichever is earlier. This has resulted in reduction of 12 months from the period available earlier for revision of return. The reduction in period for filing the revised return would adversely affect the assessees who claims FTC where in the taxes are paid on calendar year

basis and at the end of the calendar year due to the fact that due date for payment of taxes in foreign jurisdiction may occur after the end of the period for filing the revised return in India. Further, this may also adversely affect assessees who claims FTC based on the assessment orders/certificates from the tax authorities of foreign jurisdictions. These assessment orders/ certificates may be available only after the expiry of time limit available for revision of income tax return.

Proposed changes

Section 139(5) may be modified to include additional 6 months for filing the revised return for the assessees who are claiming FTC on the foreign jurisdiction where calendar year is followed as assessment year or FTC is claimed based on the assessment orders/certificates from foreign jurisdiction which follows calendar year as assessment year. This would avoid financial hardship to assessee by paying tax in India while filing original income tax return and paying tax in foreign jurisdiction on due date and claiming refund in India.

6.7 Issue

Time limit for passing orders by commissioners of income tax (appeals)

Present position

Commissioner of income-tax (appeals) is an administrative appellate mechanism and so, prescribing a time line would bring certainty of delivery, being an important taxpayer service. This concept is already prevailing under the DRP route.

As per the CBDT instruction, only 20% of the demand raised is payable by the assessees where the appeal is filed before the CIT(A). The automatic stay for the balance 80% results in blockage of demand for the tax department. Introducing a time line for disposal of appeals by CIT(A) would not only improve taxpayer service but also help department in faster realization of demands raised, in case the issues are decided in favour of the department.

Although section 250(6A) suggests a period of one year from the year in which appeal is filed for disposal of appeal by CIT(A) *where it is possible,* there is no fixed time limit. It

is seen that many appeals are pending for 4 to 5 years before the CIT(A). While there are administrative guidelines from the CBDT, the effectiveness of this could be better if these find place in the law. Delays are caused when CIT(A) calls for a remand report from the assessing officer (AO). Currently there is no time limit for sending remand report to the CIT(A).

Proposed changes

Section 250(6A) could be amended to incorporate a time limit, say, 18 months, extendable to further 6 months depending upon the complexity of the case, for the disposal of appeal. A time limit should be introduced even for the issue of remand report by AO, say, 45 days, extendable to further 45 days depending upon the complexity of the case.

7. TDS/TCS

7.1 Issue

TDS from provisions/liability created in the accounts

Present position

As per the provisions relating to deduction of tax at source, the assessee is required to deduct tax even on the amount for which provisions has been made or liability has been created in the accounts. Normally, the provision in the accounts is made on the basis of reliable estimate. The actual liability may differ from the amount provided in the accounts.

Proposed changes

Hence, in such cases the TDS should be deducted only at the time when the amount becomes payable on the actual bill/invoice received.

7.2 Issue

TDS returns

Present position

At present bank branches are required to file form 15G, 15H, 24Q, 26Q, 27Q with regards to TDS.

Proposed changes

Instead of filing several forms it can be made unique one single return.

7.3 Issue

TDS on transportation payment under section 194C

Present position

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

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

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

Proposed changes

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

7.4 Issue

Tax deducted at source (TDS) by customer at the time of payment of advances can be claimed as tax credit only in the year in which the related revenue is offered for tax as per provisions under rule 37BA of income tax rules, 1962. In ship building industry, payments are collected in stages as advances from customer after deduction of TDS @ 2%. However, due to long built period constriction of ship, revenue is offered in percentage of completion method and till such time TDS credit remain un-utilised this results in blockage of working capital till the period of offering the corresponding revenue to income tax.

Present position

Deferment of TDS credit made u/s 198 & 199 of income tax act 1961. There is no enough justification to the condition that "TDS can be claimed only in the year in which the revenue on which tax deducted is offered to tax". This is in contradiction to the basic principal of nature of justice. On the one hand tax is compulsorily deducted and on the other hand TDS credit is denied. Usually trade receivables are cleared by the customers after the sale/ delivery of the merchandise take place. However, in ship building since the consideration for the contract is received in stages but at the same time revenue (turnover) is accounted as per IND AS-115 on a percentage of completion basis. The amount on which TDS is deducted will not sync with the revenue (turnover) declared resulting in huge amount of TDS which cannot be set off against tax for the year, this is an extreme injustice done to ship building industries. This needs to be rectified.

Proposed changes

It is suggested that TDS deducted in financial year under any head may be permitted to adjust as an advance tax. It will reduce impact on cash flow, working capital and cost of output of company.

7.5 Issue

Higher incidence of TDS @ 11% DPSUS on payment of fee for technical services received from foreign company against project connected with security of India.

Present position

Section 10 (6C) I.T. Act grants exemption from tax in respect of income arising to the notified foreign company by way of royalty or fees for technical services received in pursuance to an agreement entered into with govt. For providing services in or outside India in project connected with security of India names of foreign companies are notified vide notification no. 120/2006 dated 16-5-2006 issued by income tax dept. In this case name of foreign company M/s Fedeal State Unitary Enterprise, "Rosoboronexport", 27/3, Stormynka Street, Moscow, Russia, 107076 have not been included in the said notification who is providing technology for construction 02 nos. Advanced missile frigates for Indian navy under government to government agreement with Russia and many other defence projects.

Proposed changes

It is suggested that, name of foreign company M/s Fedeal State Unitary Enterprise, "Rosoboronexport" who is providing technical services to project connected with security of India be included in the notification for availing exemption of tax.

DPSUS are required to bear applicable TDS @ 11% of technical services fee payable to foreign company over and above the technical service fee payable since foreign company do not agree for deduction of income tax on income accrued to foreign company in India.

7.6 issue

TCS on exports section 206C

Present position

Collection of tax on exports

Proposed changes

TCS should not be applicable in case of non-residents whose income is not taxable in India. This will promote exports and reduce undue hardship on a non-resident.

7.7 Issue

Deduction of tax at source in case of interest by way of interest to non-resident/ foreign company by an Indian company u/s section 194LC of income tax act, 1961.

Present position

As per the provision of section 194LC of income tax act, 1961 if any Indian company pays interest (at the rate approved by central government) to any non-resident/foreign company in respect of monies borrowed by it in foreign currency from a source outside India before the 1st day of july,2020 inter-alia including under a loan agreement approved by central government or by of issue of any long term bonds approved by central government or rupee denominated bonds, a concessional rate of 5% has been prescribed for income tax deduction on such payment of interest.

Proposed changes

Since the above concessional rate of 5% has been made applicable in respect of loan agreement/bonds/rupee bonds executed/issued before the 1st day of july,2020 only, it is proposed that above date of 1st july,2020 may extended for next five years.

Above would result into cheaper and quick foreign loans for infrastructure companies that will promote better fund management and increased investment in hydro energy sector.

7.8 Issue

Deduction of tax at source in case of income by way of interest to foreign institutional investors/qualified foreign investor by any person

Present position

As per the provision of section 194LD of income tax act, 1961, if any person pays interest (at the rate approved by the central government) to any foreign institution investor/qualified foreign investor, in respect of investments made by the payee before the 1st day of july, 2020 in Rupee denominated bonds of an Indian company or

government securities, a concessional rate of 5% has been prescribed for income tax deduction on such payment of interest.

Proposed changes

Since the above concessional rate of 5% has been made applicable in respect of investment made in Rupee bonds/government securities before the 1st day of july, 2020 only, it is proposed that above date of 1stjuly, 2020 may be extended for next five years. Above would result into cheaper and quick foreign loans for infrastructure companies that will promote better fund management and increased investment in hydro energy sector.

7.9 Issue

Rupee masala bonds with tax incentives

Present position

Rupee masala bonds are basically rupee denominated bonds issued outside India listed in foreign markets. Unlike dollar bonds, where the borrower takes the currency risk, masala bond makes the investors bear the risk. However, due to the impact of withholding tax, cost of raising these bonds becomes higher. A special window to incentivize issue of such rupee denominated bonds was earlier provided for a short period and bonds issued during the period from 17thseptember, 2018 to 31st march, 2019 were exempt from tax and accordingly no tax was deducted on payment of interest in respect of such bonds u/s 194LC of income tax act, 1961.

Proposed changes

It is proposed that such exemption of withholding tax u/s 194LC of income tax act may be continued. This would lead to reducing the cost of raising these bonds.

7.10 Issue

TDS on transmission:

Proposed changes

Income tax authorities are interpreting that transmission is a technical service and directing to deduct TDS u/s 194J of the income tax act at 10% and few other are interpreting as rent u/s 194I for deduction of TDS @10%. Because of such a high rate of TDS, cash flow of transmission companies are affected. Clarification may be issued so that TDS are not deducted on transmission charges as the same is not covered under any section of income tax act. Further, now there is ruling from supreme court of India in favor of power grid, stating that TDS on transmission charges should not be deducted, thus it is suggested that the said exemption may be incorporated in the income tax act, to avoid the litigations.

7.11 Low / nil withholding tax certificate u/s 197 :

The application for nil / withholding tax certificate u/s 197 has been computerized, however there is lot of delay in getting the certificate. There is still lot of discretion which results in delay in issue of certificate and unnecessary blockage of funds in form of TDS which then has to be claimed as refund.

8 Foreign taxation

8.1 Issue

Amendment in provisions relating to income deemed to accrue or arise in India

Present position

It is provided under sec 9(1) (v), (vi) & (vii) that income of a non-resident shall be deemed to accrue or arise in India and shall be included in the total income of the non-resident, whether or not (i) the non-resident has a residence or place of business or business connection in India; or (ii) the non-resident has rendered services in India.

As a result of above provision, if a service is utilized in India rendered by a non-resident, he will be taxable in India whether or not he has permanent establishment in India or whether or not he has actually rendered services in India.

In recent years, incidence of tax on both services and goods are kept at par. Goods imported from outside India for use in India are not subject to income tax in India. Similarly services generated outside India should not be taxable in India just because the service recipient is a resident of India.

Further, the above provision has increased the cost of procurement of services from non-residents located outside India as Indian tax costs are built in the cost of services.

Proposed position

It is suggested that non-resident should be taxable in India only if he has a permanent establishment in India and rendered services in India. This amendment will make bring clarity, simplify the compliance and prevent avoidable litigation.

8.2 Issue

Form 15CA& 15CBand section 195

Present position

195(6) require furnishing prescribed information even if the amount paid is not chargeable to tax.

Proposed changes

Needs to be done away with since payments made on account of purchase / import to non-residents do not attract income tax liability. Simplicity and tax payer friendly.

8.3 Issue

Section 195 and 203A-TDS on payments to non-residents

Present position

Every person dealing with non-residents, who is supposed to deduct tax should invariably possess tan.

Proposed changes

As per section 195 any person responsible for paying to a non-residents, not being a company, or to a foreign company shall comply with TDS provisions. In section 195 the following two phrases are spelt out:

(a) sum chargeable under the provisions of this Act"-it implies that the onus is on the payer to determine the taxable income in the hands of non-residents and

(b)"deduct income- tax thereon at the rates in force "-unlike other TDS sections, there is no threshold limit and no mention TDS rate. It implies that the onus is on the payer to determine the tax payable by non-residents depending upon the nature of transaction and deduct determined tax as TDS.

Given a situation a resident individual purchased a property from non-resident. As per section 195, payer has to compute capital gain and income tax thereon in the hands of non-residents and deduct the tax accordingly. After doing the above tedious exercise to remit the TDS amount the payer should possess Tan. However, no Individual/HUF assesse possess tan. Unlesshe is in business or profession. Once tan is allotted we need to file either TDS return or file nil declaration in traces portal on quarterly basis. Since the transaction is one time nature it is suggested to give relaxation to assesses having no tan and dealing with non-residents by framing a suitable mechanism to file TDS return similar to section 194IA.The amendment will simplify the procedure and facilitate the persons who deal with non- residents occasionally.

9 Deductions and exemptions

9.1 Issue

Deduction u/s 80C

Present position

The present limit is Rs 1.50 lakh.

Proposed changes

It should be increased to Rs.5 lakhs keeping in view the inflationary trend. The government will generate investments and get funds for its various spending the employee will end up increasing savings and get benefits of tax.

9.2 Issue

Deduction u/s 80 L

Present position

No deduction u/s 80 L is available from the A.Y. 2006-07.

Proposed changes

The deduction in respect of interest on certain securities (e.g. interest on govt. security, NSC, post office time deposits) etc. U/s 80 L should be restored with a limit of rs. 50,000.

The limit should be restored in view of the inflationary trend & to encourage small savings

9.3 Issue

Deduction u/s 80TTA

Present position

The deduction u/s 80TTA is limited to Rs 10,000.

Proposed changes

The deduction in respect of any income by way of interest on deposits in a savings account /time deposits u/s 80TTA should also be enhanced from the present limit of Rs. 10,000 to Rs. 50,000.The limit should be increased in view of the inflationary trend.

9.4Issue

Sub-clause (iii) of clause (10) of section 10 of the income-tax act, 1961-gratuity exemption

Present position

The notification u/s 10(10) (iii) is generally issued post notification/ amendment in section 4(3) of the payment of gratuity act 1972 having the effect of raising the limit under clause (ii) of section 10(10) of the income tax act. Hence there is a time lag between exemption limit notified under section 10(10) (ii) and section 10 (10) (iii) of the income tax act.

Proposed changes

The exemption limit under section 10(10) (ii) is linked to the section 4(2) & 4(3) of the payment of gratuity act 1972, in line with the changes made in the payment of gratuity act 1972. However, exemption under section 10 (10) (iii) is for employees not covered under payment of gratuity act, is done subsequently by way of notification issued by the ministry of finance. Section 10 (10) (iii) should also be aligned with section 10(10) (ii) so that no separate notification is required for the same to avoid unnecessary hardship to the employee.

It is suggested for the sake of consistency & simplification that notification issued by the labour commission u/s 4(3) of the payment of gratuity act 1973, should be deemed to be a notification for the purpose of section 10 (10) (iii) of the income tax act.

9.5Issue

Exemption of income in the nature of fees for technical services and royalty arising to a foreign company on income earned pursuant to a project connected with the security of India

Present position

Income in the nature of fees for technical services and royalty earned by a foreign company pursuant to agreements entered with the government of India, specifically notified for this purpose is exempt under section 10(6C).

Proposed changes

It is recommended that the scope of this section be extended to agreements entered with public sector defence companies as well.

