# STANDING CONFERENCE OF PUBLIC ENTERPRISES

## (An apex body of Public Enterprises)


# PRE-BUDGET MEMORANDUM 2023-24

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

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# PREFACE

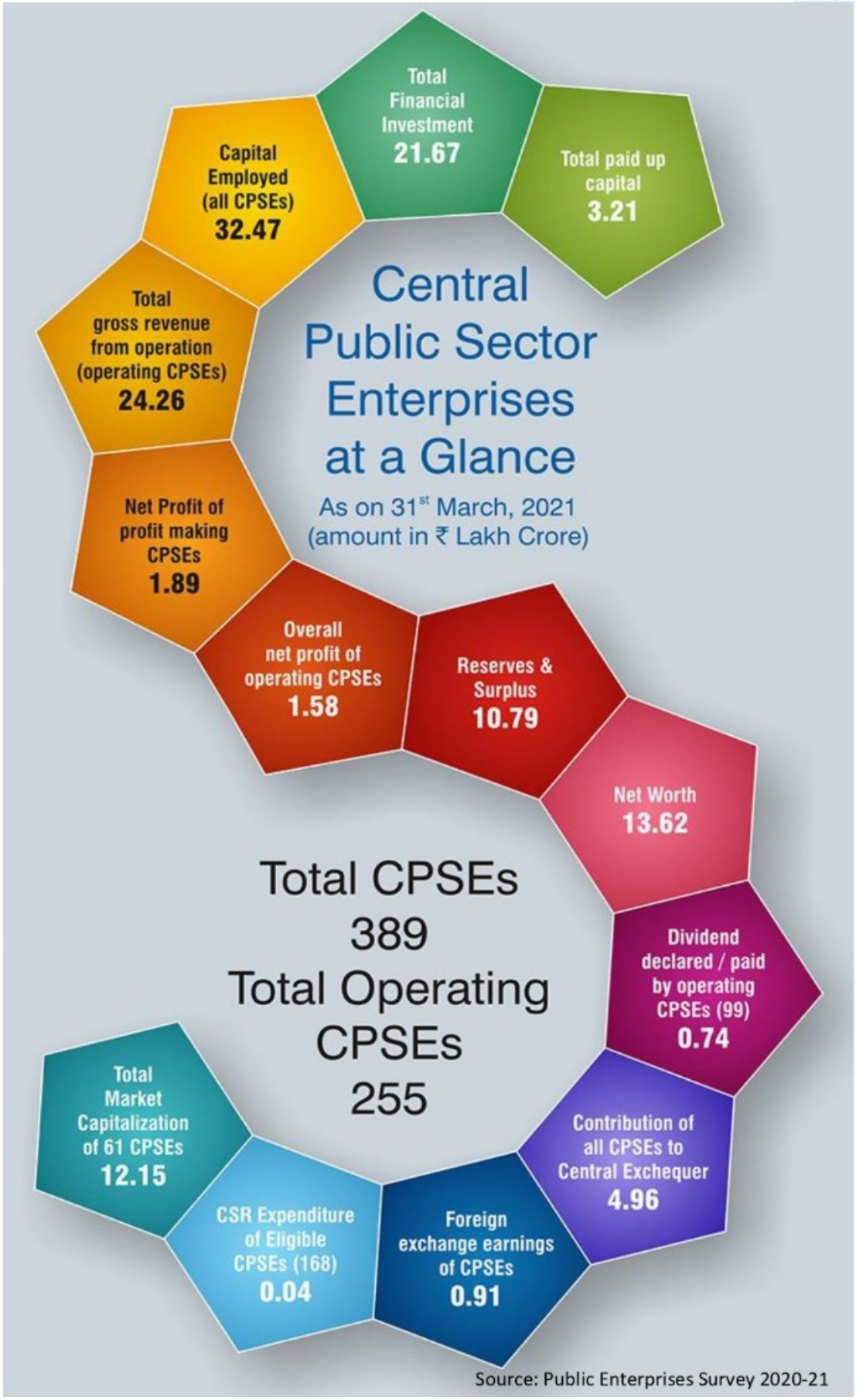
Standing Conference of Public Enterprises (SCOPE) is an apex professional organization representing the Central Government Public Enterprises. It has also some State Enterprises, Banks and other Institutions as its Members. SCOPE has taken upon itself to actively engage with the Government, regulatory bodies and policy makers for creating conducive policy framework for improving PSEs competitiveness and thus promoting excellence and their higher growth.

Public Sector in India has been playing a very significant role since the country's independence. It has always been aimed at achieving certain socio-economic objectives. The PSEs have contributed immensely to the development of infrastructure and the promotion of industrialization in the country. The core industries, which include coal, steel, crude oil, refinery products, natural gas, electricity and renewable energy are dominated by the public sector. The PSEs have also made significant contributions to the exports of the country.

Addressing the nation from the ramparts of the Red Fort on the 76th Independence Day, Hon'ble Prime Minister Shri Narendra Modi set an ambitious target of making India a developed nation by 2047 and made a renewed pitch for cutting import dependence and boosting domestic manufacturing. PSEs are striving hard to achieve Hon'ble Prime Minister's Vision of an Atamnirbhar Bharat which would pave the way for making India a developed nation when it celebrates its 100th year of independence in 2047.

However, the Indian public sector has been facing several challenges in recent years. These challenges have adversely affected the performance and efficiency of the public sector. To overcome these challenges, the public sector is expecting many reforms from the upcoming budget. These reforms will help the public sector regain its lost glory and become an engine of growth for the country once again.

In this backdrop, SCOPE has prepared this Pre-Budget Memorandum 2023 in consultation with representatives of PSEs. We hope that the recommendations given in this Pre-Budget Memorandum will help to identify the areas where Government's support would be helpful in furthering Hon'ble Prime Minister's vision to make India a developed country.


Total Financial Investment 21.67
Total paid up capital 3.21
Capital Employed (all CPSEs) 32.47
Total gross revenue from operation (operating CPSEs) 24.26
Central Public Sector Enterprises at a Glance
As on 31st March, 2021
(amount in ₹ Lakh Crore)
Net Profit of profit making CPSEs 1.89
Overall net profit of operating CPSEs 1.58
Reserves & Surplus 10.79
Net Worth 13.62
Total CPSEs 389
Total Operating CPSEs 255
Dividend declared / paid by operating CPSEs (99) 0.74
Contribution of all CPSEs to Central Exchequer 4.96
Foreign exchange earnings of CPSEs 0.91
CSR Expenditure of Eligible CPSEs (168) 0.04
Total Market Capitalization of 61 CPSEs 12.15
Source: Public Enterprises Survey 2020-21

# PART A:

# DIRECT TAX

# PART-A

# RECOMMENDATIONS ON DIRECT TAXES

## 1. TAX RATES

### 1.1 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 2024.

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 Atma Nirbhar and boost domestic manufacturing with high compounding potential.

Such 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.10,000 crores, which involves substantial construction time. Also, present COVID situation justifies extension/removal of sun set clause of 31$^{st}$ March 2027.

### 1.2 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 including surcharge and education cesses paid on MAT

## 2. SALARIES

**2.1 ISSUE**
Tax incentive for electric vehicles u/s 80EEB for Loan from Employer

**PRESENT POSITION**
With a view to improve environment and to reduce vehicular pollution, a new section 80EEB was inserted in the Act so as to provide for a deduction in respect of interest on loan taken for purchase of an electric vehicle from any financial institution up to one lakh fifty thousand rupees subject to the conditions: (i) The loan has been sanctioned by a financial institution including a non-banking financial company during the period beginning on the 1st April, 2019 to 31st March, 2023.

**PROPOSED CHANGES**
Condition as inserted by the section that the loan from financial institution and NBFC would only qualify for the deduction narrows down the sources of fund available to the assessee. The said section has failed to appreciate the other sources which are available to assessee for financing the Vehicle. It is therefore suggested to open up the other source of fund i.e. Loan from Employer also with extended period upto 31/03/2025, such will provide ease to the assesses in making the investment and such will be conducive to rapidity of the intend of the government to improve environment and reducing vehicular pollution. Such proposal will provide benefit to the employee on obtaining loan from employer and help to accomplish the objective of Government.

**2.2 ISSUE**
Interest on Education Loan from Employer to be covered u/s 80E

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

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

**2.3 ISSUE**
Rationalization of the deduction limit for perquisites in respect of motor car

**PRESENT POSITION**

In terms of section 17(2) of the Act which provides for taxability of running and maintenance expenses of motor vehicle owned by the employee, which is reimbursed by employer, when such vehicle is used partly for official purpose and partly for personal purposes of the employee or any of his household

**PROPOSED CHANGES**

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

**2.4 ISSUE**

Taxable Perquisite to Employees

**PRESENT POSITION**

Tax is levied on few perquisites like free/subsidized food & gifts provided by employers to employees, if the cost per meal per employee exceeds Rs. 50/- and gift value exceeds Rs.5000/- p.a. respectively.

**PROPOSED CHANGES**

We wish to recommend that, the threshold limit for perquisite value to be taxed in the hands of employees, needs to be revised keeping in view the inflation.

**2.5 ISSUE**

Standard deduction (with reference to salaried employees) (Section 16 of Income Tax Act)

**PRESENT POSITION**

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

**PROPOSED CHANGES**

It is suggested that the limit of standard deduction should be enhanced from Rs 50,000/- to Rs 1,00,000/- in view of the inflationary trend.

**2.6 ISSUE**

Perquisites – valuation of rent free/ concessional accommodation (Sec. 17(2) of Income Tax Act)

**PRESENT POSITION**

At present the valuation rules for the Non Govt. employees are different from the rule applicable to employees of the Central and State Government. An employee, residing in company owned accommodation, pays license fees and also, House Rent Allowance is not paid to employee. This practice puts double burden on employee.

**PROPOSED CHANGES**

Therefore, the same may please be kept outside the ambit of perquisite valuation within the meaning of Sec. 17(2) of the I.T. Act, 1961 and no housing perquisites may please be levied in such cases.

## 3. INCOME FROM HOUSE PROPERTY

**3.1 ISSUE**
Notional Rent under section – 23(5)

**PRESENT POSITION**
Section 23(5) requires to pay notional rent on vacant property (held as stock in trade) after two years of completion of construction of the property. Payment of Income Tax on unsold inventory of real estate even when the same is not let-out is giving rise to the concept of taxation of notional income i.e. income not actually earned by the assessee and defeats the basic concept of Income Tax of taxing real income.

**PROPOSED CHANGES**
It is suggested that Sub-section 5 of Section 23 of Income Tax Act, 1961 may be omitted. This amendment will give relief to already hit real estate developers who have invested huge capital in development of real estate projects which are still lying unsold and are liable to pay tax as per section 23(5) even on their blocked capital without earning any income.

**3.2 ISSUE**
Setting off house property loss for salaried employees /non- salaried individual opted for Sec. 115BAC

**PRESENT POSITION**
Presently Individuals & HUF opting for simplified tax regime u/s 115BAC are not allowed to set-off House Property loss against other heads of Income.

**PROPOSED CHANGES**
It is proposed that an exception may please be provided u/s 115BAC to allow individual salaried employee/non-salaried person to set off House Property loss (self-occupied) against other heads of Income. This will also help to promote Govt's vision- "Housing for All".

**3.3 ISSUE**
Deduction i.r.t. interest on borrowed capital under Income from House Property (Section 24(b) of Income Tax Act)

**PRESENT POSITION**
Presently interest on borrowed capital for acquiring or constructing house property (self-occupied) is deductible up to Rs 2,00,000/- if certain conditions are satisfied. W.e.f. AY 2020-21, 2 no. of houses are allowed to be considered as self-occupied house property for the purpose of determining income under the head "Income from House Property". However, limit of deduction u/s. 24(b) has been kept as same i.e. Rs. 2,00,000/-.

**PROPOSED CHANGES**
It is proposed/ suggested that the limit of deduction should be increased from Rs 2,00,000/- to Rs 4,00,000 (upto two houses) to encourage the individuals to purchase / construct their own house property. Further, unabsorbed interest may be allowed to be carried forward for self-occupied property.

## 4. PROFITS AND GAINS OF BUSINESS OR PROFESSION

### 4.1 ISSUE

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

### PRESENT POSITION

To address Base Erosion and Profit Shifting (BEPS) arising from the rapidly digitalizing economy, Finance Act 2018 expanded the concept of business connection to include a new nexus rule based on SEP to tax the digital economy, which hitherto enabled entities world over to carry out business in India without an actual physical presence, and thereby escape taxation in India. The language of the SEP provisions is broad and is likely to impact conventional transactions and activities even if they are not carried out in a digital form. If the SEP of the non-resident is constituted in India, the income attributable to the transactions or activities as indicated above (i.e. purchase of goods, services, download of data etc.) would be deemed to be income accruing and arising in India and will be liable to tax in India. Once taxation is triggered in India, the payer is required to withhold any tax due and the non-resident is obligated to file a tax return. Non-compliance with the withholding obligations can trigger disallowance of deductions and assessee in default (interest and penalties for the Indian payer). Furthermore, the Indian payer can also run the risk of being regarded as a representative assessee of the non-resident. It may be noted that there are no rules yet in place as to determine the income attributable to such a nexus or presence. In the absence of rule/guidance on the SEP income attribution principles, the payer may need to liaise with the tax authorities to determine the appropriate sum which should be regarded as taxable to comply with the withholding provisions

### PROPOSED CHANGES

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

### 4.2 ISSUE

Proviso to section 115BAA – Adding of Unabsorbed additional Deprecation to the Block of Assets

### PRESENT POSITION

As per proviso to section 115BAA in case an assessee opts for new regime, they are eligible to add the unabsorbed depreciation pertaining to additional depreciation to block of assets in AY 2020-21 only.

**PROPOSED CHANGES**
The same may be extended to the assessee who opts for new regime in any FY as this is the genuine cost incurred by the assessee for purchase of capital assets. There will be no loss of c/f additional depreciation to the assessee who has not opted for new regime in the first year.

**4.3 ISSUE**
Utilization of MAT credit for Section-115BAA

**PRESENT POSITION**
If an assessee opts for new regime u/s 155BAA, MAT Credit is not allowed. The disallowance of MAT credit under sec-115BAA causes hardship to corporate assessee.

**PROPOSED CHANGES**
Utilization of MAT credit may be allowed to the assessee because the MAT Rate is less or than the new rate of 22% u/s 115BAA. Tax benefit to the corporate assessee and motivate the corporate assessee to opt the new provision of sec-115BAA. The proposed changes will help the corporate assessee for unblocking the funds, there by fueling further investment.

**4.4 ISSUE**
TAX AUDIT REPORT FORM NO 3CA -3CB- 3CD; Rule 6G of the Income Tax Rules, 1962

**PRESENT POSITION**
Clause 44 of revised Tax Audit Form requires disclosure of break- up of total expenditure of entities registered or not registered under the GST Act.

**PROPOSED CHANGES**
The same may please be reviewed as the required information is not relevant from the point of view of the Income Tax since expenditure against procurements from unregistered entities are also allowed under Income Tax Act and the same information is already being considered under the GST Compliances. Thus the proposed change shall lead to simplification of compliances and ease of doing business.

**4.5 ISSUE**
Provisioning towards Non- Performing Assets

**PRESENT POSITION**
Clause (d) of section 36 (1) (viia) of the Income Tax Act, 1961 ("IT Act") allows NBFCs a deduction of 5% of their total income as deduction. Further, this threshold for Scheduled Banks is 8.50% under clause (a) of this section. However, the deduction for Public Financial Institution (PFI) has been fixed at 5% under clause (c) of the referred section.

**PROPOSED CHANGES**
PFIs are specialised institutions owned by GOI and lending to infrastructure sector. They being GoI owned are more focussed towards Govt initiatives and cater to areas which are otherwise overlooked by normal NBFCs. Further, similar to banks, PFIs are pronged with the risk of high bad debts/ stress on books and are competing with banks in day- to-day lending operations. As

such, PFIs may be allowed higher threshold than a normal NBFCs or/ and at par with Banks i.e. to 8.5%. This will help in improving low tax, better financials and improved liquidity to PFIs.

**4.6 ISSUE**

Section 32(2)- Ambiguity due to multi-fold amendments to 32(2) of the Act w.r.t. carry forward & set off of Depreciation allowance and Carry forward & set off of business losses

**PRESENT POSITION**

As per Section 32(2) of the Income Tax Act, 1961 the unabsorbed depreciation is allowed to be set off against the business income of subsequent years without any period restriction. This legal provision exists in the statue book till AY 1996-97. However, vide amendment to the IT Act, 1961 w.e.f. 01.04.1997, set off of unabsorbed depreciation is limited to a maximum of 8 subsequent assessment years. Subsequently, Section 32(2) was further amended to the effect that the restriction of 8 years was removed and the law prevailing before 01.04.1997 was restored. These multi-fold amendments caused ambiguity and led to litigation. The revenue in many cases argued that the amendment is in prospective in nature.

**PROPOSED CHANGES**

It is recommended to insert a clarifying explanation in Section 32(2) of the Act, stating that the purpose of amendment brought through Finance Act, 2001 was to remove the restriction imposed on carry forward of allowance and the amendment is not prospective in nature.

**4.7 ISSUE**

Section 43A - Foreign Currency Liability– Change in rate of exchange

**PRESENT POSITION**

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

**PROPOSED CHANGES**

It is suggested to amend Section 43A either to allow the companies to recognise the exchange difference in Profit & loss account or to restore the earlier provision (i.e. prior to Finance Act,2002) of Section 43A.

**4.8 ISSUE**

Section 40A-Expenses or payments not deductible in certain circumstances

**PRESENT POSITION**
As per DPE (Department of Public Enterprise) Guidelines, PSUs incorporate welfare Trusts for the welfare of its existing employees and also for retired employees towards their past services. One example is "Retired Employee's Medical Trust" – for the welfare of the retired employees – for providing OPD expenses and Hospitalization. However, there is ambiguity as to the admissibility for the amount usually transferred to Trust.

**PROPOSED CHANGES**
A suitable explanation either to Sec 40A (9) may be incorporated to clarify the above or to any other section to accommodate the concern and confusion.

