STANDING CONFERENCE OF PUBLIC ENTERPRISES
(An apex body of Public Enterprises)

PRE- BUDGET MEMORANDUM

RECOMMENDATIONS for UNION BUDGET 2021

December 2020

Standing Conference of Public Enterprises
(An apex body of Public Enterprises)
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INTRODUCTION

SCOPE (Standing Conference of Public Enterprises)

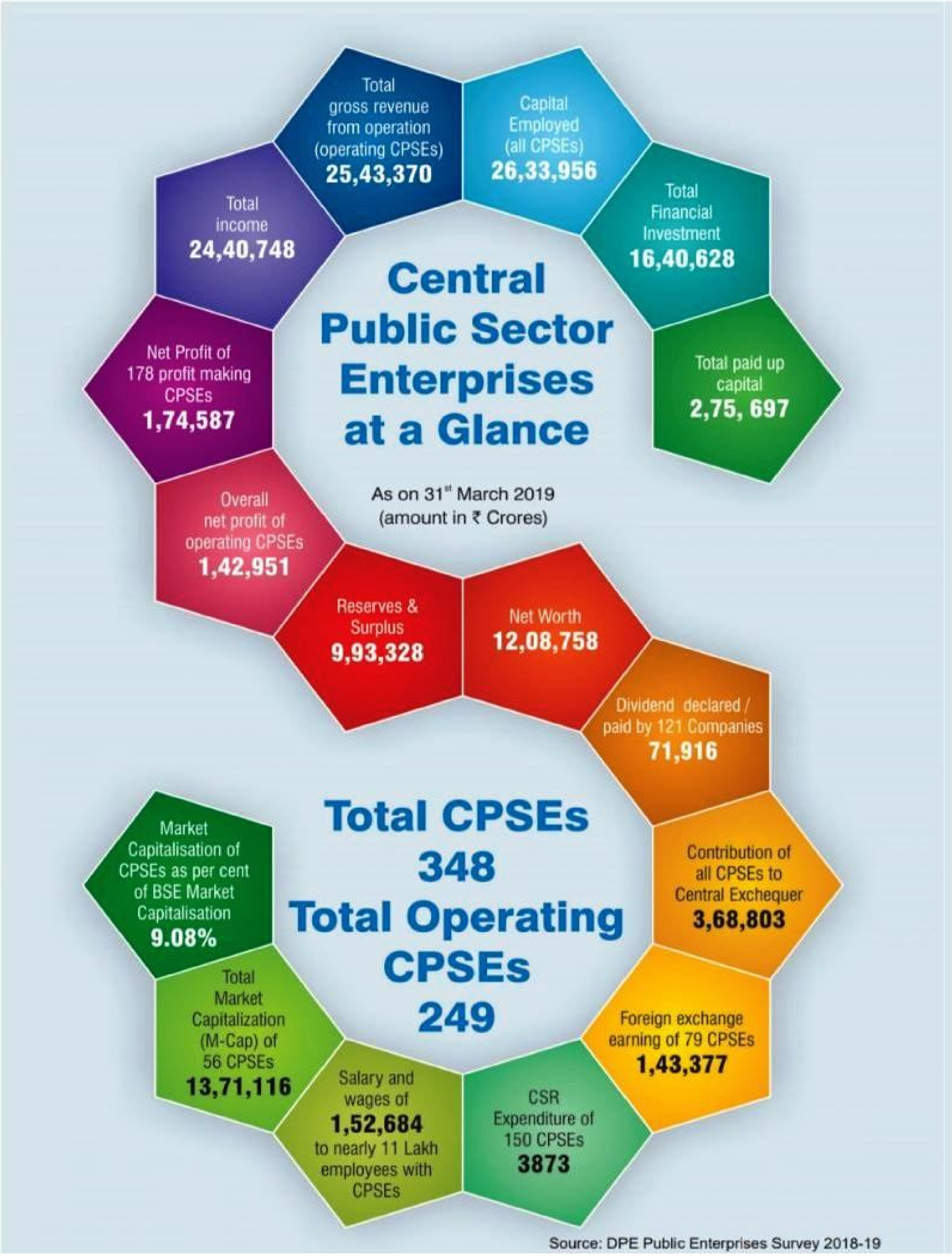
The SCOPE is to present its pre-budget memorandum for the year 2021-22. SCOPE is the Apex body of Central Government Owned Enterprises. It has the Central Government Public Enterprises, State Government Enterprises and Nationalized Banks and Financial Institutions and Insurance Companies as its members. Public sector enterprises 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, an organization of public sector enterprises, has been pro-actively spearheading the cause of public sector enterprises in India (PSEs). Its activities are centered around supporting and strengthening the PSEs in becoming globally competitive enterprises.

With the government's continuous support to strengthen the public sector, the 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 improving their competitiveness and thus promoting excellence and their higher growth.

The SCOPE takes its pleasure to bring to attention certain Issues which are specific to the public sector enterprises which may be considered in the Budget 2021.

PSEs reflect Prowess, Performance and Resilience



SECTION A:

DIRECT TAX

DIRECT TAXES

1. TAX RATES

1.1 ISSUE

Lowering of Income tax rate

PRESENT POSITION

New provision has been inserted by way of ordinance into the income tax act with effect from fiscal year 2019-20, that allows any domestic company

i) To pay income tax at the rate of 25.17%, subject to condition they will not avail any incentive or exemptions.

ii) Manufacturing companies set up after October 1, 2019 to get option to pay 17.16% inclusive of surcharge &cess.

iii) MAT rates have slashed from 18.5% to 15% for companies availing of concessions and benefits and no MAT for companies opting for new tax rate at 25.17%

PROPOSED CHANGES

The additional depreciation being claimed by manufacturing companies is treated as incentives and such manufacturing companies have to forego the additional depreciation in order to opt for lower tax regime. It may be noted that the manufacturing industries are capital intensive in nature and if the lower tax regime has to be benefited, the same has to be extended by providing additional depreciation also. Only then, the real benefit of lower tax regime will be reaped by the Manufacturing sector.

With all the above impacts leading to higher effective tax rate from the AY 2018-19, it is high time that the tax rate is reduced to all domestic companies to 25% and remove surcharge and education cess on it.

1.2 ISSUE

Lower corporate tax rate for new manufacturing companies – Sun set clause for commencement of manufacturing activities

PRESENT POSITION

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

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

Such a large investment would entail long construction period of more than 4 years and a long gestation period. Certainty of lower tax rate, will help in supporting the economics of the project. Uncertainty of tax rates, will hamper the investments.

PROPOSED CHANGES

Hence, it is suggested that lower tax rates may be allowed for all investment above threshold of say Rs.10,000crores, which involves substantial construction time. Also, present COVID situation justifies extension/removal of sun set clause of 31st March 2023.

1.3 ISSUE

Introduction of Group Consolidation Tax

PRESENT POSITION

Section 129(3) of the Companies Act 2013 requires the preparation of a consolidated financial statements where a company has one or more subsidiaries. Further, countries like United States, France, Australia and New Zealand have adopted a tax consolidation or combined reporting regime. Tax consolidation, or combined reporting, is a regime adopted in the tax or revenue legislation which treats a group of wholly owned or majority-owned companies and other entities as a single entity for tax purposes. The head entity of the group is responsible for all or most of the group's tax obligations (such as paying tax and lodging tax returns). The aim of a tax consolidation regime is to reduce administrative costs for government revenue departments and to improve the quality of tax assessment.

The regime also reduces compliance costs for corporate taxpayers. For companies, consolidating can help reduce taxable profits by having losses in one Group Company reduce profits for another. Assets can be transferred between groups companies without triggering a tax on gain for the company receiving assets, dividends can be paid between group companies without incurring tax liabilities.

PROPOPSED POSITION

It is suggested that on similar lines, the tax consolidation regime may be introduced in India as well.

1.4 ISSUE

Section 115BBDA – Dividend received by resident individuals, HUFs and firms receiving dividends in excess of Rs.10 lakhs to be subject to tax @ 10% in their hands – Consequence of the new levy- Triple taxation.

PRESENT POSITION

The provision to tax dividend in the hands of the recipient results in economic three level taxation viz. - once as corporate tax on profits, - secondly astax on dividends, - thirdly by disallowing expenses on dividend u/s. 14A. The economic tax ultimately borne by resident shareholders may be as high as 54%.

PROPOSED POSITION

It is suggested that this levy amounting to multiple level taxation on profits may be done away with. Alternatively, the earlier system of taxation of dividend, prior to 1997, namely, tax in the hands of the shareholder can be reintroduced and levy of Dividend Distribution Tax in the hands of the company may be removed.

1.5 ISSUE

Tax on certain dividends received from domestic companies (Section 115BBDA).

PRESENT POSITION

In the Finance Act, 2016 new section 115BBDA was introduced to levy tax on certain dividend income received by a resident individual, HUF and firms aggregating Rs.10 lakhs at the rate of 10%. However, the act has not clarified about the payment of advance tax on the same.

PROPOSED CHANGES

As the timing of receipt of dividend is uncertain and estimation of the same is also not possible, it is suggested that exemption from advance tax provisions may be given for such dividend income taxable under section 115BBDA. Further, it is suggested that full and complete advance tax in this respect may be permitted to be paid by the 31st march of the previous year.

1.6 ISSUE

Increase in the rate of Surcharge increases the Cost of Doing Business for Domestic Industry

PRESENT POSITION

Since the government has already announced that it would be reducing the Corporate Tax Rates from 30 per cent to 22 per cent.

PROPOSED CHANGES

The tax Rates should be made inclusive of all Surcharges.

1.7 ISSUE

Abolition of divided distribution tax (DDT) and TDS on divided payment under section 115-O & 194 of Income Tax Act, 1961

PRESENT POSITION

Companies are not required to pay divided distribution tax (DDT) on divided payments made on or after 01-04-2020 and divided are now taxable in the hands of the shareholders. This has resulted in deduction of tax on divided payment made by the companies.Consequently, the companies are now required to compute the tax in the hands of shareholders resulting in extra compliance burden higher administrative costs of compliance and likelihood of higher investor's grievances in the future. Moreover, this provision also delays the collection of tax by government as the companies used to deposit DDT within 14 days of declaration of divided.

PROPOSED CHANGES

Re-introducing the provision of divided on tax distribution tax and corresponding changes in other sections.

IMPLICATIONS

It is easier to collect tax at single point i.e. from the company rather than compel the company to compute the tax deductible in the hands of the shareholders. This shall help the companies with lower compliance burden, less litigation with the department and thereby, facilitating ease of doing business.

1.8 ISSUE

Set off of MAT Credit from Tax on Total Income before charging surcharge and education cesses - Section 115JAA.

PRESENT POSITION

There is no ambiguity with regard to the method of computation of tax liability in view of the fact that income tax e-filing return Form ITR 6 allows deduction for credit under Section 115JAA from the gross tax payable excluding surcharge and education cesses and specifically instructs an assessee to compute surcharge and education cess on the tax payable after reduction of MAT Credit brought forward u/s 115JAA. The manner of set off of brought forward MAT Credit is nowhere prescribed in the Income tax Act, 1961. But the issue is squarely covered by the decision of the Hon'ble Allahabad High Court in CIT v Vacment India (2014) 369 ITR 304.

PROPOSED CHANGES

It is suggested that set off of brought forward MAT Credit as per Section 115JAA may be allowed against tax on total income before charging any surcharge and education cesses.

SALARY

2.1 ISSUE
Valuation of Perquisites- Section 17(2) of the Actr.w. Rule 3 of the Income Tax Rules, 1962.

PRESENT POSITION
After the abolition of Fringe Benefit Tax vide Finance (No.2) Act 2009, Perquisite tax in the hands of employees was reintroduced vide Notification No. 94/2009 dt. 18.12.2009 from FY 2009-2010 by inserting new Rule 3, basis which few perquisites are taxable.

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

2.2 ISSUE
Leave Salary Exemption U/S 10

PRESENT POSITION
At present the encashment of leave during the tenure of service, is taxable in the hands of employee.

PROPOSED CHANGES
Leave Encashment to employees during the service should also be exempt from income tax.

IMPLICATIONS
This will push the employees to encash their leaves during the life time who at present are precluding themselves from availing the same and in turn help to rationalize the burden on exchequer.

2.3 ISSUE
Alternatively, exemption in respect of Leave Salary- section 10(10AA) of the Act to be in line with gratuity keeping in view cost increase due to inflation

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

PROPOSED CHANGES

It is suggested to increase the monetary ceiling to Rs.20 lakhs (keeping the amount at par with the amount of exemption for gratuity).

IMPLICATIONS

The cost of living and inflation have been steadily increasing every year; however, the limit of exemption of the leave salary in the hands of employees has not been revised for so long. Being sought as Employee Welfare measure

2.4 ISSUE

Perquisite under section 17 of the Act.

PRESENT POSITION

At present there is no perquisite taxable in the hands of employee if the interest free / concessional loan is Rs.20,000, the perquisite is not taxable.

PROPOSED CHANGES

The existing limit of Rs.20,000 for the purpose of computing perquisites be increased to Rs.3,00,000.

IMPLICATIONS

The limit may be reviewed since the limit has been same since long and the amount is immaterial considering today's economic scenario. Moreover the same will help in employees having money in their hand which he will put in the economic activity having multiplier effect.

2.5 ISSUE

Perquisite Valuation on Medical Expenditure.

PRESENT POSITION

At present all the reimbursements of Medical Expenditure is taxable.

PROPOSED CHANGES

The reimbursement of medical expenditure should be exempt at least Rs.1 Lakh p.a.Medical expenditure has become a necessity rather a luxury these days and every family spends the amount on medical expenses which has increased many fold in the recent past.

2.6 ISSUE

Standard Deduction from salary

PRESENT POSITION

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

PROPOSED CHANGES

The purpose of standard was for the factors and expenses that an employee needs to incur to fulfil the employment needs. It is proposed that limit of standard deduction should be enhanced from Rs.50,000 to Rs.1,00,000 considering the cost of living.Theassessee's having business income are allowed expenditure for business on actual basis. Hence, the standard deduction considering the purpose, should also be increased based on cost of living. In fact the standard should be dynamic based on CII.

2.7 ISSUE

Gratuity Exemption under section 10 (10) (iii)

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..

PROPOSED CHANGES

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.

IMPLICATIONS

For the sake of consistency the 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

2.8 ISSUE

TheExemption limits for various allowances

PROPOSED CHANGES

Children's Education Allowance, Hostel Allowance, etc. mentioned in Rule 2BB r.w.s. 10(14) of the Actwere fixed in 1995. This needs to be revised keeping in view the costinflation.

2.9 ISSUE

Deduction under section 43B – to cover only statutory deductions

PRESENT POSITION

The scope of section 43B should not be extended to contractual payments, such as leave encashment, but should be restricted to statutory payments only as the intention of Revenue department is that the deduction in respect of payment to statutory authority is to be made only on payment basis.

PROPOSED CHANGES

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

3. PROFIT AND GAINS FROM BUSINESS AND PROFESSION

3.1 ISSUE

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

PRESENT POSITION

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

PROPOSED CHANGES

Though the CSR expenditure requirement is calculated on the basis of the net profits of a company in 3 preceding years, the actual CSR expenditure is not an appropriation of net profit of the company and CSR expenditure promote development of the country

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

3.2 ISSUE

Treatment of Profit from Derivative Transactions.

PRESENT POSITION

The Finance Act, 2006 amended the definition of speculative transaction u/s. 43(5) to treat the transactions of derivatives (including commodity derivatives used as hedging contract as per proviso (a) of section 43(5)) on the recognized stock exchange as normal business transaction. However, there is no clarity as to whether the profit/loss made from the derivatives transactions should be treated as Capital Gain or a Business Income. This creates number of issues and invites litigations.

PROPOSED CHANGES

It is, therefore, suggested that the clarification should be issued to the effect that the profit/loss from the Derivative Transactions should be treated in the same manner as any other securities traded in the recognized stock exchanges and accordingly would be chargeable to Capital Gain Tax or Business Income based on the well-accepted principles.

3.3 ISSUE

Profits & gains of shipping business of non-resident:

PRESENT POSITION

Section 44B(1) deems seven and a half percent of amounts mentioned in section 44B(2) as profits & gains of non-resident engaged in the business of operation of ships. In the case of carriage of passengers, livestock, mail or goods shipped at any port outside India (e.g. crude oil shipped at a port in Saudi Arabia and received at a port in India i.e. import into India), the non-resident is taxable only on the amounts received or deemed to be received in India as per section 44B(2)(ii). In case the freight for import is remitted vide Telegraphic Transfer to the account of non-resident shipping company, the same is not received in India nor is deemed to be received in India as per section 7 of the Act. Further, the CBDT has also clarified the non-taxability of such transactions in India vide Instruction No. 1934 dated 14th February 1996.

However, the Assessing Officer's are treating the freight amounts on account of import, received by the non-resident outside India vide Telegraphic Transfer, as taxable in India and liable to TDS u/s. 195 and consequently disallowing the freight or/and demurrage charges u/s. 40(a)(i) in the hands of the refinery for alleged non deduction of tax at source u/s. 195 of the Act.