Payments of fees for technical services and royalty to foreign companies in relation to contracts for manufacture of aircrafts are generally grossed up and borne by the public sector companies. The extension of this clause to agreements entered by public sector companies would reduce the cost incurred by the government of India (ministry of defence) towards procurement of equipment from HAL for which there is substantial transfer of technology from foreign companies.

It is also recommended that the scope of this section be extended to agreements entered with public sector defence companies as well the extension of this clause to agreements entered by public sector companies would reduce the cost incurred by the government.

9.6 Issue

Children education allowance u/s 10.

Present position

Rs.100 p.m. is exempt per child for two children

Proposed position

Rs.1000 p.m. Is to be exempt per child for two children. Exemption in respect of hostel expenditure also needs to be increased since it was fixed 20 years back. This will promote education and people will happy to get their children educated.

9.7 Issue

Gift to employees u/s 17

Present position

Currently it is rs.5,000/-

Proposed changes

Currently it is rs.20,000/-

9.8 Issue

Leave travel concession u/s 10

Present position

Twice in block of four years

Proposed position

Every year

9.9 Issue

Part of the month

Present position

Not defined

Proposed changes

Please define. Clarity, should be date to date.

9.10 Issue

Review of allowable allowances

Present position

Deductions / exemptions: The exemptions which are linked with the actual expenditure are required to be increased substantially to meet the need of common people in the present circumstances.

Proposed change

The deductions and exemptions limit prescribed under the income tax laws are very old and do not commensurate with the current scenario. The allowances and their

exemption limits need a relook in the present scenario. This will increase confidence of individual tax payer and increase tax effectiveness of the direct tax system.

9.11 Issue

Deduction in case of profit and gains under section 80-IA (4) (iv) of the income tax act

Present position

Deduction up 100% of profit and gains are available to an undertaking engaged in infrastructure projects which includes generation of power, transmission or distribution for ten consecutive years out of fifteen assessment years starting from the year in which unit starts to generate power at any time during the period beginning on 1st day of april 1993 and ending on 31st day of march.2017.

Proposed change

The period ending on 31st day of march, 2017 may be extended further at least up to 31.03.2025 for development of power sector. Further, tax holiday period may be enhanced to 15 years from 10 years presently out of initial 20 years starting from the year in which unit starts to generate production. The extension up to 31.03.2025 under 80- IA (4) (iv) and enhancement of tax holiday period to 15 years for power sector will result in more investment in power sector and there would be development of power sector.

Annual impact of above proposal on taxable income for upcoming/commissioned after 31.03.2017 hydro- electric projects of NHPC limited would be Rs.1813 crore [krishnanagar power station, J&K-rs.282.27 crore, solar power project, Tamilnadu-Rs.14.9 crore Parbati-II he project, HP-Rs.494.86 crore and SubansiriLower Project, Arunachal Pradesh-rs.1021.19 crore] and tax implication of above is estimated at Rs.627 crores.

9.12 Issue

Deduction in respect of expenditure on any substantial renovation and modernization of existing power plant under section 80-IA (4) (iv) of the income tax act,1961.

Present position

Only “transmission and distribution” companies were eligible for deduction under section 80-IA (4) (iv) up to 31.03.2017 in respect of expenditure on any substance renovation and modernization of existing network.

Proposed change

Renovation and modernization of a power generation plant may also be covered u/s 80-IA (4) (iv) ibid. If renovation and modernization of a power generation plant is also covered u/s 80-ia (4) (iv) at par with transmission and and distribution, benefit in case of bairasiuland loktak power station of NHPC limited may be taken which have completed their prescribed life of 35 years and for maintaining their generation capacity after prescribed life, substantial amount is required to be incurred for renovation and modernization.

Annual impact of above proposal on taxable income would be around Rs.38 crores for two power stations and tax implication is estimated at Rs.13 crores.

9.13 Issue

Section 10(26B)

Present position

Any income of a corporation established by a central, state or provincial act or of any other body, institution or association (being a body, institution or association wholly financed by government) where such corporation or other body or institution or association has been established or formed for promoting the interests of the members of the scheduled castes or the scheduled tribes or backward classes or of any two or all of them.

Explanation.—for the purposes of this clause,—

(*a*) "scheduled castes" and "scheduled tribes" shall have the meanings respectively assigned to them in clauses (*24*) and (*25*) of article 366 of the constitution;

(*b*) "backward classes" means such classes of citizens, other than the scheduled castes and the scheduled tribes, as may be notified—

(*i*) by the central government; or

(*ii*) by any state government,

As the case may be, from time to time.

Proposed change

Any income of a corporation established by a central, state or provincial act or of any other body, institution or association (being a body, institution or association wholly financed by government) where such corporation or other body or institution or association has been established or formed for promoting the interests of the members of the scheduled castes or the scheduled tribes or backward classes or safaikaramcharis or of any two or all of them.

Explanation.—for the purposes of this clause,—

(*a*) "scheduled castes" and "scheduled tribes" shall have the meanings respectively assigned to them in clauses (*24*) and (*25*) of article 366 of the constitution;

(*b*) "backward classes" means such classes of citizens, other than the scheduled castes and the scheduled tribes, as may be notified—

(*i*) by the central government; or

(*ii*) by any state government,

As the case may be, from time to time;

(c) "safaikaramchari" means a person engaged in, or employed for, manually carrying human excreta or any sanitation work;

There are various government agencies at national/state level established by a central, state or provincial act or of any other body, institution or association (being a body, institution or association wholly financed by government) where such corporation or other body or institution or association has been established or formed for promoting the interests of the members of the scheduled castes or the scheduled tribes or backward classes or safaikaramcharis.

It is hereby mentioned that safaikaramcharis primarily belongs to scheduled castes or the scheduled tribes or backward classes and are involved in sanitation activities which is the basis need of the country and also the main objective of the swacch bharat mission.

Going by the words of the existing provision of section 10(26B) of income tax act, 1961, the income of the agencies involved in working for the interest of scheduled castes or the scheduled tribes or backward classes are exempted from income tax and the agencies involved in working for interest of safaikaramcharis who again belong to the scheduled castes or the scheduled tribes or backward classes are being taxed by the income tax department.

The vary purpose of introducing section 10(26B) in the income tax act was to support the government agencies setup/being setup for the welfare of weaker section of society but should not be restricted to the agencies working for the welfare of only scheduled castes or the scheduled tribes or backward classes.

At various instances central/state government has also certified that the safaikaramcharis belongs to the scheduled castes or the scheduled tribes or backward classes for submission to income tax department.

It is therefore felt that in order to ease the process and to remove the hardship currently being faced by government agencies working for the welfare of other weaker section of the society not based on caste only but also on occupation like safaikaramcharis may also be included in the purview of section 10(26B) so that these agencies also avail the benefit of exemption of tax on marginal income from such activities.

9.14 <u>Issue</u>

Restoration of section 80CCF with higher limit

<u>Present position</u>

Section 80CCF of income tax act which provided deduction of Rs. 20,000/- on subscription to the notified long term infrastructure bonds was discontinued w.e.f financial year 2012-13.

<u>Proposed change</u>

Such infrastructure bonds evoked tremendous response from the small investors in the past. It is proposed to restore the section 80CCF with higher limit of around 1 lakh.This would bring more funds to the infrastructure sector which is the key for economic

growth. It will also enable mobilisation of funds for infrastructure sector from retail investors.

9.15 Issue

Suitable amendment in income tax act may be brought to facilitate new debt instrument of tax paid bonds

Present position

No such specific provision is in place though section 10 deals with exempt income.

Proposed change

The proposed tax paid bond would have the features of both the taxable bond and tax free bond. Like tax free bond, the interest on this bond would be exempt from tax in the coupon rate will be equivalent or slightly higher than the prevailing coupon rate / yield on the tax free bond. Government owned infrastructure finance companies like PFC may be allowed to issue such bonds. Hands of the investors. However, tax on interest income on this bond will be paid by the issuer of bond at the rate of TDS applicable u/s 193 (presently @ 10%) on interest income. The coupon rate will be equivalent or slightly higher than the prevailing coupon rate / yield on the tax free bond. Government owned infrastructure finance companies like PFC may be allowed to issue such bonds.

The main advantage of the proposed tax paid bond is that the govt. Will not lose the entire tax revenue on interest and issuer will be able to raise funds at a cheaper rate.

Miscellaneous

10.1 Issue

Adjustments made due to change in accounting policy

Present position

It is a normal practice in companies to change the accounting policy to bring in line with the standards issued by the institute of chartered accountants of India. Wherever such changes are made and there is reduction in profit, the assessing officer adds the

amount by which the profit has reduced. This is not justified since the change in accounting policy does not mean that the profit is underestimated. Further, whenever there is an increase in profit due to change in accounting policy, the same treatment is not given by the assessing officer.

Proposed position

The change in the accounting policy is as per the standards prescribed by MCA/ICAI. Moreover, the accounting policy has been consistently followed in subsequent years, no addition should be made in the taxable income. Whenever there is reduction in profit due to change in accounting policy and the accounting policy has been consistently followed in subsequent years, no addition should be made in the taxable income.

10.2Issue

Tax audit report form no 3CA -3CB- 3CD; rule 6g of the income tax rules, 1962

Present position

The revised tax audit form no. 3CA -3CB- 3CD vide notificationno.33/2018 dtd.20.07.2018.

Proposed position

I) **clause 34(a) relating to TDS:**

a) TAN-wise data is already available with income tax department, since it is being complied on the basis of e-TDS statements filed from time to time
b) This data is too voluminous.
c) And finally it may not result in any logical conclusion.

II) **clause 34(b) relating to furnish the statement of tax deducted or tax collected**:

Earlier i.e. prior to revised notification we had to furnish only the details of those statements which were furnished late i.e. after the due date but now as per the revised notification we have to furnish the exhaustive/complete details even if the assesse has furnished the statement before the due date.

The form should be simplified especially for big Indian corporate having multiple locations across India. While e-filing the form no.3CD only basic summarised information need to be filled in on the basis of duly audited paper tax audit report for proper checks & balances.

10.3Issue

Tax audit report form no 3CA -3CB- 3CD; rule 6g of the income tax rules, 1962

Present position

The revised tax audit form no. 3CA -3CB- 3CD vide notificationno.33/2018 dtd.20.07.2018.

Proposed position

Clause no 44 of form no. 3CD may please be reviewed as break- up of total expenditure of entities registered or not registered under the GST act is not relevant from the point of view of the income tax. The same may please be considered under the indirect tax compliances.

10.4Issue

Tax audit report form no 3CA -3CB- 3CD; rule 6g of the income tax rules, 1962

Present position

The revised tax audit form no. 3CA -3CB- 3CD vide notificationno.33/2018 dtd.20.07.2018

Proposed position

Reporting requirements under the proposed clause 30C where the assesse has entered into an impermissible avoidance arrangement as referred to in section 96 of the income tax act should be removed. As the PSU/Govt. Companies are subject to audit by C&AG in addition to statutory audit, this clause should not be applicable to PSU/govt. Company.

10.5Issue

Taxability of payment of interconnect usage charges (IUC) paid to international telecom operator.

Present position

The revised tax audit form no. 3CA -3CB- 3CD vide notificationno.33/2018 dtd.20.07.2018

Proposed position

Reporting requirements under the proposed clause 30C where the assesse has entered into an impermissible avoidance arrangement as referred to in section 96 of the income tax act should be removed.

As the PSU/govt. Companies are subject to audit by C&AG in addition to statutory audit, this clause should not be applicable to PSU/Govt. Company.

10.6Issue

Form 15G/15H submission

Present position

In a financial year customer will open or renew several term deposits account and is required to submit the form 15G/H every time a new/renewal account opened.

Proposed position

The forms format should be suitably modified so that customer shall quote CIF (customer information file) number instead of account number of each term deposit. Especially in case of senior citizens, for the purpose of submission of form 15H the senior citizen customers need to visit the branch every time a term deposit got renewed.

10.7Issue

Taxability of fund received for R&D purpose u/s 2(24)(xviii)

Present position

Finance act 2015 has amended the definition of income to include assistance in any form received from central/state government, or any authority.

Proposed position

The amendment should not be applicable to public sector undertakings. Public sector undertakings receive funds from central government for specified R&D purpose. If these funds would be treated as income of the company, it would create undue hardship on the companies and would increase the cost of research and development expenses.

10.8Issue

Interest rates disparity u/s244A

Present position

Department charges interest @ 1/1.5% p.m. whereas it allows interest @ 0.5% p.m.

Proposed position

Interest charged and allowed should be same. Taxpayer friendly.

10.9Issue

Verification of income tax return u/s 140(c) of income tax act, 1961

Present position

The income tax return shall be verified: in case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to verify the return or where there is no managing director, by any director thereof

Proposed position

The income tax return shall be verified: in case of a company, by any whole-time director. Presently, the return is being verified the managing director, if there is one. The managing director may not be having knowledge of income tax provision. Therefore, any director entrusted with responsibility of handling income tax compliance shall have the authority to verify the return of the company.

10.10 Issue

Compliance of ICDS

Present position

The CBDT vide notification no. S.O. 3079(E), dated 29.09.2016 has come out with new revised versions of the 10 ICDSs which shall apply for assessment year 2017-18 and subsequent assessment years. These tax accounting standards notified by the CBDT are not in sync with the accounting standards notified by the MCA.

Proposed position

Therefore, it is suggested that the burden of maintaining two sets of accounts may be done away with. The ICDS relating requirements should be incorporated in the income tax act and be part of accounting standards issued by the MCA. This will reduce to burden of compliances of the assessee as requirement of it act would be in sync with the accounting standards.

10.11 Issue

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

Present position

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

Proposed position

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

This will result in eliminating disallowance of genuine business expenditure. Further due to the inclusion of the expression “income from which does not or shall not form part of total income” in the amended sub rule (2) (ii) of rule 8D of the income tax rules, 1962

the income tax department also takes into account investments, income from which is not includible in the total income in spite of the fact that there may not be any income from such investments earned/accrued during the year. This is an undue burden on assessees which needs to be removed.

10.12 Issue

Exemption from coverage under place of effective management regulation.

Present position

Finance act 2015 introduced the concept of place of effective management ("**POEM**") which is a test of tax residency of a foreign company in India. If the poem of a subsidiary/ step down subsidiary is situated in India, it is to be treated as tax resident of India and liable to tax on its global income. The related guidelines were issued by the CBDT, ministry of finance vide circular no 6/2017 dated 24 january 2017.

The guidelines distinguish between companies carrying out active business outside India and other companies. The guidelines provide that the place of effective management in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India. However, if on the basis of facts and circumstances it is established that the board of directors of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person (s) resident in India, then the place of effective management shall be considered to be in India.

