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SECTORAL ISSUES

HYDROCARBONS

1. Restore Benefit of Concessional Rate of CST against Form-C

Existing Law

The Government vide amendment to Section 8 (3)(b) of the CST Act restricted the eligibility to purchase Natural Gas and Petroleum Crude against Form C for use in the manufacture or processing for sale of non-GST goods (MS, HSD, ATF, Crude and Natural Gas). The amended law further enables the government to frame rules for the proper operationalization of the above stated provisions.

Issue

The process of production in any oil refinery involves production of both non-GST goods i.e, (HSD, MS and ATF) and GST goods i.e. (LPG, Naphtha, Fuel Oil, Petcoke, Sulphur and Kerosene) out of the common input i.e. the crude oil. Though the prime object of setting up of a refinery is to produce transport fuels (HSD, MS & ATF); production of other products is incidental.

Likewise, the upstream sector procures HSD for use in petroleum operations whereby the GST as well as Non-GST products are produced.

Given the above process requirement of a refinery, it is a common understanding of the industry that refineries are eligible to obtain C forms for the entire quantity of crude oil/ natural gas sourced from outside the state. Likewise, in case of upstream sector since HSD is used in production and processing of GST and Non-GST Goods, such sector is also of the view that since provision does not mandate that HSD should be exclusively used for processing of specified goods for sale nor does any provision provides for proportionate restriction, the benefit of Form-C would be available on entire quantity. However, the ambiguity surrounding the issue is an area of great concern and shouldn't result in a situation of hefty demands and consequent litigations.

It is also pertinent to note that the import of petroleum crude in the country attracts 'nil' customs duty and import of LNG [a substitute of domestic natural gas] attracts a total customs duty of 2.75% on ad valorem basis.

The situation will further worsen considerably in case the inter-state sourcing is restricted to pro-rated use in the manufacture and sale of non-GST goods impacting the economics of indigenous production and consumption.

Sourcing against C-form provides a reasonable method to keep the cost disadvantage within the tolerable limits. The impact is maximum in the case of sourcing of natural gas where VAT rates go as high as 25% (eg. Andhra Pradesh @ 24.50%). Moreover, as the VAT rates vary in different states; it leads to consequential issues due to tax arbitrage. This is leading to significant increase in the cost of delivered gas across the country, reduces competitiveness of domestic gas vis-à-vis alternative fuels like naphtha and coal, and undermines Prime Minister's vision of increasing the share of gas in India's primary energy mix.

Non-issuance of Form C has thus increased the cost for petroleum producers, marketing and refining companies as well as other consuming industries.

Recommendation

In view of above it is requested to make an amendment in Rule 13 of Central Sales Tax (Registration & Turnover) Rules, 1957, that procurement of specified goods by Petroleum Sector (i.e. upstream, midstream & downstream) or natural gas purchased by power generating companies, fertilizer, petrochemical plants and other sectors in the course of inter-state trade or commerce, such procurement shall continue to be eligible against Form C for all quantities purchased on such basis.

Despite compelling arguments as stated in our above argument, if the governments feels that concessional tax rate against Form C will be allowed only in the ratio of non-GST goods produced by a refinery, it is requested that the Government may consider to fix a ratio, to the extent such concessional duty procurement shall be permitted. Similarly, the C forms for mining companies and electricity companies which was always allowed under erstwhile CST laws should be reinstated.

2. Introduce Specific rate of excise duty on Aviation Turbine Fuel (ATF)

Existing Law

ATF is falling under ITC (HS) code 2710.19.20 of the Central Excise Tariff Act and presently chargeable at 14% ad-valorem rate of excise duty. Concessional rate of 2% is applicable for ATF sold under Regional Connectivity Scheme.

Issue

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

The extension of same rule for payment of duty on account of further stock transfer of products from one depot to another depot, makes the compliance of valuation rule very difficult for the oil companies. The adoption of the provisional assessment would be complicated and not a pragmatic solution due to untenable and unending exercise to trace the original duty paying documents for finalization of the provisional assessment both for the department and the oil industry. Presently MS & HSD are levied specific rate of excise duty whereas ATF is levied ad-valorem rate of duty. MS, HSD and ATF have been kept out from GST levy and continue to be levied under the levy of Excise duty & VAT.

Recommendation

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

3. Abolish/Review rate of Oil Industry Development (OID) cess on oil production in the PreNELP Exploration Blocks/Nomination regime

Existing Law

OID Cess is levied on crude oil in terms of The Oil Industries (Development) Act, 1974. Till February 2016, OID Cess was levied at specific rate (Rs. / MT) and revised from time to time keeping in view crude oil prices. Considering unprecedented reduction in crude prices, OID Cess was reviewed and revised from Rs. 4,500/MT to ad-valorem 20% w.e.f. 01 March 2016.

Issue

Though, in the Budget, introduction of ad-valorem OID Cess rate was envisaged by the Government as relief for the industry, its unduly high rate at 20% has impacted industry adversely. OID Cess is levied @ 20% only on crude oil produced from nominated blocks and Pre-NELP Exploratory Blocks. Most of the Fields of the Pre-NELP and nomination regime are already in the decline stage and need more initiatives and expenditure to maintain/enhance the existing production level. Further OID Cess is levied only on crude oil produced domestically. Thus, it places domestic crude oil producers at a significant disadvantage vis-àvis imported crude oil. This levy, thus, is against the very spirit of “Make in India” and needs an amendment. Besides OID Cess, other statutory levies viz. royalty (@ 10% and 20% on offshore & onshore production respectively) and VAT (@ 5%) are also paid. Both royalty and OID Cess are production levies and not pass through to Buyers and form part of cost of production. It makes many new development projects economically unviable and increases demand for imports. During low crude oil price regime, it also results into significant amount of impairment loss of upstream assets.

Recommendation

It is requested that OID Cess be abolished in respect of nomination/pre-NELP blocks to make it at par with NELP, DSF and OALP regimes.

Justification

Exemption of Cess will improve the techno-economics of these Fields for further production. The increased liquidity will encourage the contractor for continuous investment in these fields

for maintaining/enhancing the production. This would make more projects viable and with increased production, any balance revenue gap will be more than compensated. In case, Cess is not abolished, considering the minimum price required to meet its cost of production and to sustain the operations, it is recommended to levy OID Cess based on a fair graded system linked to crude oil prices to calibrate volatility in prices:

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

4. Remove NCCD along with BED on production of domestic crude oil

Existing Law

The Hon'ble Finance Minister in her budget speech 2019 stated that tobacco products and crude 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.

Issue

This additional levy of BED has created hardship in compliance of Excise Law in respect of each producing assets. In addition to BED, the OID Cess, a duty of excise is being discharged through centralised concept by obtaining single Excise Registration in view of Circular No. 18/88 dated 20.05.1988 issued by Ministry of Finance. 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. up to 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 still 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.

Recommendation

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

5. Provide clarification under service tax law on royalty payments

Issue

Service tax implication on royalty.

Recommendation

It is recommended to issue a clarification under service tax law that royalty payments to the Government of India does not constitute supply of services.

Justification

- Royalty is a share of the Government revenue in the production of hydrocarbons and is success based i.e. not payable on exploration failure. It is part of overall economic share of the Government & not against any service.
- The CBIC in FAQ on Government services mentions that royalty paid to the government for assignment of right to use natural resources is treated as a supply of services and licensee is required to discharge tax on the royalty paid under reverse charge mechanism • There is no quid pro quo specified in this legislation under which royalty is levied that Government is required to fulfill obligation in lieu of royalty received. Treating right to use natural resources as supply of services & levying tax is a step backward & further increase the tax burden with adverse consequences on project profitability & incremental investments.

6. Provide upfront exemption on duties of Excise on HSD

Issue

Excise duty was exempt for High-Speed Diesel (HSD) procured under ICB conditions for the E&P sector vide Notification No. 12/2012-CE dated 17.03.2012. Post introduction of GST, exemptions were withdrawn, and rates were prescribed for Excise Duty w.e.f. 01.07.2017 on High-Speed Diesel (HSD) vide Notification No.11/2017-CE. E&P Companies pay excise duty on procurement of diesel that is used for petroleum operations. Under the Foreign Trade Policy 2015-20, goods procured under ICB are eligible for benefits applicable to 'Deemed Export'. Accordingly, the excise duty paid on diesel procurement for petroleum operations is eligible for refund. However, there are delays in grant of refunds adversely affecting the cashflows of the companies under the E&P sector.

Recommendation

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

7. Provide Customs duty exemption on import of Liquefied Natural Gas (LNG)

Existing Law

Import Duty (Basic Customs Duty) @ 2.5% plus Social Welfare surcharge @10% is applicable on import of Liquefied Natural Gas (LNG), the effective Customs duty comes to 2.75%. Import of LNG for exclusive consumption in generation of electric energy for public distribution is exempt from custom duty subject to certain conditions. However, other important sectors like fertilizer, LPG, CNG, PNG, and Petrochemical bears the burden of effective Custom duty @ 2.75%.

Issue

The Custom duty increases the landed cost of imported LNG for domestic and industrial consumers. Since the domestic production of Natural Gas is not enough to cater the increasing demand, import of LNG at large scale is required to augment supply of Natural Gas for priority sectors such as Fertilizer, CNG, LPG, PNG etc. Natural Gas is an environment friendly fuel, and it is desirable that import of LNG is exempted from custom duty to enable cost effective supply of gas to major industries like fertilizer, LPG, CNG, PNG, Petrochemical and power.

Recommendation

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

8. Provide clarification to exempt Compressed Biogas (CBG) from payment of VAT/Excise duty on sale after blending mixing with Natural Gas/Compressed Natural Gas (CNG)

Existing Law

Currently, Biogas and CBG is attracting GST @5%.

Issue

Government is promoting production and use of Biogas 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 Biogas/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 attracts VAT/Excise duty as applicable to Natural Gas/CNG and Input Tax credit of GST paid on procurement of biogas/CBG will also not be available. This results in significant increase in tax incidence on biogas/CBG and make it difficult to market the same.

Recommendation

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

Justification

The above clarification that Biogas/CBG blended with Natural Gas/CNG will continue to attract GST on quantitative basis will bring clarity and certainty in the matter.

9. Tapering of Royalty rates

Issue

Keeping in view the proposed dismantling of Administered Pricing Mechanism (APM), a Committee headed by Sh J.M. Mauskar, Joint Secretary (Exploration) in the Ministry of

Petroleum & Natural Gas (MoP&NG) was constituted in 2000 for evolution of a new scheme of royalty w.e.f. 1.4.1998. Based on the recommendations of the Mauskar Committee, the new royalty scheme effective from 01.04.1998 was circulated vide Resolution dated 17 Mar'03. Salient features of the Resolution dated 17 Mar'03 are as under:

(i) Royalty will be fixed on Ad valorem basis.

(ii) Royalty will be calculated on cum-royalty basis

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

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

The convergence process, which was envisaged from 2007-08 with tapering rate/s of royalty @ 1.5% each year so as to facilitate convergence with NELP royalty rate of 12.5% by 2011-12 did not happen and royalty on production from onland nominated blocks are still being paid @ 20% of well head price.

Recommendation

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

10. Inclusion of Natural Gas in GST

Existing Law

Five Petroleum Products, including crude oil and natural gas, are presently kept outside the ambit of GST.

Issue

Natural gas is widely consumed by industries like steel, cement, glass, ceramics, chemical, fertilizer, auto ancillary industries etc. for their manufacturing related activities. Approximately 85% consumption of natural gas is used for industrial purposes.

Under the proposed GST Regime, the finished manufactured products are subjected to levy of GST but the natural gas used as industrial inputs is subjected to VAT, for which no input tax credit is available. This is against the basic objective of GST which is to ensure that input taxes are not blocked in the system, i.e., tax cascading is eliminated.

This has led to a situation where the VAT paid on procurement of natural gas is not available as credit resulting in increase in the cost of production and rendering medium and small industries economically unviable and uncompetitive as end users could potentially explore importing the desired products at a better and competitive value as compared to domestically sourced goods.

Recommendation

It is of paramount importance for the Centre, States and all stakeholders to consider covering Natural gas in GST to avoid cascading effect and ensure that the industries presently operating on natural gas do not get a raw deal under GST.

