2021-2022 Union Budget Recommendations

from the

U.S.-India Business Council

In partnership with Ernst & Young

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During 2020, the Government of India (GOI or Government) is to be commended for its decisive and comprehensive actions in response to the COVID-19 pandemic. As a result of these continued efforts, India has been successful in avoiding the worst of the devastating toll that the virus is imposing on the health and economies of so many nations. The Government has also implemented a series of reforms to support the Indian economy and its citizens through the negative impact of the health measures implemented to contain the virus. While these measures have enabled many companies, both large and small (and the workers that depend on them), to survive the economic downturn and remain viable entities, an aggressive path for reform is required to reverse the economic downturn and power the Indian economy's return to its full strength as a regional and global powerhouse. As a result, India's Union Budget for 2021-2022 takes on even greater importance as policymakers deliberate on the particular calculus required to promote investment, reinvigorate all industry sectors – both the hardest hit due to the pandemic as well as the fastest-growing – protect and create new jobs, and move aggressively towards a long-term strategy for growth. USIBC and its members share the Government's goals for economic growth for all sectors of the Indian economy and for all its citizens. Member companies remain committed to their investment in India as well as the health and safety of their workers. They seek to work in collaboration to realize the shared vision of a vibrant and growing Indian economy.

USIBC provides the following recommendations in partnership with Ernst & Young (EY) for the GOI's consideration as its submission for India's Union Budget 2021-2022. Part A outlines broader reforms to drive growth in the Indian economy. Part B outlines specific recommendations that impact the operational health, and therefore the potential for growth, of U.S. companies operating in India. Part B has three parts: Section I outlines recommendations for building a fair and transparent taxation, Section II provides sector-specific taxation to encourage investment and economic growth, and Section III provides detailed recommendations for foreign direct investment (FDI) policy.

Part A:
Broader Reforms to Drive Growth in the Indian Economy

Defence

As the strategic partnership between the U.S. and India grows, many new opportunities will be created for defence industrial cooperation. USIBC encourages the GOI to expedite the implementation of the Industrial Security Annex (ISA) to enable defence co-production with the United States, which will become particularly important when India finalizes its fighter jet requirements. USIBC further encourages the GOI to fully execute its budget for defence capital acquisitions. In years past, portions of this budget went unused due to delays in India's defence acquisition system, which will hopefully be avoided through the successful implementation of the Defence Acquisition Procedure (DAP 2020).

The Government is also urged to level the playing field between the Defence Public Sector Undertakings (DPSUs) and private sector defence companies in India. Private sector firms in India have shown an appetite for investing in the aerospace and defence sectors in support of India's goals towards greater indigenization and boosting defence exports.

Digital Economy

Communications networks are the foundation of *Digital India* and the goal of creating a $1 trillion digital economy. The GOI needs to reassess taxes and auction prices for the underlying spectrum to free up investment dollars for innovation, network expansion, the transition to fifth generation cellular technology (5G), and network security. The Government should continue its efforts to open the communication sector to foreign investment by incrementally open those segments to increased FDI limits or fewer reviews or controls.

Digital services taxes are a global issue that need an international multilateral approach. The U.S. Chamber of Commerce has repeatedly expressed support for the negotiations taking place under the aegis of the Organisation for Economic Co-operation and Development (OECD) to forge a consensus-based approach to the taxation of digital services and continues to urge all parties to focus their efforts on devising a multilateral approach.

Energy

Energy and infrastructure are at the centre of the Government's plans for economic growth, energy security, and sustainability. Both sectors are expected to continue to grow. An emphasis on contract sanctity will help to attract quality investment and partnerships in the sectors. As India undertakes the

transition from coal to renewables and clean technology, natural gas will play an increasingly important and flexible role as India brings more and more renewable energy online. Inclusion of natural gas under the Goods and Services Tax (GST) will help reduce costs for the sector and bring in more investment to help speed the energy transition and India's sustainability and climate goals. Reducing tariffs on components necessary for energy projects (and which cannot be sourced in India) will further attract companies looking to develop and test breakthrough energy technologies in India.

Financial Services

Multiple life and non-life foreign insurance companies stand ready to invest and grow their businesses in India, provided they and their joint venture partners are free to adopt ownership, management and control arrangements that suit their objectives. This requires the removal of the FDI caps that limit foreign investment in the sector to 49 percent. Capital inflows will help expand insurance supply and product offerings, increasing access to safety nets for businesses and individuals. These outcomes are important to promoting entrepreneurship and innovation and enabling hundreds of millions of Indians who presently lack insurance to insulate themselves from sources of financial shock like illness or the death of a family breadwinner. Growth in this sector can also increase the supply of investment capital to business, thereby accelerating economic growth, as insurance companies must invest their float—the premium received for their products—to generate returns sufficient to cover their contractual obligations.

Micro, small, and medium-sized enterprises (MSMEs or SMEs) access to finance is fundamental to ensuring the development of India's economy. Failure to secure much needed finance has long-term impact not only on the business itself, but also the market overall as smaller businesses lack the resources to capture growth opportunities. During the pandemic, these challenges have become more acute, due to weaker balance sheets of lenders and reduced cash flows for SMEs. Targeted reforms, such as those listed below, are needed to support this critical driver of growth in the Indian economy.

- Increased digitization and use of alternative data will allow lenders to access better quality and quantity of information to perform know your customers (KYC) reviews and evaluate credit worthiness. By collecting and analysing alternative data that is not typically used in credit decision making, more loans can be made, underwriting processes can be improved, and overall risk can be reduced. It can provide unbanked or underbanked groups with a bridge to more traditional forms of capital.

- A targeted subsidized loan insurance to banks and non-banking financial companies (NBFCs) servicing MSMEs – similar to existing deposit insurance schemes may provide incentives for lenders. Funding could come as a surcharge to the lenders based on their creditworthiness with a subsidy from the central bank, with appropriate limits and safeguards in place. This would provide confidence to investors that there is a financial backstop that would limit overall

exposure. This could be modelled based on similar schemes such as the Loan Insurance Scheme (LIS) in Singapore or loan guarantees by the U.S. Small Business Administration (SBA).

Domestic capital should be further mobilized towards financial assets to meet investment requirements. Even small increases in the household savings rate of gross domestic product (GDP) directed towards the financial markets, as opposed to invested in land or gold, will have a significant impact on the pool of capital available for financial intermediation.

While the Government has made considerable progress in reforming India's retirement system, the retirement system remains under capacity to meet the financial security needs of retirees without further reform. Most workers, particularly those in informal sectors, are at financial risk. Retirement reform should address expanding pension coverage, strengthening economic incentives, preserving retirement savings, improving performance, rethinking the pay-out phase of the pension lifecycle, and building a more robust poverty floor.

Healthcare

The pandemic has made clear the need to increase access to quality healthcare and to do so through a diverse set of care delivery models capable of reaching all of India's citizens. Sector-specific reforms should focus on enabling a smart health ecosystem that leverages digital innovation to address both connectivity and cost issues. Public sector spending on healthcare must increase significantly to improve healthcare productivity and enable new business models. The GOI is planning to increase public health spending to 2.5% of the country's GDP by 2025. India needs to invest more in research and development (R&D) and innovation, and create a robust intellectual property (IP) regime with favourable IP laws.

Manufacturing

India's manufacturing sector is vital to realizing India's economic growth story and sector specific reforms are needed to unlock its potential to contribute to India's GDP. Reforms should include a stable and declining tariff regime, with inverted duty structures removed. Well-functioning port-proximate manufacturing clusters, with free-trade warehousing zones, faster approval processes, and more flexible labor laws will enable growth. These should be supported with incentives that reduce the cost disadvantages India imposes when compared with its emerging economy counterparts.

A major rethinking of regional and global supply chain structures is underway. While cost pressures and policy risk issues in recent years have reduced the competitiveness of China as a single-source market for both intermediate and final stage goods, the U.S.-China trade conflict and current pandemic has accelerated the pace of relocation from China to other markets. To reach its full potential and recognize the opportunity at hand, India should proceed to embrace an export orientation. India

should expand its export markets through concluding high-ambition free trade agreements with economies such as the United States, Australia, Canada, and the European Union.

Supply Chain Logistics

As India's growth trajectory moves it closer to becoming a leading logistics hub – connecting Asia to the Middle East, Europe, Africa, and beyond customs modernization and trade facilitation reforms will attract new supply chains to India. These reforms are vital to India's growth in manufacturing under the *Make in India* agenda, and can support increased exports, boost India's attractiveness as an investment target for major multinational companies and raise India's ranking on indices like the World Bank's Ease of Doing Business ranking.

COVID-19 has revealed the vulnerabilities of well-established international supply chains and acted as a catalyst for companies to reconfigure value chain networks with a focus on resiliency and reliability. With India, and the rest of the world, still combatting the pandemic, it is more important than ever to implement policies and practices that ensure the safety of Indian citizens, support economic reopening, and create a business environment that will support strong future growth.

The National Logistics Plan will greatly help to standardize the country's supply chain and logistics ecosystem. India has modern manufacturing with intellectual and human capital, but the products manufactured are inefficiently moved to domestic and international markets. A standardized ecosystem will change that and help improve both India's economic growth and environmental sustainability. This ecosystem will also in the future reduce the potential transmission of disease that can result from the traditional movement of goods.

Part B:
SECTION I: Building a Fair and Transparent Taxation Regime

USIBC is deeply encouraged by the GOI's focus on improving the taxation framework to stimulate investment and economic growth in India, particularly in the aftermath of the COVID-19 pandemic. Prior to the pandemic, this has included key reforms such as reduction in corporate tax rates, rationalization of taxation of dividends, emphasis on effective implementation of the GST regime, and ongoing focus on moving India to a cashless, digitally driven economy. During the pandemic, policymakers boldly took numerous steps to support companies and the Indian economy through the negative economic impact of the measures intended to stop the pandemic. As India looks to its future in 2021-2022, the GOI must renew its focus on reform of the Indian taxation framework to drive growth that is fundamental to bringing the Indian economy forward in the aftermath of the COVID-19 pandemic.

A significant positive step toward improving the investment climate would be to further reduce tax uncertainty for multinational companies and institutional investors in India. In today's economic environment, scarce capital is allocated to markets offering optimal returns. Global businesses allocate investments where post-tax returns for a given risk profile are highest. When tax costs are uncertain, particularly in a foreign country, investors normally provide for them on a most conservative basis. Therefore, tax uncertainty results in an increase of risk when investing in any given project and drives investors to either withhold investments or require a higher rate of return to account for this risk, thus raising the cost of capital in the uncertain market and making further investment unattractive.

A. General anti avoidance rules (GAAR) chapter X-A

i. Clarify ambiguity on interpretation of application of GAAR

Central Board of Direct Taxes (CBDT) has notified the rules for application of GAAR provisions. There are concerns on how would the GAAR be applied in the absence of clear directions on various aspects. The Expert Committee on GAAR constituted by the Government had submitted its final report and made certain recommendations with respect to changes in the GAAR provisions in the Act and GAAR guidelines. While many of the recommendations have been accepted in the Finance Act, the balance have not been accepted by the Government or incorporated under the GAAR provisions and guidelines. Anti-abuse provisions in their tax treaties, including a minimum standard have been incorporated to counter treaty shopping. It is under this agenda that the bilateral tax treaties are to be modified through the Multilateral Instruments (MLI). *USIBC respectfully recommends that with a view to mitigate any ambiguity on interpretation of application of GAAR, the Government should:*

a. *Accept all the recommendations of the Expert Committee which was set up to advice/comment on GAAR provisions;*
b. *Ensure GAAR provisions do not override bilateral tax treaties, where the treaty has anti-avoidance rules in the form of limitation of benefits (LOB) condition;*
c. *Clarify through examples how (or to what type of transactions) these provisions are intended to apply. Specific legislation or clarification should be issued to the effect that foreign portfolio investors (FPIs) are not impacted by GAAR. Tax on gains arising from transfer of listed securities, whether capital gains or business income, to both residents as well as non-residents may be abolished. Indeed, it is fairly acknowledged that GAAR is a subjective exercise and each case needs to be tested based on specific facts. Nevertheless, examples can serve as useful start point for taxpayers and tax administration to understand scope of GAAR provisions and avoid arbitrariness in application of the provisions;*
d. *Clarify certain terms, such as 'tax mitigation', 'tax avoidance', 'misuse or abuse', 'lacks commercial substance', 'bona fide purpose'; and,*
e. *Clarify the availability of grandfathering benefits under the India Singapore/India Mauritius treaty on securities received pursuant to corporate action events on investments made prior to 1st April 2017.*

ii. GAAR provisions should not apply when a tax treaty contains anti-avoidance rules such as a LOB clause

There is an overlap of GAAR with the anti-avoidance provisions in the existing tax treaty. *USIBC respectfully recommends that:*

a. *GAAR provisions should not be applicable in the case where the existing tax treaty contains anti-avoidance provisions in the form of a LOB clause. LOB clauses are anti-avoidance provisions in treaties which may either be purpose-oriented (to deny treaty benefit if the main or one of the main purpose of the arrangement is targeted at treaty benefit) or may be objective rule-based conditions that seek to secure a nexus between the entity and its country of residence. Indian treaties have various forms of well negotiated LOB clauses which combine objective and/or purpose tests to ensure that treaty benefits are availed only by the intended recipients. For instance, Article 24A of the India-Singapore treaty contains motive test as also expenditure test for Singapore entity claiming source taxation exemption in respect of capital gains arising on transfer of shares of Indian company. Hence, if a Singapore entity satisfies such motive and expenditure test, treaty benefit should not be denied by invoking GAAR on the ground that the foreign entity is ineligible to claim India-Singapore treaty benefit since it is a conduit entity formed in Singapore (but controlled from elsewhere) only for availing India-Singapore treaty benefit.*
b. *The Shome Committee supported this view with their recommendation, which stated that where the treaty itself has specific anti-avoidance provisions, GAAR should not be invoked in such cases. If there is evidence of abuse of anti-avoidance provisions in the treaty, the treaty should be revisited, but GAAR should not override the treaty. In cases where the tax treaties already have anti-avoidance provisions, subjecting the taxpayer to rigors of the anti-abuse provisions of GAAR also is cumbersome and not in favour of ease in doing business in India.*
c. *In this regard, FAQ 2 of CBDT Circular No. 7 of 2017 states that if a case of avoidance is sufficiently addressed by LOB clause of treaty, there shall not be an occasion to invoke GAAR. It is submitted that this*

clarification is vague and leaves scope for subjectivity and confusion. It should be clarified that if treaty has specific anti-avoidance provision in the form of LOB clause which is complied with by the taxpayer, GAAR should not apply to deny treaty benefit.

GAAR provisions should be invoked only in rare instances where it is directly apparent from the documentation or behaviour of the taxpayer that the transactions have been designed to abuse the provisions of the Act for the evasion of tax; genuine transactions that may confer tax benefits should be kept out of the purview of GAAR. It should be clarified that provisions of the principal purpose test (PPT) of MLI would not be used to take away the benefit of grandfathering granted under GAAR in respect of income from transfer of investments made before 1 April 2017. *USIBC also recommends that suitable safeguards (similar to those present in GAAR provisions) should be put in place for invocation of PPT of MLI.* If suitable safeguards for invocation of PPT are provided, it could alleviate widespread concern of the taxpayers that PPT will be invoked by the ITA without satisfying the checks and balances as provided in the GAAR provisions.

B. Expansion of the scope of Significant Economic Presence (SEP)

The concept of SEP was introduced in section 9 of the Income-tax Act, 1961 as Amended by Finance Act 2020 (ITA or Income-tax Act) with the objective of taxing remote interactions by non-residents with users/consumers in India or soliciting business by non-residents from India remotely. The applicability of the amendment has been deferred to financial year 2021-22 in lieu of the on-going discussions in G20-OECD Base Erosion and Profit Sharing (BEPS) project. *Since the international consensus solution on taxation of digital economy is being still discussed and debated under the BEPS project, and such solution is expected to be achieved by mid- 2021, USIBC recommends deferment of SEP provisions to financial year 2022-23.* The term SEP is defined to mean:

- Any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or,
- Systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India as may be prescribed.

While the intent of SEP provision was to tax the digital economy, the first section of the above definition does not carve out a distinction between physical trade in goods and services and trading through digital means. Thus, the provision may be being applied even to physical transactions of goods, services or property carried out by non-resident with India. This conflicts with the existing provisions of the Income-tax Act that triggers source taxation in India when trade is "in India" rather than "with India."

On similar lines, in second section of above definition, the reference to soliciting of business activities or engaging in interaction "through digital means" was deleted vide Finance Act, 2020 creating a risk that solicitation of business activities or engaging in interaction with Indian users even by physical means triggers application of the SEP. *Accordingly, USIBC recommends that an appropriate amendment be made to clarify that the SEP provisions will apply only if the transaction in goods, services or property or soliciting of business activities or engaging in interaction with Indian users is carried out through digital means. This will also be in line with the objective of the introduction of the SEP provisions, i.e., to create taxable presence for non-residents deriving value by remote interactions with users/consumers in India. Further, it is also recommended that threshold of revenue and users be kept sufficiently high to befit the description of SEP and that such thresholds be fixed only after undertaking and publishing suitable data study for public consultation*

C. Direct taxes and related tax issues

i. Rationalization of corporate tax rate

The Taxation Laws Amendment Act, 2019 lowered the domestic corporate tax rate to 22% in instances where companies do not take the benefit of exemptions or incentives. However, the tax rate for a foreign company continues at 40% as compared to 22% for domestic companies. This disparity serves as a disincentive for foreign companies to expand their business in India.

For example, foreign banks make a significant contribution to the economy in the form of large capital commitments and related FDI from annual profits, employment creation, facilitation of FPI/FDI and cross-border trade, attracting multinational corporations (MNCs), bringing best-in-class practices to India (e.g., customer service, risk management, technological advancement), supporting the government borrowing program, and contributing to the corporate social responsibility (CSR) agenda. However, these foreign banks are subject to the 40% tax rate when operating in India.

Additionally, the Finance Act 2020 has abolished the Dividend Distribution Tax (DDT) payable by a domestic company on dividends declared, distributed, or paid on or after 1 April 2020. Removal of DDT, which brought a certain level of parity, has further widened the tax disparity as the tax rate differential between domestic bank branches versus those of foreign companies banks has gone up to almost 18% (with a tax rate of 22 % for the domestic banks vis-à-vis 40% for their foreign counterpart). This creates a very significant distortion against the foreign banks which play an equally important role in the Indian economy. *USIBC respectfully recommends parity between the tax rates for domestic and foreign companies.*

ii. Amendment of the concessional rate of tax for Indian rupee (INR) denominated External Commercial Borrowings (ECBs)

The concessional rate of tax of 5% available for borrowings made in foreign currency under the ECB route as per section 194LC is currently not extended to rupee denominated ECBs. The concessional rate of 5% under Section 194LC of the Income-tax Act only covers borrowings in foreign currency.

