



IADC
SOUTH CENTRAL
ASIA CHAPTER

**International Association
of Drilling Contractors**

South Central Asia Chapter

Abhishek Apartment, B Wing,
Flat-G1, Shradhanand Road,
Behind Abhinav Apts.,
Vile Parle (East),
Mumbai - 400 057.

P + 022 2613 4764
iadcsac@gmail.com
www.iadc.org

17 February 2017

To,

Shri Upender Gupta
Commissioner (GST), CBEC,
Room no 220A, Department of Revenue,
North Block,
New Delhi - 110001

Subject: GST representation for areas affecting the members of International Association of Drilling Contractors due to introduction of GST

Respected Sir,

The members of International Association of Drilling Contractors ('We' or 'IADC' or 'the Association') are happy to bear witness to the passage of the Constitutional Amendment Bill for Goods and Services Tax (GST) in the Parliament and the subsequent developments for implementation of the unified GST regime in India, likely to be implemented from 1 July 2017.

We sincerely thank the Government, GST Council and your goodself for the efforts and hard work, being put to implement the long awaited GST regime in India. We appreciate the persistent efforts in paving way for the biggest taxation reform of India in its intent to simplify the indirect taxation regime. GST regime aligned with the overall objectives of removing cascading impact of taxes, unifying the Indian market, simplifying administration compliances, and rationalizing the rates of taxation will no doubt prove to be a catalyst for economic growth of India.

The IADC - a forum of oil and gas drilling industry stakeholders to connect, share knowledge, and develop solutions to critical common oil and gas issues; is a non-profit making organization to resolve common issues relating to oil and gas and drilling services.

We have provided below key points arising out of Model GST law, November 2016, where we believe a consistency with the existing Indirect tax laws or clarifications are required and request your honour to please consider the same positively. This will help the industry as a whole and will also help to achieve the purpose of GST i.e. reduced litigation, more compliances, ease of doing business and overall economic growth.

A) Summary of GST representation areas for IADC - requesting for continuation of exemptions and clarifications under GST

1) Continuation of exemption from payment of BCD and GST on import of goods in connection with petroleum operations – whether purchased or leased.

Import of goods under an Essentiality Certificate

Importation of equipment/ material/ goods for oil and gas sector currently are exempt from all kinds of duties under an Essentiality Certificate. It is imperative for the industry that these exemptions continue even after the introduction of GST (i.e. BCD and GST). This is critical for survival of the industry due to significant value of capital goods and material imported in this industry.

Import of goods without an Essentiality Certificate

At present, CVD (in lieu of Excise Duty) is exempt on import of few goods (like towing vessels, barges etc) for oil and gas operations – when not imported under Essentiality Certificate.

Similarly, VAT / CST is also not payable on the value of lease rental of goods imported for oil and gas operations.

We request you to please continue similar exemptions i.e. GST should not be applicable.

2) Grant of facility to obtain Centralised registration under GST

As you might be aware this industry works in offshore and onshore areas; and is mainly in the nature of contractual business. Under one contract, the companies need to make one office but need to be mobile to move the capital goods and material from one location (offshore and/ or onshore) to another location (offshore and/ or onshore). In absence of provision of Centralised registration under the Model GST law, IADC requests for the grant of facility for obtaining Centralised Registration to service providers. This would certainly help avoid (a) ambiguity, (b) litigation and (c) dual adjudication by States.

3) Exemption from IGST on transfer of goods/ equipment from one location to another for performance of services/ activities

It is a standard business practice in the drilling industry that imported equipment including high value drilling rigs, vessels, tools and spares etc are used at different locations in the same project or more than one project; and are transferred from one project to another. Also, most entities undertaking drilling activities are foreign companies and generally operate through project offices along with other site offices, onshore base including offshore structures such as rigs/ platforms etc – given the nature and duration of the project/ contract.

Further, movement of rigs (goods etc) from one location to another necessitates even movement of goods on-board the rigs along with other resources essential (located at onshore site, base etc) for operation of the rigs/ goods. For instance, the movement of goods could be –

- (a) From an offshore location to another offshore location; or
- (b) Between an offshore location and onshore location; or

- (c) Between different onshore locations; or
- (d) Between 12 Nautical Miles and 200 Nautical Miles and vice versa.