11. Removal of 5% IGST on import of goods used for petroleum operations

Existing Law

5% IGST is applicable on import of goods used for petroleum operations under the National Exploration and Licensing Policy (NELP) and similar policies as per Notification No. 3/2017Intergrated Tax (Rate) dated 28/6/2017. This is an additional cost to the Oil & Gas sector.

Issue

Import of goods used for petroleum operations under the National Exploration and Licensing Policy (NELP) and similar policies were exempt from levy of custom (BCD, CVD, SAD) and excise duty. These provisions were introduced to give effect to the incentives as provided in the PSC executed with the Government of India that all imports shall be Nil duty of tax. Accordingly, pre introduction of GST no duties of customs (BCD and CVD) were levied on imports of goods used in petroleum operations.

Imposing this 5% GST on imports is also a violation of the bidding norms, based on which the bid was won by the respective bidders.

However, post introduction of GST, 5% IGST has been introduced on such imports as per Notification No. 3/2017-Intergrated Tax (Rate) dated 28/6/2017. This levy of import duties is not in line with the NELP policy of the Government of India and also against the PSC signed by the Government of India. It is leading to significant cost escalation for petroleum operations which are impacting investment decisions as Input Tax credit is not available to petroleum sector.

Recommendation

It is therefore requested that IGST may be exempted on imports of capital goods for petroleum operations.

MEDIA AND ENTERTAINMENT

1. Rationalise TDS rate and threshold limit under section 194B

Existing Law

Section 194B of the Income-tax Act, 1961 (‘ITA’) reads as “The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force”.

Issue

The limit of Rs. 10,000 was last revised by Finance Act, 2010 from Rs. 5,000. Considering that the limit was revised more than a decade ago, the existing limit needs to be revisited. Further, there should be distinction between games of skill and chance. Also, clarity is needed on what constitutes 'winnings' from online gaming platforms. There is no distinction between games of skill and chance and those who play professionally. All games are charged under the highest tax slab with no deduction or exemptions.

Recommendation

It is recommended to increase the threshold limit under Section 194B of the Act to Rs. 50,000. Further, games of skill should not be charged as income from other sources but as profits or gains from business after allowing deduction for expenses.

Justification

The above recommendation, if implemented, will be in line with the consistent inflation in the Indian economy over the past decade. It will further ease the burden and hassle of filing tax returns/claiming refunds etc for small winners.

2. Provide Clarity on TDS on commissioned programs and movies for digital platform

Issue

With the increased use of digital platform and advent of original content being created for such platform, companies are spending several crores on production of content. Typically, digital platforms commission production of such content to local production houses, who carry out the work basis the concept and script provided to them. For the payment of production cost to the production houses, question arises on what should be the appropriate section under which TDS should be done.

Recommendation

It should be clarified that content commissioned for digital platform should be liable to TDS @ 2% under Section 194C.

Justification

Meaning of 'work' as per Section 194C, interalia, includes "(b) broadcasting and telecasting including production of programs for such broadcasting or telecasting;"

Broadcasting or telecasting has been historically associated with television channels. In the current scenario, digital players offer the same / similar content through their platform. The function of creating content for digital viewers undertaken by the production houses is same / similar to the one for television medium. Also, several times, the same content is made available on both television channel and digital platform. Thus, an analogy can be drawn that production of programs even for digital platforms falls within broadcasting and telecasting and hence, the cost of production paid to production houses should be subject to TDS under Section 194C of the Act.

Another aspect relates to the cost of production relating to movies which are specifically made for digital release only. The nature of such content and the activity undertaken by production houses for such movies is same / similar to the creation of programs. Hence, the treatment of TDS on such production cost should be no different.

3. Withholding on royalty payments towards non-theatrical right

Issue

Vide Finance Act 2020, the definition of royalty under Section 9(1)(vi) of the Act was amended in lines with the definition in tax treaties to delete the exclusion towards sale, distribution or exhibition of cinematographic films and a corresponding amendment was made under Section 194J of the Act. With effect from 1 April 2020, domestic royalty consideration for sale, distribution or exhibition of cinematographic films is liable to withholding tax @ 2%. Whereas any domestic royalty payments towards non-theatrical rights is be subjected to withholding tax @ 10%.

Recommendation

It is requested that rate of withholding tax on domestic royalty payments towards nontheatrical rights be clarified to be 2% falling within the ambit of sale, distribution and exhibition of cinematographic films. This would come as a huge respite to the industry, particularly the small production houses, by addressing their cashflow issues for working capital requirement.

Justification

There is huge shift in the viewer preferences and use of technology for consuming cinematographic films. Lot of the films are directly released on satellite or digital platforms which are becoming the more popular medium of content consumption among viewers. With the advent of technology and its fast growing pace, making a distinction between the medium is not in line with the current trend of consumption.

4. Provide clarification under Explanation 6 to section 9(1)(vi) of the Act for tax withholding on transponder hire charges

Issue

Finance Act, 2012 amended the section 9 of the Act retrospectively to include payment for transponder hire and other charges as royalty w.e.f. 01.06.1976. The contracts with Satellite Service Providers are on "net of tax" basis leading to 12-13% extra cost burden on Indian service recipients (at the present level of WTH rate of 10%).

Recommendation

It is recommended to issue a clarification that Transponder hire charges are not "royalty" in order to avoid protracted litigation. Further, a clarification should also be issued that the definition of 'process' under the treaty should be read independently and the definition of 'process' under Section 9 of the Act should not be interposed in the treaty definition.

Various Courts in India have held that such charges are not 'royalty' or FTS as these are standard services and involve no transfer of technology. Even globally, OECD commentary also does not treat such payments as "royalty" or "FTS".

The Media Industry which includes the Satellite Broadcasting, DTH, HITS and Satellite News gathering (DSNG & VSAT) leases over 100 transponders on foreign satellites, which on a gross basis are priced at $190 Million dollars per year. Owing to the satellite transponder leases being treated as Royalty, which is not being held admissible for benefit of DTAA in different jurisdictions, the Indian industry is being forced to gross up the withholding tax levied in India, as the benefit of the same is not available to the foreign satellite provider in its country, despite having a DTAA with India. This leads to extra burden on Indian industry over and above the fees for transponders as the foreign satellite operators need to be paid on a net basis the price of the transponder use. This is putting an undue burden on the industry without any benefit to the Indian entity or the foreign satellite provider. This is also against the spirit of the DTAA.

Justification

However, these transactions are not regarded as royalty under DTAA as definition of royalty in the DTAA remains same and has not been amended, which results in denial of tax credit of withholding tax/tax paid in India, to the Satellite Service Providers.

HEALTHCARE

1. Increase in budgetary allocation for healthcare

The Covid-19 pandemic has become one of the biggest health emergencies faced by the global community, affecting not only health system across nations but also economic structures. India also had to navigate through the pandemic and a myriad of other challenges by undertaking strategies to balance both the health and economic stability of the country.

India's share of public and private healthcare spending was estimated to be 3.6 per cent of GDP including both the public healthcare spending and out-of-pocket expenses which is quite low as compared to various developed countries including the US, the UK, Japan, Germany, and Canada whose spending is nearly 10–18 per cent of their GDP on healthcare. While India's population has grown nearly 15 per cent over the last decade, this growth has not been complimented by an equitable growth in healthcare spending.

It is time that healthcare is provided the requisite focus in India to help build a stronger public health system, along with appropriate support to the existing private healthcare infrastructure to create a comprehensive healthcare ecosystem.

As per Union Budget 2021–22, the total public health sector allocation stood at 1.2 per cent of the GDP and it is expected to increase to 2.5 per cent of GDP by 2024–25. However, there is a need to increase the public health spending to 2.5–3.5 per cent at the earliest.

Further there is a need to incorporate alternative financing models to address the financial gaps in health sector and ensure mandatory health coverage for all to support the Universal Health Coverage (UHC) targets.

2. Increase Tax Exemption on Preventive Health Check-ups

Existing Law

The tax exemption currently available under section 80D of the Act on preventive health check-up is Rs. 5000.

Issue

Every year, roughly 5.8 million Indians succumb to heart and lung diseases, stroke, cancer and diabetes. Non-communicable Diseases (NCDs) like diabetes, heart diseases and respiratory diseases are expected to comprise more than 75 per cent of India's disease burden by 2025. Preventive health check-ups can help in early diagnosis and timely treatment of NCDs, hence lowering complications, mortality and burden on secondary and tertiary care facilities.

Recommendation

It is recommended that tax exemption on Preventive Health check-up should be raised from the current Rs 5,000 per person to Rs 20,000 under section 80-D of the Act.

Justification

Given the rising advent of lifestyle diseases in India and the need to prevent loss of productivity, it is imperative that employers get a separate annual deduction of up to Rs 10,000/- per employee, towards expenses incurred for sponsoring preventive health checkups of their employees. This should be over and above the proposed limit of Rs 100,000 per annum in respect of medical reimbursement for salaried employees.

3. Medical reimbursement exemption limit for salaried employees to be set at Rs. 100,000 per annum

Existing Law

The annual Medical reimbursement limit set at a sum of Rs 15,000/ per annum under Section 17(2) of the Income Tax Act which was fixed in April 1999, has been merged along with conveyance allowance into a composite standard deduction limit of Rs 40,000.

Issue

There is significant rise in cost inflation index and medical inflation.

Recommendation

Given the significant rise in cost inflation index in general (70% over the last 5 years) and medical inflation in particular, the medical reimbursement deduction needs to be reintroduced and the annual limit needs to be enhanced to not less than Rs 100,000 per annum.

4. Increase in quantum of deduction towards payment of medical insurance premium under section 80D

Existing Law

The tax deduction in respect of health insurance premium obtained towards the health of the assessee or his family is currently available under section 80D of the Act to the extent of Rs. 25000.

Recommendation

The present annual deduction limit of Rs. 25,000/ under section 80D of the Act should be enhanced to Rs. 50,000/ for self and family. The Government may also consider expanding the ambit of dependents eligible for this deduction.

Justification

The increase in deduction will provide an incentive for health insurance and encourage voluntary purchase of health insurance policies.

5. Instituting a Healthcare Savings Fund for all salaried employees similar to the PF scheme which would be tax deductible

A Healthcare Savings Fund similar to Provident Fund should be introduced covering all salaried employees. While health insurance takes care of hospitalization (inpatient) expenses to a certain extent, for health maintenance, health checks, outpatient services etc., one incurs additional expenses which can drain regular savings. In order to encourage citizens to plan and periodically save for their health expenses other than hospitalization, the government should allow the salaried class to open a health savings fund account similar to the PF contributions scheme and such investments should be deductible from income tax under Sec 80C of the Act.

6. Extension of tax benefits under section 35AD along with Weighted deduction for CAPEX incurred for fighting COVID pandemic

Existing Law

Currently, benefits of deduction under section 35AD of the Act for capital expenditure are extended only to hospitals having a minimum capacity of 100 beds. Moreover, the weighted deduction of 150% has also been withdrawn w.e.f. 01.04.2017.

Issue

During the last couple of months, the entire world has been grappling with COVID 19 and trying to come to terms with this pandemic. The Healthcare facilities, big or small, new or old, have had to make substantial capital expenditure towards making structural changes in the building layout, air-flows in the AHUs etc. to treat such patients. There has been significant fresh investment in medical equipment like CT scans, laboratory apparatus, setting up ICUs and the like, for treatment of COVID patients. Some of which may be surplus and not fully usable, hopefully, in the near future. This has put a lot of strain on the Hospitals from a cash flow and profitability point of view.

Recommendation

Some relief may be provided to all hospitals who have made any Capital Expenditure for prevention and/ or treatment of COVID patients. This should be made applicable from at least 01.04.2020.

7. Extension of tax benefits under Section 35AD

Existing Law

Currently, benefits of deduction under section 35AD of the Act for capital expenditure are extended only to hospitals having a minimum capacity of 100 beds.

Issue

No benefits are provided to encourage the setup of smaller hospitals/nursing homes in rural areas posing as an impediment for organizations to start chains of smaller hospitals.

Recommendation

The benefits under section 35AD of the Act should be extended to hospitals having:-

(i) a minimum of 50 beds in tier 2 and 3 cities and

(ii) minimum of 25 beds in rural areas to foster the growth in these sectors.