In case of central public sector enterprises ("**CPSES**"), there are concerns that measures to be taken from time-to-time by CPSES to ensure compliance with the applicable principles of management of Indian public sector entities specifically those relating to accountability and transparency and government of India guidelines could lead to tax disputes with respect to place of management. Further, the withdrawal of CPSES directors from foreign subsidiary boards, would adversely impact their ability to participate in the decision making of such entities including compliance with relevant government guidelines. The increase in compliance costs including that of additional overseas manpower is also a cause of concern. It is therefore for consideration that, in

the interest of effective implementation of government policies etc., subsidiaries of CPSES be exempted from poem requirements in India.

It is also to inform that CPSE can establish JVS and subsidiaries only after approval of NITI Aayog as per extant instructions. As such, such JVS and subsidiaries are established with explicit approval of the government.

Proposed position

Overseas subsidiaries of CPSES be exempted from poem requirements in India. This would ensure compliance with the applicable principles of management of Indian public sector entities specifically those relating to accountability and transparency and government of India guidelines. Further, CPSE's directors will be able to participate in the decision making of such foreign subsidiaries including compliance with relevant government guidelines.

10.13 Issue

Furnishing details of employer's bank accounts in which employees are signatories, rule 12 and form ITR-2.

Present position

In form ITR-2 prescribed by rule 12, an individual holding signing authority (including any beneficial interest) in foreign bank accounts at any time during the previous year, is required to report details thereof in item "e" of schedule-FA.

In the case of a company, the signing authority in its bank accounts needs to be necessarily delegated to an individual who if, often, an employee of the company. Similar practice is followed in all public sector companies also. An employee of a public sector company having signing authority in a foreign bank account of the employer company can, by no stretch of imagination, be said to have any beneficial interest in such bank account. However, since form ITR-2 requires reporting of signing authority (including any beneficial interest) in foreign bank accounts, details of even those accounts in which the signatory does not have any beneficial interest, need to be reported. Such reporting, typically, leads to issue of a notice calling for information and or scrutiny notice. While proceedings initiated through such notices in the cases of

public sector employees would get ultimately dropped since such employees do not have any beneficial interest in the foreign bank accounts of the public sector companies, it leads to infructuous work for the income tax department and undue hardship to such employees.

Proposed position

An exemption may by granted to the individuals who are employed in "public sector companies as defined u/s. 2(36A) of the act from reporting the details of foreign bank accounts of their employer public sector companies. This would avoid infructuous work for the income tax department and also avoid undue hardship to the employees of public sector companies.

10.14 Issue

Residential status of individual under sub-section (1) of section 6

Present position

As per sub-section (1) of section6 of the act lays down the conditions which, if satisfied by an individual, such individual would be said to be resident in India for the purposes of the act. Briefly stated, an individual is said to be resident in India in any previous year, if the assesse is in India in that year for a period or periods amounting in all to 182 days or more having within the four years preceding that year been in India for a period or periods amounting in all to 365 days or more, is in India for a period or periods amounting in all to 60 days or more in that year. It is provided by way of explanation 1 that, in the case of an individual who, being a citizen of India, leaves India in any previous year for the purposes of employment outside India, the aforesaid period of 60 days shall be substituted by 182 days. It is further provided by way of explanation 1 that, in the case of an individual being a citizen of India, who, being outside India, comes on a visit to India in any previous year, the aforesaid period of 60 days shall be substituted by 182 days. Thus, if a person leaving India for employment outside India is (a) in India for less than 182 days during the year in which such person leaves India, and (b) in a subsequent year in which that person, being outside India, comes on a visit to India and

is in India for less than 182 days during that year, such person is not considered to be resident in India for that year.

However, due to the use of the words “being outside India, comes on a visit to India”, there is uncertainty as to whether a person who ceases to be employed outside India during a previous year and is in India for 60 days or more, but less than 182 days, during that year, would be considered to be resident in India or not. There appears to be no reason why such a person should be treated differently in the year in which he/she returns to India on cessation of employment outside India, from the way such person is treated in the year in which he/she leaves India or comes on a visit to India. However, ambiguity in this regard could lead to disputes between the income tax department and assessees.

Proposed position

Explanation 1 to sub-section (1) of section 6 of the act may be suitably amended to clarify that, where a person who was employed outside India returns to India during a previous year, and is in India for less than 182 days during that year, shall not be considered to be resident in India in that year. This would avoid ambiguity and unwarranted disputes between the income tax department and assessees.

10.15 Issue

Suitable amendment in income tax act may be brought to facilitate issuance of tax free bonds.

Present position

No such provision is in place.

Proposed position

Retail investors are generally attracted to bond market for any tax incentive in the structure. Comparison of plain vanilla corporate bonds is done with bank FDs which provides much better liquidity. Thus, till we achieve the objective of strengthening of secondary market in corporate bonds, some kind of tax incentive may be required to attract retail investors towards corporate bond. To achieve this end, government owned

infrastructure finance companies may be allowed to raise funds through tax free bonds where interest (income) is tax-exempt u/s 10 of the income-tax act. Though there is loss of revenue for the government, it will help to increase retail participation in corporate bond market and also enable NBFCs like PFC to raise the funds at competitive rates.

10.16 Issue

Inclusion of bonds by infrastructure finance companies in section 80C(2) (xxii)

Present position

80c(2)(xxii) provides that any sum paid or deposited by the assessee being individual or HUF in previous year as subscription to such bonds issued by national bank for agriculture and rural development, as the central government may, by notification in the official gazette, specify in this behalf up to Rs. 1,50,000 from the total.

Proposed position

To amend the clause (xxii) of sub-section 2 of section 80c as under:-

'As subscription to such bonds issued by national bank for agriculture and rural development and any other public financial institution, as the central government may, by notification in the official gazette, specify in this behalf'. Besides NABARD, the benefit be broad based and bonds issue by government infrastructure financing companies be included in it as this will help in augmenting the resources for key infrastructure facilities like power

10.17 Issue

ITR and tax audit requirement in case of merger & acquisition

Present position

Presently, there is no clarity in law regarding the requirement of revision of ITR and tax audit in case an entity is merged with another entity and the appointed date is different than the effective date. It is plausible that the appointed date for merger could be in another financial year and the effect of merger takes place in other financial year. There arises a question regarding the obligation of filing revised ITR along with tax audit report

of merged entity from appointed date or the year in which merger was effective (in case both are different).

Proposed position

With no clarity in law it becomes subjective matter. It is proposed that clarity may be brought in section 139 in respect of obligation of filing of ITR of merged entity. It may be clarified that ITR of merged entity needs to be filed from the year in which such merger becomes effective. This will lead to more clarity in law relating to ITR and tax audit requirement in case of merger & acquisition. Further, it will reduce tax litigations.

10.18 Issue

Section 72 –carry forward and set off of business losses

Present position

Business losses can be carried forward for set off against profits for a maximum period of 8 assessment years.

Proposed position

As per national steel policy 2017, govt. Of India is aiming to build a globally competitive industry with a crude steel capacity of 300MT by 2030-31 .to achieve this target, every steel company doubling its capacities and making huge investment resulting to huge depreciation claim. Though there is negative taxable income due to huge deprecation claim, companies are supposed to pay mat u/s 115JB. The slowdown in auto industry, slow pace of infrastructure and construction activity profit margins for steel companies are squeezed .besides above, due to its inherent cyclical statutory time limit of 8 assessment years. Hence to uplift steel industry in particular, it is proposed to amend section 72 suitably. The amendment will help to sustain the domestic steel industry performance.

10.19 Other proposals

1. Solar power and wind power are bound to become prominent source of energy in future. Since traditional sources of energy like oil, gas, coal etc, may not last for a long time. Solar power & windmill power may provide solution to the energy crisis. It is,

therefore imperative to promote the generation of renewable sources of energy like wind power & solar power in order to meet energy need of the country. However, depreciation rates were cut down from 80% to 40% in these categories. In order to promote renewable sources of energy like solar/wind power, it is suggested to raise depreciation rate again to 80% in these categories.

2. Govt. Has recently introduced lower rate of tax of 22% for corporate without claiming certain exemptions/deductions. However, it has been given as one time option i.e. If a corporate opts for lower rate of tax, it can never get back to normal rate of tax. It is suggested to review the same and allow the corporate to opt once in five years so that if it wants to get back to normal rate of taxation, it can.

3. Depreciation u/s 32(i): power transmission may also be included for availing straight line basis of depreciation (which is available for power generating units) in accordance with appendix ia of income tax rule, 1962.

4. Weighted deduction/ income exemption for financing of renewable power projects: current regime is encouraging green power through renewable energy projects. For speedy and sustainable growth of renewable power projects and arranging matching funds requirement for these projects, an innovative weighted deduction as provided for research and development expenses may be introduced wherein interest expenses incurred for financing these projects be allowed to the tune of 125% of such expenses under business expenses head. This will reduce effective financing cost to renewable energy promoters and in turn enhance viability of renewable power projects.

Weighted deduction of 125% of interest expenses for financing renewable energy projects be introduced.

5. Income tax refunds:
tax payers are concerned with the substantial pending refunds at the tax offices on account of both income tax and TDS. There is a higher withholding tax and the departments dealing with withholding tax and those dealing with assessments are

different and it has been gathered that each officer act as per their own separate targets. Despite issue of lower rate tax certificate, often withholding tax is higher than the tax liabilities resulting in tax refund. Further it has also been gathered that various government departments who are not regular in filing the proper TDS return which results in non-appearance of TDS amount on NSDL site, causing denial of refunds by the tax department for these amounts.

it has also been observed that assessing officers resort to high pitched assessments to meet their targets and try to avoid making tax refunds, even when it is overdue as per law. The assessees are constrained to get into prolonged litigation by way of appeal and have to face major difficulties in getting refunds which are rightfully due to them.
It has also been observed that if a case has been selected for scrutiny, refunds process stops immediately, blocking the funds of assessee and this practice of delay in refund is against the policy of ease of doing business which is widely being propagated by out govt. Hence it is suggested that necessary instructions or guidance are issued for prompt refunds of TDS on submission necessary certificates by assessee within scheduled time

7. Online adjustments of demands**:** it is a welcome step that all processes are being digitized by the government. Some of the old demands that are appearing in the system, should have been squared off by the department after passing of appeal effect orders etc. Are still appearing in the system giving unnecessary hardship to the assesses.

SECTION B:

INDIRECT TAXES

I. GOODS AND SERVICE TAX

A. TAXABILITY

1.1) Issue

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

Present Position

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

Proposed Changes

It is suggested that to avoid any ambiguity, suitable clarification may be inserted in the GST law that applicability of rate of GST on LPG and SKO between OMCs, Stock

transfer from one state to another and import would depend upon ultimate use of the LPG and SKO.

1.2)Issue

Scope under GST Regime.

Present Position

At present there is no GST on Electrical Energy though Electricity is goods as per Law.

Implications

All the assessee's are required to file the return under GST. However, though the Power Generation Companies are doing the same, they are unable to utilize GST credit. Once GST credit accrued on Capital expenditure as well as revenue expenditure becomes utilizable, the power tariff will become cheaper.

Proposed Changes

Electricity may be considered to be taxed at a Zero rated goods so that the ITC accrued to the generating companies can be utilized and the benefit be passed on to the end users.

1.3)Issue

Imposition of GST on allocation of Expenditure & Stock Transfer in case of Electrical Energy Companies.

Present Position

Under GST the stock transfer and expenditure allocation within the organization is subject to GST.

Proposed Changes

The Electrical Energy is exempted from the GST. Hence, there is no taxable output from which the GST paid on the stock transfer can be set off. Hence, necessary exemption / modalities may be put in place to avoid payment of GST on stock transfer / expenditure allocation within the organization especially in case of electricity companies and such other entities which have no output for levy of GST.

This will remove the additional burden of GST in stock transfers within the same organization.

1.4)Issue

GST on Deemed Export of Goods.

Present Position

Supply of capital goods under Deemed Exports attracts GST at present.

Implications

All the assessee's are required to file the return under GST. However, though the Power Generation Companies are doing the same, they are unable to utilize GST credit. Once GST credit accrued on Capital expenditure as well as revenue expenditure becomes utilizable, the power tariff will become cheaper.

Proposed Changes

Electricity may be considered to be taxed at a Zero rated goods under GST so that the ITC accrued to the generating companies under Deemed Exports can be utilized and the benefit be passed on to the end users.

1.5)Issue

Reverse charge mechanism.

Present Position

The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient.

Proposed Changes

There shall be a threshold limit set for the taxable value of goods or services or both supplied by the unregistered supplier to a registered person, only above which reverse charge mechanism shall apply.

Implications

Beneficial for the registered person (recipient).

1.6)Issue

Inclusion of Petroleum Products& Natural Gas in GST.

Present Position

Presently, five petroleum products are kept outside GST till it is notified for inclusion on the recommendation of the Goods and Services Tax Council.

Proposed Changes

Crude Oil is an Industrial input for production of petroleum products [MS (petrol), HSD, ATF,etc]. Hence, petroleum crude (crude oil) should be leviable to GST. Likewise, Natural gas, which is primarily an Industrial fuel, should also come within GST. This will allow E&P Companies to utilize the credit for GST paid on inputs and avoid stranding of taxes. Further, this will also help in reducing the cost of production of MS, HSD and ATF etc.

1.7)Issue

GST on Royalty payment for assignment of right to use natural resources.

Present Position

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

Proposed Changes

The Royalty payment made by E&P companies to State Governments under the provisions of Section 6A of the ORD Act,1948 is in the nature of taxes and not consideration for any services received/receivable from the Government. Suitable clarifications may be issued to exempt royalty paid on crude oil and natural gas from applicability of GST.

This will provide relief to E&P sector which is already stressed by the increasing burden of stranding of taxes and also avoid any future litigation.

1.8) Issue

Taxation of Joint Venture.

Present Position

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

(b) Unincorporated Joint Venture – Profit Petroleum.

Proposed Changes

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

(b) Clarifications requested on the taxability of profit petroleum for the period from 01.07.2017 to 24.01.2018 in view of the Notification no 05/2018-CT(Rate) dated 25.01.2018, which exempts Govt.'s share of profit petroleum w.e.f. 25.01.18.

1.9) Issue

GST on Liquidated Damages.

Present Position

The phrase 'Liquidated Damages' has neither been defined in the GST Act nor in the Contract Act. As per Section 7(1)(d) of CGST Act, all the activities referred in schedule II would be deemed as supply of goods or services. Under the said schedule, the following entry has been deemed to be a service:

- Clause 5(e): 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'

The scope / meaning of the phrase 'tolerance of an act' has not been defined under the GST.

