APP Submissions on Tax Proposals for FY 2018-19

#	Section/ Subject	Issue	Recommendations & Justification
1.	**The Income Tax Act, 1961** Section 115-O: Applicability of Dividend Distribution Tax Provisions in case of multi-tier companies	Clarity is required in case of multi-tier companies, whether dividend paid by a step-down subsidiary is to be considered while arriving at DDT liability of the Ultimate Holding Company.	1. Under the existing provisions of section 115-O, in addition to normal income-tax chargeable, a domestic company is also liable to pay tax @ 15% on the amount of dividend declared, distributed or paid by such company. 2. However, as per sub section (1A) to the aforesaid section, for ascertaining the tax liability on the dividend declared, the amount of dividend received during current financial year from its domestic/foreign subsidiary can be reduced from the amount of dividend declared/distributed/paid. Thus, final DDT is payable on the balance dividend. This sub-section was inserted vide Finance Act, 2008. 3. The intention of the legislation seems to be to allow credit for the dividend on which DDT has already been paid. This intention has also been mentioned in the Budget Memorandum for Finance Act 2012, that the intention is to avoid cascading effect in case of multitier companies. 4. However, because of the following proviso to sub section (1A), there is ambiguity which may lead to unnecessary litigation: ***"Provided that the same amount of dividend shall not be taken into account for reduction more than once".*** **Recommendation**

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			To achieve the object of Ease of Doing Business and to have a clear legal position, it is recommended that clarification be provided in sub-section itself. Our recommendations are: – The definition of subsidiary should include a "step-down subsidiary". – This proviso to sub section (1A), which is causing this ambiguity, should also be removed.
2.	**The Income Tax Act, 1961** Section 115-O Dividend Distribution Tax: Credit for dividend received from subsidiaries after declaration of dividend by Holding Company in the same financial year	As per sub section (1) and (1A), the dividend is taxable after reducing the amount of dividend received from domestic and foreign subsidiaries during the relevant year. But as per sub-section (3), tax has to be paid within 14 days from the date of declaration/ distribution/payment. In case of non-deposit of DDT within time limit, Section 115P provides for penal interest @ 1% per month for the relevant period. In certain cases, the dividend is received from the subsidiary companies post declaration of dividend by the Holding companies. In such case, the Company may not be able to compute exact tax liability on the date of dividend payment.	1. The chargeability of DDT is decided based on sub section (1) and (1A). However, the provision of sub section (3) regarding deposit of due tax is only procedural. Sub-section (1A) comes first in order from Sub-section (3). Thus, what is payable as DDT is to be computed on dividend declared/distribution/paid, as reduced by the amount of dividend received from subsidiary company. 2. However, there are cases where dividend from a subsidiary is received after dividend declared/distributed/paid by the parent company. In those cases, the company is to pay DDT within 14 days following the provision of sub section (3). While arriving at the DDT liability there may be two situations: a) Not to consider dividend to be received from subsidiary in subsequent period in the same financial year, but it will result in excess payment of DDT. Consequently, the company funds are blocked till grant of refund of tax. b) Consider the amount of dividend to be received from its subsidiary in subsequent period on estimate basis. This may result into excess/short payment of DDT on such date. This may attract interest and penalty provision for balance amount, if any.

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			<u>Recommendation</u> To avoid undue hardship to domestic companies, it is recommended that provisions of sub-section (3) to section 115-O/115P be amended in line with the provision of payment of advance tax and interest provision of section 234B. This should be applicable only if there is shortfall of payment of tax on annual basis. Further, penal provisions as provided under section 271C should not be applicable in case of postponement of DDT liability on account of receipt of dividend from subsidiary, post declaration of dividend by the Company.
3.	Extending GST to Power Industry	The Central Government has introduced GST in India w.e.f 1st July 2017 keeping the Power Sector outside GST. This has resulted in an increase in power tariff, especially for the renewable sector, where under the pre-GST regime, exemptions were available for procurement of goods and services. In addition to above, sale of electricity is subject to Electricity Duty and Tax on sale of electricity which adds to the tariff cost. Due to above cascading effect of Indirect Taxes, the power tariff increases, which impacts the common man as well as Industry.	Under GST regime, power has been kept outside and hence the very objective of GST is not fulfilled as it leads to increase in tariff which in turn impact the economy. **<u>Recommendation:</u>** Power sector should be brought under the purview GST.
4.	GST Return filing frequency to be made quarterly for entities purely	Every registered dealer has to file GST returns in Form GSTR-1/Form GSTR-2 and final return in Form GSTR-3. The periodicity of returns as provided u/s 37 (1) of CGST Act is monthly. Power generation/ distribution/ transmission	Even though entities are engaged in exempted supply, they have to file GST returns on monthly basis resulting in an additional compliance cost. **<u>Recommendation:</u>**