Movement of goods within the same project or from one project to another or across locations, within the State or inter-State is purely meant for facilitating provision of service, and is not a trading activity. Such goods are used for performance of services and none of the member can be said to be dealer of such goods as there is no sale taking place.

Presently, such movement of goods within the project or from one project to another or location is for performance of services and the same does not attract VAT / CST or any indirect tax or mandate reversal of CENVAT/ input tax credit taken.

Thus, IADC requests for continuation of exemption from payment of IGST on transfer of goods from one State to another or from an onshore location to another onshore/ offshore location (and vice-versa) - for performance of services.

4) Inclusion of Petroleum products and Natural gas under GST

Keeping the petroleum products and natural gas out of the ambit of GST would bar the oil and gas industry from most of the benefits of GST, lead to loss of input tax credits and create a complicated indirect tax structure. Additionally, the taxes charged by sellers of these products would not be creditable – thus, negatively impacting all sectors.

GST could be levied at zero or concessional rate on petroleum products and natural gas so that seamless flow of credit is not broken and cascading impact of taxes is removed.

Exclusion of these products in the GST regime will directly impact our customers and indirectly impact our industry as that will lead to increase in cost for the customers. This may also lead to various disputes, litigations and incentive to adversely interpret the laws to defer the applicability.

Hence, IADC requests for inclusion of petroleum products and natural gas under GST – whether at zero or concessional rates. Or else, the Government should consider to keep the whole chain out of the GST net to avoid the cascading impact or breaking the chain.

5) Grant of exemption to high sea sales and sale in the course of import

By virtue of Article 286 of the Constitution of India, currently sale in the course of import (including high sea sales) is not subject to Sales tax.

Thus, in view to avoid double taxation under GST (once at the time of import and another prior to goods crossing the customs frontier of India) and considering the essence of current exemption, it is requested to allow continuation of exemption to high sea sales and sale in the course of import under GST.

6) Taxability of offshore supplies

The definition of India extends to the Continental Shelf (CS), Exclusive Economic Zone (EEZ) and any other Maritime Zone i.e. beyond the territorial waters of India.

IADC requests that it is clarified as to which State would have jurisdiction over the offshore locations/ structures so as to avoid adjudication by multiple States. It is becoming more imperative to be made clear in lieu of the current understanding between the Centre and the

State - wherein the State will have powers up to 12 Nautical Miles (Territorial waters) and the Centre will have powers up to 200 Nautical Miles (CS & EEZ). We would recommend that it may be made clear that in offshore industry it is IGST which should be applicable and not SGST to avoid future litigation.

Additionally, it should also be clarified that rigs/ offshore structures (facilitate drill wells etc) would not be termed as a 'fixed establishment' and thus not be required to register under GST law; and that the location of supplier/ receiver of goods and/ or services would be the location of their respective premises located on the landmass of India.

7) Value of goods in case of imports

As you are aware there are valuation rules in Customs regulations and also in the proposed draft GST legislation. To avoid any conflict between these two valuation rules, the Association requests that it is clarified that value of goods and basis for payment of BCD and IGST would be same in order to avoid any ambiguity or litigation.

8) Liability of non-resident taxable persons to register under GST

Presently, where a non-resident person i.e. foreign service provider renders services for which the Service recipient is liable to pay Service tax under reverse charge mechanism, in such a case, the non-resident person (service provider) is not liable to obtain Service tax registration in India or undertake compliances.

It is requested for a clarification - that under GST as well, where the recipient of goods and/ or services is liable to pay GST under reverse charge mechanism, the non-resident taxable person shall not be required to obtain registration under GST or undertake compliances under GST. Due to excessive use of foreign service providers in this industry it is imperative to be made clear that non-resident persons are not required to register under GST law otherwise it will impact the operations of the industry.

