

## CBIC issues 16 Circulars pursuant to the recommendations made by the 53rd GST Council Meeting held on 22 June 2024

The 53rd GST Council meeting was scheduled on 22 June 2024 in New Delhi<sup>1</sup>. The GST Council in this meeting had approved various clarifications to be issued. In furtherance to these recommendations, the CBIC (Central Board of Indirect Taxes and Customs) has now issued circular nos. 207/1/2024 to 222/16/2024, all dated 26 June 2024<sup>2</sup>. The gist of the clarification provided by these Circulars is summarised below:

Issue	Clarification
<p><b>Issues relating to taxability</b></p>	
<p>Taxability of ESOP / ESPP / RSU of foreign holding company provided by a company to its employees (Circular No. 213/07/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ The Indian companies provide the option of allotment of securities/ shares of foreign holding company to their employees as a means of incentivisation, under an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU).</li> <li>▪ Regardless of the terminology used, the fundamental essence of the transaction remains the same i.e., the allocation of securities or shares from the employer to employee as part of compensation package.</li> <li>▪ The foreign holding company issues securities/ shares as ESOP/ SPP/ RSU to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. However, Securities (including shares) under GST Law are considered neither ‘goods’ nor ‘services’. Hence, the purchase or sale of securities/ shares, in itself, is not a supply and GST is not leviable on said transaction of sale/ purchase/ transfer of securities/ shares.</li> <li>▪ ESOP/ ESPP/ RSU is part of the remuneration of the employee as per the terms of employment. Since services provided by employees are excluded from the ambit of ‘supply’, GST is not leviable on the compensation paid to the employee by the employer as per the employment contract, including on transfer of securities/ shares of the foreign holding company to the employees of domestic subsidiary company.</li> <li>▪ Reimbursement of costs incurred by the foreign company:               <ul style="list-style-type: none"> <li>– If such reimbursement is on a cost-to-cost basis, it cannot be treated as import of services, since it is for transfer of securities which is neither ‘goods’ nor ‘services’. Hence, the same would not be leviable to GST.</li> <li>– However, any additional fee, markup or commission for issuing ESOP/ ESPP/ RSU charged by the foreign holding company would be treated as consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company and would attract GST liability under RCM.</li> </ul> </li> </ul>

<sup>1</sup> Our alert on the gist of the recommendations made by the GST Council in its 53rd Meeting can be accessed by clicking [here](#).

<sup>2</sup> At the time of preparing this alert, circular nos. 207 to 222 had been issued. Some clarifications as mentioned in the press release, such as valuation of corporate guarantee etc, had not yet been issued while preparing this alert. We would share a separate alert once these clarifications as well as notifications are issued.