PROPOSED CHANGE

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

IMPLICATIONS

Different interpretations of the same is resulting in unnecessary disputes & litigations.

3.4 ISSUE

Allowance for investment in new plant & machinery under section Section 32AC of the Income Tax Act

PRESENT POSITION

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

PROPOSED CHANGES

It is suggested that the benefit u/s. 32AC be provided for another five years i.e. from AY 2021-22 till AY 2025-26.

IMPLICATIONS

Incentivize higher capital formation, job creation, higher economic growth and as an impetus to Make in India initiative ***especially considering the post COVID-19 pandemic economic situation.***

3.5 ISSUE

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

PRESENT POSITION

In line with the Hon‟ble Prime Minister‟s call for qualitative and sustainable industrial growth in the form of "Make in India", there is a strong need to encourage and incentivise the immense transformational capacity of corporates in innovating business models that can synergistically deliver economic and social value simultaneously.

RECOMMENDATION

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

3.6 ISSUE

Restoration of 200% weighted deduction for R&D expenses.

PRESENT POSITION

Under section 35(AB) weighted average deduction was allowed on expenditure incurred on research and development activities w.e.f. AY 2021-22 weighted average deduction is reduced to 100%.

PROPOSED CHANGES`

It is suggested to restore the weighted average deduction of 200% on R&D expenditures as allowed earlier.

IMPLICATIONS

Promote innovation in technology through research activities and to support Make in India initiative.

3.7 ISSUE

Clarification on provision of section 36(1)(va) Employees' Contribution Towards Staff Welfare Schemes.

PRESENT POSITION

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

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

PROPOSED CHANGES

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

IMPLICATIONS

Clarity in provision will reduce disputes and litigation cost.

3.8 ISSUE

Dedution in respect of specified business and notified agricultural extension project.

PRESENT POSITION

Investment linked Tax Benefit with weighted deduction of 100% available on Warehousing Facility for storage of Agricultural Produce is allowed only when the Corporate Assessee does not opt for Concessional tax regime.

PROPOSED CHANGES

It is suggested that benefit of deduction should be extended to Corporates even under opting u/s 115BA as CWC is engaged in storage of food grain across the country.

IMPLICATIONS

Shall attract Investment in setting up of warehouses for Food Grain Storage.

3.9 ISSUE

Allowance of Provision for Post-Retirement Medical Scheme under section 36 of the Income Tax Act.

PRESENT POSITION

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

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

PROPOSED CHANGES

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

IMPLICATIONS

Public Sector Undertakings will be benefitted.

3.10 ISSUE

Section 43A - Exchange fluctuation loss due to sharp fall in Rupee value.

PRESENT POSITION

Section 43A was inserted in the Income-tax Act, 1961 by Finance (No. 2) Act 1967, which permitted Capitalization of Foreign Exchange Fluctuation Loss in the borrowing used for acquisition of assets outside India. The exchange fluctuation loss on borrowings used for domestically acquired assets is not permitted to be capitalized for tax purposes. Over the years, Rupee has depreciated significantly against the US $ severely impacting the industry particularly those who have exposure to External Commercial Borrowings (ECBs) and Foreign Currency Convertible Bonds (FCCBs).

The provisions of Section 43A are similar to the provision contained in Schedule III to the Companies Act, 2013.

PROPOSED CHANGES

It is suggested that Section 43A be amended to allow Capitalization of such foreign exchange loss even for domestically acquired asset.

3.11 ISSUE

Section 35D (a) Capital raising

PRESENT POSITION

Expenses incurred for raising capital are being treated as capital in nature and no deduction is allowed in tax assessment. Section 35D provides for deduction in respect of some of the expenses, over a period of five years, subject to conditions and limits. Raising capital is necessary activity for carrying out the business activity. Not allowing deduction of expenses for raising capital increases cost of carrying out the business and adversely affects the competitiveness of the business.

PROPOSED CHANGES

Section 35D should be amended to allow deduction for all expenses incurred by an assessee for raising capital in five equal instalments over a period of five years.

3.12 ISSUE

Prior Period Expenses.

PRESENT POSITION

Prior Period expenses are not allowed as deduction in the current year.

PROPOSED CHANGES

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

3.13 ISSUE

Leave Encashment u/s 43B of the IT Act, 1961

PRESENT POSITION

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

PROPOSED POSITION

Tomitigatethehardship,itisproposedthatanExplanationbeinsertedin Section 43B to the effect that payment to the fund would be equivalent to payment to employees.

3.14 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 taxpayer is not able to avail deduction from taxable Income, of expenses on account of abortive exploration expenses until the certificate of area surrender is obtained from the appropriate authority. Further, even after giving intimation of area surrender to appropriate authority, getting certificate of area surrender from the authority takes very long time.

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

PROPOSED POSITION

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

3.15 ISSUE

Clarification that loss on Sale of Oil bounds is a revenue loss

PRESENT POSITION

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

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

GOI Special bonds are based on the scheme as framed by GOI. IOCL has not suo-moto invested in it. Further, had GOI given cash compensation in time or allowed IOCL to change price and not the subsidized rate, the borrowings would have been reduced to the great extent. GOI Special Bonds are sold primarily to meet working capital and/ or curb the borrowings.

PROPOSED POSITION

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

3.16 ISSUE

Weighted deduction under section 35(2AB) of the Act

PRESENT POSITION

Weighted deduction of 200% percent of the expenditure in the business of manufacture or production of any article on approved in house research and development facility has been restricted to100% from 01.04.2020 onwards.

PROPOSED POSITION

It is suggested that a deduction of 200% should be extended for a further period of at least 5 years. PM's vision of Aatmanirbhar Bharat is to make India self–reliant. Indian Armed forces are committed to hand–hold the domestic industry in developing next generation military platforms and equipment. Considering the above, increase in R&D expenditure would enable the industry to produce world class products and systems. This will fuel growth in the economy and also aid Armed forces to take on the challenges being posed by our neighboring nations.

3.17 ISSUE

Non-applicability of Minimum Alternate Tax on General Life Insurance Companies

PRESENT POSITION

The Finance Act 2012 has introduced sub-section 5A (with retrospective effect from 01.04.2001) under section 115JB which reads as under:

> *"The provision of this section shall not apply to any income accruing or arising to a company from life insurance business referred to in section 115B."*

PROPOSED POSITION

It is requested that the benefit of non-applicability of MAT be provided to general insurance companies also at par with life insurance companies.General insurance companies are required to cover the risks pertaining to various social and rural sector businesses such as Motor TP, Universal Health insurance, RashtriyaSwastyaBimaYojana (and Agriculture insurance from FY 2012-13) etc., which has resulted in the companies suffering substantial underwriting losses over the past many years, and thus, the exemption from MAT provided to life insurance companies should be extended to general insurance companies as all the products sold by us serve a social cause, like in the case of life insurance companies.

4. INCOME FROM OTHER SOURCES

4.1 ISSUE

Restriction of deduction against income u/s 56 of the Act

PRESENT POSITION

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

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

PROPOSED CHANGES

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

IMPLICATION

Removes disallowance of actual expenditure based on an arbitrary percentage and follows matching of income with expenditure, which creates unnecessary restrictions in business operations and ultimately adds to the costs.

4.2 ISSUE

Restriction of deduction of Interest Expenditure

PRESENT POSITION

Following proviso has been inserted in section57bytheFinanceAct,2020,w.e.f. 1-4-2021- Provided that no deduction shall be allowed from the dividend income, or income in respect of units of a Mutual Fund specified under clause (23D) of section 10 or income in respect of units from a specified company defined in the Explanation to clause (35) of section 10, other than a deduction on account of interest expense, and in any previous year, such deduction shall not exceed twenty per cent of the dividend income, or income in respect ofsuch units, included in the total income for thatyear, without the deduction under thissection.

There is no clarity with respect to the deduction of interest expenditure on borrowing for investment (upto twenty per cent of the dividend income) where the dividend has not been declared or dividendincomehasnotbeenreceivedby the assessee for a particular year. In such a scenario, there arises ambiguity in terms of allowability of interest expenditure incurred by the assessee with respect to investments in overseas projects for a particular year wherein no dividend income has beenreceived.

Since investment in oil and gas projects overseas are normally through a consortium of international oil and gas companies requiring incorporated ventures, the restrictions imposed by the provisions will result in huge financial hardship to the assessee who incurs considerable interest expenditure on overseas investments with intermittent upstream of dividend income.

PROPOSED CHANGES

Section57maybesuitablymodifiedto clarify the allowability of interest expenditure in the year in which there is no receipt of dividend income bythe assessee. Alternatively, the provision could be suitably modified to carry forward such interest expenditure to the future years so as to allow the deduction on receipt of dividend income.

IMPLICATION

This would avoid unintended financial hardship to the assessee in terms of allowability of interest expenditure in the absence of dividend income for a particular year.

These proposals are intended to encourage investments in overseas oil and gas business by assessees to enhance the energy security of the country.

4.3 ISSUE

Relaxation from applicability of the provisions of deemed Gift Income u/s 56(2)(x) of the Income Tax Act to JVs/associate companies in line with subsidiary companies.

PRESENT POSITION

The Finance Act, 2017 has introduced section 56(2)(x), under which, any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs.50,000) by any person is chargeable to income-tax under the head "Income from other sources" subject to certain exceptions. Further, Finance Act, 2018 has exempted transactions between holding & wholly owned Indian Subsidiaries from purview of this section.

PROPOSED CHANGES

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

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

IMPLICATION

Indian Joint ventures and Associate Companies will be benefited in line with subsidiary companies.

4.4 ISSUE

Exemption from deeming of fair market value of shares for certain transactions.

PRESENT POSITION

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

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

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

PROPOSED CHANGES

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

IMPLICATION

It will reduce unwarranted hardship on assesse where transactions are already approved by authorities.

4.5 ISSUE

Admissibility of Interest paid under Income-Tax Act, 1961

PRESENT POSITION

Presently, interest paid by the Government to an assessee is chargeable to tax. However, interest paid by the assessee to the Government under various sections is not allowed as deduction while computing the total income. Interest paid by the assessee is for the use of money by him and is compensatory in nature.

PROPOSED CHANGES

Interest paid by the assessees to the Government under various sections of the Income-tax Act should be allowed as deduction in computing total income. If the assessee does not have business income, interest should be allowed under the head `Income from other Sources'. Alternatively, the interest received by the assessee on refund should be exempt from tax.

5. ASSESSMENT PROCEDURE

5.1 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 ofanassessee'sapplicationundersection 154 for years together, which results in loss to the assessee. Apparently, to overcome this problem, a new sub- section(8)wasinsertedinsection154by 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 disposedof within six months have not been spelt out.

PROPOSED CHANGES

Therefore,itissuggestedthatitshould 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 sixmonths.

IMPLICATION

This would ensure promptness in the disposalofapplicationsundersection154 and avoid undue harassment to the taxpayers.

5.2 ISSUE
Provision for Time Bound/ Automatic Appeal effects being given by AO.

PRESENT POSITION
The appeal effect of superior Appellant Authority is not being given by the Assessing Officers in routine manner. The appeal effects resulting in refunds are delayed/ denied to the Assessee for which there is no accountability rest upon the Assessing Officer.

PROPOSED CHANGES
Appropriate provision should be inserted for time bound and automatic appeal effect orders by the Assessing Officer and reporting of such appeal effects in time bound manner be made to the appellate authority passing such orders as compliance report.

IMPLICATIONS
Effective and time bound delivery of Justice/ and Grievance redressal.

5.3 ISSUE
Relaxation from Faceless Assessment –Section 143(3A) and 143(3B.

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

Large organization with various business, have issues involved in assessment which are complex in nature. This complexity is further compounded by the huge volume of transactions. Assessment unit to whom case is randomly assigned under faceless assessment may not possess the requisite background knowledge of such varied transactions and complex issues specific to the industry to holistically to understand and appreciate the issues arising in the assessee’s assessment. It would not be practicable for such a random assessment unit to carry out assessment effectively in a time bound manner.

We feel that suitable exception be made in the Faceless Assessment scheme to exclude corporates such as IOC and to allow assessment by the Jurisdictional assessing authorities.

PROPOSED CHANGES

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

5.4 ISSUE

ERP System

SUGGESTION

Government has taken initiative for faceless assessment of income tax cases. For this to happen successfully, the ERP system must be robust and glitch free. However, experience is that, many times rectification initiated manually by assessing officers, when uploaded in the system doesn’t give required results. This is happening because of systems glitches.

6. TDS/TCS

6.1 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 of constriction of ship, revenue is offered in percentage of completion method and till such time TDS credit remain un-utilized. 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 due for the year. This is an extreme injustice done to the Ship Building Industries. This needs to be rectified.

PROPOSED CHANGES

It is suggested that TDS deducted in a financial year under any head may be permitted to adjust as an advance tax.

IMPLICATIONS

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

6.2 ISSUE

Multiple TDS rates u/s 194J

PRESENT POSITION

The Finance Act, 2020 has modified section 194J of the Act to prescribe a lower rate of TDS @ 2% in case of fees for technical services and royalty in case of certain transactions while the other categories such as fees for professional services and certain payments to director etc. continue to suffer TDS @ 10%.

This differential rates of TDS for mainly fees for professional services and fees for technical services could result in lot of avoidable litigation.

PROPOPSED POSITION

It is suggested that the rate of TDS for all categories such as fees for professional services, fees for technical services, royalty etc. be kept at a uniform rate of 2% or 10%.

IMPLICATION

Fixing of same rate of TDS for professional services and technical services would reduce avoidable disputes and litigations and save resources of assessees as well as the Revenue.

6.3 ISSUE

TDS on year end Provisions

PRESENT POSITION

As per the existing provisions the TDS is deducted on provisions also.

PROPOSED CHANGES

The TDS should be deducted only at the time when the amount becomes payable on receipt of bill/invoice or advance whichever is earlier.

IMPLICATONS

The provisions are notional figures and are made on estimate basis for the purpose of calculating the profit as per applicable accounting standards. The effect of the same may differ from the amount provided in the accounts.

6.4 ISSUE

Master Circular on TDS- Need of the hour.

PRESENT POSITION

In order to support/clarify the provisions of Chapter XVII, various circulars have been issued from time to time. Further various court decisions, favorable or unfavorable for the assessees, have also clarified various provisions of Tax deduction at source or tax collection at source. These court decisions/circulars/notifications have been more or less accepted by both the Department and the assessees. However, the difficulty arises for the assessees since all circulars, which may have been issued way back in 1995, 1996 etc. (still applicable) are not available at one place. Even though ignorance of law is not an excuse, it is quite possible that due to non-availability of the clarifications issued so far at one place, some assessees inadvertently might not have deducted tax on particular transactions entered into by them. Since approximately 40% of total revenue is collected through TDS /TCS, it is essential to issue a master circular every year on the lines of circular on TDS on Salaries. Issuing a master circular, clearly laying down the well-established Court decisions and circulars issued so far, would on one hand improve compliance of TDS/TCS provisions and on the other hand act as easy reference for the assessees.

PROPOSED CHANGES

To improve compliance of TDS/TCS provisions it is suggested that a master circular exclusively on TDS be issued, within a period of 15 days of passing of Finance Act every year.

6.5 ISSUE

TDS on Transportation payment under section 194C.

PRESENT POSITION

There will not be any deduction of TDS under section 194C if deductee provides a self-deduction 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 transaction. Relevant extract of the Act is as under:

“(6) No deduction shall be made from any sum clarified 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 playing, hiring or leasing good carriages, were 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 into unnecessary huge compliance. Exemption from TDS deduction may be provided to all as was available till 31st Mat 2015 on the condition of furnishing of the PAN by contractor to deductor. Condition of obtaining the self-declaration form, from the deductee and updating every time in ERP system is a very cumbersome & time consuming process.

6.6 ISSUE

Tax Collected at Source (TCS) Provision for sale of goods under section 206C (IH) of Income Tax Act.

PRESENT POSITION

The new provisions of Tax Collected at Source (TCS) have come into force with effect from 1stOctober 2020 and according to it, if turnover of the company is more than 10 crore in the previous financial year i.e. the year which ended on 31stMarch 2020, then this year, company has to collect and deposit TCS on receipts from sale of goods from such buyers from whom the company has received more than rs. 50 Lakh as sale consideration during the current financial year. The TCS is payable on the amount of receipt which is greater than 50 Lakhs and received after 1st October 2020.

However, CBDT vide circular no. 17 of 2020 reference F. No.370133/22/2020-TPL has stated that subsection (I H) of section 206C, of the Act shall not be applicable in relation to transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC.

Further TCS on sale of goods is not applicable on export of goods out of India. Clarification was provided that TCS is not applicable on sale of goods to Non Resident Airlines. However there is no clarity on sale of ATF to resellers and sale of bunker to international vessels

PROPOSED CHANGES

- To include the **Public Sector Undertakings (PSU**) in exemption list as the major stakeholder in the Central Govt /State Govt.
- It is suggested that power generating companies should be exempted from the provisions of TCS u/s 206C (IH) as buyers of the electricity are mostly DISCOMs which are controlled by Government.