This space has been left intentionally

B) DETAILED GST REPRESENTATION - REQUESTING FOR CONTINUATION OF EXEMPTION AND HAVING CLARIFICATIONS UNDER GST

1) Continuation of exemption from payment of GST on import of goods in connection with petroleum operations - whether purchased or leased

Import of goods for petroleum operations against an Essentiality Certificate

- 1.1 At present, the entire Customs duty i.e. Basic Customs Duty ('BCD'), Countervailing Duty (CVD) and Special Additional Duty and cesses, is exempt on import of goods in connection with petroleum operations under S No 357A of Notification No 12/2012 - Customs dated 17 March 2012 (as amended) for specified items mentioned under List 34 to the said notification - when imported against the Essentiality Certificate (EC) issued by the Director General of Hydrocarbons (DGH).
- 1.2 Drilling activity is an essential and high value activity for extraction of crude oil and petroleum. In this regard, it is pointed that for the purpose of carrying out drilling operations - equipment, rigs, tools and other similar goods have to be imported from outside India. Typically, such equipment, rigs, goods are used for drilling operations and are either re-exported back outside India or rolled over to other authorised projects.
- 1.3 You would appreciate that the capital equipment used for petroleum operations are of substantial value and are generally of value which is multiple times the value of the projects in India.
- 1.4 Also, considering the high value of equipment/ goods imported (being far higher than that total project costs) and the manner in which the industry operate, it would be extremely detrimental to the industry as the IGST payable thereon could generally not be recoverable during the tenure of the project and thus become a huge cost. This would negatively impact the oil and gas sector in India as levy of GST more than the value of the Contract itself will make these contracts unviable and commercially impractical.
- 1.5 In view of the above, we request and urge that appropriate provisions are made under Customs and GST law for continuation of this exemption i.e. BCD and GST and any other indirect taxes applicable should continue to be exempt on import of goods under Essentiality Certificate in connection with petroleum operations, as is available at present.

Import of goods for petroleum operations without an Essentiality Certificate

- 1.6 At present, certain equipment/ goods which are imported into India for petroleum operations (not under EC) attract Customs Duty. However, CVD (in lieu of Excise Duty) is exempt on certain import of equipment/ goods like towing vessels, barges, tugs etc for petroleum operations, in terms of the respective Customs and Excise exemption notifications 12/2012 (as amended).
- 1.7 Under the Model GST law, lease of goods imported into India would be treated as 'supply of service'. The import of goods would also attract BCD.
- 1.8 Hence, the issue involved here is double taxation of a single transaction of import of goods for oil and gas operations. The present provisions under the Model GST Law would lead to

double taxation of the same transaction – one in the form of import of goods and the other in the form of services (i.e. leasing).

- 1.9 The levy of IGST (even though creditable in nature) would lead to accumulation of GST credits for number of years - generally not be recoverable during the tenure of the project. But more alarmingly, it could have a serious negative impact the oil and gas sector in India considering the present industry scenario and the high value of equipment/ goods (being far higher than that total project costs).
- 1.10 The members of IADC would certainly have an adverse effect due to the levy of GST on such imports and could end up losing business in India. It may thus have a direct and negative effect on the Government's motto of ease of doing business in India and also the vision of the government for oil production.
- 1.11 Thus, we request and urge for continuation of exemption under GST for import of goods (whether purchased or taken on lease) for petroleum operations, similar to the currently available exemption from payment of CVD, Service tax and VAT/ Sales tax on such imports.

2) Grant of facility to obtain Centralised registration under GST

- 2.1 Under the current service tax regime, the facility of Centralised registration has been provided to taxpayers who have multiple places of business in case they have a process of centralized billing/ accounting.
- 2.2 Besides, a major benefit of Centralised registration is the facility to avail CENVAT credit on inputs, capital goods and input services at a single location irrespective of the location and receipt of such inputs, capital goods and input services. Centralised registration also reduces compliance costs to a great extent.
- 2.3 IADC members carry out drilling operations at the onshore and offshore locations. Further, there are transactions of supply of goods and / or services across locations and even between offshore and onshore locations. Within 12 Nautical Miles and Outside of 12 Nautical Miles etc.
- 2.4 However, in the Model GST Law there are no provisions *pari materia* to centralised service tax registration.
- 2.5 This is a major area of concern as in case of project operations spread across India i.e. onshore locations as well as offshore locations. Thus, it would be imperative to ascertain which State would be the relevant State to obtain apply for registration for areas in the Indian Territorial waters and maritime zones. This industry would need centralized registration as this is the only industry where the business/operations would move from one location to another location.
- 2.6 It would also lead to an exponential increase in compliances as the members would be required to obtain registration in each State where project is being executed. Accordingly, the drilling contractors could be required to undertake compliances in all such States. It is also not that the industry members have continuation of business in one state but the issue is that the business will move from one state to another state or one location to another location (onshore and offshore).