<p>Taxability of deemed processing fee in case of loans between related persons (cross-border or domestic), where consideration paid is only by way of interest or discount (Circular No.218/12/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ Where the loan is given by an entity to its related entity, the lending entity is not required to carry out administrative processes (like credit assessment, due diligence on collaterals (if any), etc.), unlike in case of lending by an independent lender. Hence, in such cases, there may not be any activity of processing/ administering/ facilitating the loan, and no administrative cost may be involved in granting such a loan. Hence, it may not be desirable to place lending by independent lender and the related parties on equal footing. Further, even in case of lending between unrelated parties, there may not be any processing fee based on the relationships between the parties.</li> <li>▪ Accordingly, in lending between related parties, if no charges other than interest are charged, it cannot be said that any other service (in the form of processing/ facilitating/ administering the loan) is supplied. Consequently, GST cannot be levied by resorting to the Open Market Value (OMV) of such supply.</li> <li>▪ However, where any processing fee/ administrative charges/ service fee/ loan granting charges etc. are charged, over and above the amount charged by way of interest or discount, the same may be treated as consideration for the supply of services of processing/ facilitating/ administering of the loan, leviable to applicable GST.</li> </ul>
<p>Position for GST liability as well as liability to reverse input tax credit (ITC) where goods as such or parts are replaced under warranty (Circular no. 216/10/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ Circular No. 195/07/2023-GST dated 17 July 2023 has covered this situation for replacement of parts but not for goods itself. It is clarified that the clarification would also apply in case the goods as such are replaced in warranty. Accordingly, such replacement of goods during warranty would neither attract GST nor would there be a need to reverse the ITC.</li> </ul>
<p>GST liability/ liability to reverse ITC where the distributor replaces parts/ goods as part of warranty out of own stock on behalf of the manufacturer and subsequently manufacturer replenishes such goods (Circular no. 216/10/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ Circular No. 195/07/2023-GST dated 17 July 2023 has covered this situation for replacement of parts but not for goods itself. It is clarified that the clarification would also apply in case the goods as such are replaced in warranty. Accordingly, such replacement would neither attract GST (except where the distributor has charged any amount) nor would there be a need to reverse ITC.</li> </ul>
<p>Taxability of extended warranty provided at the time of original supply of goods where such extended warranty is provided by a person other than the supplier of goods (say, OEM or a third party) (Circular no. 216/10/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ In such cases, since such supplies are being made by different suppliers, the supply of such extended warranty will be treated as a separate supply of services<sup>3</sup>.</li> </ul>
<p>Taxability of extended warranty provided subsequent to the original supply of goods (Circular no. 216/10/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ In such cases, the supply of extended warranty shall be treated as a supply of services distinct from the original supply of goods<sup>4</sup>.</li> </ul>

<sup>3</sup> Corresponding modifications have also been made to the Circular. In addition to the above, Circular No. 195/07/2023-GST dated 17 July 2023 is modified to substitute the phrase “any part”, “parts” and “part(s)” with the phrase “goods or its parts, as the case may be”.

<sup>4</sup> Corresponding modifications have also been made to the Circular.

<p>Taxability of salvage / wreckage value assigned in claim assessment for the damage caused to motor vehicle (Circular no. 215/9/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ Deductions made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer, which would also determine whether the salvaged goods are transferred to the insurance company.</li> <li>▪ Considering this, taxability of salvage/ wreckage value is as under: <ul style="list-style-type: none"> <li>– If due to the conditions mentioned in insurance contract, the Insurance Company deducts the value of salvage from the claim amount, the salvage remains the property of the insured and insurance companies are not liable to discharge GST liability on the same.</li> <li>– Where the insurance claim is settled on full claim amount without deduction of value of salvage/ wreckage (as per the terms of the contract), the salvage becomes the property of the Insurance company, and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer.</li> </ul> </li> </ul>
<p><b>Issues relating to Value of Supply</b></p>	
<p>Valuation of supply of import of services by a related person where the recipient is eligible to full input tax credit (Circular no. 210/4/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ Vide Circular No. 199/11/2023-GST dated 17 July 2023, CBIC had clarified on the taxability of services <i>inter se</i> between distinct persons and <i>inter alia</i> provided that in respect of the supply of services by Head Office (HO) to Branch Offices (BO) of an organisation, the value of the supply of services declared in the invoice by HO shall be deemed to be the OMV of such services, if the recipient BO is eligible for full ITC. The aforesaid clarification is equally applicable to transactions between related persons, including for import of services. Accordingly, it is clarified that: <ul style="list-style-type: none"> <li>– Where the foreign affiliate provides services to the related domestic entity, who is eligible to claim full ITC, the value of such supply of services declared in the (self) invoice by the domestic entity may be deemed as OMV.</li> <li>– Where full ITC is available to the recipient and if the invoice is not issued by the related domestic entity for any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil and the same may be deemed as OMV of such supply.</li> </ul> </li> </ul>
<p>Mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) (Circular no. 212/6/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ In the absence of the functionality/ facility to enable the suppliers and the tax officers to verify whether ITC attributable to post-sale discounts offered through Credit Notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of ITC in respect of Credit Note issued by the supplier.</li> <li>▪ However, where the tax amount involved in the discount given by the supplier to a recipient in a Financial Year does not exceed INR 0.5mn, then instead of obtaining the CA / CMA Certificate, the supplier may procure an undertaking/ certificate from the said recipient (i.e., on self-certification basis).<sup>8</sup></li> </ul>

<sup>8</sup> In respect of past periods, these certificates may be produced by a taxpayer before the tax authorities as evidence of requisite reversal of ITC by its recipients.