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	involved in exempted supply	is exempt under GST, but power companies are still required to file monthly returns.	GST Act to be amended to provide for quarterly returns for entities dealing in exempted supply.
5.	GST rate on supply in the nature of natural gas transmission through pipe line should be reduced to 5% or 12% to have minimal impact on Power Tariff. Currently, as per SAC 996513, the GST rate is 18%.	Currently, service in the nature of "Transport services of petroleum & natural gas, water, sewerage and other goods via pipeline" attracts 18% GST. This has resulted in an additional cost for the power generation industry which uses natural gas for generation. Power, being an exempted product from GST, has this additional tax burden add to the final tariff for the consumers. This, in turn, leads to increase in tariff to ultimate consumers.	Higher rate of GST on transport of natural gas increases cost of generation of power. **Recommendation:** GST rate should be reduced to 5% or 12%.
6.	Levy of IGST on import freight for import coal	In the previous Tax Regime and the legacy Customs Act, there were two levies: a) Basic customs duty (BCD) on import of Coal and b) Countervailing duty (CVD) in lieu of Excise Duty For levy of BCD and CVD the valuation is done @ 101% of the CIF value. Accordingly, the aforesaid value of goods is being charged with duty of import (both BCD as well as CVD). For levy of Custom Duty, the assessable value includes the cost of freight as per Custom Valuation Rules.	IGST being paid twice on freight component of coal viz once at the time custom valuation and secondly while making payment of freight to foreign shipping agency. **Recommendation:** In view of the above, we request that this issue is considered and addressed, providing relief from levy of GST on two occasions in case of overseas freight for coal.

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		In the new GST Regime, BCD will continue as above. However, in place of CVD, IGST will be levied on CIF value of goods imported. In addition, there will be an IGST levy on import freight as per provisions under GST Law. This attracts GST under supply of service category at a rate of 5%. Service Accounting Code is 996521.	
7.	Duty on solar modules	Queries have been raised at the Chennai/ Krishnapatnam/ Nhava Sheva ports as regards the classification of solar modules / panels imported by solar companies for setting up solar power plants. It is being contended by the Customs Department that the Tariff Entry 8541.4011 which covers *"Solar cells whether or not assembled in modules or panels"* is not the appropriate classification and that the goods should instead be classified under Chapter Heading 8501 which covers *"electric motors and generators"*. On account of this issue, the consignments imported are being withheld and being slapped with a 7.78% duty.	*It is proposed that specific clarity be provided that "Solar cells whether or not assembled in modules or panels"* under Chapter 85 to have 0% BCD.
8.	GST applicability for solar power generating system	GST rates for inputs to a solar power generating system.	Solar power generating systems under Chapters 84 & 85 are indicated under 5% GST rate. It is recommended that all inputs to solar power generating systems including all supplies, installation and civil works required also be classified under 5% mechanism, similar to the earlier one of according excise and customs duty exemptions may be adopted to facilitate the above.
9.	Duty on solar modules	Parity between manufacturers based out of Domestic Tariff Area, Export Oriented Units and Special Economic Zone when they use inputs suffering Antidumping Duty,	We suggest that the when catering to domestic market, suitable clarifications/ modifications should be issued to ensure that all entities, whether located in SEZ/ EOU/ DTA, should pay ADD and/ or safeguard duties, if applicable, on inputs for

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		Safeguards Duty and Countervailing Duty for catering to domestic market	manufacturing the finished product for the domestic market – in this case solar modules.
10.		Rationalization of fuel cost for cost competitive thermal power generation presently high incidence of taxation and levies	Government of India has set the objective of Power for All and has initiated various actions and schemes like UDAY, IPDS etc. UDAY targets the sustainable turnaround of Discoms through a) reducing financial cost b) improving operational efficiencies and c) reducing cost of power generation. One of the enabling requirements for achieving power for all is generation of affordable power. While power purchase cost from RE sources (wind and solar) have witnessed a steep decline in tariff due to competitive bidding and many incentives (exemption of transmission charges etc.), the cost of power from coal based thermal power generation has increased due to a hike in coal prices and other charges by CIL, grade slippages and increase in various levies and taxes. GST Compensation Cess (earlier called as Clean Energy Cess) is levied at Rs 400/ ton along with levies of District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET) and royalty payments to states which are highest in the world. The total liabilities in the form of taxes, cess & levies is around 90% of the basic coal price for G-14 grade and more than 110% for G-17 grades. It is suggested that to reduce the cost of thermal power and make it cost competitive and affordable, GST compensation cess be abolished or reduced and DMF and NMET levies be made part of the royalty payment.
11.		Disposal of fly ash and its utilization need to incentivize the manufacture and use of fly ash products through measures like exemption from taxes/duties and incentives for setting up higher capacity machinery	Fly ash disposal is an area of concern considering the fact that about 176 million ton of fly ash is generated every year. At present, fly ash utilization is about 61% of ash generated in the country. About 250 acres of land is required for a 1000 MW thermal power plant for dumping of ash. There is need to