Further, these benefits should also be extended to existing hospitals that invest in substantial expansion. The healthcare business by its very nature needs to make continuous investments to upgrade existing capabilities.

Justification

There is an urgent need to boost setting up of smaller hospitals, specifically in tier 2 and 3 cities and rural areas for successful implementation of the Ayushman Bharat program.

8. Reduce rate of tax deduction under Section 194J of the Act

Existing Law

As per section 194J of the Income tax Act, 1961, Corporate payers deduct tax @ 10% on the Gross revenues paid to the Hospitals.

Issue

Refunds of such taxes excess withheld are received by the Hospitals after 2-3 years which leads to blockage of working capital of the Hospitals. Current headline tax rate being 35% / 25% of the taxable income and tax deduction being 10% of the revenue, such high tax deduction is justified only if the hospitals earn 28.57% / 40% net profit margin.

Recommendation

Rate of tax deduction should be reduced to 5% for Corporate assessee, in line with the reduced rate for corporate assessee in section 194C (Contractors), wherein in also there is a lower rate of tax deduction in case of corporate payees.

Justification

This will benefit in terms of reduced blockage of working capital and also reduce administrative work of government in processing huge refunds.

9. Inclusion of hospitals under the definition of industrial undertaking under Section 72A of the Income Tax Act

Existing Law

Hospitals have a higher gestation period and in this entire period hospitals incur losses due to massive capital expenditure as well as initial expenses. This accumulated loss cannot get utilized or adjusted against future profit if there is any restructuring in terms of amalgamation or merger of hospital entities.

Issue

Currently, healthcare industry is going through a consolidation phase. Many hospitals have incurred tax losses in the earlier years, such losses are not allowed to be carried forward and set off against future years in case such hospitals undergo a corporate restructuring like merger, etc.

Recommendation

To ensure that healthcare industry is treated at par with other sectors, it is recommended to cover healthcare industry under definition of Industrial undertaking under the provisions of section 72A of the Income tax Act and accordingly, tax losses of healthcare industry should be allowed to be carried forward and set off against future profits even if they undergo any corporate structuring like, amalgamation or merger.

Justification

These are long standing demands from the Industry and are critical to expedite private investment in capacity building especially in Tier 2 & 3 cities, which will go a long way in ensuring that the dream of Universal Healthcare is translated into reality for the citizens of the country.

10 Tax incentives for Healthcare Skill Development

To encourage the private sector to take up workforce skilling activities, the government should consider providing tax incentives for Healthcare Skill Development initiatives like:

(i) provision of weighted deduction of 150% of expenses incurred on skill development project under Section 35CCD of the Income Tax Act should be extended to healthcare organizations (hospitals and diagnostic centres) for apprentice training

(ii) the Government should also expand the deduction under Section 80JJAA to healthcare organizations to provide 100% deduction on stipend to professionals undergoing DNB and short-term PG Certificate Courses at private hospitals

11 Tax Incentives for promoting Specific Developmental Activities

(i) 250% deduction on investment made for the implementation of Electronic Health Records (EHR) should be extended;

(ii) 100% deduction on expenditure incurred for securing accreditation for healthcare facilities;

(iii) 250% deductions on approved expenditure on advanced healthcare technologies for remote care

12. Extension in time period for expiry of Tax losses from 8 years to 12 years for Health Insurance Companies

Currently, Section 79 of IT Act includes expiry of tax losses up to 8 Years for any Health Insurance Company for losses incurred in initial years. Health insurance companies generally have longer gestation period to break even due to reserving requirement and investment in distribution and operations. This leads to expiration of tax losses due to the current tax laws of allowing the carry forward of losses only until 8 years from the respective years of incurred loss.

13. Additional depreciation for investments made for creating diagnostic infrastructure under Section 32 of IT Act

With the rising disease burden and increasing healthcare demands due to implementation of Ayushman Bharat, there is a significant need for creating diagnostic infrastructure in the country. The government should consider providing for additional depreciation at 50 per cent for investments made for creating diagnostic infrastructure under section 32 of the Act, specifically outside the metro cities. This will be in line with the additional depreciation provided to some sectors such as industries engaged in generation of electricity and will be well aligned with the government's vision of providing affordable healthcare to all the citizens of the country.

14. Compliance issue - Approval for Hospitals under proviso (ii) to section 17(2)(viii)

Existing Law

Currently hospitals are required to be approved by Income tax authorities under proviso (ii) to section 17(2)(viii), to ensure that the amount reimbursed by employers for any hospitalization of employees is not taxed in the hands of the employees. This approval is mainly to ensure that all medical and other facilities are available in the Hospital.

Issue

The approval process is very cumbersome and any delay in such renewal of the approval causes in-convenience to the patients.

Recommendation

All major hospitals are NABH/JCI accredited. Such accreditation ensures that all medical and other facilities of high standards are available in the hospitals. Accordingly, accreditation from NABH/JCI, should be a sufficient compliance for the purposes of proviso (ii) to section 17(2)(viii) and no separate approval from Income tax department should be required in this regard.

Justification

This would reduce administrative work of both the hospital and government. This will be a good step towards ease of business also.

15. Long Term Financing Option for Healthcare Sector

Healthcare was included in the harmonized master list of Infrastructure sub sectors by the Reserve Bank of India in 2012. This includes hospitals, diagnostics and paramedical facilities. Also, IRDA has included healthcare facilities under social infrastructure in the expanded definition of 'infrastructure facility'. In spite of this, long term financing options (as available to the other sectors accorded with infrastructure status), are still not available for healthcare providers. The government had proposed reforms for long-term financing in the Union Budget 2019-20. However, there is a need for specific focus on financing for healthcare sector.

The Ministry of Health and Family Welfare needs to work out a solution along with the Ministry of Finance to provide long term financing to the healthcare sector. This will channelize funds from the banking sector to create necessary healthcare infrastructure and enable development of innovative long-term financing structures for healthcare providers. It will also help in creating an attractive environment for domestic production of medical equipment, devices and consumables as well as catalyzing research and development. Also, the savings that hospitals accrue could be ploughed back to expand hospital bed capacity and facilities which would assist in improvising healthcare services and bed to patient ratio in the country.

16. Incentivize infrastructure creation and Ease of Doing Business for the private sector

Over the last 4 decades, the private sector has emerged as a pivotal supplier of healthcare services. It is estimated that over 80% of new bed additions in the last 10 years was contributed by the private sector. This sector is the fifth largest employer in the country and has the potential to generate millions of direct and indirect jobs. To truly position India as a global destination for healthcare, and to bring the best of healthcare to our own citizens, the private sector needs to be an active partner.

For this, it is important that the Government puts in place forward-looking policy frameworks and incentives to help the sector not only remain viable, but to bring further investment into the sector (including FDI), expand reach and bed density, invest in technology, foster a culture of innovation and retain the best clinical talent in India. The regulatory framework under which the sector operates needs to incorporate this thinking and drive the narrative accordingly.

It is critical that the healthcare sector be declared as a National Priority and incentives announced for the creation of capacity and infrastructure with a comprehensive set of measures such as:

- Provision of land free of cost or at highly subsidized rates to set up facilities;
- Higher FSI for hospital buildings, as they are required to be located in central areas;
- Rates for power to be reduced to about 50% of applicable commercial rates;
- Formulate modalities for declaring “Special Healthcare Zones” in key geographies with attendant benefits such as earning exemptions for facilities located there, infrastructure support, manufacturing incentives, etc;
- Incentives for accelerated job creation and training of skilled workforce;
- Extended tax holidays to enable ploughing back of earnings into infrastructure investment.
- Provision of incentives for new health care projects

New Projects:

- To spur investment in the sector, the Government could consider tax holiday period of 15 years for hospitals with a minimum of 100 beds. The length of period of exemption needs to be long, as new hospitals take at-least 5-7 years to start earning returns, after recovering interest and depreciation.

- Also capital subsidy at 25-30% of total project cost may be provided in priority geographies.

Interest Subsidy at 5%, for atleast 5 years would help in making hospitals turn financially viable in an accelerated way.

17. Simplification of the tax regime in respect of Real Estate Investment Trusts (REITs)/Business Trust

Under the revised scheme announced in the last Union Budget, there would be no capital gains tax exposure for the sponsor at the time of the listing of the units or subsequent divestment (if securities transaction tax has been paid). Further the REIT/Business Trust entity would not suffer tax on the rental income distributed, though individual investors in the REIT would be liable to pay tax on the income distribution by the REIT. Simplification of the tax regime would accelerate growth and ensure scale, speed and skill sets for setting up more hospitals and help attract more FDI inflows. It is recommended that there should be no capital gains tax incidence at the time of setting up REIT/Business Trust as well for individual investors on the income distribution by the REIT/Business Trust.

18. Interest Subsidy on Loans

Healthcare is a capital-intensive industry wherein very few players are able to generate decent returns. High upfront investment coupled with low price realization from the patients makes the gestation period of the projects extremely longer. It is accordingly recommended that an interest subsidy should be given to make investments attractive.

19. Provide Capital Subsidy on Investments

Land prices are rising at a tremendous pace and it is exorbitant in the prime location of city. This escalates the project cost and makes it unviable. A subsidy on capital investment would reduce the upfront investment and help generate positive returns faster. Accordingly, capital subsidy for acquisition of land and construction of hospitals should be provided.

20. Provide Specific Funds within Health Sector

Health Infrastructure Fund and Medical Innovation Fund- access to funding by creating a specific fund for healthcare infrastructure and innovation would facilitate access to capital for the industry. These funds would encourage entrepreneurship and newer business models which are the need of the hour for improving access, availability and quality, especially in Tier 2, Tier 3 and rural areas. The Government should provide the seed capital for such a fund.

Healthcare Technology Upgradation Fund- on lines of existing scheme for the Textiles sector, can help provide subsidies for capital investment undertaken to secure cutting-edge equipment. This will enable healthcare providers to re-invest in ageing technology and adopt advancements in technology and improve clinical outcomes.

21. Provide Import Duty relief for Lifesaving Equipment

There are several anomalies involved in the current classification of lifesaving equipment leading to variations in import duties for similar set of products. Hence in such cases, there is a need to revisit the classification in order to make the import duty on lifesaving equipment consistently low or even exempt lifesaving equipment from duty completely to ensure lower cost of healthcare services delivery to the common man. Tax incentives could be provided to domestic manufacturers of medical devices. The Indian market would be more attractive to global manufacturers once tax rates are liberalised along with measures taken to improve ease of doing business.

In view of the ongoing pandemic situation in India, there is a global increase in demand for life saving medical equipment. The shelf life of these equipment is limited and considering the advancement in technology, the medical equipments are getting outdated at a very fast pace. Therefore, depreciation rate for all life-saving medical equipment currently eligible for 40% depreciation should be increased to 60%.

22. Incentivize Medical Value Travel for the healthcare sector to contribute to India’s foreign exchange reserves

Medical Tourism is expected to more than double in size to reach a size of USD 10.6 bn from USD 4 bn in 2015. To further aid the growth of this segment, we recommend the following measures:

(1) Policy support to encourage and facilitate medical value travel to India, and develop medical value travel as an organised sector.

(2) Launch a “Heal in India” campaign, on the lines of the very successful “Make in India” campaign.

(3) Facilitation by Indian Embassies abroad: Our Indian embassies and missions abroad can run dedicated Medical Value Travel desks, acting as a single stop for comprehensive information relating to partners, procedures, costs and visas. The embassies could also facilitate road shows and events in partnership with private healthcare players abroad and promote India as a major destination for Medical Value Travel.

(4) Welcome desks at all Indian Airports: Establishing a single-stop facilitation counter at all key Indian airports handling International Traffic will go a long way in supporting travellers at the first point of their arrival in India.

(5) Insurance recognition for Indian providers: Getting international insurance companies to recognise the clinical programs run by Indian healthcare providers, who have achieved the highest standards of quality and patient safety, will encourage international patients to visit India. The Government of India should facilitate such recognition by

International Insurers, by placing this point as an agenda for discussion in Bilateral Discussions on Economy, Trade and Commerce with other countries.

(6) Income from the services provided by Healthcare service provider to foreign nationals in India who come for Medical Treatment (in India) should be treated as export of services and deduction should be given not only under Chapter VI A but also ensure that foreign currency income earned is fully exempt from taxes. The said move will boost Medical tourism in India thereby increasing foreign currency reserves for the country.