## Issues relating to ITC

<p>ITC eligibility on ducts and manholes used in the network of optical fiber cables (OFCs) (Circular no. 219/13/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ Ducts and manholes are basic components of OFC network used in providing telecommunication services. OFC network is generally laid with the use of PVC ducts/ sheaths in which OFCs are housed. Service/ connectivity manholes serve as nodes of the network and are necessary for laying as well as upkeep and maintenance of OFCs.</li> <li>▪ It is clarified that ducts and manholes appear to be covered under the definition of “plant and machinery” (in view of Explanation to Section 17) as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another. Further, ducts and manholes are not specifically excluded from the definition of “plant and machinery” as they are neither in nature of land or civil structures nor in the nature of telecommunication towers or pipelines laid outside the factory premises.</li> <li>▪ Accordingly, ITC on ducts and manholes used in network of OFC is not restricted under Sections 17(5)(c) or 17(5)(d).</li> </ul>
<p>ITC eligibility on repair expenses reimbursed by insurance company in case of reimbursement mode of claim settlement (Circular no. 217/11/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ In the reimbursement mode of claim settlement, payment is made by the insurance company to the insured for the approved cost of repair services through reimbursement. To the extent of the approved claim cost, the liability to pay for the repair service lies with the insurance company, and thus, the insurance company is covered in the definition of “recipient” for the supply of vehicle repair services provided by the garage.</li> <li>▪ Further, availment of ITC of GST paid on motor vehicle repair services received by the insurance company for the outward supply of insurance services for such motor vehicles is not restricted under Section 17(5).</li> <li>▪ Accordingly, ITC is available to the Insurance Companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement.</li> </ul>
<p>ITC eligibility on the amounts incurred by the insured in excess of the approved claim cost (Circular no. 217/11/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ If the garage issues two separate invoices for repair services: <ul style="list-style-type: none"> <li>– To the insurance company for approved claim costs; and</li> <li>– To the customer for repair service in excess of the approved claim cost,</li> </ul> </li> <li>▪ ITC may be available on the invoice issued to the insurance company subject to its reimbursement by the insurance company to the customer.</li> <li>▪ If the invoice for full amount for repair services is issued to the insurance company whereas the insurance company makes reimbursement to the insured only for the approved claim cost, then, ITC is available only to the extent of reimbursement of the approved claim cost to the insured, and not on the full invoice value.</li> </ul>
<p>ITC eligibility if the invoice for repairs is not issued in the name of the insurance company by the garage (Circular no. 217/11/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ In such case, the conditions prescribed under clause (a) and (aa) of Section 16(2) are not satisfied and hence, ITC will not be available to the insurance company in respect of such invoice.</li> </ul>

<p>Requirement to reverse ITC under Rules 42 and 43 in respect of the portion of the premium for life insurance policies, not included in taxable value<sup>5</sup> (Circular no. 214/8/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ As per Rule 32(4), the value of supply of services in relation to life insurance business is determined by deducting the amount of premium allocated for investment/ savings on behalf of the policyholder from the gross amount of the premium charged to the policyholder.</li> <li>▪ Merely because some amount of the consideration charged to the policyholder is not included in value of taxable supply and it is neither nil rated nor wholly exempted, it cannot be said that such portion of the consideration is attributable to a non-taxable or an exempt supply.</li> <li>▪ Hence, the amount of the premium for taxable life insurance policies, which is not included in the taxable value as per Rule 32(4) cannot be considered as pertaining to a non-taxable or exempt supply. Therefore, there is no requirement of reversal of input tax credit as per provisions of Rules 42 or 43 read with Sections 17(1) and 17(2), in respect of the said amount.</li> </ul>
<p>Time limit under Section 16(4) in respect of RCM supplies received from unregistered persons (Circular no. 211/5/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ ITC can be availed by the recipient only on the basis of invoice or debit note or other duty-paying documents. As in the case of supplies subject to RCM, received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself. The relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under Section 16(4) shall be the financial year in which the said invoice is issued by the recipient under section 31(3)(f) of CGST Act, subject to fulfilment of other conditions and restrictions of GST law.</li> <li>▪ Where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will also be required to pay interest and/ or penalty on such delayed payment of tax.</li> </ul>

