

## CBIC issues Circulars to implement 55<sup>th</sup> GST Council meeting recommendations

Pursuant to the recommendations made in the 55<sup>th</sup> GST Council meeting held on 21 December 2024, Central Board of Indirect Taxes and Customs (CBIC) has issued Circulars *inter alia* pertaining to GST implications on vouchers, place of supply (POS) of online services supplied to unregistered persons, input tax credit (ITC) eligibility on goods delivered by the supplier on Ex-Works (EXW) contract and ITC eligibility *qua* Electronic Commerce Operators (ECOs) where specified services are supplied through ECO's platform.

### Vouchers

- **Whether transaction in vouchers would be treated as supply of goods or supply of services.**
  - On a combined reading of the definition of 'vouchers' and 'money' provided under Sections 2(118) and 2(75) of the Central Goods and Services Tax Act, 2017 (CGST Act) along with the description of "pre-paid instruments" (PPI) given by the Reserve Bank of India (RBI), it emerges that -
    - If voucher is covered under scope of PPI and is used as a consideration to settle obligation, it would fall under the definition of 'money' and consequently, would not be leviable to GST, being neither supply of goods nor supply of services.
    - In other cases, voucher will be in nature of obligation on supplier to receive it as consideration or part consideration and assure the beneficiary/ voucher holder to claim certain goods and/ or services.
      - Such vouchers can be considered as an 'actionable claim' as per Section 2(1) of CGST Act read with Section 3 of Transfer of Property Act, 1882. However, such vouchers would not be covered under the definition of 'specified actionable claim' provided in Section 2(102A) of CGST Act.
      - As per Entry 6 of Schedule III to CGST Act, such vouchers can neither be treated as supply of goods nor supply of services and hence, not leviable to GST.
  - Therefore, irrespective of whether the voucher is covered as a PPI or not, it is merely an instrument which creates an obligation on supplier to accept it as consideration or part consideration. Consequently, the transactions in voucher themselves can be treated neither as a supply of goods nor as a supply of services. However, supply of underlying goods and/or services, for which vouchers are used as consideration or part consideration, may be taxable under GST.
- **Whether GST is leviable on transactions in vouchers by distributors / sub-distributors / agents, etc.**
  - **If vouchers are distributed on Principal-to-Principal (P2P) basis:** Such transaction would amount to pure trading of vouchers that would neither constitute as a supply of goods nor as a supply of services and hence, such transactions would not be leviable to GST.
  - **If vouchers are distributed on commission/ fee basis:** In such cases, the distributors/ sub-distributors/ agents do not operate autonomously and do not own vouchers but only act as an agent of the issuer of voucher. In such cases, GST would be leviable on the commission or fee or any other amount by whatever name called charged by such person from the issuer of voucher as a supply of services.

- **Whether GST is leviable on additional services such as advertisement, cobranding, marketing and promotion, customisation services, technology support services, customer support services, etc.**
  - Service fee/ service charge/ affiliate charge or any other amount charged for supplying such additional services provided by the distributor / sub-distributor / agent to the voucher issuer as per the contractual arrangements would be leviable to GST at the applicable rate in the hands of the service provider i.e., distributor / sub-distributor / agent.
- **Whether GST is leviable on unredeemed vouchers (breakage).**
  - Circular No. 178/10/2022-GST dated 03 August 2022 clarifies that agreement to do or refrain from an act should not be presumed to exist, and that there must be an express or implied agreement, oral or written, to do or abstain from doing something against payment of consideration, for a taxable supply to exist.
  - Applying the above principle, it is clarified that where the voucher is issued for redemption in respect of a supply of goods and/or services, there is no express or implied agreement, oral or written, between the issuer of voucher and redeemer for payment of any amount or charges by the redeemer to the voucher issuer in case of non-redemption of the voucher. Hence, it cannot be considered that non-redemption of voucher by the redeemer tantamounts to supply of services.
  - Thus, the amount attributable to non-redemption of voucher (breakage) would not constitute as a “*monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person*” and hence, the same would not be leviable to GST.