In the absence of clarity, the withholding tax for INR ECBs could be the lower of either the domestic rate of 40% or the applicable treaty rate between India and the jurisdiction of the non-resident lender but may be still without the benefit of the concessional rate of 5%. The impact is quite pronounced as the higher withholding tax is applied on the equivalent INR coupon, which is higher than a foreign currency (FCY) coupon, thereby making these products less cost competitive. Therefore, eligible borrowers prefer achieving the same at a lower cost through an FCY ECB as compared to INR ECB. *USIBC respectfully recommends that the concessional rate of tax under section 194LC be extended to rupee denominated ECBs.*

iii. Adoption of a negotiated settlements mechanism with government in India

The collaborative resolution of tax disputes through negotiated settlements is a facilitative mediation involving an independent third-party mediator (a tax authority unrelated to the tax dispute) that brings two parties together. This process has been successful in jurisdictions such as the United Kingdom (UK), Australia, Mexico, and the U.S. to effectively reduce the volume of litigation. This type of co-operative approach involves engaging with taxpayers to understand shared interests, minimize major tax risks, and provide cost-effective and quick resolution of disputes for both sides, according certainty. Currently, India does not have a negotiated settlement process for settling of tax disputes. Recently, the Supreme Court in the case of National Co-operative Development Corporation v. CIT [2020] 274 Taxman 187 also observed the effectiveness of mediation in resolution of tax disputes and, noted that such mediation can be done through independent legal experts. *USIBC recommends India consider adoption of a robust negotiated settlement process with the government in the form of 'mediation in tax dispute' to mitigate the inordinate delays and high expenses typically associated with settling disputes.*

iv. Availability of Minimum Alternate Tax (MAT) credit

On 20 September 2019, the Taxation Laws (Amendment) Ordinance, 2019 was promulgated by the President of India to make certain amendments in the Income-tax Act and the Finance (No. 2) Act 2019. The Ordinance, *inter alia*, introduced a new Section 115BAA in the Income-tax Act with effect from Financial Year (FY) 2019-20 [(Assessment Year (AY) 2020-21] to provide an option of a concessional tax at the rate of 22% in the case of a domestic company subject to certain specified conditions. The Ordinance also amended Section 115JB of the Income-tax Act relating to MAT to, *inter alia*, provide that MAT provisions will not apply to a person who has exercised the option to avail the concessional tax rate of 22 percent. However, the ordinance is not clear about permissibility of brought forward MAT credit.

On 2 October 2019, the CBDT, vide Circular No. 29/2019 clarified that as the provisions of MAT shall not be applicable to domestic companies which exercise the option under Section 115BAA, the tax credit of MAT paid by these domestic company shall not be available consequent to exercising of such option. Further, as there is no timeline within which the option under Section 115BAA can be exercised, a domestic company having MAT credit may exercise the option after utilizing the credit against the regular tax payable under the taxation regime existing prior to promulgation of the

Ordinance. As a result, many companies may be incentivized to remain under the old regime until their MAT credit is exhausted. Similarly, companies with units in special economic zones (SEZs) may not opt for reduced rates. Infrastructure and real estate companies may follow the same course of action. The overall goal of lower tax provisions is to boost the economy in the short to medium term. Denial of MAT credit may delay the economic boost created by lower corporate tax rate if companies choose not to opt for lower tax rates immediately. *USIBC recommends that the MAT credit should be available to companies that have opted for lower tax rates under Section 115BAA.*

v. Clarity on withholding tax provisions

The current ambiguity on the characterization of and tax payment withholding for transactions in digital goods, services, software, advertisement space, subscription, database, etc. has resulted in litigation at various levels in the government. The procedure for the application for and receipt of a lower withholding tax certificate is cumbersome and time consuming. Clarification is required on the taxability and applicability of withholding tax provisions on payments related to transactions in digital goods, services, software, advertisement space, subscription, and database.

While the application process for lower withholding tax is now online, the forms are not updated, and manual submission of documents and continuous follow-ups are still required. Further, the online functionality is not updated to accept applications without deductor details, even though the rules provide for the same. It is thus important that the Government implements the rules in their entirety and provides further automation in the processes to secure lower/nil withholding tax forms to enable savings in time and effort. *USIBC recommends the following:*

- *Determine a unified withholding tax rate for a specified nature of service to enable clarity on the deduction of withholding tax. The Government should provide comprehensive and feasible guidance in these areas.*
- *Faster implementation and automation of Form 13 for application and receipt of lower withholding tax certificate. As an alternative, the Government should consider introduction of a scheme for allowing self-declaration by the deductee to the deductor for lower rate of withholding tax. Pursuant to the revised rules, an application in Form 13 can be filed online without providing the details of the deductors subject to fulfilment of certain conditions. However, the online facility for filing such application without providing deductor details is not yet functional. Since the rules already provide for the same, USIBC recommends introduction of such facility through the online portal. Alternatively, the Government should introduce a scheme such that the deductee can furnish a self-declaration to the deductor for lower rate of withholding tax.*

vi. Clarity on furnishing the income tax return (ITR) for non-residents

There is no clarity on whether a non-resident is required to furnish an ITR when their income is chargeable to tax in India under the Income-tax Act but exempt under the applicable tax treaty. As per the amendment in Budget 2020, tax return filing exemption is available if taxes are deducted under section 115A. However, in a scenario where tax rate under treaty is less than the rate under the

Income-tax Act, the same may not be available which will defeat the purpose of amendment and introduce compliance burden for non-resident. *USIBC requests to provide clarification and use cases when a non-resident is required to furnish the ITR in India. Further, the Government should specifically clarify that where a foreign company has a permanent establishment (PE) in India, then the requirement to furnish the ITR should trigger.*

vii. Prosecution proceedings under section 276CC of the Income-tax Act

Section 276CC of the Income-tax Act mandates prosecution in cases of failure to file the ITR within the due date. However, a non-resident may not file an ITR due to a non-taxable position adopted in cases of tax treaty applicability or where there is lack of clarity in the Act, or where two views are possible.

MNCs are overall subject to regulatory provisions of their home country and have been compliant with provisions in spirit. There are several instances where positions are taken by such companies in view of treaty provisions or ambiguous interpretation under the Act, where two views of interpretation are possible or where the company provides bona fides. These are genuine cases and adverse proceedings like prosecution can act as a significant deterrent for multinationals to do business in India. Prosecution is an onerous proceeding and should be reserved in rarest of rare cases where malfeasance is established beyond doubt. *USIBC recommends that prosecution proceedings must not be invoked in genuine cases of claims made in relation to non-taxability. It is further suggested that parameters for identifying genuine cases should be introduced.*

viii. Reforms related to indirect transfers

The amendments passed in Finance Act 2015 with respect to indirect transfer provisions are very helpful, but quite wide and ambiguous. They adversely impact various situations which have not been addressed in Finance Act 2015, such as internal group restructuring, offshore derivative instruments (ODIs) structures, etc. Further, valuation guidelines for calculating value of assets are ambiguous and could lead to distorted value of Indian assets. Presently, the indirect transfer provisions levy tax on intra-group transfers and re-organizations (subject to thresholds). This puts limitations on business re-organizations which may be undertaken for commercial reasons. Such a provision or levy is not viewed favourably by the international community especially in case of an amalgamation or merger between two foreign entities where the foreign amalgamating company either directly holds Indian assets or derives its value substantially, directly or indirectly, from assets located in India. *USIBC respectfully recommends the following:*

- *Confirmation that ODIs referencing Indian securities fall outside the scope of indirect transfer provisions.*
- *Expansion of the existing exemptions for amalgamation and demerger should be extended to apply to shareholder level transfers also both in cases of direct and indirect holding of Indian shares. All intra-group transfers which are part of group re-organizations, including the merger/amalgamation between two foreign companies outside India, should be exempted from applicability of 'indirect transfer' and 'gift tax' provisions.*

To curb misuse of such an exemption, adequate safeguards to prevent this exemption may be considered. Further, the existing exemptions should not be restricted to an amalgamation or demerger as defined under sections 47(viab) and 47(vicc) respectively. This is because the mechanics of undertaking the corporate processes in a foreign jurisdiction may be different.

- *In line with the overall principle of tax neutrality, for the amalgamated entity and the shareholder, the provisions of section 56(2)(x) should have no application.*

ix. Introduction of a Controlled Foreign Company (CFC) regime

Under the current Income-tax Act, the Government has introduced concept of Place of Effective Management (POEM). POEM gives Indian tax authorities broad power to determine that a foreign company is a resident of India and subject to Indian tax litigation. Under POEM, a foreign company can be said to be resident in India and its global income can be subject to tax in India, if place of its effective management is held to be in India. POEM has been further defined as a place where key management and commercial decisions, that are necessary for conduct of business of an entity, are in substance made. The overly broad concept of POEM and the uncertainty of its application can be a big deterrent for MNCs. *USIBC respectfully recommends that the withdrawal of POEM and the implementation of CFC rules may create a better balance between the Government's objective of earning tax revenues from profits earned by Indian companies outside of the country.*

Presently, there are no statutory provisions in the Income-tax Act for enactment of CFC Rules. Globally, CFC rules aim at taxation of such profits, which are parked in foreign companies in low or no tax jurisdictions, in the parent company's home jurisdiction. Such rules also have positive effects in source countries because taxpayers have no (or much less of an) incentive to shift profits into a third, low-tax jurisdiction. *USIBC respectfully requests consideration of the implementation of the CFC rules and withdrawal of POEM.*

x. Clarity on POEM compliance requirements

The minimum threshold to trigger POEM for a foreign company is too low and the provisions have created significant ambiguity on addressing dual residency in case of tie-breaker rules under the applicable tax treaty. *USIBC recommends providing clarity on whether:*

- *a foreign company triggering POEM in India is required to maintain books of accounts as per the requirements of the Act;*
- *if the MAT is applicable to a foreign company that has a POEM in India even when it does not constitute a PE in India; and,*
- *the applicability of advance tax requirements to a foreign company that constitutes a POEM in India for the first time in a financial year.*

xi. Introduction of tax consolidation measures in India

Currently, India does not have tax consolidation mechanism whereunder a group of wholly owned or majority owned companies are treated as single entity for tax purposes. GOI should consider introduction of the tax consolidation relief mechanism on the lines of international practice. The objectives and aim of a tax consolidation regime are to reduce the on-going tax compliances cost, promote business efficiencies, reduce litigation and reduce the administrative cost of the tax department as well as taxpayers. *USIBC respectfully recommends a regime of tax consolidation whereby a group of wholly owned or majority owned companies are treated as a single entity for tax purposes. This generally means that the parent company is responsible for the entire group's tax obligations and all transactions between the group companies of the consolidated group are ignored for tax purposes.*

xii. Proactive measures to reduce litigation/resolution of pending litigation

Currently, the Indian market is characterized by prolonged tax litigation on high value tax amounts due to the new tax assessments. The potential outcome of these filings remains uncertain. While the recently introduced faceless assessment and appeals are indeed a welcome measure, the prolonged time lag in the litigation process increases the cost for taxpayers to do business in India and leads to uncertainty and lack of clarity. *USIBC respectfully recommends the following for consideration to resolve matters currently in litigation and to reduce future litigation:*

a. *Prescription of timelines for disposal of tax litigation matters by appellate authorities;*
b. *Restrictions on the number of adjournments sought by Revenue Department in tribunal/courts;*
c. *Reduction in the multiplicity of levels of litigation;*
d. *Blanket stays on payment of 20% of demand to provide impetus for tax authorities to expedite the tax matters in litigation;*
e. *Expansion of the team of tax officers with experienced personnel within Advance Pricing Authorities (APAs) and Advance Pricing Rulings (APRs) to expedite the pending applications. Referral of the factual dispute to an expert for mediation will also help to expedite this function;*
f. *Issuance of proactive clarifications on lines of practice notes similar to that in Singapore/Hong Kong to accord clarity and mitigate potential litigation;*
g. *Issuance of internal instructions to tax officers like public release of manuals prepared for Her Majesty's Revenue & Customs (HMRC) staff in UK to accord clarity on the intent and provide indicative guidance;*
h. *Elimination of revenue collection targets for tax officers as this creates undue pressure for making frivolous tax adjustment and unsettling tax positions leading to undue harassment and unwarranted prolonged litigation; As noted from public interactions of the CBDT Chairman, no such targets are given to tax authority in the faceless assessment procedure; and,*
i. *An increase in the monetary thresholds for filing of departmental appeals and withdrawal of pending appeals involving tax effect lower than these thresholds is certainly welcome step to reduce litigation.*

USIBC recommends the Government consider rationalizing the entire tax prosecution system based on the claim value and stipulate strict timelines for disposal of cases. It is also recommended that the Government take special efforts to

simplify direct and indirect tax legislations to minimize conflicting interpretations by different forums and courts. As an example, the administration could be required to review an existing proceeding, dispute basis the outcome of another dispute involving similar facts and question of law.

xiii. Amendments to record maintenance requirements

A variety of laws in India require the maintenance in original hardcopy of various documents such as vendor invoices, purchase orders, bill of entries, etc. Considering the cost of rental space in India's major cities, requirements around document and record maintenance attract significant space cost and manpower resources. *The Government should allow preservation of these documents in scanned version so that these can be furnished electronically to the assessing authority. Under the Income-tax Act, 1961, books can be maintained in electronic form also. Similar provision should be introduced in other laws also.*

xiv. Uniform application of judicial precedents

Judicial precedents are not automatically and uniformly applied for all similar cases by the tax administration. This leads to prolonged litigation and multiple cases on the same issues, which have already been settled by judicial forums. *Where the principles and rationale of settled rulings of a court or a tribunal squarely applies to a taxpayer, such matters should be settled automatically by applying those settled principles and rationale to all similar cases, unless such cases can be distinguished significantly on facts. This will support timely closure of pending litigations and result in significant savings in legal resources.*

xv. Proposal to enhance the frequency of returns filed by unlisted companies

The proposal to increase return filing frequency for unlisted companies from the current yearly to quarterly/half yearly will add immense pressure on management who are already spending significant time and resources on compliance management. *While USIBC appreciates the purpose behind the proposal, USIBC respectfully recommends that these requirements be targeted and specific to the risk proposed to be managed through higher frequency filings. The proposed requirement should avoid over regulation, which could negatively impact the ease of doing business.*

xvi. Removal of the cap on deduction for head office expenses [Section 44C]

Section 44C of the ITA states that the head office administrative expenses (HOAE) incurred shall be allowed as deductible expenses subject to the cap of 5% of the adjusted total income. As the HOAE determined for Indian branch are attributable to its business operations in India and governed by transfer pricing regulations, it should be allowed for full amount of actual HOAE attributable to the Indian branch operations, without any cap. This legislation is now outdated and no longer required, given that India has full-fledged transfer pricing rules to determine the arm's length amount of deductible HOAE. *USIBC respectfully recommends that the 5% cap on deductibility of HOAE as provided in section 44C should be removed.*

xvii. Benefit of carry forward and set off losses in case of amalgamation

Currently the provisions of section 72A allows the benefit of carry forward and set off losses on amalgamation only for certain specified industries (e.g., companies owning an industrial undertaking, ship, hotel, banking company or operation of aircraft). Due to the unprecedented COVID-19 impact, service sector companies shall seek to optimize operations through amalgamation with other companies. However, section 72A has only selective set of industries eligible for the carry forward and set off loss benefit upon amalgamation and does not cover the service industry including financial services industry. With a growing emphasis on the digitization of economy and the service sector contributing a growing portion of Indian GDP, there seems to be no rationale for treating the service sector differently than the industrial sector and restricting the applicability of Sec 72A to only the industrial sector. *USIBC recommends the following:*

a. *Expansion of the benefit of carry forward and set off be allowed to all the companies engaged in the business of providing services irrespective of their line of operation;*
b. *Clarification to provide that losses transferred under demerger should be available for a period of eight years after demerger, as is in the case of amalgamation; and,*
c. *Clarification that where the shareholding of the amalgamated company or resulting company changes due to issue of shares pursuant to amalgamation or demerger (under section 72A) beyond prescribed threshold, such change in shareholding shall not attract trigger of section 79 of the Act.*

xviii. Applicability of valuation rules under section 56(2)(x) and 50CA of the Income-tax Act

Valuation rules for section 56(2)(x) and section 50CA are applicable even in cases of genuine internal restructuring where ultimate ownership does not change. Valuation rules are also applicable when a minority stake is sold. Where the price of the traded shares, based on the formula in Rule 11UA (1)(C) of Income-tax Rules, 1962 is higher than the agreed price, the recipient of listed shares may have unintended consequences and tax liability under section 56(2)(x) of the ITA, representing the difference between the fair market value (FMV) so determined and the agreed Price. Suitable amendments should be made in Rule 11UA to provide that FMV of the underlying assets for valuation of an unquoted equity share should only be adopted in cases of transactions resulting in change in control and management in the company. Further, to determine, 'control' or 'ownership of the company', precedence can be taken from prevalent practices/rules followed under the Act and may be appropriately provided for in the rules.

The rules for determination of FMV of unquoted equity shares for section 56(2)(x) and 50CA of the ITA had been introduced as anti-abuse provisions and intended to curb transfers of unquoted shares at nominal value despite such shares holding underlying assets of substantial value. However, it would be inequitable to apply the rule in cases where control in the company has not changed. Genuine cases

of internal restructuring where the ultimate ownership does not change should be provided an exemption from adopting FMV as in case of rearrangement within the same owner group.

Further, it would be impossible for a minority shareholder to be able to materialize the transaction based on FMV of the underlying assets, as practically, a minority shareholder may not have access to such information and hence, may not be able to compute value according to this rule. Thus, exemption from valuation when transferor has less than 25% stake should also be considered. *USIBC respectfully recommends the following:*

a. Exempting valuation of unquoted equity shares at FMV if the transferor holds less than 25% of the shares;
b. Clarification regarding determination of FMV of listed shares and securities under section 56(2)(x) of the ITA in cases where applicable law prescribes a price protection mechanism;
c. Clarification that in cases where a price has been negotiated in terms of the applicable law/regulations, such price shall be deemed to be the FMV of such listed shares and securities for the purposes of section 56(2)(x) of the Act; and,
d. Genuine cases of internal restructuring where the ultimate ownership does not change should be provided an exemption from adopting FMV as in case of rearrangement within the same owner group.

Also, the CBDT is yet to come out with Notification u/s. 50CA and s.56(2)(x). The industry continues to face the challenges as indicated in the cases outlined below:

- Time lag involved between fixing up share price by the parties under an agreement and actual allotment/transfer of shares due to time taken in making regulatory compliances and/or seeking shareholder or regulatory approvals;
- Options or share warrants which are issued at a particular date giving option to the holder to subscribe for shares at a future date at the prefixed value which is generally at FMV on the date of issue of options/warrants; and,
- Transfer or issue of shares or securities in case of corporate insolvency resolution process under the Insolvency and Bankruptcy Code (IBC).

USIBC respectfully recommends that CBDT expedite the issue of Notification u/s. 50CA and s.56(2)(x). Further, prior to the issue of a final notification, it is recommended that a draft notification should be published for stakeholders' comments to ensure that all possible bona fide cases faced by industry are adequately represented in the final notification.

xix. Amendments to the due date for crediting the contribution of employees to the respective fund

Section 2(24)(x) of the ITA, *inter alia*, defines "Income" to include any sum received by the employer from its employees' as contribution towards certain specified funds. However, deduction for such income are available under section 36(1)(v)(a), provided that the contributions collected by the

employer are credited to the respective fund within the due date specified under the relevant legislation applicable to the fund.