**4.9 ISSUE**
Interest expenses incurred on account of Perpetual Debt Instruments (PDI) Bonds

**PRESENT POSITION**
Perpetual Debt Instruments (PDIs) are treated as borrowing in bank's books and interest paid on the same is treated as an expense. The Income tax (IT) department stand is that PDIs are Tier 1 capital & interest payment on those instruments are akin to dividend payment and cannot be allowed as expenses for taxation purpose. The PDIs are classified as borrowings in the Balance Sheet and reflected under Schedule – 4 pertaining to borrowings.

**PROPOSED CHANGES**
Interest on Perpetual Debt Instruments may be expressly treated as allowable deductions under Business income.

**4.10 ISSUE**
Reduction of Period of Holding for Units of InvIT to 12 months

**PRESENT POSITION**
The definition of "business trust" has been provided in clause (13A) of section 2 of the Act, which includes a trust registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations made under the Securities and Exchange Board of India (SEBI) Act, 1992 and the units of which are required to be listed on a recognised stock exchange in accordance with the relevant regulations. Later, referring the notification no. SEBI/LAD- NRO/GN/2019/10 of Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 the section was suitably amended through Finance Bill, 2020 after considering non-requirement of mandatory listing requirement for InvITs. However, no distinction was made in respect of period of holding defining the category of capital asset. Bifurcating the units of listed InvITs, which are in the nature of securities listed in Recognized Stock Exchange, has not attained same status for defining its period of holding as defined in first and third proviso to the section 2(42A) for categorizing it as short-term or long term Capital Asset

**PROPOSED CHANGES**
Considering the investor hardship and keeping it more exposed, it is suggested to consider the period of holding for units of Business Trust including InvIT units same as considered for listed securities under section 2(42A). Moreover, such change will help investor to go for listed units

and on the other side this will propel unlisted InvITs to go for its listing. Accordingly, 1st & 3rd proviso of section 2(42A) to be suitably amended to cover period of holding for Units of Business Trust including InvIT units as 12 months. Such change will bring parity in period of holding of INVIT units with other listed instruments.

**4.11 ISSUE**

Allowance of deduction for Fund Created for Foreign Currency Fluctuation u/s 36(1)

**PRESENT POSITION**

Presently there is no deduction available for a reserve for protection against foreign currency fluctuations on the unhedged loan liability

**PROPOSED CHANGES**

Companies should be allowed deduction under Section 36(1) of the Income Tax Act, 1961 for creation of a reserve for protection against Foreign Currency Fluctuation on the unhedged loan liabilities. Creation of reserve for foreign currency fluctuations shall help companies to stay in a strong financial position against the risk of foreign exchange fluctuation on the unhedged loan liability and ultimately contribute to their financial stability.

**4.12 ISSUE**

Term "General Reserve" under the proviso to Section 36(1)(viii) may be replaced by "free reserves

**PRESENT POSITION**

In terms of Section 36(1)(viii) of the Income Tax Act, the specified entities may claim deduction upto 20% of profits derived from eligible business carried to such special reserve. This is further subject to proviso that deduction will be available upto twice the amount of paid up share capital and general reserves of the eligible company. It is noted that the profit earned during the year / earlier years are normally retained in the balance sheet as Surplus / Retained Earning which is also a free reserve like General Reserve. Further under the erstwhile Companies Act 1956, the Companies were mandatorily required to transfer a prescribed percentage of current profits to the 'general reserve' for the purposes of declaration of dividend. However, this requirement has been dispensed with under the Companies Act, 2013; and as per Section 123 of the said Act there is no requirement at present to transfer the current profits to 'general reserve' for declaring dividend.

**PROPOSED CHANGES**

Accordingly, it is proposed that the ceiling for allowance under Section 36(1)(viii) may be twice the amount of paid up share capital and of the **free** reserves of the specified entity. Further the definition of 'free reserves' may be referred in the said Section 36(1)(viii),which is defined in Section 2(43) of the Companies Act, 2013 as such reserves which are available for distribution as dividend as per the latest audited balance sheet subject to certain provisos relating to unrealised/notional gain, revaluation of assets, change in carrying amount etc. As the "surplus / retained earning" is also a free reserve like general reserve and in view of the fact that it is no longer necessary for the companies to create general reserve as per Companies Act, 2013 it is proposed that the term "general reserve" as stated in proviso to Section 36(1)(viii), may be

replaced by the term "free reserve" which will lead to non-creation of General Reserves just for the purpose of this section.

**4.13 ISSUE:**
Depreciation on Goodwill Section 32

**PRESENT POSITION**
As per existing Section 2(11) or Section 32 of Income Tax Act 1961, Goodwill of business or Profession has not been specifically provided as a Depreciable asset. Only after the decision of the Supreme Court in the Case of Smiff Securities Limited (2012, 348 ITR 302 (SC), it was considered as a Depreciable Asset under Section 32 of Income Tax Act 1961. Finance Act 2021 amended clause 11 of Section 2 of the Act to provide that Block of Assets shall not include goodwill of a business or profession.

**PROPOSED CHANGES**
Keeping in view of SC judgment and to maintain status-quo, it needs to be reinstated to encourage the process of merger and acquisition of the company.

**4.14 ISSUE**
Availability of deduction in the year of withdrawal from Site Restoration Fund (SRF) account for specified purposes under new tax regime. (Section 33ABA of Income Tax Act)

**PRESENT POSITION**
Presently as per the provisions of section 33ABA of the Act, any amount deposited in a separate and dedicated account, maintained in accordance with SRF Scheme, 1999, (including interest accrued thereon) is allowed as deduction in the year in which such deposit (including interest accrued as deemed deposit) is made. Further, the aforesaid section, inter-alia, provides that expenditure incurred for the purposes specified in the SRF Scheme, by withdrawing amount from the SRF account, shall not be allowed as deduction in the year in which such expenditure is incurred. Deduction u/s 33ABA is not available under the new tax regime u/s 115BAA of the Act.

**PROPOSED CHANGES**
Under the Income-tax Act, deduction is allowable in respect of any expenditure incurred wholly and exclusively for the purpose of business. Thus, if under the new tax regime, deduction is not available at the time of depositing the sum in an account maintained under SRF Scheme (including interest credited thereon), the same should be available in the year in which the expenditure is incurred for the purposes specified in SRF Scheme.

**4.15 ISSUE:**
Restoration of 200% weighted deduction for R&D expenses u/s 35(AB) of Income Tax Act

**PRESENT POSITION**
Under section 35(AB) weighted average deduction @ 200% was allowed on expenditure incurred on research and development activities. Wef 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 even under new regime to promote innovation in technology through research activities and to support Make in India initiative. Further, the same may be allowed under new regime also to boost R&D activities.

**4.16 ISSUE**
Section 35 AD of the Income Tax Act, 1961

**PRESENT POSITION**
The deduction under Section 35 AD was provided as an Investment linked incentives to encourage some of the specified businesses. Considering the COVID-19 Pandemic situation, the specific business of setting up and operating of Temperature Controlled Warehouse would boost the "AtmaNirbhar Bharat Campaign" for making India self sufficient and for the storage and distribution of COVID-19 vaccines.

**PROPOSED CHANGES**
It is proposed that the deduction under Section 35AD may be allowed to the Assesses who are opting for lower tax rate regime under Section 115BAA. This would have far reaching consequences on the economy and also serve as a true service to the humanity by the Corporates operating in such businesses.

**4.17 ISSUE**
Increase in Limits for employer contribution to NPS Account of Employees from 10% to 14%

**PRESENT POSITION**
As per Section 36(1) (iva), amount contributed by employer to NPS Account of employee to the extent it does not exceed ten per cent of the salary; is allowed as a deduction to the employer. In case contribution exceeds the said threshold, it results in double taxation, i.e., the excess amount is neither available as a business expenditure to the employer nor is it allowed as a deduction from Gross Total Income to the employee. For Central Government employees, employer's Contribution to their NPS Account is deductible up-to 14% of salary under Section 80CCD(2).

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

**4.18 ISSUE**
Clarification that loss on Sale of Oil bonds is a revenue loss (Section 37 (1) of Income Tax Act)

**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 Oil bonds have been issued by GOI to compensate the operating losses. These bonds have long redemption period ranging from 7 to 17 years on special rates of interest. Loss is incurred at the time of sale of such GOI special Bonds and the same is 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 treated as sale of investment.

**PROPOSED CHANGES**

It is suggested that Section 37(1) needs to be suitably amended to provide deduction for business loss arising from sale of such bonds since these bonds are based on the scheme framed by GOI. Further, had GOI given cash compensation in time, the borrowings would have been reduced to the great extent. GOI Special Bonds are sold primarily to meet the working capital and/ or curb the borrowings.

**4.19 ISSUE**

Deduction for CSR activities (Section 37(1) of Income Tax Act)

**PRESENT POSITION**

At present expenditure debited in the books of accounts on a/c of CSR activities is not allowed for the purpose of Income Tax.

**PROPOSED CHANGES**

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

**4.20 ISSUE**

Allowability of Prior Period Expenses under Section 37 (1) of Income Tax Act

**PRESENT POSITION**

Presently prior period expenses are not allowed as business expenditure in the year in which it is paid.

**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 the same.

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

**PROPOSED CHANGES**
It is suggested that 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.

**4.22 ISSUE**
Allowability of Leave Encashment under Section 43B of Income Tax Act

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

**PROPOSED CHANGES**
To mitigate the hardship, it is suggested that an Explanation be inserted in Section 43B to the effect that payment to the fund would be equivalent to payment to employees.

**4.23 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.

## 5. INCOME FROM OTHER SOURCES

### 5.1 ISSUE

Prescription of exemption from deeming of fair market value of shares for certain transactions u/s 56 of the Act

### PRESENT POSITION

The existing provisions of the section 56(2)(x) of the Income-tax Act, inter alia, provide for chargeability of income in case of receipt of money or specified property for no or inadequate consideration. For determining the amount of income for receipt of certain shares, the fair market value of the shares is taken into account. Similarly, section 50CA provides for deeming of fair market value of unquoted shares for computing the capital gains from the transfer of such shares. For both these provisions, the fair market value is determined based on the prescribed method. Determination of fair market value based on the prescribed rules may result into genuine hardship in certain cases where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination. In order to provide relief to such types of transactions from the applicability of sections 56(2)(x) and 50CA, it was proposed in Finance Bill 2019 to amend these sections to empower the Board to prescribe transactions undertaken by certain class of persons to which the provisions of section 56(2)(x) and 50CA shall not be applicable.

### 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. Transaction such as (a) Assets acquired through bidding process, (b) Transaction of Government companies or PSUs may be kept outside of its purview. Such change will bring tax certainty to taxpayer on share transfer in genuine circumstances as per regulatory requirement or government direction.

### 5.2 ISSUE

Dividend income received by persons other than company and non- resident.(Section 56 of Income Tax Act)

### PRESENT POSITION

Since Dividend Distribution Tax has been abolished w.e.f. 01.4.2020, now the recipient is liable to pay tax on Dividend Income. Domestic companies can claim deduction i.r.t. dividend income to the extent of dividend distributed by it in accordance with Sec. 80M of the I.T. Act (w.e.f. 01.04.2020). However, no exemption is available to other class of assesses.

### PROPOSED CHANGES

It is suggested to provide some threshold limit in the hands of the resident individuals that dividend upto Rs 1,00,000/- may be treated as exempt for the persons other than companies and Non resident and dividend received in excess of Rs 1,00,000 may be taxable @10%.

## 6. EXEMPTIONS / DEDUCTIONS

### 6.1 ISSUE
Re-introduction of deduction on investment in Infrastructure Bonds.

### PRESENT POSITION
In past, section 80CCF, IT Act w.e.f. April 1, 2011, provided additional deduction in respect of investment in notified long term infrastructure bonds. The said deduction was discontinued w.e.f. Assessment Year 2013-14.

### PROPOSED CHANGES
Deductions for Infrastructure Bonds u/s 80CCF of IT Act up to Rs. 1 Lakh over and above other deductions of the Act may be reintroduced. Such bonds will be able to mobilise fresh investment from salaried class and low- income group. By this way, small savings could be routed to the growth of the nation.

### 6.2 ISSUE
Introducing Tax Free Green Bonds for Financing of Renewable Power Projects

### PRESENT POSITION
During Budget 2022, GoI mentioned to issue Green Bonds for use in 'green infrastructure' for use in climate change and environmental focused projects. For efficient and cost effective fund mobilisation, such bonds may be made tax free. In past, tax-free bonds were allowed to Infrastructure and Infra Financing PSUs to enable mobilising low-cost funds for funding to infrastructure sector.

### PROPOSED CHANGES
For speedy and sustainable growth of renewable power projects and arranging matching funds requirement for these projects, Tax-Free Bonds for Financing of renewable power projects may be re-introduced. This will reduce effective financing cost to Renewable Energy sector and in turn enhance viability of renewable power projects.

### 6.3 ISSUE
Allowing Tax Free Bonds

### PRESENT POSITION
There are large number of HNIs (High Net-worth Individuals) and Retail Investors who look for safety of investments and at the same time a decent return also and are interested to subscribe to tax-free bonds. In past, such bonds were allowed for resource mobilisation by the Govt Infrastructure Companies including financing arms.

### PROPOSED CHANGES
It is requested to authorize Government Non Banking Financial Companies (NBFCs) registered as Infrastructure Finance Company (IFC) with Reserve Bank of India (RBI) and State Power Discoms to issuelong term bonds offering tax free interest u/s 10 of the Income Tax Act. The rate of interest on these bonds may be linked to G-Sec yields prevailing at the time of issue. Further, the funds raised under the allocation of tax free bonds may be exclusively earmarked for

funding of renewable generation projects. This will enable Infrastructure Finance Companies (IFCs) in Government Sector to raise long term funds at competitive rates for development of Infrastructure in India as well as lead to increased participation of retail investors in the corporate bond market. Raising of funds through Tax Free Bonds u/s 10(15) of the IT Act may be allowed which is guaranteed by the State Government to the extent of outstanding state government dues. This will attract more direct investment to the State and evolution of Bond Market by retail participation.

**6.4 ISSUE**

Extending tax exemption to Sovereign Wealth Fund for investment in Public Financial Institutions engaged in Infra Financing

**PRESENT POSITION**

As per Section 10 (23FE) of IT Act, the income of a Sovereign Wealth Fund (SWF) is not taxable if it is derived from investment made in India in a company engaged in Infrastructure Projects as defined in Section 80IA(4) (i) of the IT Act. However, company financing for infrastructure sector are not covered in above clause.

**PROPOSED CHANGES**

Financial Institutions lending for infrastructure projects eligible u/s 80IA(4)(i) of IT Act may also be allowed for the purpose of section 10(23FE) of IT Act. It will enable Financial Institutions to mobilise more funds for development of the infrastructure of the nation.

**6.5 ISSUE**

Income Tax Section 10(14)

**PRESENT POSITION**

As per Rule 2BB of Income tax rules, (1) For the purposes of sub-clause (i) of clause (14) of section 10, prescribed allowances, by whatever name called, shall be the following, namely:

| | |
|---|---|
| (e) | any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions; |

**PROPOSED CHANGES**

It is suggested to amend the rule 2BB(1) (e) of the Income tax rules and insert “and consultancy organisation” after educational and research institutions. In line with Education and research institution, it is required to research for new technology and innovation in competitive market to beat the competition for consultancy organisation.

**6.6 ISSUE**

Income from Infrastructural Capital Funds u/s 10(23G)

**PRESENT POSITION**

The exemption was withdrawn w.e.f. A.Y. 2007-08. It may be reinstated to give boost to Infrastructure projects and lead to growth of economy.

**PROPOSED CHANGES**
Income from Infrastructural Capital Funds may be made exempt u/s 10(23G).

**6.7 ISSUE**
Income tax benefit or Incentive scheme for setting up Green Hydrogen Plants or Electrolyser Plants

**PRESENT POSITION**
The Union Government is focusing towards goal of self-reliance in energy sector through clean energy. Accordingly, Government has come up with renewable power policy and draft green hydrogen policy. Several benefits are proposed under draft green hydrogen policy. The Green Hydrogen is produced from water through electrolysis process using Electrolyser. Electrolyser is one of major equipment used in production of Green Hydrogen Plants.

**PROPOSED CHANGES**
In context of push up of players in 'Green Hydrogen & Electrolyser Manufacturing', the tax holidays scheme may be proposed for 7 or 10 years. Such proposal will boost investment in field of Green Hydrogen Plants or Electrolyser Plants

**6.8 ISSUE**
Tax Paid Bonds

**PRESENT POSITION**
Only RBI is allowed to issue Taxable bonds

**PROPOSED CHANGES**
In order to raise long term funds at competitive rates for development of infrastructure without loss of tax revenue to the Government, it is proposed to authorize Government owned NBFCs registered with RBI as IFC to issue tax paid bonds to the Indian investors. The coupon rate of such bonds may be equivalent or slightly higher than the prevailing coupon rate / yield on the tax free bonds. Further, funds raised under the allocation of tax paid bonds may also be exclusively earmarked for funding of renewable generation projects. This will enable Infrastructure Finance Companies (IFCs) in Government Sector to raise long term funds at competitive rates for development of Infrastructure in India.

**6.9 ISSUE**
Increase in Investment Limit of Capital Gain Tax Exemption Bonds u/s 54EC

**PRESENT POSITION**
Till 31.03.2007, there was no limit for investment in long term specified assets (Capital Gain Tax Exemption Bonds) from capital gains arising from transfer of land/building. As on date, maximum limit of Rs. 50 lakh for investment in 54EC Capital Gain Tax Exemption Bonds is applicable (Inserted by Finance Act 2007 w.e.f. 01.04.2007). The said limit of Rs 50 lakh has not been reviewed in the last fifteen years.

**PROPOSED CHANGES**

In view of the rise in the real asset prices year on years, the limit of Rs. 50 lakh may also be reviewed. The same is proposed to be linked with Cost Inflation Index (CII). Considering the same, the present limit of investment in long term specified assets u/s 54ECmay be enhanced to Rs. 1.28 crore (based of CII of 2007-08 at 129 and CII of 2022-23 at 331). Further, some infrastructure PSUs may also be approved for issuance of bonds u/s 54EC.

