

**Memorandum of Council of Power Utilities (CPU) for  
Annual Budget 2006-2007.  
Submitted to Ministry of Power**

**I. Direct Taxes**

1. Continuance of deduction of an amount equal to 100% in respect of profit and gain from Industrial undertakings or Enterprises engaged in Infrastructure development etc (Sec 80 I A of IT Act) years for tax purposes as per following details:-

- For Generation or Distribution of power, if it begins to generate power at any time during 1.4.93 to 31.3.2006.
- For T&D, if network of new Transmission or Distribution lines starts laying at any time during 1.4.99 and ending 31.3.2006.
- Undertaking substantial R&M of existing transmission or Distribution line during 1.4.2004 ending 31.3.2006.

**Suggested modification:** Existing Maximum time limit for availing of the facilities i.e. 31.3.2006 may be removed and instead the facility may be made availed of for course entire 10 years from the date of beginning of the activity.

**2. Income which do not form part of the total income under chapter III.**

Under the existing provision of sec 10(20) of IT Act 1961 local authorities which is derived from supply of water or electricity is exempt from tax because the cost of tax may not be added to the electricity tariff being charged.

Tata Power of the view that the main objective of the Govt. is not to exempt the income of the local authorities but not to increase electricity and water tariff. They therefore propose that income of all those enterprises or companies engaged in the business of supply of water and electricity should be exempted within provisions of Sec 10(20) of the IT Act, 1961.

**3. Additional Depreciation under Section 32(ia) :**

Under the existing law, additional depreciation is available to an assessee engaged in the business of manufacture or production of any "article" or "thing".

Though "electricity" has been held to be "goods" by various appellate authorities under the Central / local Sales Tax Acts, in order to avoid litigation, it is suggested that assessee engaged in generation / distribution / transmission of electricity also be specifically entitled to additional depreciation under Section 32(ia).

**4. Section 43 B:**

It is suggested that Section 43-B be amended conferring eligibility of electricity expenses for deduction from income only on actual payments. This would speed up the revenue recovery for Electricity Companies.

**5. Section 36(1) (vii a) :**

Under the existing provision of Section 36 (1) (viia), a revenue deduction is allowed in respect of any provision for bad & doubtful debts made by a schedule bank, a bank incorporated under the laws of a country outside India and a public financial institution.

It is suggested that power sector companies should also be allowed similar deduction in respect of its provisions made for bad & doubtful debts.

**6. Section 10(23G) :**

Under the existing provisions of Section 10(23G) of the Income Tax Act, the exemption is available to Infrastructure capital fund or Infrastructure capital company or a co operative bank against any income earned by them by way of dividends, interest or long term capital gains from investments made in shares or long term finance in any enterprise which is wholly engaged in the business referred to in sub section 4 of section 80 IA and its business is approved by the central government on an application made to it by the said business enterprise in accordance with the rules made in this behalf.

It is suggested that the exemption should be extended to all categories of investors (lenders) and in all kinds of investments (whether by way of shares, loans, cash credit limit, public deposits etc) to give a boost to investments in the power sector. Increased cost of financing in power sector results in higher power tariffs.

**7. Dividend Tax**

In compliance with the requirements of Electricity Act 2003, the Power sector would be restructured to a large extent which would include formation of subsidiaries & joint ventures. The returns for investment under the formation of such companies would be through Dividends.

At present the Dividends although tax free in the hands of the recipient, is subject to Dividend Tax before distribution. The formation of subsidiaries/joint ventures would only necessitate deduction of Dividend Tax at various stages before reaching the final share holder.

It is therefore requested that the dividend distribution tax on Companies be abolished, since such tax results in double taxation.

**8. Minimum Alternate Tax**

In order to promote investments in the infrastructure sector, the Government has provided Section 80-IA benefits. However, these benefits are diluted due to the minimum alternate tax to be paid by the Companies.

Though Minimum Alternate Tax credits are now available, it is suggested that Minimum Alternate Tax be abolished for Infrastructure /Electricity Generating/Transmitting/Distribution Companies to whom the Section 80-IA benefit is available.

**9. Procedural matters :**

- a. Suitable provision should be made in tax laws laying down time limits within which the assessing officer is required to give effect to orders of CIT (A), ITAT, Courts, failing which the assessee should be entitled to adjust the refund amount from advance tax.
- b. Time limits also need to be fixed for disposal of appeals by appellate authorities.

**10. Tax deduction at source:**

As per the Income Tax Act, TDS is to be deducted on payments and provisions. However, on actual crystallization of liability the actual amount payable may differ substantially from the amount provided. Accordingly, TDS amount would also substantially differ. The excess TDS deposited, when adjusted in case of subsequent deduction results in date of deposit of TDS being prior to the date of deduction.

It is suggested that TDS be applicable only on actual payments and not on mere provisions made.

**11. Wealth tax Act**

Wealth Tax Act be abolished to reduce administrative work both at the Corporate level and the departmental level. In any event, wealth tax yields insignificant revenue.