[Circular No. 243/37/2024-GST dated 31 December 2024]

#### ITC eligibility on Ex-Works Contract

- In automobile industry, the contract between the automobile dealers (dealer) and the Original Equipment Manufacturers (OEMs) is generally an EXW contract. Accordingly, the property in goods (i.e., vehicles) passes to the dealer at OEM’s factory gate when the goods are handed over to transporter at dealer’s instance, and the delivery on OEM’s part is complete at their factory gate. The OEM may arrange the transport and insurance on behalf of the dealer and any claim in case of loss has to be lodged by the dealer with the insurance company.
- In this regard, the issue arises as to whether the dealer can claim ITC on such vehicles at the time it is handed over to the transporter or only after the vehicles are physically received at their business premises.
  - It is clarified that as per Explanation to Section 16(2)(b) of CGST Act, the dealer can be considered to have ‘**received**’ the said goods at the time of handing over of such goods by OEM to the transporter i.e., at his factory gate, for their onward transmission to the dealer.
  - The above principle would also apply in case of EXW contract where the goods are to be delivered by the supplier to the recipient, or to any other person (including the transporter) on behalf of the recipient, at the supplier’s place of business and the property in the goods stands transferred to the recipient at the time of handing over the said goods.
  - The eligibility to claim ITC based on the above clarification would be subject to the other provisions of Sections 16 and 17 of CGST Act including the condition that the goods are used or intended to be used in the course or furtherance of business by the dealer.
  - Further, if the goods are found to be diverted for non-business purposes at any stage, either before physically receiving the said goods at their business premises or subsequently, the dealer shall not be entitled to claim ITC on such goods. Further, if at any time after ‘receiving’ the goods, such goods are lost, stolen, destroyed, written off or disposed of by way of gift or free samples, the recipient would not be entitled to claim ITC on such goods as per Section 17(5)(h) of CGST Act.

[Circular No. 241/35/2024-GST dated 31 December 2024]

#### Requirement of ITC reversal by ECOs required to pay tax under Section 9(5) of CGST Act

- ECOs liable to pay tax under Section 9(5) of CGST Act (in case of Restaurant services as well as other supplies) are not required to reverse proportionate credits under Sections 17(1) or 17(2) of CGST Act to the extent of supplies made under Section 9(5) of CGST Act.
- ECOs will be liable to pay full tax liability on account of supplies under Section 9(5) of CGST Act (in case of Restaurant services as well as other supplies) only through Electronic Cash Ledger. ITC availed by ECOs in relation to inputs/ input services used to facilitate such supplies cannot be used for discharging tax liability under Section 9(5) of CGST Act. However, such credit can be utilised for discharging tax liability in respect of supply of services on his own account.

[Circular No. 240/34/2024-GST dated 31 December 2024]

## POS of Online Services

### ▪ Relevant provisions:

- As per Section 12(2) of Integrated Goods and Services Tax Act, 2017 (IGST Act), POS of all services supplied to an unregistered recipient (except those covered under Sections 12(3) to 12(14) of IGST Act) will be the location of recipient of service (if available on record) or the location of supplier of services (in other cases).
- Proviso to Rule 46(f) of Central Goods and Services Tax Rules, 2017 (CGST Rules) mandates the tax invoice to contain the recipient's state name in respect of supply of online money gaming or taxable services supplied by or through ECO or by a supplier of online information and database access or retrieval services (OIDAR) to an unregistered recipient and the same shall be deemed to be address on record of the recipient.
- In this regard, it is clarified that proviso to Rule 46(f) of CGST Rules would be applicable in respect of all online services supplied to an unregistered recipient, in addition to online gaming and OIDAR services. Some examples of such services include subscription of e-newspapers and e-magazines, online subscription of entertainment services (e.g. OTT platforms), online telecom services, digital services through mobile applications, etc.
- Hence, in respect of such services, the supplier is mandatorily required to record the name of State of the recipient on tax invoice irrespective of the value of supply of such services and to declare POS of such services as the location of recipient of service (based on the State of recipient) in their details of outward supplies in Form GSTR-1 / 1A.

*[Circular No. 242/36/2024-GST dated 31 December 2024]*

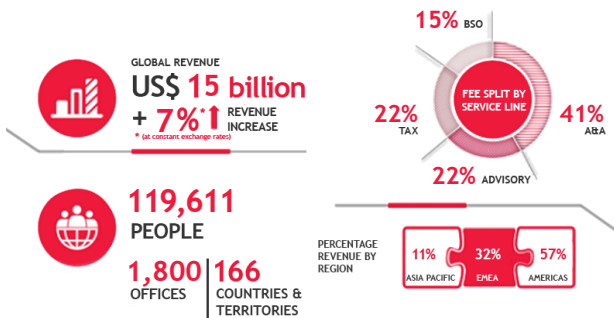
### BDO in India Comments

The recent CBIC circulars, issued in accordance with the 55<sup>th</sup> GST Council meeting recommendations, offer much-needed clarity on some of the GST issues, where the industry and tax authorities had adopted different interpretations. Notable among them are the taxability of vouchers and ITC eligibility on goods received under EXW contracts. The industry would await the other clarifications which are recommended by the GST Council but are yet to be issued.

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\*Note: Financial results are as of 30 September 2023

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\*Includes employees from our shared services centres in India

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