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			incentivize the manufacture and use of fly ash products through measures like exemption from taxes/duties and incentives for setting up higher capacity machinery. There is a need for policy and fiscal directives in this area.
12.		Insurance Fund Given the long-term nature of PPAs and the financial health of state utilities, risk related to payment defaults/ termination of PPA is perceived to be high by bankers and financial institutions. Lack of adequate available instruments for to hedge against/ mitigate this risk	Introduce an insurance fund in place of current payment security mechanism, to mitigate the credit risk of bankers in case of default in payments beyond 6 months by utilities or termination of PPA. Risk premium to be paid by developers as part of Project cost. The risk mitigation fund should provide cover for state run solar programs as well.
13.		Low-cost Financing	Availability of funds at lower rate is quintessential for meeting the targets of Government. Thus, it is suggested that funds at lower cost should be made available to domestic manufacturer. This would also promote Make-In-India programme. Funds at discount to the prevailing PLR rate will go in a long way in ensuring the sustainability of the domestic industry. At interest rate of SBI PLR -3% for capital expenditure will help the domestic industry to grow and contribute towards meeting the country's journey of ramping up Renewable Generation.
14.		M-SIPS Implementation	Currently M-SIPS disbursements are guided by the approvals taken for new capacity addition/ system augmentation/ system modernization. At the time of seeking approval, it may not be always possible to forecast the new systems' specifications in its entirety because of new products being made available and fast changing commercial considerations. Therefore, it is suggested that M-SIPS approvals be accorded for a longer time-frame and a flexible approach adopted for disbursements vis-à-vis the approvals taken. Further, the minimum eligible investment for M-SIPS may be reduced to Rs. 50 Cr instead of

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			the current Rs. 100 Cr with retrospective effect from April 2015. M-SIPS for solar equipment manufacturers should be handled by MNRE instead of by MEITY for faster disposal of cases and because MNRE has a better understanding of the solar sector and systems.
15.		Digitalization of Processes - Issue of Customs Duty exemption certificates	Given the importance of ease of doing business through digitization of targeted processes, a fund of Rs. 100 Cr should be earmarked for enhancing digitization of processes like (i) CEIG permits; (ii) customs duty exemptions by MNRE etc. This will enhance ease of doing business with greater transparency.
16.	Direct Tax Disallowance of expenses incurred to earn tax-free income dividend [Section 14A r.w. Rule 8D]	At present, Rule 8D is applied by the Income Tax Department on all investments made irrespective of the nature of investment and purpose thereof. This results in huge disallowance and thereafter litigation. The said rule is litigated very much and is before various courts of law on various grounds and courts have decided in favour of assessee.	Accordingly, it is suggested that present provision of sec 14A of the Income Tax Act r.w. Rule 8D should not apply to strategic investments made by corporates as the said investments are purely for business purpose and not with intention to earn exempt income. The dividend on such investment is merely an incidental income. Hence, it is proposed that the strategic investments should be kept out of purview of sec 14A r.w. Rule 8D.
17.	Direct Tax Disallowances u/s 14A or rule 8D while calculating book profits u/s 115JB	Under the existing provisions of clause (f) of explanation 1 of Section 115JB, for the purposes of computation of Book Profits, amount of expenditure relatable to any income to which section 10 (other than long term capital gains tax on transfer of listed shares), section 11 and section 12 apply, is added back to profit as per books of the company. The Minimum Alternative Tax (MAT) provisions were introduced in Act to levy a minimum tax on such companies who have sufficient book profits but escape taxation under	It should be clarified that disallowance made u/s 14A or rule 8D which have limited applicability in respect of normal computation of income under chapter IV of the Act should not be applied in respect of provisions of section 115JB and disallowance should be restricted to actual expenses debited in books in respect of identified incomes as mentioned in clause (f) of explanation 1 to section 115JB. Having so many dissimilarities in the provisions and fact that MAT is tax on profits determined as per financial statements

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		normal provisions of the Act due to various exemptions, set-off, incentives and allowances allowed under the Act. Section 115JB itself provides computation mode for computing 'Book Profit' for levy of MAT. The sanctity of profits declared as per books maintained in compliance with Schedule VI of Companies Act has been accepted by law as well as Hon'ble Supreme Court and only adjustments as provided in explanation 1 to section 115JB are allowed to determine Book Profit for purposes of MAT. Dividend income earned from investments in shares of domestic companies and units of mutual funds have been excluded from book profits and simultaneously any expenditure incurred in respect of such exempt dividend income is also to be excluded. However, income in the nature of capital gains on transfer of such shares and units is taxable under MAT provisions whereas the same is exempt/ taxable at reduced rate under normal provisions. Disallowance u/s 14A and Rule 8D in respect of exempt income under normal provisions is a presumptive action limited to computation of income under Chapter IV. The scope of exempt incomes for section 14A is much larger than clause (f) of Section 115JB. Moreover, capital Gains and capital receipts which are exempt under normal provisions are taxable at uniform rate under MAT provisions as part of book profits.	prepared in compliance with Companies Act, the presumptions granted under section 14A and Rule 8D cannot be imported for the purposes of determination of book profits for the purposes of MAT. There is however growing tendency among authorities to import disallowance made u/s 14A and Rule 8D for computation of MAT thereby resulting in hardship to the companies and litigation. It is therefore suggested that necessary clarification may be introduced in law to restrict disallowance of actual expenditure debited in books in respect of identifiable exempt income for the purposes of MAT.

