Impact of GST on oil and gas sector

December 2017

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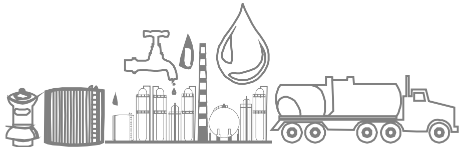
GST - Recent developments



No IGST on import of leased rigs & ancillary, payment only on lease service

Deferment of e-way bill Rule

Operationalization of TDS/TCS provisions postponed

RCM Provisions on procurement from unregistered person extended

Due dates for Return Filing extended

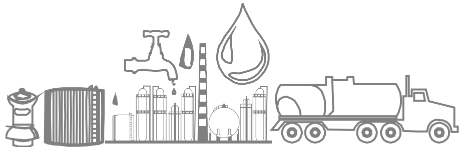
No GST on advance received for goods

GST Rate Reduction

Goods/Service	From	To
Transportation of natural gas (without credit)	18%	5%
Transportation of natural gas (With credit)	18%	12%
Offshore works contract	18%	12%
Bunker fuel	18%	5%

GST - Issues for oil and gas sector

Continuation of C form to manufacture products covered under GST



Background

- C form (CST 2%) can be issued to purchase excluded petroleum products (i.e. crude, HSD, MS, natural gas, ATF), if they are used for:
  - Telecommunication network / Mining
  - Generation / distribution of power
  - Resale / manufacture of goods
- From 1 July, definition of goods under CST Act, have been restricted to excluded petroleum products and alcoholic liquor for human consumption
- Ministry of Finance, has clarified that prima facie 'manufacture of goods' would mean only the manufacture of excluded petroleum products and alcoholic liquor for human consumption

Legal Provision

Issues

- C form cannot be issued for manufacture goods other than excluded petroleum products
- Whether C form can be issued for crude used to manufacturing both excluded petroleum products and goods under GST

Recommendation

- Advocacy to allow issuance of C form to manufacture all goods
- Reduction in VAT rate on excluded petroleum products

Credit reversal for capital goods used for taxable and exempt supply

Background

- Entire credit can be availed in the first month
- Capital goods (CG) used for taxable / exempt supply:
  - Credit reversal over 60 months
  - Interest @ 18% on the reversal amount
  - CG purchased / removed needs to be tracked on a monthly basis
- CG in oil and gas industry gets used for supplying included and excluded petroleum products
- Thus, the industry has to comply with the relevant reversal provision

Issues

- Substantial credit of capital goods will be reversed with 18% interest
- Difficult to keep track of assets excluded and included

Recommendation

Advocacy to allow CG credit as under:

- Option 1 – No interest to be paid on reversal
- Option 2 –
- Proportionate credit basis last year taxable turnover to be allowed in first month
- True up at the end of each year for a period of of 5 years

Dual tax on "ocean freight" and "time charter"

Background

- Import of goods - GST on freight is as under:
  - Procurement on FOB basis – service recipient is required to pay GST under reverse charge mechanism (RCM)
  - On procurement of goods on CIF / DES basis - importer to pay IGST under RCM
- In case of time charter, GST is payable under RCM
- Freight cost (including time charter cost) is included in the assessable value for computing customs duty

Issues

- IGST paid is a cost for oil and gas industry
- Dual taxation increases the cost burden

Recommendation

- Industry may explore following alternative:
  - File a writ basis:
    - Double taxation
    - Notification superseding section
- Representation to Government for IGST exemption for ocean freight

Cross charge of corporate / zonal office expenses

Background

- Corporate office (CO) / zonal office (ZO) in one state is considered as distinct person as regards to other registrations of the same entity
- The administrative / management activities carried out by the CO / ZO may be viewed as provision of services for other registrations

Issues

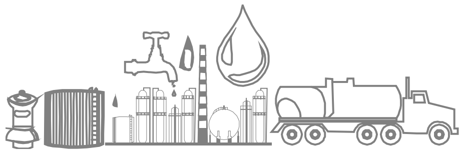
- Whether CO / ZO would be required to charge GST to other units?
- If yes, credit reversal required at recipient unit

Recommendation

- Industry may consider following representations:
  - Valuation of such self-supply to be as ‘Nil’
  - Exemption with full input tax credit to supplier
  - Full credit in the recipient state