- Explanation shall be inserted to section 206C(1H) stating that goods exported out of India shall include sale of ATF to Non Resident Resellers and sale of bunker to international vessels.

IMPICATION

1. Ease in Financial Management.
2. Boost to Power Generating Companies.
3. Reduction in compliance burden on companies.

6.7 ISSUE

TDS claim under section 199

PRESENT POSITION

In case of Section 199, assesse has to adjust TDS amount on proportion basis in future years, i.e. when the revenue offered for tax. However, 26AS does not reflect TDS in future years. Assesses cannot claim full TDS in the year of deduction and in future years, 26 AS do not reflect TDS of earlier year but remained unclaimed. This results in unnecessary tax demands and disputes.

PROPOSED CHANGES

Form 26AS of future years must reflect carried forward TDS amount of earlier period.

7. FOREIGN TAXATION

7.1 ISSUE

Foreign tax credit- section 90 and 91 read with rule 128

PRESENT POSITION

A resident company who earns income from overseas jurisdiction is assessed in India as per Income tax Act 1961 for its globalincomeandcreditfordoublytaxed income is allowable according to the provisions of sections 90 and 91 read with Rule128. The elimination of double taxation is made through credit methods as per Income tax Rule 128 which provides as below;

> *"An assessee, being a resident shall be allowed a credit for the amount of* ***anyforeign tax paid****by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule".*

From the above, it may be noted that the tax credit is allowed on taxes paid for income from overseas which is doubly taxed. In India, the assessment year followedisfromApriltoMarch.However, most of the jurisdictions follow calendar year as assessment year. In view of this income is assessed and taxes are paid on calendar year basis in such jurisdictions. This has led to a practical difficulty in the computation of foreign tax credit as per Rule 128 due to difference in periods followed as assessment year in India and overseas jurisdiction. Further, in some of the foreign jurisdictions, the tax liability is also paid after the end of the assessmentyear.

In a jurisdiction where the calendar year is followed as assessment year and taxes are paid after the end of the assessment year, the taxes for the period from January to March will be paid at the end of the year, i.e. after December of the relevant year. However, the income for the period from January to March will be taxableinIndiaintheassessmentyearfor the period from April to March and the due date for filing the return for such period ends in November of the relevant year.Thiswillresultinpracticaldifficulty in claiming the foreign tax credit on the taxespayableinforeignjurisdictiondueto the fact that taxes are not due in a foreignjurisdictionandhencenotpaid.In view of this, the assessee may not be able to claim the credit for the income tax payable for the period from January to March. Thiswillresultinhugefinancialhardship to the resident companies who earn considerable income from a foreign jurisdiction, which is doubly taxed, with the calendar year as assessment yearand taxes are payable at the end of such assessmentyear.

PROPOSED POSITION

Suitable guideline may be incorporated in Income tax Rule 128 for the following;

1. Method for apportionment of taxes paid in a foreign jurisdiction on calendar year basis (January- December) for claiming Foreign Tax Credit ("**FTC**") in India on assessment year basis (April- March).
2. Provisional claim of FTC for the period January-March while filing the returns before actual remittance of such taxes on due date with a facility to revise the claim as per actual during filing of revised return or assessment proceedings.

IMPLICATION

This amendment will make bring clarity, simplify the compliance and prevent avoidable litigation. This would avoid unintended financial hardship to the assessee by paying tax in India while filing the original income tax return and paying tax in a foreign jurisdiction on the due date which is eligibleforFTCandclaimingrefundofthe same inIndia.

7.2 ISSUE

Carry forward of excess foreign tax credit.

PRESENT POSITION

The Income-tax Act, 1961 allows for set off in respect of foreign taxes paid on overseas income. However, in case of loss/inadequate profits, no set off may be possible. In the current economic scenario of the global economy, business outlook has become extremely uncertain and results have become very volatile.

PROPOSED CHANGES

It is suggested that assessees be permitted to carry forward (say for five years) such unutilized credit.

8. DEDUCTIONS AND EXEMPTIONS

8.1 ISSUE

Deduction u/s 80Cof the Act

PRESENT POSITION

Investment under ELSS and other equity linked saving schemes are covered under present limit of Rs.1.50 lakh.

PROPOSED CHANGES

Such investments may be considered to be over and above Rs.1.50 Lakh on the lines of NPS.

IMPICATION

The limit will help in bring more inflow in the equity market by retail investors which in turn will bring sustainable strength the Indian equity market which heavily dependent on FIIs as of now.

8.2 ISSUE

Allowance of Deduction under section 80G for the purchase of Section 115BAA and 15BAB.

PRESENT POSITION

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

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

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

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

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

PROPOSED CHANGES

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

IMPICATION

Companies opting to pay tax u/s 115BAA will be benefited.

8.3 ISSUE

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.

IMPLICATION

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 .

8.4 ISSUE

Deduction from Income tax on profits from new power generating units under section 80-IA of Income Tax Act, 1961.

PRESENT POSITION

i) This section provides deduction on income tax in profits to an Industrial Undertaking set up in any part of India for generation or generation & distribution of power, if it began to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2017.

ii) Deduction under section 80-IA is available for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking begins the generation of power.

PROPOSED POSITION

Presently, many hydro power projects are at various stages of implementation. The implementation and gestation period for these capital intensive projects is longer than other non-conventional power generating units. Hydro projects are highly desirable as alternative to fossil fuel power and also for grid stability issues with higher solar and wind power installations.

i) It is therefore proposed to extend the period of the said deduction u/s 80-IA till FY 2025 or it will be even better not to fix any ending period for making the long term decision process more investor friendly.

ii) It is proposed that this section be amended to provide deduction for any fifteen consecutive assessment years out of twenty years to provide flexibility to power entities.

IMPLICATIONS

1. Improvement in cash flow.
2. Tax holidays to power developer.
3. Development of pollution free Hydro power projects mandatory for grid stability.

9. MISCELLANEOUS

9.1 ISSUE

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

PRESENT POSITION

The profits of the oil industry is integrally linked to:

(a) International Crude Oil and product prices

(b) Government policy on duty structure, Pricing of products, subsidy –sharing etc.

Changes in both these factors significantly affect the refining margins and cannot be foreseen or reasonably estimated. Therefore, a correct estimation of profits for the year and remitting the correct amount of the advance tax instalments is not possible.

PROPOSED CHANGES

It is suggested that, the waiver of penal interest for deferment of advance tax, which is now given as a discretionary power to the Chief Commissioners of Income tax by CBDT circular No. FNo 400/234/95 dated 23.05.1996, may be allowed as a specific exemption for the oil industry.

In case of the others, a time limit for the disposal of waiver petitions may also be fixed since it is experienced that the genuine waiver petitions of assessee are kept pending for a very long period of time.

9.2 ISSUE

Break-up of total expenditure of entities registered or not registered under the GST in Tax Audit Report: Section 44AB of the Income Tax Act, 1961 read with clause 44 of Form 3CD prescribed under Rule 6G(2) of the Income Tax Rules, 1962

PRESENT POSITION

Vide Notification No. GSR 666(E) [No. 33/2018 (F. No. 370142/9/2018-TPL)], dated 20.07.2018, the CBDT notified revised Form 3CD (Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961) with effect from 20.08.2018. The said revised Form 3CD contained a new clause 44 seeking 'Break-up of total expenditure of entities registered or not registered under the GST'. Subsequently, vide various Circulars and the recent Circular No. 10/2020 dated 24.04.2020, the CBDT kept clause 44 of the new Form 3CD in abeyance till 31.03.2021.

PROPOPSED POSITION

Considering the extensive reporting and compliance mechanism with respect to GST framework in place, and GST being an Indirect Tax administered by CBIC under the same Ministry as the CBDT, reporting again the GST data in Tax Audit Report in Form 3CD overburdens the assessees with additional compliance work. It also results in higher costs to the assessees for maintenance of such detailed data. Since the GST Registration is PAN based, requisite data for the same can be made available from the GSTN Server to the concerned Statutory Authorities as required.

9.3 ISSUE

Utilization of MAT Credit when taxed under section 115BAA of the Act.

PRESENT POSITION

Vide the Taxation Laws (Amendment) Ordinance, 2019 dated 20.09.2019 and subsequently vide the Taxation Laws (Amendment) Act, 2019, option was provided to existing domestic companies to pay income tax at a lower rate of 22% for any assessment year from A.Y. 2020-21, onwards subject to certain conditions under section 115BAA of the Act. It is also provided that for a company opting for the lower tax rate under section 115BAA, Minimum Alternate Tax under section 115JB shall not apply.

Further, the CBDT, vide Circular 29/2019 dated 02.10.2019, inter-alia, clarified that as provisions of section 115JB of the Act are not applicable to a domestic company which exercises the option of lower income tax rate u/s. 115BAA of the Act, carry forward and set off of MAT Credit shall not be available to such domestic companies opting for lower income tax rate u/s. 115BAA of the Act.

PROPOPSED POSITION

It is suggested to allow carry forward and utilization of MAT Credit already generated even for those domestic companies opting for lower corporate tax rate of 22% under section 115BAA as a transition benefit.

IMPLICATIONS

Considering that, the taxes paid under MAT provisions in earlier assessment years are tax credits already accrued to the assessees, it would be just and proper to allow carry forward and utilization of MAT Credit for those domestic companies opting for lower corporate tax rate of 22% under section 115BAA as well, which will lower the costs for corporates with ultimate benefit to the final customers.

9.4 ISSUE

Interest on deferment ofadvance tax under section 234C of the Income Tax Act, 1961

PRESENT POSITION

Section 234C of the Act provides for levy of interest where there is shortfall in any installment of Advance Tax actually paid vis-à-vis the installment of Advance Tax payable.

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

PROPOPSED POSITION

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

IMPLICATIONS

The Companies in the Oil & Gas Industry would be relieved of huge cost of interest burden arising due to fluctuations in global prices of Crude Oil and Foreign Exchange which is beyond their control.

9.5 ISSUE

Interest on refunds

PRESENT POSITION

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

Further, at present, if there are manual order of refunds, there is no time limits to release actual money. Refund orders gets pending for very long and accrued interest included in the order is offered for tax. This is sheer injustice to assessee as one side he pays tax on accrued interest but doesn't get money.

PROPOPSED POSITION

It is suggested, to have parity between assessee and department, hat the rate of interest on refunds u/s. 244A be amended from 0.5% p.m. to 1% per month or in both the cases the rate be kept at 0.75% p.m.Further, there must be time limit for releasing money to manual refund order. In such cases, the rate of interest u/s 244 need to be increased from 6% to 12% p.a. which is similar to department charges on the pending dues.

JUSTIFICATION

Prevent excessive delay in issuance of refunds. In case of delay, adequate interest to offset the loss to the assessee following the principles of natural justice.

9.6 ISSUE
Exemption Threshold for certain allowances to employees

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

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

IMPLICATIONS
The cost of living and inflation have been steadily increasing every year; however, the limit of exemption of the allowances to employees have not been revised for so long. Being sought as Employee Welfare measure

9.7 ISSUE
Taxes on dividend received from foreign subsidiaries

PRESENT POSITION
The income tax rate on dividendreceived from a foreign company is 15% and no deduction is allowable from such dividend income in respect of interest, etc., on funds borrowed for investmentin foreignsubsidiaries. Thereisnoprovisioninlawforproviding any underlying credit for taxes paid by the foreign subsidiarycompany.

PROPOPSED POSITION
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 a 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 the 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 India 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 the regulatory requirement of the host country to hold a 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%).

IMPLICATIONS

If "underlying credit" for taxes paid by foreign subsidiaries is allowed, the discrimination between a foreign branch and foreign-controlled entity will disappear.These proposals are intended to encourage investments in overseas oil and gas business to enhance the energy security of the country.

9.8 ISSUE

Exemption from coverage under Place of EffectiveManagement regulation section 6(3).

PRESENT POSITION

Finance Act 2015 introduced the concept of Place of Effective Management ("**POEM**") which is a test of tax residency ofaforeigncompanyinIndia.IfthePOEM ofasubsidiary/stepdownsubsidiaryis situatedinIndia,itistobetreatedasatax 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 January2017. 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 theboardofdirectorsofthecompanyare 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 inIndia.

In case of Central Public Sector Enterprises ("**CPSEs**"), there are concerns that measures to be takenfrom time-to-time by CPSEs toensure compliancewiththeapplicableprinciples 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 the place of management. Further, the withdrawal of CPSEs directors from foreign subsidiary boards would adversely impact their ability to participateinthedecisionmakingofsuch entities including compliance with relevant Government guidelines. The increase in compliance costs including that of additional overseas manpower is also a cause ofconcern.

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.

ItisalsotoinformthatCPSEcanestablish JVs and subsidiaries only after approval of NitiAayog as per extant instructions. As such, such JVs and subsidiaries are established with the explicit approval of theGovernment.

PROPOPSED POSITION

Overseas subsidiaries of CPSEs be exempted from POEM requirementsin India.

IMPLICATIONS

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.

9.9 ISSUE

Limitation of interest deduction in certaincases.

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 a 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 the 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.

PROPOPSED POSITION

Section 94B of Income Tax Act 1961 maybeamendedtospecificallyprovide that the deeming fiction applies to loans guaranteed by ***"anon-resident associated enterprise"***and not to resident associates enterprises. Further,itisalsoforconsiderationthat the provisions of Section 94B be grandfathered to exclude financing arrangements entered into prior to March 31,2017

IMPLICATIONS

This would ensure that the deeming 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 baseerosioninIndia.Moreover,aproviso will be aligned to the scope of main section.

9.10 ISSUE

Revision of Income tax return under section 139(5) of the Act

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 the assessment,whicheveris earlier Thishas resultedinareductionof12monthsfrom theperiodavailableearlierforrevisionof return.

The reduction in the period for filing the revised return would adversely affectthe assessees who claims FTC wherein 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 a foreign jurisdiction may occur afterthe end of the period for filing therevised 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.

PROPOPSED POSITION

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.

IMPLICATIONS

Thiswouldavoidfinancialhardshiptothe assesseebypayingtaxinIndiawhilefiling the original income tax return and paying tax in a foreign jurisdiction on the due date and claiming a refund inIndia.

9.11 <u>ISSUE</u>

Furnishing details of employer’s bank accounts in which employees are signatories- Rule 12 and Form ITR-2

<u>PRESENT POSITION</u>

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 detailsthereofinitem“E”ofSchedule-FA.

In the case of a company, the signing authorityinitsbankaccountsneedstobe necessarily delegated to an individual who if, often, an employee of the company.Asimilarpracticeisfollowedin all public sector companies also. An employee of a public sector company havingsigningauthorityinaforeignbank account of the employer company can,by no stretch of imagination, be said to have any beneficial interest in such bank account. However, since formITR-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 the 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 suchemployees do not have any beneficial interest in the foreignbankaccountsofthepublicsector companies, it leads to infructuous work for the Income Tax Departmentand undue hardship to such employees..

<u>PROPOPSED POSITION</u>

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.

<u>IMPLICATIONS</u>

Thiswouldavoidinfructuousworkforthe Income Tax Department and also avoid undue hardship to the employees of public sectorcompanies.

9.12 <u>ISSUE</u>

Abolition of MAT provisions

<u>PRESENT POSITION</u>

It is welcome move that the MAT provisions are not applicable to domestic companies that opt for lower tax rates.However, the same should also be extended to taxpayers at the higher tax rates also specifically the Oil Industry as the profits of the oil industry are integrally linked to:

(a) International Crude Oil and product prices and Foreign exchange

(b) Government policy on duty structure, Pricing of products, subsidy –sharing etc.

Changes in both these factors significantly affect the refining margins and cannot be foreseen or reasonably estimated. Therefore, a correct estimation of profits for the year and remitting the correct amount of the advance tax instalments is not possible.The existing MAT provisions adversely impact the oil companies that are on the path of recovery from losses.

PROPOSED CHANGES

The objective of MAT is to tax companies that have earned book profits but do not pay taxes by availing tax exemptions. Extending MAT to companies recovering from losses is not in consonance with the objectives of MAT. Accordingly, it is suggested that MAT may be abolished.

At the least, Companies that are recovering from losses and turnaround from losses to profits should be exempt from the provision of MAT.

9.13 ISSUE

Computation of Book profit u/s 115JB to exclude profits eligible for deduction u/s 80-IA/ 80-IB of the Act.

PRESENT POSITION

Deduction available under sections 80-IA and 80-IB is not allowed to be excluded from the ambit of MAT provisions and hence, it is suggested that the book profit definition should exclude the profit from 80-IA and 80-IB respectively.

PROPOSED CHANGES

It may please be noted that the profits computed u/s 80HHC were allowed a deduction from Book Profits. Similar treatment may please be extended to Profits computed u/s 80-IA and 80-IB.

9.14 ISSUE

Exemption from payment of Minimum Alternate Tax (MAT) to the power sector companies-section 115JB of Income Tax Act, 1961.