#### Issues relating to Place of Supply (PoS)

<p>Determination of PoS for supply of goods (particularly through e-commerce platform) to unregistered persons where billing address is different from the address of delivery of goods under section 10(1)(ca) of the IGST Act<sup>6</sup> (Circular no. 209/3/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ In such cases, the PoS shall be the address of delivery of goods recorded in the invoice.</li> <li>▪ Further, in such cases, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of PoS of the said supply of goods.</li> </ul>
<p>Custodial services by banks or financial institutions to FPIs - whether to be considered as services to be provided to 'account holders'? (Circular no. 220/14/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ The main activity provided by the banks as a custodian in relation to custodial services is maintaining the account of securities held by FPIs.</li> <li>▪ Relying on the Education Guide issued by CBIC under the Service tax law, it is clarified that custodial services provided by banks or financial institutions to FPIs cannot be treated as 'services provided to account holders'. Accordingly, the PoS of custodial service will not be covered under Section 13(8)(a) of the IGST Act but will be determined under the default provision viz., Section 13(2) of the IGST Act.</li> </ul>

#### Issues relating to Time of Supply (ToS)

<p>ToS of services of spectrum usage and other similar services procured by telecom operator from the Department of Telecom (DoT) (Circular no. 222/16/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ Services provided by DoT is a continuous supply of services, in the cases where the telecom operator chooses the option to make payment in instalments and telecom operator is liable to pay GST under RCM as per the ToS determined as under: <ul style="list-style-type: none"> <li>- If the telecom operator makes full upfront payment for such services - ToS will be the date when the payment is made or due.</li> <li>- If deferred payment in specified instalments is made by telecom operator - ToS shall be earliest of the due date of payment or the actual date of payment.</li> </ul> </li> </ul> <p>The ToS would be similarly determined in all cases of the natural resources being allocated by the Government to the successful bidder/ purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services.</p>
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<sup>6</sup> Integrated Goods and Services Tax Act