Proposed Changes

Different tax positions and practices are undertaken by different industries, it is therefore, requested that a clarification may be issued in this regard that GST is not applicable on Liquidated Damages.

1.10) Issue

Applicability of GST on Corporate Guarantee provided to an overseas subsidiary free of cost.

Present Position

Companies have to provide corporate guarantee/performance guarantee to various regulatory for acquisition of block or PI through its subsidiary or Joint Venture.

As per section 7(1) (a) of the CGST Act 2017, a supply constitutes all forms of supply of goods or services or both for a consideration by a person in the course or furtherance of business. Further, para 2 of Schedule 1 provides activities to be treated as supply even if made without consideration between related person when made in the course of furtherance of business.

As such, the supplier undertakes the risk for its group companies and thus, is providing a service. Also, since supplier does not receives any payment for such services henceforth, the same will not qualify “exports” and thus, will be treated as “inter-state” supplies as per section 7(5)(a) of IGST Act.

Implication

As per Section 7(5)(a) of IGST Act, 2017, such transaction would qualify as inter-state supply and will be liable for the payment of GST on such Corporate Guarantee. Further, per Rule 27 of the CGST Rules, 2017, the value of such transactions shall be the open market value of such supplies which is practically quite challenging to determine as most of the times such tenure of such guarantee is up-till the life of the project (i.e. for various years), accordingly, the valuation has to be made as per rule 30, which is 110% of cost of provision of service which is quite high and will lead to undue hardship and increase in litigations.

Proposed Changes

Pre-GST such transactions were not liable to service tax, as such corporate guarantee's when provided by a company to its subsidiary it was neither treated as exports nor taxable.

Therefore, such specific exemption may also be issued under GST Act with full credit eligibility to the supplier &alternatively, valuation for such self-supplies to be treated as "Nil".

1.11) Issue

Abolition of sub-section (6) of Section 18 of the CGST Act, 2017.

Present Position

As per the said provision, in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the tax payers need to pay tax as higher of:

- tax on transaction value determined under section 15 of the CGST Act, or
- input tax credit reduced by certain percentage points (5% per quarter) in the manner prescribed.

Implications

Difficulties are being faced in complying with the provisions of sub-section (6) of section 18 of the CGST Act on account of the following reasons:

- The intent of sub-section (6) of section 18 of the CGST Act is to ensure that the tax is paid on the open market value of capital goods. The manner prescribed for reversal of ITC assumes the useful life of all capital goods as 5 years. However, to provide for the payment of tax based on a fixed assumption of considering the life of all the capital goods as 5 years is restrictive.
- The useful life of the assets capitalized in the books of account is determined in accordance with Schedule II of the Companies Act, 2013. The said Schedule provides for the determination of the useful life depending on the estimation of the period for which the management expects to derive economic benefit from the usage of capital goods.

Moreover, where the capital goods are disposed of, the value is negotiated with the scrap dealer. The value so negotiated is the open market value. The tax is, accordingly, payable on such value. It would be prejudicial to the tax payer to require him to pay tax in excess of the tax payable on the consideration which the capital goods being disposed of would fetch from the market. The additional tax payable would become a cost to the tax payer as the same is not being recovered. Hence, only the transaction value as declared on the invoice should be considered for the determination of tax on supply of capital goods.

Further, owing to the nature of business, there are many capital goods which need to be relocated frequently to another State. Since the date of capitalization of goods accounted for in the books of account shows the first date of installation of such goods, it is not possible to keep a record of the duration for which such goods have been installed later where such goods are subsequently relocated to a different State. Therefore, it is not possible to calculate the amount of ITC to be reversed owing to the unavailability of the period for which the capital goods have been used in the last location.

Proposed Changes

GST be required to be paid only on the amount that would be realized on the sale of capital goods.

1.14) Issue

GST levied on transactions between two distinct persons of same organization.

Present Position

As per CGST Act 2017, each and every establishment of an organization located at different states should be registered and treated asa Distinct Person. However w.e.f, February 2019 every unit of the organization may take separate registration and each of them will be treated as distinct person. So any transaction between two distinct person is liable for GST. In that case, an organization transferring to other unit/ project of that organization, which are independently registered under GST, then such transfer of

expenditure is liable for GST. Secondly, service by an employee to the employer in the course of or in relation to his employment is out of preview of GST as per Schedule III. But when employee expenditure of H.O. of the organization is transferred to other distinct unit (Inter or Intra), then such allocation of expenditure is liable for GST as per CGST Act 2017. The employees of the organization are qualeentity of the corporation and not quarter wise or unit wise registration, hence, cost plus computation for employee cost should not be considered for living of GST.

The organization where output is taxable, the impact of ITC on cross charge has nullified because of availability of ITC, but if the output of the organization is exempted viz. generation of electricity, then ITC cannot be availed by the organization as per Section 17(2) of CGST Act 2017 and thus GST is levied twice on that organization i.e., at the time of inward supply of good & service and again on transfer of expenditure to other distinct units registered separately under GST. So GST is borne by the organization twice which may ultimately not matched with the very basic conception of GST i.e., to avoid cascading effect tax.

Proposed Changes

Firstly, Intra / inter transactions (after amendment w.e.f., 01.02.2019) between distinct person of organization should not be liable for GST, especially for transfer of H.O./service center expenditure to its other units/ projects though they are distinct person.

Secondly if it is taxable then ITC must be allowed without conditions laid down in section 17(2) of CGST Act 2017 i.e., GST on inward supply of goods & service against the allocable expenditure should be fully allowable for ITC benefit without conditions at Section 17(2) of CGST Act 2017. Allocation of employee expenditure should not be subjected to GST if allocated to different unit/project of the organization registered as distinct person.

1.15) Issue

GST payment on raising the invoices and not on realization.

Present Position

Under GST LAW, the GST is payable by 20th of the following month of raising the invoices even though the invoices are not accepted by client and/or the payment for the invoice has not been received by the supplier. Normally for the companies like TCIL who are having most of its clients as Government department, the payment of the invoices are received in about 3-6 months' time of raising the invoice due to various procedural issues. Further in many cases, the invoice is accepted by the client for the lesser amount than raised amount but the full GST is already paid to Govt. on the full invoice value. This results blockage of working capital and the track record has be kept for the actual amount realized.

Proposed Changes

Hence, if possible the GST may be made payable on realization of invoice by the supplier for actual received amount **as was done under service tax regime till 31.07.2011**.

B. RATE OF GST

2.1) Issue

Increase in GST Rates on goods like railway wagons, coaches, metros rolling stock from 5% to 12%.

Present Position

Supplies of railway wagons, metro coaches, etc are charged with 12% GST w.e.f 01-10-2019.

Implication

The cost of metro projects for metro developers like BMRCL, KMRCL, DMRC, etc will increase as they are not eligible for claiming GST ITC on inward supplies as their outward supplies is exempted from GST which in turn will be lead to increase project

cost which would make the mass transportation of common use of masses costlier impacting the common man. Besides, it will impact the local domestic manufacturers of Rolling stock of metro cars due to shortage of resources with such metro developers as their buying capacity with same resources will come down and will have adverse impact on such Rolling stock suppliers.

Proposed Changes

It is proposed to reduce the rate to original level of 5%.

2.2) Issue

Applicability of varying % of IGST ranging from 5% to 28% on parts, components, LRUs, etc. for Manufacturing of Aircraft & Repair or Overhaul of Aircraft.

Present Position

In Customs assessment under Notification No. 50/2017 dt. 30.06.2017, S .No. 545 uniform rate of Custom Duty is applicable irrespective of Custom Tariff heading of the items, provided items are parts of Aircraft. However, with application of specific Tariff headings, applicable IGST varies from 5% to 28% though all items are solely or principally used for Aircraft Manufacturing, Repair or Overhaul.

Implications

The GST applicable at the point of sale of Aircraft or Aircraft Services remains unchanged. Though there will be reduction in the extent of IGST incurred at the point of import the same is compensated in the form of extra tax payable after availing Input Tax Credit (ITC).Hence, there is no reduction in tax collection for the Government due to this proposed change.

Proposed Changes

Since items primarily meant for Manufacturing of Aircraft & Repair or Overhaul of Aircraft, on the same lines of Custom Duty, even uniform IGST of 5% could be considered.

2.3) Issue

Reduction of GST on parts of Aircrafts Engines.

Present Position

Presently Aircraft Engines falling under CTH 8411, attracts 5% GST. However, the IGST rate applicable on Aircraft Engines parts is 18%.

Proposed Changes

This also may be reduced to 5%.

2.4) Issue

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

Present Position

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

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

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

Proposed Changes

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

2.5) Issue

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

Present Position

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

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

Proposed Changes

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

2.6) Issue

GST on on-shore works contracts relating to oil and gas exploration and production.

Present Position

GST rate applicable to on shore and off shore works contract initially was 18%. The GST council has decided in its 22nd meeting held on 6th October,2017 to reduce the GST on works contract services to 12% in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles.

Proposed Changes

To maintain uniformity between offshore and onshore operations, it is requested that GST on on-shore works contracts relating to oil and gas exploration and production (E&P) should also be reduced to 12%, in line with offshore works contract.

2.7) Issue

Increase in cost of other Services as GST is levied @ 18%.

Present Position

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

Proposed Change

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

2.8) Issue

Uniformity in merit rates between Onshore and Offshore Rigs.

Present Position

Offshore Rigs are classified under HSN 8905 which is chargeable to merit rate of GST at 5%. Whereas onshore rigs are classified under HSN 8430 which is presently chargeable to merit rate of GST at 18%.

Proposed Change

To avoid such wide disparity of rate it is requested that both may be brought under the uniform rate of GST at 5%.

2.9) Issue

EPC Contracts for Hydro Power Projects.

Present Position

Rate of GST on Equipment's/ other Supplies (Cement/Steel etc.) used for Hydro Power Project ranges between 18% to 28% which results into considerable increase in construction cost of Hydro Power projects and consequential increase in per unit cost of energy.

Proposed Change

All Supplies/ goods used in Hydro Power Projects may be taxed @ 5% GST rate. Further there may be separate valuation rules in above cases so that the benefit of concessional rate i.e., 5% on supplies/ goods used for Hydro Power Projects can be actually by NHPC. This would result into reduction in construction cost of Hydro Power Project and would render Hydro Power Projects viable by reducing per unit cost of energy.

2.10) Issue

Reduced rate of tax for re-gasification services.

Present Position

Re-gasification service is subject to tax GST at 18%.

Proposed Change

Support services to exploration, mining or drilling of petroleum crude or natural gas or both fall under the HSN code of 9986 which is taxed at the rate of 12%. Further, vide circular no. 114/33/ 2019 it has been clarified that scope of the above-mentioned entry would be governed by the explanatory notes to service codes 998621 and 998622 of the Scheme of Classification of Services. However, re-gasification services fall under the HSN code of 999799 and taxable at the rate of 18%.

Further, LNG being a clean fuel is mainly used by power and other priority sectors in the country. The intent of Government is also to promote import of LNG considering the shortage of gases in the country. It is thus suggestive, to bring re-gasification services at par and the same should be taxable at the rate of 12%.

This would result in reduction in cost to end users of Natural Gas, like Power, Fertilizer, CGD, Petrochemical, Oil Refineries etc.

2.11) Issue

Works contracts service.

Present Position

Works contracts service (SAC 9954) are taxable at the rate 18%, as per the notification no. 2017- central Tax (Rate) dated 28.06.2017. However Government vide notification no. 27/2017-Central Tax (Rate) Dated 21.09.2017 has reduced the GST rate on works contractsto 12% forwork contract services provided to Central Government, State Government, Union Territory, Local Authority or Government Authority .

Proposed Change

It is proposed that similar reduction in GST rate may be also be provided to PSUs, engaged in Infrastructure Projects (such as Power projects etc.) in line with the rate of tax applicable to works contract services provided to Government entities mentioned above. This will result in decreasing the cost of Project, resulting in lowering the cost of power, thereby benefiting the economy at large.

2.12) Issue

Anomaly in GST rates for supplies of steel for warships.

Present Position

As per Finance Ministry Notification no.1/2017-Integrated Tax (Rate) dated 28th June 2017, parts for items under HS code 8906 are charged GST @5%. This leads to an anomalous situation wherein steel products such as plates (HS chapter 72) must be supplied by vendors at 18% GST, while the same steel with a minimal working by an intermediary processor is supplied at 5% GST for naval warships.

This leads to an inverted duty structure wherein the raw material attracts a higher duty rate than the processed material and needs to be addressed.

Proposed Change

It is thus suggested that the government urgently take steps for necessary corrections in tax structure on above aspect.

2.13) Issue

Reduction in GST rate on Steel.

Present Position

Current Economic situation has adversely impacted sales in the Infrastructure and Automobile sectors, which are the major consumers of steel. Additionally, capital expenditure by industry at large has also been kept on hold. As a result, consumption of steel has been come down drastically, which in turn has affected revenues of all Steel manufacturers including RINL. Due to reduction in the demand and consecutive drop in prices, the average Net Sales for November, 2019, by almost 25%.

Owing to slump in sales, rationalization in production volumes became necessary. As such, underutilization of capacities has also led to further reduction in the bottom line of major steel manufacturers. In case of RINL, the impact due to lower volumes was around 17% when compared with corresponding period of last year. Due to compounded effect of above phenomena, total impact on the gross sales value can be estimated around 30 to 35%.

In the current scenario, following drastic cut in the contribution (net selling in the current scenario), following drastic cut in the contribution in price by Steel manufacturers.
As a case in example, RINL is able to make just around Rs.2000 per Mt of contribution which is insufficient to cover the fixed expenses in the cost of manufacturing steel and thus, incurring huge gross/operating loss.

With this background, it is evident that the steel industry requires immediate support for substance.

Proposed Changes

In order to ensure full utilization of capacities in the steel sector, incentives for increased consumption of steel needs to be considered. One of the effective ways to do so could be by reduction of GST rate on iron and steel products.

Therefore, present GST rate on iron and steel product at 18% may be brought down to 12% rate category till normal consumption levels are achieved.

2.14) Issue

Classification of items under multiple GST rate structure.

Present Position

As decided by Government, effectively there will be six rates of GST i.e., zero rate, 5%, 12%, 18%, 28% and Cess on demerit goods.

The multilayered structure has created classification issues and complicated matters from transaction prospective especially for companies dealing with more than one product along with the selection of correct HSN number for goods and SAC number for services.

Proposed Changes

The Government should make clear decision in classification of items so that the doubts are minimum.