2.7 In view of the above, IADC requests for the grant of facility for obtaining Centralised Registration to service providers. This would certainly help avoid – (a) ambiguity, (b) litigation and (c) dual adjudication by States.

3) Exemption from IGST on transfer of goods/ equipment from one location to another for performance of services/ activities

3.1 It is a standard business practice in the drilling industry that imported equipment including high value rigs, tools and spares etc are used at multiple locations in the same project or more than one project; and are transferred from one project to another.

3.2 Also, most entities undertaking drilling activities are foreign companies. Further, as the duration of the project(s) / contract is variable i.e. the tenure of the project may vary from few days/ weeks, months or few years, the drilling entities generally operate through project offices along with other site offices, onshore base including offshore structures such as rigs/ platforms etc.

3.3 The drilling operations are performed at onshore as well as at offshore locations – in relation to which, there is movement of equipment/ goods (including tools, spares, consumables) along with manpower from one location to another – depending on the project site and activities to be performed.

3.4 Also, the movement of rigs (goods) from one location to another necessitates even movement of goods on-board the rigs along with other resources essential for operation of the rigs/ goods.

3.5 Such goods could be located either at the onshore site/ base as well on-board the rigs or offshore structure(s). For instance, movement of goods generally takes place in the following manner:

(a) Between an offshore location to another –

Where the rig (along with on-board goods and manpower) moves from west coast of India (i.e. Arabian sea) to the east coast in the Bay of Bengal etc. This might also include movement of rigs and goods from EEZ (200 Nautical Miles) to Territorial Waters (12 Nautical Miles) or vice versa.

(b) Between an offshore location and an onshore location

Movement of consumables/ spares from the offshore rig to the onshore base and vice-versa etc.

(c) Between two onshore locations

Movement of onshore drilling rig from an onshore project site to another; or movement of consumables from the base to the project site etc

3.6 These goods are high value items and levying tax at each stage would have huge cash flow and working capital impact. As also discussed above, this would lead to credit blockage and be detrimental to operating in the oil and gas sector as the GST payable thereon could generally not be recoverable during the tenure of the project (thus becoming a huge cost).

- 3.7 From reading of the provisions of the Model GST Law, November 2016, it is understood that movement of equipment, rigs and other capital goods under a particular project or from one project to another, within the State or inter-State could attract output GST, even though the same is not a 'supply' in technical sense. Also, the goods are not transferred to any other person but returned back after use in the project. Additionally, supply of capital goods would mandate reversal of input tax credit taken on such capital goods.
- 3.8 It is requested to acknowledge the fact that the movement of good/ equipment from one project to another is purely meant for facilitating provision of service, and is not a trading activity. Such goods are used for performance of services and none of the member can be said to be dealer of such goods as there is no sale taking place.
- 3.9 Presently, such movement of goods/ equipment from one project to another or from an onshore location to another onshore or offshore location (and vice versa) for performance of services does not attract VAT/ CST or any indirect tax or mandate reversal of CENVAT credit/ input tax credit taken, if any.
- 3.10 In view of the above and given the peculiar nature in which the industry operates, IADC requests for continuation of exemption from payment of IGST on transfer of goods for performance of services from one State to another or from an onshore location to another onshore/ offshore location (and vice-versa) to avoid - (a) ambiguity, (b) litigation and (c) dual adjudication by multiple States.