The employee's contribution credited to the employees account in the relevant fund after the due date specified under section 36(1)(va) are disallowed in the hands of employer. Further, any payments made by the employer after the due date is also NOT allowed as a deduction in the year of payment. Hence it becomes a permanent disallowance for the assessee. *USIBC respectfully recommends that the due date defined under Explanation to Section 36(1)(va) shall be amended to include the due date for filing return of income under section 139(1), thereby aligning it with the due date specified for payment of Employer's contribution under Section 43B of the Income-tax Act.*

It may be noted that the statutory laws under the respective contribution schemes have provisions to levy interest, penalty, etc. for the delayed payment. Hence, disallowing a genuine business expenditure merely on the ground that it has been paid after relevant due date casts extra burden on the employer and calls for an unwarranted litigation. Further, the issue is contentious because there are conflicting decisions from different courts and hence it warrants clarity to avoid ongoing litigation.

xx. Disallowance of expenditure u/s. 40(a) (i) & (ii) for non-deduction of tax deducted at source (TDS)

Presently, the taxpayer is getting penalized twice for default of deduction of tax at source i.e., disallowance u/s 40(a)(i)/(ii) as well as u/s 201/(1A) under the Income-tax Act. Sec. 40(a) (i) & (ii) should be deleted as penal consequences for violation of TDS provisions are already being covered u/s 201 and 201(1A). *USIBC recommends the provisions of Sec. 40(a) (i) & (ii) should be deleted as the taxpayer is getting penalized twice for the same default under Sec. 201 & 201(1A) as well as under 40(a)(i) & (ii). Moreover, there are sufficient penal provisions u/s 201 & 201(1A) to safeguard against the violation of TDS provisions.*

xxi. Amendments to the Tax Collected at Source (TCS) obligation on receipt or accrual basis

TCS needs to be collected strictly on actual receipt basis, irrespective of the method of accounting followed by the seller. This results in mismatch between books of accounts of the seller following mercantile method of accounting and TCS obligation. While it is true that casting TCS obligation at the time of receipt of sales consideration is beneficial to the seller from cash flow perspective since he is required to discharge TCS only on actual receipt, but practically reconciling the sales as per GST and financial reporting recognised on mercantile method of accounting and actual sales realisations for TCS purposes may lead to litigation and disputes. *Thus, we recommend TCS obligation on sale of goods u/s 206C(1H) should trigger as per the method of accounting followed by the seller.*

xxii. Extension of benefit of lower/nil tax collection certificate u/s.206C(9) should to TCS on sale of goods

Sec. 206C (9) provides for collection of tax at lower rate. However, this benefit is not extended to TCS on sale of goods as per Sec.206(1H). There are cases where there is no tax payable for certain entities due to various reasons like losses, tax incentives, etc. However, TCS will get unnecessarily collected on their purchases despite no tax liability. *USIBC recommends benefit of availing lower tax certificate should be extended to TCS u/s.206C(1H) for the transaction of sale of goods. Furthermore, the rationale for non-extension of lower TCS benefit to transactions for the sale of goods is not clear.*

D. E-Commerce issues

i. Clarity in provisions relating to TDS under section 194-O

India has exported products worth $1.2 billion through the ecommerce channels in 2018-19. The B2C ecommerce exports market is a $400 billion opportunity for India and $300 billion for MSME sector. It is a welcome step towards reducing the trade deficit of India. E-commerce plays an integral role in growing exports from India and the Government is evaluating new measures to boost exports from India through online channels. Given this vision of the Government to promote exports, TDS under section 194-O will add to the working capital burden of the e-commerce participant and thereby reducing his competitive advantage vis-à-vis other countries. This would only negatively impact the growth of the export sector for India. *USIBC respectfully recommends reconsideration of the application of the TDS provisions under section 194-O.*

S.194-O of Income-tax Act provides that an e-commerce operator who, through their digital or electronic platform, facilitates the sale of goods or supply of services of e-commerce participant shall be liable to undertake TDS at 1% on the gross amount of such sale or service at the time of credit or payment to e-commerce operator, whichever is earlier. *USIBC respectfully requests the Government's consideration of the following below with respect to the applicability of the TDS.*

a. Expansion of the threshold limit of 5 lakh INR

The provisions of section 194-O that an e-commerce operator is not obligated to deduct TDS where e-commerce participants, either as individuals or a Hindu Unified Family (HUF), furnish a Permanent Account Number (PAN)/Aadhaar number to e-commerce operator and their gross sales in a financial year does not exceed INR 5 lakhs. However, once the amount exceeds INR 5 lakhs, TDS is required to be deducted on the entire amount during the financial year. This benefit is not provided to small partnerships or companies which are growing and find it difficult to manage working capital. The proposed provision will hamper the growth of MSME the most and will discourage such small businesses from using e-commerce platform for expanding their business. Also, the threshold limit of INR 5 Lakhs is very low because of the income element in the consideration of Rs. 5 lakhs will be very low. *Thus, USIBC recommends that, the de-minims limit may be increased to at least INR 10 Lakhs or more aligned with the threshold for GST registration prevailing in majority of the states. Further, it is recommended that the de-minims exemption be extended to all types of small e-commerce participants who furnish PAN or Aadhaar and not restricting to individuals and HUFs. Also, the Government should clarify that once the payment exceeds the specified*

threshold, TDS is required only on the payment in excess of threshold limit. Further, we request clarification that the withholding tax under section 194-O for individuals or HUFs, being e-commerce participants shall apply only on the incremental amount exceeding the minimum threshold during the financial year.

b. Clarifications on the computation of "gross amount of sales"

Section 194-O of the Income-tax Act provides for levy of taxes on the gross amount of sales or services for which amount is remitted by the e-commerce operator to the e-commerce participant. The provisions are currently widely worded, i.e., "gross amount of sales" has not been defined in terms of what relevant items it should include. In addition to the sale of the goods or service, incidental charges such as delivery or transport charges, packing charges, gift wrap charges, convenience fee, etc. are charged by sellers to customers and form part of the invoice raised by the sellers. Further, for the purpose of other provisions of TDS under the Act, a CBDT circular already clarifies that wherever the component of GST on services is indicated separately in an invoice for payment, tax shall be deducted at source on the amount excluding such GST. However, such clarification is not available for TDS u/s 194-O.

USIBC recommends clarification that sales returns or cancellations shall be excluded while computing the 'gross amount' for the purpose of section 194-O of the Act and the withholding applies to the net amount of sales, similar to GST. Also, clarify that charges incidental to the sale of the goods or service do not fall within the ambit of section 194-O of the Act and shall be excluded while computing the 'gross amount' for the purpose of section 194-O of the Act, provided, the same is separately shown on the invoice. Further, similar to clarifications issued under other TDS provisions, it should be clarified that e-commerce operator is not required to withhold tax on the amount of GST/indirect tax that is collected from the customer

c. Clarifications on coverage of e-commerce operators

1. Liability for TDS only when payment is routed through e-commerce operators

The Finance Act, 2020 introduced Section 194-O of the IT Act (applicable from October 1, 2020) which provides that an 'e-commerce operator', who facilitates the sale of goods or supply of services of an Indian resident merchant through its digital platform, will be required to deduct tax at 1% on the value of goods or services sold. Such tax is deductible at the time of making payment or crediting the merchant's account, whichever is earlier. Section 194-O further provides that where the purchaser of goods directly pays the e-commerce participant (referred to as merchant/seller) for goods or services facilitated by the e-commerce operator, such e-commerce operator will be deemed to have paid such amount to the merchant, and will be liable to deduct tax thereon.

In certain types of electronic commerce transactions, where the sale of goods or provision of service takes place directly between buyer and seller, the e-commerce operator does not have visibility over the transaction. In such cases, the e-commerce operator may not be aware of the pricing of the goods,

conclusion of the contract, etc. Levying TDS obligation on such e-commerce models not only creates difficulty in deducting TDS in absence of payments but also adds to administrative inconvenience and working capital hurdles. It casts an unnecessary obligation on platforms who are not involved in consummation of the transaction between buyer and the seller. *Hence, USIBC recommends that e-commerce operator be liable for TDS only when payment is routed through such e-commerce operator.*

2. Recognition of hardships for payment gateways and insurance aggregators may apply to other e-commerce operator, hence principles of circulars be made applicable to other e-commerce operators as well:

Pursuant to industry recommendations, the Government issued Circular No. 17 of 2020 (Circular) on September 29, 2020, inter-alia, clarifying on the applicability of provisions of section 194-O of the Income-tax Act for insurance aggregators and payment gateways. The Circular clarifies that:

(a) payment aggregators will not be required to deduct TDS, if the main e-commerce operator, which is facilitating the sale of goods and services, deducts TDS on the same transaction; and,

(b) insurance agents or insurance aggregators will not be required to deduct TDS in years (subsequent to the first sale of insurance policy) where the transaction directly takes place between the insurance companies and the buyers (such as renewal of policies) with no role of insurance agents or insurance aggregators.

While these clarifications are helpful, notably several pertinent issues highlighted by the industry continue to remain unaddressed, resulting in practical hardships for a wide array of e-commerce operators and Indian merchants. It is relevant to note that several e-commerce operators allow the sellers to merely list their products/services on their digital platform and allow potential buyers on the platform to view such listings, however, the sale and purchase transaction occur independently between buyers and sellers and the e-commerce operators do not have access/visibility whether or not sale actually fructified, the terms of the transaction, sale consideration etc. Section 194-O does not define the term "facilitation", which leads to ambiguity regarding its scope and ambit.

The broad meaning of the term "facilitate" raises doubts as to whether such electronic platforms, which merely list the products and services of sellers and have no role to play in completion of sale or service will also be obligated to withhold under section 194-O. For instance, the concerns recognized for insurance aggregators i.e. applicability of TDS u/s 194-O despite having no role in sale or service transaction may apply to e-commerce operators acting as **pure listing entities**. It is impracticable for such e-commerce operators/digital platforms, who merely list products and services, to deduct TDS absent any knowledge of the transaction and its terms. Obligations to withhold tax in such situations may be nearly impossible to implement and therefore, highly burdensome and unreasonable for the e-commerce operators. The CBDT circular in-principle recognizes such concerns and hence, such relief should be extended to other business models and e-commerce players that are similarly placed

and have no role in conclusion of sale/purchase transactions. *USIBC recommends that e-commerce operators that merely provide listing and information of products but do not enable sale of such products not be required to implement TDS deduction.*

Another example may be where multiple e-commerce operators are involved in the transaction chain: seller lists his goods or services on E-commerce Operator 1 (Eco1) who is responsible to make a payment to the seller; Eco1 has an arrangement with E-commerce Operator 2 (Eco2) to list such goods or services; Eco 2 collects the payment for the goods or services and any incidental convenience fees of Eco 1 from the purchaser of the goods and passes it on to Eco2 for further payments to the seller. *USIBC respectfully requests clarification that no TDS obligation arises for Eco2 when Eco2 makes payment to Eco1 for the payment for the goods or services and any incidental convenience fees collected from the customer. Similar to the GST TCS provisions, the TDS obligation should apply for Eco1 on making payments to the seller.*

3. Exclusion for payment aggregator or payment gateways (covered under RBI Guidelines 2020 dated 17 March 2020) from S.194-O

The definition of 'e-commerce operator' under section 194-O is widely worded and could be construed to extend to payment gateways or payment intermediaries (including payment processors) regulated by Reserve Bank of India (RBI) even if they merely assist in completion of payment arm of the transaction and are not involved in selling of goods or services. The CBDT Circular discussed above further reinforces such TDS obligation of payment gateways since the exemption provided is only subject to certain conditions. *USIBC respectfully recommends that "e-commerce operator" definition does not include payment gateways, payment service providers or payment intermediaries or payment processing entities which essentially facilitate the payments.*

4. Clarification on scope of "goods"

The proposed levy covers sale of all goods and services through digital or electronic means. Since the term 'goods' is not defined and services is defined in an inclusive way, pre-paid instruments such as gift cards, which are essentially money's equivalent, may be inadvertently interpreted to be covered. *USIBC recommends clarification that pre-paid instruments (such as gift vouchers, etc.) are excluded from the definition of goods and services.*

5. Exclusion for sale or service outside India

Many Indian businesses use e-commerce channels to export products outside of India. TDS under section 194-O will add to the working capital burden of the e-commerce participant who usually operate on very thin margins. *USIBC recommends clarification that provision of section 194-O will not apply when the e-commerce operator facilitates sale of goods or services by a resident seller to a customer outside India, i.e., only sales to customers in India are covered under the provisions.*

6. Exemption for sale by charitable trusts or institutions through electronic commerce

Due to wide scope of definition of e-commerce participant, charitable trusts and institutions, registered under S.11/12A and selling their goods through e-commerce platforms are also covered in the net of TDS. Such registered charitable trusts or institutions enjoy exemption under provisions of ITA for the charitable activity conducted by them. Hence, withholding taxes u/s.194-O on gross amount of sales of such registered charitable trusts results in blockage of funds. *USIBC respectfully recommends an exemption from the TDS obligation where there is sale of goods or supply of services by registered charitable trusts or institutions through e-commerce.*

ii. Alignment of India's equalization levy (EL) to multilateral discussions of digital services taxes

USIBC's fundamental view is that, as enacted, the EL appears to violate obligations India has undertaken as a party to the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS). Specifically, the EL violates the GATS national treatment principle and discriminates against U.S. and other foreign companies in two ways. First, the EL applies to e-commerce operators (EOPs) defined as a non-resident that own, operate, or manage a digital or electronic facilities or platforms for the online sale of goods or the online provision of services. By its terms, the EL amounts to an import tariff imposed on sales by U.S. firms of goods and services. Its exclusive application to non-resident entities is a prima facie violation of India's national treatment commitments.

Second, the EL targets a selection of digital services in which U.S. firms are market leaders, e.g., digital advertising, but excludes digital services where Indian firms are the major actors. The GATS explicitly prohibits WTO Members from implementing measures that afford de facto discrimination even when the measure provides "formally identical" treatment.

For these reasons and others, USIBC has repeatedly urged governments around the world to avoid unilateral measures such as India's EL and instead to support the negotiations taking place under the aegis of the OECD to forge a consensus-based approach to the digitization of the global economy and continues to urge all parties to focus their efforts on devising a multilateral approach.

Without setting aside these fundamental objections, USIBC has found the manner in which the EL has been introduced to be problematic for many firms. India first introduced the EL in 2016 and unexpectedly expanded it in 2020 Budget Act without any notice or pubic consultations. The short implementation timeline, unfortunately, left many issues and clarifications unresolved. *In this context, USIBC urgently requests the GOI to undertake the following modifications:*

- *Narrow the overly broad definitions of EOPs and e-commerce supply or services (ESS), which currently cover a wide swathe of transactions such as headquarters charges/intra-group services and online purchases of goods and services consummated offline (e.g., hotel and airline bookings). In the later cases, only the facilitation value for the portal, if any, should be subject to the EL. Clarity is needed on the meaning and scope of consideration on which EL is to be charged. EL should be levied only on the income component, i.e. commission or fee (being the consideration of an EOP for facilitation) and not on the gross merchandise value (GMV) of the goods or services.*
- *Provide an ESS carve out for financial services because Indian regulation already requires that financial ESSes have a presence in India in order to operate in the country (and thus are fully subject to Indian regulation).*
- *Exclude non-residents purchases of goods or services using an Indian IP address where customer is located outside India and provider is a non-resident (as some virtual private networks (VPN) services use an Indian Internet protocol address (IP address) even when the entire transaction transpires outside of India). Further, use of IP address creates challenges regarding whether the IP address requirement is sufficient, reliable and verifiable indicator of nexus in all cases. Therefore, it is important that a guidance, resolving these issues be also provided.*
- *Include the EL in double taxation avoidance agreements (DTAAs) as non-residents subjected to EL cannot claim relief under DTAAs and will not be entitled to credit for EL paid in India in their country of residence. And,*
- *Exclude EL on sale of data.*

SECTION II: Sector Specific Taxation to Encourage Investment and Economic Growth

A. Aerospace and Defence Sector Taxation

i. Secondment of expatriate employees

Secondment of expatriate employees will facilitate ease of doing business in India and inflow of foreign expertise. Currently, there is uncertainty as to the treatment of the secondment of expatriate employees which has resulted in frequent litigation. This includes issues around taxability of cross charge of salary by Indian company to foreign employer, PE creation, withholding, and transfer pricing. There are also diverse rulings from Indian Courts on the subject, which add to the lack of clarity for taxpayers. As a result of the current uncertainly, Indian corporates lose out on knowledge and expertise of specialized employees of overseas group companies. Various countries, including China, Denmark, Australia, Germany, have issued administrative circulars/guidance's on the treatment of secondment or similar arrangements. *USIBC recommends that the Government should provide clarity in the upcoming budget or by way of a circular, as to the treatment of secondment of expatriates to avoid uncertainty for global organizations wanting to do business in India.*

ii. Deepening the Indian Maintenance, Repair, and Overhaul (MRO) industry

In order to make the Indian MRO industry attractive, the Government should consider tax concessions/benefits in the direct tax area. *USIBC recommends reduction of corporate tax rate of 15% to be extended to MROs keeping at par with manufacturing companies. Further, lower the rate of withholding at 2% on payments made by Indian operators to MRO at par with contractor or fleet technical services (FTS), which are not professional services providers, to address cash-flow issue.*

A. Information & Communications Technology (ICT) Sector Taxation

i. Reduced base pricing for new spectrum auctions

The Government must balance the need to raise revenue with the underlying value of relatively low spectrum costs that permit operators to invest in new infrastructure and equipment. As past tax issues strain the segment, operators may struggle to sufficiently invest in expanding the network, introduction fourth generation (4G) and 5G systems, and/or will raise costs of telecommunications services to industry and consumers. The easiest mechanism to ensure reduce cost is to provide a low floor base for new spectrum actions, which optimize the operators' ability to utilize spectrum at a reasonable cost. Past auctions, which have focused on maximizing revenue and hence higher base prices, have resulted in financial hardship for the sector, and reduced investment precisely at time when the nation needs to expand the network into rural areas, spread the availability of true broadband capacity, and invest in trusted equipment ecosystems. *Therefore, USIBC recommends that the Government*

not estimate excessively large future revenue from spectrum auctions, but rather focus on the widespread economic and social benefits of an expanded, advanced, broadband network.

ii. Relaxation of increased tariffs on ICT products

The Union Budget 2016-2017 significantly raised tariffs on numerous ICT products, which for the most part remain in force. Subsequently, the Government has increased both the rate on many of these items and increased the number of tariffs lines covered. These tariff increases include, but are not limited to e-readers, computer and cell phone peripherals, specified telecommunication equipment such as soft switches and voice over internet protocol (VoIP) equipment, media gateways products, silica for manufacture of telecom- grade optical fibre and cables, printed circuit board (PCB) for the manufacture of personal computers, automatic data processing (ADP) machines, and video graphics array cards. Also, Basic Customs Duties (BCD) continue to be levied on telecom equipment at higher rates. While telecommunication companies are continuously upgrading to incorporate new technology, most equipment manufacturing takes places outside India, making telcos dependent on imports.