**6.10 ISSUE**

Royalty/ Fees for Technical Services (Section 10 (6C) of Income Tax Act)

**PRESENT POSITION**

Income Tax Act provides for tax exemption for Royalty/ Fee for Technical Services received by foreign company pursuant to an agreement entered with Govt. of India for providing services (in or outside India) in projects connected with security of India, subject to a notification in the Official Gazette.

**PROPOSED CHANGES**

Extant Section be amended to clarify that exemption under Sec 10(6C) of IT Act shall be available in respect of agreements between foreign company and Defence PSUs, for providing services under projects connected with security of India.

**6.11 ISSUE**

Employees Contribution to Recognized Provident Fund

**PRESENT POSITION**

Finance Act 2021 had amended Section 10(11) & Section 10(12) by inserting new clause that if the amount of employee's contribution exceeds Rs. 2.50 Lacs, then interest on excess contribution shall be taxable in the hands of the employee.

**PROPOSED CHANGES**

It is understood that the purpose of this amendment was to discourage voluntary employee's contribution, however this limit of Rs.2.50 lacs falls short for mandatory 12% contribution for certain higher level /PSU sector employees. Therefore, it is suggested that the amount of Rs. 2.50 Lacs may be increased atleast upto 12% of salary.

**6.12 ISSUE**

Exemption in respect of leave encashment (Section 10 (10AA) (ii) of Income Tax Act)

**PRESENT POSITION**

Presently during the tenure of service, the leave encashment is taxable. Moreover, leave encashment after retirement, whether such retirement is on account of superannuation or otherwise is exempt up to the specified limit i.e. Rs. 3,00,000/-. However, in the case of central /state government employees there is no limit on exemption in r/o leave encashment at the time of retirement /superannuation or otherwise u/s 10(10AA)(ii) of the I.T.Act, 1961.

**PROPOSED CHANGES**

It is proposed that there should also not be any ceiling on the exemption limit for leave encashment in the case of the PSU Employees like in the case of central /state government employees as such this will eliminate disparity between Govt. Employees and PSU employees. Further, encashment during service may also be considered to be exempt.

**6.13 ISSUE**

Covid Treatment Expenses (Section 10 of Income Tax Act)

**PRESENT POSITION**

Due to Covid, CBDT introduced a provision wherein any expenses which are incurred for covid treatment shall be exempt when reimbursed by employer or any other individuals. However if the individual incurred expenditure from their own pocket there was no deduction provided to them.

**PROPOSED CHANGES**

Considering this pandemic as an unforeseen event many individuals savings have eroded, Accordingly the Government should introduce a deduction which can be adjusted against the future earnings of the individual to benefit the individuals and this will help in recouping the savings lost to the individuals.

**6.14 ISSUE**

Various Allowances to Employee (Section 10 (14) of Income Tax Act)

**PRESENT POSITION**

The Exemption limits for various allowances (eg: Children's Education Allowance, Hostel Allowance etc.) mentioned in Rule 2BB r.w.s. 10(14) was fixed in 1995.

**PROPOSED CHANGES**

Keeping in view of inflation & cost escalation, the same may please be suitably revised.

**6.15 ISSUE**

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

**PRESENT POSITION**

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.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 CHANGES**

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. 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. 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.

**6.16 ISSUE**
Extension of date of sanction of loan for affordable residential house property U/s 80EEA.

**PRESENT POSITION**
Finance Act 2021 amended the due date for sanctioning loan from 31.03.2021 to 31.03.2022 for obtaining additional benefit of Rs.1.50 Lacs under section 80EEA of Income Tax Act 1961.

**PROPOSED CHANGES**
In order to encourage real estate sector of country, the above benefit should be extended up to 31.03.2025. Further, deduction under this section may also be allowed in case loan is taken from employer subject to fulfilling other conditions.

**6.17 ISSUE**
Deduction of Donation Paid under Section 80G of Income Tax Act

**PRESENT POSITION**
Presently donation is not allowed as a deduction u/s 80G in case the company has opted for New Regime.

**PROPOSED CHANGES**
It is proposed that donation may be eligible for deduction U/s 80G under New regime to ensure that the companies will continue to make contributions for the benefit of the country in future like relief funds etc.

**6.18 ISSUE**
Deduction U/S 80TTA as regard to Interest Income

**PRESENT POSITION**
Presently deduction U/S 80TTA is limited to Rs 10,000 in respect of Interest on Savings Account.

**PROPOSED CHANGES**
It is suggested that the deduction in respect of any income by way of interest on deposits in a savings account should be extended to time deposits also u/s 80TTA. Further, the present limit of Rs. 10,000 may please be increased to Rs. 50,000, keeping in view of the inflationary trend and also this will boost spending.

## 7. TDS / TCS PROVISIONS

### 7.1 ISSUE
Clarification w.r.t. exclusion of the certain transactions from TDS on perquisite u/s 194R

### PRESENT POSITION
Bad Debts written off by companies – When the company is unable to recover the money and option for recovery of balance is exhausted then the company writes off the same in its books. Further, companies provide IT / office assets such as laptop / I-pad etc to the Independent director and other personnel who are not employees of the company. which may or may not be returnable.

### PROPOSED CHANGES
Clarification is to be provided that such waiver of bad debts is not a benefit on which TDS u/s 194R is applicable. Clarification should also be issued for assets provided not to be considered as benefits on which TDS u/s 194R is applicable.

### 7.2 ISSUE
TDS on perquisites in respect of business or profession (Section 194R)

### PRESENT POSITION
TDS @ 10% is to be deducted in case a benefit or perquisite in aggregate exceeding Rs 20,000/- in a financial year is provided to a resident during the course of Business or Profession. For compliance under this section, each monetary or non-monetary perquisites arising out of business or profession may have to be examined.

### PROPOSED CHANGES
The terminology "benefit or perquisite" may be defined in the Income Tax Act / Rules in order to avoid undue litigation in this regard. Further, the threshold limit of Rs 20,000/- may be increased to at least Rs 2,00,000/- considering the value of non- monetary perquisites may lead to practical difficulty for the deductor in many cases. It may also be noted that the threshold prescribed under this section does not sync with threshold prescribed under section 56.

### 7.3 ISSUE
Exemption/Clarification for TDS u/s 194Q on purchase of goods

### PRESENT POSITION
Finance Act 2021 has inserted a new provision of Tax deduction at source (TDS) under section 194Q which provides for TDS at rate of 0.1% on any sum paid to any resident for purchase of any goods of the value or aggregate of such value exceeding Rs.50 lakh rupees in any previous year. Public sector undertakings (PSUs) particularly those in Oil and Gas sector have very high value transactions of purchase / sale of petroleum crude oil, petroleum products and natural gases.

**PROPOSED CHANGES**
Section 194Q may please be exempted for all sales transactions of OMCs as the same is in no way furthering the object of the section since OMCs fully comply by tax laws and this change will lead to avoidable compliance burden of mammoth proportion. If sales by PSUs cannot be exempted from the provisions of section 194Q, then category of excluded buyers (Govt./local authority) u/s 206C(1H) to be adopted for buyers under section 194Q.

**7.4 ISSUE**
Clarifications wrt TDS on E-Commerce Operator u/s 194O

**PRESENT POSITION**
In case a website/portal is used to ensure smooth business and convenience to customers of the company's dealers/ distributors and the intention is just to facilitate booking of orders like booking of LPG cylinders in the portal of oil companies, the same is not for e-commerce but only a facility to place an order.

**PROPOSED CHANGES**
Clarifications can be brought to exclude such kind of transactions. Wide worded section is resulting into excess compliance of transactions which are not e-commerce in true sense and already covered in tax net. Clarification will remove this excess burden.

**7.5 ISSUE**
PAN in 26AS

**PRESENT POSITION**
26AS data has only the TAN number of the assessee

**PROPOSED CHANGES**
The same may also include the PAN number for ease of reconciliation.

**7.6 ISSUE**
TDS on payment to non-resident for purchase of goods u/s 195

**PRESENT POSITION**
In the absence of specific provision, TDS Rate on purchase of goods from non-resident is being covered under other income i.e. @ 40% plus surcharge and cess and it may not be possible each time for the vendor having PE in India to timely approach the department for lower deduction certificate. This causes conflicts between the vendor and the assessee since the assessee is duty bound to deduct tax.

**PROPOSED CHANGES**
Procedure for arriving profit component on sale of goods by Non-resident may be defined in the Act for calculating TDS on off-shore supply in absence of lower deduction certificate. Otherwise, suitable rate of deduction in case of goods purchased from non-residents may be notified.

**7.7 ISSUE**
Extending Lower tax deduction on interest payable to non-resident or a foreign company

**PRESENT POSITION**
Finance Act 2020 reduced withholding tax rates from 5% to 4% provided bonds are listed only on a recognised stock exchange located in any International Financial Services Centre ('IFSC') vide sub clause (2)(ib) of the section.

**PROPOSED CHANGES**
Explanation may be provided under Sec 194LC that even if bonds are additionally listed on foreign stock exchange, benefit of withholding @ 4% be available. This shall serve both the purposes i.e. increasing listings on Domestic Exchanges (IFSC) and reduce the cost of borrowings to the Corporates by encouraging investment through listing on foreign stock exchange.

**7.8 ISSUE**
Extending TDS exemption on Debentures holding in demat form by Non- Resident

**PRESENT POSITION**
As per section 193 of IT Act, no tax deduction at source is required on interest payable relating to listed securities held in demat form by Resident. However, no such relaxation for Non-Resident.

**PROPOSED CHANGES**
Non Deduction of tax from interest on listed securities be extended to all including Non Residents u/s 193 of IT Act. It will help in smoothing of compliance and promote debenture market with more participation by non-resident.

**7.9 ISSUE**
Section 194Q & 206C(1H)- Exemption with respect to compliance of Section 194Q and Section 206C(1H)

**PRESENT POSITION**
It is mentioned in section 194Q as well as Section 206C(1H) that Central Government may by way of notification specify exclusion category of persons from the ambit of Section 194Q.But till date no such notification has been released.

**PROPOSED CHANGES**
It is recommended to notify Public Sector Enterprises from the ambit of these sections in order to ease the compliance burden.

**7.10 ISSUE**
Form 16A & Form 27D - Availing TDS/TCS credit on the basis of Form 26AS

**PRESENT POSITION**
Form 16A is the certificate of deduction of tax at source and issued on deduction of tax by the payer. These certificates provide details of TDS for various transactions between deductor and

deductee. Similarly Form 27D is the certificate of collection of tax at source. Form 26AS contains the tax credit information for each taxpayer against its PAN.

**PROPOSED CHANGES**

Currently statute mandates issues of Form 16A or Form 27D on quarterly basis. With the advancement of technology and also assesse has been provided the facility to figure out TDS/TCS credit to his account in Form 26AS. Hence it is recommended to dispense with the issue of Form 16A and Form 27D for ease of compliance. Further, introduction of TDS u/s 194Q, the number of deductors (customers) have increased 10 times and the TDS amounts are very small figures in 2 digits. Contacting all the customers and obtaining the TDS certificates is consuming lot of time.

**7.11 ISSUE**

Section 194Q - Uniformity in charging of higher rates of tax

**PRESENT POSITION**

As per proviso to section 206C(1H), in case buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then tax is to be deducted @ 1% while in section 194Q, in case seller has not provided PAN then tax is to be deducted @ 5%.

**PROPOSED CHANGES**

It is recommended that since both the section relates to Sale/purchase of goods and therefore similar provision can be made with respect to charging of higher rate of tax in case of non-availability of Permanent Account Number or Aadhar number.

**7.12 ISSUE**

TDS credit to be allowed irrespective of the Assessment Year

**PRESENT POSITION**

Credit for TDS deducted is available to the deductee in the year in which the corresponding income is offered to tax. If, for any reason, credit for TDS is not claimed in the relevant year, the same would get lapsed and would not be available against tax payable by the deductee on income of any subsequent year. Availability of TDS credit only in the year in which corresponding income is offered to tax leads to undue hardship to the deductees from whom TDS was rightfully deducted and is also reflected in Form no. 26AS.

**PROPOSED CHANGES**

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

**7.13 ISSUE**

Exclusion of non-residents from the ambit of the provisions relating to applicability of TDS/TCS at higher rate in the cases of non-filer of Return of Income u/s 206AB and 206CCA

**PRESENT POSITION**

As per the provisions of section 206AB of the Act, if any TDS is deductible from a “specified person”, then, TDS would be deducted at higher rate. For the above purpose, “specified person”

means a person who has not filed its return of income. Similar provisions have been introduced in the context of TCS by insertion of section 206CCA. Apart from the resident deductees/collectees, the provisions of section 206AB and 206CCA are also applicable in the cases of sums payable/receivable to/from a non-resident having a Permanent Establishment (PE) in India. The applicability of sections 206AB and 206CCA in the cases of non-residents payees/payers may lead to certain issues to be faced by the resident deductor/collector in complying therewith.

**PROPOSED CHANGES**

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

**7.14 ISSUE**

Rationalizing the provisions relating to refund of TDS in tax protected contracts u/s 239A

**PRESENT POSITION**

As per the provisions of section 239A of the Act, inserted by the Finance Act, 2022, where under an agreement or arrangement, TDS applicable on any income (other than interest) payable to a non-resident is borne by the payer and, the payer claims that no TDS is required to be deducted from the income so payable, then, the payer may, within a period of 30 days from the date of payment of such TDS, file an application before the Assessing Officer for refund of such TDS.

**PROPOSED CHANGES**

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

**7.15 ISSUE**

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

**PRESENT POSITION**

Presently, application for nil rate of TDS certificate u/s 197 is allowed only for specified circumstances like Loss making company, nil tax liability etc. In case of large corporates especially for Public Sector undertakings (PSUs), reconciliation of TDS deducted by various customers with the tax credit appearing in Form 26AS is cumbersome and consuming many man hours due to large volume of transactions and many customers spread across India. For some instances, due to mismatch of TDS deducted with form 26AS, assessee may not avail tax credit for the same in ITR which results in loss of benefit.

**PROPOSED CHANGES**

Considering the above, suitable provisions may be inserted u/s 197 for PSUs or any other large taxpayer by providing an option to apply of Nil rate of TDS certificate by depositing lumpsum

amount on the basis of previous TDS liability. This will provide ease to the assessee from TDS reconciliation and generate upfront revenue to the department. Large tax payers including PSUs will be benefited with ease of doing business as it will avoid tedious process of TDS reconciliation and would also generate upfront revenue to the department.

**7.16 ISSUE**

Grossing- up of income of the non residents for TDS and assessment purposes. (Section 195A)

**PRESENT POSITION**

Section 195A of the Act requires multi-stage grossing up of income for TDS purposes if tax on the income of the non- resident payee is to be borne by the payer. Hon'ble Uttarakhand High Court held in favour of only single stage grossing up and the Hon'ble Supreme Court has dismissed Special Leave Petition filed by the Revenue against the Hon'ble High Court's judgment.Thus, the issue has attained the finality.

**PROPOSED CHANGES**

Suitable amendment may be made in section 195A of the Actso as to provide that where income of the non-resident is already grossed-up under any other section, the same would be subject to only single stage grossing-up for TDS purposes also.

**7.17 ISSUE**

TDS on Transmission Charges etc. (Section 194J/194I/194C of the Income Tax Act)

**PRESENT POSITION**

Various customers/ Income Tax Dept. are interpreting that Transmission of electricity is a technical service and are being required to deduct TDS u/s 194J of the Income Tax Act at 10% and few other are interpreting it as rent u/s 194I for deduction of TDS @10%. Also, various customers are deducting tax u/s 194C as well. Hon'ble Supreme Court upheld the judgement of Mumbai High Court case no 336/2013, stating that TDS on transmission charges should not be deducted.

**PROPOSED CHANGES**

It is suggested that clarification may be issued so that TDS is not required to be deducted on transmission charges as the same is not covered under any section of Income Tax Act. Otherwise, a separate exemption from TDS may be provided for amount collected and distributed as transmission charges on behalf of licensees as no loss for revenue since the amount being given up as TDS would be recouped from increased advance tax receipts from the licensees.

**7.18 ISSUE**

Reduction of TDS rate u/s 194LC

**PRESENT POSITION**

TDS u/s 194LC @5% is to be deducted in case of payment of interest by an assessee in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond). This TDS is to be paid as the interest payment

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

**PROPOSED CHANGES**

It is requested to please reduce the rate from 5% to 3% for all types of borrowings covered u/s 194LC to have a uniform single rate.

**7.19 ISSUE:**

Rationalizing the provisions dealing with TDS by e- commerce operators. (Section 194-O of Income Tax Act)

**PRESENT POSITION**

Presently as per the provisions of section. 194-O of the Act, where sale of goods or provision of services is facilitated by an e-commerce operator through its digital or electronic facility or platform, the e-commerce operator is required to deduct TDS on the amount of sale or services at the time of crediting the same to the account of e-commerce participant (i.e., the seller) or at the time of payment thereof, whichever is earlier. Explanation to the aforesaid section clarifies that, any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for sale of goods or provision of services facilitated by e-commerce operator, shall be deemed to be the amount credited or paid by e-commerce operator to the e-commerce participant and shall be includedin the gross amount of such sale and services for the purpose of deduction of TDS under the above section. The instant issue pertains to the non-availability of ample clarity on various aspects arising from theaforesaid provisions.

**PROPOSED CHANGES**

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

**7.20 ISSUE:**

TDS on Purchase of Goods u/s 194Q of Income Tax Act 1961

**PRESENT POSITION**

Any person, being a buyer who is responsible for paying any sum to any resident (hereafter in this section referred to as the seller) for purchase of any goods of the value or aggregate of such value exceeding Rs.50 Lacs in any previous year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount equal to 0.10 percent of such sum exceeding Rs.50 Lacs as income-tax. Further, there is another similar provision for sellers i.e. Section 206C (1H), however it has been overridden by the provisions of Section 194Q of Income Tax Act 1961.