<sup>7</sup> Central Goods and Services Tax Act, 2017

<p>ToS on Annuity received for construction of road and operation &amp; maintenance (O&amp;M) services supplied by concessionaire under the Hybrid Annuity Model (HAM) (Circular no. 221/15/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ A HAM is a single contract for construction and O&amp;M of the highway.</li> <li>▪ The contract cannot be artificially split into two separate contracts for construction and O&amp;M based on the payment terms because the concessionaire is bound contractually not only to construct the highway but also to operate and maintain the same.</li> <li>▪ The HAM contract appears to be continuous supply of services since the payment is made over the contract period in instalments, due after specified periods or on completion of event.</li> <li>▪ GST liability on the concessionaire under the HAM contract, including the construction, would arise on the ToS of services, which is determined as per Sections 13(2) and 31(5) of CGST Act<sup>7</sup> as follows:             <ul style="list-style-type: none"> <li>- If the invoice is issued on or before the specified date or the date of completion of the event specified in the contract - ToS shall be the earliest of the date of invoice or the date of payment.</li> <li>- In other cases (where invoice is not issued on or before specified date or date of completion of event specified in the contract) - ToS shall be earliest of the date of provision of service (i.e., due date of payment as per the contract) or the date of payment.</li> </ul> </li> <li>▪ Since the instalments/ annuity payable also includes an interest component, such amount shall be included in the value of supply (attracting applicable GST) under Section 15(2)(d).</li> </ul>
<p><b>Monetary limits for filling appeal</b></p>	
<p>Monetary limits for filing appeals or applications by the Department before GST Appellate Tribunal (GSTAT), High Courts and Supreme Court (Circular no. 207/1/2024-GST)</p>	<ul style="list-style-type: none"> <li>▪ The monetary limits for filing appeals/ applications by the Department are as under:             <ul style="list-style-type: none"> <li>- Before GSTAT - INR 2mn</li> <li>- Before High Court - INR 10mn</li> <li>- Before Supreme Court - INR 20mn</li> </ul> </li> <li><b>Key principles for determining the monetary limits</b></li> <li>▪ The monetary limits as above to be computed based on the following:             <ul style="list-style-type: none"> <li>- If the dispute pertains to the demand for tax (with or without penalty and/ or interest) - Aggregate amount of tax in dispute (CGST, SGST, IGST and GST Compensation Cess) to be considered for determining the monetary limits.</li> <li>- amount to be considered for determining the monetary limits.</li> <li>- If the dispute pertains to demand of penalty only, such amount to be considered for determining the monetary limits.</li> <li>- If the dispute pertains to demand of late fee only, such amount to be considered for determining the monetary limits.</li> <li>- If the dispute pertains to demand of interest, penalty and/ or late fee - Aggregate amount of interest, penalty and late fee to be considered for determining the monetary limits.</li> <li>- If the dispute pertains to erroneous refund - Aggregate amount of refund in dispute (CGST, SGST, IGST and GST Compensation Cess) to be considered for determining the monetary limits.</li> </ul> </li> <li>▪ Monetary limits for a composite order (which disposes more than one appeal/ demand notice) shall not apply to individual appeal/ demand notice but would apply to the total amount of tax/ interest/ penalty/ late fee as per the order, as the case may be.</li> <li>▪ Further, the monetary limits would not apply to various cases <i>inter alia</i> including a case where the provisions of the GST law (including rules, circular, etc) were held to be <i>ultra vires</i> the Constitution of India, or where the matter relates to specified issues (viz. valuation, classification, refund or place of supply or any other recurring issue involving interpretation).</li> </ul>

Further, Circular no. 208/2/2024-GST has been issued, providing clarifications on various issues pertaining to the special procedure for the manufacturers of pan masala, tobacco products, etc.

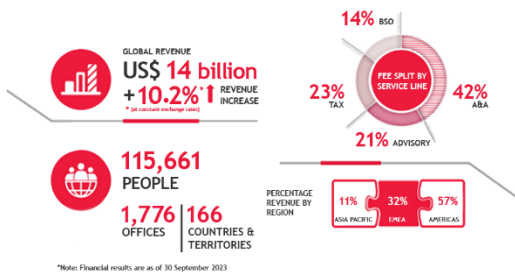
### BDO in India Comments

In line with the announcements made by the Council in the meeting, circulars have been issued, clarifying the issues faced by the industry. As hoped by the industry, the circulars have largely confirmed the practices/ interpretations adopted by the industry. It appears that some more clarifications, such as relating to the valuation of corporate guarantees are yet to be issued, along with various notifications, which would be expected by the industry to be issued at the earliest.

[Source: CBIC Circular nos. 207/1/2024-GST to 222/16/2024-GST]

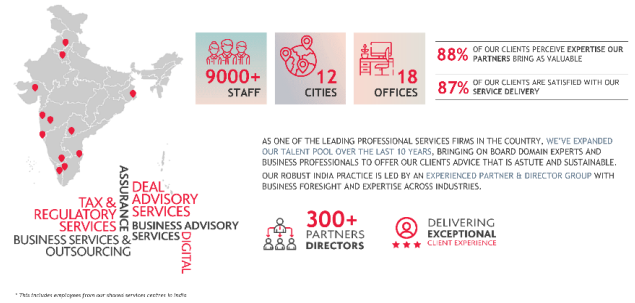
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