2.15) Issue

Reverse charge under GST regime.

Present Position

Under the previous regime, reverse charge was applicable only on service tax and service tax is payable by the service recipient for services of Rent-a-cab, Legal service, Manpower supply, import of taxable service, security services etc.

But in case of GST regime, the reverse charge will be applicable both on goods & services i.e. the receiver of goods and services, being a body corporate, would be liable to pay tax under GST under reverse charge in case the supply of goods and services are received from a non-body corporate/ unregistered dealer.

This will complicate the accounting procedures as the assessee will have to keep a track of all receipt of supply not only for services but also for receipt of supply of goods.

Proposed Changes

The Govt. may look into the same any minimize the complexities.

2.16) Issue

GST on components used in Battery Energy Storage Systems (BESS).

Present Position

GST on components used in Battery Energy Storage Systems (BESS) is taxed @ 18%.

Implication

Unlike components in solar photovoltaic (SPV) plant, which attract GST of 5%, the components of BESS attract GST at higher rates viz. @ 18%. However, both Solar PV plant & BESS are part of green/clean energy initiative, and hence, the GST rates for BESS should be 5%.

Proposed Changes

GST rate on components used in Battery Energy Storage Systems needs to be revised to 5%.

2.17) Issue

18% Rate of Tax for Civil works.

Present Position

In pre-GST, regime effective rate of indirect taxes (VAT & Service Tax) was 6%. However, the same has been increased to 18% as civil work are treated as service under GST.

Implication

The reduction shall reduce burden of cash requirement for companies dealing in infrastructure projects including reduction in overall cost of the projects.

Proposed Changes

It is suggested to reduce 18% rate of tax for civil works to 5%.

2.18) Issue

Applicable Rate of Tax on goods supplied to Solar Power projects

Present Position

Vide notification No. 25/2018-Integrated Tax (Rate) dated 31st Dec'18 (amendment in IGST rate notification for goods), an explanation has been inserted to S.No. 234 of the notification that 70% of the gross consideration charged for supply of goods and services shall be deemed as the value of supply of goods and remaining 30% shall be deemed as value of taxable services.

Implication

Under the supply of goods contract, various goods are being supplied which may or may not fall under CH 84, 85, 94 as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). As such it is understood that all the material supplied, whether or not covered under said chapter heading shall be taxable @ 5% and services @ 18%, thus effective GST rate works out to be 8.9% (5% on 70%+ 18% on 30%). Otherwise, the taxability of goods, other than CH 84, 85,94 goods cannot be ascertained.

Further, the value of supply of goods under such contracts is around 90% as compared to 70% as stipulated in the notification leading to increased tax burden / cost of solar power plant.

Also, since supply of such goods is being made from multiple GSTINs, thus applying 70% cap on the value of goods supplied from such GSTINs would be practically difficult.

The above issue shall impact the industry at large since in case of a Power Plant, where presently the output, i.e. electricity is exempt from GST and thereby GST ITC is not available to customer, the higher incidence of tax will unduly increase the cost of setting up of the solar Power Plant and thus likely to cause hardships to the common mass of the country due to corresponding increase in price of Electricity.

Proposed Changes

Suitable amendment may be made in S. No. 234 of the rate notification that where the goods mentioned in this s.no., are supplied separately from services under separate /divisible contract(s), the GST rate on supply of goods shall be as applicable as per respective chapter heading / classification on the actual value of goods supplied.

3)EXEMPTIONS

3.1) Issue

Exemption to movement of defense goods between distinct persons for repair.

Present Position

HAL has multiple divisions across India which undertake specific functions. For example, HAL Koraput Division specializes in manufacture and repair of engines of Russian Origin, HAL Lucknow Division specializes in manufacture and repair of accessories of the aircrafts/engines, HAL Nasik Division specializes in final assembly, manufacture and supply of Aircrafts and so on.

Therefore, if Indian Air Force sends any aircraft/helicopter, in which only engine requires repair. The aircraft is given to HAL Nasik Division, where the engines is dismantled and sent to HAL Koraput Division for repair. Likewise, specific parts of Aircraft is first dismantled in Nasik and then supplied to respective HAL sister Divisions to carry out the specified activities. After the repair, the engine/parts are sent back for incorporating into the aircraft. The supply of such parts within HAL Divisions, is made liable to tax as per Item 2 of Schedule I of CGST Act 2017 which relates to deemed supply in case of

supply of goods between related persons. Therefore, supply of goods between HAL Divisions are liable to GST.

Proposed Changes

A clarification was provided vide Circular 1/1/2017 of IGST dated 7th July 2017 whereby it was clarified that interstate movement of goods of various modes of conveyance for carrying goods or passengers or for repairs and maintenance, within distinct entities, were clarified as not to be treated as supply and therefore not taxable. The said Circular lists down various modes of conveyance on which the exemption is clarified to be applicable. The circular clarified that movement of Aircrafts meant as mode of conveyance was exempt. The said exemption, may be extended to movement of Aircraft and Helicopter parts, which at present is only available for Aircrafts as a whole. Further, aircrafts other than those meant as mode of conveyance, such as defense aircrafts and helicopters may also be included.

3.2) Issue

For job work, if the materials are sent to outsourced vendor as a part of outsourcing activities, as per GST Act, the items should be brought back within a period of one year for claiming exemption.

Present Position

Presently, goods sent out for job-work is required to be returned within one year.

Implication

Typically, in aviation section, activities involved in job-work activity requires more time than a regular job-work activity. Specifically, in defense aviation, due to requirement of adhering to military standards, the time take for job-work activity is much higher.

Proposed Changes

The time-limit for return of goods, which are meant for defense use, sent for job work may be increased.

3.3) Issue

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

Present Position

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

Proposed Changes

In this regards, we suggest for granting exemption/ lowering GST rate on procurement of major capital goods, input and input services for use in refining, marketing &distribution of petroleum products in order to minimize the impact of GST, like

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

3.4) Issue

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

Present Position

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

Proposed Changes

Subsequent movement of goods which is intrinsic to E&P operations should be exempt from GST. Moreover, it is requested that once goods have been previously imported or

procured under EC/DGH certificate, further movement of such goods within the same PAN No. should not require any EC/DGH certificate.

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

3.5) Issue

Construction of Subansiri Lower Hydroelectric Project in the States of Arunachal Pradesh and Assam

Present Position

NHPC's one Construction project namely Subansiri Lower Hydroelectric Project [2000 MW] is scattered into two states namely Arunachal Pradesh and Assam. NHPC, as an abundant caution, has obtained separate registrations in both the above states. During the course of construction, NHPC transfers the goods from place of business located in Arunachal Pradesh (having a GSTIN) to its business located in Assam (having a separate GSTIN) and vice versa.

Proposed Changes

Considering the practical difficulties of transfer of goods in such a case, a clarification is required regarding non-levy of GST on above transactions.

Implication

Above proposal would result into removing practical difficulties in execution of such project.

3.6) Issue

Exemption from GST on activities related to operation & Maintenance of Hydro Power Projects.

Present Position

Presently, there exist no exemption under the provision of GST Laws in relation to Operation & Maintenance of Hydro Power Plants. Rate of GST on service is 18% which results into considerable increase in Operation & Maintenance Cost of Hydro Power Projects and Consequential increase in per unit Cost of power Generation.

Proposed Changes

It is proposal all the activities (service) relating to operation & Maintenance of Hydro Electric Power Plants may be taxed at 5% GST.

Implication

Above proposal would result into reduction in O&M cost of Hydro Power Stations which will reduce the cost of Generation and ultimately the tariff to the Consumers.

3.7) Issue

Fee under GoI schemes be exempt from GST.

Present Position

Various schemes have been launched by Govt. of India for improvement of power sector. For implementation of such programs CPSUs / State PSUs are appointed as nodal agency for which certain fee is paid by the Govt. to CPSUs / State PSUs which is currently subjected to GST. However, grants received by such entities is exempted from GST.

Proposed Changes

It is proposed that the nodal agency fee / other sums paid by GoI to the nodal agency for implementation of its schemes may be kept outside the purview of GST by amending the Notification -12/2017-Central Tax (Rate).

3.8) Issue

Taxation of Employer-employee transactions which are in the form of perquisites

Present Position

As per Schedule III, services by an employee to an employer in the course of or in relation to his employment shall neither be treated as a supply of goods nor supply of services. While it clarifies that services provided by an employee to an employer should be exempt, there are various transactions where for certain perquisites, the employer recovers some amount from the employees.

Given that only services provided by an employee have been clarified to not qualify as "supply", it appears such recoveries by employer would qualify as "supply"; the same being services by an employer.

The above issue becomes graver on account of employer and employee being included in the definition of related persons and thereby, entailing valuation rules applying as well i.e., open market value. On account of GST being charged and that too on a higher value, there is a GST cost as well being incurred on perquisites by employer to an employee.

Proposed Changes

It is recommended that all transactions between an employer and employee be clarified as neither supply of goods nor supply of services.

3.9) Issue

Remove GST implications on cross charge of Intra-company services

Present Position

Services from HO to branches or other factory locations (or vice versa) within same company (PAN) must not be subject to GST levy as this involve difficult task to value the goods/ services supplies as well as it causes cash flow issues to business. In either case, these are fully creditable supplies and therefore, except by adding to transactional costs and blocking the working capital of business, there is no incremental revenue inflow to the Government. Further, it may also be clarified that where an employee of a legal entity acts for more than one unit of such legal entity, there is no supply by one unit to another unit of such legal entity and accordingly, no GST is chargeable on such cross charge.

Any levy on this transaction is merely going to increase the compliance burden of the Tax payer without any revenue to the Government considering the entire transaction would tax neutral.

Proposed Changes

- Supplies from HO to branches or other factory/ offices locations within same company should not be subjected to GST levy.
- Service by employees of a legal entity to its various location (GSTINs) should be kept out of purview of GST.
- To remove the excessive compliance burden, the concept of centralized registration which was prevalent for the service sector during the service tax regime be introduced.
- Services rendered by employees of the management office to the employer (branches of same office located in other States) as rendered in the course or furtherance of business be considered as activities which shall be treated neither as supply of goods nor as supply of services and should be included under Entry I to Schedule III of CGST Act, 2017.
- Modify ISD Rules to include distribution of Input Tax Credit of Goods used for furtherance of business.

3.10) Issue

Non-availability of exemption from IGST on import of goods for projects approved by Govt. of India & financed by ADB, World Bank etc.

Present Position

After implementation of CGST Act 2017 as on 01 July 2017, any exemption of CVD & SAD on imported of goods have been abolished vide Not. No. 44/2017 – custom dated 30.06.2017 because CVD & SAD subsumed in GST & IGST has been levied. Levy of IGST on import has led to disparity in tax treatment on imported of goods financed by multi-agencies, since exemption has not been extended in GST regime (which was existed in pre-GST regime)

Proposed Changes

The company request that suitable notifications should be issued to grant exemption from IGST on import of goods for projects financed by multilateral agencies approved by GOI, with same procedural requirement as given in Notification 84/97- Customs dated 11.11.1997 with subsequent amendments. Further, benefit shall be extended to project contractors and sub-contractors also if they import goods exclusively for the Govt. Approved Project and funded multi-lateral agencies.

4) POINT OFTAXATION

4.1) Issue

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

Present Position

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

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

Proposed Changes

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

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

- ✓ export of goods or services or both, or
- ✓ supply of goods or services or both to a Special Economic Zone developer SEZ unit
- ✓ supply of Aviation Turbine Fuel to a foreign going aircraft"

5. Input Tax Credit(ITC)

5.1) Issue

10% Restriction in availment of Input Tax Credit (ITC) on invoices not uploaded by vendors in GSTN.

Present position

The rule has been amended from 20% to 10% restricting availment of ITC on invoices to the extent of 10% not uploaded by the suppliers.

10% will be calculated on the eligible ITC available in GSTR 2A as on 11th of every month for invoices uploaded by the suppliers.

Proposed Changes

The restriction of 20% should be removed and existing provision should be retained.

This will lead to severe cash flow issues with industry as their credit will get restricted for no fault of their thereby impacting their cash flows and consequential impact on financing cost. As per the existing rules, GST ITC has to be reversed with applicable interest on those invoices which are not flowing in GSTR 2A.

It will avoid litigation as GSTR 2A is a dynamic report and there is no provision in the GSTN to download GSTR 2A as on 11th of every month.

Further, this will have impact on those cases where many assesses have opted for filing quarterly returns resulting in cash payment which will affect working capital of the

company since such credits will get reflected only after the end of quarter thereby delaying the availment of ITC .

5.2) Issue

Change in GST Set-off rule for exhausting IGST ITC before utilizing of CGST / SGST ITC

Present position

The new rule allows utilization of IGST ITC in full in the following sequence

a) Output Tax of IGST
b) Output Tax of CGST
c) Output Tax of SGST

Even for CGST/SGST output liability, IGST ITC has to be set off first, if available.

Implication

This will severally impact the companies like BEML where interstate procurements are more and have both local and interstate supplies where the new set-off rule will result in deferment the utilization of CGST and SGST ITC balances over several tax periods. Moreover, adjustment of IGST among Centre and States is sovereign function and should not impact the domestic industry whose competitiveness will get impacted by such provisions.

It is leading to payment of CGST in cash and accumulation of SGST ITC as inter adjustment of SGST/CGST is not allowed.

Proposed changes

The restriction of exhausting IGST ITC before utilizing of CGST / SGST ITC should be removed in order to avoid blockage of ITC in CGST / SGST. Previous provisions should be retained.

5.3) Issue

Matching of ITC

Present position

The Supplier needs to file GSTR 1 return by uploading details of invoices in GSTN. The Suppliers also had to file GSTR 3B returns by remitting tax to government on such invoices

On the basis of GSTR 1 filed by the suppliers the details of invoices will flow in GSTR 2A in the buyer GSTN Based on the GSTR 2A invoices the buyer will match and avail GST ITC in his GSTR 3B return.

There is no link between GSTR-1 and GSTR-3B, so it is impossible to ascertain whether the tax has been remitted by the supplier on invoices which were uploaded by him in GSTR 1.

The buyer is losing ITC along with interest even after making payment to vendors including MSME vendors, for reason solely attributable on part of suppliers.

Proposed Changes

Necessary changes have to be incorporated in GSTN portal so as to enable the linking of GSTR-1 and GSTR-3B which should clearly enable buyer to verify from the system that vendor has discharged his tax liability against the invoices uploaded by him in his GSTR1 as buyer is no position to ascertain whether invoices uploaded in GSTR1 by suppliers have actually been included in his GSTR3B and liability thereof discharged Or Suitable system should be developed so that invoices should flow in GSTR 2A only when the vendor file both his return i.e. GSTR 1 & GSTR 3B Or

The CGST/IGST Acts should be amended accordingly to made seller accountable for remitting GST to the government, if any invoices are uploaded by him in his GSTR 1 and liability thereof should not rest on buyer.