**PROPOSED CHANGES**

In order to reduce litigation, provisions of Section 206(1H) should be replaced with the Section 194Q & threshold limit of Rs.50 Lacs should be replaced with Rs.2 Crs for better compliance

with tax provisions. Co-existence of both provisions of TDS & TCS on the purchase/sales transaction is resulting in increased compliance burden, undue reconciliation issues between buyer and seller and may lead to both, deduction and collection of tax at source in case of lack of TDS details, especially in the case of Big Corporates /PSUs dealing in Capital Goods / Infrastructure projects having long term contacts comprising numerous transactions of sale / purchase.

**7.21 ISSUE**

Clarification regarding non applicability of TDS on Indirect taxes like Excise duty /VAT/CST like GST if charged separately in invoice (Section 194Q of the Income Tax Act)

**PRESENT POSITION**

Finance Act 2021, has inserted a new provision of Tax Deduction at Source under section 194Q which provides for TDS @ 0.1% of any sum paid to any resident for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year. Clarification was issued that TDS is not applicable on GST, However since the major products of the Oil Companies ie. MS, HSD and ATF are outside the ambit of GST and Excise Duty/VAT/CST is levied on the same

**PROPOSED CHANGES**

It is requested to please provide a clarification on similar grounds for exclusion of Excise Duty, VAT and CST to have consistency in the Act and also better clarity.

**7.22 ISSUE:**

TCS Return-removing of ambiguity and implausible compliance Form 27EQ

**PRESENT POSITION**

The TCS Return requires every case where TCS is required to be collected to be reported, However in case the same is not required to be collected where TDS has been deducted u/s 194Q – then the challan number and date of deposit of TDS is required to be mentioned. This makes it impossible for any assessee to report these transactions as, collecting these details from all the customers will be practically impossible.

**PROPOSED CHANGES**

Hence it is suggested that this requirement may be done away with to reduce unnecessary compliance burden

**7.23 ISSUE:**

TDS from provisions/liability created in the accounts (Chapter XVII B of Income Tax Act)

**PRESENT POSITION**

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

**PROPOSED CHANGES**

It is suggested that the TDS should be deducted only at the time when the amount becomes payable on receipt of bill/invoice, which shall have positive implication for the Corporate by bring tax certainty and shall reduce litigation.

**7.24 ISSUE**

Rationalisation of TDS/TCS Provisions

**PRESENT POSITION**

TDS is very complicated compliance which needs professional guidance. However, small companies tend to default in complying TDS/TCS provisions due to lack of professional expertise available to them.

**PROPOSED CHANGES**

It is ssuggested that TDS/TCS provisions should be applicable to the entities whose turnover exceeds Rs 10 crores in previous year so as to keep small time payees out of bracket of TDS/TCS, so that the time and money involved in the compliance can be reduced. Waiving the condition for issuance of TDS certificate to vendors may also be considered in the light of strengthening of form 26AS.

## 8. FILING OF RETURN & ASSESSMENT / APPEAL PROCEEDINGS

**8.1 ISSUE**
Avoidance of delay in issuance of Refund u/s 143(1)

**PRESENT POSITION**
It is observed that even after issuing intimation u/s 143(1), refunds are not given in no. of cases.

**PROPOSED CHANGES**
CPC should ensure that they process the 143(1) intimation and refund the same to the assessee without any delay, Only in exceptional cases the refund should be retained for which approval shall be taken from PCIT. Timely realization of refund by the assessee and savings of interest for the tax department.

**8.2 ISSUE**
Delay in issuance of Refund under Vivad Se Vishwas Scheme

**PRESENT POSITION**
It is observed that refunds due under Vivad Se Vishwas Scheme are getting delayed in no. of cases. Further as per scheme, there is no interest payable on refund due to assessee, hence assessee's funds are blocked with It Department for uncertain period. Delay in refunds is causing hardship on the assessee who opted for the Scheme.

**PROPOSED CHANGES**
It is suggested that time limit to issue refund be made under Vivad Se Vishwas Scheme. Further, payment of interest on delayed refunds may also be considered.

**8.3 ISSUE**
Time limit to file revised return

**PRESENT POSITION**
The time gap between due date of filing of original return & revised return has been reduced very substantially.

**PROPOSED CHANGES**
Since this is a very short time, the same may be extended to the earlier provisions of the act ie. 31.03.2023. (For AY 2022-23)

**8.4 ISSUE**
Creation of PAN sub user login in case of big corporate

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

**PROPOSED CHANGES**
Considering the hardship faced by large assessee, multiple login may be allowed in the form of Sub-user for single PAN/TAN may be enabled for the benefit and ease of compliance of various activities by the tax payers. Similar facility is also available for GST login wherein multiple logins can be used for single GST registration. Sub-users under single PAN would facilitate ease in business process and hassle-free compliance.

**8.5 ISSUE**
Faceless Assessment for Income Tax Appellate Tribunal (Section 255)

**PRESENT POSITION**
Finance Act 2021 introduced faceless assessment for Income Tax Appellate Tribunal (ITAT). Currently, assessments before the Learned Assessing Officer & Hon'ble Commissioner of Income Tax (Appeals) both are in Faceless Mode.

**PROPOSED CHANGES**
Considering the fact that the ITAT is the final fact-finding authority, it is more desirable that physical hearing/ debating the issue before the Hon'ble members of ITAT be continued.

**8.6 ISSUE**
Delegation of power to file return u/s 140

**PRESENT POSITION**
As per Section 140, managing director is required to verify & sign the return. Sometimes, it is not possible for managing director to do the same.

**PROPOSED CHANGES**
Section 140 may be amended to allow any person with the Power of Attorney from the board to file its return of income for faster and timely filing of returns without undue pressure on top management of the companies.

**8.7 ISSUE**
Communication/notices/orders from department

**PRESENT POSITION**
Resolution provided to grievances raised on E-Nivaran portal of E-filing website are not clearly replied/attended. Reply to notices u/s 139(9) as well as intimation u/s 143(1) etc provided by the assessee is usually not being considered by CPC and orders are passed which leads to unnecessary litigations both at the part of the assessee as well as the department. No field to mention the reason for filing of request for rectification u/s 154, which leads to wastage of time as well as litigations due to incorrect orders passed by CPC.

**PROPOSED CHANGES**
Proper mechanism to address such issues may be devised by the Government. Assessee will be able to do proper compliance and better interpretation of the Act.

**8.8 ISSUE**
Adjustment of Excess tax paid with future year(s) tax liabilities

**PRESENT POSITION**
Currently, refund for each year in case is paid on a separate basis. However, department has the right to adjust prior refunds against demand pending u/s 245. However, the option is not available with the assessee for adjustment of excess tax paid i.e. refund with future year(s) tax liabilities.

**PROPOSED CHANGES**
Provision of option to the assessee to adjust extra tax deposited/TDS (refund) towards advance tax for next assessment year(s) instead of claiming the same as refund.

**8.9 ISSUE**
Carving out separate threshold limits for filing of IT Department before various appellate authorities, in case of CPSEs.

**PRESENT POSITION**
Currently, following threshold limits of disputed tax amount have been prescribed by IT Department for litigation at various levels:

- ITAT – Rs. 50 Lacs
- High Court – Rs. 1 crore
- Supreme Court – Rs. 2 crores

Above limit has been specified for any assesse (Public/ Private).
CPSEs are subject to C&AG multiple audits, Tax Audit, Internal Audit and Statutory audit. Listed CPSEs are additionally governed by Corporate Governance norms.

**PROPOSED CHANGES**
It may be considered to stipulate a higher threshold limit for CPSEs as below:

- ITAT – Rs. 5 crores
- High Court – Rs. 10 crore
- Supreme Court – Rs. 20 crores

Hence, a separate and higher limit may be stipulated for tax litigations for Income Tax Department may be prescribed, to save time and money of Government.

**8.10 ISSUE**
Consideration of interest for granting refunds u/s 244A

**PRESENT POSITION**
Section 244A of the Act deals with interest payable on refunds due to an assessee. Sub-section (1) of section 244A starts with the phrase "Where refund of any amount becomes due to the assessee…..". On a literal construction of the aforesaid, it may be inferred that the phrase "..any amount…" occurring in section 244A (1) refers to the total amount of refund due to an assessee not just the tax component thereof. Thus, the interest should be calculated on the amount of tax, interest, penalty etc., comprising the total amount of refund. However, the provisions of section

244A does not contain any clarificatory clause as to whether or not interest and other components of refund would also form part of "any amount of refund" as mentioned above.

**PROPOSED CHANGES**
It is suggested that, a suitable clarificatory provision may be inserted in section 244A of the Act in this regard on the amount of tax refund or interest.

**8.11 ISSUE**
Faceless Assessments

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

**PROPOSED CHANGES**
It is suggested that suitable upgradations may be made in software so as to facilitate the assesee.

**8.12 ISSUE**
Providing consequences of non-disposal of rectification applications. (Section 154 of Income Tax Act)

**PRESENT POSITION**
Section 154(7) of the Actspecifies a time limit of four years for making amendments toorders for rectification ofmistakes 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. Further, under the provisions of sub-section (8) of section 154, 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 madeis not disposed of within six months have not been spelt out.

**PROPOSED CHANGES**
It is suggested that sub-section (8) of section 154 may also provide that, if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed as it is seen that, in a large number of cases, the assessing officers simply do not dispose of an assessee's application under section 154 for years together, which results in loss to the assessee. Providing consequences for non- disposal of applications within the specified period would ensure promptness in disposal of applications under section 154and avoid undue harassment to the taxpayers

**8.13 ISSUE**
Restriction on deposit/adjustment of demands exceeding 20% of disputed amount pending disposal of appeal (Section 245/220 of the Income Tax Act)

**PRESENT POSITION**

The Central Board of Direct Taxes (CBDT) had, vide Office Memorandum dated 29-02-2016 and 31-07-2017, issued guidelines for granting stay ofdemands pending disposal ofappeals by first appellate authority. As per the aforesaid guidelines, where the outstanding demand is disputed before the Commissioner of Income-tax (Appeals) [CIT(A)], the assessing officer shall grant stay of demand till disposal of first appeal on payment of 20% of the disputed amount. However, in practice, it has been observed that, pending disposal of appeal by CIT (A), the amount of demands raised and collected by the assessing officers often exceeds 20% of total disputed amount and in certain cases, the entire demand is collected by way of payment / adjustment of refunds arising in any other assessment year.

**PROPOSED CHANGES**

Suitable provisions may be inserted in section 245 (which empowers the assessing officer to adjust refunds against the outstanding demands) or section 220 of the Act (which deals with payments of outstanding demands) restricting the assessing officers to raise and collect demands (by any mode) exceeding 20% of total disputed amount pending disposal of appeal by CIT(A). It may alsobe provided therein that, the demand in excess of 20% of disputed amount may be raised and recovered by the assessing the same. officer only with the prior approval of Chief Commissionerof Income-tax. Further, to safeguard the Revenue's interest, certain exceptions to the aforesaid general rule may also be provided in line with the ones contained in CBDT's Office Memorandum dated 29-02-2016.

## 9. FOREIGN TAXATION

### 9.1 ISSUE
Mandatory E-Filing of Form 10F (Section 90)

### PRESENT POSITION
To claim the benefit of a Double Taxation Avoidance Agreement ('DTAA'), a non-resident is required to furnish a Tax Residency Certificate ('TRC') from the Government of the country of which he is a resident. and a self-declaration in Form 10F ("the form") in case the TRC obtained from the Government of a particular country, does not contain certain details. Notification No. 03/2022 dated 16th July 2022 issued by the Director General of Income-tax (Systems) mandates that certain forms, including Form 10F, shall be furnished electronically in the manner prescribed under Rule 131(1) of the Rules. Prior to the above-mentioned notification, there was no specified mode of furnishing the form along with the TRC to obtain the benefits of a Double Tax Avoidance Agreement (DTAA). However, post this Notification, it shall now be mandatory to furnish this Form 10F electronically.

### PROPOSED CHANGES
Electronic Form 10F can only be generated by persons holding PAN in India, as one is required to create a login ID and password on the Income-tax portal, for which obtaining a Permanent Account Number ('PAN') is mandatory. It is suggested to do away with the mandatory electronic furnishing of Form 10F at least for those who do not have PAN. Alternatively, it is recommended that such form can be undertaken electronically without creating a PAN-based login id on the Income tax portal. Mandating a non-resident payee to obtain a PAN in India creates an unnecessary compliance burden.

### 9.2 ISSUE
Tax on certain dividends received from foreign companies (Section 115BBD)

### PRESENT POSITION
Finance Act 2022 scrapped lower rate of income tax @ 15% u/s 115BBD in order to bring parity of taxability on account of receipt of dividend from foreign subsidiary/associate & domestic subsidiary/associate.

### PROPOSED CHANGES
With a view to encourage/enhance the inflow of foreign funds in India, this clause should be retained in the Income Tax Act. Also, if the domestic company declares dividend out of the receipt of such foreign dividend, then benefit u/s 80M should be available for computation of taxable Income of the company.

### 9.3 ISSUE
Impermissible avoidance arrangement u/s 96

### PRESENT POSITION
For determining "Impermissible avoidance arrangement" u/s 96(1), subsection (2) of Section 96 provides that an arrangement shall be presumed, unless it is proved to the contrary by the

assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit.

**9.4 PROPOSED CHANGES**

There needs to be more clarity and objectivity in the section while defining the arrangements envisaged as "Impermissible avoidance arrangement". The clarity is required to bring more tax certainty and reduce litigation keeping in view that the legitimate tax planning should not come into the purview of Impermissible avoidance arrangement.

## 10. MISCELLANEOUS

**10.1 ISSUE**

Waiver of Interest under section 234B and 234C

**PRESENT POSITION**

Oil Companies have not been able to estimate their profits with any accuracy due to pricing mechanism currently in vogue and sensitivity of pricing of petroleum products. Whereas the Industry has been subjected to 234B/234C like any other assessee. The statute provides powers with Chief Commissioner of Income Tax for waiver of interest. However, the waiver applications are not disposed off.

**PROPOSED CHANGES**

It is imperative to pass on necessary administrative instructions by the Board for disposal of waiver applications in a time bound manner.

**10.2 ISSUE**

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

**PRESENT POSITION**

Section 281 of the IT Act requires an assessee to obtain the permission of the assessing officer before creating a charge on certain assets or transfer of certain assets in the event there are ongoing tax proceedings or pending claims/demands against such assessee. The main objective of section 281 is to safeguard the interests of the revenue against assessees who may fraudulently part with their assets to avoid payment of taxes. Further, referring to CIRCULAR NO. 4/2011, where requisites have been prescribed before granting of permission u/s 281. One of the conditions as prescribed is "If there is no demand outstanding and there is no likelihood of demand arising in the next six months". The above circumstance as mentioned in the circular has created significant inconvenience to the assessee in obtaining certificates from the concerned authority.

**PROPOSED CHANGES**

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

**10.3 ISSUE**

Taxability of Dividend u/s 115A

**PRESENT POSITION**

A resident individual is required to pay at higher tax rate upto 30% whereas non-resident is benefiting from lower rate of 20% under section 115A of the IT Act and further lower rates of 5% to 15% under the tax treaties.

**PROPOSED CHANGES**
The rate of dividend taxation in hands of resident investors may be considered for reduction.

**10.4 ISSUE**
Increase in the threshold limit in case of Payment of Advance Tax by Individual

**PRESENT POSITION**
The threshold limit of Rs. 10,000 for payment of advance tax was last mended by Finance Act, 2009. Considering the inflation in the economy over the last 12 years as well as reducing compliance burden, there is a need to increase the threshold limit from the present Rs. 10,000.

**PROPOSED CHANGES**
Increase in threshold limit from Rs.10000/- to at least Rs. 50000/-. Such proposal will provide benefit to the assessee from extra burden of interest.

**10.5 ISSUE**
Carry forward and set off of business losses: Section 72

**PRESENT POSITION**
Section 72 of Income Tax Act, 1961 provides for carry forward and set off of business losses against profit for a maximum period of eight assessment years. With introduction of National Steel Policy 2017, India is aiming to build a competitive global industry with a crude steel capacity of 300 MT by 2030-31 which will require huge investments resulting to huge depreciation claim and thus negative taxable income. Losses available under the Income Tax Act may not be set off within the statutory time limit of 8 assessment years.

**PROPOSED CHANGES**
It is suggested to amend section 72 suitably so as to uplift the steel industry. The amendment will help to sustain the domestic steel industry performance.

**10.6 ISSUE**
Exit Window in Section 115BAA of the Income Tax Act, 1961

**PRESENT POSITION**
The non-availability of exit window at least once from Section 115BAA once opted by a Company is creating a genuine hardship as the Companies who have now adopted for lower rate of tax as per the said section are facing issues in practical terms that some of the benefits which they were earlier allowed now stands withdrawn.

**PROPOSED CHANGES**
Considering, this fact, a exit window should be allowed for the same once in a block period of five years.

**10.7 ISSUE**
Extending benefit of section 115BAB to transmission companies. (Section 115BAB of Income Tax Act)

**PRESENT POSITION**
Currently, the benefit of lower tax rate of 15% u/s 115BAB is available only to companies engaged in business of manufacture or production of any article or thing" which also includes the business of generation of electricity.

**PROPOSED CHANGES**
It is proposed to extend the benefit of section 115BAB to companies engaged in the business of transmission of electricity, to make the sector more competitive and reduce the cost of power in the hands of the ultimate consumers.

**10.8 ISSUE**
Minimum Alternate Tax (MAT) (Section 115JAA of Income Tax Act)

**PRESENT POSITION**
As per provisions of Income Tax Act, MAT Credit entitlement can be carried forward for a period of 10 years for the MAT paid prior to AY 2018-19 and for MAT paid after AY 2018-19 can be carried forward for a period of 15AYs.

**PROPOSED CHANGES**
It is suggested that the many companies, which are incurring losses and under Negative Net-worth should be exempted from MAT provisions. In case of companies with negative net-worth, it is proposed that set-off period of MAT should be without any time limit, which would give substantial relief to the industry to carry forward such MAT credit and adjustment during future years.