23. Increase in period available for claiming EPCG credit by three years

Under current rules, any importer under an EPCG license has to meet the export obligations equivalent to 6 times of the import duty saved under EPCG within 6 years.

However, during 2020 & 2021 (and possibly till March 2022), International travel has been severely affected by Covid-19 restrictions on travel. The healthcare industry was hugely affected as India was one of the largest healthcare services exporters at affordable prices.

Due to this huge loss of international revenue, export obligations could not be met in the last 2 years. All importers in the health care industry are bound to face huge liabilities on this account. Also, it is not possible to cover such a huge loss incurred in 2 years in any one 1 year or so.

It is earnestly requested that the window of 6 years provided for fulfilment of foreign exchange earnings obligations under the Export Promotion of Capital Goods scheme (which stipulates that an importer of medical equipment should fulfil foreign exchange earning obligations which is equivalent to 6 times of the import duty component saved while importing medical equipment) should be relaxed for a further period of three years for the healthcare sector since restrictions on international travel imposed since the onset of the COVID-19 pandemic since March 2020 has severely impacted medical value travel flows to India and led to a significant decline in foreign exchange earnings.

24. Need for allowing tax deductibility of CSR spends made by Corporates

The Ministry of Corporate Affairs (“MCA”) notified amendments to Section 135 of the Companies Act, 2013 along with the applicable Rules which have made some fundamental changes to the CSR Rules, 2014 on 22nd January 2021 .

Prior to this notification, CSR provisions in the Companies Act was based on the principle of ‘comply, or explain’ -- where a company could either spend the minimum CSR amount constituting 2% of the average net profits of the three immediately preceding financial years or disclose the reasons for failing to do so. The new regime has departed from ‘comply or explain’ and has made CSR a mandatory obligation of companies apart from imposing stringent monetary penalties for non-compliance with CSR provisions. Despite making these changes, no corresponding amendments have been made to Section 37(1) of the Income Tax Act, 1961, which states that CSR expenditure is not tax deductible.

Through Circular No. 01/2015[1], the Central Board of Direct Taxes ("CBDT") clarified that as CSR expenditure "is not incurred for the purposes of carrying on business", such expenditure cannot be allowed as a deduction.

It is also pertinent to note that the rationale given in the CBDT Circular was under the earlier 'comply or explain' regime as far as CSR spends by corporates is concerned. This rationale is no longer relevant today, as CSR is now a mandatory levy for every profit-making company. Obligating companies to spend 2% of net profits on CSR, but not allowing tax deductibility of such legitimate expenditure is harsh and unfair to companies – particularly when such expenditure could be availed as a tax deduction under various provisions of the Income Tax Act, prior to the introduction of Section 135 of the Companies Act, 2013.

FINTECH

1. Fast-track the Account-Aggregator framework

The Account Aggregator (AA) framework that provides data aggregation and sharing services based on the explicit consent of data owners, as approved by the RBI in 2016, was recently launched and some of the largest banks in India have announced their participation in the same. However, to make this initiative a complete success, all banks in the country must join the framework in a timely manner. Hence, industry submits that a strong push from the Government and RBI for time bound real world / production launch of all the banks would go a long way in implementing and operationalising a faster and orderly launch of the AA framework, which is the need of the hour.

Why the AA ecosystem is important

AAs provide customers control over their data, allowing them to aggregate and selectively share their data with different service providers for their own benefit. A trusted, secure, and interoperable framework is key to driving broader financial inclusion, especially to those who have never availed formal credit.

Accelerating the AA ecosystem

On Sep 2, 2021, 4 banks (HDFC, ICICI, Axis, IndusInd) went live on the AA ecosystem as Financial Information Providers (FIPs) and Financial Information Users (FIUs). Since then, four more banks and a few NBFCs have joined the ecosystem. Over 20,000 unique accounts were linked, and 40,000 consent requests were raised as of September 30, 2021. All identified postlaunch technical and operational issues have been resolved, and the system is now ready to scale. These early adopters are private sector banks, and collectively represent ~ 35% of the country's CASA accounts.

Driving scale in the ecosystem requires addressing certain issues as listed below –

S No.	Issue	Suggestion(s)

1	Lack of participation in AA ecosystem by Public Sector Banks	Support from RBI to nudge its regulated entities PSU Banks – who dominate the CASA base in India – to participate as FIPs and FIUs in a time-bound manner. Cooperative and regional banks to participate to allow their customers broader choice.
2	Need for regulated entities across financial sector to participate in AA ecosystem	Cross-regulatory cooperation to enable Other FSRs such as SEBI and IRDAI to issue directions to their REs to participate in the AA ecosystem, making AA the single source of truth for a data principal's financial data.
3	Need for data protection	The Privacy and Data Protection Bill to be enacted as a law to provide a legal basis to protect a data principal's interests and hold data fiduciaries accountable.
4	Need for appropriate consent patterns compliant with PDP and Non-personal data framework	Define additional consent categories such as time boxed consent and perpetual consent (details provided ahead)

Consent driven mechanics

Consent driven transactions are certainly unravelling far more use cases today, with the availability of advanced data processing and analytics capabilities - including machine learning and AI techniques. However, there is a need to create appropriate consent patterns - that stay compliant with PDP and Non-personal data framework. Most consent driven transactions that are available in India today can be grouped into

- Upfront consent (taken at the time of opting in or signing up for a service. Ex: Banks having access to Cibil/Bureau data)
- Just in Time consent (most consent transactions - including the OTP based consent for GST data. Consent is captured at the time when data needs to be accessed)

Both of these, with consent revocation at any point in time being with the data owner. There is however the need to define additional consent categories

- Time-boxed consent: Most of the consent requests revolve around specific use cases. Consider business loans as an example. Consent to GST data is today captured to evaluate, among other things, the risk associated with the business. Financial institutions today need to keep a tab on this risk through the tenure of the loan. Having a Just-In-Time consent for such transactions proves to be limiting and an operational overhead. Having a time-boxed consent sets the consent duration through the tenure of the loan, which thereby simplifies life for the taxpayer as well as the financial institution/consumer of such consent data

- Perpetual consent (and extension of the timeboxed consent). This is a consent 'on' until the data owner turns off the consent.

In all these approaches, the data owner should have the right at any time to turn off consent (whether it was Upfront, Just-in-time, Time-boxed or Perpetual)

On the subject of consent, it may be noted that the current mechanism provides a way to approve one consent at a time. For a cash flow lending it would need a consent to pull invoice history for loan underwriting and another consent prior to disbursement for credit monitoring. These two consents can be merged to ask a master consent for the borrower to approve prior to underwriting. This can be specific to cash flow-based lending with credit monitoring.

Advantages of master consent are

1. The same CASA and GSTN data would be shared for both underwriting and credit monitoring.
2. Reduction in touch points of the borrower decreasing drop-offs.

2. Enable GSTN as a Financial Information Provider

GSTN should be a high priority project, given the urgency to get SMEs back on their feet as the economy recovers from the COVID shocks.

GST as FIP

GST as a FIP in AA ecosystem can significantly boost cash flow lending for MSME sector and better underwriting & lending models can be built leveraging on GST data along with CASA data from various banks participating as FIP in AA ecosystem. This is a much-required activity in boosting MSME with timely credit.

We therefore feel the need for a formal notification / other mechanism between relevant ministries / regulators to enable GSTN to be a bona fide FIP. Further, government must also look at making e-way bill also a part of AA ecosystem by participating as FIP.

The progress made so far in this direction is as under:

- Updated specifications to pull data
- Tech POC implementation using GSP as intermediary & AA specifications is completed.
- Successfully pulled GSTR1, GSTR3, GSTR3B invoices for the period of 12 months.

However, there are certain technical and operational challenges that need to be addressed on priority.

Technical challenges / issues and suggestions		
S No.	Issue	Suggestion
1	Discovery of GSTN using PAN number is not seamless/via an API. It must be done via screen scraping mechanism with a captcha.	Have an API based discovery of associated GSTN via PAN number.
2	API access to pull GSTN invoices is by default disabled, borrowers are expected to enable it and then approve consent. Many borrowers do not know how/where to enable it and what it means.	Reduce friction to the borrower by making API enabled default as true.
3	Post disbursal of loan, lenders need to assess the borrowers frequently for credit monitoring. For this purpose, recurring invoice history is needed from the borrower till the end of loan tenure. This means a session must be established with GSTN to pull the data. Current mechanism expires the session in 30 days, making the borrower to enter OTP every 30 days.	Keep the validity of session to 365 days instead of current implementation of 30 days.
Operational challenges / issues and suggestions		
S No	Issue	Suggestion
1	When a seller (borrower) raises an invoice, there is no mechanism to validate the authenticity of this invoice by the buyer. Lack of this, lenders must look for other data to approve the invoice as collateral.	A mechanism for the buyer to approve the invoice from the seller as soon as its filed.

Further, it may be noted that currently available public data (via GSTN portal) around GST and their filings is proving to be very useful across multiple use cases. Taxpayers' behaviour (measured via filing patterns) is finding takers across multiple use cases - from Credit decisioning to vendor evaluation to customer risk to general counter party evaluation. Based on this data, many fintech and AI/ML providers are also modelling risk scores. While access to this kind of data is very useful and welcome, there are some additional data points that will significantly help the various use cases. Some of these are

- Tax-payer size categorisation (buckets). This categorisation can either be on annual revenue basis (or GST tax paid basis). Ex: Classifying each taxpayer as belonging to one of the revenue buckets: 0-50L, 50L-1Cr, 1Cr-5Cr, 5Cr-50Cr, 50Cr-500Cr, >500Cr
- Information on GST disputes/Credit notes issued by tax-payer per month (aggregate counts/aggregate value, per taxpayer)
- GST compliance rating, which has been talked about for a while now.

3. Promote use of Central KYC

Explicit mention by the Department of Revenue in the Prevention of Money Laundering Act/Rules thereunder and by RBI in Master KYC Directions is required to the effect that CKYC Registry API level checks should be considered as “full KYC” by Banks and NBFCs in a completely digital and non-face-to-face mode, without having the need to conduct any faceto-face verification, further KYC checks or due diligence. As an additional risk mitigation measure, it is suggested that in addition to or combination with the CKYC Registry API level checks, a verification through a one-time password (OTP) sent to the registered mobile number of the said individual (as available in the CKYC records) is carried out so as to mitigate any residual risks. Since the mobile number would have been captured and already verified by a bank/regulated entity before uploading on the CKYC portal, it may be safe to rely on such information for the further checks as mentioned above.

4. Offer specific tax incentives to start-ups including fintech start-ups

- Due to the pandemic start-ups have not really been able to make use of the benefits of start-up registration under DPIIT. The income tax holiday should be extended by two more years to those whose benefits would expire in this time period.
- Further, all start-ups registered under DPIIT should automatically get tax exemption rather than going through the current process of inter-ministerial board approval.
- Special ESOP tax treatment announced by Government for registered Start-Up to be extended to larger group of companies e.g., MSME
- LTCG treatment of share sale to be equivalent for Public Market equity sales and Private shares (all start-ups and investors benefit).

5. Relook at cap of 18% on priority sector loans to MSMEs and for CGTMSE coverage

The current priority sector loans to MSMEs have a cap of 18% IRR to the end customer. Fintech/ Smaller NBFC’s current cost of borrowing is upwards of 14% making it difficult to get the PSL benefits despite serving the same segment. It is therefore proposed to make Cost+10% as a cap that will expand the coverage, make more MSMEs eligible for PSL benefits and overall help in growing the ecosystem.

The CGTMSE scheme from SIDBI has capped the ROI for eligibility coverage at 18% for eligibility since Aug' 21. As mentioned above, Fintech/ Smaller NBFC’s current cost of borrowing is upwards of 14% and hence it is requested that for eligibility and coverage under CGTMSE scheme Cost+ 10% may be considered as the cap.

6. Extend trade credit insurance to PSL Loans or Loans sub 10 Lacs

The Insurance Regulatory and Development Authority of India (IRDAI) on 8 September issued revised guidelines for trade credit insurance that will come into effect on 1 November 2021. It would cover a portfolio of buyers and indemnifies an agreed percentage of an invoice or invoices that remain unpaid as a result of protracted default or insolvency. The cover may include commercial risks such as insolvency or protracted default of the buyers of goods and services. The trade credit policy will also cover rejection by the buyer after the delivery, subject to conditions of a policy contract.