These tariffs not only increase the price of electronics and digital services for Indian consumers and businesses, they increase India's manufacturing costs by raising prices on inputs, which reduces *Make in India* investments and exports. In addition, ICT tariffs distort the market, type, quality, and sophistication of available ICT products, which has a negative impact on India's overall competitiveness and ease of doing business – not to mention consumer choice. These moves increase some tariffs on goods covered by the WTO's Information Technology Agreement to which India is a signatory, further increasing investment uncertainty and the prospect of future trade disputes and retaliation. Several of India's leading digital partners have moved this issue within the WTO.[1] *To ensure India's continued global ICT leadership, USIBC recommends that the GOI lower the costs of both intermediate and finished ICT goods and services and enact measures that enhance the ease of doing business within the sector. USIBC respectfully requests the Government to:*

- *Remove the ICT tariff increases from the 2016—2017 budget onward, unequivocally comply with its ITA-I commitments, and consider taking a digital leadership position through support for the ITA-II agreement.*
- *Grant exemption from the levy of BC) on telecom equipment.*

iii. Incentive SEZs by reducing duties

The GOI set up SEZs to attract manufacturing facilities focused on export markets. However, some of these factories also sell to the Indian market. For some telecom products under Harmonize System Code 8517, factories within SEZs pay a BCD while factories outside do not, which creates a

[1] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds588_e.htm

competitive disadvantage across the industry. *For domestic sales of equipment manufactured in SEZ, the GOI should eliminate the 10% BCD so that these factories are not at a competitive disadvantage vis-à-vis domestic manufacturers located outside the SEZ, which currently do not pay the BCD on domestic equipment sales. This would encourage investment in manufacturing facilities in SEZs and create parity among all factories selling to the domestic Indian market.*

iv. Taxation of digital transactions under the significant economic presence provisions

While the SEP provisions were deferred until FY 2021-22, pending global consensus, the attribution rules which seek to tax digital transactions, are effective from FY 2020-21. There is incongruity to this extent, since the income, which is sought to be taxed, in terms of the new attribution rules, does not need physical presence of the foreign enterprise, however, this is linked to the nexus rule (business connection) which requires physical presence. Further, there is lack of clarity on certain aspects such as who should be regarded as a 'target' audience, reliability of using IP address given that it can be disguised easily or it may be impossible or impractical for companies to keep track of the IP address of every user. *USIBC respectfully recommends clarification and reconsideration of the application of this rule.*

B. Energy Sector Taxation

i. Renewable energy exemption from Section 56(2)(viib) of the Income-tax Act

Holding companies incorporated in India often receive funding from multiple foreign institutional investors and invest in subsidiary companies engaged in the generation of electricity through renewable sources. The holding companies may have several subsidiaries and each of its subsidiaries is incorporated to carry out different projects under its supervision. This complex structure is required by power purchase agreement (PPA)-related conditions, lender conditions or land acquisition-related laws. Holding companies subscribe to the shares of the subsidiary at a premium. The subscription prices paid by the holding companies are based on the projected cash flows of the company as certified by a chartered accountant. However, when subscription of shares is at a premium, the provisions of section 56(2) (viib) of the Income-tax Act are triggered and the share price is questioned by the tax authorities seeking to treat the premium as income of the subsidiary and taxing the same. This treatment has generated concern among investors that their investment may not be fully utilized by the investee company, limiting further investment. *USIBC recommends excluding renewable energy investments from section 56(2) (viib) to encourage investment into the sector.*

ii. Restoration of accelerated depreciation for windmills and solar projects especially for MSMEs

The Finance Act, 2016 proposed to restrict the highest rate of depreciation under Income-tax Act to 40% for all assets (whether old or new) falling under the relevant bock of assets w.e.f. 01.04.2017 by

amending rule 5 of IT Rules.[2] Hence keeping cap on accelerated depreciation of 40% on windmill and solar project is detrimental to investors for bring fresh investment in the renewable energy sector. *USIBC respectfully recommends restoration of accelerated depreciation at 80% for windmills and solar projects especially for MSME accelerated depreciation is one of the key boosters for investment in the renewable energy sector where project gestation period is long. This measure is fundamental to enabling growth in the sector.*

iii. Generation of power or generation and distribution of power through renewable energy device should be added as specified business u/s 35AD

Power is one of the most critical components of infrastructure crucial for the economic growth and welfare of nations. Hence to grow GDP at higher rate and to light up every house in India, the Government needs to give thrust on power sector. For reducing corporate tax rate Government had proposed to phase out profit linked incentive and has not extended sunset clause for business specified u/s 80IA(4)(i) and (iv) pertaining to infrastructure facility and power sector respectively.

In lieu of withdrawing the profit linked incentive for infrastructure facility, the Government has added the same as specified business u/s 35AD for which capital expenditure can be claimed as deduction W.E.F. 01.04.2017. However, the power sector was not included u/s 35AD as a specified business. To achieve the installation target of 175 GW by 2022 as set up by Government of India, fiscal incentive from direct tax perspective should be continued. *USIBC respectfully recommends that generation of power or generation and distribution of power through renewable energy device should be added as specified business u/s 35AD similar to infrastructure facility added or definition of infrastructure facility is extended to include generation of power or generation and distribution of power through renewable energy device as electricity generation is also infrastructure facility.*

iv. Reduce scope for litigation in claiming of benefit of higher additional depreciation and investment allowance and lower taxation for investment in backward area for generation or generation and distribution of power

To drive manufacturing activities and the development of backward areas, the Government has amended the Finance Act 2015. A new proviso to Sec 32(1) (iia) was included granting additional depreciation at 35% instead of 20% for setting up undertaking or enterprise for manufacture or article or thing in any notified backward area by installing new machinery or plant. In addition, thereto, Section 32AD was introduced for allowing investment allowance for investing in new plant or machinery in notified backward area. Separately, for lowering corporate tax, the Government has inserted new Section for charging corporate tax at 15% instead of 30% Taxation Laws (Amendment) Act, 2019 as below:

Section 115BAB was introduced for charging income tax at 15% instead of 30% to company which is set-up and registered on or after 01.10.2019 for manufacturing or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it

[2] CBDT Notification No. 103/2016 dated 7 November 2016

after fulfilling certain conditions prescribed therein. The present section of 32(1) (iia) of the Act has wording "in the business of generation, transmission or distribution of power" after manufacture or production of any article or thing.

USIBC respectfully recommends that to harmonize the current Income Tax Act and to reduce litigation Sec 32(1) (iia), Sec 32AD and Sec 115BAB of the Act should be amended to include, "In the business of generation or generation and distribution of power". By bring those words on the similar lines of section 32(1)(iia), the benefit of higher additional depreciation and investment allowance for investment in backward area and lower taxation u/s 115BAB of the Act may be extended to an assessee engaged in the business of generation or generation and distribution of power. Therefore, an assessee engaged in the business of power generation or power generation and distribution can claim benefits for which said sections were introduced.

v. Clarification on Custom Duty exemption

Goods imported in relation to exploration and production (E&P) activities are exempt from the levy of customs duty vide customs Notification no. 12/20129 (Sl. No 357A). This exemption is available to goods specified under List 13/14 but an exhaustive list is not provided. In other words, there are only a few line items describing the specified goods which would be exempt from levy of customs duty and may be subject to different interpretation. The List 13/14 should be an illustrative list, granting specific exemption to all goods/equipment imported in relation to E&P (Directorate General of Hydrocarbons (DGH), at the time of issuing the Essentiality Certificate, verifies the purpose of use of goods for petroleum operation).

USIBC recommends that a residuary clause be inserted in the list as below:

a. *List-13: (25) all goods other than those mentioned above imported for use in relation to petroleum operation.*
b. *List-14: (20) all goods other than those mentioned above imported for use in relation to coal bed methane (CBM) operation.*

vi. Custom import duty exemption on liquified national gas (LNG or NG) for all sectors; according the same status as crude petroleum

LNG presently attracts a BC) of 2.5 % (effective duty 2.75%) ad valorem which adds to the cost of supply to the end-users. While the BCD on crude oil was waived off in 2011 to reduce the procurement costs in support of the end-users, similar exemption is yet to be extended to LNG for all consumers and importers. While the BCD exemption is currently provided for import of LNG cargoes only for domestic power generation, the same benefit is not available to Power generators who procure RLNG from gas marketers and other gas consuming sectors.

Even though NG/LNG is a cleaner fuel, the disparity in the levy of BCD results in additional costs for use of LNG vis-à-vis crude oil. LNG prices are generally 20-25% lower than the crude oil (or petroleum fuels) on energy equivalence basis and thus, reduces the cost of energy to end-consumer in addition to the forex saving. Many countries have exempted custom duty on import of NG to promote

the usage of cleaner fuel, for example Argentina, Brazil, Mexico, U.S. and Norway. *USIBC recommends that the customs duty exemption be extended to LNG/NG to all importers for consumption in all end-user sectors to promote gas usage and to increase use of cleaner fuel and making LNG more affordable to end users in order to support the development of gas-based economy.*

vii. LNG loaning and borrowing of in-tank quantity, at LNG terminals handling co-mingled goods with virtual segregation of title stocks, should be specifically kept out of purview of taxable transactions.

NG is liquefied to -160 Degrees for ease of transportation and handling. This liquefied NG or LNG is transported and stored in special vessels and storage tanks that are heavily insulated in order to maintain the temperature of LNG. NG is sold in energy units of the contents thereby making it widely tradable without determination of its physical characteristics or source of supply, etc. However, due its transmission over high seas from countries around the world, the supply happens in ship loads and the schedule of which cannot be accurately determined. LNG storage tanks are also expensive to build and maintain due to the storage requirements of NG.

These LNG storage tanks are used to store the goods of various entities with virtual segregation of title stocks. However, due to the limited storage space, varying ship schedules, there are situations where demand exists with a certain entity while the title of LNG stock in the tank is held by another entity resulting in mismatch and restriction of free trade and commerce of LNG in India, i.e. LNG is available in the tank, there are willing customers at the gate, but the LNG cannot be supplied to them.

The Indian entities are apprehensive of application of laws like 'Right to Use of Goods', rules of barter etc. and thereby hesitant to carry out loan/borrow of in tank LNG to enable transfer of goods to that entity which has the demand orders in hand.

USIBC recommends an exemption from any taxing provision for loan/borrow transactions of In Tank LNG to enable optimum utilization of LNG Terminal facilities in India and facilitate higher trade and consumption of this carbon efficient fuel by India entities.

viii. Change in tax policy for NG to be included in the GST regime (including regasified LNG)

NG is not included under the purview of the GST Act and continues to be governed under the excise, central sales tax (CST)/value-added tax (VAT) regime. Consequently, while GST is applicable on most of the input's goods and services for NG, the end-product(s) continues to be taxed under excise, CST/VAT regime. This has resulted in breakage in the credit line between the input and output taxes resulting in increase of the costs for both the gas consumers and entities involved in the gas value chain.

- NG is cleaner than other liquid fuels (fuel oil, naphtha, liquid propane gas (LPG)) that it would replace. As these alternative fuels are already included in GST, non-inclusion in GST adversely

impacts the competitiveness of NG and the growth of natural gas sector, which is not in sync with the stated objectives of the GOI, i.e., increasing the share of NG in the fuel mix from 6.5% to 15% to support India's transition to more cleaner fuels through a gas-based economy.

- Inclusion of NG under GST is required to provide uniform taxation and to encourage free trade of NG across the country without any tax anomalies. This is one of the key pre-requisites for the development of gas exchange in the country.
- Internationally, substantial tax differentials (and/or carbon costs) exist between NG and polluting fuels like fuel oil (FO), diesel and coal. The differential taxation is used a one of the policy tools to account for the cost of externalities (health, environment and social etc.) and incentivize the use of cleaner fuels such as NG which provides many health and environmental benefits vis-à-vis more polluting fuels.

USIBC respectfully recommends that NG be brought under the ambit of the GST regime. Non-inclusion has translated into higher costs for the sector and thereby adversely impacting the competitiveness vis-à-vis more polluting fuels; no input credit is available on goods and services used for operations and industry cannot offset the VAT/CST paid on NG in its value chain leading to stranding of taxes paid by suppliers as well as by the industry at different stages in the value chain.

Retail fuel marketing

ix. Rationalization of customs duty on import of petroleum products viz motor spirit (MS) and high-speed diesel (HSD)

Budget 2015 implemented duty rationalization measures for central excise and customs duty for petroleum products viz. Motor Spirits and HSD. While the additional duty of excise and additional duty of customs (commonly known as "Road Cess") were revised upwards, simultaneously, basic excise duty rates on MS and HSD (both branded and unbranded) were reduced, thereby keeping neutralizing the overall impact of the rate change.

Besides, as a rationalization measure, one of the key amendments was that education cess and secondary and education cess leviable on excise duty had been fully exempted. Given this, education cess and secondary education cess as applicable to petroleum products, including MS and HSD, were also fully exempted. To compensate and adjust for this impact, additional duty of excise has been increased. However, as mentioned above, the overall impact on the aggregate effective excise duty remained unchanged as the additional duty was increased after exemption to cess.

As consequence of revisions in basic excise duty and additional duty of excise for MS and HSD, countervailing duty (CVD) and additional customs duty were also revised. While the rate rationalization was done primarily for excise duty thereby fully exempting education cess and secondary and higher education cess, for the purpose of customs duty, education cess and secondary and higher education cess continue to apply on imports of petroleum products, that is, MS and HSD.

Consequently, overall effective customs duty on import of petroleum products is higher as compared to effective duty of excise as applicable on indigenous procurement of such products. Historically the government has always maintained parity and uniformity in both duty rates and duty structure between the Central Excise and Customs.

In terms of additional duty impact, the effect has been that imports of MS and HSD have become expensive by approximately INR 0.54/litre for diesel and by INR 0.67/litre for petrol, when compared to effective excise duty when procured indigenously. Also, this additional impact is now dependent upon excise duty which the Government changes from time to time therefore creating an uncertainty about the effective landed cost of the product for an importer. This change impacts the industry wherever imports of MS and HSD are involved and more so, where company is trading and will not be eligible for credits for these duties and hence, even marginal distortion has significant impact on the cost of imported product.

In the absence of rationalization, companies which are importing products are the ones who are most impacted. It does not impact those entities which are involved in indigenous production primarily affecting multinational companies operating in this field. In a market where the companies operating in fuel retail alone are already disadvantaged due to lack to access to indigenous products and basic customs duty on imports, this additional impact of cess is another barrier. Hence in the interest of a level playing field and fair competition, this anomaly should be addressed as a priority. This will help enable investment in and business growth of retail petroleum sector.

Budget 2018 abolished the Education Cess and Secondary and Higher Education Cess on imported goods and in its place imposed a Social Welfare Surcharge at the rate of 10% of the aggregate duties of customs, on imported goods, to provide for social welfare schemes of the Government. The imposition of cess has been a long-standing anomaly with respect to import of petrol and diesel as the corresponding cess on excise duty had been abolished a few years ago. Doing away with this cess and imposing a surcharge makes no change at the ground level as imports continue to be burdened with an additional liability as compared to indigenous production. Removal of this anomaly would be in tune with the spirit of level playing field to companies which are importing petrol and diesel for distribution in India.

USIBC respectfully recommends that the Social Welfare Surcharge should be abolished and import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported.

x. Rationalization of excise duty on premium diesel

Premium fuel reduces environmental impact by cleaner burning of the fuel and enhances the life of the engine, thereby improving the overall efficiency. Although premium fuel has been available in

India for more than a decade, the market for branded diesel is practically non-existent. Higher taxation on branded diesel has made the product too expensive for the market.

The excise duty on branded diesel is INR 2.36/litre higher than compared to regular diesel. After incorporating the impact of state and local levies (sales tax/VAT, entry tax, Local Body Tax (LBT), etc.) the difference in taxation between branded diesel and regular diesel is more than INR 3/litre. As a result, the higher excise duty on branded diesel makes the fuel commercially unviable for the highly price sensitive diesel market in India. Even after more than a decade after being available in the market, the penetration of branded diesel is less than "0.01%" of the total diesel market in India.

Excise duty on branded diesel should be at par with non-branded diesel to promote an efficient fuel market. The key benefits of encouraging the usage of branded diesel via a reduction in the excise duty in comparison to non-branded diesel include: 1) Reduced environmental impact of vehicular emissions by cleaner/complete burning of fuels; and 2) increased government revenue from a deeper market for branded diesel. *USIBC respectfully recommends significant reduction of the excise duty differential between branded and regular diesel, bringing it close to or at par with excise duty on regular diesel. This will help create a market for an efficient branded fuel which will help reduce the environmental impact of vehicular emissions and help improve the efficiency and performance of the vehicles.*

Upstream Petroleum:

xi. Upstream Petroleum: Service Tax on Cost Recovery (Cost Petroleum) recovered by upstream oil and gas companies under Production Sharing Contracts (PSCs)

The Government introduced the New Exploration & Licensing Policy (NELP) to boost the production of oil and natural gas and providing level playing field for both public and private players. Under NELP, the GOI signed several PSC with private and public companies, each of these PSC's are placed in the Parliament. A PSC is a Public Private Partnership between the Government and the oil and gas companies for exploration, D&P of petroleum resources and sharing of profits from such operations, if there is production of hydrocarbon. To provide impetus to the oil and gas companies, NELP/PSC provided for exemption from customs duty and excise duty. In addition, the NELP also provides for fiscal stability during the entire period of the contract.

PSC is an economic sharing agreement and not a service contract. Government is a partner in the venture it is entitled to receive royalty and its share of any profit petroleum either in cash or in kind if revenue is generated from sale of hydrocarbon. Similarly, the oil and gas companies are also entitled to their share of profit petroleum and a recovery of cost (cost petroleum) as agreed in the PSC.

Under the PSC arrangement, the companies spend costs relating to petroleum operations, i.e., exploration, D&P of hydrocarbon. To manage the inherent risk of exploration, the PSC includes a provision to recover cost and capital spent in exploring and developing the field, if revenue is

generated. This is just a mechanism (formula) to determine the share of petroleum which will belong to companies and to the Government. This is not linked to any service.

The CBIC has already issued a circular clarifying that Cost Petroleum is not a service rendered to the Government As this is a clarificatory circular it should be equally applicable to the service tax regime. Despite circular in the GST regime, the field formations are confirming levy of Service Tax on this cost recovery which is a matter of grave concern for the industry. Note that the underlying services or supplies from vendors have already suffered appropriate taxes. *USIBC recommends that similar to clarification issued under the GST regime, a clarification should be issued under the Service Tax Law (Finance Act 1994) confirming that Service Tax is not applicable on such Cost Petroleum.*

xii. Service tax on contractors share of profit petroleum

Profit petroleum is the share in petroleum after recovery of cost which is shared between the contractor and the Government. This is not a consideration for any service. VAT is already paid at the time of sale of the petroleum products (crude/natural gas) by the contractors. The contractor's share of profit petroleum is an entrepreneur revenue from sale of crude oil/NG and not a consideration for any service. Such notices seeking to levy service tax on contractors share of profit petroleum has resulted in unnecessary litigation. *USIBC recommends an urgent clarification is required to clarify that contractors share of profit petroleum is not a payment against any service and therefore not subject to service tax.*

C. FINANCIAL SERVICES TAXATION

i. Consistent corporate tax rate for domestic and foreign banks/companies [First Schedule to Finance Act]

Globally, the general practice is to have tax parity across all banks/companies, both domestic and foreign, operating in a market. However, India differs from this practice by having a higher tax rate for foreign bank branches/companies. Even as the Government lowered the domestic corporate tax rate in September 2019 to 22%, it kept the tax rate for foreign banks/companies unchanged. Moreover, the promulgation of the Finance Act, 2020 abolished the dividend distribution tax, which had been used in the past to justify the uneven tax treatment. As a result, the uneven taxation gives the domestic company a distinct advantage for a direct tax perspective in comparison to a foreign branch in India. Domestic and foreign companies operating in India compute profits in accordance with the same accounting rules and compute profits and losses under the same guidelines. *USIBC recommends that foreign banks be treated on par with Indian banks for nearly all matters and are subject to the same prudential regulations and norms. The method for computation of business profits and taxable income is also the same. Therefore, it is proposed to establish parity in corporate tax rates, as well.*

ii. Income tax rate applicable to Foreign Reinsurance Branches (FRBs) should be at par with domestic Indian insurance companies

FRBs are registered as non-residents under the regulations. As such, they are liable to tax at 40% plus surcharge and education cess whereas the domestic insurance and reinsurance companies are liable to tax at 22% plus surcharge and education cess. FRBs that have established a PE in India are also subject to additional compliance requirements, such as tax registration, payment of advance tax, filing of tax returns, etc. As a result, FRBs operate in marketplace in uncompetitive market for FRBs in which they are disadvantaged. These conditions undermine the purpose of establishing a PE in India and makes it difficult for these for FRBs to compete with the domestic players. *USIBC respectfully requests that FRBs be subject to the same taxation rate at par with their domestic counterparts.*

iii. Tax rate of 5% on INR denominated ECB [Section 194LC]

The base tax rate of 5% under section 194LC of the Income-tax Act is applicable on foreign currency loans. While the scope of provisions of section 194LC was sought to be extended to include RDBs vide Finance Act, 2017, such benefit is subject to approval of the Central Government on rate of interest. Further, issues arise whether the benefit is applicable to only offshore RDBs issued outside India or it can extend to RDBs issued in India also. RDBs (whether issued on-shore or off-shore) and foreign currency denominated ECBs are both borrowing in foreign currency. In case of foreign currency denominated ECB, the currency in converted into INR by the borrower and the risk of fluctuation in the exchange rate is also borne by the borrower. Whereas in the case of INR denominated ECBs, the conversion as well as the risk is borne by the lender. However, in both cases the foreign currency is brought in India. Hence, the tax treatment should also be identical. *USIBC recommends that the scope of provisions of section 194LC should be clarified to include off-shore and on-shore RDBs as well.*

iv. Exemption of NBFCs and primary dealers from the thin capitalization provisions

These provisions have introduced the limitation of an interest deduction of up to 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) of the borrower enterprise with respect to interest paid to its non-resident associated enterprises (AE). The provision now excludes banking and insurance companies from the ambit of this limitation. *USIBC respectfully requests the expansion of this exemption to also exclude systemically important NBFCs and primary dealers and further clarification on key provisions.*

<u>Exemptive relief for NBFCs and primary dealers</u> -- Banks are exempted from the purview of these provisions because they presumably are very well regulated by the Reserve Bank of India (RBI) and subject to stringent liquidity guidelines. Like banks, both NBFCs and primary dealers are also well regulated by the RBI and are required to maintain high capital adequacy ratios and comply with all relevant liquidity provisions. NBFCs perform many of the same functions as banks and serve a similar

funding role in the marketplace. Primary dealers act as market makers for government securities. To do so, they carry a substantial amount of debt on their balance sheet comprising of overnight call, market REPOs, RBI liquidity facilities, collateralized lending and borrowing obligation (CBLO), longer- term debt issuance, and inter corporate funding. The nature of their business and the funding model mandates that interest expense represents a major component of the overall expense base. Currently, the number of standalone primary dealers is very limited (i.e. 7). And they are disadvantaged when compared to primary dealers housed within a bank (who are in turn exempted from these provisions at an entity level due to the exemption for banking operations). Extending exemptive relief to NBFCs and primary dealers will create a more level playing field for all stakeholders.