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18.	Direct Tax CSR expenses be allowed as deduction as revenue expenditure	Under the existing provisions of section 37 of Income Tax Act, any Expenditure not being in nature of capital expenditure or personal expenditure is allowable as deduction if the same is laid out or expended wholly and exclusively for the purposes of business. The Companies Act 2013 has made it mandatory u/s 135 for certain categories of companies to spend 2% of their average profits on CSR activities prescribed. Under the current income tax regime, CSR expenses incurred by companies which are of capital nature, donations or not wholly and exclusively related to business are not allowed as deduction while computing taxable income. It has created genuine hardships to the companies as such CSR expenses incurred under mandatory provisions of the law are not allowed as business deduction.	Hence, it is proposed that the benefit of deduction in respect of CSR expenses should be allowed to companies without subjecting to restrictions of section 37 of the Act.
19.	Direct Tax Continuation of tax incentives to new investment in power sector by way of profit linked or capital deduction	Profit linked incentives by way of deductions are being gradually to be phased from the Income Tax Act 1961. The said deductions are being provided to highly capital intensive infrastructure industries which play crucial role in development of economy of India. Extant section 80IA provides the benefit of 100% deduction of profits derived from power generation, power transmission, power distribution for ten out of fifteen years from the initial year. This deduction reduced the cost of power to the consumers and helped in the growth of	To keep parity and growth of infrastructure which is one of the motto of the Government, it is humbly proposed that all industries covered by extant section 80IA should be covered by the section 35AD. Otherwise it is proposed that the benefit of deduction u/s 80IA should be continued for power industries covered under the extant section 80IA.

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		economy. This deduction now is not available to those undertakings which are otherwise covered by the section but starts commercial operation after 31 March 2017. The Finance Act 2016 introduced 'infrastructure facility' in section 35AD of the Act wef 1 April 2018 along with the other major r industries which are covered by the extant section 80IA are being covered in the definition of 'infrastructure facility' under section 35AD. Accordingly, the industries covered in this section shall be able to take 100% deduction of the capital cost incurred by them till the date of commencement of commercial operation. Thus, these industries shall be able to claim 100% deduction in the first year of its operation and will be out of tax net for the period till it absorbs the carried forward losses. However, power industry does not find place in the definition of 'infrastructure facility' and hence it will be not eligible to claim benefit of section 35AD which the other important/critical infrastructure industries will be able to claim.	
20.	Direct Tax Utilization of MAT credit in case of amalgamation	After proposed amendment to current provisions of section 115JAA, credit for MAT paid under section 115JB is allowed in the hands of assessee company for 15 years but the same does not allow carry forward of MAT credit in cases of amalgamation of companies where the amalgamating company has unutilized tax credit.	This section should be amended to allow carry forward and utilization of unutilized MAT credit of amalgamating company in the hands of amalgamated company. To rationalize and make business reorganizations tax neutral, carry forward and set off of unabsorbed depreciation and accumulated losses were allowed in the hands of resulting company in amalgamation and demergers etc. Also in the present GST structure a specific provision has been made to allow the input credit of the amalgamating company to the

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			amalgamated company. However, such benefit has not been extended in respect of MAT paid on deemed income credit in respect of which is allowed to a company for fifteen years. As the amalgamating company loses its identity and becomes part of resulting company, the tax credit paid by it on deemed income should be made available to resulting company under the basic principle of taxation and on principle of natural justice. Further, in light of the current thrust of all stakeholders including government to attempt a speedy resolution of Mergers and Acquisitions of stressed assets/companies, continuation of the MAT credit for the potential amalgamated company will also help in facilitating faster resolution of the same
21.	Direct Tax Rate of Minimum Alternate Tax ('MAT') [Section 115JB]	Currently, effective rate of MAT is 18.5% excluding surcharge and education cess. There has been increasing trend of MAT rate since its inception. This was introduced on the concept of Minimum and Alternate Taxation. However, the rate of MAT is almost 60% of tax under normal provisions and hence it is far from its rationale. Also it was stated during Budget Speech for FY 2017-18 by the Finance Minister, the normal tax rates are proposed to be reduced from 30% to 25% gradually in 4 years.	It is proposed that the MAT rates may also be reduced.
22.	Direct Tax Section 50CA and section 56(2)(x)(c)- Fair Market Value to be full value of	Section 50CA provides that in case of transfer of shares of a company, other than quoted shares, the fair market value of such shares determined in the prescribed manner shall be deemed to be the full value of consideration for the purpose of computing income chargeable to tax as	In light of the aforesaid proposed amendment, there will be a double taxation of the same income on deeming basis one in the hand of the seller/transferor and the other in the hands of the buyer/transferee.