PRESENT POSITION

If Income tax under the normal provisions is less than 15% of company's Book Profits, such book profit shall be deemed to be the total income and income tax (Minimum Alternate Tax i.e. MAT) at the rate of 15%+Surcharge + Education cess will be payable on such Book Profit. (Effective MAT Rate at present is 17.47%).

PROPOPSED POSITION

It is suggested that power generating companies should be exempted from MAT, as these are capital intensive and returns are spread over a long period of time.

IMPLICATIONS

1. Improvement in cash flow.
2. Tax holidays to power developer.
3. Boost for undertaking Power Generation activities.

9.15 ISSUE

Continuity of availability of MAT Credit in New Tax Regime- u/s 115BAA of Income Tax Act, 1961.

PRESENT POSITION

If a company adopts new tax regime u/s 115BAA, it has to forego various exemptions including available MAT Credit u/s 115JAA.

PROPOPSED POSITION

Since, power sector companies have unutilized MAT credit, the same should be available to the power generating companies even if they adopt new tax regime. It is suggested that unutilized MAT Credit should be continued to the power generating companies after adopting the new tax regime.

IMPLICATIONS

1. Easiness in adoption of New Tax Regime.
2. No loss of MAT credit accumulate u/s 115JAA

3. Boost companies to opt for the new simplified tax regime

9.16 ISSUE

MAT on dividend received from subsidiaries and joint ventures.

PRESENT POSITION

Finance Act 2020 has abolished exemption on dividend earned and the same is taxable in the hands of assesse, however section 80M was introduced to exclude taxability of dividend on inter corporate dividends. However under MAT computation the same has not been excluded and this income is taxed u/s 115JB.

PROPOPSED POSITION

Under MAT computation, provision to be inserted to exclude the amount of deduction claimed under section 80M. So that there is consistency with the approach adopted earlier where dividend exempt was excluded in the computation of MAT.

IMPLICATIONS

Avoid double taxation of dividends in the hands of the company as well as shareholders.

9.17 ISSUE

Delegation of Power for investment decision to Mini-Ratna companies.

PRESENT POSITION

India is a fast developing Nation with a vision of becoming five trillion dollar economy by FY-2024-25. To achieve this target, National Infrastructure Pipeline 2019 to 2025 has been formulated and total project capital expenditure in infrastructure sectors in India during the fiscals 2020 to 2025 is projected at over Rs.102 lakh crore. During the fiscals 2020 to 2025, sectors such as Energy (24%), Roads (19%),Urban infrastructure (16%), and Railways (13%) amount to around 70% of the projected capital expenditure in infrastructure in India. To achieve these targets, Public sector companies/ CPSEs have big responsibilities and to provide massive growth opportunities.

CPSEs have been graded as MahaRatna, NavRatna and MiniRatna based on their past performance. About 75% CPSEs are MiniRatna companies and they have prime role in Nation’s growth due to their diverse investment and business in different sectors of economy. The power to incur capital expenditure on new projects, modernization, purchase of equipment, etc. without Government approval stands at Rs.500 Crore for MiniRatna Category-I and Rs.250 Crore for MiniRatna Category-II. If the delegated financial power of MiniRatna companies is enhanced, the decision for investment of projects can be taken by these CPSEs as their own, quickly

PROPOPSED POSITION

For MiniRatna Category-I and Category-II companies, the power to incur capital expenditure on new projects, modernization, purchase of equipment, etc. without Government approval should be enhanced to Rs. 5000 Crore and Rs. 2500 Crore respectively. Also, the power in this respect for MahaRatna and NavRatna CPSEs may also be enhanced accordingly.

9.18 IRR/ ERR for infrastructure projects

PRESENT POSITION

For appraisal and approval of public-funded schemes and projects, Ministry of Finance (MoF), Government of India has circulated guidelines which undergo periodic revisions as and when required depending upon financial health and requirement of the country. While appraising any scheme/project, one of the significant factors to assess the viability of investment in a project is the financial Internal Rate of Return (IRR). Presently, this IRR i.e. hurdle rate considered is at 10%. Further, it is to also submitted that the hurdle rate considered in earlier guidelines issued by MoF, Department of Expenditure in November 2007 was a minimum of 12% when the prime lending of SBI during the period was 12.25 to 12.75 %. Subsequently, in August 2016 the hurdle rate was downwardly revised by MoF to 10 % when the MCLR based lending rate of SBI was about 10 % (MCLR 9.30%).

In recent months, the MCLR for the SBI has further gone down (current MCLR of SBI for 3 years is 7.30%) and the lending rate is of the order of 7.50 to 8%. Therefore, hurdle rate also needs to be downwardly revised to 8%. CPSEs have to compete with private players to get infrastructure projects. In such scenario, CPSEs are at a disadvantage vis-s-vis private players because of the requirement of minimum IRR of 10%. If this is further reduced to 8% in harmony with the lending rate, CPSEs stand better chance to invest more, and thus the idling surplus funds with the CPSEs can be put to better use of economic development of the Nation.

PROPOPSED POSITION

The hurdle rate may now be revised to minimum 8 %. This will result into more investment by Public Sector companies and increase competitiveness.

9.19 ISSUE

Definition of Qualifying Assets in case of Borrowing other than specific borrowings [Explanation to Para 6 of of ICDS IX]

PRESENT POSITION

For the purpose of this paragraph, a qualifying asset shall be such asset that necessarily require a period of twelve months or more for its acquisition, construction or production

PROPOPSED POSITION

Explanation: For the purpose of this paragraph, a qualifying asset shall be such asset that necessarily require a substantial period for its acquisition, construction or production.

IMPLICATIONS

By doing so, definition of qualifying assets mentioned in Income Tax (ICSD IX) will be in line with the provisions of IndAS mentioned in Companies Act resulting the ease of tax treatment and comparability of Assets in both laws.

9.20 ISSUE

Benefit restricted under Sec 115BAC

PRESENT POSITION

Individuals & HUF opting for new tax regime u/s 115BAC are not allowed any benefit. This in fact has caused the concerned assesses to bear more tax than old regime

PROPOPSED POSITION

Lot of Assesses have already availed Home Loan having the point of tax benefit in consideration. Such assesses are not having benefit to shift to new tax regime. In fact, the new tax regime has caused lot of such prospective home loan seekers to review their plan to buy new house which is indirectly detrimental to the interest of Housing Sector which is already going through a tough phase. In order to motivate individual and HUF assesses for purchase of residential house through Home loan, an exception may be provided u/s 115BAC to allow such assesses to set off loss House property loss (self-occupied) against other head of Income. Further the limit of such loss may also be considered to be increased to 5 Lakh.

IMPLICATIONS

The suggestion will be a booster to the Housing sector and lot of other associated sectors like Cement, Wood, other related service sectors etc and specially more employment will be generated out of the same.

9.21 ISSUE

Clarification regarding scope of Vivad Se Vishwas Scheme and extension of specified date.

PRESENT POSITION

During the recent budget presented on 1st Feb 2020, the Finance Minister has introduced the Vivad Se Vishwas Scheme (VsVs) in order to resolve pending litigation under the Income Tax Act, 1961 (ITL). The bill on the VsV Scheme was introduced in the lower house of parliament on 5th February 2020 and the President has provided assent on the said bill on 17th Mar 2020.
As per the Act the specified date is 31st January, 2020 and the due date for application was kept as 31.03.2020

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

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

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

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

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

PROPOPSED POSITION

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

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

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

"specified date" means the 31st day of January, 2020 in relation to case pending as on that day before any appellate forums,andThe last date for making a declaration under this Act, in relation to appealable orders against which assesse has time available to file appeal or the concerned tax authority has time available to file further appeal.

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

IMPLICATIONS

The object of the scheme will be better achieved if there is due clarity and wider scope.

9.22 ISSUE

Clarification on the Direct Tax Vivad se Vishwas Act, 2020 and Vivad se Vishwas Rules,2020

PRESENT POSITION

Section 11 of the Vivad se Vishwas Act (VSV Act) provides that if any difficulty arises in the implementation of the Scheme, the Central Government may be way of an order, remove such difficulty. The VSV Act, Rules notified therein and the FAQs (VSV Scheme) do not deal with the treatment that needs to be followed by taxpayers in subsequent assessment years in respect of claims, which are being settled under the VSV Act in the earlier assessment years.

The various tax disputes being settled under the VSV Act relate to disallowance arising during assessments which are of timing nature wherein claim disallowed in one assessment year are consequentially available in the subsequent assessment years either by way of deprecation over the period or by way of claim of allowance on payment bases in subsequent assessment year.

Hence, in this regard, IOC has made a representation under section 11 of the VSV Act dt. 22nd July 2020 to issue clarifications on the issues by way of FAQ / Amendment to VSV Act or VSV Rules.

PROPOPSED POSITION

The DTVSV Act and Income Tax Act may be suitably amended allowing assessee to re-compute assessed income for subsequent Assessment Year, Following the Assessment year for which VSVs is being opted for settlement of tax disputes, by claiming:-

- Depreciation towards disallowance resulting in treatment of allowance claimed by assessee as capital expenditure.
- Allowance on payment basis towards disallowance claimed by assessee on incurrence basis.

The assessed income of the subsequent assessment years so recomputed to be allowed to be the basis for determining the amount of tax payable or refundable for the subsequent assessment years in normal course or where Tax dispute for the said subsequent years is being opted to be settled under VSVs.

10. OTHER PROPOSALS

10.1 Payment to non-residents

The tax withholding in respect of non-residents scope is widened in the section 195. Section 195 contemplates that in the case of composite payments made to a non-resident, which have an element of income embedded or incorporated in them, the payer is under an obligation to deduct

TDS in respect of such income attributable to the composite payments. In the case of purchase of indigenous crude oil, the price payable is determined based on International markets and hence, it would not be possible to determine the profit element embedded in the total payment made towards purchase. It is also to be noted that the prices of crude are independent of cost associated for exploration and production of crude oil. Hence, section 195 makes it obligatory on the part of the assessee to withhold tax in respect of the whole or part of the income attributable of the other income.

In view of the divergence of opinions under the existing tax regime for example, royalty would be subject to withholding tax while copy righted materials and goods are not subject to withholding tax, clarifications need to be issued by CBDT specifying the nature of payments which attract withholding tax. It should be noted that the following phrase, "**any other sum chargeable under the provisions of the Act"** should be removed from the section 195 of the income tax act to bring in more clarity on the payments which are subjected to TDS

10.2 TDS Credit to be allowed irrespective of the Assessment Year

In respect of Tax deducted at source, TDS certificate issued by the deductor would reflect in Form 26AS statement. If the income in respect of such TDS was booked and offered to tax in one particular year and the amount of deduction is made in any subsequent year by the deductor, then such TDS credit is not provided to the benefit of the assessee stating that the income has not been offered for tax in that relevant year. Hence, it is suggested that the TDS Credit to be allowed irrespective of the assessment year.

10.3 Tax Loss Carry back

Tax loss carry back is a concept similar to the tax loss carry forward. The principle difference is that a year in which a loss is noted is not carried forward to a subsequent year. Instead, the tax loss carry back is applied to a previous year in which the assessee has paid large sum of taxes, and allows you to reduce taxes already paid, which usually results in a refund of some of the taxes paid by the assessee. This system is widely practiced in United States by the Internal Revenue Service (IRS) of United States Federal Government.

Under this system, the assessee will have to refile the tax return of previous year for the carry back year, and request a refund accordingly, if the assessee have filed its tax return on time in the past. There is a specific provision in the US tax law system which allows them to carry back upto three immediate proceeding years in order to avoid unlimited time for reopening an assessment related to previous years.With the Indian Tax laws, aligning with global tax laws, this concept can be introduced in India also.

This would go a long way in incentivizing commodity sectors that are badly affected by pricing cycles like Oil & gas and other commodities that are exposed to extreme volatility in International prices.

Thus in a business that had terrifically profitable years, an extremely bad business year might prompt an attempt to recoup some of the taxes paid in profitable years through a tax loss carry back. The above provision would also be attractive for foreign funds and institutions which are exposed to such environment globally but denied in Indian Taxation laws.

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

Benefit of weighted deduction of 1.5 times of expenditure incurred towards common carrier pipelines approved by Petroleum and Natural Gas Regulatory Board. The same benefit should also be extended to crude oil pipeline and petroleum product pipeline which are dedicated for supply to a specific consumer.

Section 73A should also be amended such that the loss computed under section 35AD can be set off against profits of other business inter-alia involved in oil and gas industry.

10.5 Impairment of Assets

For the purpose of calculation of book profit u/s 115 JB, clause (i) of explanation 1 to section 115JB refers that "the amount or amounts set aside as provision for diminution in the value of any asset" has to be added to the profit and loss account.

Clarity has to brought in the Act by referring that the Impairment of Assets are not provision for diminution in value of assets as they are guided by Ind AS 36 and since the profit and loss account has to be prepared in accordance with provisions of Schedule III of companies Act,2013, impairment of assets cannot be treated as amount set aside as provision for diminution in value of asset.

10.6 Scrapping of ICDS

Conceptually, tax should be paid on income; logically, income should be as per the books of accounts, especially if they are audited and maintained in accordance with generally accepted accounting principles, except to the extent of fair value accounting adjustments that neither cause income nor create losses in a recognized sense, as required under IFRS or Ind AS.

ICDS introduces a significant element of complexity and, more importantly, it is inconsistent with the concept of real income for example: Concept of capitalising borrowing costs irrespective of whether the funds utilized or not for the capital project, concept of materiality not recognized by ICDS by which small amounts have to be reconciled and taxed accordingly.

Various assessees are mandatorily required to follow method of accounting as per the Accounting Standards (AS) applicable in India, which is prescribed by the ICAI. However, section 145A deviates from the AS to certain extent. As per Guidance Note issued by ICAI in respect of method of accounting with regards to inclusive method as per S.145A, or exclusive method as per AS-2/Ind AS 2, there is no impact on the assessee's profit. Though there is no impact on profit and loss account, whether the assessee follows inclusive method or exclusive method, to comply with s.145A, the assessee needs to prepare profit and loss account following inclusive method, which is duplication of effort. Further, ICDS also requires that the valuation of inventories should be based on inclusive method of accounting.

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

10.7 <u>Macroissues</u>

1) Repo Rate linked borrowings may be made available to all CPSEs by way of a suitable policy. This will ease the liquidity situation prevailing in the economy to a largeextent.
2) Restriction on imports of Petrochemical products may be enforced to provide anambient business environment under AatmanirbharBharat.
3) The North East Industrial Development Schemes (NEIDS) 2017 may be extended for another 5 years to boost the producers in NER.
4) Investments in developing infrastructure in NER for producers like BCPL to have access to the South-East Asia markets may be prioritized. Long pending projects like theAgartala-Akhaura railway link project for connecting NER to Bangladesh through railway should be completed.
5) Expediting the construction of gas infrastructure in NER may be undertaken.

10.8 <u>CPC intimation u/s 143(1)</u>

Many times, in spite of explanations/ replies submitted in case of corporate intimations, no action is taken and demands are confirmed.

Suggestion: Mechanism should be there to provide justifications for not accepting views/clarifications of assesse need to be promulgated.

SECTION B:

INDIRECT TAXES

I. GOODS AND SERVICE TAX

1. TAXABILITY

1.1 ISSUE

Inclusion of Certain Petroleum Products within the ambit of GST

PRESENT Position

Currently Petroleum products like MS, HSD, ATF, Natural Gas and Crude oil are kept outside the ambit of GST.These products have to be brought within the ambit of GST. This would help the Oil Industry to avail entire GST credit available on Revenue and Capital goods. Currently, due to GST not being levied on MS, HSD & ATF, Oil Industry is eligible to avail only the proportionate Input tax credit (ITC) on GST, whereby about 75 % of ITC is lost.

Currently, the State taxes and Central taxes put together works out to more than 100 – 120 % in respect of HSD & MS. It is being reported that State consensus on bringing Petroleum products under GST ambit would involve considerable loss to exchequer and hence the proposal is getting deferred. However, this burden has been shifted to the Oil companies, denting the profitability and ability to pursue projects, which can generate employment and value additional potential.

Alternatively, a token GST of 1% may be imposed on MS, HSD and ATF in addition to the Excise and VAT which will enable oil companies to take Full Input Tax Credit. This process will also not be a loss to exchequer.Or the rules may be suitably amended to avail the ITC credit to the extent of GST liability without application of proportionate ITC clause.

PROPOSED CHANGES

This has dented the profitability and ability to pursue projects, which can generate employment and value additional potential. The effective cost of putting up a project is higher by 13% (i.e. 70% of 18%) as compared to projects outside India, impacting the project economic is against the professed principle of enhancing indigenous production

Sharing of Raw Material like Raw HSD, VGO, VR, Reformate, Isomerate, Naphtha etc. between the refineries for further processing and value addition is not economical due to non- availability of GST ITC. This has resulted in a situation where the refineries are left with intermediates on one hand and are unable to sell the same profitably and refineries in need of inputs are unable to source the intermediates.