The Indian tax regime already has a well-established transfer pricing regime which tests the *bona fide* and arm's length pricing of related party transactions. In addition, GAAR have been introduced effective April 1, 2017 to ascertain whether an arrangement is an Impermissible Avoidance Arrangement, i.e., results in misuse or abuse of provisions of tax laws, lacks commercial substance, etc. Both the aforesaid regimes will counter the cross-border shifting of profit through excessive interest payments.

Clarification on provisions -- The provisions themselves remain unclear on key issues. The regulations are ambiguous regarding the ability to carry forward interest disallowed in previous year. It is not clear if the amount of interest disallowed in previous year should be considered as interest paid to the AEs in the year of claim. This ambiguity leads to distorted results and defeats the intent of the provision as has been described in the memorandum to Finance Bill 2017. The provision also does not provide computation methodology for EBITDA. *Clarification will serve to reduce interpretation issues that may lead to tax litigation. At a minimum, USIBC recommends the regulations should be suitably amended to:*

a. *Allow an indefinite carry forward of disallowed interest;*
b. *Clarify that EBITDA needs to be arrived as per books of accounts; and,*
c. *Clarify that the expression 'total interest' refers to the total interest paid or payable to non-resident AEs.*

v. Removal of cap on deduction for provisions for bad and doubtful debts under Section 36(1) (viia) [Section 36(1) (viia)] of the Income-tax Act

The cap of 5%/8.5% of tax profits on tax deduction for provision for bad and doubtful debts should be removed. At least, the cap for domestic and foreign banks should be uniform at 8.5% of tax profits. Currently provision for bad and doubtful debts for banks is capped at 8.5% of tax profits for local banks and 5% of tax profits for foreign banks. Banks are regulated entities and the provisions for bad and doubtful debts are required to be done in accordance with guidelines laid down by the RBI. *USIBC recommends that in view of this and the current challenging economic scenario, the deduction for bad and doubtful debts should be fully allowed to all banks to the extent mandated by RBI regulations. Also, domestic and foreign banks are*

subject to almost identical regulatory regime for provisioning for bad debts. Hence, for a minimum, the cap for deduction should be raised to 8.5% for foreign bank.

vi. Banking units in the International Financial Services Centre (IFSC)

Recent amendments to the Finance Act, 2019 applicable to the foreign banking unit operating within the IFSC have been welcomed by the industry. These include:

(a) Section 80LA of the Income-tax Act that provides for deduction of 100% of income for 10 consecutive years, at the option of the assessee, out of 15 years.
(b) A proviso to sub-section (4) that the conditions contained in sub-section (4) shall not apply to a deduction allowed to a unit in an IFSC under section 80LA of the Act. Accordingly, a Gift city branch can now claim a profit exemption despite the provisions of Section 115A of the Act.

The Government's efforts to promote development and bring these IFSC at par with similar IFSC in other countries is commendable and appreciated. However, there is an unintended ambiguity in the interpretation of the provisions of section 115A that needs to be addressed. Pursuant to the provisions of section 115A, and in the absence of a claim of deduction under section 80LA, banking units of foreign banks operating in the IFSC are liable to pay tax at the rate of 20% or 5% on gross interest income earned on foreign currency borrowings or debt granted to Government or Indian concerns. In certain instances, a foreign bank's IFSC banking unit may be liable to pay tax on gross interest income even in case of a net loss. These requirements have led to unintentional ambiguity in the interpretation of the provisions of section 115A.

USIBC respectfully requests amendment of section 115A of the Act to exclude the income earned by banking unit of a foreign banking company in the IFSC from the scope of section 115A of the Act. This can be achieved by inserting sub-section (6) in Section 115A of the Act:

"(6) The provision of this section shall not apply to the interest income [accrued or arising from any business carried on] received by or is payable to, or fees for technical services rendered by, a Banking Unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone [of foreign banking company]"

Further, in order to provide complete tax exemption to a Gift city branch, USIBC recommends that the MAT provision should not be applicable to Gift city branch in a year where deduction under section 80LA is claimed.

vii. Income computation and disclosure standards (ICDS)

ICDS are accounting standards for computing taxable income, i.e., business income and income from other source, have been in effect from 1 April 2015. Banks and NBFCs face a serious challenge given the significant differences between the accounting treatment as required under the ICDS and that

under the Companies Act or prescribed by RBI regulations and the Securities and Exchange Board of India (SEBI) guidelines. Banks and NBFCs are primarily governed by RBI and SEBI Regulations and subject to the requirements of the Companies Act with respect to accounting standards outlined in these regulations regarding investments, derivatives and forward contracts, exchange rate for conversion.

The ICDS creates unnecessary complexity. First, it indirectly necessitates the maintenance of two different set of books of accounts - one based on the existing accounting standards prescribed under Companies Act and other based on ICDS. Additionally, it requires companies to reconcile these two sets of accounts. Adjustments undertaken to comply with the ICDS requirements only result in timing differences given that the ICDS implications will be reversed upon actual settlement. As a result, there is no additional benefit to Government revenue due to such adjustments. *USIBC respectfully requests the Government to amend the ICDS provisions such that they are in line with the existing accounting standards prescribed under Companies Act or provide an exemption for the banking and NBFC sector from the applicability of the ICDS requirements.*

viii. Form 15CA and 15CB related requirements for non-resident investors

The provision of Section 195 (6) of The Income tax Act provides that form 15CA and 15CB is required to be submitted at the time of making payment to non-resident investors irrespective of taxability for such payment under The Act. The mutual fund industry routinely makes redemptions/dividends to non-resident investors in India. Due to the volume of transactions and the stringent timelines for payments, the mutual fund industry finds it difficult to comply with requirement of form 15CA and 15CB. The stakeholders have made multiple representations in the past through the Association of Mutual Funds in India (AMFI) Operations and Compliance Committee to AMFI which have been further raised with SEBI and Finance Ministry. The representation was made to relax the requirement of compliance with the form 15CA and 15CB as the payments are being made in Indian bank accounts of non-resident investor only. The mutual fund industry is already complying with the requirement of withholding tax on capital gains for non-resident investors. The Finance Act, 2020, now has introduced withholding tax on dividend with effect from April 01, 2020. *Thus, USIBC respectfully requests that mutual fund proceeds at the time of dividend distribution or redemptions to Non-Resident investors should be excluded from requirement of form 15CA/CB.*

ix. Indirect offshore transfers

The Income-tax Act through the Finance Act, 2012, provides that shares or interest in a foreign company or entity that derives its value 'substantially' from assets located in India would be deemed to be situated in India. As such, a completely offshore transfer of such foreign shares would be brought within the Indian tax net. *USIBC respectfully requests following additional industry concerns should be addressed:*

a. *Exemption for (a) transfer of shares listed outside India (b) all forms of intra-group restructuring outside India (presently the provisions cover only amalgamation and demergers);*

b. *The acquisition of rights/control and management is by virtue of additional issue of shares to either existing or new shareholders (could be rights shares issuance, or fresh shares issued to a new shareholder, etc.). It is recommended that such cases should not be covered under the definition of 'capital asset' and 'property' (see the discussion under Para 3.3 of the Expert Committee Report);*
c. *As per the valuation rules, the manner for determining the FMV of shares of an Indian company has been prescribed without considering liabilities of the company. This is inconsistent with the valuation methodology generally followed and therefore FMV should also consider the liabilities of the company;*
d. *The valuation rules also remain silent on what criteria should be used when determining whether a methodology is internationally accepted or whether an accountant or merchant banker qualifies as having international repute. This may leave otherwise accurate FMV determinations open to litigation; and,*
e. *In view of the impracticality of tracking and reporting of all transactions, it should be clarified that the reporting be restricted to those transactions (a) whose income is covered within the ambit of indirect transfers which are deemed to accrue or arise in India. (b) reporting entity would be the foreign transferor entity.*

Finance Act 2016 rationalized the provisions by limiting the tax incidence to specified transactions. CBDT also issued rules prescribing the method of FMV computation and reporting requirements. USIBC recommends that a suitable exemption should be provided to avoid the multiple instances of taxation that may arise considering this multi-tier structure. Also, additional measures are required to ensure that the law is not adversely contrary to the global practices.

Tax Deducted at Source (TDS)

x. Tax deducted at Source (TDS) on premium remittance to Indian foreign reinsurers branches

Indian FRBs are regarded as non-resident under the Income Tax Act. Withholding tax provisions under Sec 195 are applied i.e. 43.26% on gross premium without determination of the actual tax obligations. It should be noted that Indian reinsurers as well as FRBs are registered with Insurance Regulatory and Development Authority of India (IRDAI) and are subject to same set of regulations. However, the Indian reinsurer pays reinsurance premium to GIC Re (Indian Reinsurer) there is no requirement to deduct tax at source. As a result, FRBs are not able to get a level playing field in the Indian reinsurance market. *USIBC respectfully requests: 1) an amendment to Sec 195 to include "or insurance premium"; or 2) an amendment/notification under Sec 119 sparing reinsurance premium from withholding tax.*

xi. Income in respect of units of non-residents [Section 196A of Income-tax Act]

Section 196A provides for TDS rate of 20% on any income in respect of units of mutual funds in case of non-residents (other than FII/FPI). Hence, based on language provided in said section, it seems that TDS at 20% may be applicable on capital gains also notwithstanding that such capital gains may be taxable at a rate lower than 20% (e.g. equity-oriented funds where TDS rate is 10% or 15%). A clarification has been provided in section 194K which is applicable for resident individual stating the

TDS is not applicable for capital gains. *USIBC respectfully requests that a similar clarification should be provided for section 196A as well*

xii. Surcharge on TDS rate deducted under Section 196A

Part II of the Finance Act provides for the rates in force for deduction of TDS along with applicable surcharge rate which is as given below:

1. 10% where total income exceeds ₹50 lakhs, but does not exceed ₹1 crore;
2. 15% where total income exceeds ₹1 crore but does not exceed ₹2 crore;
3. 25% where total income exceeds ₹2 crore but does not exceed ₹5 crore;
4. 37% on base tax where total income exceeds ₹5 crore; and,
5. In addition, "Health and Education Cess" @4% is to be levied on aggregate of base tax and surcharge.

The above surcharge rates are applicable on the income/aggregate income paid *or likely to be paid* during the year. From an investors' perspective, the plethora of tax rates, compounded with varied surcharge and cess rates leads to significant amount of confusion. In view of the aforesaid challenges, some mutual funds have been conservatively deducting the Surcharge on TDS at the maximum rate of 37% surcharge, irrespective of the amount of capital gain, while some are deducting the surcharge at the applicable rate for the actual redemption amount paid for a given transaction. In short, there is a lack of uniformity in the rate of surcharge on the TDS applied by various mutual fund houses. Consequently, there have been numerous complaints from non-resident Indian (NRI) taxpayers who are demanding for a uniform rate of Surcharge on TDS to be applied across all mutual funds.

To address the concerns faced by investors and to ease the TDS compliance burden for the mutual funds, USIBC recommends a flat surcharge rate of 10% could be applied to TDS on capital gains/dividends paid to NRIs. It is pertinent to mention here that, in any case, the actual/final applicable rate of surcharge on tax payable by a NRI assessed would depend entirely upon the final aggregate income of the NRI taxpayer under the Heads 'Income from Capital gains' & 'Income from Other sources' (for dividend) in the income tax return. Hence, rationalizing the rate of Surcharge on TDS by prescribing a flat rate (just like the flat rate for TDS itself) will facilitate ease of tax administration, *without any loss of revenue to the Government*. At the same time, it would also mitigate the hardship currently being faced by the mutual funds and the NRIs and eliminate the lack of uniformity amongst mutual funds in compliance of the TDS obligation. *In view of the issues and challenges explained above, USIBC respectfully requests the CBDT to issue suitable a notification/circular amending the existing provisions regarding surcharge on TDS in respect of NRIs and prescribe a uniform rate of Surcharge on TDS in respect of dividend from mutual fund units u/S 56 to NRIs as well as the capital gains u/s 111A &112A arising upon redemption of mutual fund units in respect of NRIs. This will alleviate the hardship for mutual funds and NRI tax assessees and facilitate ease of tax administration, without any loss of revenue to the Government.*

Tax Collected at Source (TCS)

xiii. TCS on sale of goods under section 206C(1H) and exclusions for banks, mutual funds, and other financial services providers

The Finance Act, 2020 inserted a new sub-section (1H) in section 206C of the Income-tax Act to expand the tax collection mechanism to cover sale of goods beyond a threshold limit by a seller whose sales, turnover or gross receipts exceeds Rs 10 crores during the preceding financial year. Such persons shall be required to collect tax at source on receipt of any amount as consideration for sale of any goods from a buyer, where the value or aggregate of such value such goods exceeds Rs 50 lakhs in any previous year.

The term 'goods' have neither been defined under section 206C(1H) of the Act nor under any other provisions of the ITA. For complying with regulatory prescriptions as well as managing various risks, Banks invests and trades in securities regularly. The Sale of Goods Act, 1930 specifically includes some of the securities like stocks and shares. The definition of securities is very wide under the provisions of Securities Contract (Regulations) Act, 1956 (SCRA). For example, Government securities, debentures, mutual fund units do not find any mention in the Sale of Goods Act, 1930 but form part of 'securities' under SCRA

Further, transactions in securities, including Priority Sector Lending Certificates, derivatives, etc. are voluminous, real time, and involve multiple information technology (IT) systems and complex derivative products such as interest rate/cross currency swaps, options, forwards, etc. In an anonymous order matching system of stock exchanges/RBI trading platform, it is not possible to ascertain the identity of the buyer and thus the mechanism for levy and collection of TCS would fail, in the event TCS is required to be collected.

While it appears the legislature is not intended to apply TCS provisions to securities as it will impact the entire financial markets including stock markets, there is a continuing ambiguity on account of different definitions under various statutes. *USIBC requests clarity on the definition of the term "goods" for the purpose of Section 206C(1H) of the Act.*

The intent of the introducing Section 206C(1H) of the ITA was to widen and deepen the tax base through greater transparency and disclosure of transactions. The banking and financial services sector is subject to stringent regulations and does not pose a heightened risk of non-disclosure of transactions.

The intent of the TCS provisions is to create an accountable trail for all buy and sell transaction upon which the appropriate tax can be levied and collected. Highly regulated sectors, such as banking and securities trading, already have significant regulatory requirements to ensure a distinct electronic and physical can be quickly and credibly traced back to the concerned counterparties. As such, these

sectors do not pose the risk of non-disclosure and tax avoidance contemplated under the TCS provisions for physical goods and should be exempted from these requirements.

Mutual Funds

xiv. Applicability of TCS on sale of "Goods" [Section 206C(1H)] – unintended impact on mutual funds

As per section 206C(1H) of the ITA, every seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, shall collect from the buyer, a sum equal to 0.1 per cent of the sale consideration as income-tax.

As per the memorandum to the Finance Bill, 2020, the intent of introducing the aforesaid provision was to widen and deepen the tax net to levy TCS (collection of tax at source) on sale of goods above a specified limit. The Income-tax Act does not define the term goods but the intent does not seem to cover mutual fund transactions or indeed, any transaction of purchase and sale of securities by mutual funds, (i.e. units of mutual fund & purchase and sale of securities by a mutual fund) which are conventional, well-regulated and adequately captured/reported. A plain reading of the section, by a literal interpretation, creates a scope for interpretation that the provision would also extend to cover even mutual fund transactions within its scope. While, transfer of units on recognized stock exchange, in view of Circular No. 17/2020, does not entail TCS obligation under section 206C(1H) of ITA, in case of off stock exchange, transfer of units of mutual funds TCS obligation may be attracted. Thus, TCS u/s section 206C(1H) should not apply on any transactions in mutual fund units or security transactions by mutual funds basis the contentions given below:

- "Goods" does not cover securities as per definition under GST laws which is more beneficial to the mutual fund investor.
- Income of mutual funds is exempt u/s 10 (23D) of the Income Tax Act. In case if this subsection is made applicable to mutual fund transactions as well, then mutual funds would be required to claim refund for the TCS collected. Since there is no chargeable income for the mutual fund schemes, 100% of the tax collected would be eligible for refund. This would cause undue hardship to the schemes and its investors.
- The intent of introducing the subsection was to widen and deepen the tax net and not to cover mutual fund transactions which are conventional, well-regulated, and adequately captured and reported vide SEBI, RBI, etc.
- Mutual fund trades in securities are high in volume and a significant value of investors will get locked on account of TCS if this gets applied to mutual fund transactions. Similarly, this would also impact investors as investments would be reduced to the extent of TCS which again will impact the fund return.

The Explanation to the section 206C (1H), provides that "buyer" & "seller" does not includes "any person" as the Central Government may, by notification in Official Gazette, specify for this purpose, subject to such conditions as may be specified therein. *USIBC respectfully requests that Mutual Funds registered with SEBI under SEBI (Mutual Funds) Regulation, 1996 be notified by CBDT as excluded from the operation of section 206C(1H) by issuing a suitable notification excluding Mutual Funds from the definition of "buyer" and "seller" under section 206C(1H) of the Act, to avoid any unintended burden on mutual funds.*

Banking

xv. TCS on Liberalized Remittance Scheme (LRS) flows

The ability to monitor Indian residents who have remitted INR 7 lakh or exceeded this amount across all financial institutions is ineffective with the current Liberalised Remittance Scheme (LRS) system. While certain Authorized Dealer Category -1 (AD-1) Banks may have the sole ability to upload limits for individual's PAN cards, given that a greater number of non-banks (Authorized Dealer Category-2 level, full-fledged money changers (FFMCs), and tie-ups) are accessing LRS flows via the AD1 bank, these additional non-banks should have viewing rights in order to ensure effective monitoring of customer transactions (particularly limit breaches) and correctly collect Tax Collected at Source when applicable. *USIBC respectfully recommends the Government consider a real time system for LRS limits.*

xvi. Reinsurance Export Services (RES) - taxation at par with other countries

Reinsurance underwriting activities for offshore business (reinsurance export services) from FRBs India office are taxable at the same rate of tax as onshore business. Taxability at the same rate of tax (offshore and onshore business) disincentivizes the foreign reinsurers who underwrite offshore business in India. A lower tax rate will motivate foreign reinsurance branches (FRBs) to underwrite neighbouring countries foreign reinsurance business from India. This in turn will help in promoting India as a competitive reinsurance hub in the region and attract greater business from such countries. *USIBC respectfully recommends that in line with international practice, a new lower taxation rate "reinsurance export services (RES)" of 10% may be introduced for offshore /foreign business underwritten from Indian office.*

xvii. Unexpired Risk Reserve ("URR") represents premium attributable to succeeding accounting periods subject to the provisions of the Insurance Act, 1938.