5.4) Issue

Payment to be made within 180 days from the date of invoice

Present Position

The buyer had to make payment within 180 days from the date of Invoice for availing GST ITC Credit. If the payment is not made than ITC along with interest needs to be reversed on 181 day.

Implication

When the supply is made to unregistered person than ITC is not availed by the buyer. Being an unregistered party, CGST Act is not applicable to him and hence, he is making payment even after 180 days. In view of above the same benefit should be given to registered party under GST.

Proposed Change

The clause should be removed as payment terms between buyer and seller is commercial decision between two parties and such restriction should not be imposed as long as vendor has discharged his tax liability on his supplies.

5.5) Issue

Input Tax Credit on telecommunication towers.

Present Position

ITC on works contract services used for construction of telecommunication towers has been specifically disallowed under the GST regime.

Implication

Telecommunication towers are essential to the business operations of telecom service provider and constitute a major expense. In case ITC of GST Paid on such towers is not available to a telecom provider, the same would from part of the cost for the telecom service provider.

Given that without the telecommunication tower, service cannot be provided, ITC of GST paid on such tower should be available. This will provide a major relief to the telecom service providers and will reduce the cash outflows.

Proposed Change

ITC in respect to telecommunication towards should be specifically available to telecom service providers.

5.6) Issue

Accumulation of ITC in certain states.

Present Position

Refund of accumulated ITC on account of reasons other than zero rated supplies and inverted duty structure is not available.

Implication

Given the Financial health of the company and the industry, availability of refund of accumulated ITC will offer a relief to the sector.

Proposed Changes

Option to claim refund of accumulated ITC which the company is not able to utilize, should be available on yearly basis under section 54.

5.7) Issue

Reversal of ITC if the payment is not made within 180 days along with interest.

Present Position

Where ITC is availed on the basis of invoices and payment for the invoice is not made within 180 days, the company is required to reversed the ITC availed along with applicable interest. While the option to re-avail the ITC is available, the interest component is still a cost.

Given the financial health of BSNL, there are a lot of reversals on account of non-payment leading to increase in cash liability and interest exposure. A relief in his account will improve the cash flow position of BSNL and provider substantial relief

Proposed Changes

Requirement for reversal of ITC on account of nonpayment within 180days should be removed; or the levy of interest on such a reversal should either be removed or a provision for refund of such interest should be inserted.

5.8) Issue

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

Present Provision

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

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

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

Proposed Changes

Considering the above, it is suggested that value of these non-GST petroleum products should be included in the Non-GST turnover of only in the manufacturing State and suitable amendment to be made in clause 2 of Explanation inserted to the end of

Chapter 5- Input Tax Credit of CGST Rules, 2017, by insertion of a new sub-clause as per follows;

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

> *“for determining the value of an exempt supply as referred to in sub-section of section 17- the value of non-taxable goods i.e. MS (Petrol), HSD, ATF, Crude Oil and Natural Gas shall be included in the exempt turnover of only in the state where such goods is manufactured”*

5.9) <u>Issue</u>

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

Present Provision

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

Proposed Changes

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

5.10) Issue

Allowing of GST credit on “Pipelines laid outside factory premises”

Present Provision

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

Proposed Changes

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

5.11) Issue

Eligibility and Conditions for taking input tax credit

Present Provision

*(a)*A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

*(b)*ITC is allowed to buyer only if other party has actually paid the tax to government either in cash or through utilization of ITC.

Proposed Changes

*(a)*A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after furnishing of the relevant annual return.

*(b)*ITC should be allowed to recipient based on the Tax Invoices.

This shall result in better reconciliation & accuracy in the books of account. Further, it is not justified to penalise the genuine buyer for no fault at his end. Government has given adequate powers to Department for penalising supplier if he has not paid the taxes to government or not filed the returns.

5.12) Issue

Formula for reversal of Input Tax Credit.

Present Provision

Under GST law, the formula for reversal of credit is on the basis of turnover of the GST and Non-GST transactions.

Proposed Changes

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

5.13) Issue

Rationalizing the provision of Blocked Credit

Present Provision

Section 17(5) of CGST Act, 2017, provides for the circumstances/specifies the cases for which no ITC would be allowed to registered supplier even though the same have been procured for legitimate business need or in compliance of law.It leads to cascading of taxes which is not the spirit of GST, as to provide seamless credit.

Proposed Changes

It is recommended that provision of section 17(5) of CGST Act, 2017, be rationalized and brought at par with simple concept that if outward supplies of person are taxable, then GST paid on inward supplies used or intended to be used in the course or furtherance of business, should be allowed as Input Tax Credit.

5.14) Issue

Allow Input Tax Credit utilization for payment of GST Liability under RCM

Present Provision

GST liability on forward charge may be settled by utilization of available Input Tax Credit. However, any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible. By not allowing utilization of ITC for payment of GST Liability under RCM, undue and unintended hardship is caused to business by increasing their cost of fund.

Proposed Changes

Amendment be made in the law to allow payment of GST under RCM by debiting credit ledger.

5.15) Issue

Eligibility of ITC Credit for Essential Goods under GST Exempt category

Present Provision

Vide exemption notifications, essential commodities and/or services like Metro Fare, Health Care Services, and Electrical Supply etc. are exempted/chargeable to NIL rate. Thereby, resulting in increased price for general public as GST paid on all inputs and input services becomes part of cost for supplier of such supplies.

Proposed Changes

It is recommended that instead of exempting such essential commodities/services; it may be made chargeable at zero rated or at 5% to enable suppliers of such supplies to avail Input Tax Credit of GST paid all inputs and input services.

5.16) Issue

Input Tax Credit – Supplier be paid within six months.

Present Provision

According to the second proviso to Section 16 (2) (d) of CGST Act 2017, recipient is required to make payment to the supplier within 180 days from the date of issue of invoice by the supplier for availment of Input Tax Credit (ITC), failing which reversal of ITC and payment of GST liability along with interest is to be made. In fact, in a real business scenario, in many of the supplies like project contracts, refractory supplies etc., and payment to the supplier is linked to the performance guarantee for the period which ranges from 6 months to 36 months. The stringent condition on availment of ITC is against the spirit of Value Added Tax. It is worth mentioning that no such condition existed in the erstwhile Central Excise and VAT Laws.

Proposed Changes

It is suggested that Govt. may reconsider and withdraw such restrictive and prohibitive condition.

5.17) Issue

Input Tax Credit to be availed of within one year.

Present Provision

According to Section 18 (2) of the CGST Act 2017, Input Tax Credit is required to be availed of within one year from the date of issue of tax invoice. In a number of cases, it may be difficult, due to practical reasons, to avail ITC within a period of one year.

Proposed Changes

A restriction by way of taking ITC within one year from the date of invoice would jeopardise the right of the recipient to avail the ITC. As denial of availment of ITC, due to any delay would result in a loss to the recipient. It is therefore suggested that minimum 24 months period may be allowed for availment of ITC.

5.18) Issue

Input Tax Credit – Eligibility

Present Provision

According to Section 16 (1) of the CGST Act 2017, Input Tax Credit is available on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business of the recipient dealer. The word 'furtherance' is prone to litigation and requires further elaboration. A mammoth business organization like SAIL has to maintain vast Township for its employees having educational institutions, residential houses, hospitals and number of civic amenities. Similarly, numbers of CSR initiatives are also undertaken by SAIL.

Proposed Changes

It is suggested that the availability of Input Tax Credit on the supplies of goods and services for above purposes may be allowed.

5.19) Issue

Input Tax Credit – Capital Goods.

Present Provision

According to Section 2 (19) of CGST Act 2017, "capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business. In fact, availment of Input Tax Credit based on definition of capital goods as above would pose problems as many of the common goods like Refractories may be treated both as inputs and/or capital goods depending upon usage of such goods.

Proposed Changes

It is suggested that proper classification of the Input/ Capital goods may be brought out in line with the earlier Excise Act provisions.

5.20) Issue

Electricity Generation & Distribution is exempted from GST hence benefit of ITC is not availableWhich increase the cost of generation of electricity.

Present Position

Generation of Electricity &it's distribution is exempted from GST. Since it is exempted item hence ITC cannot be availed by the generating company as per section 17(2) of CGST Act 2017. Due to this GST becomes the cost per unit of electricity which ultimately not helping to provide affordable power to the consumer.

Proposed Changes

Generation of Electricity distribution may be covered under ZERO Rated item so that ITC benefit cab be availed subject to section 17(5) of CGST act 2017.

5.21) Issue

Concern of Service sector – Applicability of GST on advances while denying Input Tax Credit ("ITC") to recipient.

Present Position

The services sector is not only the dominant sector in India's GDP, but has also attracted significant foreign investment flows, contributed significantly to exports as well as provided large-scale employment. One of the intimidating issues haunting the entire Service Sector is pertaining to applicability of GST on advances received for future supply of services, for which no credit is available to the recipient till the time of actual receipt of services. In exercise of powers conferred under Section 148 of the CGST Act and understanding woes of the Industry facing immense pressure of GST along with compliance burden by applicability of GST on advance amount received for supply of goods, the Government, on the recommendations of the GST Council, vide *Notification No. 66/2017- Central Tax dated November 15, 2017*, has notified the registered persons, who have not opted for composition levy, as the class of persons who shall pay GST on outward supply of goods at the time of supply specified in clause (a) of Section 12(2) of the CGST Act. Thus, w.e.f. November 15, 2017 in respect of supply of goods by normal registered persons (other than composition taxpayers), the time of supply will be the date of issue of invoice or the last date by which invoice has to be issued in terms of Section 31, i.e. No GST is payable on advance money received for

supply of goods at a future date. The entire GST is payable only when the invoice is issued for such supply of goods. Ironically, in this entire process, similar benefit has not been granted to the Service Sector, even though similar encumbrances of GST compliance viz., depositing GST on advance amount on the basis of receipt voucher, netting off transaction once supply is made and entire consideration is received, treatment in GST Return, etc., are being faced by the Service Sector as well, when advance amount is received against future supply of services. **Considering GST as "One Nation One Tax", ideally, similar treatment must be offered to any 'supply' made in GST, be it goods or services.** In such scenarios, many times the assessee has to face double setback on account of applicability of GST on advances, when on one hand, the ITC of GST paid on input services received is not available, while on the other hand, additional amount of GST has to paid on advances received towards the outward supply, for which the prices are inclusive of taxes.

Proposed Changes

- Scrap applicability of GST on advances received towards future supply of services, in similar manner as was done for supply of goods;
- If at all GST has to be paid on advances received for supply of services, at least the recipient must not be denied ITC of the same.

It may be appreciated that GST paid on advances is otherwise also available as credit at the time when services are received by the recipient. Allowing ITC at the time when advances are made taxable in GST, **will not result in any revenue loss to the Government exchequer**, but will certainly ease the position of traders and suppliers in the form of freeing them from working capital blockage.

5.22) Issue

Difficulties in availing concessional GST @5% for procurement of shipbuilding inputsdue to Ambiguity and absence of definition of "Parts of ship" under GST Law, and non-availability of detailed guideline's/ circular/ procedure promulgated by the Government.

Present Provision

Parts of ships (Under Any Chapter / Tariff item of goods of heading 8901, 8902, 8903,8905& 8906) will attract GST rate of 5%. However, due to ambiguity and absence of definition of "Parts" under GST Law, and non-availability of detailed guidelines/ circular/procedure promulgated by the Government to avail this concessional GST @ 5 %, suppliers are charging GST at full tariff value rather than concessional 5% GST on materials which forms Parts of ship but which are generic in nature and can be used for other purposes also such as raw material and consumable, steel plastes/ profile's/ section, Ms Angles, Flat bars, channels etc which are used for constructing hull of a warship/ submarine.

Proposed Changes

To address the ambiguity, it is suggested that, to introduce definition of "Parts" in the GST Law in line with the definition of "Parts" as defined under the chapter 9 of Foreign Trade Policy promulgated by DGFT.

5.23) Issue

Unable to claim refund of unutilized Input Tax Credit against inverted rated supply due to long gestation period of contract.

Present Provision

As per provisions under GST, Refund of unutilized ITC can be made when invoice for sale of the inverted rated goods is issued. In case of shipbuilding industry, invoice supply of ship (turnover of inverted rated supply) is issued to customer on completion of construction and delivery of ship which occurs after a prolonged construction period of 40 to 66 months' time from the date of commencement of ship construction activity. In case of weapon intensive defense ship, the construction period generally exceeds 66 months. In view of the longer cycle time, the input tax credit accumulated remained unclaimed for longer duration resulting into blockage of working capital.

Proposed Changes

In line with the provisions of refund of unutilized ITC under VAT regime, it is requested that, a suitable provision of annual refund of unutilized ITC (Net ITC after considering

output tax payable on sale of ship) on account of Inverted Duty Structure be considered for shipyard specific to construction of ship/ war ship under chapter 8906.

5.24) Issue

Reversal of input tax credit on account of Non- payment to suppliers within 180 days in case of non- receipt of fund from the Government client for Govt. Projects.

Present Provision

As per provision sec. 16 (2) of CGST Act, 2017 input tax credit shall be reversed in case payment to the supplier of goods and services (contractor)Or both is not made within 180days of date of invoice. Further interest at the rates prescribed under Section 50 of CGST Act, 2017 will be applicable on such Input tax credit claimed.

Proposed Changes

Second provision to section 16(2) of CGST Act, 2017 may be deleted. Proposal changes will avoid undue hardship caused to suppliers claiming ITC. This change is neutral on the revenue’s part as the Government might have already collected the taxes from the supplier.

6) RETURN FILING

6.1) Issue

Return filing under GST.

Present Position

Upon roll out of the GST assesses are required to file large number of returns electronically. The filling of returns are cumbersome and complicated and also time consuming.

Proposed Changes

Therefore, provision may be modified to allow filling of minimum number of returns annually. This, will provide a great relief and comfort to a business entities and they will be able to focus more on the business activities rather than compliances.

6.2) Issue

Furnishing of returns

Present Position

No provision for revision of returns viz GSTR-3B.

Proposed Changes

Allow provision for revision of returns.