**10.9 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. @ 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 CHANGES**
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.

**10.11 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 CHANGES**
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.

# PART B:

# INDIRECT TAXES

# PART-B

# RECOMMENDATIONS ON INDIRECT TAXES

## I. GOODS & SERVICE TAX

### 1. TAXABILITY

**1.1 ISSUE**
Suggestion to include Aviation Turbine Fuel **(**ATF**)**and Natural Gas (NG) under GST

**PRESENT POSITION**
It has been suggested to Govt. to include all the petroleum products under GST to have a seamless credit chain providing relief for mitigating the impact of loss of Input Tax Credit and avoid multiple compliances of law. However, if due to any reason our request for inclusion of all petroleum products under GST is not feasible, it is suggested that at least include Aviation Turbine Fuel (ATF) and Natural Gas under GST. Out of excluded petroleum products ATF & Natural Gas is contributing only around 2% of Central Excise revenue to Central Govt and less than 6% Sales tax revenue to State Govts.

**PROPOSED CHANGES**
This would enable some relief to Oil Marketing Companies through some reduction of under recovery on account of non-inclusion of such petroleum products under GST. At the same time this move would benefit the Airline industry (which is just recovering from the pandemic effect but is adversely hit by the abnormal rise in prices of Aviation Turbine Fuel due to the geo political facts) and the various User industries where Natural Gas is being used as India progresses towards a Gas based economy.

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

**PRESENT POSITION**
Under the present form of GST, even though major petroleum products have been kept out of GST ambit, however, exports of such goods are considered 'Zero Rated' (u/s 16 of IGST Act) to enable them to avail Input Tax Credit on such exports to avoid exporting taxes. While going through the GST provisions relating to Zero Rated supply, an ambiguity has arisen regarding supply of ATF to foreign going airlines. Under the GST provisions, the term 'exports of goods' have been defined, as taking goods out of India to a place outside India. Though, the ATF is supplied to a foreign going aircraft for the purpose of ''consumption outside India'' but may not get covered directly within the definition of export of goods to treat them as zero rated supply as it is being "supplied within India''.

**PROPOSED CHANGES**
It is suggested to treat supply of ATF to foreign going aircraft as export by suitable amendment in definition of export of goods or zero rated goods under the IGST Act to enable to avail ITC.

**1.3 ISSUE**

Applicability of GST Compensation Cess on transfer of Coal from allotted Coal Block to End use Power Plant of same entity/group company

**PRESENT POSITION**

In case of captive consumption of coal between power plants and mines of same entity/group within same state, transfer of coal from Mine to Thermal Power station under the same registration will not attract the GST Compensation Cess. However if the same transfer of coal happens from one state to other between "distinct persons" ,transaction will attract GST Compensation Cess as per the provisions of the GST Act, though the coal is used for captive consumption, which makes the Coal less competitive, thereby increasing power cost.

**PROPOSED CHANGES**

Applicability of GST Compensation Cess on inter-state transfer of Coal from allotted Coal Block to End Use Power Plant of same entity/group company, may be exempted. It would lead to generation of affordable power to the end user due to reduction in power cost by way of reduction in input price.

**1.4 ISSUE**

Applicability of GST on Asset Monetization:

**PRESENT POSITION**

Govt. of India has recently introduced new concept for monetization of existing Govt./PSU assets. In the process of monetization there can be various models including Lease/Right to Use/Sale/ Transfer etc. Based on the model chosen for asset monetization applicability of GST needs to be ascertained. Certain models for asset monetization become unviable due to applicability of GST on the transaction particularly for power assets where the output is exempt from GST.

**PROPOSED CHANGES**

Hence, in order to maximize the stakeholder return, all models of monetizing assets should be kept outside GST particularly for power assets.

**1.5 ISSUE**

GST on advances received for works contract services.

**PRESENT POSITION**

Under the GST law, works contract has been deemed to be a supply of service. In case of supply of service, GST is payable on receipt of advances from the customer. Thus, even before actually supplying any service, the registered person is made liable to pay GST on advances.

**PROPOSED CHANGES**

No GST on advances received for works contract services. GST on advances leads to blockage of Working Capital and the credit of such GST will be available to the recipient only after the services have been actually received. Further in cases of deposit basis work where advances are received frequently the ITC available gets blocked as there is no outward supplies against which the same could be used as GST has already been deposited in cash at the time of receipt of advance from the client leading to non-utilisation of ITC.

**1.6 ISSUE**
Valuation of land cost in case of real estate transactions

**PRESENT POSITION**
In case of supply of service involving transfer of property in land or undivided share of land, the Act has prescribed the deemed value of land as 1/3 of the total consideration. This amount is to be deducted from the total consideration to arrive at the value of WC service for charging GST.

**PROPOSED CHANGES**
The value of land in case of real estate transaction shall be taken as 1/3 of the total consideration or the actual value land, at the option of the taxable person. This will be justified and acceptable, since the value of land in metro cities is much more than 1/3 of total consideration of the building. In most of the cases, the cost of land in metro cities on an average is 75% and the cost of construction is merely 25%. This will give a boost to the ailing real estate sector.

**1.7 ISSUE**
Reverse charge on services provided by Central Government, State Government, Union territory or local authority (herein referred to as 'Government') to business entity is chargeable to GST on reverse charge basis.

**PRESENT POSITION**
Where any service as defined in clause 5(b) of Schedule II to CGST Act, 2017 is provided by Government to any business entity then the business entity is liable to pay GST on the same under reverse charge @ 18% (12% where the construction services also include value of land). Generally, the availability of input tax credit in this industry is in the range of 7%-8%. Since the aforesaid services are chargeable to GST on reverse charge basis, ITC for providing such output services by the Government is lost and, becomes a part cost. This additional cost is passed on to the business entity purchasing the commercial unit. Thus, effectively, the cost of the commercial unit goes up. Whereas in case such services are procured from non-government entities the ITC is available to them thereby reducing the cost of the unit and it becomes financially viable to procure unit from non-government entities instead of Government.

**PROPOSED CHANGES**
It is suggested to provide an effective rate of 5% for construction services provided by the Government when the said service is chargeable to tax on reverse charge basis.

**1.8 ISSUE**
GST payment on realization, not on raising the invoices

**PRESENT POSITION**
Under GST LAW, the GST is payable by 20$^{th}$ of the following month of raising the invoices even though the Invoices are not accepted by client and /or the payment for the invoice has not been received by the supplier. Normally for the companies who are having most of its clients as Government department, the payment of the invoices are received in about 3 to 6 month's time of raising the invoice due to various procedural issues. Further in many cases, the invoice is

accepted by the client for the lesser amount than raised amount but the full GST is already paid to Govt. on the full invoice value. This results blockage of working capital and the track record has to be kept for the actual amount realized.

**PROPOSED CHANGES**

Therefore, it is suggested that GST may be made payable on realization of invoice by the supplier for actual received amount as was done under service tax regime till 31.07.2017.

**1.9 ISSUE**

Need for Clarity on Scope of Service of Exploration, Mining or Drilling

**PRESENT POSITION**

The Govt. has levied concessional rate of 12% GST instead of 18% on Support Services to of exploration, mining or drilling of petroleum crude or natural gas or both. However, GST rate on Support service to mining other than above is 18%. There is overlapping of the word “mining” in above cases. Since scope of exploration, mining or drilling are not defined anywhere under GST Law, it is apprehended that the field formations may take restricted interpretation and may cover such Services under 'Support services to Mining Services' which attracts 18% GST.

**PROPOSED CHANGES**

In order to ensure that the E&P sector gets the intended benefits as envisaged by the legislature and to avoid litigation, it is requested that a suitable clarification may be please issued on applicability of 12% GST on the services availed by the E&P sector which are required for ‘Petroleum Operations’ as defined under the Petroleum Tax Guide issued by Ministry of Petroleum & Natural Gas, Govt. of India

**1.10 ISSUE**

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

**PRESENT POSITION**

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

**PROPOSED CHANGES**

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

**1.11 ISSUE**

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

**PRESENT POSITION**

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

**PROPOSED CHANGES**

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

**1.12 ISSUE**

Applicability of GST on Power Producing and Distribution Companies (Second proviso to Sec. 16(2) of CGST Act, 2017)

**PRESENT POSITION**

Presently, vide Entry No. 104 of Notification No. 2/2017-CT (Rate), dated 28 June, 2017, electricity as goods is exempt from GST. Also, transmission or distribution of electricity by an electricity transmission or distribution utility is exempt vide serial no.25 of Notification No. 12/2017-Central Tax (Rate), dated 28 June, 2017. 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**

It is proposed that exemption to Power producing and / or Power Transmission or Distribution utilities may please be reviewed in order to avoid any blockage of funds of the suppliers of such Companies on account of GST in the supply chain as second proviso to Sec. 16(2) of CGST Act, 2017 is not affecting the timeline for making payment by such companies to their suppliers (since electricity is exempt from GST, GST ITC is not available, thus GST amount is part of CAPEX). However, such suppliers are required to discharge their output tax liability to Govt. on the amount billed to customers and are also required to reverse the GST, ITC in case any payment is not made by them to their sub-suppliers within the prescribed time, which will increase in working capital requirement of suppliers due to delay getting payment from customers while making timely payment to their sub-suppliers within the prescribed time limit i.e within 180 days from the date of invoice.

**1.13 ISSUE**

GST on supplies to deemed export projects. (Section 16(1) of IGST Act)

**PRESENT POSITION**
In pre-GST regime, Excise Duty (ED) was exempt for supply to deemed export projects. However, there is no exemption under GST for supply to such projects and the same is subject to GST at applicable rate.

**PROPOSED CHANGES**
It is proposed/ suggested that supply to deemed export projects may be considered at par with physical exports and accordingly should be included in zero-rated supply as the same shall reduce burden of cash requirement for companies dealing in supply to infrastructure projects including reduction in overall cost of the power project.

**1.14 ISSUE**
Levy of nominal GST on excluded petroleum products or include under Zero rated Supplies

**PRESENT POSITION**
Presently major petroleum products MS, HSD, ATF, Petroleum Crude, Aviation Turbine Fuel **(**ATF**)** and Natural Gas have been constitutionally kept out from levy of GST. These products are continuing under the existing Excise and Sales Tax/VAT laws. Inputs/input services procured by the petroleum industry post GST is liable to tax under GST whereas the major final products of the petroleum industry continue to be liable under the existing excise and sales tax/VAT laws, etc. Thus, credit of input GST is not fully allowed when used in supply of these non-GST goods, such exclusion is resulting in loss to the refineries/marketing locations as full credit of input taxes are denied. Dual taxation is contradicting the objective of introducing uniformity in taxation of goods and services all over the country. It has also resulted in additional compliance burden for the Petroleum Industry and Government as well.

**PROPOSED CHANGES**
It is suggested that these excluded products are also included in GST with nominal GST alongwith levy of Excise duty /VAT. Alternatively, these products may be included under zero rated goods in GST to allow the full availment of input tax Credits under GST. This will protect the State and Central revenues at the current levels. Such levy is already there for tobacco products.

**1.15 ISSUE**
GST on Royalty

**PRESENT POSITION**
The Royalty is being paid by companies 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, such royalty as being paid by companies is in the nature of tax. Accordingly, the GST 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.

**PROPOSED CHANGES**

It is proposed that a clarification may be issued that such Royalty being paid by comapnies u/s 6A of ORD Act is in the nature of tax and hence should not be subject to levy of GST.

**1.16 ISSUE**

Clarification under GST to the effect that consortium members including operator and the consortium formed under Production Sharing Contract (PSC) are not two distinct persons.(Section 7(aa) of CGST Act)

**PRESENT POSITION**

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 (ICB) 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 GST. 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.

**PROPOSED CHANGES**

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 GST, to avoid dispute with Dept.

**1.17 ISSUE**

GST On Government Contracts

**PRESENT POSITION**
Various Government Contracts/Works are exempt from GST. However, such exemption is available to the Prime Contractor only i.e. the Agency to whom the work has been awarded by the Govt. As is the common business practice, some part of the works is further sub-contracted to multiple vendors. But it is observed that GST exemption is denied to such sub-contractors. This defeats the very purpose of providing GST exemption to a particular Govt. contract.

**PROPOSED CHANGES**
It is therefore requested to allow GST exemption in such cases to the entire chain of sub-contractors to avoid compliance and interpretation issues.

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

**PRESENT POSITION**
Section 7 read with schedule III provides applicability of GST for transactions amongst distinct persons of the same entity. Issue arises whether head office is providing services to its unit situated in other states or whether units are providing services to head office. The issue has further attained significance in case of adavnce ruling in the case of M/s Columbia Hospital wherein it was held that head office is providing services to units and employee cost is required to be included in the value of services. Since, employees are for the company as a whole and not permanently mapped to any unit of the organization, cannot be considered as providing services among distinct persons.

**PROPOSED CHANGES**
It is suggested that necessary notification to be issued by Govt. providing exemption for deemed supply of services by head office to its units situated in another state and services by units to head office situated in another state. Such clarification would avoid unwarranted litigations at future date particularly in view of contrary AAR ruling in this regard.

**1.19 ISSUE**
Taxability on Renewable Energy certificate

**PRESENT POSITION**
The Government of India's Policy initiatives have led to a tremendous growth and development of renewable energy (RE) sector in the country. Government of India (GOI) has framed various policies for changing the energy mix ratio towards non-pollutant sources of energy and thus promoting the uses of renewable energy. One such initiative is inclusion of Renewable Purchase Obligation (RPO) in the National Tariff Policy 2006/ National Solar Mission 2010. Such policies are amended from time to time to increase solar/ non-solar RPO from 0.25% in 2012 to 3% by 2022. The GOI in July 2018 notified the Long-Term growth trajectory of Renewable Purchase Obligations (RPOs) for Solar as well as Non-solar, uniformly for all States/ Union Territories, reaching 21% of RPO by 2022 with 10.5% for solar based electricity. The RPO targets specified for solar and non-solar power are to be adhered and met uniformly by the Obligated Entities (which includes Discoms, Open Access Consumers and Captive power producers) of all the

States and Union Territories. In line with RPO regulations, companies have been implementing various solar and non-solar RE projects across India to meet its RPO obligations. Accordingly, some companies realigned its investment decisions to fall in line with the GOI policies and invested huge sum of money in highly capital-intensive renewable energy generation. These investments were made in various states of Union of India based on the detailed technical study about availability of required wind speed and the available radiation for installation of Wind/Solar plants to meet the RPO obligations towards the captive generation of electricity. As per CERC regulations, RE Generator is permitted to retain the certificates for offsetting its renewable purchase obligation (RPO) or for their consumption units located in different parts of the country. However, the utilization of REC generated by a company in one state and utilized in another state is subject to levy of GST. Presently REC certificates fall under GST tariff heading 4907 and trading of REC certificates are subject to GST @12%. Since refineries are producing both GST and non-GST goods, there is loss of ITC proportionate to non-GST turnover of the refinery.

**PROPOSED CHANGES**

It is suggested that to promote /increasing the share of renewable in the generation capacity in the country, it is essential that REC certificates self-utilized against own-RPO's should not be taxed under GST in case of interstate utilization. The same should be treated at par with revenue from sale of electricity which is presently outside the ambit of GST. Secondly, the RE projects continue to suffer from cost disadvantage in terms of non-availability of ITC on GST paid on inputs/ input services and capital goods. Hence, it is also essential that RE projects should be exempted from levy of GST on inputs, input services and capital goods.

**1.20 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 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.

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.
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 on the similar lines of the Notification No. 256/87-C.E. dated 25.11.1987 issued under the Excise law.

## 2. INPUT TAX CREDIT

**2.1 ISSUE**
ITC in respect of civil construction has been blocked

**PRESENT POSITION**
Normally, taxes paid on all business procurements are allowed as ITC but certain credits are specifically restricted / blocked (popularly known as 'blocked credits'). One among them is the ITC on goods/services used for 'construction of immovable property' which is specifically restricted under section 17(5) ( c )&(d) of CGST Act, 2017 even though factories buildings are vital and indispensable for the conduct of businesses as much as machines, raw material or services. The Constitutional (101) amendment Act 2016 clearly states in the Statement of Objectives for ushering in GST that it is to remove the cascading effect of taxes and allow the seamless flow of the tax credit across the supply chain. It means that it should avoid tax on tax.

**PROPOSED CHANGES**
The provisions under Section 17 relating to the Input Tax Credit needs to be rationalized and brought at par with the simple concept that if outward supplies of a person is taxable then the inward supplies of the goods and/or services should be allowed as credit.

**2.2 ISSUE**
Input Tax Credit on charter hiring of Vessels & Offshore Rigs

**PRESENT SITUATION**
Upstream service providers (i.e. service contractors of E&P companies) provide services for petroleum operations through imported vessels and rigs for a temporary period. IGST@5% is payable at the time of import of such vessels/ rigs. However, ITC of same is not available to the service providers since GST paid on such imports has been put in negative list under Sec 17(5)(aa) of CGST Act.

**PROPOSED CHANGES**
A suitable clarification/ notification may be issued that availability of ITC on imported vessels on lease basis by service providers will continue to be eligible notwithstanding credits blocked under Section 17(5). Since the navigation is secondary in case of Rig and Vessels being used for providing output services, there is a merit in the instant case to clarify in favour of the availability of the ITC in order to remove the avoidable disputes with Department. Further, unless the input credit is allowed, the service providers would load GST on such import of rigs/vessels on their service charges which will indirectly increase the cost of operation of E&P companies.

**2.3 ISSUE**
Blocking of ITC on employee township U/S 17(5)

**PRESENT POSITION**
It is an admitted fact that manufacturer runs factories for manufacturing purposes, which are to be manned 24 hours every day. For efficient operation of the manufacturing activity in the factories, the manufacturer is required to make arrangement in the residential colonies near the

factories, so that the employees can easily reach the workplace and readily available in the event of emergency situation. Thus, the residential colonies have been set-up and are being maintained by the manufacturer in the interest of its business.

**PROPOSED CHANGES**
Since input services relating to township are integrally connected with the business of manufacturing and tax paid on goods and services relating to maintenance of industrial township is forming a part of cost of final product, therefore, benefit of ITC in respect of industrial townships should be allowed.