The URR represents premium attributable to succeeding accounting periods subject to the provisions of the Insurance Act, 1938. Rule 6E of the Income Tax Rules prescribes the URR limits for different lines of business – which have been in effect since 1962. In contrast, IRDA regulations in 2002 have set different limits and long-term products were introduced. *Considering this conflict, USIBC respectfully recommends that Rule 6E should be deleted and Sec 5(c) of the First Schedule (read with Sec 44) in the section titled, "Premium Reserves for insurance (including reinsurance) contracts in force duly certified by Statutory Auditors and qualified Actuary shall be allowed as a deductions" should be amended for addressing the above mentioned* URR *issues*

to ensure consistency with the books. It may also be noted, URR *is created by charge on the revenue and not by appropriation of profits.*

xviii. Applicability of grandfathering provisions to long term capital assets

The exemption u/s 10(38) in the Income-tax Act towards gain on long term capital asset was applicable to general insurance companies till March 31, 2018 in view of settled position that special provisions of s.44 of the Income-tax Act read with First Schedule applicable to insurance companies does not override exemption u/s. 10 in terms of which incomes specified in s.10 do not enter the total income at threshold. Section 112A providing lower rate of tax along with grandfathering of gains earned on long term capital asset till January 31, 2018 replaced Section 10(38) exemption. The Budget speech of Finance Act 2018 has clarified that 'all gains' up to 31st January 2018 will be grandfathered. The object was to protect the capital gains exemption for value accretion until 31 January 2018 and avoid a retrospective application of the new Long-Term Capital Gains Tax (LTCGT, CGT) regime. and that the grandfathering benefit will be available to general insurance companies upon withdrawal of Section 10(38) exemption. However, in view of special provisions of s.44 row First Schedule overriding the general computational provisions under different heads (including capital gains), the 'grandfathering' benefit cannot be availed by insurance companies. Without the benefit, general insurance companies are subject to tax at higher rate on higher value for identical nature of income. *USIBC respectfully requests a grant of relief by way of suitable amendment to the Act so that the grandfathering provisions contained in sec 55(2)(ac) is made applicable to general insurance companies also for providing a level playing field with other taxpayers in the matter of 'grandfathering' benefit.*

xix. Capital gains tax on foreign portfolio investors

Currently, capital gains earned by FPIs are taxed under domestic law. In addition to tax on capital gains, transaction taxes are also levied on listed securities in India. Only a few countries (e.g., Pakistan, Bangladesh, India) have a combination of transaction taxes and capital gains taxes, which are unduly burdensome. Capital gains tax on FPIs on listed securities should be removed. If removing CGT altogether is not possible, then removal (or at least reduction) of the LTCGT on equities may help in this regard. *USIBC recommends at minimum reverting to the old law – i.e. LTCGT on transfer of equity shares to be exempt. It should be acknowledged though that the existence of LTCGT rate of 10% can itself act as a discouraging factor for long-term investment into India by many investors. Attracting long-term foreign investments, by exempting LTCGT should result in the appreciation of the rupee amongst other fiscal benefits.*

xx. Interest deduction limitation rule (s.94B)

As per the interest limitation provisions under section 94B of the Act, an exclusion has been provided to taxpayer engaged in the business of banking and insurance, wherein the interest expense shall not be hit by any limitation/disallowance. However, the exact scope of 'business of banking' is not clear. *USIBC recommends that the scope of exclusion applicable to business of banking and insurance may be clearly defined. It is also recommended that scope of exclusion should also be extended to non-banking financial companies.*

D. Life Sciences Taxation:

i. Depreciation on non-compete fees

Non-compete fees are not specifically covered under Explanation 3 to Section 32(1) as intangible assets leading to unwanted litigation on account of disallowance of depreciation claims. *USIBC recommends Explanation 3 to Section 32(1) be suitably amended to include non-compete fees under expression intangible assets to specifically allow deprecation on the same under Income Tax Act, 1961.* A non-compete right in respect of trade, business or commerce qualifies as a "business or commercial right". The issue of depreciation on non-compete fees (being an intangible asset) has been subject matter of litigation for quite some time with conflicting decisions rendered by the appellate authorities. Hence, it is imperative that the issue of whether non-compete fees are an intangible asset or not and eligible for depreciation as contemplated under section 32 of the Income-tax Act requires certainty to protect the interest of buyer in any purchase transaction. *USIBC recommends Explanation 3 to Section 32(1) be suitably amended to include non-compete fees under expression Intangible assets to specifically allow deprecation on the same under Income Tax Act, 1961.*

ii. Reintroduce weighted deduction u/s 35(2AB) for inhouse R&D

The Finance Act 2016 has reduced weighted deduction of R&D expenses under section 35(2AB) in respect of the Department of Scientific and Industrial Research approved in-house R&D facility to 150% from April 2016 and 100% from April 2020. The phasing out of weighted deduction for R & D incentives will not only discourage the various initiatives like "Make in India", Digital India", "e Governance", "Clean Energy", etc. which are being aggressively pursued by the Government but also will dampen the spirit of innovation which is essential for the robust growth of the Indian industry. The critical importance of R&D is acutely felt in current times when the economy is facing a crisis due to COVID-19 pandemic and there is a race amongst pharma companies to come out with effective and safe vaccines at the earliest.

Globally, the trend is to encourage the R&D activities through provision of incentives e.g. such incentives are currently available in the U.S., UK, Australia, France, Italy, China and Singapore to name a few. The UK Government continues to implement its R. & D. incentive regime despite drastic reduction in the headline tax rate of 26% in 2011 to 21% in 2015 and 18% by 2020. Several countries have low corporate tax rates along with R&D incentives, e.g. Singapore (tax rate 17%; 100 to 150% of R&D expenditure), China (tax rate 25%; 150% of R&D expenditure); UK (tax rate 20%– 30%; patent box regime to encourage R&D).

In view of the above, USIBC respectfully recommends continuing not only the current scheme of weighted deduction but also introduce new R&D. incentive schemes which are administratively easy to implement. Further, this benefit should be available even to companies which opt for beneficial corporate tax rate u/s 115BAA and 115BAB and the past

unabsorbed expenditure in relation to S 35(2AB) should be allowed for carry forward. The scope of R&D deduction should be expanded to partially outsourced activities and commercial R&D companies.

iii. Applicability of Medical Council Guidelines (MCI) to pharmaceuticals companies

The CBDT through Circular No. 5/ 2012, dated 1 August 2012 (Circular) has clarified that freebees given by pharmaceutical companies to medical practitioners and their professional associations was in violation of the provisions of MCI Regulations and should be inadmissible under section 37(1) of the Income-tax Act. The Circular does not provide details on the scope of permissible expenses due to which the authorities adopt the strictest interpretation and disallow all expenses incurred by pharmaceutical companies for educating and creating awareness among doctors. Judicial precedents have noted that the Circular is not applicable to pharma companies. However, this continues to be a major litigation issue for all pharmaceutical companies. *USIBC requests clarification be issued after considering the judicial precedents on this subject to avoid protracted and repetitive litigation.*

E. COVID-19 Related Measures

i. Travel restrictions during COVID-19

A PE for a foreign company is constituted where the period of stay for an employee in India exceeds the prescribed time threshold under the tax treaty. The unintended and unplanned extended stay of such employees in India due to COVID- 19 beyond the threshold prescribed under the tax treaty may result in a non-resident enterprise constituting of a PE in India. Additionally, such unintended and unplanned extended stay may result in breaching the threshold specified for residential status under domestic law and/or short stay exemption under 'dependent personal services' article of tax treaty.

The CBDT has introduced relaxations when determining the residential status of an individual for FY 2019-20, for individuals who came to India before 22 March 2020 and were stranded on account of lockdowns and travel bans. Similar clarification is pending for FY 2020-21. On the international front, the OECD has released a guidance note on the impact of COVID-19 crisis stating, "these situations should be treated as 'exceptional and temporary' and should not trigger a change in residency or PE status." Further, these exceptional circumstances call for an exceptional level of coordination and co-operation between countries, notably on tax issues, to mitigate the potentially significant compliance and administrative costs for employees and employers. Following this, many countries like the UK, Singapore, Australia, U.S. and Ireland have made amendments to domestic tax laws/released clarifications on treatment under tax treaty, to ensure that such forced stay by employees in the foreign countries is not counted for determining residency or PE exposure. Australia, UK have also clarified that holding of board meetings in the respective country or presence of managerial personnel who attend board meetings from the respective country, because of COVID-19, will not be considered as resulting in POEM from such country. *USIBC respectfully requests a similar Circular as provided for FY 2019-20 from perspective of residential status must be extended for the FY 2020-21 for the period impacted by lockdown,*

considering the lockdown and travel restrictions had greater impact for FY 2020-21. USIBC also requests clarification that this forced stay owing to Covid-19 should not be considered for the purpose of evaluating the threshold criteria under Dependent Personal Services, for both FY 19-20, FY 20-21. Further, Circular should be issued providing relaxation from creation of PE, POEM due to presence of personnel in India owing to COVID-19, on similar lines as provided by various countries/OECD. Considering these exceptional circumstances of lock down/travel bans, such relaxations are essential to be granted to foreign companies and employees.

USINDIA BUSINESS COUNCIL

SECTION III: USIBC Budget Recommendations for FDI Policy

A. Digital Economy

India's digital economy is in the process of a major transformation. Historically, the growth the sector was linked to the IT/Business Process Outsourcing (BPO) segment, which remains largely an export-oriented service industry with large MNCs, including numerous Indian-headquartered companies. Of course the telecoms sector, which is under financial duress and going through a period of consolidation, nonetheless has experienced a rapid roll out of services as well, with cellular services available throughout most of the country, and with more than 1 billion subscribers and increased use of smart phones, and is effectively universally available. India's media sector too – movies, television, print, online – is well developed, robust, and widespread, with a brand value well known globally. Over the last several years, however, in a trend dramatically accelerated by COVID, there has been significant increases in ecommerce, streaming services, and online gaming/esports. The electronics manufacturing segment too, has seen a boost. When taken together, India's digital economy is global powerhouse, and now is supported but sizeable markets and growth within its domestic market.

India country remains the top destination for IT outsourcing and has attracted companies small and large into its technology corridor, particularly in the electronics manufacturing segment. With a high growth rate, the IT industry remains a bright spot in terms of investment, growth, job creation and innovation. The telecommunications segment, which is undergoing a significant consolidation, has well over 1 billion users, and a robust infrastructure.[3]

i. Diversification of access technologies

USIBC commends the GOI in its efforts to increase broadband penetration and facilitate 5G cellular services, as communication infrastructure enables digitalization of the entire economy. *USIBC recommends the government look to a diverse set of access technologies beyond 5G and fibre, such as satellite communications in the Ku- and Ka- bands, direct-to-mobile broadcast, and other advanced connectivity technologies. USIBC further recommends the government take steps to ensure financial stability and growth within the core telecommunications markets, as a vibrant telco ecosystem underpins economic growth and the roll out of additional telecoms infrastructure that is central to a vibrant equipment and communications ecosystem.*

USIBC is encouraged by Indian Space Research Organisation (ISRO)'s draft plan to open the satcom market, however, it is disappointing that the current draft limits participating to Indian companies. To fully obtain the benefits of satcom – FDI, broadband satellite, ubiquitous access – USIBC strongly recommends opening the satcom market to international players and consider the privatization of its commercially-focused satellite system. Initially, FDI rules could align with telecoms operators that have 49% FDI via the automatic route, and higher via the government route.

ii. Greater FDI to ensure level playing field in e-commerce

The GOI restricts FDI in business-to-consumer e-commerce (inventory-based model), despite the large investment and employment generated by U.S. companies operating in the e-commerce sector. As the GOI considers liberalization, *USIBC recommends that it provide a level playing field to e-commerce,*

[3] https://www.investindia.gov.in/sectors

allowing at least 51 % FDI so that U.S. and Indian companies can partner to provide world class solutions to merchants and customers.

FDI in e-commerce benefits Indian consumers and local businesses – including manufacturers – while decreasing fiscal and trade deficits. Removing restrictions on e-commerce will help India attract new investments in the form of warehouses, supply chain management, and logistics services. Indeed, the reform would help develop India's domestic manufacturing sector and the resulting infrastructure developments will further generate local employment. *Given the immense growth opportunity for India, USIBC recommends that the Government allow FDI in business-to-consumer e-commerce (inventory model).*

B. MEDIA AND ENTERTAINMENT

India has one of the most robust media and entertainment sectors in the world, characterized by regionally based linguistic content that is globally distributed through channels, and cutting-edge media products. The Indian media and entertainment sector are a massive consumer of both domestic and international media content across both traditional platforms as well as via new media and technology. By the numbers, the Indian media and entertainment (M&E) sector reached INR1.82 trillion (US$25.7 billion), a growth of 9% over 2018, with television, print, and digital media being the largest segments. By forecasted growth, online gaming (43% CAGR 2019-22), digital media (23%) and animation/visual effects (VFX) (18%) are the fastest growing. Overall, the sector is anticipated to growth 10% a year – COVID not withstand.[4] Key policy issues for the sector include the Telecom Regulatory Authority of India (TRAI)'s New Tariff Order (NTO) – now flowing through India's judicial process, streamlining licenses for satellite up linking and down linking, pending privacy legislation, monetization of digital content, and skills development.

i. Passage of the amendments to the Cinematograph (Amendment) Bill, 2019

USIBC recognizes the dramatic improvement in India's policy environment for intellectual property rights. While broader challenges remain, the increase is a result of specific reforms that better align India's IP environment with the international IP system. *USIBC recommends additional IP reforms to strengthen copyright enforcement and reduce piracy such as the final passage of amendments to the Cinematograph (Amendment) Bill, 2019 regarding cam-cording.*

ii. Liberalization of FDI for media and entertainment

India's M&E sector is pointed for tremendous growth, and there are clear opportunities to attract additional investment to promote innovation, content creation, exports and jobs. USIBC welcomes the changes in the Ministry of Information & Broadcasting (MIB) with respect to industry engagement and encourages a review for ways to improve the ease of doing business in the sector, with the goal of stimulating innovation, investment, job creation, and local language content development. While the GOI continues to liberalize the M&E sector incrementally, there remain several unnecessary limits on international FDI into the sector, including:

[4] The era of consumer A.R.T. Acquisition | Retention | Transaction India's Media & Entertainment sector, EY, March 2020 (www.ficci.in/spdocument/23200/FICCI-EY-Report-media-and-entertainment-2020.pdf)

Segment[5]	Limits	Proposal and Rational
5.2.7.2.1 Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	49% Government Route	100% Government Route Government Route provides sufficient oversight and safeguards With recent licensing changes India's FM radio landscape is highly competitive Sector is focused on entrainment as there are restrictions on news broadcasts and other content controls Indian FM operations are expanding in the U.S.
5.2.7.2.2 Up-linking of 'News & Current Affairs' TV Channels	49% Government Route	
5.2.7.2.3 Uploading/Streaming of News & Current Affairs through Digital Media	26% Government Route	49% Government Route Government Route provides sufficient oversight and safeguards Prior to the new Digital Media FDI cap, this segment previously into the 49% for Broadcasting Content Services Previous investment should be grandfathered. Even news aggregators should be outside the ambit of FDI under "Digital Media" sector.
5.2.8.1 Publishing of newspaper and periodicals dealing with news and current affairs	26% Government Route	49% Government Route

5 Based on new FDI Consolidated Release October 2020

		Government Route provides sufficient oversight and safeguards
5.2.8.2 Publication of Indian editions of foreign magazines dealing with news and current affairs	26% Government Route	49% Government Route Government Route provides sufficient oversight and safeguards
5.2.12 Satellites- establishment and operation	100% Government Route	Approve existing proposals While this route has been on the books, the government has not approved any FDI proposals, including those that provide ubiquities broadband internet access ISRO consultation calls to limit investment in satellite sector to only Indian entities, which undermines existing FDI rules in the sector.

USIBC also urges the GOI to do away with the restrictions on vertical integration and at least consider, if not fully adopt, the TRAI's Recommendations on Issues related to New DTH Licenses and on Issues relating to Media Ownership.

C. AEROSPACE AND DEFENCE

i. Defence Acquisition Procedure (DAP) 2020

USIBC commends the GOI and the Ministry of Defence (MoD) on the issuance of the DAP 2020. USIBC pledges our commitment to work closely with all stakeholders, government and industry, to enable a deeper cooperation; one that fulfils the public policy goals of the GOI while providing industry the clarity, incentives, and policy stability they need in order to help India create a defence industrial base that expands and complements those of other friendly countries. USIBC recognizes the DAP 2020 as a renewed articulation of the Government's commitment towards *Atmanirbhar Bharat*. Since the launch of the *Make in India* initiative in 2014, India's defence industrial base has become broader and stronger. It is now blazing a new, albeit uncharted path towards indigenous design, development, production, and sustainment capabilities for its growing military needs.

USIBC member companies, which include both U.S. and Indian private-sector defence companies, are eager and willing to traverse this path with the MoD as we seek to create a robust defence industrial base in India that underpins the national security needs not only of the Indian Armed Forces, but also

benefits other partner countries, including the United States. There is a lingering concern amongst defence companies that the DAP 2020 may present certain requirements that cannot be readily achieved. Stringent offset requirements or unattainably high indigenous content thresholds may prove to be technically unfeasible or cost prohibitive. Such conditions may deter prospective bidders, resulting in reduced competition from foreign original equipment manufacturers (OEMs) and increased costs for the GOI. This may also hamper the ability of global OEMs to further invest in India, form joint ventures, transfer technology, and enable skill development.

USIBC recommends the maximum possible flexibility to allow a more sustainable development of India's defence sector. We request that the DAP 2020 be accommodating to a broad range of prospective bidders, whether Indian or foreign, which boosts competition and provides the MoD better solutions at a better price. Favourable terms and broad solicitations will also attract greater investment into India and bolster India's goals to become a manufacturing hub and a net exporter of defence equipment in the long run. This would help achieve the ambitious targets envisaged by policies such as the Defence Production and Export Promotion Policy (DPEPP) of 2020. In the months and years ahead, as the MoD executes its capital expenditure budget for the Armed Forces, we hope the DAP 2020 proves effective.

ii. Ease of doing business in India by foreign defence companies

As a general comment, companies would welcome any move to reduce the barriers to doing business in India by Foreign Companies whilst at the same time supporting the local Indian workforce and the Indian economy. *USIBC recommends that the policy for ease of doing business should focused on streamlining business opportunities for both indigenous and foreign companies. This could also include ensuring India remains aligned with global best practices particularly on emerging issues such as the taxation of digital services (including OECD Pillar 1 and Pillar 2 uniformity).*

iii. Language in defence procurement manual

The language in the Defence Procurement Manual should be inconsistent to exchange rates at the time of bidding for the contract. Currently, the exist full exchange rate variance (ERV) protection for foreign vendors versus only minimal protection for Indian vendors. *USIBC recommends that ERV application should include Buy (Indian) and Buy and Make (Indian) bid categories to ensure level playing field between foreign and indigenous tenders.*

iv. Title transfer in DAP 2020

DAP 2020 includes title clause whereby title transfer is expected to occur in India. For foreign OEMs, having title transfer occur in India will not be conducive for ease doing business in India. It will likely create additional compliance burden for foreign OEMs, which translates into additional costs/resources. *USIBC recommends that the Government should retain an option with contracting agency to accept transfer of title outside of India in case of foreign sellers. In such cases, the risk of loss or damage to goods shall continue to remain with the seller until acceptance of goods by the buyer. This will promote ease of doing business in India, while*

continuing to meet compliance and regulatory requirements regarding licensing and local permits for import of defence goods in-country. Additionally, title transfer outside of India aligns with the general language of the tax clause that seller and buyer paying taxes in their respective countries.

