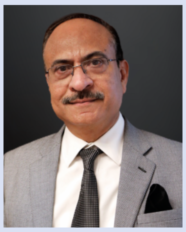
VOICE OF FICCI

SHAPING THE AGENDA

February 2023



From the
Director General

FICCI has taken up several issues and submitted its recommendations to the government and various departments in this month. The announcements made in the Union Budget 2023 has addressed several issues and has maintained the continuity both in terms of reforms and inclusive growth. The Budget has also ensured fiscal consolidation through a well-defined glide path.

However, the Finance Bill for FY2024, presented in the ongoing budget session, does not propose to extend the concessional withholding tax (WHT) regime. It will either result in higher borrowing costs for Indian borrowers (if they are grossing up WHT) or lower returns for international investors (if they are absorbing WHT) thus making these borrowing/ investment avenues less attractive. FICCI has put forward recommendations, drafted in consultation with the industry members, on withdrawal of concessional tax regime for ECB and INR Bonds as the proposed change can have an adverse impact on foreign investor debt flows.

Further, in continuation with the stakeholder consultation, chaired by Secretary, Department for Promotion of Industry and Internal Trade (DPIIT), the industry chamber has submitted a detailed recommendation-note to DPIIT suggesting ways to streamline IP registration processes relating to patents and trademarks so that the level of pendency/backlogs in these areas could be reduced.

The Federation has also submitted detailed set of recommendations to Ministry of Corporate Affairs regarding changes in the Insolvency and Bankruptcy Code (IBC). To strengthen the functioning of the IBC, Ministry of Corporate Affairs has proposed changes to the Code in relation to the admission of corporate insolvency resolution process applications, streamlining the insolvency resolution process, recasting the liquidation process and the role of service providers under the Code.

Above were some of the major recommendations and suggestions submitted by FICCI in this month.

Arun Chawla

FICCI Representation on Taxation of Life Insurance Products

Union Budget 2023-24 has introduced 20% taxation on certain non-ULIP policies which has severe ramifications on the growth of the industry and may even result in de-growth. Life insurance industry is source of long-term funds for infrastructure sector and in FY23 it had invested Rs 4 Lakh crores in G-Sec & SDLs and 1.5 Lakh crore in hosing & infra bonds. Life insurance products have dual significance in the diversified financial market as they provide both the risk cover as well as long-term guaranteed returns to the investors.

FICCI has put forward recommendations drafted in consultation with industry members.

Industry assumes that 30% of middle class/ upper class which invest in insurance also fall in the immediate tax slab and Rs 5 Lakh limit proposed in the budget may not be meaningful. FICCI recommends that this limit be revised to Rs 15-20 lakhs as it would less the impact.

Non-linked policies are similar to Debt Mutual Funds with minimum of 65% of premium being invested in non-equity (50% in Central & State Govt securities and 15% in housing & infra bonds) but there is differential taxation on non-liked policies. FICCI recommends tax parity on income from these instruments; they should be taxed as long-term capital gains with indexation benefits. Further, being long-term (10+years) products and given a positive inflation environment, depriving indexation benefits will destroy investor wealth. FICCI recommends that it be clarified as gains, if taxed under Capital gains. Accordingly, it is submitted that premiums paid by the policy holder should get indexation benefits and only the capital gains after indexation should be taxed. This was submitted to the Finance Minister.

For detailed recommendations, please write to
Mr Anshuman Khanna at anshuman.khanna@ficci.com

FICCI Representation on withdrawal of concessional tax regime for ECB and INR Bonds

The Finance Bill for FY2024, presented in the ongoing budget session, does not propose to extend this concessional WHT regime. Accordingly, such interest income paid to non-residents will be chargeable at a tax rate of 21.84% (reduced by relevant Double Tax Avoidance Agreements (DTTA) where applicable) instead of the current concessional rate of 5.46%.

FICCI has put forward recommendations drafted in consultation with industry members as the proposed change can have an adverse impact on foreign investor debt flows. It will either result in higher borrowing costs for Indian borrowers (if they are grossing up WHT) or lower returns

'Voice of FICCI' is a service to all our members and shared with key policy makers and thought leaders. The document is a compilation of FICCI's views on macro-economic issues. These issues come to us directly from members, or through deliberations in conferences and seminars on sectoral issues, as also through Government notifications.

for international investors (if they are absorbing WHT); making these borrowing/ investment avenues less attractive. This will hamper the nascent investment recoveries and availability of foreign capital to fund medium/ long-term investments.