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	consideration in case of transfer of unquoted shares	capital gains. Further, Explanation to the said section states that "quoted share" means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business. Section 56(2)(x)(c) provides that where any person receives any property other than immovable property without consideration or for a consideration which is less than its fair market value, the fair market value or the excess fair market value, as the case may be, shall be subject to tax.	Further, even though the recipient, at the time of sale of such shares at a later date would treat the FMV as the Cost of Acquisition, tax has been collected upfront and at times it may happen that the person may not sell shares at a later date. In view of the above, it is proposed that a suitable amendment is made keeping in front the consequential double taxation arising on account of the same income being charged to tax both in the hands of transferor as well as transferee so that unjust enrichment of the revenue is prevented.
23.	Direct Tax Secondary Adjustment in computing ALP in international transaction	Section 92CE- The Finance Bill, 2017 has introduced the concept of secondary adjustment on Transfer Pricing (TP) adjustments. A taxpayer is required to make a secondary adjustment, where the primary adjustment to transfer price has been made in the following situations:- • Suo moto by the taxpayer in the return of income; • By the AO during assessment proceedings, and has been accepted by the taxpayer; • Adjustment determined by an Advance Pricing Agreement (APA) entered into by the taxpayer; • Adjustment made as per the safe harbour rules under section 92CB; or • Adjustment arising as a result of resolution of an assessment by way of the mutual agreement procedure (MAP) under an agreement entered into	In view of the same it is proposed that the computation mechanism for levy of interest under Sub Section (2) should be clearly prescribed with detailed examples to obviate uncertainty including the trigger for such secondary adjustment or interest levy and the start date for levy of interest. Appropriate safeguards by way of clarificatory provisions / Rules should be brought in to obviate an interest on interest situation and cascading effect. Also the Government should clarify the term 'has been accepted by the taxpayer' in order to provide certainty on the applicability of these provisions in various situations. For e.g. if the taxpayer is in appeal against the assessment order to Tribunal, in such cases, will secondary adjustment provisions be applicable only after the Tribunal proceedings are completed or the same will be applicable after Court

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		under section 90 or section 90A for avoidance of double taxation. Further, the section 92CE(3)(v) defines 'Secondary adjustment' as an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. The additional amount receivable from the AE as a result of the primary adjustment should be repatriated by the taxpayer into India within a prescribed time limit. If the same is not received by the taxpayer within the time-limit, then the primary adjustment will be deemed as an advance extended to the overseas AE and a secondary adjustment in the form of notional interest on the outstanding amount should also be offered to tax as an income of the taxpayer. The above requirements for repatriating the adjustment amount into India and imputing a notional interest are triggered if the TP or primary adjustment exceeds rupees one crore. The manner of computation of interest on the amount deemed as advance made by the taxpayer to the AE would be prescribed. The situation of excess payment treated as loan given to AE on which notional interest is computed and added to the income of the assessee till the excess amount is repatriated by AE.	proceedings are completed i.e. if the taxpayer further appeals to High Court/ Supreme Court.

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		It would be difficult for AE to repatriate the money to India on account of secondary adjustment as the income-tax laws and any other relevant laws pertaining to such country may not allow to repatriate money. Further the AE would have paid tax on such amount in its home country. This would lead to double taxation. This would lead to double taxation. Further, the same cannot be treated as advance in the books of account maintained in India as the books of account are prepared as per the provisions of Companies Act, 2013 read with Indian Accounting Standards. The section is unclear as to whether the interest levy is a onetime levy or will apply on a year to year basis until the amount related to the “primary adjustment” is brought into India. Further, in case any interest imputed is not paid in the year of imputation, it is unclear whether or not it will itself take the colour of a “primary adjustment” and interest will be levied on such unpaid interest of last year (treating it as an advance). This will lead to a cascading effect and unnecessary burden on the assessee.	
24.	Indirect Tax Reduction of GST for Hydro sector	Presently applicable GST @hydro-sector is 18%. All the hydro projects are bearing higher cost due to the locational disadvantages and working at difficult terrain.	In order to revive the sector and make hydro tariff viable /acceptable, applicable GST should be brought down from 18% to 5% on products being used in hydro-power construction.
25.	Custom Duty Clarification on applicable Customs duty on import of coal	Prior to Union Budget 2013-14, erstwhile Notification No. 12/2012-Cus., dated 17th March 2012 prescribed concessional rate of Basic Customs Duty (“BCD”) and Countervailing Duty (“CVD”) for import of coal at Sl. Nos. 123 and 124 therein. The said entries are reproduced below:	The issues emanating from the mis-classification of coal has been acknowledged by the Hon’ble Finance Minister during the budget speech on 28th February 2013: *“166. Steam coal is exempt from customs duty but attracts a concessional CVD of one percent. Bituminous coal attracts a*