**2.4 ISSUE**
ITC in respect of hiring motor vehicles have been disallowed only for vehicles having capacity upto 13 seats u/s 17(5) of CGST Act

**PRESENT POSITION**
Employers across the industries, especially manufacturing companies located at remote locations, provide transport facilities to their employees and workers to enable them to discharge their duties effectively. This is a necessary expense which is required to be incurred by employers to retain existing and attract new talent. However, with the introduction of new provisions w.e.f. 01/02/19, ITC on renting, leasing and hiring of motor vehicles have been disallowed only for vehicles having capacity upto 13 seats.

**PROPOSED CHANGES**
While the term 'supply' under the GST Law is wide and considering the basic ethos of GST Law that there should be a seamless flow of credit, denial of ITC on rent-a-cab service is manifestly unjust.

**2.5 ISSUE**
Renovating ITC System

**PRESENT POSITION**
Restriction on cash flow in the market has adversely affected businesses. The ITC that is acquired at the state level by several businesses is subject to tax payment in some other state.

**PROPOSED CHANGES**
At central GST, a national pool has to be considered in addition to allowing an offset against income tax. An excess amount in input tax can be dispersed as a refund to the taxpayers

**2.6 ISSUE**
SECTION 16 (2) of CGST Act, 2017 (Conditions to avail input tax credit.)

**PRESENT POSITION**
Presently, the buyer had to ensure whether tax charged has been actually paid to the Government for availing GST ITC Credit on supplier invoice. The supplier needs to file GSTR 1 return by uploading details of invoices in GSTN. The Suppliers also has to file GSTR 3B returns by remitting tax to government on such invoices. On the basis of GSTR 1 filed by the suppliers the details of invoices will flow in GSTR 2B in the buyer GSTN. Based on the GSTR 2B invoices

the buyer will match with its inward supplies/ invoices and avail GST ITC in his GSTR 3B return. However, there are circumstances where, though the invoices are flowing in GSTR 2B of the buyer, but since the supplier has not filed GSTR 3B and not remitted the taxes on such invoices, the buyer is not eligible to claim ITC on the same.

**PROPOSED CHANGES**

The CGST/ IGST Acts should be amended accordingly to make supplier accountable for remitting GST to the government, in case where invoices are uploaded by him in his GSTR 1 but GSTR 3B is not filed by him. In such cases, buyer shall be allowed the availment of GST ITC. The buyer is losing ITC along with interest even after making payment to vendors including MSME vendors, for reason solely attributable on part of suppliers.

**2.7 ISSUE**

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

**PRESENT POSITION**

Currently ITC on the account of goods lost is blocked under section 17(5)

**PROPOSED CHANGES**

Due to inherent nature of petroleum product GST paid on loss should be allowed as ITC or a mechanism to be put in place to compensate Oil companies on such stranded taxes due to the losses. It will be a huge relief for oil marketing companies.

**2.8 ISSUE**

Relief against Garnishee attachment orders from GST monthly payments issued by Sub Courts

**PRESENT POSITION**

There is no mechanism under GST to adjust such garnishee deductions from the outward GST liability.

**PROPOSEDCHANGES**

Appropriate amendments in GST Act to prohibit such garnishee recovery from GST revenues or suitable mechanism is provided to adjust garnishee deductions against our outward liability in the GSTR 3B return.

**2.9 ISSUE**

GST INPUT

**PRESENT POSITION**

Section 16(4) of CGST Act, 2017- 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 November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. Further, GST ITC has now been restricted subject to appearance in GSTR-2B. It has been noticed that number of times, Tax payer furnished the wrong GSTN in B2B Invoice data of GSTR-1 or file as B2C due to clerical error.

**PROPOSED CHANGES**

It is proposed that to insert explanation after Section 16(4): If any amendment of GSTN in B2B of GSTR-1 or amendment B2C will not restrict the input tax credit even if it is amended after the due date of furnishing of the return under section 39 for the month of November following the end of financial year in which such invoice or debit note pertains.

**2.10 ISSUE**

Interest on reversal of GST ITC on account of non- payment to supplier with in 180 days (Second proviso to Sec. 16(2) of CGST Act, 2017)

**PRESENT POSITION**

As per the present provision, 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**

It is suggested that interest should not be charged on reversal of such ITC since there is no undue availment of GST ITC by recipient as there is no loss of revenue to the Government as tax has already been discharged by vendor, interest should not be charged from the recipient. 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.

**2.11 ISSUE**

Input Tax Credit of GST paid on civil construction work done at Site office, storage yard etc., for erection / commissioning work to be carried out at site. (Section 17 (5) of CGST Act, 2017)

**PRESENT POSITION**

Presently ITC is not be available in respect of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract.

**PROPOSED CHANGES**

It is proposed/ suggested that ITC should be allowed for expenditure incurred on civil construction works at site which are mandatorily required to be incurred for execution of contract. Seamless Credit should be allowed in entire supply chain to avoid any cascading effect of taxes, as creation of these facilities is must at site for large infra-structure projects. Denial of Input Tax credit at intermediate stage is against basic principle of GST i.e. it will lead to cascading impact of taxes and eventually will increase the cost of goods/services and hence no goods/services should be kept out of credit chain which is the primary object of GST.

**2.12 ISSUE**

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

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

**PROPOSED CHANGES**
It is suggested that in case of Petroleum manufacturing companies, the ITC of GST paid purchases may be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be carried out in the CENVAT Rules to allow the tax credit of GST paid inputs against the output tax liability of Excise on non-GST products since the credit was earlier available under CENVAT & VAT laws;

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

**PRESENT POSITION**
Second proviso to section 16(2) provides that in case recipient fails to pay the value of goods/service alongwith tax to the supplier within 180 days from the date of invoice, ITC availed needs to be reversed along with interest thereon. The condition of payment to supplier is generally governed by the contractual agreement between the parties which depends on the various factors such as nature of work, credibility of the recipient etc. Once the payment of tax has been made by the supplier to Govt., disallowance of ITC to the recipient where he is not contractually liable to release the payment within 180 days from the date of invoice is unfound and is unnecessary burden on the legitimate recipient.

**PROPOSED CHANGES**
It is proposed that needful notification/clarification to be issued by Govt. that condition of 'fails to make payment within 180 days' to be reckoned with contractual conditions between the supplier andrecipient and not from the date of invoice.

**2.14 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.

**2.15 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.

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.

**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.

**2.16 ISSUE**

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

**PRESENT POSITION**

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.

**2.17 ISSUE**

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

**PRESENT POSITION**

Section 2(47) of CGST Act defines exempt supply to include non-taxable supply, therefore, for the purpose of common input tax credit (ITC) reversal, turnover of these excluded products would be counted as exempt supply as per formula prescribed under Rule 42 and Rule 43 for the reversal of common Input / Input Services and Capital goods credit respectively. Petroleum products manufactured in oil refineries are stock transferred out of the state to other states in order to cater the demand in those States and to maintain un-interrupted supply of these essential commodities across the country. In some cases, goods are 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**

It is proposed that considering the above, 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.

**2.18 ISSUE**

Payment under Reverse Charge Mechanism (RCM) by Input Service Distributor

**PRESENT POSITION**

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

**PROPOSED CHANGES**

It is suggested that necessary notification to be issued by Govt. to allow the payment of RCM under ISDregistration.

## 3. GST RATES

**3.1 ISSUE**
Inverted Duty Structure in GST for Shipbuilding and Ship repair

**PRESENT POSITION**
Currently, Output GST rate on Shipbuilding and Ship Repair is 5%. However, the applicable GST on inputs (raw materials, equipment, spare parts, machinery) used in construction of Ships and repair of ships varies from 5% to 28% as per the HSN classification of the particular input. This results in inverted duty structure due to which substantial input tax credit accumulation remains unutilized over the years.

**PROPOSED CHANGES**
To consider GST for both the Inputs and input services used for construction of Ships and inputs for repair of ships at 5% in line with Output GST rate.

**3.2 ISSUE**
Amendment in GST Rate for Inputs and Services related to Domestic LPG, since outward supply of LPG to NDEC and household customer is taxable at 5% while the inputs are being taxed at higher rate

**PRESENT POSITION**
GST rate on major procurements for LPG like certain capital goods and services of which mainly consist of empty cylinders, blending services, bottling services and transportation services etc. are taxable at 18%

**PROPOSED CHANGES**
The rate of tax on certain inputs for LPG such as empty cylinder, blending services, bottling services, transportation should be changed to 5% or 12% to remove anomaly in tax structure. It would provide greater synergies to the entire supply chain of LPG (Dom) in the country by eradicating the prevailing anomaly including disproportionate ITC accumulation.

**3.3 ISSUE**
Reduction in Number of Tax Slabs Rates

**PRESENT POSITION**
Many tax rates on different items lead to confusion.

**PROPOSED CHANGES**
There is an invariable need to put a halt on the changes in tax rates and decide the rate structure that is static for a few years. Adding on to that increasing the tax rates is not an ideal solution for grabbing more revenue especially in the era of an economic slowdown. In short, there is a need for a simplified tax structure of only three tax slabs. Either we need to merge 12% & 18% or 5% & 12% slabs into one.

**3.4 ISSUE**
Change in rate of tax for inward supplies related to supply chain of LPG Domestic.

**PRESENT POSITION**

Public Sector Oil Marketing Companies (OMCs) viz, are engaged in inter-alia of marketing of Liquified Petroleum Gas (LPG) for supply to domestic household consumers / customers, which includes propane and butane (hereinafter referred as LPG Domestic). Supply of LPG domestic is taxable at 5% GST in terms of entry 165A/165 of Schedule I of GST notification no. 1/2017-CT(rate) dt. 28.06.2017. Supply chain of LPG Domestic involves regular procurement of certain capital goods and services of which mainly consist of empty cylinders, blending services, bottling services and transportation services. There exists an anomaly in tax structure for the business of marketing LPG Domestic (supply to household domestic consumers / customers) as tax rate on finished product is 5% whereas related capital/inputs are taxable at higher rate of tax. Though, Input tax credit (ITC) for the aforesaid items is admissible to OMCs, however, there has been considerable increase in ITC due to anomaly in rate structure i.e. higher tax structure for inward supplies and lower tax structure for its related outward supplies. This has also been increased due to spending by OMCs for increased demand and new connection under Govt. of India's flagship programme of Pradhan Mantri Ujjawala Yojana (PMUY) which is likely to continue for few more years.

**PROPOSED CHANGES**

It is suggested that Change in rate of tax for the followings inward supplies related to supply chain of (i) LPG Domestic 14.2 KG Empty LPG Cylinders for supply of LPG Domestic – HSN 7311- from 18% to 12%, (ii) Services of LPG Domestic Blending (i.e. Propane and Butane blending)- HSN 9988-from 12% to 5%, (iii) Services of LPG Domestic Bottling (Bulk LPG to cylinders)- HSN 9985-from 18% to 5% and (iv) services of LPG Domestic Transportation through Pipeline- HSN 9965-from 18% to 5%.

**3.5 ISSUE**

Supply of LPG (Domestic) / NDEC at concessional rate of 5% GST.

**PRESENT POSITION**

Entry 165 to Schedule I of Notification No. 1/2017 - Central Tax dated 28.06.2017 provides that Liquefied Propane, Butane & LPG for supply to household domestic consumers or to NDEC (non-domestic exempted category) Customers by IOCL, HPCL & BPCL are taxable at 5% GST. Vide notification dated, 06/2018-CT dated 25.01.2018, entry 165 was amended and entry 165A was inserted as follows: Entry 165- Liquefied Propane, Butane & LPG for supply to NDEC Customers by IOCL, HPCL & BPCL is taxable at 5% GST. Entry 165A- Liquefied Propane, Butane & LPG for supply to household domestic consumers is taxable at 5% GST. Further, CBIC vide circular dated 31.12.2018 has clarified that supply of LPG Dom by refiners/fractionators to OMCs for ultimate supply to household domestic consumers will attract 5% GST w.e.f. 25.01.2018. However, ambiguity with regards to applicability of GST rate on transaction undertaken during 01.07.2017 to 24.01.2018 remains under dispute. Intention of the Govt. is clear that LPG, Butane and Propane for supply to household domestic consumers should attract the concessional rate of GST @ 5%. Even though intention is clear, however, there is possibility of dispute on the eligibility of such exemption for transactions between OMCs with other Refinery, fractionators & private oil companies for the period 01.07.2017 to 24.01.2018.

The language of the notification granting exemption to LPG (Dom) prior to the amendment is the exact replica of the language used for grant of exemption from central excise duty. During period prior to 01.07.2017, PSU OMCs were purchasing LPG for the specified end use without payment of central excise duty by such SARs/Fractionators and also from other PSU OMCs. The above was settled proposition of the law for given specified transactions and the same has never been disputed by the Central Excise Authorities. Any dispute in this regard under the GST regime now may have repercussions in the pre-GST regime under Central Excise law as entriesin both regimes are identical.

**PROPOSED CHANGES**

It is suggested that some clarification needs to be issued to provide such concessional rate of 5% GST is applicable for all Transactions of LPG meant for ultimate supply to household domestic consumers & NDEC for the period 01.07.2017 to 24.01.2018. Such clarification is required to avoid any possible litigation at field units due to interpretation.

**3.6 ISSUE**

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

**PRESENT POSITION**

The goods and services purchased for construction of cross-country petroleum and natural Gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services, etc. are not eligible for input tax credit (ITC) under GST regime and will attract GST up to 28% (on Gas compressors). Applicability of high GST rate on goods and services required for laying the pipeline without benefit of ITC will substantially increase the cost of such projects.

**PROPOSED CHANGES**

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

**3.7 ISSUE**

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

**PRESENT POSITION**

The prevailing rate of tax on supply of Furnace Oil (FO) grades as bunker fuel for use in ships or vessel is 5%. Furnace Oils are produced at refineries and thereafter transferred to supply points, which may be situated in state different to the state of said refineries, for onward supplies to ships or vessels for use as bunker fuel. Further, there is no process undertaken by such supply points and FO is supplied as such to ships/vessels as bunker fuel. Therefore, the initial leg of such FO supplies, which is ultimately supplied as bunker fuel, from refineries to supply points

situated in different state also to be covered under the principal entry 164 and applicable tax on the same to be 5% GST.

**PROPOSED CHANGES**

It is suggested that clarification from CBIC that the entire chain of supply of FO for use as bunker fuel including supply from refineries to supply locations, situated in other states, are also covered under entry164 of Schedule I of GST.

**3.8 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.

**3.9 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.

## 4. EXEMPTIONS

**4.1 ISSUE**
E-Way Bill

**PRESENT POSITION**
With introduction of e-Invoice, the details relating to Part-A of e-Way Bill are captured in the e-invoice, however, e-way bill (both Part-A & B) is still mandatory for all invoices with value more than Rs. 50,000/- for which e-invoice is being generated.

**PROPOSED CHANGES**
The CGST/ IGST Acts should be amended accordingly so that the details of Part-B of e-Way Bill is also captured in e-invoice so that there will not be any need for generating e-way bill for invoices where e-invoice is being generated. It is proposed to capture all relevant details in one single document instead of multiple documents, so as to reduce the avoidable additional work.

**4.2 ISSUE**
GST on ceding commission paid by reinsurers to insurers

**PRESENT POSITION**
The Company has submitted a request / representation on the matter to Central Board of Indirect Tax & Customs, Ministry of Finance, through Department of Commerce- Ministry of Commerce & Industry, on 10/12/2021.

**PROPOSED CHANGES**
Exemption of GST on ceding commission paid by reinsurers to insurers as per erstwhile Service Tax regime on exemption under CBEC circular no. 120(a)/2/2010- ST dated 16/04/2010. As the present guidelines are silent on the matter, the Company has to make appropriate provision of the payable amount towards reinsurance commission in the books of Accounts leading to increase in expenses and affecting profit & loss of the Company.

**4.3 ISSUE**
Exemption from GST on Ethanol/Bio Diesel used in blending with MS/HSD as no ITC is available of GST paid on purchase of Ethanol/Bio Diesel

**PRESENT POSITION**
Presently GST is applicable on Ethanol/Bio Diesel procured for blending with MS/HSD

**PROPOSED CHANGES**
Ethanol/Bio Diesel meant for blending with petrol/diesel should be exempt from GST as to promote and maximize sale of blended fuel, thereby reducing import of crude. This will help in cost optimization for OMCs and savings of forex due to reduction in import of crude.

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

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

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

**4.5 ISSUE**
Reverse charge mechanism

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

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

**4.6 ISSUE**
Realisation of Export Proceeds within one year for exports made without payment of tax under LUT - Rule 96A of CGST Rules

**PRESENT POSITION**
Due to outbreak of pandemic across the globe in 2019, it has become extremely difficult to realize export proceeds within one year.

**PROPOSED CHANGES**
It is recommended to extend the period of one year for realisation of export proceeds for the invoices raised without the payment of tax in 2018-19, 2019-20 and 2020-21.

## 5. RETURN & REFUND

**5.1 ISSUE**
Refund of pre-deposits

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

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

**5.2 ISSUE**
Section 39-Furnishing of Returns

**PRESENT POSITION**
Section 39(9) [Where] any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars [6][in such form and manner as may be prescribed], subject to payment of interest under this Act:
**Provided** that no such rectification of any omission or incorrect particulars shall be allowed after the [7][thirtieth day of November] following [8][the end of the financial year to which such details pertain], or the actual date of furnishing of relevant annual return, whichever is earlier.

**PROPOSED CHANGES**
In proviso of Sub-Section 9, the word "thirtieth day of November", the words, "Thirtieth day of March" may be substituted**. I**n GST return, there is a chance of omission like wrong GSTN, Invoice Date Invoice No. etc, which sometime identified late, where no change in tax portion should provide one year to rectify the data. This should provide the better facilitation to small taxpayer.