Internationally credit default swaps (CDS) are very popular mode of insurance towards such risks. The recommendation is to extend this to PSL Loans or Loans sub 10 Lacs and thus promote micro businesses funding which is today not possible due to high delinquency and high borrowing rate of NBFCs.

7. Provide PSL classification for Commercial Credit Card Program

Inclusion of a commercial credit card program involving B2B payments by a corporate to a MSME supplier of goods and/or services for Priority Sector Lending (PSL) benefits for the banks. By subscribing to a commercial credit card program of a bank the corporate can make an early invoice payment by leveraging the bank credit in lieu of the trade credit from the supplier.

A mid-to-large sized corporate purchases goods and/or services from a MSME supplier. The supplier raises an invoice on the corporate, usually the b2b purchase involves a deferred payment term (i.e. payment post 30-90 days from the date of invoice) negotiated by the buyer with the supplier. In the real world these B2B payments may get further delayed, creating a financial stress in the supply chain for the MSME.

By subscribing to the commercial credit card program, the corporate is able to make timely payments to the MSME supplier, thereby easing the pains of delayed payments. Further, the banks and the payment networks have been continuously working to provide value added services like payment reconciliations, etc. The credit card programs help, both the corporate and the MSME supplier, to enhance cash-flow visibility and also improve process efficiencies related to payment and collection of invoices. The card payment solution also helps to bridge the trust between the corporate and the MSME supplier and vice versa.

The increased penetration of digital payments in the B2B payments provides the banks with a better understanding of the business health of the MSME supplier and thereby facilitate in the banks providing better services to the MSMEs. In the current business and policy environment, where the focus in on helping MSME to set-up business, to run an efficient operation and to grow business, extension of the PSL status to the commercial card programs would help in ensuring a broader participation of banks, networks and technology enablers and a more inclusive growth.

8. Review Payments Infrastructure Development Fund Subsidy Guidelines

The objective of PIDF is to increase the number of acceptance devices multi-fold in the country. The Scheme is expected to benefit the acquiring banks / non-banks and merchants by lowering overall acceptance infrastructure cost. However, there is need to review the criteria for eligibility for subsidy.

Currently in the PIDF scheme, to be eligible for a subsidy, there should be minimum 50 transactions over a period of 90 days and active status shall be minimum usage for 10 days over the 90-day period. However, for tier 3 and below areas, it is very difficult to achieve the criteria. Most of the devices deployed might not be eligible for the subsidy. It is suggested that for BQR the limit should be a minimum of 5 transactions to begin with. Also, a parity should be maintained while providing subsidy for deployment of QR infrastructure and equal weightage to be provided to UPI and Bharat QR.

9. Review MDR policy

To promote digital adoption specially from small retailers/ merchants, the government abolished the Merchant Discount Rate (MDR) fee – a fee levied upon merchants by banks for providing Payment Infrastructure – on RuPay Cards and UPI transactions from 1 January 2020. The Rupay Card transactions include the payments made to the merchants against purchase of goods & services and UPI transactions include P2P and P2M transactions performed by the users. This caused NPCI to revise the interchange fee and PSP fee to zero for debit card payments through RuPay and for UPI payments in the country, leaving players with no revenue model around the infrastructure.

For accelerating digitisation of merchants there is a need to incentivise both payment service providers as well as users of digital payments so that repeat behaviour in terms of usage gets established.

Government may review the MDR policy as this would encourage banks and PSPs to further intensify efforts in building a wider last mile reach as they would see the possibility of them being able to recover their costs of laying down the network. UPI enabled QR codes is one of the lowest costs and highly scalable model to build the reach and adoption of digital payments in the hinterlands. This could prove to be the single biggest enabler, which would accelerate inclusion of rural merchants into the payment's ecosystem.

MDR is necessary because it funds the acceptance, servicing acquired users and payment infrastructure. India has a highly underpenetrated acceptance ecosystem and there is a need to incentivise the acquirers of merchants so that it can be scaled up quickly.

Additionally, there is a need to introduce ongoing usage incentives for digital payments for merchants in rural geographies. This would help build the habit of acceptance. A higher propensity to accept digital payments accelerates building of both sides of the network- an increase in the number of active merchants on the supply side and on the demand side, more consumers will come into the fold because of more active acceptance points.

As the benefits of digital payments far outweigh the investments made by way of subsidy, Government must consider the same as well as review the MDR policy.

10. Consideration of sending App based notification for transactions instead of SMS notifications

This is with reference Para 5 of RBI circular on Customer Protection – Limiting Liability of Customers in Unauthorised Electronic Banking Transactions dated July 6, 2017. The said Para mandates banks register its customers for SMS alerts for electronic banking transaction. We request for giving an exception to requirement of sending SMS to customers if the same notification is sent to the customer through App based notification. Start-ups in Fintech and
Banking space have invested heavily in developing Apps and making App based
communication secure. App based notifications are more effective as compared to SMS notification and hence should be considered.

11. Cost of adding money in PPI/Wallet should be similar to bank transfers instead of merchant transactions

PPI users add money to PPI m-wallet using various digital instruments such as debit card, UPI, net banking and credit card. Presently, “Add Money” transactions on PPI are considered as Person to Merchant (P2M) transactions instead of Bank transfers. Since, PPIs issuers are RBI licensed payments system operators or Banks, adding money to a PPI wallet should be treated at par with inter-bank transfers from one payment instrument (Debit Card, UPI, Net Banking and Credit card) to another payment instrument (PPI) and hence IMPS charges should be applicable. Furthermore, RBI Master Direction on Issuance and Operation of Prepaid Payment Instruments (Updated as on Feb 28, 2020) does not prescribe add money transactions to PPI to be categorized as merchant transactions and does not permit the application of any charges by Banks to PPI on add money transactions.

Applicable MDR is charged on the P2M transactions; however, for the bank transfers the mode specific bank transfer charges are applicable. Presently, add money transactions to wallets are classified as P2M transactions and therefore MDR is charged instead of the applicable bank transfers charges. This does not appear to be logical since wallets act as intermediary for a transaction between a customer and a merchant, wallets are not merchants themselves. MDR charging on ‘Add money’ results in double MDR payment liability on single purchase of goods and services, one payable by PPI issuer to bank & second by end merchant to PPI acquirer. For instance, a PPI user adds INR 3000 on m-wallet using debit card, which leads to payment of add money cost (MDR) by PPI issuer ~0.9% (INR 27) to acquiring bank. Subsequently, when PPI user scans QR code and pays INR 3000 at merchant then merchant is required to pay 0.9% (INR 27) to the acquirer PPI. This results in an economically un-viable scenario for PPI issuers & acquirers. Further, as per NPCI circular no NPCI/201920/BBPS/28 dated 16th March 2020 on Bharat Bill Payment System: Interchange and Customer Convenience Fees (CCF) of all Biller categories, the Consumer Convenience Fee for Electronic ON-US transactions is NIL. The biller categories include Utilities like Gas pipeline, water, electricity as well as Telecom, DTH, Gas-cylinder, FASTag recharge, loan repayment, credit card, mutual fund, insurance, cable, housing society, educational fees, subscription fee of digital, OTT, offline and other billers of similar nature, hospital collection, clubs and association, recurring deposits/EMI deposits/instalment deposits and Municipal taxes and services. This impairs wallet issuing institutions as they are charged with burden of MDR at the time of loading of wallet but are not permitted to charge customer convenience fees to customers while making Bill payments using wallets for Electronic ON-US transaction.

12. Issue clarification regarding exemption from applicability of tax deducted at source provisions under section 194N of the Income-tax Act, 1961 on withdrawal of cash by any business correspondent Agent of a banking company / co-operative society

Section 194N of the Act, as substituted by the Finance Act, 2020, provided that in the case of a recipient who has not filed the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit to file return of income under section 139(1) of the Act has expired, immediately preceding the previous year in which the payment of the sum is made to him, the TDS shall be deducted –

- at the rate of two percent if the aggregate amount of cash withdrawn exceeds INR twenty lakh rupees during the previous year but does not exceed INR one crore; or
- at the rate of five percent if the aggregate amount of cash withdrawn exceeds INR one crore rupees during the previous year

It may be noted that this section is not applicable to any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking. Accordingly, no TDS shall be deducted on withdrawal of cash by any business correspondent.

In practice, a BC Agent withdrawing cash from his local Bank B (other than the BC Sponsor Bank with which he is associated as BC Agent) is not able to claim exemption from the applicability of provisions of section 194N of the Act as there is no standard procedure or instructions issued by the bank to recognize the BC of another banking institution for the purpose of the exemption. A letter from the BC Sponsor Bank with which a BC is associated is not being recognised by another banking institution. This results in genuine hardship for the BC Agent who have to withdraw cash from banking institutions with whom they are not necessarily associated as BC Agent.

The BC Agent is remunerated by way of a small fee / commission (0.50%) per transaction whereas TDS is deducted at the rate of 2% / 5% on the entire amount of cash withdrawn. This results in a huge blockage of funds for at least 18 months to the extent of 400% to 1000% of earnings for BC Agents, which exceeds the income that they earn from the banking transactions of distributing DBT or microATM services.

In light of the above, Ministry of Finance is requested provide a clarification that the exemption under section 194N of the Act is available to the BC Agents associated with any banking institution and not just to the BCs associated with the sponsor banking institution. The clarification should include an advisory to all banks to follow the same in letter and spirit.

13. Provide separate deduction for term insurance

Ideally, the life insurance cover of an individual should equal at least 10-15 times of his annual income. The most cost-effective way of buying such large life covers with low premiums is to buy term insurance policies. Hence, the budget should introduce a separate section for term insurance policies (instead of having it in the overcrowded Sec 80C). This will incentivise consumers to buy term insurance policies and thereby, get adequate life cover for their families' future.

14. Introduce a separate deduction for home loan repayments

Currently, the repayment of principal component of home loans is eligible for tax deduction under Section 80C whereas the repayment of interest component of up to Rs 2 lakh qualifies for tax deduction under Section 24B. However, with multiple investment options, small savings instruments, insurance policies, pension plans, etc crowding Section 80C, many home loan borrowers remain bereft of availing tax deduction on their entire home loan principal repayments. Similarly, the upper cap on Section 24B becomes inadequate for a large number of home loan borrowers, especially in their initial years of their home loan tenure. Hence, there should be a separate section for home loans repayment with a combined maximum deduction of up to Rs 5 lakh for both principal and interest components. This would boost home buyers' sentiment and thereby, increase demand in the housing industry.

15. Simplify processing of trade documents in banking system

During this unusual Covid period, banking system has displayed great resiliency in providing continued services. Many services are now being delivered digitally and our MSME sector adapted the same. However, in certain processes – particularly in the area of Trade Finance and issuance of Bank Guarantees, contact less delivery has not been possible. We feel that this is the right time for driving digital processes.

While a couple of initiatives taken by Indian Banks Association (IBA) are praiseworthy, the same have not taken off because corresponding simplification in process has not been initiated by Government Departments. For example, by leveraging Automated e-Stamping System (AeS) launched by banks under IBA's Trade Digitization Project, a few forward looking banks are in a position to generate electronic Bank Guarantee (e-BG); but in the absence of the major beneficiaries like Government Departments not being in a position to accept e-BG, there is no choice but to follow the age old manual process of physical bank guarantee.

MSME sector players often mention that Government Departments require submission of paper-based Bank Guarantee and no modification in the Government processes has taken place so far. While we agree that BG is a financial document and only the genuine and authentic document would have to be used, IBA model of e-BG with several checks and balance is worth considering.

- It is suggested that Dept of Customs- the largest user of BG in the country should be enabled for e-BG on a pilot basis as per the process finalized by IBA.
- The same applies for institutions like Railways, NHAI and Oil/ Gas Marketing Companies (HPCL, BPCL, IOCL, GAIL) etc.
- Keeping a long-term view, the e-BG should also be in globally accepted format so that technology integration remains simple.