4) Inclusion of Petroleum products and Natural gas under GST

- 4.1 Vide the Constitution (One Hundred and First) Amendment Act, 2016, it has been decided to keep Petroleum crude, High Speed Diesel, Motor Spirit, Natural Gas and Aviation Turbine Fuel out of the ambit of GST.
- 4.2 It has also been provided in Article 279A of the Constitution of India that the GST Council would recommend the date on which GST would be levied on such petroleum products and natural gas.
- 4.3 Keeping the petroleum products and natural gas out of the ambit of GST would bar the oil and gas industry from most of the benefits of GST, lead to loss of input tax credits and create a complicated indirect tax structure. Additionally, the taxes charged by sellers of these products would not be creditable and thus negatively impact all sectors and lead to inflation.
- 4.4 The finished products (eg: Natural gas, High Speed Diesel, Aviation Turbine Fuel etc) would be subject to Excise duty and Sales tax; whereas the inputs and input services would be subject to GST - which would not be creditable against the output duty/ tax liability. This would result in massive increase in costs for the oil and gas sector making it financially unattractive, which would in turn reduce exploration and drilling activities carried out in the country.
- 4.5 Consequently, as a suggestion, GST could be levied at zero or concessional rate on petroleum products and natural gas so that seamless flow of credit is not broken and cascading impact of taxes is removed. Tax at marginal rate of may not hurt the consumers much but will benefit the industry in a big way.

4.6 In view of the above, IADC requests for the inclusion of petroleum products and natural gas under GST at concessional rate or zero rate. Alternatively, the complete chain for this industry may be kept out of GST to maintain the chain of value addition and to avoid cascading impact.

5) **Grant of exemption to high sea sales and sale in the course of import**

5.1 By virtue of Article 286 of the Constitution of India, currently sale in the course of import (including high sea sales) is not subject to sales tax. Hence, Central Sales Tax is not applicable on high sea sales or sale in the course of import.

5.2 Under the Model GST law, 'Supply of goods in the course of import into the territory of India till they cross the customs frontiers of India shall be deemed to be a supply of goods in the course of inter-State trade or commerce'

5.3 Thus, supply in the course of import appears to be subject to IGST under the proposed GST regime.

5.4 In view of the above, to avoid double taxation under GST (i.e. once at the time of import and another prior to goods crossing the customs frontier of India) and considering the essence of current exemption on the same, it is requested to allow continuation of exemption on transaction in the nature of high sea sales and sale in the course of import.

6) **Taxability of offshore supplies**

6.1 The definition of India extends to the Continental Shelf (CS), Exclusive Economic Zone (EEZ) and any other Maritime Zone i.e. beyond the territorial waters of India.

6.2 IGST is levied when the place of supply and location of supplier are in two different States. CGST and SGST are levied when supply is intra-state (within the same State).

6.3 As stated above, IADC members carry out drilling operations at the offshore locations which are outside of any State. Under the current draft legislation it is provided that these locations should be covered under IGST, however, there would be contradiction and dispute when these locations would be within 12 Nautical Miles and 200 Nautical Miles.

6.4 In this regard, if it is clarified that in case of services provided in offshore locations it should be the State in which the office of the service provider is location should be the State jurisdiction for registration.

6.5 Also, as you would be aware, oil rigs/ offshore structures are large structures with facilities to drill wells, to extract and process oil and natural gas, or to temporarily store product until it can be brought to shore for refining and marketing. In many cases, the platform contains facilities to house the workforce as well.

6.6 As per Section 2(47) of the Model GST Law, the term 'fixed establishment' has been defined as -

"a place, other than the place of business which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources"

- 6.7 In this regard, the Association requests that it is clarified that the oil rigs/ offshore structures would not be a classified or treated as fixed establishment and must not be required to be registered under GST law. This will lead to impractical consequences.
- 6.8 Accordingly, it is requested that with regards the supply of goods and services to such structures located in offshore India (for instance oil rigs etc), it is clarified that the location of supplier and receiver of goods and/ or services should be the location of their respective premises on the landmass of India for levy of GST (i.e. CGST and CGST or IGST, as the case may be).