D. Energy & Environment

i. Valuation of taxable services for naturally evaporating products like LNG

Naturally volatile and evaporating products like gasoline or LNG are susceptible to continuous erosion of quantity in their natural state. LNG is compressed by 600 times and remains in liquid form only at temperatures of -160 degrees centigrade. Exposed to ambient conditions, the entire product evaporates on its own. The usable form of LNG is in its re-gasified state as natural gas. Shortfalls and excess of actual losses over pre-agreed norms are compensated by the service provider or taken as part of stock and disposed of as per provisions of Generally Accepted Accounting Principles (GAAP), VAT and income tax laws. However, due to misunderstanding of the process there are claims on taxability of the tolerance norms and any quantities of the product lying in excess over the loss tolerance quantities by both VAT and Service Tax. The same value should not be taxable under two separate indirect taxes. *USIBC recommends that the charges for the delivered quantity of a volatile product (after considering the losses during regasification) shall be taxable as services in order to avoid double taxation. The value of product lost or consumed during the process of regasification shall be deemed includible in the charge levied for processing as it is intrinsic to the process itself.*

ii. Extension of import duty exemption on LNG to all sectors & not just power, similar that for crude petroleum

Import of LNG presently attracts BCD of 5.15% ad valorem which adds to the cost of supply to end-users. Until June 25, 2011, this was the same rate import of crude petroleum attracted until it was brought down to zero. Hence it is no longer at parity with crude. LNG and NG imported for generation of power has been exempted from customs duty vide Notification No. 12/2012 dated 17.03.2012 (Sr. No 139). However, this exemption is applicable only to the power sector and that too only in case of imports for supply to a power generating company. This exemption is not applicable to other sectors like fertilizer and petrochemicals, which results in additional costs for use of LNG and leads to preferential treatment for imported crude without justification where cleaner fuel i.e. natural gas imports are discriminated with crude oil imports.

USIBC recommends the import duty of LNG be made at par with the import duty of crude petroleum, which is presently zero. Moreover, the Council recommends that the custom duty exemption to LNG/NG be granted on imports made by any person boosting development of competitive gas markets in India and as such should be extended beyond the power sector to 'end-use' for other sectors as well, to ensure parity with imported crude.

Environmental Products

iii. Improving Rules for Plastic Waste Management

The Ministry of Environment, Forests and Climate Change (MOEFCC) notified the Plastic Waste Management (PWM) Rules, 2016 (PWM Rules) on 18 March 2016. One of the key issues faced by industry under the PWM Rules viz. the obligation on manufacturers under the Extended Producers Responsibility (EPR) to collect, segregate and dispose of or recycle all plastic waste wherever in the country these may occur. For any producer to collect every bit of waste from wherever such waste might occur across the length and breadth of this country is impractical. These obligations in the PWM Rules 2016 have key procedural/implementation bottlenecks making it impossible for manufacturers to meet the obligations. *USIBC members appreciate the industry consultation that MOEFCC has conducted recently on this issue and respectfully submit that the concept of EPR under the PWM rules be amended so as to make it practical to implement and until such time, defer implementation of the EPR rules.*

PETROLEUM SECTOR

iv. Ensuring growth in the petroleum sector through protecting contract sanctity

India is an important market for U.S. LNG. While the Government has plans to increase natural gas usage in India, Indian importers of LNG are having difficulty digesting their existing U.S. LNG volumes due to their price sensitivity in the current market and most importantly, lack of gas import and distribution infrastructure in India.

Over the second half of 2020, the Government escalated its focus on the existing long-term LNG sales and purchase agreements (SPAs) between U.S. LNG exporters and Indian state-owned LNG importers, agreements that have been signed, executed, and already commenced. The GOI has raised the issue of renegotiating these existing contracts with U.S. Government (USG) officials during both government-hosted, private dialogues as well as public sessions with representatives of both governments. In all instances, GOI representatives have specifically called on the USG to encourage U.S. LNG exporters with existing LNG export contracts to renegotiate the terms of their contracts with Indian LNG importers. The USG, however, does not have a role to play in private contracts like those that exist between U.S. LNG exporters and Indian importers.

Indian Government support for contract sanctity and the expectation that all Indian firms, particularly those that are owned or partially owned by the GOI, abide by signed contracts with U.S. firms would go a long way to encourage further investments and business between the US and India in the petroleum sector. *USIBC respectfully recommends the GOI support for contract sanctity and the expectation that all Indian firms, particularly those that are owned or partially owned by the Government, abide by signed contracts with U.S. firms would go a long way to encourage further investments and business between the US and India in the energy and infrastructure sectors.*

E. FINANCIAL SERVICES

i. Increasing to 100% FDI in insurance and removing restrictions on management and control

The economic stresses arising from the COVID pandemic highlight the urgency of removing barriers to expanding financial protections while also showcasing how world class insurers are working with Indian technology providers to rapidly develop and deploy new virtual capabilities for customers. The U.S. insurance industry sees great potential in India's insurance market, as evidenced by the joint venture (JV) arrangements established to date and the additional companies that seek to enter should the market open further to foreign participation. The insurance sector is currently constrained by the foreign investment cap for both life and non-life insurance companies, as well as the requirement that joint ventures remain Indian owned and controlled.

Allowing insurance companies in India to be fully owned and managed by foreign investors will inject fresh capital into the Indian economy, create jobs, spur economic growth, and enable insurance companies and pension funds to support long-term investments in priority areas. This investment of capital will help deepen the insurance market and narrow the insurance protection gap. In addition, it will improve economic resiliency, strengthen capital markets and investments, particularly in infrastructure, and enhance societal well-being.

Domestic capital alone is not likely to be sufficient to support such market growth, given the existing capital demands in the Indian insurance market. Specifically, India's public insurance companies require large-scale capital infusions to be brought to the capitalization level of the private sector. Estimates predict the recapitalization needs of public insurers to be $34 billion in the life sector and $1.7 billion in the non-life sector, for a total of approximately $36 billion. Those funds will need to come from fiscal resources or private investors. Accordingly, India will need significant foreign capital inflows to augment the domestic capital necessary to recapitalize the industry and support its growth.

Given such a historic opportunity for market opening through an act of Parliament, USIBC recommends a bold and decisive reform aimed at supporting the government's growth objective, rather than a partial measure that could fail to fully mobilize the industry, as in the prior liberalization experience just a few years ago. Foreign insurers are willing to commit significant amounts of capital to India – provided they are allowed to do so and can control how their capital is invested, and when. This necessitates abolishment of the restrictive ownership and control policies without which these policies will not capture the investment potential possible. The Government should raise FDI to 100% and remove any restrictions on management and control.

ii. Removing IRDA limitations on management expenses and commissions

Under its current regulations, the IRDA imposes regulatory limitations on the amount of premiums insurers may spend on management expenses generally and on agent/intermediary commissions specifically. Relying on authority conferred by the Insurance Act, 1938, the IRDA has issued

regulations that limit each insurer's "expenses of management" to between 20 and 37.5% of premiums, depending on the line of insurance and volume of gross premium written by the carrier. The IRDA's approach to management expenses and/or commissions stands as an exception to global practices around the world. While the need for regulators to ensure that premiums are spent on benefits rather than insurer expenses and commissions is certainly understandable, the current regulatory restrictions and micro-management of expenses limit the ability of stakeholders to freely allocate expenses among the various opportunities available and discourages differentiation in the industry, which ultimately negatively impacts the choices available for the Indian consumer.

Artificial limits on insurer expenses and commissions could discourage or even stifle the very sorts of innovations that are fundamental to meeting the growing needs of the Indian marketplace. The risk of loss or delay in innovative technologies would be particularly impactful for rural customers in India for whom the lack of efficient distribution channels can be a bigger impediment than for customers in urban areas. Limits on both expenses and commissions tend to promote consolidation, rather than competition, by favouring larger firms that can take advantage of economies of scale and/or by creating a marketplace with little differentiation. If there is concern that a lack of limitation on commissions will result in brokers steering business to those paying the highest commissions, regulators can require clear disclosure to customers, who can evaluate the costs against the benefits to make the choice best for them. More importantly, such regulatory limitations in a fast-growing market leads to inappropriate market practices. It results in serious compliance issues and consequential severe market disruption impacting industry growth. *For the reasons outlined above and to improve customer options, encourage investment, and promote innovation, USIBC respectfully recommends that India should align itself with other major economies and eliminate the regulatory limitations on insurance expenses and broker commissions.*

iii. Engaging with credit information companies on the establishment of Public Credit Registry

In June 2018, RBI initiated the creation of a nationalized Public Credit Registry (PCR) to allow for a centralization of credit information that would result in more symmetry of data and greater efficiencies in comparison to the current systems with credit information disbursed throughout the financial market. The credit information companies (CICs) in India understand the RBI's desire to establish a PCR and believe an open and transparent implementation process with participation from stakeholders is critical to ensuring the PCR meets its objectives. With approximately one billion dollars-worth of investment cumulatively over the past fifteen years, CICs are a valuable component of the Indian credit system. These CICs, including U.S.-based companies, have invested in technology and analytical resources to strengthen the credit infrastructure in India. They have helped the Government achieve its goals in the credit market by helping control delinquencies, increasing financial inclusion, enhancing efficiencies, and increasing access to credit. Recent discussions with RBI officials have clarified the RBI's desire to keep the CICs operational and leverage the existing credit infrastructure in the Indian market. *USIBC recommends representation of industry on the PCR working groups to establish a public-private partnership with GOI that will identify the most productive path going forward.*

FOREIGN PORTFOLIO INVESTORS

The recent reforms to relax the FPI criteria (GOI move from 3 categories to 2) has enabled investment in India. USIBC commends policymakers for this move. Removal of broad-based requirement for category II FPIs will benefit the majority of FPIs operating in India. In addition, such a reform would harmonize India's requirements with other markets and rationalize market entry procedures for foreign investors in alignment with the Government's focus on improving the ease of doing business in India. The reform process needs to continue to realize these benefits.

iv. Reviewing the hedging related constraints for FPIs

USIBC recommends a review of the hedging related constraints on FPIs to allow for greater flexibility. FPIs should be permitted to reuse the underlying hedge of a cancelled contract for a certain period and be allowed to explore more dynamic hedging options to manage their risks. This reform will encourage greater investment from FPIs as the cost of managing their risk is controlled.

v. Amendments to the FPI regulations on maximum investment limits – removal of the 50% limit on subscription of an issue

FPI regulations restricted any single FPI investor to a maximum of 50% subscription of an issuance and a maximum of 20% of its investments in any single corporate entity. In its recent reforms, the Government removed the 20% limit and has taken the 50% limit under review. Industry members believe the 50% limit should also be relaxed. Given that these FPI investors are not local regulated banks or NBFCs, Single Borrower Limit/Max Investment Limits are not applicable in what is fundamentally a private investment and not public money subject to oversight. *USIBC recommends that FPI investment managers are best suited to determine the allocation of funds in investee companies and the concentration risks they wish to take. As such, the Council recommends removing the 50% limit on subscriptions of new issuances.*

ASSET MANAGEMENT

vi. Leveraging global investment Management Expertise to benefit Indian Investors

Global asset management companies benefit from well-developed networks of global expertise in many areas of investment operations, including fund management, research, and trading. Global regulators recognize and allow global affiliates of an asset management group to provide and receive investment related services to and from each other. A number of global regulators have entered into cooperation agreements with each other that facilitate global operations by regulated firms. Current Indian regulations are an outlier, denying the efficiencies of global investment operations to asset managers. *USIBC recommends that SEBI consider regulation allowing for the operation of such industry networks to encourage the development of India's capital markets to a greater extent than possible under the current regulation characterized by a focus on local requirements.*

vii. Enabling asset management companies (AMCs) to actively sell and market direct plans to investors

Current regulations are silent on charging cost of selling and marketing Direct Plans to Direct Investors. Additionally, SEBI has asked AMCs to limit the Total Expense Ratio (TER) of Direct Plans to the Total Expense Ratio of Regular plans as reduced by the commission paid to Intermediates (Distributors). It therefore appears that AMCs cannot charge the cost of selling/promoting Direct Plans to Direct Investors, even if such cost of selling and marketing Direct Plans is lower than the cost of selling and marketing Regular Plans. This is currently preventing AMCs from using new age digital marketing tools that can be deployed to specifically promote Direct Plans amongst Investors and increase the penetration of Direct Plans that have a lower expense ratio compared to Regular Plans. *USIBC recommends the GOI reconsiders these restrictions.*

viii. Mutual fund reclassification

The recent reclassification of mutual fund portfolios has resulted in bifurcation between large cap/mid-cap/small-cap funds and has affected institutional participation in IPOs. Based on the new classification, every company below market cap of INR 9,000 crore falls in the small cap bucket (i.e., beyond top 250 companies). As a result, initial public offerings (IPOs) are likely to fall under the small cap category at listing price. This in turn has served as a chilling factor on investor interest and participation in these IPOs. *USIBC recommends reconsideration of these reclassification categories.*

ix. Review of restriction on foreign asset managers:

Current regulation imposes restrictions on foreign asset managers that are incorporated in India but are a subsidiary of a foreign firm. These restrictions create an uneven playing field for these asset managers and their operations in India. *USIBC recommends the Government of India review these restrictions and consider amendments creating a more level playing field that will promote further investment into the Indian capital markets.*

x. Improving ease of doing business in asset management and financial products in India through coordination between regulators:

The multiplicity of financial regulators providing oversight on asset managers and their funds often raises concerns around ease of doing business. Examples include the potential for regulatory arbitrage in financial products between SEBI, IRDAI and Home-Pension Fund Regulatory and Development Authority (PFRDA), the inability for asset managers to manage pension and insurance assets, the multiple regulations around KYC, and Aadhar that complicate the operating environment, and the recent FPI KYC/UBO Circulars that reflect a lack of coordination between the RBI, Ministry of Finance, and SEBI. *USIBC recommends a process to ensure greater and more effective coordination between regulators.*

PENSION REFORM

xi. Increasing Pension FDI limits to 74%

USIBC respectfully recommends that FDI for pension should be increased to 74% to allow for greater capital infusion into the country and acceleration of the growth of the pension market to serve Indian citizens and removal of the condition mandating the ownership and control remaining in the hands of resident Indian entities at all times.

xii. Public/Private Collaboration

The Government has made substantial progress in laying the foundation for effective pension reform to expand pension coverage to millions of Indian citizens. Demonetization, investment in digital payment systems, a mobile financial ID, and the drive to bank millions of people provide the necessary infrastructure to increase national savings and avert the fiscal crunch threatened by aging and urbanization. Although modest progress has been made through reforms to the Employee Provident Fund (EPF) and the National Pension System (NPS), only 13% of Indian households are actively saving for retirement. *USIBC requests the Government to convene a public-private working group to collaborate on continued reform of the country's pension schemes, and to harness the expertise and experience of the global asset management industry to leverage expanded pension coverage to build a domestic, pension-backed capital market.*

xiii. Strengthening economic incentives for

NPS and EPF pay-outs enjoy different tax treatments which have discouraged take up of the NPS in the private sector. *USIBC recommends making NPS annuities and lump sum payments fully tax exempt as this would harmonize the schemes and incentivize savings through the NPS.*

xiv. Improving pension investment performance

Both the EPF and NPS retain highly restrictive rules for asset managers, reducing the ability of the funds to generate competitive long-term returns and adequate income replacement rates. *USIBC recommends eliminating the EPF and NPS prohibitions on foreign investment, opening up asset management in the NPS government schemes to all PRFDA-certified pension fund managers, and allowing higher NPS asset management fees to encourage competition. Civil servants should be allowed the same freedom to choose pension fund managers and portfolio allocation as do participants in the All Citizen NPS and Corporate NPS schemes. Similarly, the limit on equity investment in the NPS government scheme should be raised to match the limit in the other NPS programs.*

DIGITAL PAYMENTS

Measures to boost digital payments reforms by expanding the available modes of payment to provide end consumers with more choices

xv. Promoting contactless payments and online transactions

Currently, at the time of issue or re-issue, all cards (physical and virtual) are enabled for use only at contact-based points of usage [such as automatic teller machines (ATMs) and Point of Sale (PoS) devices] within India. Issuers provide cardholders a facility for enabling card not present (domestic and international) transactions, card present (international) transactions and contactless transactions. The facility allows cardholders to switch on/off and set, modify transaction limits (within the overall card limit, if any, set by the issuer) for all types of transactions – domestic and international, at PoS/ATMs/online transactions/contactless transactions pursuant to RBI Notification 2019/-20/142 DPSS.CO.PD No. 1343/02.14.003/2019-20: Enhancing Security of Card Transactions. Customers who have opted for contactless and card not present (CNP)/online usage should not be inconvenienced with procedural requirements every time they receive a re-issued or a new card for their same account number or relationship with the bank. It results in transaction declines and customer dissonance for digital payments and will resultantly increase cash payments. *Thus, USIBC respectfully requests that all cards, newly issued or re-issued, should be activated with domestic CNP, contactless transactions and online transactions by default for domestic transactions with an option of the customer only calling to opt-out.*

xvi. Increasing the contactless transaction limit

With COVID-19, there has been a significant increase in the use of online and contactless payments as the default choice. Across Asia Pacific, the contactless payments have increased by 90% in comparison to the pre-COVID-19 period. Under current regulations, the limit of INR 2000 has been the limit set across all categories of merchants in the country where such contactless payments will be accepted over last 5 years without any incremental increase in fraud for contactless transactions. Beyond this transaction limit, the card must be processed as a contact payment and authentication with PIN (AFA) is mandatory. Even for transaction values below this limit, the customer may choose to make payment as a contact payment, which must be facilitated by both issuing and acquiring banks. In other words, customers cannot be compelled to do a contactless payment. *USIBC respectfully requests that the contactless transactions limit be reviewed and be increased up to INR 3000 without the requirement of a mandatory pin as opposed to the current limit of INR 2000. Also, where the PoS does not have the facility of contactless transactions, there should not be the need for punching in the pin in a dip transaction. The consumers should be allowed to undertake the transaction for whatever limit is set by the card holder for contactless no-PIN transactions or INR 3000, whichever is lower.*

xvii. Encouraging asset light innovations such as BharatQR

The Report of the Committee on the Analysis of QR (quick response) code chaired by Prof. D.B. Phatak, Professor Emeritus, Indian Institute of Technology, Mumbai recommends continuing with interoperable QRs, i.e., Bharat QR and Unified Payments Interface (UPI) QR. The report also notes that Bharat QR as single open-loop QR code-based payment mechanism should be capable of accepting payments from all payment modes - cards, UPI and wallets and thus focus on customer and merchant convenience, which offers low-cost implementation and convenience for merchants, banks,

and consumers. To encourage the greater use of digital payments, the Government should promote all modes of payments.

Given that Bharat QR accepts cards, wallets and UPI transactions, promoting a single National Bharat QR code would greatly ease customer transactions from an end-user/customer perspective. Similar to operating through a single POS that works seamless and is truly interoperable based on EMVCO standards, it can be used by cardholders of any network (Visa/Mastercard/Rupay/Amex, etc) or account holders of any bank. It will ensure convenience for the customer as well as the merchant. Further, QR-based payment has been launched in multiple markets across the globe by the networks. Since Bharat QR follows EMVCo standards, it will facilitate cross-border payments, which are critical in a global economy, and easy to promote by banks and payment networks as it's a single QR code. (Unlike UPI QR which needs to be promoted separately by the banks to their consumers for UPI based payments only).