All the banks in the country dealing with import / export financing are familiar with e-BG used in international business. But domestic business is totally manual. Another example is the process of e-way Bill/ e-invoice verification by banks for invoice financing. In the current process, banks find it difficult to verify the authenticity without explicit consent from the supplier on every occasion. While privacy is well protected, strictness of its implementation goes against the same entity, because the bank financing the same transactions find it a challenge to obtain the consent in the absence of any specific instruction from GST authorities. It is gathered that a solution implemented on a pilot basis by 5-6 six banks with SWIFT India has not taken off for the same reason. Therefore, a review of the consent architecture with some special provisions for transactions under bank financing appears necessary.

POWER

1. Introduction of Group Relief for treating Parent and Subsidiary Special Purpose Vehicle (SPVs) as one assessee for the purposes of Income Tax

Issue

Companies engaged in the generation of power and development of infrastructure projects are generally organized as SPVs which are owned by a parent. This is essential for the purpose of project finance as also considering the distinctive nature of each infrastructure project. As a result, for purposes of income-tax assessments, each SPV is treated as a distinct assessee and the profits / losses of one SPV are not available for set off against the profits / losses of other SPVs or of the parent. This creates a mismatch whereby while certain SPVs are necessarily incurring losses (in the initial years of any infrastructure project), the other SPVs or the parent forming part of the Group are required to pay income-tax on their profits.

Recommendation

It is recommended that Group Relief be introduced at least for companies engaged in the infrastructure including Power Sector such that at the option of the parent, the entire Group of the parent and subsidiary SPVs is treated as one assessee for the purpose of income-tax.

Justification

This anomaly is overcome in most countries by instituting Group Taxation. The concept of Group Taxation is to permit companies or SPVs in which the equity holding exceeds a specified percentage, say 75%, to be treated along with their parent and other SPVs as one Group so that the profits and losses of individual SPVs are set off against each other and the net profit of the Group is charged to tax.
Group Relief is available under the tax laws of most countries including USA, UK, France, etc. and is an essential reform for the purpose of modernizing India's tax laws and bringing them on par with those of the world. On the Regulatory and Accounting fronts the law has already been amended for example, under the Companies Act 2013, the parent company is mandatorily required to prepare consolidated financial statement including therein accounts of all its subsidiaries and associates. The consolidated financial statements are required to be laid before the annual general meeting (Section 129).

NBFC

DIRECT TAX ISSUES AND SUGGESTIONS

1. Amendment to Section 43D – Taxation of Interest income on realization basis in case of Non-Performing loans and Covid 19 moratorium cases.

a. Section 43D of the Income Tax Act, 1961 specifically provides for taxation of interest income from non-performing loans, having regard to prudential guidelines of RBI / NHB, to be taxed on realization basis or credit to Statement of Profit and Loss, whichever is earlier. This provision is applicable to all banks, financial institutions, NBFCs and HFCs.

However, it may be noted that all the HFCs and NBFCs have adopted the Ind AS accounting regime wherein interest income has to be recognized on the net carrying value of Stage 3 loans, in the Statement of Profit and Loss, whether or not the company has received / realized such interest income. This creates an anomaly as the HFCs / NBFCs end up paying tax on such income which is not received / realized from credit impaired accounts since credited to the Statement of Profit and Loss. Further, it defeats the very intent of the introduction of the section in the Income Tax Act, 1961. Hence, a suitable amendment in view of adoption of Ind AS Accounting Standard by HFCs and NBFCs will be much appreciated.

Further, it is highlighted that income recognition in case of such bad or doubtful loans should be aligned with the rules and guidelines issued by RBI / NHB. Rule 6EB defines doubtful asset, non-performing and loss assets in case of public companies regulated by NHB. However, there is inconsistency in the definitions under aforesaid rule when compared to the extant guidelines prescribed by RBI / NHB. Under RBI / NHB guidelines, a loan is classified as nonperforming once the instalment receivable is past due 90 days whereas Rule 6EB prescribes 180 days (6 months). This may result into conflict between accounting and taxation of such income and litigations. Accordingly, we recommend that these rules should be aligned by amending Rule 6EB in the spirit of Section 43D and extant guidelines issued by RBI / NHB in this regard.

b. The Covid -19 outbreak had crippled the entire economy as lockdown was initiated throughout the nation. The Reserve bank of India had introduced COVID-19 Regulatory Package dated March 27, 2020 and April 17, 2020, to offer a moratorium on the payment of installments falling due between March 1, 2020 and May 31, 2020 ('moratorium period') to eligible borrowers. The said moratorium was further extended to August 31, 2020. During this period, the assessee HFCs / NBFCs has capitalized the interest income on such loans where moratorium was granted without actual receipt of interest income.

Thus, this will create undue hardships to the assessee HFCs / NBFCs to pay tax on such interest income wherein the actual receipt of the same is not realized.

► ***It is thus suggested that the section 43D be suitably amended to tax interest income from Non-performing loans, classified as Stage 3 loans, of HFCs / NBFCs under Ind AS accounting framework to be taxed solely on receipt basis.***

► ***It is recommended that Rule 6EB shall be suitably amended in line with Extant guidelines issued by RBI / NHB having regard to classification of doubtful, non-performing and loss asset so as to make the rule harmonious with intent of Section 43D.***

► ***Further, interest on loans under moratorium for the moratorium period, as per RBI Covid 19 Regulatory package, shall be charged to tax only on receipt basis.***

2. Taxability of Income on transfer of loans / securitisation transactions under Ind AS

The NBFCs including HFCs have transited to Indian Accounting Standards (converged to IFRS) (Ind AS) from FY 2018-2019. In transfer of loans / Securitisation, the originator of the pool of loans typically accrues the excess interest spread (interest differential over the weighted average interest rate of the pool) over the life of the pool of the loan on time proportion basis. However, under Ind AS, the same needs to get accounted on upfront basis though the same is actually realised over the period of time in future.

It may be noted that income tax shall be applied on real income which is realized in accordance with the contractual arrangement. The upfront booking of income is mere book entry as required by the applicable accounting standard. In effect, the real income in such case is the income that is received over the period of time.

However, it may so happen that basis the accounting entry, the tax department may consider the same as taxable income on upfront basis since credited to the Statement of Profit and Loss. In addition, NBFCs / HFCs are exposed to the risk of penalty proceedings which will lead to litigation on the issue. Further, Reserve Bank of India in its Master direction on Transfer of Loans exposure / Securitisation of Standard Assets issued on September 24, 2021 has directed the NBFCs / HFCs that have adopted Ind AS accounting must deduct such unrealized upfront gains from the owned funds while computing regulatory capital and should be recognized as capital only on realization / receipt.

► ***It is recommended that the Act shall be suitably amended to exclude such unrealized upfront gains on Securitisation from taxable income and should be taxed only on realization basis based on real income theory.***

3. Provisions of Section 194IA – TDS on property transactions – Not to apply to SARFAESI sale cases

Section 194IA of the Act was introduced vide Finance Act, 2013 with a view to improved reporting of transactions and taxation of capital gains. It was believed that transactions of immovable properties are usually undervalued and under-reported with the transacting parties refrained from reporting their PAN while entering into such transactions.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (SARFAESI Act 2002) allows bank and other financial institutions including Housing finance companies and NBFCs to recover their loans by taking possession/auction of assets which were kept as security by the defaulting borrowers. Under the SARFAESI Act, there is a Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) to register security interest created by banks and financial institutions covered under the SARFAESI Act.

Thus, the SARFAESI Act is, in essence, a mechanism wherein the lender company can recover its dues from the defaulting borrower and pass on clear title of the secured property to the new buyer. However, when TDS is deducted from the sale consideration from such SARFAESI sale, the credit of the same is passed on the borrower and the lender company receives less consideration which eventually becomes irrecoverable resulting into loss.

Further, many times, the buyers deduct taxes and report the same in the name of the lender company. Even in these cases, the credit for TDS is not available to the lender company as it is not the transferor of the property and the actual capital gais is assessed in the hands of the defaulting borrower. This results into loss for the lender company.

Lender should be allowed to claim such tax credit, even though the income will be taxed in the hands of the borrower. This will result into recovery of loan to the extent of TDS credit.

► ***Accordingly, we recommend that by way of amendment under Section 194IA, all property sale transactions under SARFAESI shall be exempted from withholding provisions.***

► ***Alternatively, the section can be suitably amended to enforce withholding in the name of the lender company along with permitting the lender company to claim the TDS in its income tax return without considering the capital gains as income.***

4. Practical issues in relation to TDS under Section 206AB

Finance Act 2021 has introduced section 206AB and 206CCA which provides for higher rates for tax for TDS and TCS for a person who has not filed the income tax return in the two preceding years for which the time limit of filing the return u/s 139(1) has expired and the aggregate of TDS and TCS in each of the two years is Rs. 50,000 or more.

Further, to help the taxpayers of TDS and TCS to follow the Compliances of these sections, the IT Department has introduced a new "Compliance Check Functionality for Section 206AB and 206CCA". This new tool enables the tax deductors / collectors to verify the specified person. It is expected that this functionality will ease the compliance burden on taxpayers.

The utility has been provided with bulk upload facility in case the number of records to be checked are voluminous. However, the number of records that can be checked under bulk upload is restricted to 10,000 cases only. Thus, this creates a practical difficulty in case of companies having large shareholder or depositor data base as the details are required to be submitted multiple times.

Further, it is practically impossible for a listed company to validate the return filing status of shareholders while remitting the dividend, which is generally a very short window after the record date. The turnaround time from declaration time to disbursement time is too short to check DTAA, PAN, Residency; 15G/15H etc due to which additional checking of return filing of lakhs of shareholders would not be feasible.

It is therefore requested to reconsider this restriction and provide additional bandwidth, say one lakh records for upload and checking purpose.

► ***Accordingly, we request that the utility must be updated for taking upload and providing results for larger number of records rather than restricting to 10,000 cases only.***

5. Dividend payments to Foreign Institutional Investors / Foreign portfolio investors (FII / FPI)

Dividend payments to FIIs / FPIs I subject to TDS under provisions of Section 196D at 20% rate. The aforesaid section was amended vide Finance Act 2021 to grant benefit of lower rate deduction in case of applicability of relevant Double tax avoidance agreements (DTAA) subject to recipient FII / FPI submitting necessary documents like Form 10F, Tax residency certificate (TRC), no PE declaration etc.

This has casted onerous responsibility on the deductors of collecting and maintaining documents and then applying the correct rate of taxes in these cases. This also becomes a herculean task especially in cases where there large number of FII / FPI shareholders. Also, for the shareholders, they are required to submit the same details to each deductor where they have made investments.

Hence, a repository of such information is highly required for ease of compliance and a common repository of necessary documents to the deductors will ensure consistency of the position across Corporates and avoid multiple submissions by investors. Further, the department can themselves, confirm the applicable rates based on documents submitted by the investors, to provide clarity and avoid future litigations.

► ***A central repository of information shall be made available in case of FIIs / FPIs for assistance and proper compliance of the law in relation to TDS compliance.***

6. Increase in threshold for Non deduction of TDS on Interest in case of Fixed deposits with HFCs

Interest income from fixed deposits is subject to withholding taxes at the rate of 10% under section 194A of the Income tax Act, 1961subject to threshold of Rs. 10,000 for non-deduction in case of Banks including Co-operative banks, post offices etc. However, the aforesaid limit is restricted to Rs. 5,000 in case of HFCs and NBFCs.

Finance Act 2018, further, increased the aforesaid threshold to Rs. 50,000 in case of deposits held by Senior citizens.

It may be noted that Fixed deposits accepted by HFCs are subject to NHB regulations and therefore should be on par with the banks, cooperative banks, post offices etc.

► ***It is recommended that the treatment of threshold for Non deduction of TDS on Interest in case of Fixed deposits in case of HFCs shall be at par with Banks, post offices etc.***

7. Exemption of Interest income from Time / Fixed deposits.

Section 80TTA allows deduction upto Rs. 10,000 earned by assessee from savings bank account. A similar provision may be introduced to allow deduction from interest income earned from Time / Fixed Deposits held with banks including Co-operative banks, post offices and deposits with HFCs. This shall further channelize deposits to the banking system and HFCs.

► ***It is recommended to introduce Exemption of Interest income from Time / Fixed deposits with banks and HFCs.***

8. Exemption benefit on interest on deposits including fixed deposits under section 80TTB to be extended to deposits held with HFCs / NBFCs.