Petroleum products have to be brought within the ambit of GST. Only if petroleum products are included, Oil refining companies can claim tax credit, without breaking the input credit chain.***(Financial impact of ineligible input tax credit on Revenue and Capital Goods Rs.200 crore p.a. for CPCL)***

1.2 ISSUE

Exemption from getting CSR projects treated as Sponsorship and falling under the ambit of Section 9(3)of the CGST Act read with CGST Notification 13/2017.

PRESENT POSITION

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

PROPOSED CHANGES

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

1.3 ISSUE

Corporate Environment Responsibility(CER) projects gets treated as Sponsorship. Section 9(3)of the CGST Act read with CGST Notification 13/2017.

PRESENT POSITION

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

PROPOSED CHANGES

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

1.4 ISSUE

Payment of IGST on reverse charge on Sea Freight/ demurrageSection 5(3)of the IGST Act read with IGST Notification 10/2017 (SL NO 10)

PRESENT POSITION

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

PROPOSED CHANGES

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

1.5 ISSUE

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" - CBEC Circular dated 24.09.2014.

PRESENT POSITION

InrespectofoverseasE&Pactivities,theService Tax Department is taking a view that amounts remitted to operators by otherconsortium partners or overseas branches by Indian E&P companies are liable to service tax as "business support services" rendered byoperator/foreign branch to the Indianentity.

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 shareofthejointcoststotheoperatorbywayof advancing the funds (called cash calls). The operatorpaystheexpensesfromsuchfundsand renders account of the expensesincurred.

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 seismicsurveys,drillingofwells,constructionof Production installations/platforms, transportationpipelines/facilitiesetc.andother associated operatingcosts.

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 overseasbusiness.

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,similarissuesmayariseandbefacedby Operators carrying out exploration and production activities inIndia.

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 productionactivities 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 underGST.

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.

IMPLICATION

This will avoid unnecessary litigation and improve ease of doing business in India.

1.6 ISSUE

Underutilization of Refinery Assets due to GST Applicability on Transfer of Intermediate Streams between Refineries and Blend components transferred within BPCL Refineries.

PRESENT POSITION

To utilize the refinery assets optimally and maximize production of value added products, the Refineries resort to transfer of intermediate streams and blending components within the own group of refineries and also from other Indian Refineries. Such transfers enables not only optimal utilization of the refinery assets but also avoids import of products and export of intermediates.

Stock transfer of intermediate product streams between refineries of suffers GST with nil or minimal input tax credit available as products finally manufactured by Refineries are under Excise/VAT regime. Due to this, the transfer of Intermediate products between Refineries becomes commercially infeasible, which in effect results into underutilization of Refinery assets and production capacities and causes loss of optimum utilization of nation's resources.

It is to be noted that BPCL has spent INR 16,500 Crores on IREP and a large secondary unit capacity has been created. Effective utilization of these refinery assets will add tremendous value to the corporation and to the Nation. We have also incurred capital expenditure of Rs. 530 Crores in laying of Heat Traced Pipeline between Refinery tankages and the Jetty, at both the refineries at Mumbai and Kochi, to enable the integration of the two refineries by enabling transfer of high pour intermediate product streams like HSVR / LSVR, fuel oil and VGO through coastal movement.

Due to un-viability of such intermediate stream transfers, we are not able to utilise the production capacities at KR to produce high value added products. Also, at Mumbai Refinery, we are exporting the low value added product at sub optimal price. Simultaneously, it leads to under - utilization of the secondary processing technology in the other refinery. Further, it compels us to undertake the costlier imports to satisfy the environmental norms of low sulphur plant fuel. Therefore, it results in loss to the corporation from all the above accounts.

At present, the intermediate products at Mumbai Refinery such as HSVR and LSVR are converted into Furnace Oil 380 (FO) and are completely exported out of India since there is no demand of such quality of product in India. At the same time, the production capacity at Kochi Refinery remains unutilized.

In earlier tax regime, such transfers between two units of the same company were exempted from state taxes and in case of taxes like Excise, full tax credit was available to the receiving units. Further in some cases specific exemption were available viz. vide Notification No. 256/87-C.E. dated 25.11.1987, Petroleum Products under Chapter 27 manufactured by HPCL, Bombay and transferred to BPCL, Bombay or vice-versa is exempt from whole of Excise Duties.

Therefore, the said transfer which were either duty free or on which full tax credit was available under earlier regime is now taxable at the rate of 18% and very less (20%-30%) tax credit for the same is available. We wish to submit that there will be increase in Revenue of Government in form of GST/Excise Duty/VAT, if the levy of GST is exempted on transfer of intermediate products from one refinery to another.

PROPOSED CHANGES

From the deliberations above, it can be comprehended that the transfer of intermediate products is essential and requisite for national importance. The above transfers can be carried smoothly only by providing relief from levy of GST on the transfer of intermediate streams like VGO from one refinery to another on the similar lines of the Notification No. 256/87-C.E. dated 25.11.1987 issued under the Excise law.

1.7 ISSUE

Time limit for issuance of credit note under section 34 of Chapter VII of The Central Goods and Services Tax Act

PRESENT POSITION

At present, credit notes against a particular invoice can be issued latest by 30th September of next financial year. However, many a times due to non-settlement of disputes by the specified date, it is not possible to amend the invoice leading to loss of GST already paid by the supplier.

PROPOSED CHANGES

Time limit for issuance of credit note may be increased or may be removed, so that business is not impactedThis will lead to amicable settlement of disputes and reduction in cost of supplier.

1.8 ISSUE

Applicability of GST on Power Producing and Distribution Companies.

PRESENT POSITION

Presently, electricity as goods is exempt from GST and transmission or distribution of electricity by an electricity transmission or distribution utility is exempt. Since production as well as transmission and distribution of electricity is presently exempt under GST, GST ITC is not available to such Companies.

PROPOSED CHANGES

Exemption to Power producing and / or Power Transmission or Distribution utilities needs to be reviewed in order to avoid any funds blockage on account of GST in the supply chain to such Companies.

IMPLICATIONS

This will help in maintaining the supply chain and help to reduce the cost of energy which is the essential input to all industries and accordingly shall have multiplier effect.

1.9 ISSUE

Non - inclusion of Natural Gas under GST Regime.

Present Position

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

The VAT rate on Natural Gas is very high in different states (viz. UP-26%, AP 14.5%, MP 14%, etc.). Since Gas based industries do not get benefit of tax credit of VAT paid on purchases of Natural Gas, it is resulting in increase in cost of production of such industrial consumers and would have inflationary effect on the economy.

PROPOSED CHANGES

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

2. RATE OF GST

2.1 ISSUE

Difficulties in availing concessional GST @ 5% for procurement of shipbuilding inputs due to Ambiguity and absence of definition of "Parts of ship" under GST Law and non-availability of detailed guidelines/ circular/ procedure promulgated by the Government. Sl. No. 252 of Schedule I annexed to Notification no.01/2017- Integrated Tax (Rate) /Central Tax (Rate) dt.28.06.2017 issued by MoF.

PRESENT POSITION

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 plates/ profiles/ 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.

IMPLICATIONS

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

2.2 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.

PROPOSED CHANGES

It is suggested to reduce 18% rate of tax for civil works to 5%.The reduction shall reduce burden of cash requirement for companies dealing in infrastructure projects including reduction in overall cost of the projects.

2.3 ISSUE

GST Rate of Following are on Higher Side

a) Smart Meters
b) EV Charging Services thru EV charging station.
c) Super-Efficient Air-conditioner.

PRESENT POSITION

Presently GST rate on

a) Smart Meters	--- @18%
b) EV Charging Services	--- @18%
c) Super-Efficient Air Conditioner	---@28%

PROPOSED CHANGES

Seeking Reduction in GST Rate of

a) Smart Meters from 18% to 5% or 12%
b) EV Charging Services thru EV charging station from 18% to 5%.
c) Super-efficient Air-conditioner from 28% to 5% or 12%.

Reduction in GST rate shall strengthen the Government National electric mobility mission plans, help in reducing cost to end consumers which make energy efficient equipments EVs more affordable and encourage the use of such energy efficient equipments, EVs etc.

2.4 ISSUE

Rationalization of GST on the service of regasification of LNG. GST Rate on services of regasification of LNG [Present GST rates are @ 18%, if benefit of N/N 20/2019 Central Tax Rate dated 30.09.2019 not applicable].

PRESENT POSITION

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

b. The imported LNG has to be re-gasified and converted into Natural Gas (known as RLNG - Regasified Liquefied Natural Gas) for transportation and consumption in India. The activity of regasification of LNG presently attracts high GST @ 18%.
c. The levy of GST at higher rate of 18% on the regasification of LNG increases the landed cost of imported LNG for domestic industrial consumers. 'Natural Gas' is being kept outside the ambit of GST till the recommendation of GST council. Regasification of LNG is under GST ambit resulting in stranding of taxes, and a higher rate of tax owing to limited clarification is reducing the competitiveness of RLNG with other polluting fuels.

The activity of regasification may be considered as manufacturing, going by the definition of manufacture as per Sec 2(72) of the CGST Act and the transaction of regasification under job work will attract GST @ 12% vide notification no. 20/2019 Central Tax Rate dated 30.09.2019, instead of present rate of 18%. However presently the industry is not considering the said definition due to lack of clarity and continues to charge GST @ 18%.

PROPOSED CHANGES

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

2.5 ISSUE

Clarification regarding GST Rate on Liquefied Petroleum Gases (LPG) supplied to OMCs for onward supply to household domestic consumers [GST @ 18% on LPG-Non domestic and @ 5% on LPG domestic].

PRESENT POSITION

a. Under GST regime, GST @ 5% is applicable on LPG for supply to household domestic consumers or to non-domestic exempted category (NDEC) customers by IOCL, HPCL and BPCL at entry no 165 of schedule 1 of the notification no. 1/2017-Cenral Tax (Rate) dated 28.06.2017. In other cases, the GST is payable @ 18% on supply of LPG
b. As per industry practice, GST @ 5% is applicable on the manufacture of LPG supplied to OMCs for ultimate supply to household domestic consumers. Accordingly, after introduction of GST Laws, the manufacturers of LPG are supplying LPG to OMCs @ 5% based on the end use certificates given by OMCs for domestic use.
c. During Pre-GST regime, VAT was levied on LPG in similar manner and LPG for domestic use was attracting concessional rate of VAT. LPG for domestic use was included in the category of declared goods under section 14 of the CST Act 1956 under which there was upper ceiling of State VAT rate of 4% / 5%. The MoPNG had also clarified vide letter ref. No. P 20023/2/2011-PP dated 23.07.2013 to the effect that the LPG supplied in bulk as well as in cylinders by refiners/fractionators to OMCs for ultimate sale for domestic use will qualify as supply of LPG for domestic use by such refiners/ fractionators.

d. Subsequently, a new entry no. 165A had also been inserted w.e.f. 25.01.2018 to expand the scope of the concessional rate of GST @ 5% on LPG for supply to household domestic consumers by suppliers of LPG which was intended for private suppliers who were not covered under entry 165.
e. The CBIC vide Circular No. 80/54/2018-GST dated 31.12.2018 again clarified at para 6 that GST @ 5% would be applicable to LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 25.01.2018 onwards i.e. date of notification whereby entry 165A. Since entry 165A was inserted with effect from 25.01.2018 to cover the LPG domestic supplied by private manufacturers, the clarification contained in para 6 is not proper and cannot be applicable to LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 01.07.2017 to 24.01.2018.

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

PROPOSED CHANGES

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

IMPLICATIONS

Gas fractionators producing LPG will be benefitedand future dispute will be avoided

2.6 ISSUE

Clarification regarding GST Rate on Compressed Biogas (CBG).

Present POSITION

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

PROPOSED CHANGES

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

2.7 ISSUE

Reduction of GST rate on Caustic Soda, being basic chemical.

PRESENT POSITION

At present, the GST rate on Caustic Soda is 18%.

PROPOSED CHANGE

The GST rate on Caustic Soda be reduced to 12%.

3. EXEMPTIONS

3.1 ISSUE

Exemption for payment of GST on purchase of supplies for Mega Power Projects.

PRESENT POSITION

GST on purchase of supplies for Mega Power Projects

PROPOSED CHANGES

Since there is no GST on generation and supply of Electricity it will be appropriate that supply of Goods & Services including works contract for Construction & Operation of Power Projects be exempted from GST which would help in reduction of project cost which will result in decrease in tariff for end consumers.This affordability will make electricity an alternate source of power to petroleum products, which are mainly imported. This will decrease the outflow of capital to foreign countries

3.2 ISSUE

GST on Interstate movement of material/equipment

PRESENT POSITION

In construction of power projects material/goods needs to be transported from stores in one state to another state often in case of emergency. In addition to this, assets are transferred from one unit to another unit of CPSE and other transactions are also carried out between the different units of CPSE situated at different state. As per the GST Act, movement of already procured items from one state to other state will attract GST which was not the case in earlier regime. This additional cost would increase the tariff and the cost of power to ultimate consumers.

PROPOSED CHANGES

It is proposed to exempt the GST on transactions/ transportation of material/goods between different units of the same entity located in different states.This will result in reduction of the project cost which will result in decrease in tariff for end consumers.

3.3 ISSUE

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

PRESENT POSITION

1. This is with reference to the **Circular No. 80/54/2018-GST** dated **31.12.2018** clarifying applicability of GST rate of 5% on supply of Liquefied Petroleum Gas (LPG) by

refiners/fractionators (like GAIL / ONGC) to Oil Marketing Companies (OMC) for ultimate supply to household domestic consumers in terms of Ministry of Petroleum and Natural Gas (MoP&NG) letter No. P 20023/2/2011-PP dated 23:07.2013.

2. In this regard, we would like to submit as under :-
   i. OMCs have to procure the quantity of Domestic LPG, not only from own refineries but also from standalone refineries including private refineries, fractionators, from other OMCs as well as through direct imports.
   ii. The entire chain for supply of LPG for domestic use starts from the procurement of bulk LPG through imports or from the refineries/fractionators/OMCs to the bottling plant and thereafter sale of LPG for domestic use in cylinders to the consumers.
   iii. Applicability of GST rate of 5% on supply of Liquefied Petroleum Gas (LPG) to household domestic consumers or to Non-domestic Exempted Category (NDEC) customers is covered under entry at S.No. 165 and 165A respectively of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. However, it is worth mentioning that S.No. 165A was inserted w.e.f. 25.1.2018 and earlier supply of LPG by OMC to both household domestic consumers or to NDEC customers was covered under entry at S.No. 165 during 1.7.2017 to 24.1.2018 only.
   iv. There was an ambiguity on applicability of GST rate on supply by refiners /fractionators to OMCs for ultimate supply to household domestic consumers or to NDEC customers. Therefore, Oil industry has requested for issuance of clarification that such supply should also attract 5% GST.
   v. Though Govt. has issued above mentioned circular clarifying that supply of LPG by refiners /fractionators to OMCs for ultimate supply to household domestic consumers will attract 5% GST w.e.f. 25.01.2018, however, an ambiguity has arisen regarding applicability of GST rate on such transactions taken place during 01.07.2017 to 24.01.2018.

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

PROPOSED CHANGES

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

S.No.	Issue	Status	Amendments sought
1.	Supply by refiners/fractionators to OMC during 01.07.2017 to	W.e.f. 1.7.2017 to 24.01.2018, supply of LPG by OMCs (IOC,BPC,HPC) to NDEC and DomesticHousehold Consumers	Circular No. 80/54/2018-GST doesn't include supply of LPG to OMCs under S.No.165for ultimate supply

	24.01.2018 to Domestic Household and NDEC customers.	were attracting GST at the rate of 5% in terms of entry in S.No. 165 of Notification No.01/2017– Central Tax (Rate) dated 28.06.2017.	to both NDEC and domestic consumersupto 24.01.2018.Hence, S.No. 165 to be included in the circular w.e.f. 01.07.2017 itself.
2.	Supply by refiners /fractionators to OMC w.e.f. 25.1.2018 for supply to NDEC customers	Consequent to insertion of S.No.165A, Notification No. 1/2017- Central Tax (Rate), the S.No.165 was amended to omit the supply to household consumers. Thus, w.e.f. 25.01.2018, S.No. 165 is applicable for supply to only NDEC consumers. S.No. 165A is applicable w.e.f. 25.01.2018 for Supply to household consumers.	S.No. 165 is still applicable for supply of LPG to NDEC consumers, as amended by Notification No. 06/2018 – Central Tax (Rate) dated 25.01.2018, thus Circular No. 80/54/2018-GST should include S.No. 165.

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

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

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

3.4 ISSUE

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

PRESENT POSITION

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

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

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

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

PROPOSED CHANGES

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

3.5 ISSUE

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

PRESENT POSITION

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

PROPOSED CHANGES

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

4. POINT OF TAXATION

4.1 ISSUE

The street light activity under taken under street lighting national programme entered with various local authorities was taxable @18% has been considered as supply of services by the EESL.

PRESENT POSITION

There is no clarification by the GST council or the Government on the following issue:

1. Whether street lighting activity under street lighting national programme is to be considered as pure supply of services or pure supply of goods or composite supply of goods and services being a works contract?
2. What will be rate of Tax on the above transaction?

