



Tax alert: Clarifications issued pursuant to recommendations of GST Council at its 55 meeting

3 January 2025

The Central Board of Indirect Taxes and Customs (CBIC) has issued various circulars on recommendations made at the 55 GST Council meeting.

In a nutshell



E-commerce operators (ECOs), who are required to pay tax on specified services, under section 9(5) of Central Goods and Services Tax Act 2017, are not required to reverse proportionate input tax credit (ITC).



For availment of ITC, the recipient can be considered to have "received" goods at the time of handing over by the supplier at his factory gate to the transporter, for their onward transmission.



Suppliers of online services provided either by themselves or through ECOs, are required to mention the name of the state of unregistered recipient on the invoice.



Transaction in vouchers is neither a supply of goods nor of services. GST is not payable on income recognized on account of unredeemed vouchers by voucher issuer.



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Circulars issued pursuant to recommendations made at the 55 GST Council meeting

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

- E-commerce operators (ECOs), required to pay GST under section 9(5) of Central Goods and Services Tax Act, 2017 (CGST Act) makes supplies under two counts:
 - Supplies notified under section 9(5) of CGST Act for which he is liable to pay tax as the supplier of the said services.
 - Supply of own services by providing electronic platform for which platform fee /commission etc. is charged from platform users.
- Circular No. 167/23/2021 – GST dated 17 December 2021 clarified that ECOs are not required to reverse input tax credit (ITC) in respect of supply of restaurant services through their platform.
- Representations were filed seeking clarification regarding requirement of reversal of ITC, if any, in respect of supply of services, (other than restaurant services) under section 9(5) of CGST Act.
- It has been clarified that ECOs who are liable to pay GST under section 9(5) of the CGST Act in respect of specified services are not required to reverse ITC on inputs and input services proportionately under section 17(1) or section 17(2) of CGST Act, to the extent of supplies made under section 9(5) of the CGST Act.
- Further, ECO will be required to pay the entire GST liability on account of supplies under section 9(5) of the CGST Act only through electronic cash ledger.
- ITC can be utilized for discharging GST liability in respect of supply of services on own account.

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

- In automobile sector, contract between automobile dealers and Original Equipment Manufacturers (OEMs) is generally an ex-works (EXW) contract.
- As per the terms of the contract, the property in goods (i.e. vehicles) passes to the dealer at the factory gate of the OEM, when the goods are handed over to the transporter at the instance of the dealer, and the delivery on the part of the OEM is complete at his factory gate.
- The transport may be arranged by the OEM on behalf of the dealer and where insurance is arranged, it may also be done on behalf of the dealer. Any claim in case of loss has to be lodged by the dealer.
- The dealer also duly accounts for the invoice in his books of accounts on such delivery of the vehicles at the factory gate of the OEM.
- The dealer avails ITC on the date the vehicles are billed to him and handed over to the transporter by the OEM at his factory gate.
- However, authorities were of the view that ITC can be availed by the dealer only after the vehicles are physically received by him at his business premises and show cause notices were issued demanding tax for wrongful availment of ITC for contravention of provisions of section 16(2)(b) of the CGST Act.
- It has been clarified that, in cases where goods are delivered by the supplier to the registered person, either directly or to any other person on the directions of the said registered person, the registered person shall be considered to have “received” the said goods for the purpose of section 16(2)(b) of the CGST Act.
- Further, in case of EXW contracts, the property in the said goods can be considered to have been passed on to the dealer by the OEM, upon handing over of the said goods to the transporter at his factory gate, meaning thereby that the goods can be considered to have been delivered to the registered person (the dealer), through the transporter, by the supplier (the OEM) at his factory gate and the supply of the said goods can be

considered to have fructified at the factory gate of the OEM, even though the goods may be physically received by the registered person (the dealer) after the transit period.

- Therefore, the registered person (the dealer) can be considered to have “received” the said goods at the time of such handing over of the goods by the supplier to the transporter, at his factory gate, for their onward transmission to the said registered person (the dealer) under section 16(2)(b) of the CGST Act.
- The same principle is applicable in respect of supply of other goods also where the contract between the supplier and recipient is an EXW contract.
- If the goods are found to have been diverted for non-business purposes at any stage, either before physically receiving the said goods at his business premises or subsequently, the registered person shall not be entitled to ITC on such goods in terms of section 16(1) of the CGST Act.
- 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 registered person would not be entitled to the ITC in respect of such goods as per provisions of section 17(5)(h) of the CGST Act.