Section 80TTB was introduced by Finance Act 2018 to allow deduction upto Rs. 50,000 earned by specified assesses from savings bank account and fixed deposits held with specific entities like Banks including Co-operative banks and Post offices.

However, this benefit is not applicable for interest earned out of deposits held with HFCs and NBFCs.

It may be noted that such Fixed deposits accepted by HFCs / NBFCs are subject to NHB / RBI regulations and therefore should be on par with the banks, cooperative banks, post offices etc.

► ***It is recommended that the exemption benefit on Interest under section 80TTB shall also be made available in case of deposits held with HFCs / NBFCs to bring the treatment at par with Banks, post offices etc.***

9. Exemption from deduction of tax at source on interest income received by NBFCs under Section 194A of the IT Act 1961

As per section 194A of the IT Act, any person making payment of interest is required to deduct tax at source ('TDS'). There are certain exemptions under this section wherein the person making payment to various institutions like banking companies and financial institutions are not required to deduct TDS. Accordingly, any person making payment of interest to Banks is not required to deduct tax.

The NBFC Sector have grown significantly over last decades and has immensely contributed to Government objective of financial inclusion by lending to masses. However, no such exemption has been provided to NBFCs from the applicability of section 194A. Accordingly, tax is required to be deducted at the rate of 10 percent from interest paid to NBFCs.

Non-applicability of TDS on interest components paid/ payable to Banks put them as a more preferred lender as compared to the NBFCs as computation of interest in every EMI becomes more tedious for the borrower. We proposed that existing TDS exemptions be also extended to NBFC for below stated reasons

1.Level-playing field with Banks

We wish to highlight that like Banks, even NBFCs are regulated by Reserve Bank of India ('RBI') and are mandated to follow RBI guidelines. All deposit accepting NBFCs ('NBFC-D') and all systemically important non-deposit accepting NBFCs (NBFCs-ND-SI) are subject to prudential regulations such as capital adequacy requirements and provisioning norms along with reporting requirements, similar to banks. In-fact over the years, similar to Banks, RBI has been tightening the regulatory framework for NBFCs and has brought convergence in regulation for NBFCs with Banks i.e. registration requirements, higher capital norms, tightened asset classification and provisioning norms, credit concentration norms, enhanced reporting and supervision, corporate governance framework, etc. The RBI recently also introduced

Scalebased regulatory guidance for NBFC considering its growth in size, complexity and interconnectedness within financial sector.

Applying similar corollary, the benefit of the provisions of section 194A should also be extended to NBFCs i.e. the interest income earned by NBFCs should be exempted from any TDS requirement.

2.No Loss to the Revenue

No loss to the Revenue: Tax on the income earned by NBFCs could be paid in the form of 'advance-tax', ensuring no revenue loss to the Government.

3. Administrative hardship

Additionally, given the number of customers deducting TDS for NBFCs at times, the TDS deposited by the customer does not necessary gets reflected on government TDS portal and hence, claim of TDS for NBFCs gets partially rejected. Given the same, the Government should extent the said exemption to NBFCs as well. The TDS exemption will eliminate significant administrative hassles of reconciliations of thousands of TDS deductions at the transaction level.

4. Liquidity Impact

Generally, NBFCs engaged in financing activities operate on a very thin margin on the interest and many of these NBFCs have high cost of operations and low profitability. Deduction of taxes at source (by virtue of section 194A) on the gross interest income earned by such NBFCs puts them in a disadvantageous position as it creates cash flow constraints. Moreover, at times the tax deductible on the gross interest income is much higher than the profitability of the NBFCs ie to utilize the TDS of 10% on gross amount approximately 25% profit margin needs to be earned at the current tax rates. This results into significant refund position to the taxpayers.

5. Large Volumes

NBFCs carry on the financing business mostly with retail customers who could be large in number spread across various geographies and sectors, including unorganized sectors. Due to the large customer base, it becomes almost impossible for NBFCs to regularly follow up with every customer for TDS certificates every quarter (details of which are mandatory for claiming the same in the Income-tax return). Also, practically it is very difficult to collate and collect details from such customers

As stated above, TDS on interest earned by Banks is not applicable under section 194A and tax on the income earned by such banking units are paid in the form of 'advance-tax', ensuring no revenue loss to the Government. On similar corollary, such TDS exemption should be made applicable to NBFC's as well.

The above proposal will also help NBFCs to manage the liquidity crisis, especially in the current times when their profitability is severely impacted on account of Covid-19 lockdown. This will also significantly reduce the compliance burden on the NBFCs' and its customers, while ensuring no loss to the Government Revenue.

► ***It is recommended that as NBFCs are institutions similar to banks the benefit of the provisions of section 194A should also be extended to NBFCs. The interest income earned by NBFCs should be exempted from any TDS requirement.***

Section 194A(3)(iii)(a) be amended as follows:

3) The provisions of sub-section (1) shall not apply—

…………….

(*iii*) to such income credited or paid to—

(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank) New sub-clause (ba) can be added:

(ba) a deposit taking non-banking financial company or a systemically important nondeposit taking non-banking financial company.

OR

The Central Government notifies a non-banking financial company for the purpose of Section 194(5) of the Income tax Act, 1961 and provide that no deduction of tax be made from payment to such person.

10. Restriction on cash receipt in excess of INR 2 lakhs under Section 269ST – Extension of exemption to NBFC to bring parity with Banks

Section 269ST of the IT Act does not permit any person to receive INR 2 lakhs or more:

(a) in aggregate from a person in a day;
(b) in respect of a single transaction; or
(c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

The above provision does not apply to banks, cooperative banks and post office savings bank. At present, such rigorous provisions are applicable in case of NBFCs.

As NBFC lends to the un-banked populations such agriculture and micro segment, such restriction impacts the business operations. Inclusion of NBFCs akin to Banks, co-operative bank and post-office savings banks will facilitate business operations to a large extent and provide a level playing fields to Banks and NBFC.

Similar amendment to be carried out in Section 269SS and Section 269ST which provides restriction of cash receipts and repayment in respect of loans, deposits and specified sum.

► ***It is recommended that proviso (i) to Section 269ST be amended to exempt NBFC from the purview.***

Section 269ST

Provided that the provisions of this section shall not apply to—

(i) any receipt by— (a) Government;

(a) any banking company, post office savings bank or co-operative bank Further inclusion:

or non-banking financial company/ systemically important non deposit taking NBFC;

Similar amendment to be carried out in Section 269SS and Section 269T

11. a. Alignment of Special deduction on provision for bad and doubtful debts between Bank and NBFC – 36(1) (viia) of IT Act b. One-time accelerated deduction on account of provision for doubtful debts for FY202223

Section 36(1)(viia) of the IT Act provides that a bank shall be allowed a deduction of provision of bad and doubtful debts to the extent of 8.5 percent of the total income (computed before making any deduction under this section and Chapter VIA) and 10 percent of aggregate average advances made by rural branches of such bank.

Finance Act, 2016 extended similar benefit to NBFCs and permitted them to deduct provision of bad and doubtful debts to the extent of 5 percent of the total income (computed before making any deduction under this section and Chapter VIA).

Such disparity is unwarranted as the NBFCs are making active contribution to the Indian Government's objective of financial inclusion by providing financial access to the un-banked population in rural areas. Hence, NBFCs having its branches and service centres in rural areas and lending to the rural sector in the form of agricultural loans, equipment finance, etc, should also be equated to lending by rural branches of banks.

Further, a one-time accelerated deduction only for FY2021-22 will provide liquidity support to NBFCs.

Also, from the perspective of the revenue, such measures are timing difference only as the deduction of provision of bad and doubtful debts claimed under section 36(1)(viia) of the IT Act will be either set-off in the year of write-off or reversal in the year of recovery of such bad & doubtful debts. However, this measure will infuse the required liquidity support to the NBFC.

► ***It is recommended that the existing threshold of deduction of 5 percent of the total income under section 36(1)(viia) applicable to NBFCs should be increased to 8.5 percent and also rural branches of NBFCs be allowed to claim deduction of 10 percent of average rural advances made by rural branches of NBFCs so as to bring it at par with the banks.***

► ***Further, it is recommended that considering severe impact of Covid-19 on NBFC Sector, a one-time accelerated deduction on account of provision for bad and doubtful debts of 15% of total income be provided for FY2022-23.***

The aforementioned measure will provide the much-needed liquidity required for the NBFC sector. Section 36(1)(viia)(d) be amended as follows:

The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 — (viia) in respect of any provision for bad and doubtful debts made by:

……

(d) a non-banking financial company, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A)

Amended in Clause (d):

(d) a non-banking financial company, an amount not exceeding *eight and half percent per cent* of the total income (computed before making any deduction under this clause and Chapter VI-A) *and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of such institutions computed in the prescribed manner*:

Provided that a non-banking financial company is eligible to claim deduction upto fifteen percent of total income for the year ended 31st March, 2023

12. Carry forward of accumulated losses in case of amalgamation or demerger u/s 72A of the IT Act, as applicable for Banks only – to be extended to NBFC

Amalgamation of banking companies is specifically included in section 72A of the IT Act. Hence, carry forward of accumulated business losses and unabsorbed depreciation of amalgamating banking entity can be claimed by the amalgamated banking entity. However, NBFCs have been kept outside the ambit of such provisions.

Given that the Government has actively implemented consolidation exercise in the Banking and Financial Services including the Mega merger of PSU banks and may adopt similar approach for NBFC Sector, it is recommended that provisions of section 72A of the IT Act are extended to NBFCs also to facilitate consolidation initiatives in this sector.

► 72A. (1) Where there has been an amalgamation of—

(b) a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a specified bank; or

Sub-clause (ba) to be inserted in Section 72A to allow carry forward of accumulated losses in case of amalgamation or demerger to NBFC then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly New sub-clause (ba) can be added:

(ba) *a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company*

13. Applicability of TDS under Section 194 N on cash withdrawal from current account leading to administrative hardship to NBFCs

Section 194 N was introduced in the Budget 2019 which stipulated that any withdrawals from the Current Account for more than 1 crore in a financial year will attract a TDS at 2%. The exemptions to this rule include when the payee is a government body, banks, white-label ATM operator. Large and listed NBFC's principal business is relating to money lending and collections. Such entities having branches across India have significant cash withdrawal requirement for running their day-to-day business. These entities have banking relationships across multiple banks. Currently, the banks deduct the TDS at applicable rates as per Section 194 N.

However, there are no standard practices followed across banks for this process. Banks, sometimes, debit the current account leading to overdrawing of the current account, and also in some cases because the processing of such debits by back-end processing team is done at night, the customer is also not aware of the timing of such debit leading to a shortfall in funds in the bank account. This gets reflected in the CRILIC reports as a default. CRILIC reporting system throws default by any customer in the Current/Loan account. Banks debit the TDS without any prior intimation and not even on a uniform date which results in the Customer not knowing about the debit.

All these results in the customer's account shown as default in CRILIC system and the entities have to spend considerable time and effort in explaining the reason to the regulator and lenders for such transactions. Further, such a non-standardized process followed by the banks leads to administrative inconvenience in terms of accounting.

► ***The following suggestions may be considered i) Inclusion of large and listed NBFCs in the payee exemption list to Section 194 N being regular advance tax-payers ii) Create a standardized process for all-payer banks to ensure that TDS debits, if any, are not included as part of CRILIC report.***

14. Introduce a separate deduction for home loan repayments

Real estate sector has been severely impacted by current COVID-19 crisis and as a consequent, financial sector (viz Banks and NBFCs) will be directly impacted. This will result in scarcity of demand from potential buyers and impact economy as a whole. The lower interest rate on home loan is an attractive proposition and increase in existing tax deduction for home loans will further boost the sentiments of the housing sector.

Currently, the repayment of principal component of home loans is eligible for tax deduction under Section 80C whereas the repayment of interest component of up to Rs 2 lakh qualifies for tax deduction under Section 24B. However, with multiple investment options, small savings instruments, insurance policies, pension plans, etc crowding Section 80C, many home loan borrowers remain bereft of availing tax deduction on their entire home loan principal repayments. Similarly, the upper cap on Section 24B becomes inadequate for a large number of home loan borrowers, especially in their initial years of their home loan tenure. Hence, there should be a separate section for home loans repayment with a combined maximum deduction of up to Rs 5 lakh for both principal and interest components. This would boost home buyers' sentiment and thereby, increase demand in the housing industry.

