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Alert: Indirect Taxation

Bhatia & Bhatia
CHARTERED ACCOUNTANTS



Latest Key Updates and Insights

Welcome to the latest edition of our Monthly Indirect Tax Alert, where we bring you a concise roundup of the most critical developments, updates, and insights in the realm of indirect taxation. This newsletter is designed to equip businesses, professionals, and stakeholders with the knowledge they need to navigate the ever-evolving tax landscape efficiently.

In this issue, we cover:

- Key notifications and circulars are issued during the month.
- Recent amendments and policy changes in GST and Customs.
- Critical case law developments that could impact your tax planning.
- Practical insights and compliance tips to ensure your business stays ahead.

Our aim is to simplify complex tax changes and present actionable information that helps you make informed decisions.

Let's dive into the updates for this month!



GST: Regulatory Compliance

Clarification in respect of input tax credit availed by electronic commerce operators where services specified under Section 9(5) of Central Goods and Services Tax Act, 2017 are supplied through their platform.

- An Electronic Commerce Operator (ECO) liable to pay tax under Section 9(5) of the CGST Act makes two types of supplies:
 1. notified supplies for which the ECO is deemed
 2. the supplier and pays tax accordingly, and
 3. their own services, such as platform fees or commissions. For the latter, the ECO avails Input Tax Credit (ITC) on inputs and input services.
- As per Circular No. 167/23/2021 dated 17.12.2021, the ECO is not required to reverse ITC related to restaurant services taxed under Section 9(5). However, ITC cannot be used to pay tax liabilities under Section 9(5); these must be paid entirely in cash. This principle extends to other services covered under Section 9(5).
- Thus, an ECO paying tax on specified services under Section 9(5) need not proportionately reverse ITC under Section 17 for inputs or services. However, ITC can only be utilized for tax liabilities on the ECO's own services, not for Section 9(5) liabilities, which must be discharged through the electronic cash ledger.

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

Clarification on availability of input tax credit in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract.

- CBIC clarifies the eligibility of Input Tax Credit (ITC) under Ex-Works (EXW) contracts, particularly impacting sectors like the automobile industry.
- Key Clarifications:
 1. Deemed Receipt of Goods: Under EXW contracts, ownership transfers to the buyer at the supplier's factory gate when goods are handed over to the transporter. This handover is considered as the buyer having "received" the goods, fulfilling the condition in Section 16(2)(b) of the Central Goods and Services Tax (CGST) Act, 2017, for ITC eligibility.
 2. ITC Eligibility: Buyers can claim ITC once goods are handed over to the transporter at the supplier's location, even if physical receipt occurs later. This aligns with modern supply chain practices and provides relief to businesses operating under EXW contracts.
 3. Business Use Requirement: ITC can only be claimed if the goods are intended for business purposes. If goods are used for non-business purposes or are lost, stolen, or destroyed after the deemed receipt, ITC eligibility is forfeited.

GST: Regulatory Compliance

- This clarification ensures that businesses can more accurately determine ITC eligibility under EXW contracts, promoting compliance and reducing disputes related to the interpretation of "receipt" of goods under the CGST Act.

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

Clarification on place of supply of Online Services supplied by the suppliers of services to unregistered recipients.

- CBIC clarifies the place of supply for online services provided to unregistered recipients under the Integrated Goods and Services Tax (IGST) Act, 2017. The circular addresses instances where suppliers incorrectly record the place of supply as their own location instead of the recipient's, leading to revenue misallocation among states.
- Supplies covered:
 1. Online money gaming.
 2. Supply of taxable services by or through an electronic commerce operator.
 3. Supply of online information and database access or retrieval (OIDAR) services.
- Key clarifications include:
 1. Recipient's Location as Place of Supply: For online services supplied to unregistered recipients, if the recipient's address is available on record, the place of supply should be the recipient's location. If the address is unavailable, the place of supply defaults to the supplier's location.
 2. Mandatory Invoice Details: Suppliers must include the recipient's state name on tax invoices for online services, regardless of transaction value, to ensure accurate determination of the place of supply.
 3. Compliance and Penalties: Failure to accurately record the place of supply may result in penalties under Section 122(3)(e) of the Central Goods and Services Tax (CGST) Act.
- This clarification applies to all suppliers of online services, including electronic commerce operators, and aims to ensure proper tax allocation to the appropriate state jurisdictions.

Circular No. 242/36/2024-GST dated 31st December 2024.



Clarification on various issues pertaining to GST treatment of vouchers.

- Key Clarifications:

1. Nature of Vouchers: Vouchers are instruments obligating a supplier to accept them as full or partial consideration for goods or services. If recognized as prepaid instruments by the Reserve Bank of India (RBI), they are considered "money" under Section 2(75) of the CGST Act and are excluded from GST. If not classified as "money," vouchers may be deemed actionable claims, which are also excluded from GST unless specified otherwise.

2. Transactions Involving Vouchers: When vouchers are classified as money, transactions involving them are neither a supply of goods nor services and are not taxable under GST. For vouchers not classified as money but representing a promise for goods or services, they are considered actionable claims. Transactions in actionable claims (other than specified ones like betting or gambling) are categorized under Schedule III, meaning they are neither a supply of goods nor services and are not taxable under GST.

3. Distribution Models:

- **Principal-to-Principal Model (P2P)**: Distributors or sub-distributors purchase vouchers from issuers at a discounted price and sell them to end customers or other distributors. In this model, the distributor assumes ownership of the vouchers and operates independently. The pure trading of vouchers in this scenario is not taxable under GST.
- **Commission or Fee-Based Model**: Distributors and agents act on behalf of the voucher issuer, providing marketing and support services in exchange for a commission or fee. The commission or fee is subject to GST, as the transaction is considered a supply of services.