In context of the above, it is recommended that:

a) Grandfather interest income with respect to all instruments covered under section 194LD of the Act and issued up to 30 June 2023 and make them eligible for 5% base tax rate for future coupons as well.

b) A staggered rate hike be made from 5% to 10% in respect of base tax rate on interest income under section 194LD and 194LC given that the base tax rate of 10% is also applicable for specified funds as defined in section 10(4D) of the Act. Further, the said base tax rate of 10% should also be applicable in respect of interest income on rupee denominated bonds of an Indian company without any cap as is currently prescribed under section 194LD of the Act. This was submitted to Hon'ble Minister, Ministry of Finance.

For detailed recommendations, please write to
Mr Anshuman Khanna at anshuman.khanna@ficci.com

DPIIT identified issues relating to streamlining of IP-related registration processes and reducing pendency & backlogs at IP Offices

Following a stakeholder consultation, chaired by Secretary-DPIIT, FICCI was requested to provide suggestions on ways to streamline IP registration processes relating to patents and trademarks so that the level of pendency/backlogs in these areas could be reduced. Accordingly, based on inputs received from industry members, a detailed recommendation-note was submitted to DPIIT, which included the need for complete digitization of registration processes, a provision for multiple embodiments of the same design, among others. The need to amend the Trademarks Act in areas like statutory provision for powers of police officer for search & seizure, timelines for determination of well-known Trade Marks, additional forum for enforcement against infringement were also underlined.

For detailed recommendation, please write to
Mr Dipankar Barkakati at dipankar.barkakati@ficci.com

Condonation of delay u/s 460 of Companies Act

Presently, no specific policy or guideline under the Companies Act specifies the instances under which companies can seek condonation of delay in filing in certain cases. In this context, FICCI has requested that a policy may be framed to ensure that the discretion conferred upon the Central Government under Section 460 of the Companies Act is utilized to achieve the beneficial purpose it is intended for and the rights of deserving parties are protected, as envisaged under the law. This was submitted to Joint Secretary, MCA.

For detailed recommendation, please write to
Ms Abha Seth at abha.seth@ficci.com

Technical issues-MCA21 V3 portal

Based on concerns highlighted by members with respect to issues in filing on the MCA21 Version 3 portal, FICCI had requested MCA to consider allowing filings of forms and returns in physical form till normal functioning of the portal is restored. MCA has accepted this recommendation and issued a notification allowing filings in physical mode and extension of time for filing without any additional fees. This was submitted to Joint Secretary, MCA.

For detailed recommendation, please write to
Ms Abha Seth at abha.seth@ficci.com

Proposed changes to the Insolvency and Bankruptcy Code

To strengthen the functioning of the IBC, MCA has proposed changes to the Code in relation to the admission of corporate insolvency resolution process applications, streamlining the insolvency resolution process, recasting the liquidation process and the role of service providers under the Code. Based on feedback received from members, FICCI submitted detailed set of recommendations to MCA.

For detailed recommendation, please write to
Ms Abha Seth at abha.seth@ficci.com

Proposals pertaining to Hydrocarbon Sector

Removal of levy of Special Additional Excise Duty (SAED) on Petroleum Crude - A recent development which has adversely impacted domestic Exploration and Production industry is imposition of SAED on Petroleum Crude as a 'windfall gain tax' on oil companies. This SAED is putting a burden over and above all existing levies.

Recommendation - It is recommended that SAED should be removed or if there is need to continue the levy for some time as an extraordinary measure then the rate be changed to ad-valorem levy of 20% of incremental crude price over USD 100.

Remove National Calamity & Contingent Duty alongwith Basic Excise Duty - NCCD on tobacco products and crude was announced in the Budget of 2019. Further BED of 'Rs 1 per tonne 'on domestic production of crude was added. Imposition of NCCD and BED on production of domestic crude in the background of crude oil not under the ambit of GST has created hardships to industry by substantial stranding of taxes.

Recommendation - It is recommended that NCCD along with BED on production of domestic crude oil be removed with immediate effect.

Provide Upfront Exemption on Duties of Excise on HSD - With the introduction of GST w.e.f. 01.07.2017 exemption of Excise Duty on procurement of HSD was withdrawn for domestic operations. However, since import of HSD under a specified good category for petroleum operations were at zero customs duty, excise duty paid on domestic production was eligible for deemed export benefit under Foreign Trade Policy. However recently HSD was pruned from specified goods list, resulting in non-eligibility of zero custom duty on import or the deemed export benefit.

Recommendation - It is recommended that upfront exemption on procurement of HSD required for petroleum operation be provided without any condition.

These recommendations were submitted to Chairperson, Central Board of Indirect Taxes and Customs, Ministry of Finance.