USIBC respectfully recommends having parity between the standards of Bharat QR and UPI QR to ensure equal adoption in the market as is the intent of the Committee. In this context, USIBC members suggest the following:

- ***Merchant onboarding*** - *Merchant onboarding processes should be made the same for all QR codes;*
- ***Transaction types*** - *P2PM transactions should be allowed for the QR codes;*
- ***Regulatory support*** - *Similar incentivization and participation to promote Bharat QR, as it has been for UPI QR;*
- ***Education and awareness***- *Impetus on building education and awareness for both forms of QR;*
- ***Merchant segments*** – *Push for merchant segments like Utility payments, government and education to have equal adoption of both the standards; and,*
- ***Authentication*** – *Standardization of authentication process, i.e. QR, codes should not have two factor authentications for low ticket size face to face transactions on the lines of NFC such as for transactions below INR 2000.*

xviii. Accelerating the launch of tokenized Card Transactions

Tokenization is the process of replacing a card's primary account number (PAN)—the 16-digit number on the plastic card—with a unique alternate card number, or "token." Tokens can be used for mobile point-of-sale transactions, in-app purchases, or online purchases. Account and merchant tokenisation will promote interoperable digital transactions and the greater use of digital payments. Customers should be given the power of choice to use any mode of digital payments at their convenience within the same App seamlessly while making payments through, wallet, cards, or account. Similarly, card tokenisation should not differentiate between customer and merchants. While card tokenisation is allowed for customers, merchant tokenisation is not permitted.

USIBC respectfully recommends that tokenisation when allowed by RBI should not be restricted to card transactions only and account tokenisation should be allowed to promote convenience to customers. Similarly, merchant should also

be allowed to store their cards in tokenised form. Merchants should not be treated differently than other token requestors and restricted from storing details in a safe and secured manner. Banks/mobile wallet issuers should be requested to accelerate the launch of tokenised card transactions so that tap and pay transactions can also be used instead of cash.

xix. Adopting a market-driven and sustainable pricing model to accelerate acceptance infrastructure for digital payments in India

National payments systems and the accompanying financial infrastructure are the backbone of digital payments. While digital government-to-person (G2P) payments can be more cost effective in the long term, building an adequate physical infrastructure for reliable experiences with digital payments can require significant up-front investments. Countries with advanced and broadly used payment and banking systems might already have a physical infrastructure in place to process digital payments. But in developing countries such as India where such infrastructure is concentrated in urban areas, developing an adequate payment infrastructure, including a physical network, to deliver digital payments to all corners of the country is a significant challenge. *To encourage continued the expansion, establishment, and use of digital payments, USIBC respectfully requests the following:*

- *Provide tax breaks to Acquirer bank/payment facilitators to accelerate PoS adoption;*
- *Encourage small merchants to accept electronic transitions by providing GST relief/incentives;*
- *Leverage the Depositor Education and Awareness Fund to promote infrastructure penetration while the Acceptance Development Fund is being established; and,*
- *Provide reimbursement of merchant discount rate (MDR) charges on transactions below INR 2000 for small merchants.*

xx. Relaxation of the Additional Factor of Authentication (AFA) for cards issued to corporate and businesses for facilitating B2B payments.

The current regulations for AFA apply uniformly to all card payments, consumer and commercial cards. The adoption of AFA, primarily a one-time password (OTP) based, has enhanced the safety and efficiency of retail payments where the transaction is done online. However, the use of OTP-based AFA during the flow of the transaction results in a poor merchant experience and negatively impacts the adoption of digital payments in B2B transactions.

Additionally, for reoccurring online transactions where the customer registers their card on the merchant's digital platform (a.k.a. card-on-file), the two-factor authentication requirement has been relaxed for transactions below INR 2000. However, for transactions above INR 2000, the cardholder is required to do an OTP-based AFA. While this enhances safety and efficiency of retail payments, it limits the adoption of card usage in the B2B payment transactions for recurring payments above INR 2000.

USIBC respectfully recommends the relaxation of the AFA requirements for cards issued to corporate and small businesses under a bank's commercial card products and programs. The issuer can seek a one-time consent of the corporate cardholder to authorize and process the card payment without the AFA.

C. LIFE SCIENCES

i. Increasing Expenditure by Government of India on Healthcare

USIBC recommends the Government dedicate additional resources to increased healthcare access and improving the ability of citizens to afford their healthcare. While USIBC applauds the Government's recent agreement to restore some funding to health programs, particularly in HIV/AIDS, more should be done. Increasing access to health insurance, whether provided through the public sector or the private sector, is a key concern to Council members, as it is the surest means for enabling families to afford their healthcare. Furthermore, greater healthcare financing will also attract new investment in the health sector, including both infrastructure building and innovation in new products. Healthcare is just as much about the availability of doctors and hospitals and health insurance as much as it is about access to new medicines and cutting-edge technology. *USIBC urges the GOI take the necessary steps to achieve the goal of contributing 2.5 % of the country's GDP to healthcare.*

BIOPHARMACEUTICAL INDUSTRY

ii. Pharmaceutical protection of intellectual property to enable innovation in the biopharmaceutical sector.

The Indian pharmaceutical industry supplies healthcare products both domestically and globally, and budget measures should support *Make in India* as well as promote exports from India. FDI and global collaboration in life sciences is essential for a thriving, robust Indian healthcare sector. Industry is encouraged by the efforts taken by the GOI to engage all stakeholders in the policymaking process. USIBC has been encouraged by the Government's efforts to engage in a constructive dialogue on intellectual property, and the introduction of the new IP policy. *Much work remains to be done, and USIBC recommends the Government remain diligent on the protection and enforcement of intellectual property.*

iii. Predictable framework on price controls

Medical device investors are concerned about the issue of price controls. The recent issue of price controls being considered on several products was disheartening. USIBC believes that simply reducing maximum retail prices from the medical device manufacturers does not take into account: (1) the impact on the final price to the patient for a given procedure as the device is a part of procedure package; (2), Indian customers that can afford to pay the higher price for innovative products; (3), the mark-ups by others in the supply chain, who increase the cost to the patient regardless of the

manufacturers reduce the price; (4), the increased access to hospitals and doctors that are trained to offer healthcare service by using the implant/devices; and, (5) the broad scope of those who have access to some form of health insurance so that the cost may be shared by society-at-large, rather than individual families. USIBC supports a broader approach, including capping the trade margins instead, and has shared with the GOI a detailed proposal on the same. *USIBC recommends that GOI work with all stakeholders to provide a predictable and transparent framework for any price controls placed on pharmaceuticals, medical devices, biologics, or other healthcare products and would encourage the GOI to adopt the USIBC Trade Margins Proposal on regulating the same.*

iv. Separate regulatory framework for medical devices

Medical devices are currently regulated under the same statute as pharmaceuticals, which have led to inefficiencies within the regulatory process and uncertainty for investors. *USIBC urges the Government to introduce a new Drugs & Cosmetics Bill (Amendment) in the winter session of Parliament this year and enact rules that will create a framework for medical devices separate from pharmaceuticals.*

Until new legislation clears Parliament, medical devices are regulated under the same law as pharmaceuticals leading to unnecessary regulation. *USIBC recommends a separate regulatory framework for medical devices and greater industry dialogue regarding the regulation of such devices.*

v. Valuation of samples imported for research and development purposes

Companies engaged R&D activities require to import samples for testing, analysis and development purposes. These are not commercial imports in nature and the subject imports, post the R&D activities are not saleable in the market. There have been no guidelines for valuation of such imports. *USIBC urges relief sought vide a notification where on basis of valuation or a benchmark is established for valuation of samples which are used/consumed for R&D purposes.*

vi. Imports for exhibitions ATA Carnet– Health Cess

Reference is sought to Notification No. 8/2020-Cus dated 2nd February 2020 which seeks to levy a Health Cess on specific imports. However, the same does not exclude goods which are imported into India on a temporary basis for the purpose of exhibitions/demonstrations. *As a relief, it is sought to extend the benefit of imports for the purpose of exhibitions, which are imported under an ATA Carnet.*

D. MANUFACTURING

i. Adopting an export-oriented strategy

Major rethinking of regional and global supply chain structures is underway. While cost pressures and policy risk issues in recent years have reduced the competitiveness of China as a single-source market for both intermediate and final stage goods, the U.S.-China trade conflict and current pandemic has accelerated the pace of relocation from China to other markets.

Although India is a potential alternative manufacturing destination and supplier of a number of these goods, India has seen little relocation of investment or increased exports to the United States as a result of the trade war. According to a study by Nomura,[6] a Japanese financial group, out of 56 companies that relocated their production out of China between April 2018 and August 2019, only three went to India while 26 went to Vietnam, 11 went to Taiwan and eight to Thailand.

To reach its full potential and recognize the opportunity at hand, India should proceed to embrace an export orientation. No country has achieved double digit growth for its manufacturing sector – a stated goal of *Make in India* and essential to reaching its overall employment and growth goals – without recording double-digit expansion in its exports. For manufacturers, many of the world's customers are outside of India. A greater focus on *Make in India* for the world is essential to higher capacity utilization and to connecting India with global supply chains. This is a critical element of the business case for U.S. manufacturers to invest in India. Developing a world class industry and its associated economic benefits requires international engagement. *USIBC recommends India take steps to expanding export markets through pursuit of new free trade partners. Council members recommend India expand its export markets through concluding high-ambition free trade agreements with economies such as the United States, Australia, Canada, and the European Union.*

E. SUPPLY CHAIN LOGISTICS

As India faces the year ahead, an extraordinary year in the life of India and every other nation of the world, and enters the budget process, *USIBC respectfully recommends it may be a useful exercise to consider all budget issues, particularly those related to supply chain logistics through four lenses:*

- *Coronavirus and its impact on health of citizens and the wellbeing of the economy;*
- *National Logistics Policy;*
- *Sustainability; and*
- *Supply chain logistics sector-specific reforms.*

i. Coronavirus and its impact on health of citizens and the well-being of the economy

At the heart of the coronavirus issue are the two-fold threats that are obvious to all: the health of the citizens of India and the wellbeing of the Indian economy and related economic opportunity for all. The budget should ensure that adequate resources are devoted to continuing the fight against the virus and the great work being undertaken by India's science and medical community to create therapies and vaccines for the treatment of the disease. In addition, the critical essential services must have continued support from the Indian budget to ensure that they are able to deliver food, water and medicines to grocery and health care facilities. Without the full support of the budget both health and wellbeing will suffer.

[6] https://www.livemint.com/industry/manufacturing/why-manufacturers-are-not-rushing-into-india-11570429217983.html

As a practical matter, the therapies and vaccines being developed will not come soon enough for any in the world. The biggest challenge for this disease or others that might occur in the years ahead is interrupting the transmission of disease. In recent months we have seen a few critical means of transmission. One such means is the manual handling of food products in the supply chain. The lack of hygiene in the movement of goods creates a strong and effective transmission of disease.

ii. National logistics policy

Fortunately, the Draft National Logistics Plan (Plan) provide solutions to the problem of transmission between people. Perhaps the most critical solution is the standardization of India's supply chain and logistics infrastructure ecosystem. By ensuring that India's modern manufacturing is matched by new standards for automated loading and distribution of goods the transmission of this disease or any other will be interrupted reducing the threat of illness and food contamination.

The policy which is to be passed by Parliament requires funding. There needs to be adequate funding for all aspects of the standardization of the entire ecosystem. Standards related to palletization, handling equipment, racking and trucking/containerization, would be developed with the help of technical panels, aligned with global best practices. Adoption would be enabled through a system of registration of logistics service providers, which would require adherence to a set of minimum standards, as a pre-requisite for registration.

USIBC respectfully recommends that full funding for this and other features of the Plan should be incorporated in this next year's budget. The work of implementing the Policy need not wait for the policy to become law. There are immediate needs to both interrupt the transmission of the disease and to enable economic growth and opportunity. Such growth could result from investment in transportation infrastructure that would support more efficient road movements of goods.

The Plan will require years of consistent investment and follow-through. Ensuring that there are some early wins will both help the health of the Indian people and the wellbeing of the economy.

iii. Sustainability

Both the work to defeat the virus and create a competitive supply chain and logistics infrastructure ecosystem will advance the interests of the people of India. Today the health of citizens facing coronavirus is further threatened because of the volume of pollution in every country of the world. There are immediate opportunities to create a more sustainable India. Burning of fields is one issue but so is the speed in which fossil fuels can be transitioned to less-polluting energy sources. The Indian government understands this. As the government promotes a more sustainable India it should use its tax policy to encourage these alternate fuels. *USIBC respectfully recommends that the government should promote and encourage companies that* ***reuse*** *and discourage those businesses that wastes. Additionally, the GOI should also remove the obligations in the PWM Rules of 2016 hat pose procedural and other bottlenecks.*

USIBC members appreciate the industry consultation that MOEFCC has conducted recently on this issue and respectfully submit that the concept of EPR under the PWM rules be amended so as to make it practical to implement and until such time, defer implementation of the EPR rules. In addition, USIBC recommends that there be a consistent

approach to waste management across the country. An approach to waste management should be consistent across the nation, all states just as the modern supply chain and logistics infrastructure ecosystem should be consistent. Sustainability is not just about waste and reuse and reduced pollution. Sustainability is also about raising up the quality of life of the Indian people and creating economic opportunity for all. The Indian government's budget should also continue to advance the ability of the Indian people to seek a better quality of life.

iv. Sector Specific Reforms

a. Increase in customs personnel to facilitate customs clearance

USIBC recommends an increase in the number of customs officials to increase manpower at courier and cargo terminals, which would reduce customs clearance dwell time and allow 24x7 customs clearance at major airports (e.g. Bengaluru).

b. Elimination of export value limits

To further support the growth and expansion of Indian MSME's access to global markets and improve India's logistics sector, the Indian government should strive to eliminate the export value limit for goods shipped in courier mode. While USIBC was pleased to see the government raise the export limit threshold from INR25,000 to INR5,000,000, eliminating the export limit altogether would increase India's competitive advantage as a manufacturing hub and facilitate exports for MSMEs that engage in cross border e-commerce. It would also further improve India's Ease of Doing Business score as it applies to "Time to Export." *USIBC recommends elimination of the export limit to further boost exports from India, increase India's competitive advantage as a manufacturing hub and facilitate exports for MSMEs that engage in cross border e-commerce.*

c. Removal of processing restrictions

USIBC recommends a reduction/elimination of the various commodity, weight, and value restrictions for processing shipments in courier mode to enable the express sector in India to fully cater to the growth of low-value e-commerce shipments. There are commodity restrictions for processing in courier mode; Mumbai Customs recently issued a standing order for the strict adherence to these restrictions and move these commodities in cargo mode.

d. Facilitation of bulk clearance & returns

To further support the growth and expansion of e-commerce in India, the Government should adopt procedures that help facilitate the cross-border movement of goods. Specifically, the Government should identify procedures that enhance e-commerce, such as the creation of a process for the bulk clearance and the return of goods to India. Establishing a bulk clearance and return process for goods will allow Indian MSMEs to have a vastly improved logistics pipeline and enhance global consumer confidence. Such processes will allow MSMEs to receive necessary inputs in a timely fashion for their manufactured products, allowing them to get their finished goods to global markets quickly and improving India's Ease of Doing Business ranking by improving the "time to import" metric. These processes would also allow for the development of a robust return management system. Growth in the e-commerce sector will enhance revenues from exports, generate employment and provide better

products and services to global customers in the long-term. *USIBC recommends that the Government facilitate the bulk clearance of e-commerce import/export shipments (i.e., enable clearance off a consolidated document such as a manifest with minimal details). Additionally, the Council recommends the GOI simplify the process for e-commerce return shipments, which would facilitate cross-border trade and promote e-commerce growth and investment.*

e. Risk management

Despite the introduction of the Electronic Data Interchange (EDI), post-customs clearance still depends on an officer individually approving each shipment and the lack of adequate staffing leads to daily delays. However, India can use the Trade Facilitation Agreement based risk management system to identify potential risk making a post-clearance review redundant. *USIBC recommends the Government strengthen risk-based targeting processes to ensure that all government agencies deploy the highest standards and minimize physical inspections.*

f. De minimis

Low-value shipments are just that, low value. Consequently, the revenue collected on each low value shipment is also low. But complex import procedures are costly – also for the authority that runs them. The cost of the collection procedure can exceed the revenue levied on a shipment, which results in a net loss for the revenue authority. *USIBC recommends that the Government introduce a de minimis threshold (under which no taxes and duties are levied for low value commercial shipments) that at least matches the country's per-shipment cost of collection.*

g. Single Window

Pursuant to the launch of electronic clearances for courier shipments, *USIBC recommends that the Single Window concept be integrated for shipments cleared in courier mode.*

h. Rationalize KYC norms

Rationalization of KYC norms is a critical requirement in current times as security is a key concern of the government and customers. *USIBC recommends that a central depository of KYC documents be created to facilitate trade and minimize the burden on importers/exporters*.

i. Removing the Threat of Courier License Suspension or Revocation

In the case of express operators, which provide speed and connectivity of supply chains to global markets, this essential capability is diminished when it is burdened by excessive regulatory oversight and investigations. The courier registration issued to an authorized courier under the courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 (Courier Regulations 1998 for manual clearances) is the basis of its operations and crucial to providing express delivery to its customers. Express operators are often threatened with investigations and sudden license suspension/revocation when unscrupulous shippers/consignees misuse the express network for their unlawful purposes. Depending on the size, customer base and scale of operations of an authorized courier, suspension implies immediate cessation of its operations which affects thousands of

customers (exporters and importers) immediately. Express companies manage entire supply chains and provide door-to-door service for express transportation, and courier customs clearance is just one aspect of the entire chain. The suspension of licenses brings the entire chain to a sudden and abrupt stop. In order to maintain business continuity, this measure of suspending or revoking courier registrations should not be a regular method of oversight. Customs should act with the same sensitivity towards the Express Industry as the other industry regulators in the Aviation, Banking and Telecom sector act towards operators in their sectors wherein suspension is not resorted to in the larger interest of customers and trade. The current suspension or revocation of courier registration provisions under the Courier Regulations have a wide ambit by disrupting the business continuity and need appropriate modifications to keep the supply chain connected. Rather than targeting the express operators, which are also being harmed by this unlawful use, *USIBC recommends that the Government seek to uniformly collaborate and partner with stakeholders, which will better drive the bad actors out of the network for the benefit of all.*

F. RETAIL

i. Comprehensive national framework of plastic and waste management laws

Business must comply with several sets of conflicting rules that govern waste management. The Central government along with states and Union Territories have all issued plastic and solid waste management rules with different parameters, resulting in a complex environment that presents significant practical challenges to implement and comply with when operating in India. *USIBC recommends an EPR Framework be issued by the Central Government covering all forms of waste. States should then be directed to model their state-specific waste management rules on the national framework. Businesses need clarity on their responsibilities and greater predictability of compliance costs.*

ii. Customs and Foreign Exchange Management Act (FEMA) regulations:

There is no specific regulation to cover re-usable packaging materials. The Bill of Export and Bill of Import is in name of the party whose goods have been loaded onto the reusable packing (i.e. exporter and importer). Hence, there is no document available for 're-usable packaging company' to earn forex because of export for such re-usable packaging material. Similarly, there is no document available in name of 're-usable packaging company' in case of import. *USIBC recommends a mechanism to generate bill of entry in multiple names (importer and 're-usable packaging company') to discharge customs duty in case of import, similarly mechanism is required to obtain proof of export in multiple names (exporter and 're-usable packaging company').*

Currently companies are using one time use packaging material which would create more cost for the customers. This cost can be reduced if re-usable packaging material is used. This will also reduce negative impact of "one time use packaging materials" on carbon footprint/sustainability. With reusable packaging, there would be less damages in-transit leading to product safety and lesser dispute.

Temporary importation for Reusable packaging – should be on aggregate basis and not on unique identification number or tag id basis to promote sustainable solutions like reusable packaging.