Circular No. 242/36/2024-GST

- Certain suppliers of online services were not complying with the provisions of mandatory recording of correct place of supply on the invoices issued by them (in respect of online services provided either by themselves or through ECOs) to unregistered recipients due to wrong interpretation of provisions relating to place of supply of services [section 12(2)(b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act)] along with the provisions relating to particulars to be mentioned in a tax invoice as per rule 46 of Central Goods and Services Rules, 2017 (CGST Rules)].
- It was also observed that, though in such cases of taxable online supplies of services to unregistered recipients, registered suppliers are required to mention name of the State of the recipient on the invoice, irrespective of the value of such supply and declare place of supply of such services as the State of the recipient, many suppliers are not recording the name of the State of the unregistered recipient on the invoice.
- Such suppliers mention their respective location as the place of supply, resulting in wrong declaration of place of supply, which impacts the flow of revenue in respect of the said supply to the wrong State.
- As per Rule 46(f) of the CGST Rules, in cases involving the supply of online money gaming or supply of taxable services by/ through an ECO or by a supplier of OIDAR services, to an unregistered recipient, irrespective of the value of the said supply, the tax invoice issued by the registered supplier must contain the recipient's State name. It has also been provided that such State name shall be deemed to be the address on record of the recipient.
- Accordingly, it has been clarified that the said provision shall be applicable on all the online supplies of services supplied to an unregistered recipient, in addition to the supply of online money gaming and OIDAR services, which 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.
- Also, suppliers are mandatorily required to record the name of the State of the recipient, on the tax invoice, irrespective of the value of supply of such services, and to declare place of supply of the said services as the location of the recipient (based on the name of State of the recipient)
- In addition, suppliers should devise suitable mechanism to ensure collection of such details from unregistered recipient before making any supplies.
- If the invoices are issued without recording correct mandatory particulars, including recording of name of State of unregistered recipient, penalty may be imposed in the supplier.

Circular No. 243/37/2024-GST

- Clarity on various issues with respect to vouchers such as whether transactions in voucher are a supply of goods and/or services, whether GST is leviable on trading of vouchers by distributor/sub-distributor and whether unredeemed vouchers (breakage) are taxable, was sought by the industry as there was ambiguity on these aspects.

Whether “transactions in vouchers” falls under the category of supply of goods and/or services.

- On combined reading of the definition of “voucher” along with definition of “money” provided under the GST law and the description of “pre-paid instruments” given by Reserve Bank of India (RBI), it emerges that where the voucher is covered as a pre-paid instrument recognized by the RBI and is used as a consideration to settle an obligation, the voucher will fall under the definition of “money”.
- In such a case, as “money” is excluded from the definition of goods and services as provided in the GST law, the transactions in voucher would be considered neither as a supply of goods nor as a supply of services.
- Where voucher is not covered as a pre-paid instrument recognized by RBI and hence, cannot be treated as money, the voucher will be in nature of an obligation on the supplier to receive it as consideration or part consideration and assure the beneficiary/voucher holder to claim certain goods and/or services as specified on the voucher or in the related documents. In such cases, even though the voucher can be considered as an "actionable claim" under the GST law. Therefore, even in such a case, transaction in vouchers would be treated neither as a "supply of goods" nor as a "supply of services".
- Accordingly, it was clarified that irrespective of whether voucher is covered as a pre-paid instrument recognized by RBI or not, the voucher is just an instrument which creates an obligation on the supplier to accept it as consideration or part consideration and the transactions in voucher themselves cannot be considered either as a supply of goods or as a supply of services.

GST treatment of transactions in vouchers by distributors/ sub-distributors/ agents etc.

- Where vouchers are distributed through the distributors/ sub-distributors/ dealers on Principal-to-Principal(P2P) basis, the transaction in vouchers is neither a supply of goods nor supply of services, therefore, pure trading of vouchers in this case would not constitute either supply of goods or supply of services and GST would not be leviable on the same.
- Where vouchers are distributed using distributors/ sub-distributors/ agents on commission/ fee basis, GST would be payable by such distributor/sub-distributor/agent, acting as an agent of the voucher issuer, on the commission/fee or any other amount for such purpose, as a supply of services to the voucher issuer.

GST treatment of additional services such as advertisement, co-branding, marketing and promotion, customization services, technology support services, customer support services etc.

- Additional services such as advertisement, co-branding, customization services, technology support services, customer support services, etc. may be provided either by the distributor/ sub-distributor or by another person to the voucher issuer against a service fee/ service charge/ affiliate charge or any other amount, as per contract/ agreement between such service provider and the service recipient (voucher issuer).
- In such a case, the said service fee/ service charge/ affiliate charge or other amount for supply of such additional services to the voucher issuer as per the terms of contract/agreement, would be liable to GST at the applicable rate in the hands of the said service provider.

GST treatment of unredeemed vouchers (breakage)

- Sometimes, vouchers remain unused/ unredeemed at the end of their expiry period. In such cases, businesses generally make book adjustments and account the said amount on account of unredeemed vouchers in their statement of income, typically called as breakage.

- There are ambiguities and doubts in respect of GST treatment of such breakage. Also, doubts are raised whether the breakage income can be considered as “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”.
- It has been clarified that, in the case of breakage, there is no redemption of voucher and there is no supply of underlying goods and/or services. Therefore, there is no supply of goods and/or services on account of such unredeemed vouchers (breakage) and the amount attributable to unredeemed vouchers (breakage) would not be taxable under GST.
- Where the voucher is issued for the purpose of redemption in respect of a supply of goods and/or services and 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, it cannot be considered that non-redemption of voucher by the redeemer tantamounts to supply of services.
- Therefore, 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 no GST would be payable on such amount attributable to non-redemption of voucher (breakage).

Deloitte comments

There were considerable ambiguities regarding the GST treatment of certain transactions which led to queries/ notices being issued by the authorities. The clarifications issued by the government, vide the Circulars, would bring certainty and consistency to the transactions and ensure that a uniform view is taken by the jurisdictional authorities, thereby avoiding unnecessary disputes.

Also, this would help businesses to improve the processes adopted by them to avoid unnecessary litigations.

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