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<tr><th>#</th><th>Section/ Subject</th><th>Issue</th><th>Recommendations & Justification</th></tr>
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<table>
<tr><th>S. No.</th><th>Tariff Item</th><th>Description of goods</th><th>BCD</th><th>CVD</th></tr>
<tr><td>123.</td><td>27011920</td><td>Steam Coal</td><td>NIL</td><td>1%</td></tr>
<tr><td>124.</td><td>27011100,
27011200,
2701 19</td><td>All goods other than those specified at S. Nos. 122 and 123 above</td><td>5%</td><td>-</td></tr>
</table>
All the power companies were largely importing steam coal for its operations which attracted Nil BCD.
The Notification No. 12/2013 dated 1st March 2013 was then issued amending the Notification No. 12/2012-Cus dated 17th March 2012. The relevant extract of the amended entries, relevant in the context, is reproduced below:
<table>
<tr><th>S. No.</th><th>Tariff Item</th><th>Description of goods</th><th>BCD</th><th>CVD</th></tr>
<tr><td>122A</td><td>27011200</td><td>Bituminous Coal</td><td>2%</td><td>2%</td></tr>
<tr><td>123.</td><td>27011920</td><td>Steam Coal</td><td>2%</td><td>2%</td></tr>
<tr><td>124.</td><td>27011100,
2701 19</td><td>All goods other than those specified at S. Nos. 122 and 123 above</td><td>5%</td><td>-</td></tr>
</table>
During the Budget Speech on 28th February 2013, the Finance Minister announced certain reduction in the rate of
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duty of 5 percent and CVD of 6 percent. <u>Since both kinds of coal are used in thermal power stations, there is rampant misclassification.</u> I propose to equalise the duties on both kinds of coal and levy 2 percent customs duty and 2 percent CVD.”
The classification disputes are prevalent across the industry, and an amendment / clarification in this regard would resolve the pending litigations and would serve as a major relief to the industry.
Amendments vide Notification No. 12/2013 dated 1st March 2013, be made applicable retrospectively OR issue a clarification on coal classification to resolve the pending litigation.
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		Custom duties for the import of bituminous coal and accordingly Notification No. 12/2012 – Customs dated 01st March 2013 was amended, prescribing both BCD and CVD at the rate of 2%, as outlined above. In this connection, notices have been issued across the power sector, for the period prior to amendment of the Notification No. 12/2012, demanding Customs duty classifying the imported coal as bituminous coal vis-à-vis industry classification as steam coal.	
26.	Custom duty on coal for consumption in Thermal Power Plants	At present, coal imports are subject to BCD of 2.5% and IGST of 5%. Since there is shortage of domestic coal in India, power plants are compelled to meet the requirement through imports. The IGST paid is also a cost as there is no duty on electricity produced and this increases the cost of generation.	Since there is no duty on electricity on the output side, any duty imposed on procurement of coal would be a cost for power companies. The present duty structure is unintentionally increasing the cost of power generation and thereby increasing the cost of power, which is directly impacting the common man. Since, levy of IGST is ideally to levy the same rate of duty as rate of CVD being levied on the same goods under earlier regime, Hence, it is proposed to issue notification confirming IGST @ 2% on coal in line with rate of CVD. BCD and IGST should be NIL rated for coal imported for the usage in thermal power plants. Without prejudice to the above, the IGST @5 % on coal should be reduced to 2 % to bring it in line with CVD.
27.	Custom Duty on Raw Materials viz. Coal and Spares Imported into SEZ	Ministry of Finance through its notification No 9/2016-customs dated 16th February 2016, imposed a restriction that duty shall not be levied upon electricity that is removed from SEZ to DTA, subject to condition that no duty benefits	All raw materials and consumables imported into SEZ for purpose of generation of electricity should be exempted from levy of custom duty which includes components such as Basic

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	for Generation of Electricity and Operation & Maintenance	such as custom duty, excise duty, fuel transportation related service tax on raw materials and consumables are availed of. Ministry of Commerce and Industry, Department of Commerce (SEZ Division) issued Guidelines for Power Generation, Transmission and distribution in SEZ dated 16th February 2016, stating power plants in processing area of SEZ will be allowed O&M benefits only with regard to average monthly power supplied to entities within same SEZ and no O&M Benefits including service tax exemption will be allowed for power supplied to DTA. Hence, Custom Duty is being paid for all raw materials and consumables imported like coal, spares as per their respective duty structures.	Custom Duty, Countervailing duty, Special Additional Duty, IGST, IGST Compensation Cess. As per scheme of SEZ Act and the Rules made thereunder a power plant set up in SEZ will be entitled to all benefits available to developers / co-developers, including fiscal benefits under section 26 of SEZ Act, 2005 & Rule 27 of SEZ Rules including benefits for initial setting up, duty free imports of raw materials, components and consumable for operation and maintenance of power plant and generation of power. Relevant provisions are reproduced below : *"Section 26. Exemptions, drawbacks and concessions to every Developer and entrepreneur.- (1) Subject to the provisions of sub-section (2), every developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-* *(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;* *(c) exemption from any duty of excise, under the Central Excise Act, 1944 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit,*