**5.3 ISSUE**
Section 54 Refund of tax

**PRESENT POSITION**
Section 54(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

**PROPOSED CHANGES**
Explanation shall be inserted after Sub-Section (1) of Section 54, Time Limit is not applicable where tax has been paid on exempt supply or Non-GST Supply or NIL rate. In case where GST has been paid on a transaction considered by him to be Intra Supplybut which is subsequently held to be inter-supply or vice-versa. In this case, Refund Can be applied and the two years start from the date when error or omission comes in knowledge and in the same line, the time of GST refund in case of tax paid wrongly on exempt supply or nil rate or non-gst supply time limit should be count from the date when this omission or error came in knowledge.
Explanation should remove ambiguity and litigations

**5.4 ISSUE**
Credit note distribution by ISD

**PRESENT POSITION**
Section 34 was amended to provide for issuance of credit note for multiple invoices, considering the same, GSTR-1 return does not require reference of original invoice for credit note.
However, ISD return (GSTR-6) in Table 5 still requires reference of original ISD distribution invoice.

**PROPOSED CHANGES**
As distribution of credit note by ISD registration may involve multiple original documents, the mandatory requirement of reference of original invoice in table 5 of GSTR-6 may be removed.

**5.5 ISSUE**
GST Assessments (Audit)

**PRESENT POSITION**
Presently audit can be conducted by STATE GST / CGST authorities whereas the BANK has got presence all over the country and attending to all State Audits is cumbersome process.

**PROPOSED CHANGES**
Centralised assessment for banks can be considered as in most banks the compliance activity is done centrally including the system enabling, policy decisions etc. The current practice of state wise assessment is creating practical difficulties considering all the compliance data is available centrally available and handled. This would enable better filing and assessment and ensure compliance centrally duly understanding the overall Domain knowledge both banking and practical aspects of audit and assessments.

**5.6 ISSUE**
Separate Registration in each state for Service Providers

**PRESENT POSITION**
Currently service providers has to obtain registration in each state for rendering services from that state

**PROPOSED CHANGES**
It is suggested to allow single registration across the country, specifically in case of banks. Ease of compliance burden like filing of multiple returns across different states, GST Audits etc.

**5.7 ISSUE**
Scope for revision of GST Returns

**PRESENT POSITION**
There is no scope of revision of GST Return.

**PROPOSED CHANGES**
There should be option of revision of GST Returns to rectify any error/omission as given the option to rectify in Income Tax Returns.

**5.8 ISSUE**
Time of supply for services under reverse charge basis

**PRESENT POSITION**
The time of supply for services under reverse charge basis is promulgated as the earliest of (1) date of payment or (2) the date immediately following sixty days from the date of issue of invoice or any other document as per section 13 (3) of the Act.

The time period of sixty days from the date of issue of invoice is very much insufficient for deciding point of taxation. In fact, under the Service Tax regime it was initially 6 months which was amended to 3 months from 2014 onwards under Rule 7 of Point of Taxation Rules. Generally there will be delay in receiving the invoices from the suppliers. Apart from this, in large business organizations, where the bill processing takes place in different sections the time limit of 60 days is insufficient.

**PROPOSED CHANGES**
It is suggested to increase the period of Sixty days w.r.t. time of supply for services under reverse charge basis need to be increased to 6 months.

**5.9 ISSUE**
GST Audit

**PRESENT POSITION**
Every registered person, shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically.

**PROPOSED CHANGES**
It is suggested to reinstate the provisions of Section 35 (5) and 44 so as to have GST Audit done by Independent Professionals. Independent examination by External Agency will ensure compliance with GST Laws and reportany shortcomings for the benefit of GST Officials.

**5.10 ISSUE**
Setting up of effective dispute resolution mechanism

**PRESENT POSITION**
GST Tribunals have not been constituted in the country

**PROPOSED CHANGES**
It is suggested to set up GST Tribunals for faster dispute resolution.

**5.11 ISSUE**
Amendment in Supplies reported in GSTR-1

**PRESENT POSITION**
Certain times amendments are required for correction in supplies reported in GSTR-1 B2B and B2C category, which have implication on input tax credit available to the recipient. However there are restriction on same.

**PROPOSED CHANGES**
It is suggested that necessary facility may be provided on GSTN portal to amend transactions as B2B, freely for a period till annual returns are filed.

**5.12 ISSUE**
Refund due to Inverted Duty Structure-Formula under rule 89(5) of CGST Rules, 2017.

**PRESENT POSITION**
Section 54- Clause (ii) of proviso to section 54(3) Provide for Refund of accumulated ITC on account rate of tax on input being higher than rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, rule 89(5) of CGST Rule, 2017, provide for refund of ITC for inverted rated supply as perfollowing formula- Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

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

**5.13 ISSUE**
Refund of huge Input Tax Credit Accumulation.

**PRESENT POSITION**

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. 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 they 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.

## II. CUSTOM DUTY

**1.1 ISSUE**
Withdrawal of exemption notification related to 'Social Welfare Surcharge' on custom duty on Petrol and Diesel

**PRESENT POSITION**
Social Welfare Surcharge (SWS) was introduced by Finance Bill 2018 @ 10% on total Custom Duty. By an exemption notification (Notification No.12/2018-Customs dated 2nd February 2018) SWS on MS and HSD was reduced to 3%.This exemption has been rescinded by the Finance Bill 2021 (Notification No.12/2021-Customs dated 1st February 2021) thereby restoring the effective rate of SWS to 10% on MS and HSD vis a vis 3% earlier. Oil marketing Companies are required to import MS and HSD regularly to fulfill supply demand gap to meet domestic requirement.

**PROPOSED CHANGES**
It is requested that the exemption notification reducing SWS on MS and HSD from 10% to 3% may be restored.

**1.2 ISSUE**
Custom Duty on Aluminium Scrap

**PRESENT POSITION**
Primary aluminium industry is facing severe threat from the import of Aluminium scrap. Primary aluminium metal and aluminium scrap can be used almost interchangeably in many applications. As aluminium Scrap is imported at 2.5% custom duty as compared to 7.5% duty on Primary Aluminium, the 5% duty differential encourages importers to import scrap, rather than using primary aluminium. Such rapid proliferation of Aluminium scrap into the domestic market is an alarming development, and detrimental to the interests of domestic aluminium producers.

**PROPOSED CHANGES**
Therefore, a sizeable increase in customs duty on Aluminium Scrap is solicited to safeguard the domestic market share of Indian primary aluminium producers. All other non-ferrous metals like copper, zinc, lead, nickel, tin etc. have same custom duty for both scrap and primary metal. Hence the custom duty on aluminium scrap should be kept at par with duty on primary aluminium metal in line with other non-ferrous metals.

**1.3 ISSUE**
Custom duty on Primary Aluminium

**PRESENT POSITION**
Indian Aluminium Industry has seen a huge surge in Imports in recent years primarily from China and Middle East which have surplus aluminium capacity. Even though, our domestic industry is capable of meeting 100% of the consumption demand. In last financial year, India's domestic aluminium sales declined, whereas aluminium import has been increased. High imports have resulted in declining domestic market share of primary producers and underutilized

capacities rendering huge financial losses. Aluminium import has resulted in forex outgo of which could have been saved because India's domestic aluminium industry has adequate manufacturing capacity and is self-sufficient to cater nation's demand.

**PROPOSED CHANGES**

It is suggested to increase basic custom duty on aluminium from 7.5% to 15 % against HS Code 7601 since sufficient quantity of this item is produced within the country, increase in custom duty will restrict imports and improve domestic production capacity utilization thereby generating employment and boosting Government's Make in India" vision.

**1.4 ISSUE**

Custom duty on Raw Materials used for production of Aluminium

**PRESENT POSITION**

The cost of production of aluminium metal in India has increased considerably over past 3-4 years due to increased cost of raw materials, GST Compensation Cess on coal @ Rs. 400/ MT under GST regime, Renewable Power Obligation (RPO) and high logistic costs. The high import duties on raw materials has a huge disadvantage for domestic aluminium producers which are dependent on imported raw materials, rendering Indian finished goods costlier and uncompetitive in the international markets, and gives them negative protection against cheaper imports of finished products, thereby discourages domestic value addition within the country. The duty on aforesaid critical raw materials for aluminium industry should be reduced to encourage domestic value addition within the country and thereby increasing exports of

**PROPOSED CHANGES**

Reduction in duty on following critical raw materials used by aluminium industry:

1. Aluminium Fluoride (28261200):From 7.5% to 2.5%
2. Caustic Soda Lye (28151200):From 7.5% to 2.5%
3. Calcined Petroleum Coke (HS Code: 27131200): From 7.5% to 2.5%

**1.5 ISSUE**

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

**PRESENT POSITION**

With the intention of increasing trade with UAE under CEPA, the Govt. of India has issued Custom Notification no. 22/2022 dated 30.04.2022 making Nil customs duty on LNG produced in UAE and imported into India. As per the Notification Certificate of Origin (CoO) to be issued by the proper authority in proper format who is authorized to sign and issue the CoO. Considering the involvement of multiple traders in LNG import transactions and in view of requirement of signing by Ministry of Economy at UAE, the issuance of CoO as per format prescribed in CEPA takes substantial time. Practically it is difficult to obtain Certificate of Origin at the time of Custom clearance of LNG cargos and to avoid delay in custom clearance and further operational issues, OMCs are bound to pay custom duty and file refund claim subsequently which would take considerable time & efforts. It is defeating the intention of the Govt. to facilitate and promote the import from UAE as per CEPA.

**PROPOSED CHANGES**

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

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

**1.6 ISSUE**

Extension of RoDTEP scheme to entities registered under MOOWR

**PRESENT POSITION**

Govt. vide notification no. 19/2015-20-Customs dated 17.08.2021 has announced scheme guidelines for Remission of Duties and taxes on exported products (RoDTEP). Under the Scheme, a rebate would be granted to eligible exporters at a notified rate as a percentage of FOB value with a value cap per unit of the exported product, wherever required, on export of items which are categorized under the notified 8 digit HSN Code. RoDTEP benefit is not available, if Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act, 1962 (52 of 1962) i.e. MOOWR

**PROPOSED CHANGES**

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

**1.7 ISSUE**

Exemption for import of Capital goods and spares thereof in respect of Ship Repair Unit

**PRESENT POSITION**

NIL rate of Customs duty is available in respect of import of Capital Goods & spares thereof by a Ship Repair Unit only.

**PROPOSED CHANGES**

It is suggested to extend the subject benefit in respect of import of Capital Goods & Spares thereof to Shipyard (in addition to Ship Repair unit only). This would be a great relief to the Shipyards which are in the course of upgradation of their infrastructure. It is to be noted that shipbuilding and ship repair co-exist within the same factory in most of the cases.

**1.8 ISSUE**

Denial of NIL rate of BCD in respect of certain goods procured for Shipbuilding.

**PRESENT POSITION**
"Raw Materials and Parts" for use in the manufacture of goods falling under heading/tariff 8901,8902,8904,8905 (except 8905 20 00) or 8906" are eligible for "Nil" BCD. Customs Department have taken a different stand on applicability of "Nil" rate to all imports and instead restricted applicability of "Nil" rate to certain items only based on their interpretation of the term "Raw Materials and Parts"

**PROPOSED CHANGES**
Clarification to the term "Raw Materials and Parts" (Serial No 559 of Notification No 50/2017-Customs dated 30 Jun 2017) under Customs Act may be issued such that it includes all the materials used in construction of Ships/Vessels. The complete benefit of the intended legislation would pass on to the Shipbuilding industry

**1.9 ISSUE**
Concession of the applicable customs duty on all materials required for constructing cross-country pipeline meant for Product and Gas movement

**PRESENT POSITION**
Customs duty is currently being charged on import of materials viz. pipes; valves; flanges; data communication system for laying of petroleum products and gas pipelines

**PROPOSED CHANGES**
Pipeline transport being environment friendly and cost effective should be promoted and thus necessary rate changes be brought in relevant chapters of Custom tariff. This will lead to reduction in consumption of fuel in road transport and resultantly savings for forex towards cost of importing crude.

**1.10 ISSUE**
Notification of Bhairabkunda gate as Indian Land Custom Station for the purpose of Export to Bhutan

**PRESENT POSITION**
In case of supplies to Jomotsangkha region and Border Road organization in various parts of Bhutan, the only access road available from Indian side is Bhairabkunda gate i.e. road connecting Bhairabkunda to Jomotsangkha where there is no Indian Land Customs Station available.

**PROPOSED CHANGES**
Notification may be issued for the Bhairabkunda gate as Indian Land Custom Station along with approved route as road connecting from Bhairabkunda to Jomotsangkha. Alternatively, suitable amendment can also be brought by inserting a proviso in the Notification No. 63/1994 – Custom (NT) dated 21.11.1994 for procedural relief in case of supplies of Petroleum Product to Jomotsangkharegion and Border Road Organization (BRO) in Bhutan. This will result in expansion of bilateral trade and collaboration in economic development between India and Bhutan.

**1.11 ISSUE**
Non availability of Ethanol in country

**PRESENT POSITION**
Presently, import of ethanol attracts customs duty as per Customs Act and is restricted as per the import policy issued under Foreign Trade Policy.

**PROPOSED CHANGES**
It is requested that Oil Marketing Companies may be allowed to import ethanol for blending purposes with nil rate of customs duty without restrictions along with preferably Nil IGST. This will act as an incentive to OMCs indulged in blending of Motor spirits with Ethanol.

**1.12 ISSUE**
Insertion of HSN in List-33 of Customs Notification 50/2017 and Pruning of List-33

**PRESENT POSITION**
The Customs Duty exemption was applicable for goods prescribed in List 33 has now been pruned and HSN have been specified against description of goods which will be eligible for the concessional rate in the revised List 33. The revised list has been prepared considering availability of domestic goods in view of Make in India Policy of the Govt. However, in certain cases such goods are domestically not manufactured or there is capacity constraint of domestic suppliers to fulfill the requirement of E&P Industry. Further, the items specified under revised list despite having wider coverage gets restricted due to corresponding HSN. As a result, merit rate of duty is being charged (BCD, SWS & IGST) at the time of customs clearance on import of goods which have now been removed from the List-33 or there is inconsistency in the description and HSN code.

**PROPOSED CHANGES**
Customs duty exemptions originally provided to Oil & Gas companies for all the goods in List 33, under Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017 should be reinstated. Also, it may be clarified that in case of any infirmity between the description of goods and HSN thereof, the description of goods would prevail for the purposes of claiming concessional rate by E&P Industry at the time of importation of such goods in relation with petroleum operations.

**1.13 ISSUE**
Relaxation from Condition of ICB for Deemed Export Benefit

**PRESENT POSITION**
The Deemed Export Benefit is available on supply of such specified goods from domestic manufacturer to OMCs for petroleum operations in terms of Para-7.02 B.(f)(i) of Foreign Trade Policy- 2015-20 (FTP). 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 OMCs for petroleum operations undertaken under PEL/ML/under specified contracts/NELP/MFP/CBM, where contract has been awarded under procedure of ICB. However, the Govt. of India, Ministry of Finance (Dept. of Expenditure) vide F.No.12/17/2019-PPD dated 15.05.2020 has amended the General Financial Rules, 2017, inter-alia, that no Global

Tender Enquiry (GTE) shall be invited for tender uptoRs. 200 Crore. Further, PSEs have also been advised to mandatorily procure specified goods through Government e-Marketplace (GeM) Portal even in cases where tender value is above Rs. 200 Crore.

In view of above, on the supply of specified goods under procedure of National Competitive Bidding (NCB) or through GeM, the domestic manufacturer 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 the 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**
To relax the condition of ICB under Para-7.02 B.(f)(i) of FTP for petroleum operations so that domestic manufacturers can continue to avail the benefit of deemed export:

(i) on supply with tender value uptoRs. 200 Crore; and
(ii) for the procurements through GeM Portal

**1.14 ISSUE**
Withdrawal of Export Duty

**PRESENT POSITION**
GOI has imposed export duty on Pig Iron and certain steel products @ 15% w e f 21.05.2022 when Export Realisations were high. Since then, the global steel prices have reduced. With Export Duty still continuing, Exports have become unviable.

**PROPOSED CHANGES**
To overcome the problems, GOI may review the export duty on Iron & Steel on priority basis.

**1.15 ISSUE**
Benefits under RoDTEP Scheme – enhancement of rate of Benefit:

**PRESENT POSITION**
As per present guidelines, MEIS benefits are not applicable from 01.02.2021. The RoDTEP benefit is introduced in lieu of MEIS. However, no RoDTEP is extended for Iron & Steel material as of now.

**PROPOSED CHANGES**
To make cost effective, compensate input costs partly and to be more competitive in Global market it is suggested RoDTEP benefit should be made available to Iron & Steel exports. GoI should give budget allocation for reimbursement of pending MEIS scrips which already used.

**1.16 ISSUE**
Inordinate delay in Final Assessment of BoE's of Liquefied Natural Gas (LNG) resulting in undue financial hardship to LNG importers

**PRESENT POSITION**

As per the provisions of Customs Law, the customs duty is payable on the actual quantity imported in India. However, in case of LNG, customs duty is paid provisionally. Under normal circumstances, actual custom duty payable remains lesser than the custom duty paid provisionally by LNG importer. Therefore, there remains an amount refundable to LNG importer on account of excess custom duty paid provisionally. The excess custom duty paid provisionally get refunded to LNG importers, only after the final assessment of Bill of Entry. However, inspite of rigorous follow up at respective jurisdictional custom office for final assessment of pending Bill of Entries, final assessment provisionally assessed Bill of Entries is pending for more than 5-6 years. Reference is also invited to Customs (Finalisation of Provisional Assessment) Regulations, 2018 issued vide Notification No.73/2018-Customs (N.T.) dated 14th August, 2018. The said regulation, inter-alia, provides the time-limit for finalization of provisional assessment by proper officer i.e. two months from the date of submission of the documents or information by importer. However, the field formations are not adhering to the time limit prescribed under Customs (Finalisation of Provisional Assessment) Regulations, 2018. The amount of legitimate refund is getting piled up on arrival of each LNG cargo and thereby increasing the burden of excess custom duty paid provisionally by LNG importers. Thus, LNG importers are getting out of pocket to the extent of excess custom duty paid provisionally, till the time it gets back the refund of excess amount. The issue of pending refund is getting very critical and is affecting the cash flow and entire Natural Gas Industry in general.