  (States where there is 100% exempt supply, such credit would be a cost, hence, least preferred)

Credit reversal in case of service and trading turnover



Background

- Reversal of credit is required for goods and services used for effecting taxable and exempt supplies
- Excluded petroleum products qualifies as exempt supplies
- Company engaged in re-gasification and trading of natural gas
  - Required to reverse credit of re-gasification facility if it is used to re-gasifiy natural gas meant for trading
- Similar case for company engaged in transportation and sale of excluded petroleum product through pipeline

Issues

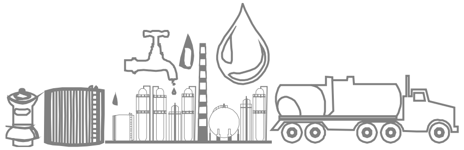
- High reversal
  - Sale turnover is much higher compared to service turnover

Recommendation

- For trading, value of exempt supply should be higher of
  - Profit margin or
  - 10% of cost of goods sold whichever is higher

  (same as given under earlier tax regime)
- Alternatively, credit reversal should be basis volume processed / transported

Inter-unit billing for transportation through pipeline



Background

- Fixed establishment defined as *place with sufficient degree of permanence and suitable structure in terms of human and technical resources*
- Pipeline in each state may be considered as fixed establishment, thus, distinct persons
- In case of cross country pipeline,
  - Pipeline infrastructure in each state may be considered as supplying services to subsequent State for transportation
- For transportation of natural gas there is an option to be pay GST @ 5% without credit

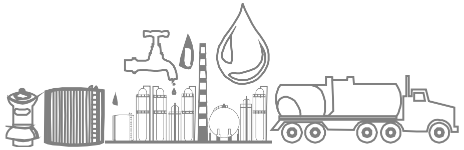
Issues

- Is GST payable in each state for self-supply of transportation of goods to subsequent State?
- GST charged on self supply is cost when rate is 5%

Recommendation

- Industry may consider following representations:
  - Valuation of such self supply of services as ‘Nil’
  - Exemption with full credit
  - Full credit in the recipient state for self supply where GST is 5% without credit

Lower rate of 5% on transportation of petroleum products through pipeline



Background

- Transportation of goods via railways and road is taxed at a lower rate of 5%
- GST on transportation of natural gas through pipeline is 5% without credit and 12% with credit
- Transportation of crude / MS / HSD through pipeline falls under residuary entry in Schedule 3 and is taxable @ 18%

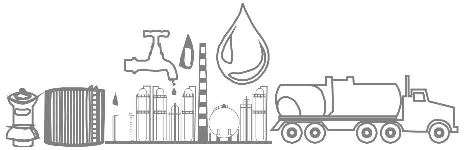
Issues

- Increased cost due to credit restriction for refineries

Recommendation

- Advocacy to reduce GST on transportation of crude / MS / HSD to 5%

Taxability of services if place of supply is outside India



Background

- GST is payable on intra-state / inter-state supply
- When location of supplier is in India and place of supply is outside India – inter state supply
- Export of services (zero rated) when:
  - Supplier is in India
  - Recipient is outside India
  - Place of supply is outside India
  - **Payment received in foreign exchange.**
  - **Supplier and recipient are not establishment of a distinct person**

Issues

GST applicability on the following:

- Services provided to a PO outside India (e.g. recovery of manpower cost) – <u>*supplier & recipient are mere establishment of distinct person*</u>
- Corporate guarantee for a overseas subsidiary free of cost – <u>*payment not received in foreign exchange*</u>

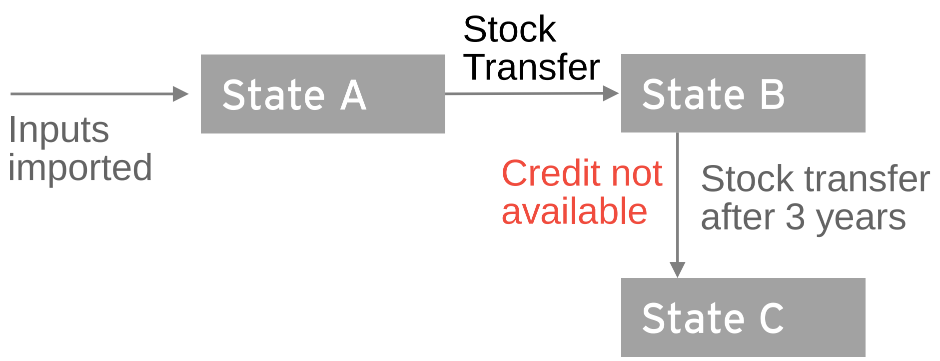
Recommendation

- Advocacy for exemption
  - Pre GST such transactions were exempt
- Government may address this issue in next GST council meeting