6.3) Issue

Multiple registration

Present Position

GST being the destination based tax, the dealer need to have registration at every place where the supply of goods and services are made by him. Thus, if a dealer of one state makes transaction in several states then he need to have registration at all these states and accordingly need to file all returns, making the payment and keep a record for input credit etc. for all these states separately with their respective GST number, Whereas in

the existing system a dealer having office in one state and deals in several states, they need to have registration at one place only.

Proposed Changes

Hence government may look into the same if there is any possibility for centralized registration system to avoid burden of complexities due to multiple registration. For each state the minimum monthly returns are four per state and for a company having PAN–India operations, the minimum total returns will be around 120 per month. The service sector like Telecom, Banking, Insurance, and Airlines etc. undertake PAN-India operations. Meeting requirement of each state through different registration, Audit, Return, assessments and compliance would be a massive work. Having four tier rate structures will further complicate the issue.

7. TDS

7.1) Issue

TDS under GST

Present Position

Under section 51 of CGST Act, Public sector undertaking has been obligated vide notification no. 33/2017 Central Tax dated 15.09.2017 to deduct TDS under GST on payment / contract exceeding Rs. 2.5 lakhs. Therefore, for the purpose of making deduction, one has to make a separate registration under GST Act. Since the Power grid has already taken 35 registrations in all the state and again has to take a separate registration for provision u/s 51 of CGST Act, it will make the compliance burden cumbersome. Therefore, it is suggested PSUs may be exempted from the applicability of the provision.

Further, it is imperative that PSUs are procuring goods and services mostly from the registered dealers by paying appropriate taxes. Further, supply and procurement of goods transactions are duly backed by e-Way Bill trail. Accordingly, the entire trail of TDS System only leads to excessive and avoidable workload on account of compliance,

system requirement, accounting and reconciliation, payment, returns and TDS certificate issues without resulting into any concrete benefits.

Proposed Changes

Under the circumstances, it would be proper to exempt PSUs from the application of TDS provisions as notified above. This will help industries under PSU a level playing field with large private sector industries.

8. Miscellaneous

Issues

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

Present Position

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

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

Proposed Changes

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

Issues

Easy accessibility of GST Provisions.

Present Position

Notification Based Provisions: The earlier Indirect Taxes legislation and present GST both are Notifications based legislations. Due to frequent amendments in the law it is difficult to keep track of all the changes made through notifications which may lead to non-compliances inadvertently.

Proposed Changes

Withdrawal / Reduction in Notifications: To overcome from the above, new modalities in place of existing Notification based system is needed as a reform. The Taxation system may be considered to be made generic in nature for easy compliance.

It would help to improve compliance and understanding of all classes of Assesses. It will also reduce multiplicity as well as increase clarity and certainty in the Indirect Tax matters.

Issues

E-Way Bill requirement.

Present Position

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

Proposed Changes

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

Issues

E-Way Bill (Rule 138 of CGST Rules)

Present Position

Vide Press Release dated 23rd April 2018 issued by the Ministry of Finance, it has been stated that for supply of goods under "Bill To Ship To" case only one E-Way Bill is required to be issued.

Further, there is no provision to enter "Ship-To" party's GSTIN and the corresponding invoice details in the E-Way Bill Form.

Justification

Since a single E-Way bill is required where "Bill to" and "Ship to" parties are different, the following issues may arise:

1. As the GSTIN of "Ship-To"party is not entered in the e-way bill system, the transaction cannot be mapped to "Ship-To" party GSTIN and accordingly the "Ship-To" party shall not be in a position to accept / reject the consignment.
2. Further, there is no provision to enter the invoice details of subsequent supply and accordingly the invoice details of subsequent supply shall not be captured through such single e-way bill.

The above issues will lead to loss of control of 'Ship-To' party on consignments which are being reported in its name. The suggested change will also facilitate in ease of doing business.

Proposed Changes

The E-way Bill form needs to be suitably amended to include the GSTIN of all subsequent recipients (buyers) involved in that particular movement of goods.

Issues

The Oilfield (Regulation& Development) Act, 1948

Present Position

Royalty is charged on the pre-discounted Price at 20% on Crude Oil and 10% on Natural Gas. The maximum Royalty that can be levied as per the Act is 20%.

Proposed Changes

The rate of Royalty may be reduced under the Act so as to give some relief to the upstream sector which is already under pressure due to non-availability of ITC.

Issues

Cess on Crude Oil levied under OIDB Act to be abolished

Present Position

It was levied at Rs.2,500/MT from 01.03.2006 till 16.03.2012, and was revised to Rs.4,500/MT effective from 17.03.2012, when the price of Indian basket of crude was in the range of US$ 110/bbl. It is collected on quantity &value of Crude Oil delivered to a Refinery w.e.f. 01.03.2016, the rate of cess was revised to 20% ad-valorem.

Proposed Changes

It is pertinent to mention that historically cess on crude oil was effectively levied in the range of 8% to 10% even though the same was collected on per MT basis. The Industry has been representing for reducing the rate of cess to 8% ad valorem in view of rising crude oil prices in the international market and fall in US Dollar exchange rate.

Issues

Allocation of common Expenses of Corporate Office/Regional Office.

Present Position

NHPC Limited is allocating its Head Office/Regional Office Expenses to all its Projects / Units located in various States on actual cost basis. There is an uncertainly the taxability of such transaction in GST Laws as GST Laws are not clear on the above subject.

Proposed Changes

Since above allocation of expense on actual basis does not involve any supply of supply of goods/ service but it is only an accounting entry, it may be clarified that such booking of allocated expenditure in the books of account shall not be treated as taxable supply under the provisions of GST laws.

Implication

Above proposal would result into removing practical difficulties and such clarification is required to avoid any dispute in future by tax department.

Issues

Costs of oil and gas exploration and production activities contributed by non-operating partners to the operator under joint operating mechanism should not be treated as payment for "taxable services".

Present Position

In respect of overseas E&P activities, the Service Tax Department is taking a view that amounts remitted to operators by other consortium partners or overseas branches by Indian E&P companies are liable to service tax as "business support services" rendered by operator/foreign branch to the Indian entity. Such a view is totally contrary to the letter and spirit of the law. In oil and gas business, the consortium partners form a joint venture and typically one of the consortium partners acts as operator of the venture. All partners pay their share of the joint costs to the operator by way of advancing the funds (called cash calls). The operator pays the expenses from such funds and renders account of the expenses incurred. Applicable VAT/GST as per laws of the country where the oil/gas mine is located is payable to the host government. Such expenditure would typically include the costs of carrying out seismic surveys, drilling of wells, construction of production installations/platforms, transportation pipelines/facilities etc. and other associated operating costs. There is absolutely no rationale to treat such contribution for incurring the expenditure for the oil field operations viz., seismic surveys, drilling of wells, construction of production installations/platforms, transportation pipelines/facilities etc. as taxable services as every partner in the joint operations is responsible for its own share of costs of such overseas business. It may be added that in none of the countries, where such company operates, there is any instance of VAT/GST authorities seeking VAT/GST on amount of cash calls paid by non-operators to the operator. Further, similar issues may arise and be faced by Operators carrying out exploration and production activities in India.

Proposed Changes

It is proposed that a clarification by way of circular may be issued by CBEC to clarify that costs of oil and gas exploration and production activities contributed by non-operating consortium in proportion to their participating interest to the operator as well as the contributions of the operator under joint operating mechanism are not to be treated as payment for "taxable services" both under the earlier regime and also the new regime under GST The circular dated 24.09.2014 issued by CBEC has not clarified the position sufficiently. It may be considered to issue a circular specific to the Indian E&P Companies operating overseas to avoid unnecessary litigation.

Issues

The definition of interest under GST law may be changed to that given in section 2(28) of income tax Act

Present Position

As per GST law, the term interest include only interest and all the fee incomes are excluded due to which fee incomes are subject to GST. It is submitted that in many fee incomes, no service is involved like in case of upfront fee/ Commitment fee which is charged as a deterrent against the non-drawl/ delayed drawl of the sanctioned loan by the borrower. And not for providing any service to the borrower. Further, Prepayment Premium is charged against loss of future interest due to asset – liability mismatch and to discourage for prepayment of loans by the borrowers .This prepayment premium is charged as per the term and conditions of the loan agreement entered into with the borrowers. Thus, the fee incomes and prepayment premium etc. charged are not against any service supplied to the borrower and is in the nature of interest as mentioned in clause (28A) of section 2 of income Tax Act. Hence, should not be subjected to service tax/ GST.

Implication

The fee incomes and prepayment premium etc. charged are not against any service supplied to the borrower and is the nature of interest as mentioned in clause Tax Act. Hence, should be subjected to GST. It will bring uniformity in various laws.

Proposed Changes

It is proposed to replace the definition to interest as provided in income Tax Act: Interest has the meaning assigned to it by clause (28A) of section 2 of the Income Tax Act, 1961. The definition of interest as per clause (28A) of section 2 of income Tax is given below:-

"interest means interest payable in any manner in respect of any moneys borrowed Or debt incurred (including a deposit, claim or other similar right or obligation) and Includes any service fee or other charge in respect of money borrowed or debt incurred or in respect of any credit facility which has not utilized."

Deemed Export Benefits: Deemed export benefit for multilateral funded projects under GST regime may be also considered.

Exempted from levy of GST on Inter–state transfer of material/ construction stores.

Some time for emergency requirement we need to send the material/ construction material from one state to another state for our sub-stations/transmission lines. Such diversion of material of self-usage is considered as supply and attracts GST. Our output is transmission of power and the same is exempted under Clause 25 of Notification no. 12/2017-Central Tax rate dated 28.06.2017. Therefore, Power grid engaged in exempted supply should also be exempted from levy of GST on Inter – State transfer of material/ construction stores meant for transmission lines/sub-station.

Issues

Fungibility of Mining royalties, cess, etc. with GST to offset duty and structural disadvantages.

Present Position

The extraction and exploitation of raw materials in India involves a large number of duties, royalties, cess, etc. which were not subsumed into GST and hence have become an additional cost to the domestic steel producers.

For example, in respect of iron ore, royalty @ 15% of Average Sales price, DMF @ 30% of royalty and NMET @ 2% of royalty add up to nearly 600-700 rupees per ton. In respect of coking coal, Clean Environment Cess @ 400 rupees per ton is an additional cost apart from the royalties, DMF and NMET.

Steel producers are unable to obtain input credit on these costs for various input materials, putting Indian steel at a disadvantage vis-à-vis other countries, where royalties are lower (iron ore royalties in Brazil: 2%-3.5%, South Africa: 3%, Australia: 2.5%-7.5%)

In addition, Producers in steel surplus countries bear hardly any inland freight either on Raw materials or on steel produced, as major share of production is coast based.

In India, however, substantial share of production is by producers which are based inland either due to social cost benefit considerations or due to historical reasons.

For instance, Coking Coal, a major input for the steel industry is practically non-existent in India and the industry depends on imports for maintaining production. Thus, while producers in exporting, steel surplus countries like Japan and Korea bear hardly any freight being coast based, Indian producers bear huge freight costs, apart from production constraints due to logistical bottlenecks in raw materials receipts, such as non-availability of railway wagons, Choking of particular railway routes, etc.

Similar impact is there on all other raw materials imported or moved across the country for steel production.

In order to at least partially offset these structural disadvantages, there is an urgent need to subsume royalties, duties, cess, etc. imposed on mining of steel raw materials into GST so that producers can avail input tax credit on the same, increasing their competitiveness.

Proposed Changes

It is thus suggested that the government urgently take steps for subsuming all mining related taxes, royalties, cess, etc. into GST or allow these to be fungible with GST so that input tax credit can be availed by producers for these costs.

Issue

Breaking of input tax credit chain on payment to government departments

Present Position

Rashtriya Ispat Nigam Limited (RINL) is a Central Public sector undertaking under the Ministry of steel with Head quarter at Visakhapatnam. As a public sector undertaking, we placed many order on central public works department (CPWD), Government of India for civil works basis and also on water Resource Department, Government of Andhra Pradesh. With the introduction of goods and service tax (GST) Law since 01.07.2017, our company is put to additional cost for contract awarded to CPWD and other Government Department as there is no input tax credit availability, as explained below.

Under the GST provisions, the payments made towards any service supplied by Government are subject to reverse charge payment i.e. the recipient of service has to pay .GST instead of the supplier of service Since CPWD is a Government Department, the recipient of the services (viz., RINL) shall be required to discharge GST on reverse charge basis on the payments made to CPWD.

CPWD is sub-contracting the works awarded to it to the sub-contractors and GPWD will supervise the work carried out by the sub-contractors' the sub-contractors are charging GST in their invoices for the services supplied by them to CPWD. The GST charged by the sub-contractors is a cost to CPWD as CPWD being an unregistered person under GST is not eligible to claim input tax credit of such GST charged by the sub-contractors. Even when CPWD. registered, being a Government Department it does not discharge the GST liability and does not claim input tax credit' CPWD raises invoice on RINL in Form-65 for the total agreed amount including the amount of GST paid by CPWD to

sub-contractors. RINL shall be liable to pay GST on reverse charge basis on the total amount invoiced by CPWD which includes the amount of GST paid by CPWD to the sub-contractors.

In this situation, GST is being charged twice on the same amount and GST is also paid on the GST component lying in the total invoice amount. Firstly, the sub-contract will charge GST at the rate of 18% [e.g. 100 (taxable value) + 18(GST on 100) =118] in the invoices raised by them on CPWD. Secondly, CPWD will raise invoice on RINL with the total agreed amount including GST paid by CPWD to the sub-contractors {e.g. [118(sub-contractor amount which includes GST of 18) + 10 (supervision charges)]}. RINL needs to discharge GST of 18o/o under reverse charge on 128 charged by CPWD which comes to 23.04. The total GST component involved in the above transaction is Rs.18 + Rs.23.04 = Rs. 41.04. However, if we consider the GST on the net value of work Rs. 110 work rendered to RINL, the GST shall only be Rs19.80 (Rs. 110 x 18%= 19.80). Against the overall GST Liability of Rs.19.80, in the present system RINL is ending up paying Rs.41.04 which has a major impact. Thus, GST on amount charged by sub-contractor is paid twice i.e., once by sub-contractor while raising invoice on CPWD and secondly, by RINL under reverse charge for the invoice raised by GPWD. This is increasing the overall cost to RINL when compared to pre-GST period.

As per Section 17(5) (c) of the Central Goods and Services Tax Act, 2017 ,the recipient of the works contract services for construction of an immovable property (other than plant and machinery) are not eligible for claiming the input tax credit unless the works contract service is an input service for further supply of works contract service. According to this, input tax credit is not available for any asset in the nature of building, civil structures or other fixed assets other than plant and machinery to the recipient.