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			to carry on the authorised operations by the Developer or entrepreneur; *Rule 27. Import and Procurement — (1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Bio-technology Park unit, all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items:* *Provided that exemptions from payment of duty, taxes or cess, drawbacks and concessions on all types of goods and services, required for setting up and maintenance of the factory building, allowed to a unit shall also be available to the contractors appointed by such unit and all the documents in such cases shall bear the name of the unit along with the contractor and these shall be filed jointly in the name of the unit and the contractor: Provided further that the unit shall be responsible and liable for proper utilization of such goods and services in all cases.* *Provided also that items prohibited for import can be procured by a Special Economic Zone unit or Developer from a place*

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			outside India to the Special Economic Zone with the prior approval of Board of Approval." From the plain reading of the above, it is clear that the duty imposition on goods imported and procured from DTA, is directly in contravention of the said provisions of SEZ Act and Rules made thereunder, despite the fact the inputs are used for authorized operations inside the SEZ. Thus, the levy on imported goods is clearly ultra vires Section 26 of SEZ Act & Rule 27 of SEZ Rules since the said provisions clearly provides for exemption from payment of custom duty on goods imported into SEZ or a unit to carry on authorized operations by a developer or entrepreneur.
28.	Export Tax Benefit	Allow export tax benefits for entities exporting electric power to neighboring countries through cross border transmission lines	It is strategically important for India to integrate its national electric power grid with the grids of neighboring countries through cross border transmission lines. Exporters of electric power should be provided tax breaks. Provide customs duty free import / zero GST purchase of capital goods required for setting up power plants and dedicated transmission lines for supplying power to neighboring countries. Provide duty free import of coal / zero GST purchase of all local inputs for production of power for export.
29.	GST	As per section 17 of the CGST Act, amount of GST paid on Input shall not be allowed as Credit wherein such inputs are used for effecting exempt supplies. Due to this, entire GST	**Suggestion** Electrical Energy should be considered under taxable goods category with tax rate of 5% or below.

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		on Input for the power companies is not eligible for credit and hence, it results in to cost of generation of electricity.	**Rationale** The above should entitle power generation companies to avail Input tax Credit of all the inputs for power generation. This should make the cost of power generation lower, ultimately resulting into cheaper power for the consumers.
30.	GST As per Section 140 of CGST Act, registered person is entitled to Input tax credit of taxes paid under pre-GST regime on the stock lying as on transition date.	There is no clarity w.r.t. eligibility of credit of Clean Energy Cess paid on purchase of coal in pre-GST regime wherein sale of coal is made in GST regime with applicable GST and Compensation Cess.	**Suggestion** Clarity should be brought in to allow credit of Clean Energy Cess paid on purchase of coal in pre- GST regime for set off against the GST and Compensation Cess payment in the post GST regime for stock as on transition date. **Rationale** Non-clarity on the above will lead to litigation. Non-eligibility of Credit of Clean Energy Cess should result into double tax on the sale of opening stock.
31.	GST As per The Goods and Service Tax (Compensation to States) Act, 2017, sale of coal is subject to of Rs. 400/MT.	The above provision as applicable even on sale of reject coal, sale of same is also subject to levy of Rs. 400/MT. However, sale price of reject coal is lower than Rs. 400/MT.	**Suggestion** The levy of Compensation cess should not be made applicable in case of sale of Reject coal. **Rationale** Reject Coal is mere wastage generated out of certain process and levy of Compensation Cess making transaction commercially unviable.
32.	GST SEZ is considered to be a place outside Indian territory as per the	There is no explicit clarification specifying that GST shall not be levied in the tax invoice raised by SEZ to DTA shall not levy GST for on sale of goods whereby GST has already been levied goods have already suffered GST at the time of filing of bill of entry.	**Suggestion** Clarification is required regarding non levy of GST in sale invoice from sale made by SEZ to DTA. **Rationale**