12. Benefits under sections 80 I A and 10(23G) of the Income tax Act, 1961 to be extended from current 2006 to 2012.
13. Section 80IA & 10(23G) benefits to be extended to investments in Renovation & Modernization of existing generation projects also.
14. 80IA benefits for substantial renovation of Power Distribution should not be subject to conditions linked to “reconstruction” in section 80 (IA)(3)(i).
15. Section 10(23G) benefit to be given on “gross” income instead of “net income” basis.
16. For claiming Sec 10(23G) benefits, approval from CBDT may be dispensed with and instead MOP approval should be stipulated.
17. Power Sector to be exempted from Minimum Alternate Tax and Dividend Distribution Tax.
18. ECBs raised by companies engaged in power sector to be exempted from withholding tax under Sec 10(15)(iv).
19. Sec 43B to be amended such that electricity expenses can be claimed for deduction from taxable income only when actually paid.
20. Special Provision as to Income Tax (Section 65 of MP Reorganization Act 2000):-

Where the assets, rights and liabilities of any body corporate carrying on any business are, under the provisions of this Part, transferred to any other bodies corporate which after the transfer carry on the same business, the losses or profits or gains sustained by the body corporate first mentioned which, but for such transfer, would have been allowed to be carried forward and set off in accordance with the provisions of Chapter VI of the Income-tax Act, 1961 (43 of 1961) shall be apportioned amongst the transferee bodies corporate **in accordance with the rules to be made by the Central Government in this behalf** and, upon such apportionment, the share of loss allotted to each transferee body corporate shall

be dealt with in accordance with the provisions of Chapter VI of the said Act, as if the transferee body corporate had itself sustained such loss in a business carried on by it in the years in which these losses were sustained.

**Suggestion for Annual budgetary exercise:-** Till date Government of India has not framed rules under the Section 65 of MP Reorganization Act. It is pertinent to mention that six State of India, emerged as per the Act of Parliament w.e.f.1.11.2000, re being affected due to non formulation of the said rules.

In absence of such rules losses or profit or gains sustained by the corporate of undivided State are not being shared by the successor body corporate. It is therefore, proposed that rules may be framed by the Govt. of India under section 65 of MP Reorganization Act at the earliest, so that successor bodies corporate can prepare/finalize their Annual Accounts depicting true & fair view, considering share of losses or profit or gain of erstwhile bodies corporate.

## II. Indirect Taxes

- a) Basic customs duty for equipment used in Generation, Transmission & distribution to be rationalized at an aggregate level of 5%. Currently basic custom duty applicable for Generation equipments (for Non Mega) under Project import is 5% and 15% for Non project import while for T & D equipments, current basic duty is 10% for “project imports and 15% for “non-project imports”. Rationalisation at uniform level of 5% is required, keeping in view the need for large investments in the Generation, Transmission & Distribution.
- b) CVD on power Generation, Transmission & Distribution equipment (which is currently at 16%) should be abolished. This is required, as power sector has no advantage of “Cenvat” credit. In fact, the CVD increases the capital cost of the power plant.
- c) Mega power project benefits are currently applicable only to certain eligible projects in generation i.e. thermal power plant above 1000 MW and hydel power plant above 500 MW. These benefits should also be allowed to transmission and distribution projects having above prescribed threshold investment.
- d) For Mega power projects, in addition to customs duty/excise duty exemption, there should also be exemption from currently applicable Service Tax at 10.2% and Central Sales Tax at 4% and Octroi
- e) Custom Duty for Pollution Control Equipment for Power Sector to be made nil, similar to such benefits available for goods substituting Ozone depleting substances and setting up capacity with non ODS technology.
- f) 100% tax/duty exemption on equipment/fuel used for decentralized generation/distribution system in un-electrified rural areas.
- g) Customs duty on import of coal (currently 5%) to be reduced to nil.



## Non-conventional energy projects – wind

### I. Indirect Taxes

- a. Exemption from customs duty for all components of plant & machinery utilized for

wind power projects. Currently it is 5% on most items.

- b. Exemption from customs duty for all components of plant & machinery utilized for solar projects is to be brought down to NIL.
- c. Exemption from service tax on erection, commissioning, operations & maintenance services for wind power projects. Currently it is 10.2%.
- d. Exemption from Central sales tax for wind energy projects.

## II. Direct Taxes

- a. At present these projects are incentivised in form of accelerated depreciation @ 80%. This should be enhanced to 150%.

**Also, to promote production efficiency, the accelerated depreciation allowance should be converted into Production Tax Certificates (PTC) on the lines of those followed in US which allow a fixed amount of tradable tax credit per unit of wind energy generated.**



### CENTRAL SALES TAX ACT, 1956:

#### 1. Mandatory 'F' from and deemed inter State Sales:

Inter-State transfer of goods otherwise than by way of sale require mandatory furnishing of 'F' form. In the case of inter-state sales, Form 'C' has to be mandatorily furnished. This stationery printed by the respective State Governments is in short supply thereby hampering Trade.

#### • Suggestions:

- i. The Government should permit printing of Forms 'C' & 'F' by the individual dealers, subject to necessary controls similar to Central Excise, e.g., pre-printed serially numbered and authenticated forms.
- ii 'F' form should be allowed to be collected on yearly basis, instead of monthly basis. ['C' form is already collected on yearly basis].

#### 2. Liability for CST on deemed inter-state sales:

Though it is well settled issue that States can permit a dealer to issue 'C' form declarations against their inter-state purchases of the materials to be used/supplied during execution of indivisible works contract, some States are of the view that unless for this purpose **section 8 is amended suitably, dealer should not collect/issue 'C' form even after the amendment in CST Act effective from May 11, 2002.**

#### • Suggestions:

Through the above view taken by the States is not sustainable, Section 8 of CST Act is suitably amended so that the issue will not surface.

It is also strongly recommended that a **"Model"** provision be inserted in the CST Act clearly defining turnkey contracts, allowable deductions etc. this will enable the State laws to become uniform to some extent.

**a)** A single rate of 5 per cent basic customs duty across the board for import of equipment used for generation, transmission and distribution (T&D), renovation and modernization (R&M) and spares parts. This would mean doing away with existing levy of 16 per cent countervailing duty (CVD) for all of the above segments and 4 per cent special additional duty (SAD) on T&D, R&M and spare parts segments.