Hence, in respect of the works given to GPWD, GST is getting charged twice and the whole GST amount paid by RINL is becoming a cost due to the ineligibility of input tax credit. Thus, there is a huge additional burden of GST to RINL when works are awarded to CPWD, Though the super vision charges are Rs'10/- only' the actual implication is

working out to Rs. 33.04 (Rs.10 + Rs.23.04). This situation may lead to awarding of new works to other organizations to save double taxation though our basic intention is to go with government organizations. Hence, there is a need to eliminate the double impact of GST on works awarded to Government Department like CPWD. The following are suggested.

Proposed Changes

a) To declare by notification of Government that in all the deposit works performance by CPWD or Government Department, they will be treated as pure agent for the works / service sub-contractors) would raise invoice in the name of RINL, to the a/c of CPWD. CPWD would raise invoice showing explicitly the value of the work done by the sub-contractors and the value of supervision charges by CPWD separately. This would enable the customers (RINL) to make payment of GST on reverse charge basis on the amount of supervision charges only, which thus eliminates the double GST payment on the works done by sub-contractors; or

b) To amend the GST Act and rules suitably so that payments towards services to Government attract forward charge and not reverse charge. In this case, organizations like CPWD can claim input tax credit of GST charged by sub-contractors and can bill for the net basic price of the works done with applicable.

Issue

Burden Of Matching Invoice Is Imposed Indirectly On Recipients, Needs Relief.

Present Position

The GST Act originally envisaged availment of input credit ion this basis of matching of invoices through monthly returns. The suppliers shall upload details of their outward supplies in GSTR-1, which will be accepted by recipient in GSTR-2 and final monthly return

GSTR-3 will be filed. However, matching of invoice has been kept in abeyance due to implementation issues and filling of GSTR-2 and GSTR-3 have been deferred once for all.

However, matching of invoices has been indirectly brought in by way of auto population of the sum total of GSTR-2A balances in the Annual Return GSTR-9. The burden of matching of invoices on recipients is too onerous and in case the suppliers do not upload their GSTR-1 return, the recipients of input tax credit are penalized. Lot of reconciliation and follow up with suppliers is required. Penalizing recipients for the deficiencies of suppliers needs to be looked into.

Recommendations sought:

Recipients may be allowed input tax credit if the recipient is in hold of a valid tax invoice and it receives the supply of goods or services without any link to matching.

Issues

GST on spectrum charges, License fee and other payment to the Government.

Present Position

GST is payable under reverse charge on any payments made to the Government for spectrum, license fees etc. Even though credit of the GST providers, however, it creates a major cash flow problem as reverse charge liability is to be paid in cash and the credit keeps on accumulating and is not completed utilized.

Implication

This will provide a major relief to a sector which is facing financial hardships.

Proposed Changes

A clarification should be issued that no reverse charge liability should arise on account of making such payments.

Issues

Transition provision (Sec 140 of CGST Act) - Credit of Education Cess (EC) & Secondary and Higher Education Cess (SHEC)

Present Position

CENVAT Credit as on migration date is allowed provided such credit is duly reflected in last return before the appointed date.

Implication

Presently, industry/ companies may have unutilized balance of Education Cess/ Secondary and Higher Education Cess/ Krishi Kalyan Cess which cannot be utilized. However, such balance is still being reflected in Excise/ Service tax returns. Such accumulation of credit can be due to supplies to projects which have been provided upfront excise exemption (eg. Mega Power projects/ICB projects), resulting in accumulation of input credit.

Keeping in view the overall reading of Excise and Service tax law including Cenvat Credit Rules and various judgments, technically a registered person should be eligible to get refund for the same, otherwise, it would be a permanent loss of credit for companies.

It is further gathered that carry forward of EC/ SHEC/ KKC is not allowed. Such a step will lead to lapse of accumulated credit unless carry forward of the same is allowed, and as such would also be a financial loss to the domestic industry.

Proposed Changes

Provision should be made that unutilized balance of Education Cess/ Secondary and Higher Education Cess/ Krishi Kalyan Cess (KKC) as on migration date shall be refunded.

II. CUSTOM DUTY

1) Issue

High duty on import of telecom equipment's.

Present Position

The rate of duties on equipment's used by the telecom operators range till 20%.

Proposed Changes

Given the financial position of the sector and the amount of investment planned, the duties levied on import of goods by telecom operators should be reduced.The reduction in duties will provides a relief to the sector and should attract more investment into India.

2) Issue

Clarification on the effective date of the notification 2/2019 – Customs dated 29th January 2019.

Present position

The rate of custom on 4G LTE equipment's imported under the HSN 85176990 was increased to 20% with effects from 12th October 2018. However, such equipment were being imported under the HSN 85176290. The rate of 4G LTE equipment's imported under HSN 85176290 Was increased to 20% Vide notification issued on 29th January 2019. While the notification specifically provides that it is effective from 30th January 2019 West Bengal customs authorities have issued a letter to BSNL providing the notification is effective from October 2018.

Implication

The order from the West Bengal authorities have resulted in ambiguity regarding the effective date of the Notification resulting I increased duty implications to the extent of 10% on the goods imported under HSN 85176290 during the period October 2018 to January 2019

Proposed Changes

It should be specifically clarified that the notification is effective from 30th January 2019.

3) Issue

Exemption of Customs Duty on Capital Goods and spares thereof for use in Ship Building.

Present position

Ship Building has been granted the status of Infrastructure Industry by the Union Government in the year 2016. The Government has granted Customs duty exemption for the procurement of Raw materials, parts, material handling equipment and consumables for use in repair of ocean going vessel by a ship repair unit (entry no. 459 of Notn No. 12/2012 dt. 17.03.2012) and for use in manufacture of goods -Ship building (entry no. 469/469A of Notn No.12/2012 dt. 17.03.2012). Besides in order to encourage investment and support to the ship repair industry, the Government has by notification no. 12/2012 dt. 17.03.2012 (entry no. 459) granted exemption of Customs duty on Capital goods and spares thereof for use in repair of ocean going vessels by a ship repair unit. However, the ship building has been deprived of this benefit. Most of the capital goods imported are dual use goods and therefore the yards are not able to claim the benefit of exemption notifications as there is no provision for proportionate claim based on use of the capital goods. Ship Building and Ship Repair are integrated standalone industry in India and they are seamless activity. The same cannot be divested from one another. Customs duty is not cenvat able and therefore adds to the cost of the Capital projects.

Proposed Changes

Notification No. 12/2012 may amended in line with entry no. 459 to exempt Customs Duty on import of Capital Goods and spares for Ship building. The exemption from Customs Duty will bring down the Cost of capital and would encourage investments in the Industry.

4) Issue

Exemption on imports of parts, testing equipment, tools and tool-kits for maintenance, repair, and overhauling of aircrafts/ helicopters used by Indian defense forces.

Present position

Majority of the Combat Aircrafts/Helicopters used by Indian Forces are either imported from overseas OEM or are manufactured in India under Transfer of Technology (ToT) agreement with the OEM. Such ToT also enables HAL to undertake repair, overhaul and maintenance of aircrafts, engines and their parts. For the purposes of repair, overhaul and maintenance of aircrafts, engines and their parts for MoD, various goods are imported which suffer BCD; Presently, in terms Sl No 536 of Notification No 50 /2017 –Customs dated 30th June 2017 exemption is granted for import of Parts, testing equipment, tools and tool-kits for maintenance, repair, and overhauling of aircrafts and its parts when such imports are made by units registered with DGCA; The said exemption of the same service is only provided to Civil Aviation but not to Defence Sector.

Implication

Industries engaged in Defence Aviation would also be benefitted with exemption from BCD as is being enjoyed by the Civil Aviation sector

Proposed Changes

The exemption from BCD being provided to Civil Aviation Industry may be extended to Defence Sector.

5) Issue

Exemption of BCD on import of parts, components, LRUs, etc. for Manufacturing of Aircraft & Repair or Overhaul of Aircraft.

Present Position

At present HAL import parts, components, LRUs, etc. for Manufacturing of Aircraft & Repair or Overhaul of Aircraft. Import of these items attracts basic Custom Duty at 2.5%. However, recently Customs At present HAL import parts, components, LRUs, etc.

for Manufacturing of Aircraft & Repair or Overhaul of Aircraft. Import of these items attracts basic Custom Duty at 2.5%. However, recently Customs Notification issued vide Notification No.19/2019 dt. 6th Jul 2019, as per which import of parts, components, LRUs, etc. required for Aircraft by MoD and Defence Services are fully exempted from Custom Duty. It is pertinent to note that majority of Imports by HAL are also meant for execution of MoD or Defence Services orders.

Implication

At present Custom Duty incurred is reimbursed to HAL by customers i.e Defense Services. Granting exemption reduces the Tax burden consequently reduction in operation cost for Defense Services.

Proposed Changes

Import of parts, components, LRUs, etc. required for Manufacturing of Aircraft & Repair or Overhaul of Aircraft by HAL also to be exempted from Custom Duty.

6) Issue

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

Present Position

Liquid (crude oil & petroleum products) and Natural gas pipeline projects have been notified as Project imports under Chapter heading 98.01 at Entry no.33 of Notification no.42/96-Cus, dated 23.07.96 as amended. Further, vide entry no.510 of the Notification No.12/2012-Cus, dated 17.03.12 as amended; all goods under chapter heading 98.01 are leviable to 5% customs duty. Considering that these projects are capital intensive in nature and important for country's energy security, there is a need to grant exemption of customs duty on the subject projects.

Proposed Changes

It is suggested that present customs duty being levied at the rate of 5% should be reduced to Nil on Liquid as well as Gas pipelines projects covered under chapter 98.01. Alternatively, an exemption from custom duty may be provided to Liquid (crude oil &

petroleum products) and Natural gas pipeline projects laid in specified states such as north east states, J&K etc.

7) Issue

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

Present Position

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

Proposed Changes

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

8) Issue

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

Present Position

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

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

Proposed Changes

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

9) Issue

Exemption from Custom Duty on import of LNG.

Present Position

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

Proposed Changes

LNG being a clean fuel is mainly used by many important sectors like CGD, power, fertilizer, petrochemical, refineries etc. The Government also recommends import of LNG considering the shortage of domestic gas exploration in the country. It is suggested that import of LNG may be exempted from customs duty (present rate @ 2.5%) on the lines of crude oil to provide relief to gas based industries and domestic consumers. This will also promote usage of this environmentally friendly fuel in industrial and domestic sectors.

Like Power Sector, this will especially boost the CGD, where the Government aims to promote the clean fuel in a massive way.

10) Issue

Exemption/Concessional rate of Social Welfare Surcharge

Present Position

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

Implication

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

Proposed Changes

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

11) Issue

a) Raising the Standard Customs Duty rate on Steel Products to 25% and actual rate to 15% (WTO Bound rate – 40%) against the import.
   - ➢ Current Standard Customs Duty rate: 15 %.
   - ➢ Effective Rate: 12.5% for Flat Products and 10% for Long Products.

b) Raising the Customs Duty on import of HR Coils for manufacture of welded tubes and pipes to 12.5%.
   - ➢ Current duty: 10%

c) Reduction in Customs Duty on import of raw materials use in Steel making:
   - ➢ Duty on all types of Coal to be made NIL (Current Duty - 2.5 %).
   - ➢ Duty on Metallurgical Coke to be rationalized. (Current duty: 5%; Duty should be 5 % higher than duty on Coking Coal).
   - ➢ Exemption of Imported Coal from GST Compensation Cess (Current Rate is Rs.400/MT).
   - ➢ Restoration of the Customs Duty on import of MS Scrap to “NIL” rate which is main raw material for manufacturing of Stainless Steel (Current rate - 2.5%).
   - ➢ Import duty on Limestone to be made nil. (Current Duty - 5 %)

d) Review of Trade Agreements

- Through the mechanism of mid-term review of Comprehensive Economic Partnership Agreement (CEPA), Steel may be excluded from CEPA with Korea and Japan.
- Bilateral Safeguard rules for CEPA need to be framed.
- Steel should be kept out of the purview of the RCEPAs/FTAs and all such agreements

i. Procedural Issues relating to Customs duty assessment and Clearance:

- **Final assessment of Bills of Entry:**

  As per present practice, all Bills of Entry (BE) for imported coal are filed and assessed on provisional basis at the time of receipt & despatch of cargo from the port. Later on, BE is to be finally assessed taking into account the total landed cost including demurrage. There is no clear guideline regarding benefit to be passed on for cases where importers have earned despatch money. Many disputes are pending before the Customs Authorities in this regard. Since importer is earning despatch money which is passed on to them by ship owner in terms of reduction in overall freight outgo, logically this benefit must be passed on to importers.

- **Port clearance of imported cargo:**

  At present processing of Bill of Entry i.e. preparation of check list, payment of duty and assessment is done on Monday to Friday and despatch permission for imported cargo is not allowed on holidays including Saturdays.

  To expedite removal of cargo from the port to reach the production units, dispatch permission i.e. "Customs out of charge" for Bulk Cargo may be allowed at all Ports, including Non-Major/Private Ports, on Sundays/holidays.

III. CENTRAL EXCISE

1) Issue

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

Present Position

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

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

The extension of same rule for payment of duty on account of further stock transfer of products from one depot to another depot, makes the compliance of valuation rule very difficult for the oil companies.

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

Proposed Changes

Presently MS& HSD are levied specific rate of excise duty whereas ATF is levied ad-valorem rate of duty. MS, HSD and ATF have been kept out from GST levy and continue to be levied under the levy of Excise duty & VAT. Since, MS & HSD both are

levied specific rate of excise duty, thus it is requested that ATF should also be levied specific rate of duty in place of ad-valorem duty. This would ensure correct payment of duty at the initial clearance stage itself and will eliminate complexities and difficulties in re-determination of duty on further stock transfers which sometime result in avoidable litigation.

2) Issue

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

Present Position

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

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

Proposed Changes

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

3) Issue

Levy of Excise Duty.

Present Position

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

Proposed Changes

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

4) Issue

Excise Registration.

Present Position

Excise registration is required to be obtained each factory wise.

Proposed Changes

E&P operations are carried out across the field area granted by the DGH and production takes places across various producing wells scattered across. However, taking registration each producing wells is not practically. Department earlier exempted manufacturer of Compressed Natural Gas vide Notification no. 35/2001-Central Excise dated 26.06.2001, benefit on similar line may be extended for E&P Industry also.

VII. Central Sales Tax (CST)

1) Issue

Continuation of C form for purchase of excluded products

Present Position

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

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

Proposed Changes

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