The said matter is under litigation in various states some advance ruling has considered it as supply of Goods and has levied a GST rate of 12% while ruling has considered as supply of service and levied a GST rate of 18%.

PROPOSED CHANGES

The Government shall specifically provide clarification of such activity either as supply of goods or services.The proposed GST rates of such activities may be 5%.

Implication

Street Lighting National Programme (SLNP) to replace conventional street lights with smart and energy efficient LED street lights across India was launched by the Hon'ble Prime Minister, on 5th January, 2015.The reduction in the GST rate and clarity on the said issue will drastically reduce the cost of replacement of conventional street light by the local authorities and will further reduce the litigation.

5. Input Tax Credit (ITC)

5.1 ISSUE

Proportionate reversal of credit on “Capital goods” for every tax period.

PRESENTPOSITION

In respect of capital goods used in the production of GST and Non-GST goods ITC on capital goods will be reversed along with 18% interest. Further, the formulae for reversal of credit are also very complicated due to which taxpayers are having unnecessary compliance and administrative hassle.

PROPOSED CHANGES

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

5.2 ISSUE

Reversal of Input Tax Credit on Inputs and Input Services in proportion to Sales Turnover of Non GST output. Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules.

PRESENT POSITION

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

PROPOSED CHANGES

Provisions be made in the CGST Act **so that the input tax** credit is not restricted in the case of sale of MS/ HSD and ATF (duty paid). Currently a major part of the input tax credit gets reversed on account of the sales of MS/HSD and ATF being non-gst product which affects the profitability/survival of the business

5.3 ISSUE

Reversal of Input Tax Credit on Capital Goods. Section 17(2) of the CGST Act read with Rule 43 of the CGST Rules.

PRESENT POSITION

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

PROPOSED CHANGES

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

5.4 ISSUE

Restriction in availment of input tax credit because of additional requirement of GSTR 2A reconciliation under section 37 of CGST, Act 2017 read with rule 36(4) of CGST Rules, 2019.

PRESENT POSITION

The input tax credit is required to match in respect of invoices/debit notes whose details are uploaded by supplier in GSTR-1 return under section 37(1) and restriction is also imposed that in respect of invoices/debit notes whose detail are not uploaded by suppliers maximum 10% of eligible credit which have been uploaded by the suppliers may be availed. This is even when original invoices /debit notes (hard copy) are available.

PROPOSED CHANGE

This provision places unreasonable restriction on the buyer as the buyer take the credit after receiving original invoice and payment to the seller. The defaults of the seller can be easily verified from the GSTN system by which the Department should take action against the seller and the buyer should not be unnecessary harassed and put to difficulty for no fault of buyer. Hence the 10% clause restriction may be removed and full credit to be allowed.

However to protect the interest of the Revenue report may be obtained from each assese of credit taken not appearing/ wrongfully appearing to 2A after 30th of September of succeeding Financial Year to trace the defaulters.

5.5 ISSUE

Input tax credit to be allowed for construction of cross country petroleum and gaspipeline.

PRESENT POSITION

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

PROPOSED CHANGES

GST law should be amended appropriately to allow ITC on goods and services used in construction of cross country petroleum and gas pipeline. This will help OMCs.

5.6 ISSUE

GST input tax credit on storage tanks.

PRESENT POSITION

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

In case due to lack of clarity and technicalities involved, the Department considers the large petroleum tanks (LPG Spheres) and storage tanks as immovable property and not Plant & machinery, then non-availability of input tax credit would significantly increase the cost of oil distribution and will adversely affect economics of petroleum distribution business

PROPOSED CHANGES

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

5.7 ISSUE

GST Transitional dispute relating to CENVAT Credit.

Present Provision

(1) As per GST transitional provisions, CENVAT Credit in original return shall be the basis for transiting the credit to Form GST TRAN – 1 and wherever service tax/excise return is revised and pursuant to such revision, any CENVAT Credit is found to be admissible, the same shall be refunded in cash under the existing law (i.e. earlier regime of Service tax/Excise) subject to doctrine of unjust enrichment. [Section 142(9)(b) of CGST Act, 2017)

(2) Section 142(9)(b) reads as under

"Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash ***under the existing law,*** *notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and amount rejected, if any, shall not be admissible as input tax credit under this act."(Emphasis Supplied)*

(3) We have filed refund claim on account of additional CENVAT credit becoming eligible pursuant to revision of service tax return. Department is of view of that there is no provision to grant such refund under the existing law i.e. Central Excise, Service tax. Thus, litigation are pending on account of same.

(4) Similarly, Section 174 of the CGST Act provides provisions with respect to repeal and saving. Section 174(2)(c) provides that repeal/amendment of the earlier Acts shall not affect any right which had accrued or been acquired under the repealed/amended Act. Further, the CENVAT credit Rules, 2004 provided that CENVAT credit can be availed within 1 years from the date of invoice.

In view of above provisions, the CENVAT Credit of service tax in respect of invoices received after filing of revised service tax return but which are within 1 year of time-limit were statutory and vested right of us. In view of this, we have filed refund applications, however, Department is of the view that such credit should have been claimed under form GST TRAN -1 as well as there is no transitional provisions under GST to allow refund of same.

PROPOSED CHANGES

CENVAT credit in disputes was legally earned and forms part of substantial vested right which should not be taken away due to introduction of new & vastly different tax regime of which the assesses had no prior experience. It is requested to issue suitable clarification that refund of additional CENVAT credit be given to assessee in respect of their above said claims.

5.8 ISSUE

Non availability of Input Tax Credit of GST paid on exempt outward supplies by warehousing companies- Section 42 of Chapter V of The Central Good and Services Tax Rules 2017.

PRESENT POSITION

Warehousing companies like CWC are in the business of loading, unloading, packing, storage or warehousing of agricultural produce including rice. This is exempt from GST.

Though the output supply is exempt, but there is no provision in the GST law for the availing the Input Tax Credit of GST paid on various inputs used like chemicals, insurance, dunnage, fumigation covers, rent paid for warehouse, rent of go-downsand security services etc. May please note that without these inputs, warehousing business cannot be done.

Non-allowing of the GST paid on input has increased the cost of warehousing tremendously especially food grains.

PROPOSED CHANGES

It is requested that the input tax credit of GST paid by the warehousing companies may also be allowed, so as to make warehousing business more lucrative which is now the need of hour in view ofCOVID-19 pandemic.

IMPLICATIONS

This shall reduce the warehousing cost of Food grains (including Rice) as full input tax credit of GST paid by warehousing companies is allowed.

5.9 ISSUE

Reversal of Input Tax Credit where both taxable & exempt supplies are made- Section 42 of Chapter V of The Central Good and Services Tax Rules 2017.

PRESENT PROVISION

In case of CWC/ any other warehousing company, input goods and services are used partly for effecting taxable supplies and partly for effecting exempt supplies. The amount of such common Input Tax Credit is restricted to so much of the input tax as is attributable to the said taxable supplies. This reversal of Common Input Tax Credit also increases the cost of warehousing of food grains.

PROPOSED CHANGES

It is requested that the unutilized input tax credit may also be allowed to be availed by the Warehousing Companies who are in storage of Foods grains (including Rice).This shall reduce the warehousing cost of Food grains (including Rice) as full input tax credit of GST paid by warehousing companies is allowed.

5.10 ISSUE

Non availability of input credit on goods to the input service distributor (ISD) Section 39 of Chapter V of The Central Good and Services Tax Rules 2017.

PRESENT PROVISION

At present an ISD is allowed to avail and distribute only input credit on services availed and not on goods. However, many a times goods are also purchased by ISD which are for the common utilization of all the units. Non availability of input credit on goods leads to increase in the cost of services provided**.**

PROPOSED CHANGES

ISD may be allowed to avail and distribute credit on goods also.The same will lead to reduction in cost of services provided by warehousing companies.

5.11 ISSUE

Interest on reversal of GST ITC on account of non- payment to supplier within 180 days.

PRESENT PROVISION

Second proviso to Sec. 16(2) of CGST Act, 2017 provides that where a recipient fails to pay to the supplier of goods or services, the amount towards the value of supply of goods/ services along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in the manner as may be prescribed.

PROPOSED CHANGES

In case, provision for reversal of ITC for non-payment within 180 days exists, interest should not be charged on reversal of such ITC since there is no undue availment of GST ITC.

IMPLICATIONS

Regarding Interest liability, since there is no loss of revenue to the Government, interest should not be charged from the recipient. By relaxing ITC reversal / interest payment thereon, the burden on taxpayers shall also be removed in the present situation of COVID 19 pandemic and otherwise also.It is also worthwhile to mention that the levy of interest in such cases was recommended to be withdrawn by the GST Council Meeting held on July 21, 2018.

5.12 ISSUE

Restriction of Time limit for taking Input Tax Credit. [16 (4) CGST Act]

PRESENT PROVISION

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.

PROPOSED CHANGES

The necessary amendment should be made in the GST Act to allow the claim of such left out input in the annual GST return of the taxpayer. The left out ITC can be claimed in the annual GST return, will not debarred the taxpayer for taking ITC on which GST has already been paid by the seller, and there won't be any revenue loss to the exchequer due to such move.

5.13 ISSUE

ITC availment Restriction limit [Rule 36(4) of CGST Rules, 2017.

PRESENT PROVISION

Rule 36(4) of CGST Rules, 2017 specifies that Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

There are several reasons due to which it is practically difficult to reconcile the ITC claimed vis-a-vis that appearing in GSTR 2A like:

- The recipient is filing monthly return but the supplier is filing quarterly return;
- It is a very cumbersome process to always reconcile the GSTR2A especially in cases where the supplier uploads its GSTR 1 with delays.
- This rule is creating huge working capital blockage for tax payers who are not being able to claim ITC due to the fault of the supplier in spite of the fact that in many cases such tax payer has already paid to his supplier.

PROPOSED CHANGES

This Rule imposing restrictions limiting input credit at 10% of ITC appearing in GSTR 2A should be dispensed.

IMPLICATIONS

The very objective of GST is to provide seamless credit flow, the insertion of rule 36(4) defeated the said objective. The working capital requirement of the business entity has increased there by increasing the finance burden. The deletion of said rule will also avoid unnecessary litigation and the said rule is considered violation of the Article of the Constitution of India.

5.14 ISSUE

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

PRESENT POSITION

a. As per the extant provisions of GST laws, Input Tax Credit (ITC) is not eligible on goods / services used for construction of immovable property (other than plant and machinery). Further, the definition of Plant & Machinery specifically excludes 'Pipelines laid outside the factory premises'.
b. In view of aforesaid provision of GST law, it may be interpreted that ITC is not available on goods/services received for construction of Natural Gas / LPG pipeline networks being immovable property and not covered in the definition of plant & machinery.
c. It is submitted that under the erstwhile provisions of Cenvat Credit Rules, input tax credit (CENVAT Credit) was eligible, in general, on the goods/services received for construction of pipeline.
d. It is also submitted that the GST is applicable on the services of transportation of goods through such Natural Gas / LPG pipeline and GAIL is making payment of GST on the transportation of entire Gas being transported through Natural Gas / LPG pipelines. The non-availability of ITC on the goods/services received for construction of pipeline will substantially increase the costs of pipeline projects resulting in higher transmission tariff and will lead to cascading and inflationary effect which is against the basis spirit and concept of GST.
e. Key definitions under GST laws is as below for reference. It may be observed that term "factory" is not defined under the GST law.
   i. Plant & Machinery is defined as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes following:
      a) Pipelines laid outside the factory premises
      b) Land, building or any other civil structures
      c) Telecommunication towers
   ii. Construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization.

It may not be out of place to mention that Natural gas is mainly (around 70%) used in priority sectors like Power and fertilizer, non-availability of ITC on the GST paid on procurement on goods and services required for construction of pipeline would lead to increase in the transmission tariff and will in turn make Natural Gas costlier for power and fertilizers sectors. This may result in an adverse effect on many thrust sectors including the priority agricultural sector and may increase the subsidy burden on the Government for such sectors.

PROPOSED CHANGES

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

5.15 ISSUE

No ITC benefit, if GST is levied @ 5% on service of transportation of Natural Gas through pipeline. GST Rate on services of transportation of Natural Gas through pipeline [Present GST rates are @ 12% with ITC credit & 5% without ITC Credit].

PRESENT POSITION

a. It may be observed that presently GST rate on the services of ‘transportation of Natural gas through pipeline’ is applicable @12% (with ITC benefit) and @5% (without ITC benefit).
b. Further, as per GST Laws, two different registered units of an entity are considered distinct persons and inter-unit billing for supply of goods/ services between such units is required to be carried out with applicable GST. Considering such provisions under GST Laws, the lower GST rate @5% (without ITC Benefit) could not practically be implemented so far, as Input Tax Credit (ITC) of GST payable on the inter-unit billing, for services of transportation of Natural Gas, will not be available to recipient unit of GAIL.

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

PROPOSED CHANGES

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

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

5.16 ISSUE

Double impact of GST on procurement and subsequent transfer of Pipes procured for laying other cross country Pipeline network under section 17 of the CGST Act.

PRESENT PROVISION

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

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

PROPOSED CHANGES

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

i. Since input tax credit is specifically denied on goods purchased for construction of pipeline, any subsequent stock transfer of such goods by one registered unit to another registered unit of same entity will not be liable to payment of GST.
ii. Alternatively, a mechanism may be provided to allow Input Tax Credit (ITC) to the transferor unit of same entity at the time of Stock Transfer of such goods to another unit of same entity in line with the mechanism provided for airline industry. It is submitted that in the similar circumstances vide Circular reference no. 16/16/2017 dated 15.11.2017, the input tax credit (ITC) of aircraft engines/Parts has been explicitly allowed on inter-state transfer of these goods by airline industry.

5.17 ISSUE

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

PRESENT PROVISION

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

PROPOSED CHANGES

In case our request for levy of nominal GST is not practical, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be carried out in the CENVAT Rules to allow the tax credit of GST paid inputs against the output tax liability of Excise on non-GST products since the credit was earlier available under CENVAT & VATlaws;

5.18 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 define 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 service and capital goods credit respectively.

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

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

It is worth mentioning here that Under Cenvat Credit Rules, 2004 also, the value of traded goods was considered at only 10% value of traded goods for calculating reversal ratio for common input services.

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,-*

(1) ………

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

a) ……….
b) ……….

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

In case of traded excluded petroleum goods, value will be considered by the exporter for positioning of the Non-GST goods for Export.

5.19 ISSUE

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 section 16, zero rated supply means export of goods and the state which exports the Non-GST goods are eligible for ITC. However in case of movement of Non-GST goods from manufacturing unit situated in one political state to Export 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 warehouse are situated in different political states. This would provide relief to the exporters from burden of incurring GST taxes and duties are not to be loaded in case of exports.

6 REFUND

6.1 ISSUE

Unable to claim refund of unutilized Input Tax Credit (ITC) of GST arising out of inverted tax structure due to long gestation period of construction & delivery of ship. Refund of unutilized ITC in respect of inverted rated goods is governed by provisions of section 54(3) and Rule 89(2)(h) & 89(5) of CGST Act.

PRESENT PROVISION

In shipbuilding industry it is experienced that input tax paid on procurement of ship building inputs exceeds GST payable on the finished ship leading to inverted tax structure. This results in accumulation of unutilized Input Tax Credit (ITC) at the end of each financial year. As per the provisions under GST law, in order to claim refund of ITC, there must be sale of inverted related goods and refund will be proportionate to the turnover during the year of sale and not full ITC as per the formula. In case of shipbuilding industry, invoice for 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 month time from the date of commencement of ship construction activity. In case of weapon intensive defence 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

The contract price of a ship is fixed at the time of signing of the shipbuilding contract. Hence the output tax liability can be determined with certainty at the beginning itself and thereby refund due can also be worked out. Considering long gestation period & complexity involved in shipbuilding and to address the issue holistically, MoD may impress upon MoF to exempt ship building industry from the applicability of the provisions of Rule 89(2) (h) & 89(5) of CGST Act and to allow refund of unutilised ITC at the end of each financial year.

6.2 ISSUE

Refund of huge Input Tax Credit Accumulation.

PRESENT PROVISION

There are various common Inputs, Capital Goods and input services, which are covered under GST and used for supply of Non-GST products [MS (Petrol), HSD (Diesel) and ATF] as well as GST Products [LPG, SKO, Furnace Oil and other GST product]. As per the provision of GST Act, input tax credits can be claimed only if the output is also under GST. There is huge Input Tax accumulation in majority of the states where BPCL has taken GST Registration because of following main reasons:-

- Major proportion of Final Product [MS (Petrol), HSD (Diesel) and ATF] is outside GST, therefore, input tax credit of GST paid is available proportionately as per Rule 42 and 43 of CGST Rules, 2017.
- Furthermore, input service/Capital Goods used for supply of GST Goods is taxed at higher rates, however, the outward taxable supply is taxed at lower rate, for instance, LPG Domestic & SKO PDS.