Input tax credit on stock transfers for specific purpose

Background

- GST is payable on stock transfer of goods between two registrations
- Credit is not available for specific purposes (such as laying of pipeline)
- GST paid (including on stock transfer) is a cost



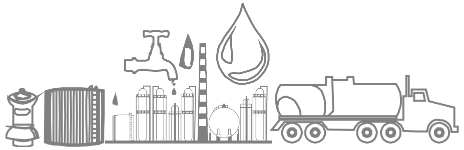
Issues

- Incremental cost wherever credit is not available:
  - Laying of pipeline
  - Pipeline transportation @ 5%
  - For movement of goods from on-shore to offshore & vice versa

Recommendation

- Exemption to be provided for stock transfers where credit is not available in destination State

Payment for acquisition of land for laying pipeline or construction of refinery



Background

- Supply includes all kind of supply in the course & furtherance of business
- Taxability under RCM
  - Supply from government taxable
  - Supply from unregistered person (relief from GST till 31st Match 2018)
- Payments for acquisition of land
  - Crop compensation given to farmers
  - Transfer of right to use land (acquired through a specific Act or otherwise)

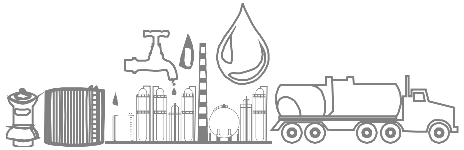
Issues

- GST applicability when payments made to the following:
  - Farmers / unregistered person
  - Registered person
  - Government agencies

Recommendation

- Advocacy to clarify that GST is not applicable when the acquisition is made under a legislation

Concessional rate for setting up new refineries / expansion of existing refinery



Background

- 18% GST is levied on goods used for setting up new refineries / expansion of existing refinery

Issues

- Increased cost for petroleum sector

Recommendation

- Advocacy for
  - IGST – NIL / 5%

Questions

Thank you

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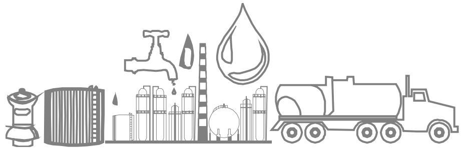

Legal Provision

- As per Section 8 of CST Act goods specified in registration Certificate purchased for resale/manufacture of goods can be procured on concessional rate of CST subject to providing ‘form C’ to seller.
- Section 2(d) of CST Act defining goods has been amended:
- Goods means petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas aviation turbine fuel; and alcoholic liquor for human consumption

Current Position

- Bombay HC grants interim relief to Vedanta Ltd, directs Dept. not to discontinue issuance of Form C in respect of petroleum products procured under GST regime
- Central Government vide Office memorandum dated 07-11-2017 clarified:
- "Goods" referred to in section 8(3)(b) of the CST Act, 1956 will have same meaning as defined and amended under Section 2(d) of the Act
- Similar clarification issued by Maharashtra Sales Tax Authority

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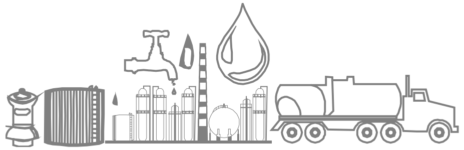
Dual tax on “ocean freight” and “time charter”



Legal Provision

- Section 5(3) of IGST Act provides that government will specify the supply of goods / services on which tax shall be paid on reverse charge basis by the recipient
- Recipient has been defined under Section 2(93)(a) as the person who is liable to pay the consideration
- Notification 10/2017-IGST (Rate) provides that recipient of ocean freight services will be importer of goods
- Recipient for ocean freight are as follows:
    - FOB: Importer
    - CIF: Exporter

Current Position

- Delhi HC admitted writ challenging levy of IGST on Ocean freight payable by importer
- Revenue to file reply within 6 weeks from 30th October 2017
- Interim relief expected

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