For detailed recommendation, please write to
Ms Ira Khanna at ira.khanna@ficci.com

CIFTI – FICCI representation on Forms referred in the Draft FSS (Genetically Modified Foods) Regulations, 2022

In the submitted representation on FSSAI notice dated 02nd Jan. 2023 related to seeking public comments on Forms 1A, form 1 B and Form II referred in the draft Food Safety and Standards (Genetically Modified Foods) Regulations, 2022, FICCI proposed to remove Form IB i.e., Application for approval of foods derived from GMOs, based on the following:

- As referred under sub-regulation 2 (c) "Food ingredients produced from GMOs but does do not contain modified DNA". Hence in principle, these materials should not be treated as GM Food/ Food Ingredients.
- Further 2© are out of scope from GMO labelling as per sub regulation 5- Labelling.
- Therefore, approval requirement for category 2© will create confusion and increased burden on FBO and authority as for products which do not have content or adventitious amount is present will require approval. Hence suggest removing requirement of its approval.
- Instead, these materials may be regulated on the same lines as non-GM counterparts.

For detailed representation, please write to
Mr Abhinav Singh at abhinav.singh@ficci.com

CIFTI-FICCI representation on FSSAI draft notification on FSS (Labelling & Display) Amendment Regulations, 2022

In the submitted representation on FSSAI Draft Food Safety and Standards (Labelling & Display) Amendment Regulations, 2022, FICCI shared comments on the following clauses:

- Addition of FSS (Nutraceutical, Health supplement, FSDU, FSMP) regulations 2022, under Section 1(a) in clause (b), "Provided further that per serve percentage (%) contribution to RDA and number of servings per pack may not be given for Infant Nutrition products as defined under Food Safety and Standards (Foods for Infant Nutrition) Regulations, 2020."
- We proposed that all allowed formats under Health supplements, Nutraceuticals and Foods for Special Dietary Uses (FSDU) should be covered under the exemption of Nutritional information.
- We suggested revision of the tolerance limit.
- We requested to incorporate new dimension requirements for Jaivik bharat logo, fortified food logo and vegan logo (basis FSSAI draft notification dated 23.12.22) in Schedule I in line with the dimension requirement followed for the veg logo.

For detailed representation, please write to
Mr Abhinav Singh at abhinav.singh@ficci.com

CIFTI-FICCI request Inclusion of 'alcoholic beverages' and 'spirituous liquor' in the Third Schedule of the Legal Metrology (Packaged Commodities) Rules, 2011

In the submitted representation on Legal Metrology (Packaged Commodities) Rules, 2011 third Schedule, which classifies packaged commodities likely to undergo significant variations in measure on account of "environmental conditions", FICCI requested for the inclusion of "Alcoholic Beverages and Spirituous liquor" under the scope of third schedule, because of the following reasons:

- The LM Rules are framed to ensure that the consumer receives the accurate quantity of the product that he pays for. Rule 11 of the LM Rules accommodates products that are likely to undergo significant variations. By qualifying such products by the words "when packed", the consumer is informed and made aware about the quantity as it existed when the product was packed and that any variation of the quantity is owed to environmental conditions alone—and not due to any human intervention.
- Alcoholic beverages are prone to contraction or expansion depending upon the temperatures in which they are stored. When alcoholic beverages are manufactured and bottled at a distillery during the summer season but stored till the winter season, the alcohol in the bottles will undergo contraction and, hence, the net quantity of the bottles will reduce. When the same bottles are sold to the consumers in the winter season, the apparent reduction in the net quantity may give the impression that the bottle was filled with less quantity when it was manufactured, and the consumer may feel cheated. This is an important consideration justifying the inclusion of alcoholic beverages and spirituous liquor within the Third Schedule.

For detailed representation, please write to
Mr Abhinav Singh at abhinav.singh@ficci.com

CIFTI - FICCI Comprehensive representation on import issues

In the submitted representation to FSSAI, FICCI addressed the challenges related to various import agendas as:

1. FSSAI notification on health certificate requirement accompanied with the import of food consignments:
   - We humbly requested to keep the health certificate order in abeyance till the integrated certificate is issued.
   - We requested that the HS code list should be reviewed and mapped with the three standards of Food Safety and Standards Regulations (FSSR) before it is included in the integrated format.
2. FSSAI notification on foreign food manufacturing facilities:
   - We requested to issue a clarification regarding the registration of foreign food manufacturing facilities to have smooth import facilitation.
   - We also requested to mention the food category/sub-category number in the FSSAI order for better clarity.
3. GM CoA issue:

   We requested to issue a clarification, withdrawing the requirement of a CoA from an accredited lab, for the absence of a production organism.
4. Dual Usage of ingredients for food and drug purpose:

   We requested to take up the concern of over-scrutiny of food materials having dual usage, with the relevant drug authorities.

For detailed representation, please write to
Mr Abhinav Singh at abhinav.singh@ficci.com

For more details contact FICCI Membership at:
tripti.kataria@ficci.com/9818000591