► ***It is recommended that there should be a separate section for home loans repayment with a combined maximum deduction of up to Rs 5 lakh for both principal and interest components.***

INDIRECT TAX ISSUES AND SUGGESTIONS

15. Payment of taxes on net basis and Payment of reverse charge liability through utilization of input tax credit - Section 49(4) read with Section 2(82) of the Central Goods and Services Act, 2017

GST on output supplies made by the companies is required to be discharged on net basis i.e., cash payment being restricted to the liability after offsetting of available input tax credit.

While the above modus operandi is available for GST payable on output supplies, reverse charge GST liability is required to be necessarily discharged in cash and cannot be paid through utilization of input tax credit.

The GST liability under reverse charge is payable in cash, even though companies could avail input tax credit of the GST so paid (on reverse charge supplies) in the same month. This entails obligatory cash outflow for businesses with a corresponding liquid asset being created in parallel.

Further, as input tax credit is an unbridled asset for a business, the said should be freely allowed to be used for payment of all GST liabilities and the embargo on payment of reverse charge liability should be removed for easing financial stress.

► ***It is recommended that legislative changes be carried out in the GST provisions for below suggestion:***

- ***Allowing payment of reverse charge liability on net basis i.e., gross reverse charge liability payable reduced by input tax credit available thereon.***

- ***Allowing payment of reverse charge liability through utilization of input tax credit.***

16. Issuance of credit notes in scenarios of bad debts - Section 34 of CGST Act, 2017

As background, under the currently manifested provisions of the GST law (Section 34 of the CGST Act), credit notes are allowed to be issued by businesses only for specified scenarios inter-alia including sales return, deficiency in service, etc. The said scenarios do not include adjustment of taxes paid in scenarios of full/ partial bad debts; even though adjustment of taxes does not entail any loss to the exchequer per se.

In the current COVID-19 scenario, businesses are apprehensive on receiving customer payments and of renegotiation of prices/ non-payment of dues by some businesses. Where businesses are not allowed to adjust taxes earlier paid on such supplies made by them, the said becomes an additional burden on them – as they are required to discharge taxes without corresponding recovery from customers.

Herein, it is also worthwhile to note that typically customers would not be able to utilize input tax credit of the GST so charged on the tax invoice on account of non-payment within 180 days of the issuance of invoice. Hence, even in a scenario, where adjustment of GST through issuance of credit notes is allowed, it should not entail any loss to the exchequer per se.

It is also worthwhile to note that globally, most jurisdictions allow an adjustment of taxes in cases of bad debts and the said is imperative during the current times of financial stress.

► ***It is recommended that issuance of credit notes be allowed in scenarios where partial/ full payment is not received from customers***

17. Accept payment of Tax under one major head

Currently, GST is being charged and paid under three different heads - Integrated Goods and Services Tax (IGST), Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) or Union Goods and Services Tax (UGST). In case taxpayer makes payment under IGST, it can be utilised for payment of IGST liability first and then against CGST and SGST.

Rather than making payment under different heads, it would be helpful if payment is accepted under one head and then adjusted towards different head while filing returns.

► ***It is recommended to allow payment of tax in cash under one head and adjustment of the same towards actual liability while filing returns.***

18. Adjustment of credit notes while filing GSTR-3B

Credit notes are part and parcel of any business activity. GST law permits adjustment of credit notes while making payment. By adjusting credit notes taxpayer can offset the GST liability for a particular month.

Adjustment of credit notes and its disclosure is allowed while filing GSTR-1 return. However, in case there is NIL liability or negative liability due to adjustment credit notes, disclosure of the same is not allowed while filing GSTR-3B return. This is leading to reconciliation issues between GSTR-1 & GSTR-3B.

► ***It is recommended to provide functionality for disclosure and adjustment of credit notes while filing GSTR-3B***

POLICY ISSUES AND SUGGESTIONS

19. Arbitration Clause under Emergency Credit Line Guarantee Scheme

Under the FAQs of Emergency Credit Line Guarantee Scheme, the FAQ No 83 on 'when would legal action be considered as initiated in case an account turns NPA' clearly states the below:

"Mere issue of recall notice shall not be construed as initiation of legal action. Legal action shall be considered as initiated upon filing of application in Lok Adalat/Civil Court/ Revenue State Authority/DRT or after action pursuant to the notice issued under Section 13(4) of SARFAESI Act, 2002 or after admission of application under NCLT or commencement of arbitration proceedings or such other action as may be decided by NCGTC from time to time."

However, as per a recent notification by National Credit Guarantee Trustee Co. Ltd. (NCGTC) dated August 11, 2021, an additional FAQ has been added. According to latest addition by way of FAQ 161:

Arbitration proceedings are not considered as legal action for recovery of dues. NCTGC has without any valid justification or assigning any reason struck off the legal remedy option available to Banks and NBFCs of commencement of arbitration proceedings under the FAQ 83.

It is requested that the words "Arbitration proceedings are not considered as legal action for recovery of dues" should be done away with. Also, the option of Arbitration under the head "Legal Action Taken" should be immediately activated on the website of NCGTC for the Application process for interim payment.

It is pertinent to point out that claims of MLIs less than Rs 20 lacs are not being entertained in DRT and such claim necessarily go through Arbitration route for its claim adjudication. Therefore, disallowance of Arbitration proceeding (as one of the measures for legal actions), will complicate the process of interim and final claim submission for the MLIs. **Hence, it is requested that provisions of FAQ 83 should continue to remain applicable.**

20. Alignment of single counterparty exposure limit for banks' exposure to Gold Loan NBFCs with that of other NBFCs

The present limit of bank finance ie. 7.5% of capital funds of banks to Gold Loan NBFCs was fixed in 2012 at a time when there was no regulation in place specifically for this sector. Now, 8 years have passed and the industry has grown responsibly over these years. To harmonize 'single counterparty exposure limit' for bank's exposure to 'single NBFCs' with that of 'general single counterparty exposure limit', RBI, in September 2019 increased the bank's exposure limit to a 'single NBFC' to 20% of Tier-I capital of the bank as against 7.5% for Gold Loan NBFCs.

As with the growth in the asset base, borrowing requirements of Gold Loan NBFCs have increased and despite the fact that industry players have diversified their sources of funding, the bank funding contributes a major source of funding for them.

It may be noted that bank's exposure opportunity to Glod Loan NBFCs is limited on account of the above exposure ceiling. It is to be noted that most banks keep their respective ceiling slightly lower than the RBI ceiling limit further reducing the credit flow to the sector.

The problem is also getting aggravated because of the merger of PSU banks. Due to the merger of PSU banks, exposure to Gold Loan NBFCs by the merged entity tends to be larger when combined and hence appetite for further increase in exposure becomes limited which was hitherto getting spread over several banks.

► ***It is recommended to align the single counterparty exposure limit for banks' exposure to Gold Loan NBFCs with that of other NBFCs i.e. at 20 percent of Tier I capital of the bank to enhance credit flow to the sector as well as harmonization of single counterparty exposure limit.***

21. Issuance of Udyam Certificate to MSMEs

Individuals to be exempted from Udyam registration requirement.

Subsequent to the issue of the circular permitting on-lending to NBFCs, RBI issued a fresh circular RBI/2020-21/10 FIDD.MSME & NFS.BC.No. 3/06.02. 31/2020-21 dated July 2, 2020 notifying new criteria for classifying the enterprises as Micro, Small and Medium Enterprises. The New PSL criterion requires Udyam to be obtained for MSME borrowers. However, the process of registration has been extremely slow largely due to practical issues being faced in the registration process. Udyam registration portal requires Aadhar linkage with verification through OTP process to the linked mobile. Most of the MSME individual borrowers have prepaid mobile account and they tend to change their mobile number frequently. Aadhar Verification for Udyam certificate is not being possible till mobile number are linked and updated which can only be done by UIDAI centres. As it is practically difficult to obtain the Udyam registration for individual customers, we request for exempting the individuals for Udyam registration requirement.

22. Extension of PSL classification for NBFC loans every six months by RBI with a 5% cap

RBI announced Extension of facility of Priority Sector Lending- Banks' lending to NBFCs for onlending wherein the facility of bank lending to NBFCs (other than MFIs) for on-lending was allowed to be classified as PSL up to September 30, 2021. As announced in the 'Statement on Developmental and Regulatory Policies' dated October 8, 2021, the facility has been extended till March 31, 2022 keeping in view the increased traction observed in delivering credit to the underserved/unserved segments of the economy.

Loans disbursed under the on-lending model will continue to be classified under Priority Sector till the date of repayment/maturity whichever is earlier.

Our request is to continue the PSL classification to banks for on lending to NBFCs, which will enable retail NBFCs to deliver credit to the undeserved/unserved segments at an reasonable cost as a permanent facility and increase limit for the bank from 5% to 10%.

23. Issuance of Credit Cards by NBFCs

RBI Regulations permit NBFCs also to issue Credit Cards directly. Gold Loan NBFCs have more than 300 lakh customers at any given point in time who have availed the gold loan on the security of household used gold jewellery.

Permission may be granted to "Large NBFCs- SI" predominantly engaged in lending against Gold Jewellery to issue Credit Cards on the security of the gold ornaments pledged by borrowers with a limit not exceeding the Loan to Value stipulated by RBI. The borrowers who opt for the card will enjoy the benefit of having to pay interest only on the day they start using the credit cards at POS machines and thereby save on the interest expense.

24. Lowering the loan limit for applicability of SARFAESI Act from Rs 20 lakh to Rs 1 lakh

The government has reviewed and lowered the eligibility for NBFCs for applicability of SARFAESI

Act i.e. Asset Size of NBFC from Rs. 500 Crore to Rs. 100 Crore and Loan Amount from Rs. 50 lakhs

to Rs. 20 lakhs. While it is a step in the right direction, however, this threshold of Loan Amount of Rs. 20 lakhs should be further reduced to Rs. 1 lakh.

25. Centralised liquidity support for PTCs

The investor base for PTCs (both ABS and more so for RMBS) is limited and the market is largely driven by the banks as investors (primarily to meet their PSL requirements). One of the reasons for low participation from different classes of investors (mutual funds, insurance companies, etc) is lack of development of secondary markets for PTCs. This makes investments in PTCs illiquid. This not only makes pricing inefficient for PTCs but also severely impacts the very appetite for PTCs. This has following major impacts:

- Concentration for credit risk within banks/ NBFCs.
- Inefficient pricing for PTCs
- Lower participation from investors other than banks

To promote development of securitization market (PTCs), liquidity of PTCs (i.e., option to sell in secondary market) is very critical. Besides reducing illiquidity premium for PTCs, this will also help in diversification of credit risk away from banks / NBFCs through better participation from other investors.

One suggestion to improve liquidity of PTCs, is to have assured liquidity facility (to purchase PTCs in secondary market) from a central agency. Since the intended objective is to provide assured secondary market liquidity for PTCs, due care has to be taken to ensure that this facility does not otherwise serves are a mitigate for credit risk. We suggest as under:

Our suggestion:

- The central agency should be mandated to provide assured liquidity (centralized liquidity support) for PTCs by way of purchase of PTCs in the secondary market. This central agency could be NHB, SIDBI, NABARD or any other entity created with mandate to development PTCs market. This will also address some of the tenor related concerns of the investors for assets with longer maturity e.g., RMBS.
- The facility should continue to be available for PTCs subject to following conditions:
    - PTCs are rated by an external credit rating agency registered with SEBI.
    - Securitization transaction is carried out under SEBI Regulation and / or RBI Regulations o The PTCs is rated minimum at same level (as initially rated) at the time when secondary market transaction pursuant to this facility is proposed. If PTCs are rated at lower level (than original rating) at the time of secondary purchase under this facility, the facility shall not be available till the credit rating is upgraded to minimum of original rating.
    - The facility should be available only after a cooling period (say [1] year for ABS and [2] years for RMBS) from the date of securitization for the facility unless specifically allowed by the relevant regulator.
    - The facility should be available at pre-defined time intervals (quarterly / half yearly) till expiry of mutually agreed period for each transaction.
    - The PTCs should be rated at minimum of [BBB]
- The interest rate for the facility may be decided upfront and may be linked to an external benchmark.
- The central agency may also have flexibility to offer the PTCs so acquired in the market.