7) **Value to be adopted in case of Imports**

- 7.1 The definition of India extends to the Continental Shelf (CS), Exclusive Economic Zone (EEZ) and any other Maritime Zone i.e. beyond the territorial waters of India.
- 7.2 The Association humbly request that it is clarified that the value of goods and basis for the purpose of payment of BCD and IGST would be the same.
- 7.3 The current ambiguity arises because of the way Section 5 of the Model IGST Law has been worded:

Section 5 of the Model IGST Law:

“There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made in the course of inter-State trade or commerce on the value determined under section 15 of CGST Act, 2016 and at such rates as may be notified by the Central Government in this behalf, but not exceeding twenty eight percent, on the recommendation of Council and collected in such manner as may be prescribed and shall be paid by every taxable person in accordance with the provisions of this Act.

PROVIDED that the Integrated Goods and Services Tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962), on a value as determined under the first mentioned Act.”

- 7.4 Thus, IGST levied on imports would be as per the value determined under the first mentioned Act. The first mentioned Act in the proviso is the Customs Tariff Act, 1975 which does not contain valuation provisions. However, the first mentioned Act in Section 5 is the CGST Act.
- 7.5 At this juncture, it is brought to the notice of Council that adopting two valuations mechanisms i.e. –
- (a) Valuation as per Customs Law for payment of BCD
 - (b) Valuation as per GST law for payment of IGST would make the process cumbersome for assesses and litigation prone
- 7.6 In view of the above, the Association requests that it is clarified that valuation for payment of BCD and IGST would be the same and that there would not be any cascading effect. This would certainly help avoid – (a) ambiguity, (b) litigation and (c) dual adjudication by multiple authorities.

8) Liability of Non-resident taxable persons to register under GST

8.1 Para 6(v) of Schedule V of Model GST Law requires non-resident taxable persons to register irrespective of any threshold limit.

Schedule V of Model GST Law

"Persons liable to be registered

....

(v) non-resident taxable persons, irrespective of the threshold specified under Paragraph 1"

8.2 Section 2(68) of the Model GST Law defines 'non-resident taxable persons as follows:

"non-resident taxable person" means a taxable person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India;

8.3 It appears that foreign non-resident exporters (of goods and services) undertaking supply of goods and/ or services would have to register and undertake various compliances such as filing of returns, deposit of taxes, maintenance of books as per law, invoicing etc.

8.4 These provisions would be mandatory even if - (a) such non-resident person does not have a place of business in India; and/ or (b) the turnover is below the specified threshold limit.

8.5 Separately, Section 8(3) of the Model GST law provides that the Centre or State Governments may, on recommendation of the GST authority, specify the categories of supply of goods and/ or services, the tax on which will be payable under reverse charge mechanism.

Section 8(3) of the Model GST Law

"The Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the recipient of such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to the supply of such goods and/or services."

8.6 In this regard, it may be noted that presently, where a non-resident person i.e. foreign service provider renders services for which the Service recipient is liable to pay Service tax under reverse charge mechanism, then in such case, the non-resident person (foreign service provider) is not liable to obtain Service tax registration in India or undertake compliances.

8.7 It is requested for a clarification - that under GST as well, where the recipient of goods and/ or services is liable to pay GST under reverse charge mechanism, the non-resident taxable person shall not be required to obtain registration under GST or undertake compliances under GST.

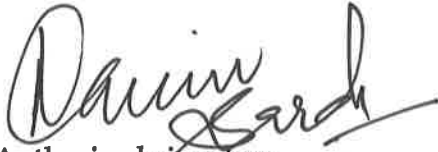
We trust the above requests would receive sympathetic consideration by the GST Council and appropriate amendments will be made in the provisions of the GST law to provide for exemption as well as clarifications requested above

We request you to grant us an opportunity to represent our submissions/ contentions stated above in person before your goodself to enable you to appreciate the points of representation and grant relief requested for.

Thanking you in anticipation,

Yours faithfully

For **International Association of Drilling Contractors**

A handwritten signature in black ink, appearing to read "Navin Sarda". The signature is written in a cursive style with a long horizontal stroke at the end.

Authorised signatory
Navin Sarda
Director Tax Committee

Navin.Sarda@deepwater.com
+91 9819045884