**PROPOSED CHANGES**

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

**1.17 ISSUE**

Custom duty exemption for setting up Green Hydrogen Plants or Electrolyser Plants

**PRESENT POSITION**

The Union Government is focusing towards goal of self-reliance in energy sector through clean energy. Accordingly, Government has come up with renewable power policy and draft green hydrogen policy. Several benefits are proposed under draft green hydrogen policy. The Green Hydrogen is produced from water through electrolysis process using Electrolyser. Electrolyser is one of major equipment used in production of Green Hydrogen Plants. The setting-up of Green Hydrogen and Electrolyser plant also involve huge capex. In order to reduce the cost of green hydrogen and make it available to industries, it is further essential to reduce the equipment (i.e., capex) cost which can be achieve by waiving Custom Duty on Electrolyser or on various components thereof.

**PROPOSED CHANGES**

The Custom Duty on import of Electrolyser or components thereof may be waived off for certain period. It will reduce the cost of green hydrogen and make it available to industries.

**1.18 ISSUE**

Disposal of Obsolete/ Surplus goods procured at concessional or Nil rate of Customs Duty / GST as Scrap (Condition no. 48(e) of Sl. No. 404 of Customs Notification No. 50/2017-Cus)

**PRESENT POSITION**

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 case of domestically procured goods also, there is a similar condition for such disposal on payment of GST @18% on transaction value. In Oil & Gas Industry, procurement 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. It is experienced that DGH is finding difficulties in issuing such certificate. Hence, companies will not be able to dispose off scrap adversely effecting costs for storage and working conditions apart from causing safety and environmental concerns. This is also resulting in loss of revenue for GoI in terms of duty due to non-disposal of the items. Further, the requirement to mutilate goods will significantly increase the cost for companies as the goods are spread across different parts of the country.

**PROPOSED CHANGES**

It is proposed that disposal of used and non-servicable materials, scrap generated out of revamping of existing infrastructure (pipelines etc), surplus, unused, obsolete and condemned items etc. which are no longer required for petroleum operation, may be permitted to be disposed off in terms of condition no.48(e) of Sl. No. 404 of Notification no.50/2017-Cus and GST Rate Notification No.3/2017, based on a certificate from the concerned authority in place of certificate from DGH. Further, the requirement to mutilate goods may also be removed for already used and non-servicable materials.

**1.19 ISSUE**

Project Import Regulations,1986 – Limitation factor for import of goods under PI bonds. (Project Import Regulations, 1986)

**PRESENT POSITION**

Presently limitation factor for import of goods under PI bond is both for value and quantity as per Essentiality Certificate.

**PROPOSED CHANGES**

It is suggested that only quantity as per Essentiality Certificate may be considered as limitation factor for import of goods under Project Import bonds as Power projects are always of long gestation period and price of the commodity in today's economic environment are very dynamic. Further Exchange rate fluctuation contributes to the dynamic nature of commodity prices. Therefore, even though quantity is available as per EC, value of EC may exhaust. Hence quantity

as per EC alone may be considered as limitation factor for import of goods under Project Import bonds.

**1.20 ISSUE**
Finalisation of the Project registered under Project Import - Final Duty Assessment for Bond Closure (PIR- 1986, Regulation 7) (Project Import Regulations, 1986)

**PRESENT POSITION**
Presently application for final duty assessment to be submitted within 3 months from last import.

**PROPOSED CHANGES**
It is suggested that submission of application for Project Import (PI) finalisations should be co-terminus with the duration of setting up of the power plant project as in Power Sector, the gestation period of projects is usually very long and involves several manufacturing processes on imported items. Further after installation and commissioning of power plant it has to undergo further testing for performance, and installation certificate is generally released by the customer after completion of performance test. Linking of PI bond validity with duration for setting up of power project will facilitate power sector industry to comply with the provision for submission of application for closure of PI bond.

**1.21 ISSUE**
Drawback incentive in case of projects under "HOLD" due to force majeure conditions/ war like situations: Refund of drawback to customs for which exports proceeds are not realized within specified period.

**PRESENT POSITION**
Presently drawback is to be refunded to Customs with interest from the date of export for unrealized portion of export proceeds. However, Drawback rules are silent in case the project goes on HOLD for long periods due to force majeure conditions/ war like situations.

**PROPOSED CHANGES**
It is requested that in cases where projects are under HOLD for various reasons beyond the control of exporter like force majeure conditions, unrest or war like situations etc., provision for refund of drawback with interest may be waived as It will provide relief to exporters whose project exports are stuck up due to various reasons beyond his control like force majeure conditions, unrest or war like situations etc.

**1.22 ISSUE**
Scope of utilization of scrips needs to be enlarged. (Not. No. 19/2015-20 dated 17.08.2021)

**PRESENT POSITION**
Presently scrips issued under RoDTEP scheme can be used for payment of Basic Customs duty.

**PROPOSED CHANGES**
It is suggested that scope of utilization of scrips may be enlarged to include IGST on imports, Customs Duty other than BCD in addition to utilization for payment of Basic Customs Duty

(BCD) as restriction on the usage of scrips only for payment of Basic Customs duty may lead to blockage of working capital in export orders.

**1.23 ISSUE**
Clarification on applicable Import duty rate on Import of Propane and Butane.

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

**PROPOSED CHANGES**
It is suggested that Ministry of Finance to intervene and provide clarification in this respect to avoid litigation in this matter.

**1.24 ISSUE**
Inclusion of Land Customs Station in Notification 208/77 for claiming Duty Drawback Benefit

**PRESENT POSITION**
Clause (c) of Notification ref. no. 208/77 as amended from time to time issued under Section 76 of the Customs Act, 1962 provides for admissibility of duty drawback claim on export of petroleum products through notified Land Customs Station (LCS) namely Panitanki, Raxaul, Jogbani, Sonauli, Rupedya, Gauriphanta and Dharchula. However, LCS Barhni & Bhithamore are not included in the said notification for NOC supplies. Hence the company is not able to file drawback on the exports to NOC undertaken through above said LCS.

**PROPOSED CHANGES**
It is suggested that to include LCS Barhni & Bhithamore as notified LCS under clause (c) of notification 208/77-Cus.

**1.25 ISSUE**
Exemption of Customs Duty on import of Liquefied Natural Gas (LNG)

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

**PROPOSED CHANGES**

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

**1.25 ISSUE**

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

**PRESENT POSITION**

When the Nation was facing a severe drought during 2003, the Union Finance Budget of 2003-04 imposed National Calamity Contingent Duty (NCCD) of Rs.50 per metric tonne on domestic as well as on imported crude oil, amongst various other goods, to augment the fund available with the Govt. and to support the relief work in the areas affected by natural calamity. It was mentioned in the Finance Bill, 2003 that this new levy will be limited to one year only. However, the Govt. has kept this levy for year after year. This levy has put an additional burden on the Oil Refining Companies.

**PROPOSED CHANGES**

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

## III CENTRAL EXCISE

**1.1 ISSUE**

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

**PRESENT POSITION**

Vide Notification No. 01/2022-CE dated 01.02.2022 the effective rate of Central Excise duty on unblended MS & HSD w.e.f. 01.10.2022 has been increased. The amendment may result into differential pricing of the same product (MS/HSD) at the same Retail Outlet (RO) / market depending on blending. It is difficult to monitor on PAN India basis at the retail locations to ensure that no higher price is charged from the customers for the blended products. Since the duty is collected at the Refinery locations, it is difficult to introduce any mechanism for the Govt. to check the actions of unscrupulous dealers.

**PROPOSED CHANGES**

Since the implementation of maintaining dual pricing system for the blended and unblended products is not practically workable due to difficulties cited above, it is requested to kindly continue with the existing mechanism of incentivising Oil Marketing Companies giving exemption in the excise duty payment to the extent of blended quantity.

**1.2 ISSUE**

Exclusion of MS/ HSD/ ATF from the operation of Rule 18/19 of Central Excise Rules (CER), 2017 effective 01.07.2022

**PRESENT POSITION**

Vide notification no. 02/2022 dt 30.06.2022, MS/ HSD/ ATF has been excluded from the applicability of Rule 18/19 of CER, 2017 which provides for the operating procedure for movement of said goods for export purpose.

**PROPOSED CHANGES**

Clarification may be issued for clearances and movement of goods cleared for the purpose of export as procedures specified under Rule 18/19 is no longer available, new procedure for clearances for the purpose of export may be notified.

**1.3 ISSUE**

Ethanol Blending undertaken by Oil Marketing Companies (OMC)

**PRESENT POSITION**

PSU OMCs are undertaking ethanol blending with MS (Motor Spirit Commonly known as Petrol) in terms of Central Govt guidelines for sale as Ethanol Blended Motor Spirit (EBMS). At present, ethanol blending is undertaken at 5% or 10%, as the case may be, by OMCs. Both EBMS as well normal MS are being sold at the same price to the end customers as MS. Blending of ethanol with MS is considered as manufacturing activity under the Central Excise law. To avoid the dual duty implication on blending of GST paid Ethanol with Duty paid MS in the prescribed proportion namely 5% / 10%/12%/15%/20% ethanol with 95% / 90% /88%/85%/80% of MS, to produce EBMS, payment of duties of excise are exempt. EBMS is exempt from payment of excise duties only when duty paid MS and GST paid Ethanol are blended in the

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

**PROPOSED CHANGES**

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

**1.4 ISSUE**

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

**PRESENT POSITION**

Presently OMCs are classifying LSHF HSD and HFHSD under the category of Diesel and excise duty is being paid as applicable to Diesel. It is understood that IS 16731 is the international standard for bunker fuel has two tables specifically for distillate fuel and residual marine fuel. The distillate would include HSD grade marine fuel. The bunker fuel of HSD grade cleared from refinery would meet both IS 16861 & IS 16731 as both the IS have lot of parameters which are over lapping.

**PROPOSED CHANGES**

Entry prone to multiple interpretations as GST or Non-GST product. PSU oil companies are clearing HFHSD under the excisable goods. Thus, classification of Distillate oil (under marine fuel) under non excisable category may result in revenue loss to the Govt as well as business loss to PSU OMC.

**1.5 ISSUE**

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

**PRESENT POSITION**

ATF is falling under ITC (HS) code 2710.19.20 of the Central Excise Tariff Act and presently chargeable at 11% ad-valorem rate of excise duty. Concessional rate of 2% is applicable for ATF sold under Regional Connectivity Scheme. Generally, ATF is received at AFSs through intermediate storage locations (Depot/Terminal) instead of directly from Refinery. At the point of removal, the excise duty is paid on destination assessable value by following the principle of Normal Transaction Value under Section 4 of the Central Excise Act read with Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In case of further stock transfers by the intermediate storage locations, the duty payable is again determined based on the value applicable to the final receiving locations i.e. AFSs which result in payment of differential duty. This creates problem in re-ascertaining the correct transaction value for payment of differential excise duty at Refinery.

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

**1.6 ISSUE**
Taxability of supply of Ethanol (E-1OO)

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

**PROPOSED CHANGES**
Clarification to be issued that sale of bioethanol (E-IOO) as Standalone fuel or blended with MS/Additives denaturant wherein Ethanol is more than 30%, would be classified as GST product under HSN 22072000. Promotion of usage of more environment friendly fuel and avoidance of double taxation

**1.7 ISSUE**
GST on Ethanol manufactured from Captive Plants for blending with MS in the same state

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

**PROPOSED CHANGES**
Suitable amendment in exemption notification under the Central Excise law for exempting the blended EBMS produced from Ethanol manufactured from their own ethanol plants, by removing the condition of blending of GST paid ethanol in MS. Proper utilization of captively produced ethanol within the state for blending with MS

**1.8 ISSUE**
Review/ removal of Special Additional Excise Duty on Crude Oil

**PRESENT POSITION**
The Government has introduced a windfall tax in the form of Special Additional Excise Duty (SAED) on production of Crude Oil at the rate of INR 23,250/tonne (currently INR 10,200/tonne) under section 147 of the Finance Act, 2002.

**PROPOSED CHANGES**
The windfall gain tax on Crude Oil should be withdrawn.

**1.9 ISSUE**
Removal of Basic Excise Duty (BED) & National Calamity Contingent Duty (NCCD) on Crude Oil

**PRESENT POSITION**
The Hon'ble Finance Minister in her budget speech 2019 stated that tobacco products and crude oil attract National Calamity & Contingent Duty (NCCD). In certain cases this levy has been contested on the ground that there is no BED on these items. To address this issue, a nominal basic excise duty has been imposed. Accordingly, Fourth Schedule to Central Excise Act has been amended to levy BED at the rate of 'Rs. 1 per tonne' on domestic production of petroleum crude. This additional levy of BED has created hardship in compliance of Excise Law in respect of each producing assets. Further, the NCCD was introduced by Ministry of Finance @ Rs 50 per MT on indigenous crude oil. This duty was to be valid for one year i.e. upto 29.02.2004 so as to replenish the National Calamity Contingency Fund, but it is still continuing. Accordingly, Oil Industry has been representing from time to time for removal of NCCD. GST has been introduced since 1st July 2017 subsuming most of the indirect tax levies including Excise duty, Service Tax, VAT, Central Sales Tax etc. However, Crude Oil, Natural Gas in addition to Petrol (MS), Diesel (HSD), ATF are temporarily kept out of GST. Hence, there is substantial stranding of taxes in the hands of company effecting cash flow negatively. Further, Company is burdened with dual compliance of GST law as well as Central Excise & VAT laws.

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

**1.10 ISSUE**
Upfront exemption of duties of Excise on HSD (Sl. No. 3 of Notification No. 11/2017-Central Excise)

**PRESENT POSITION**
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 were eligible for benefits applicable to 'Deemed Export'. Accordingly, the excise duty paid on diesel procurement for petroleum operations was 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.

**1.11 ISSUE**

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

**PRESENT POSITION**

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

**PROPOSED CHANGES**

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

**1.12 ISSUE**

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

**PRESENT POSITION**

Ministry of Petroleum and Natural Gas vide Notification No, F. No.P-13032(16)/18/2017-CC dated June 8, 2018 has notified National Policy on Biofuels 2018. The Goal as specified in the said Policy is to improve availability of bio fuels thereby increasing its blending percentage, which can be achieved through reinforcing ongoing ethanol/biodiesel supplies or through increasing domestic production by setting up Second Generation (2G) bio refineries. In addition, in order to prevent burning of crop stubble, which is one of the major reasons of environmental pollution, OMC's are in the process of setting up of Second Generation Bio Diesel and Ethanol Plants. Currently OMC's procure Ethanol and Bio Diesel from independent manufacturers for blending with MS (Petrol) and HSD (Diesel) to market Ethanol Blended MS (Petrol) & Biodiesel Blended HSD (Diesel). In order to avoid double payment of excise duty, CBIC has exempted Ethanol Blended MS (Petrol) and Bio Diesel Blended HSD (Diesel) which is a blend of GST paid Ethanol/Bio Diesel and Excise paid MS/HSD from further levy of duties through various notifications.

Pursuant to the Govt.'s aim to reduce import dependence as well as to minimise pollution, OMC's are now in the process of setting up their own 2G Ethanol and Bio diesel manufacturing plants at various locations where raw materials for this would be available. Ethanol and Bio diesel manufactured by the OMC's will be used for blending. Since OMC's will themselves be producing these products, own consumption of ethanol/bio diesel produced will not be subject to GST. Thus exemption vide the aforesaid notifications will not be available as the self-produced ethanol/bio diesel used by OMC's themselves for blending will not be GST paid. Manufacturing facilities proposed to be set up will become completely unviable if the exemption as is currently available to GST paid ethanol/bio diesel is not extended to OMC's who are setting up these plants and will be using the production captively and such captive use is not subject to GST.

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

**1.13 ISSUE**
Ethanol Blended Motor Spirit

**PRESENT POSITION**
Oil companies are blending Ethanol / bio diesel with MS / HSD in the prescribed ratio for selling Ethanol Blended MS (EBMS) / Diesel blended with Bio Diesel (B5 HSD). Excise law provides for exemption of duty on such blending activity. As per ministerial direction the sale price of these products is kept same as that of non-blended MS / HSD. Department is raising issue with regard to the recovery of the excise duty through price by the oil companies on the ethanol / bio diesel portion of the blended product on the ground that price is the same.

**PROPOSED CHANGES**
It is suggested that some clarification or 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 Act.

**1.14 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 Operators for Regional Connectivity Services (RCS) flight from RCS Airport subject to conditions as stated therein (Normal rate of Excise duty on ATF currently is 11%). In terms 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). Also it is understood that Oil companies are required to supply concessional Excise duty ATF at RCS Airports only from their own refineries and cannot undertake procurement of the concessional duty paid ATF from other Oil Marketing Companies (OMC) / Stand Alone Refineries / Subsidiary etc. This is as per the settled judicial position by Hon'ble Supreme court in the case of Hindustan Petroleum Corp. Ltd v. Commissioner reported at 2015 (320) E.L.T. A344 (S.C.) wherein CESTAT Mumbai decision reported at 2014 (301) E.L.T. 554 (Tri. - Mumbai) was upheld . The Oil companies are interdependent on each other and Purchase/ Sale of petroleum products between Oil companies in various States cannot be avoided. It will be very difficult for the Oil Companies to meet the requirement of RCS flights at RCS Airports without such inter- Company sale/ Purchase of concessional duty paid ATF in view of the location of the Refineries and RCS Airports that need to be catered. The said condition is putting constraints on the logistics of the Oil Companies ultimately putting restriction on the quantities of ATF that are being supplied to RCS flights .

**PROPOSED CHANGES**

It is suggested that a uniform date can be provided for the validity of the exemption for all supplies under RCS category to avoid disputes w.r.t to validity dates due to possible different interpretations and Suitable amendment in notification is required stating that "Aviation Turbine Fuel procured by any Public Sector Oil Company from any other manufacturer of the said fuels and drawn by Operators or Cargo Operators from the Regional Connectivity Scheme (RCS) Airport" eligible for concessional excise duty @ 2%.

**1.15 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.

**1.16 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.