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

PROPOSED CHANGES

In view of the above, it is suggested that OMCs should be granted refund of ITC accumulation because we are still under dual tax regime. Therefore, suitable amendments in refund provisions under section 54 of GST Act and Rule 89 of CGST Rules, 2017 may be carried out so that these accumulated ITC can be refunded to OMCs.

7 RETURN FILING

7.1 ISSUE

Non-availability of filling of GST return without payment of tax - Section 39(7)

PRESENT POSITION

Currently last day of payment of tax is 20th of succeeding month and filling of return is 20th of succeeding month.

PROPOSED CHANGES

Payment and return filling of the same day leads to overload of the system, It is suggest payment may be made by 20th of succeeding of the month and return filling be relaxed by day or two say upto on or before 22nd of succeeding Month.

This legal compulsion of payment by 20th will help in collection of tax dues by 20th and its remittance. This will result easy way of filling return on 22nd.

7.2 ISSUE

Time limit extension for filing of GSTR-1

PRESENT POSITION

Time limit for filing GSTR-1 needs to be extended to enable vendors to upload all required data properly.

PROPOSED CHANGES

Time limit for filing GSTR-1 needs to be extended to 15th of each month instead of 11th.

7.3 ISSUE

Filing of Revised Return

PRESENT POSITION

Currently, vendors are unable to file the Revised Return, due to which vendors are not able to correct the errors done at the time of filing monthly returns.

PROPOSED CHANGES

The Mechanism for filing the Revised Return needs to be in place.

7.4 ISSUE

Payment of GST before and after due date

PRESENT POSITION

Currently, vendors are able to pay GST only once during the month.

PROPOSED CHANGES

The system should provide for the payment of GST before and after the Due Date.

7.5 ISSUE

GST portal is not working satisfactorily.

PRESENT POSITION

Presently, the system is not working satisfactorily. As a result, the Payment of Taxes & also, the Filing of Returns get affected and the Assesses end up in paying the Interest for no fault of theirs.

PROPOSED CHANGES

The GST portal needs to be improved significantly.

II. CUSTOM DUTY

1.1 ISSUE

Removal of NCCD for import of Crude oil

PRESENT POSITION

Recently, NCCD has been included in the computation of rates under the Duty Drawback Scheme (DBK). However, the scheme permits the credit to be availed only by the exporter unlike other export incentive schemes like Advance Authorization, EPCG etc., which allows supporting manufacture to claim the benefit.

PROPOSED CHANGES

The levy of NCCD @ Rs. 50 / MT on import of crude oil was introduced in the year 2003 to meet the emergency situation that arose due to the natural calamity that struck Maharashtra in the form of an earthquake. However, the NCCD element still continues even after a period of 17 years, although at the time of such levy it was indicated that it was only for a period of 1 year.

The Supporting manufacturer, who imports the goods on remittance of NCCD and sells the same to the Exporter, is unable to avail the benefits of DBK scheme resulting in a situation of the cost being borne by the supporting manufacturer, without recourse to claim the incentive, based on which the exports have actually occasioned. ***Financial impact Rs.50 Crore per annum.***

1.2 ISSUE

Net Duty Protection to Oil refining Industry

PRESENT POSITION

The net duty protection available at present is only around 0.5 % which is inadequate as compared to around 4% in FY 2004-05. The refining margin has been hovering around $ 2 / bbl as against an average of around $ 5 / bbl till 2007-08. Hence standalone refineries have to be compensated by way of higher duty protection to generate sufficient resources to fund modernisation and growth oriented projects.

PROPOSED CHANGES

The duty structure and pricing policy should be stable and consistent to enable investment decisions based on sound economic principles. The threats of changes in the above significantly cloud the investment perspectives thereby rendering the growth stunted.

1.3 ISSUE

Social welfare surcharge (SWS) on MS and HSD

PRESENT POSITION

When Social Welfare Surcharge was introduced by the union budget in 2018, MS and HSD was specifically excluded from the levy.

When all the inputs imported by the refineries are subject to SWS, exemption of MS/HSD creates an inequitable situation of non-recovery of cost in the import parity component of MS and HSD.

PROPOSED CHANGES

In order to remove this anomaly of the input being subject to higher tax without corresponding levy on the output, resulting in losses to the refineries, the exemption of SWS to MS and HSD is required to be withdrawn.

This will also have the impact of making the imports costlier and further incentivize domestic production and procurement.

1.4 ISSUE

Custom duty on import of Hydrogen especially from SEZ unit to DTA. As per Customs Act Basic duty rate is 5% + 18%IGST + 10%SWS cess under tariff code 28041000 –Hydrogen.

PRESENT POSITION

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

PROPOSED CHANGES

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

1.5 ISSUE

Import materials for supply of LRSAM to Ministry of Defence-Ministry of Finance, department of revenue Notification Number 19/2019 dated 6th July 2019.

PRESENT POSITION

As per the said notifications, vide serial number 21 only CTH 84, 85 90 or 9306 is allowed to get the exemption from payment of customs duty. However, there are many other items which are being imported for LRSAM project that are falling other than CTH 84, 85, 90,& 9306.Therefore currently ,customs duties are being paid for the goods that are not covered under the notification.

PROPOSED CHANGES

The Said Notifications issued by the **GOI for exempting the goods meant for LRSAM**, restricts the exemption to few items. Hence, it is proposed that, all the materials that are required for LRSAM project need to be covered in the notification number 19/2019 Dated 6th July 2019.Issues relating to Duty exemption in respect of some item and reimbursement of Custom Duty for other items in respect of the LRSAM project could be resolved.

1.6 ISSUE

Import of Gold and Silver (precious metals) for manufacture of electronic devices. Ministry of Commerce & Industry, Department of commerce Notifications Number 36/2015-2020 Dated 18th December 2019.

PRESENT POSITION

As per the said notification the import policy was amended stating that, imports of "Gold and Silver" in any form needs the Licence from the Directorate General of Foreign Trade. The receipt of licences from DGFT is talking nearly 5 to 6 months. This is causing, inordinate delay in imports and hampering the production.

PROPOSED CHANGES

Requirement of import Licence for Import of Gold and silver for manufacture of electronic devices may be relaxed so that DPSUs can import these under Specific Defence Contracts with certification of DPSU Director.

1.7 ISSUE

Customs duty concession for laying of product and gas pipeline.

PRESENT POSITION

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

PROPOSED CHANGES

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

1.8 ISSUE

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

PRESENT POSITION

i. Import Duty (Basic Customs Duty) @ 2.5% plus Social Welfare surcharge @10% is applicable on import of Liquefied Natural Gas (LNG), the effective Customs duty comes to 2.75%.
ii. Import of LNG for exclusive consumption in generation of electric energy for public distribution is exempt from custom duty subject to certain conditions. However, other important sectors like fertilizer, LPG, CNG, PNG, and Petrochemical bears the burden of effective Custom duty @ 2.75%.
iii. The Custom duty increases the landed cost of imported LNG for domestic and industrial consumers. Since the domestic production of Natural Gas is not enough to cater the increasing demand, import of LNG at large scale is required to augment supply of Natural Gas for priority sectors such as Fertilizer, CNG, LPG, PNG etc.

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

PROPOSED CHANGES

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

1.9 ISSUE

Rationalization of suspension of deferred duty payment benefit in Customs. Advance Economic Operator Scheme.

PRESENT POSITION

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

PROPOSED CHANGES

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

1.10 ISSUE

Reduction in Customs Duty rate forProcurement / Materials Management**.**

PRESENT POSITION

ETHYL ANTHRA QUINONE, TETRA BUTYL UREA, HYDROXY ETHYLIDENE, TREATED ALUMINA and POTASSIUM CHLORIDE–these are a raw material for manufacturing of Hydrogen Peroxide (H2O2). Market price of H2O2 is very low due to the heavy dumping of material from East Asian Countries i.e. China, Korea, Thailand etc. As a result of this Indian manufacturers are facing difficulties in selling the material locally. Reduction in duty % will help to become competitive in Market.

PROPOSED CHANGES

Existing BCD rate 7.50%

Proposed BCD rate 2.50%

1.11 ISSUE

ClarificationonapplicableImportdutyrateonImportofPropaneandButane.

PRESENT POSITION

Import of Propane and Butane meeting IS specs. 4576 for Non-Domestic Supplies by OMC's falls under specific Tariff Item 2711 1200 - Propane and specific Tariff Item 2711 1300 - Butane. As per Sl. No.156 & 157 of Customs Notification no. 50/2017 dated 30th June 2017 which specifies a levy of Basic Customs Duty of 2.5% with NilConditions.

Recently Customs Authorities post amendment in Customs Tariff Schedule effective 01.01.2020 arising pursuant to changes as per Finance Act 2019 are insisting for clearance of Imported Propane and Butane under Tariff Item 2711 1910 LPG (for non-automotive purpose conforming to standard IS 4576) having Basic Customs Duty of5%.

PROPOSED CHANGES

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

1.12 ISSUE

Existing description of goods as per Sl. No. 559 of the Table to Notification No. 50/2017 – Customs dated 30/06/2017.

PROPOSED CHANGES

Recommended Change to description of goods as per Sl. No. 559 of the Table to Notification No. 50/2017 – Customs dated 30/06/2017.

1.13 ISSUE

Raw materials and parts, for use in the manufacture of goods falling under heading 8901, 8902, 8904, 8905(except sub-heading 890520) or 8906

PRESENT POSITION

Raw materials, **consumables** and parts, for use in the manufacture of goods falling under heading 8901, 8902, 8904, 8905(except sub-heading 890520) or 8906 **and spares for goods falling under heading 8906**

Mazagon Dock Shipbuilders Limited (MDL) even though exempted from Customs Duty on raw-materials and parts, is required to pay Custom Duty on Consumables and Base & Depot Spares.

III. CENTRAL EXCISE

1.1 ISSUE

Central Excise duty MS, HSD and ATF and Petroleum Crude increases the cost to do business**.**

PRESENT POSITION

These products are under the Excise Regime. Excise Duty has to paid on these products as well as CST /KST. These duty amounts paid are not cenvatable adding to the cost of doing business. Moreover facilities / infrastructures created to manufacture these products are entirely non-cenvatable.

PROPOSED CHANGES

These products should be brought under GST so that the cost of doing business decreases. Further the facilities / infrastructure created –more so because the BSVI need to be produced– are completely non- cenvatable as the same are used for non-GST products.

1.2 ISSUE

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

PRESENT POSITION

1. The petroleum product were covered under Central Excise on or before 30.06.2017 and w.e.f. 01.07.2017, certain petroleum product such as Furnace Oil etc are covered under GST product.
2. As per Central Excise provisions, the petroleum product were cleared without payment of duty from the manufacturing plant to the export warehouse. As on 30.06.2017, the NIL duty paid product remained in the warehouse, and post 01.07.2017, the product are cleared under GST provisions after charge of GST.
3. The Central Government issued Notification No.12/2017-CE dated 30.6.2017 to exempt **all excisable goods** from whole of the "duty of excise" leviable thereon under the erstwhile Central Excise Act, 1944 which are manufactured on or before 30th June 2017 and ***not cleared from the factory of production***before the 1st July 2017. The exemption was subject to condition that the excisable goods manufactured on or before 30th June 2017 and not cleared from the factory of production before the 1st July 2017 and shall be cleared/removed/supplied on payment of GST leviable at applicable rate.
4. The field formation are of the view that the above notification will not be applicable for the goods lying in export warehouse as it is not factory of production and central excise duty would be payable on the product in stock as on 30.06.2017.
5. It is important to note that above position creates double taxation on the same product which can never be the intention of law.

PROPOSED CHANGES

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

1.3 ISSUE

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

PRESENT POSITION

As per the provision of GST Act, input tax credit can be claimed only if the output supply is also covered under GST. Therefore, purchases of goods and services which are to be used for output supply of non-GST products like MS, HSD & ATF will not be entitled for input tax credit of GST. Hence, this will lead to double taxation of same products, and thus, will have cascading effect of tax.

PROPOSED CHANGES

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

1.4 ISSUE

Exemption to CNG from payment of excise duty.

PRESENT POSITION

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

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

PROPOSED CHANGES

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

IMPLICATIONS

Users of CNG for running the vehicle will be benefited.

1.5 ISSUE

Credit towards payment of Service Tax/Excise Duty paid in respect of any issues that arose during the course of Audit.

PRESENT POSITION

There is currently no mechanism available to claim credit of Excise Duty & Service Tax payments made, as a part of Audit compliance.

PROPOSED CHANGES

Clarification is necessary as regards the credit towards payment of Service Tax/Excise Duty paid in respect of any issues that arose during the course of Excise / Service Tax Audit by the Department for the period ending 30th June 2017.

1.6 ISSUE

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

PRESENT POSITION

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

However, the GST law does not define motor spirit (commonly known as petrol) and High-speed diesel. Various interpretation may be there what is covered under petrol and high-speed diesel (HSD) depending upon the sources. Accordingly, clarity is required as to which tariff would be covered under GST and which would be outside ambit of GST.

Further the Forth schedule to the Central Excise Act 1944 covers various goods which are covered under GST with blanks against rate of duty column.

Under the IS specification (i.e. IS 2796 / IS 1460) – BS VI grades are covered. However, BS II & BS III grade of petrol and diesel are not covered in any of the IS specification. Hence inter refinery transfer of BS II / BS III may have issues on classification as motor spirit/diesel.

PROPOSED CHANGES

Further clarity to be provided with regards to tariff covered in GST and not covered within the ambit of GST by suitable modification to fourth schedule so as cover only those products namely petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel which are outside the ambit of GST as per provision of section 9(2) of CGST Act 2017 as per the 101st Constitutional Amendment Act. In other words, schedule IV may specify the only products covered for levy of Central Excise duty and not the products covered under GST law to bring clarity across board.

1.7 ISSUE

Ethanol Blended Motor Spirit – Section 11D Demand

PRESENT POSITION

Oil Companies are blending ethanol / bio diesel MS/HSD in the prescribed ratio for selling Ethanol Blending MS (EBMS) / diesel blending with bio diesel (B5 HSD). Excise law provide for exemption of duty on such blending activity. As per ministerial direction the sale of those product is kept same as that Non-Blended MS/HSD.

Department is raising issue with regard to the recovery of exercise duty through price by the oil companies on the ethanol / bio diesel portion of the blending product on the ground that price is the same.

PROPOSED CHANGES

Clarification on 11C notification may be issued by CBIC that in case of Ethanol Blended Petrol Sold at the same price that of motor spirit would not be subjected to provision section 11D of Central Excise Art.

1.8 ISSUE

Concessional Rate of Duty – ATF for RCS flights.

PRESENT POSITION

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

PROPOSED CHANGES

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

1.9 ISSUE

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

PRESENT POSITION

M15 would be a blend of 15% methanol + 3% Additive (Isobutyl Alcohol) + 10 ppm CI + 82% motor spirit. This blended product is being understood as M-15 Petrol and is expected to be sold in market. The blending process is to be proposed to be undertaken at Terminal / Depots (other than refinery) wherein the blending of methanol (covered under GST) with normal petrol clearing from refinery on payment of duties. Blending of ethanol with normal petrol is considered as manufacturing activity by the authorities and accordingly they have provided duty exemption for 5% Ethanol blended motor spirits (EBMS) and 10% EBMS.

Since M15 would also be blend of methanol with petrol, the same would also be considered by the authorities as manufacture under the central excise law and would attract duties of excise on the M15 also in the absence of exemption notifications.

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

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

PROPOSED CHANGES

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

1.10 ISSUE

2710 1242 – E 20 Fuels conforming to IS 17021

PRESENT POSITION

E 20 would be a blend of 20% Ethanol with 80% of normal Petrol. The Blended product E 20 is expected to be sold in market as motor spirit.he blending process is to be undertaken at

Terminals / Depots (other than refineries) wherein the blending of Ethanol (covered under GST) with normal petrol cleared from refinery on payment of duties.Blending of ethanol with normal petrol is considered as manufacturing activity by the authorities and accordingly they have provided duty exemption for 5% ethanol blending motor spirit (EBMS) and 10% EBMS.
Since E 20 would also be blend of Ethanol with Petrol, the same would also be considered by the authorities as manufacture under the central excise law and would attract duties of excise on the E 20 also in the absence of exemption notifications.

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

PROPOSED CHANGES

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

1.11 ISSUE

Amendment to existing excise tariff for blending of More than 10% Ethanol with normal petrol

PRESENT POSITION

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

PROPOSED CHANGES

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

IV. Central Sales Tax(CST)

1.1 ISSUE

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

PRESENT POSITION

Petroleum products have to be brought within the ambit of GST. Only if petroleum products are included, Oil refining companies can claim tax credit, without breaking the input credit chain. Pending the inclusion of other petroleum product under GST, in the interim, the CST rate which was poised to be reduced from 4%, progressively to 0% within a span of 4 years before the implementation of VAT, continues to be 2% for more than 12 years. CST continues to be levied on Non- GST products, viz, Crude, Natural Gas, MS, HSD and ATF. This has the effect of inefficiencies in logistics, straining the infrastructure facilities and incurrence of unproductive avoidable costs.