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	provisions of the SEZ Act, 2005 and accordingly, supply of goods and services from SEZ to DTA is considered as import. Accordingly, in case of supply of goods, the same is subject to filing of bill of entry and payment of applicable custom duty and GST.		Supply of goods from SEZ to DTA is subject to custom duty and GST (in lieu of CVD) by the DTA customer at the time of bill of entry. If clarity is not brought regarding non-levy of GST by SEZ where tax is paid with bill of entry, the situation may lead to litigation, and if the SEZ is required to levy GST in their invoice, it may this shall result in levy of in double taxation on in the hands of the DTA customers which may lead to transaction being commercially unviable and future litigations.
33.	GST Supply of goods/ services to SEZ is considered as zero rate supply under IGST Act and supplier is not supposed to charge GST on SEZ unit/developer as per Section 16 of IGST act.	In case supplier has charged GST to SEZ unit/developer, there is no provision enabling SEZ units/developers for filing refund claim by SEZ unit /developer who has borne the burden of tax inspite of being eligible for zero rated supply.	**Suggestion** IGST Act should clearly spell out the eligibility and process for filing of refund claim by SEZ unit/developer. **Rationale** If eligibility to file refund claim by SEZ unit/ developer is not brought into the GST act, the intention of the legislature not to burden SEZ unit/developer with tax burden cannot be achieved where DTA supplier has charged tax. This will result in GST being additional cost to the SEZ unit/developer and the same should be contrary to the provision of the SEZ Act, 2005.

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34.	GST	Green field projects are eligible for carbon credit as per the international environmental norms. Companies are eligible to sale the carbon credit availed. The applicability of GST on sale of carbon credit is not explicitly covered in the exemption schedule.	Schedule III of the GST Act should explicitly mention carbon credit as exempt goods so as to avoid ambiguity and litigation in the matter. This shall also give financial boost to the green field projects.
35.	Direct Tax Withdrawal of Minimum Alternate Tax ("MAT") and Dividend Distribution Tax ("DDT") for SEZ	Vide Finance Act 2012, MAT is levied on the book profits of the developers and units located in SEZ and DDT is levied on dividends declared or distributed or paid by developers of SEZ or units in SEZ.	The tax benefit of MAT and DDT which were available under section 115 JB & 115 O of Income Tax Act 1961 respectively until 31st March 2011 & 31st May 2011 respectively should be restored. Industry and SEZ are looking for stability in the policy and this is required for the revival of SEZ. This will directly impact the Power Sector specific SEZ developers and units in those SEZs.
36.	Direct Tax Amendment in section 80 IA(12) to allow benefit in case of amalgamation or demerger	Presently, if an undertaking (unit) of Indian company is eligible for tax holiday u/s 80IA of the IT Act and if the said undertaking (unit) is transferred in a scheme of amalgamation or demerger then the transferee undertaking is not granted tax holiday u/s 80IA for remaining period.	80 IA (12) should be suitably modified to allow benefit of section 80 IA in case of amalgamation or demerger as the case may be. Present provision is a roadblock for M&A and restructuring transactions in power generation & transmission business which is need of an hour considering challenges faced by the industry. This will directly impact the Power Sector as a whole.
37.	Direct Tax Retrospective amendment to section 206AA wherein the	As per Section 206AA, any person entitled to receive any sum or income on which tax is deductible shall furnish his Permanent Account Number to the person responsible for deducting such tax, failing which tax shall be deducted at the higher of the following rates, namely:	It is proposed that the amendment referred above should have retrospective implication.

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	provisions shall not be applicable in case of non resident assesses or foreign company.	(i) at the rate specified in the relevant provision of this Act; or (ii) at the rate or rates in force; or (iii) at the rate of twenty per cent During the Finance Bill 2016, amendment has been brought in section 206AA by way of sub section (7) that the provision of this section shall not apply to a non-resident or a foreign company.	The retrospective implication of the said amendment should settle many ongoing litigation cases and should result in saving huge litigation costs at either end.
38.	Direct Tax Amendment to section 56 of the act to exclude income earned during construction period if it has linkage with the project.	Presently, there are no specific provisions about the treatment of income earned during construction period where in income has been earned from the fund meant for project and has linkage with the said project.	It is proposed that the amendment should be brought out under section 56 to exclude income earned during construction period where in income has been earned from the fund meant for project and has linkage with the said project c. Presently, there large amount of litigations are going on which needs to be settled by way of amendment in the said section. Power Projects have long gestation period and sometime due to delay in completion of construction, the interest cost is impacting project cost. Due to huge fund requirement for the project, the fund is required to be tied up in advance and it is required to make the surplus fund yield maximum returns
39.	Tax free bonds for holding power assets	The sector has been under severe stress, and lenders (Banks and FIs) are also finding it difficult to find buyers for the stressed assets. It is necessary to hold these assets for another 4 to 5 years to wait for the sector to turnaround. The sector may need hand holding for the next few years till the demand of power picks up.	Those private sector entities who venture to buy and turnaround the stressed assets should be allowed to raise tax Free Power sector rehabilitation Bonds through private placement / QIP route, and the proceeds of such Bond issuance should be allowed to be used to hold the equity and preference capital of stressed assets acquired from Banks or through Insolvency proceedings.