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

PROPOSED CHANGES

Therefore, it is requested that the CST rate may be made 0%. Central Sales Tax (CST) for inter-state trade could not be taken as credit and hence was a cost that was added to the value of goods. Further, on compliance angle we are faced with "C" Form collection and issue with various States which can be done away with, whereby minimum governance can be implemented, if IGST can be made applicable, whereby seamless credit mechanism can be in place.

1.2 ISSUE

Crude & Natural Gas continues to suffer VAT at 5% or CST of 2%.

PRESENT POSITION

While the import duty on crude is Nil (except for NCCD) and Natural gas is 2.5%, VAT results in inverted duty structure and hence domestic crude is costlier than imported crude and is against the principle of supporting of domestic production. Hence there is a strong case for reduction in VAT/CST on crude Oil. With the implementation of GST, the entire VAT is required to be absorbed as a cost, as no input Tax credit is available. While the margins in the petroleum industry is around 2% to 3%, absorption of 5% cost on crude is unsustainable.

PROPOSED CHANGES

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

1.3 ISSUE

Central Sales Tax paid on inter-state purchase of Petroleum crude and Natural Gas. Central Sales Tax Act, 1956 and rules thereunder.

PRESENT POSITION

Presently, Petroleum Crude and Natural Gas is non-GST product. Purchase of crude on inter-state basis entails levy of CST of 2% against form 'C'. The same is not available for any set off and thereby increases the product cost.

PROPOSED CHANGES

Petroleum Crude and Natural Gas to be covered under GST/mechanism to avail credit of such cost of interstate levy to be brought.

1.4 ISSUE

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

PRESENT POSITION

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

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

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

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

PROPOSED CHANGES

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

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

V. MISCELLANEOUS

1. NON-PAYMENT OF GST ON "OCEAN FREIGHT" (AS AN IMPORTER)

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

2. CANTEEN SERVICES

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

3. E-WALLET SCHEME SHALL BE INTRODUCED FOR EXPORTERS SOON

The GST council has decided that the government will be introducing the facility of an e-wallet. The e-wallet is a concept where on a provisional basis; the government will credit duty to the accounts of an exporter. This will enable exporters to pay off the duty directly from their e-wallet at the time of importing capital goods or raw materials for exports.

E-wallet facility was deferred by GST Implementation Committee (GIC) till 31.03.2020, with a condition that if new return system is rolled out smoothly and e-Wallet scheme is ready at an earlier date, then it could be rolled out before 31.03.2020. This has further been postponed to 31st March 2021 in the 39th GST Council Meeting.

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

4. EXPORT OBLIGATION (EO) UNDER EPCG SCHEMES

EO under the scheme shall be, over and above, the average level of exports achieved by the applicant in the preceding three licensing years for the same and similar products. It may be noted that in Oil Industry, all petroleum products are subject to high volatility in the International markets and foreign currency fluctuations.

Due to this, the export target which is fixed based on the average turnover of preceding three licensing periods will be an aberration in certain years where the crude prices are at all-time high and in subsequent years crude prices have touched new lows. Hence, export obligations cannot be met unless there has been substantial capacity expansion.

Therefore, it is suggested that the mechanism of export obligation can be in the form of any average tonnage basis or any other physical quantitative basis rather than monetary basis.

5. Special export related incentive may be designed for the NER in form of Tax Incentive and additional Duty Drawbacks.

6. Section 16(2) (c) of the CGST Act seeks to deny ITC to a buyer of goods or services, if the tax charged in respect of supply of goods and services has not been actually paid to the Government by the supplier of goods or services. This section is an undue hardship to a genuine buyer without any administrative power and on whom the buyer has no control whatsoever. This issue needs to beaddressed.

7. REMOVAL OF NATIONAL CALAMITY CONTINGENT DUTY ON CRUDE OIL LEVIED @ RS.50/MT.

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

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

8. FINAL ASSESSMENT OF IMPORTANT LNG CARGOES:

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

This has resulted in an inordinate delay in carrying out the final assessment due to UQC constraint (MMBTU is not available as one of the UQC in the drop-down menu of EDI system). The necessary changes in the EDI to incorporate the MMBTU is not available as one of the UQC in the drop-down menu of EDI system.Option to manual assessment of LNG cargo may be extended till the time above modifications are done in the system.

9. PAYMENT UNDER REVERSE CHARGE MECHANISM (RCM) BY INPUT SERVICE DISTRIBUTOR

As per CGST Rules, in case Input service distributor (ISD) wants to take RCM supplies, a separate normal registration is required. Further, rule 54 (1A) provides that such common RCM supplies can be transferable to ISD by raising an invoice.

Accordingly, following three documents are prepared for a common RCM inward supply received by ISD:

- Payment of tax under RCM by normal registration and generation of tax invoice as recipient in case of unregistered supplier.
- Raising an invoice under rule 54(1A) of CGST Rules, 2017 from normal registration for such common RCM on ISD registration.
- Raising an ISD invoice on respective recipient from ISD registration.

Generation of three documents are prepared for a single transaction is leading to unnecessary additional compliance. In case ISD is allowed to make the payment of RCM supplies, the requirement to raise tax invoice under 54(1A) can be removed.

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

10. DEEMED EXPORT SUPPLIES UNDER GST

All the supplies notified as supply for deemed export will be subject to levy of taxes i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT. However, the refund of tax paid on the supply regarded as Deemed export is admissible to either the supplier or the recipient on filing the requisite application subject to certain conditions.

To avoid blockage of fund in GST paid in such cases following suggestion are made;

- Deemed exports may be considered for zero-rated supplies by default, like the regular exports and such supplies can be made on without payment of tax under a Bond/LUT.
- Facilitating expeditious liquidation of claims: Deemed export refund can be linked with GST return or input tax credit to be allowed to seller like RCM supplies.

11. EXISTING DESCRIPTION OF GOODS AS PER SL. NO. 252 OF SCHEDULE I OF NOTIFICATION NO. 1/2017-INTEGRATED TAX (RATE) DATED 28/06/2017

Recommended change to Description of Goods as per Sl. No. 252 of Schedule I of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017

12. PARTS OF GOODS OF HEADINGS 8901, 8902, 8904, 8905, 8906, 8907

Raw materials, Components, Consumables and Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907 and **Spares** for goods falling under heading 8906.

Proposed change would help Shipbuilding Industry in a long way by doing away with the Inverted Tax Structure and avoiding working capital blockage (MDL - at present has un-utilised ITC of Rs.793 crs.) and also do away with cumbersome refund procedures as the output is subjected to lower rate of tax @ 5%.

13. <u>EXTENSION OF TIME FOR RETURN OF INPUTS OF SHIPBUILDING SENT FOR JOB WORK</u>

a) Specific Issue faced by MDL post GST has been with regard to time for return of inputs sent for job work. Section 143(1)(a) of the CGST Act 2017 stipulates that inputs need to be returned within 1 year and capital goods need to be returned within 3 years. Further, proviso to section 143(1)(b) stipulates that Jurisdictional GST Commissioner is empowered to extend the time for return of inputs sent on Job Work by 1 year and for capital goods by 2 years.

b) Thus for MDL's inputs to be returned from job work, there is a maximum time limit of 2 years when the proviso to section 143(1)(b) is considered. However, for MDL, this 2 years period is not sufficient.

c) MDL is the 1st shipyard to undertake Modular Construction of warship. (This Modular Construction of warship has been adopted, under the Make in India policy, and also to help reduce the long gestation period for the Shipbuilding Industry.) Under this method, manufacturing the ship consists of manufacture of separate mega blocks (15 - 17 blocks) and integrating them to build one ship. The average timeline for construction of a block at the premises of job worker is 7 to 8 months. However, the leftover steel from manufacture of one block is used in the manufacture of future blocks on a continuous basis. The job worker manufactures 4-5 mega blocks, integrates them into one unit and then transports it back to MDL. **Therefore, a period of almost 3 years is required from the time of sending inputs to Job worker's premises and return of one integrated unit back to MDL's premises**.

d) Since at least 3 years are needed for job work for Shipbuilding Industry, **we therefore propose that Section 143 be amended so that inputs for Shipbuilding Industry be treated at par with capital goods as they have a long gestation period.**

S. No.	Existing Section 143(1)(a) of the CGST Act 2017	Recommended change to Section 143(1)(a) of the CGST Act 2017

1	Bring back inputs, after completion of job work or otherwise, or capital goods, other than mould and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;	Bring back inputs, after completion of job work or otherwise, or capital goods/inputs for shipbuilding industry, other than mould and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

14. <u>ABOLITION/ REVIEW OF RATE OF OIDB CESS ON OIL PRODUCTION IN THE PRE-NELP EXPLORATION BLOCKS/ NOMINATION REGIME (HSN: 2709)</u>

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

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

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

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

<u>Proposed Changes</u>

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

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

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

15. REVIEW OF DOMESTIC GAS PRICING FORMULA-(HSN 2711)

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

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

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

(b) averaging of benchmark prices over the past year with a lag of a quarter mean that the domestic gas price movement is often out of sync with ground realities of price movements;

(c) non-consideration of prices of LNG imported into India in the gas pricing formula; and

(d) deduction of US$ 0.50/mmbtu towards the cost of transportation and treatment (T&T), despite the fact that ONGC is supplying treated gas at landfall point.

At prevailing domestic gas pricing regime, ONGC is incurring significant under-recoveries from its gas business. ONGC is incurring continuous losses and finding it difficult to sustain gas business as more than 95% of its gas is sold at formula derived price. Current formula based gas price is all time low at $1.79/mmbtu. During FY 17-18, loss from gas business was Rs.4,272 Crore. Break Even Price of major ongoing/ planned projects are in the range of $5/mmbtu to $9/mmbtu. Cost of production of natural gas from nomination blocks of ONGC for 2019-20 was US$ 5.27/mmbtu (including return) and US$ 3.73/mmbtu (excluding return). Expected losses from gas business during 2020-21 could be to the order of Rs. 8,000 Crore.

PROPOSED CHANGES

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

16. TAPERING OF ROYALTY RATES

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

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

Subsequently, the scheme of royalty was issued by Government vide notification dated 16 Dec'04, wherein it was decided that the royalty on production from nomination blocks shall be levied @ 20% and 10% of well head price in respect of onland and offshore areas respectively. The convergence process, which was envisaged from 2007-08 with tapering rate/s of royalty @ 1,5% each year so as to facilitate convergence with NELP royalty rate of 12.5% by 2011-12 did not happen and royalty on production from onland nominated blocks are still being paid @ 20% of well head price.

PROPOSED CHANGES

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

17. DEEMED EXPORT BENEFIT FOR EMPANELED TECHNICALLY QUALIFIED BIDDERS-PARA 7.02 B.(F)(I) OF FTP 2015-20

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

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

Further, as per para 7.02 B.(f)(i) of FTP 2015-20, the deemed export benefit is allowed to domestic supplier (manufacturer) on supply of goods to any project or for any purpose in respect of which the Ministry of Finance, permits import of such goods under Customs Notification No. 50/2017-Cus dated 30.06.2017 with Zero Basic Customs Duty. However, such supply should be under procedure of ICB. Accordingly, domestic manufacturers supplying goods under ICB for construction of facilities for petroleum operations are eligible for deemed export benefits.

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

In this regard, a detailed representation was submitted by ONGC to Policy Interpretation Committee, DGFT, Ministry of Commerce & Industry on 21.11.2018. Subsequently, Office of DGFT vide letter dated 17.05.2019 has requested Department of Economic Affairs, Ministry of Finance to furnish their comments/views so as to facilitate further processing of the case.

PROPOSED CHANGES

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

18. <u>RELAXATION FROM CONDITION OF ICB FOR DEEMED EXPORT BENEFIT-(PARA 7.02 B.(F)(I) OF FTP 2015-20)</u>

The Deemed Export Benefit is available on supply of such specified goods from domestic manufacturer by ONGC for petroleum operations in terms of Para-7.02(f)(i) of Foreign Trade Policy- 2015-20 (FTP) which states as under:

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

In terms of said provisions at Para-7.02(f)(i) of FTP, the domestic manufacturer avails the benefit of deemed export under Para-7.03 read with Para-7.04 on supply of specified goods to ONGC for petroleum operations undertaken under PEL/ML/under specified contracts/NELP/MFP/CBM, where contract has been awarded under procedure of ICB. Further, ONGC is also eligible for Refund of Terminal Excise Duty (TED) on procurement of 'Fuel' (like High Speed Diesel – HSD) in terms of Para-7.08(iii)(a) of FTP as Recipient of Supply in terms of Para-7.04 of FTP.

Now, the Govt. of India, Ministry of Finance (Dept. of Expenditure) vide F.No. 12/17/2019-PPD dated 15.05.2020 has amended the General Financial Rules, 2017, *inter-alia*, that no Global Tender Enquiry (GTE) shall be invited for tender uptoRs. 200 Crore. Further, ONGC has also been advised to mandatorily procure specified goods including Fuel (such as HSD) through Government e-Marketplace (GeM) Portal even in cases where tender value is above Rs. 200 Crore.

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

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

PROPOSED CHANGES

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

19. UPFRONT EXEMPTION OF DUTIES OF EXCISE ON HSD-*(HSN: 2710)*

Excise duty was exempt for High Speed Diesel (HSD) procured under ICB conditions for the E&P sector vide Notification No. 12/2012-CE dated 17.03.2012. Post introduction of GST, exemptions were withdrawn and rates were prescribed for Excise Duty w.e.f. 01.07.2017 on High Speed Diesel (HSD) vide Notification No.11/2017-CE. E&P Companies pay excise duty on procurement of diesel that is used for petroleum operations.

Under the Foreign Trade Policy 2015-20, goods procured under ICB are eligible for benefits applicable to 'Deemed Export'. Accordingly, the excise duty paid on diesel procurement for petroleum operations is eligible for refund.

PROPOSED CHANGES

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

20. SERVICE TAX ON ROYALTY

The Royalty is being paid by ONGC pursuant to the statutory provisions contained under 'The Oilfields (Regulation and Development) Act, 1948' (ORD Act) and 'The Petroleum and Natural Gas Rules, 1959' (PNGR) on extraction of mineral oil & natural gas. Like any taxing statue, ORD Act & PNGR under which Royalty is levied has a charging provision (Section 6A of ORDA, 1948), provisions for granting exemption [Section 6A(5)], imposition of penalties, by way of imprisonment for failure to pay [Section 9(1)], power of enter and inspect any mine [Section 11(1)(a)], order production of any document [Section 11(1)(b)], etc. and examine any person [Section 11(1)(c)], besides the Rule making powers. Monthly returns are also filed in terms of Rule 14 (2).

The rate of royalty etc. under ORD Act is fixed by the statute and not by the agreement between the parties. The rate of royalty may be revised subject to the limitation contained in the act in respect whereof the lessee have no say in the matter. Even the principle of natural justice are not required to be complied with. The lessee even cannot transfer mining lease without following the prescribed procedure under the law. The amount of royalty received by the state is expended as general revenue.

Thus, ONGC is of the view that such royalty as being paid by ONGC is in the nature of tax. Accordingly, the service tax should not be applicable on payment of such royalty which is an imposition under Law as well as there is absence of quid pro quo.

It is also pertinent to mention that in case of India Cement Ltd. vs. State of Tamil Nadu, the Seven Judges Bench of the Hon'ble SC held that royalty is a tax. However, in case of Mineral Area Development Authority vs. M/s Steel Authority of India (SAIL) & others, this matter is pending before the Larger Bench of Nine Judges of the Hon'ble SC.

PROPOSED CHANGES

In view of above, a clarification may be issued that Royalty being paid by ONGC u/s 6A of ORD Act is in the nature of tax and hence should not be subject to levy of Service Tax/GST.

21. CLARIFICATION UNDER SERVICE TAX TO THE EFFECT THAT CONSORTIUM MEMBERS INCLUDING OPERATOR AND THE CONSORTIUM FORMED UNDER PSC ARE NOT TWO DISTINCT PERSONS

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

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

PROPOSED CHANGES

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

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

22. SERVICE TAX ON COST RECOVERY (COST PETROLEUM)

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

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

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

PROPOSED CHANGES

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

23. DISPOSAL OF OBSOLETE/ SURPLUS GOODS PROCURED AT CONCESSIONAL OR NIL RATE OF CUSTOMS DUTY AS SCRAP

The Govt. vide Customs Notification No. 25/2019-Cus dated 06.07.2019 has inserted a proviso under condition no. 48(e) of Sl. No. 404 of Customs Notification No. 50/2017-Cus., whereby an option has been provided to pay Basic Customs Duty (BCD) @ 7.50% of transaction value of such imported goods to be disposed off in non-serviceable form, after mutilation, subject to submission of a certificate from DGH to the effect that the said goods are non-serviceable and have been mutilated before disposal.In Oil & Gas Industry, import of material are on estimated basis where due to technical difficulties (like drill plan change, data from exploratory phase, well construction contingencies, design change etc.), there is accumulation of such unused material for long time.

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

PROPOSED CHANGES

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