4. Unredeemed Vouchers (Breakage): If vouchers remain unredeemed after their expiry period, no supply of goods or services occurs. Therefore, no GST is applicable on the amount from such unredeemed vouchers.

- This circular provides clarity on the GST implications of various voucher-related transactions, aiming to ensure uniformity in tax treatment and compliance.

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

Recommendations of the 55th Meeting of the GST Council dated 21st December 2024

GST Council made several key recommendations on changes to GST tax rates, relief measures, trade facilitation and compliance streamlining:

A. Changes in GST Rates

- Goods:

1. GST @ 5% on fortified rice kernel classifiable under code 1904
2. No GST on gene-therapy
3. IGST exemption to systems, sub-systems, equipment, parts, software, etc. meant for assembly/manufacture of LRSAM system
4. IGST exemption to imports of all equipment and consumable samples by inspection of International Atomic Energy Agency
5. Reduced 5% GST on food inputs and food preparations under HSN 19 or 20 which are supplied for food preparations meant for free distribution to economically weaker sections under the Government program.
6. Reduced 0.1% compensation cess on the supplier to merchant exporters.
7. Increased GST @ 18% on the sale of all old and used vehicles
8. GST @ 12% on Advanced Aerated Concrete (ACC) blocks (with more than 50% fly ash) under HSN 6815.
9. No GST on pepper (both fresh green or dried pepper) and raisins supplied by agriculturists.
10. Tax on popcorn is divided into three rates of 5%, 12% and 18% based on packaging and contents.

- Services:

1. Brought sponsorship services provided by the body corporate under the Forward Charge Mechanism.
2. Exempted third-party motor insurance contributions to a compensation fund.
3. Adjusted GST rates for hotel restaurant services based on accommodation rates, effective 1st April 2025.
4. Excluded composition scheme taxpayers from reverse charge mechanism for commercial/immovable property rentals (other than residential dwelling) by an unregistered person to a registered person.

B. Trade Facilitation

- Amended Schedule III of CGST to treat the supply of goods warehoused in SEZ/FTWZ warehouses as non-supply until cleared.
- Clarified tax treatment of vouchers, including exemptions for unredeemed ones.
- Introduced clarifications for ITC reversals and taxability of e-commerce supplies.

C. Compliance Measures

- Enabled Track and Trace Mechanism for evasion-prone commodities.
- Clarified requirements for online service suppliers to record state details for unregistered recipients.
- Introduced provisions to simplify GST return filing and extended waivers for past late fees on GSTR-9C.

D. Other Measures

- Amended section 17(5) to clarify the definition of plant and machinery.
- Reduced pre-deposit for penalty appeals to 10%.
- Adjusted ISD provisions to include inter-state RCM transactions, effective April 2025.

E. GST Advisory on Waiver Scheme under Section 128A.

- GSTN has issued a new Advisory on Waiver Scheme u/s 128A of the CGST Act, 2017.
- Under the Waiver Scheme, for a demand notice or statement or order which has been issued under Section 73 for the tax periods between July 2017 & March 2020, the taxpayers are required to file an application either in FORM GST SPL-01 or SPL-02 in GST portal accordingly.
- While Form GST SPL-01 is expected to be made available in due course, Form GST SPL-02 is presently available on the GSTN portal.
- GSTN has provided a detailed procedure for filing Form GST SPL-02 electronically.
- It contains details about how to fill applications, navigation, payment, uploading of supporting documents and submissions of applications.

Source: https://tutorial.gst.gov.in/downloads/news/help_document_on_filing_of_spl_02.pdf

F. Retrospective Amendment for ITC

Another example of the GST Council not being judicious but pro-revenue is revisiting the decision of the Supreme Court in the Safari Retreat case so much so that the outcome of the apex court's decision has been overruled by deciding to bring in the amendment in tax law, that too from retrospective effect from 1st July, 2017. We are in the eighth year of GST now and it is indeed unjust, unfair and unethical, even if the Government and GST Council may try to be lawful by bringing in retrospective amendment. Post this amendment, Odisha High Court may not give its remand verdict in favor of the taxpayer.

G. Additional Recommendations

- Discussed IGST settlement issues and extensions for resolving GSTAT operationalization.
- Set up a group to explore GST restructuring and natural disaster taxation policies.





GST: Judicial Pronouncements

Violation of principles of natural justice in tax assessment proceedings.

Summary: The petitioner, a registered taxpayer under the CGST and APGST Acts, faced registration cancellation, which was later restored on appeal. Meanwhile, the tax department issued notices regarding discrepancies in past tax returns. Despite the petitioner seeking time to respond and requesting restored access to tax portals, the department passed a demand order before the 30-day response period ended. The Court found this premature action a violation of natural justice, quashed the order, and directed fresh proceedings, allowing the petitioner two weeks to respond with proper access and a personal hearing. Pending applications were also closed.

Source: M/S. AVEXA CORPORATION PRIVATE LIMITED VERSUS THE STATE OF ANDHRA PRADESH AND OTHERS [HON'BLE ANDHRA PRADESH HIGH COURT, WRIT PETITION NO: 10094/2024 DATED 19TH AUGUST 2024]

CGST Order Quashed for Lack of Reasoning, Calls for Fresh Adjudication.

Summary: In the Delhi High Court, the petitioner challenged an order issued under Section 73(9) of the CGST Act, 2017, finalizing a Show Cause Notice (SCN) for the tax period April 2019 to March 2020. Although the petitioner submitted a detailed reply, the Assistant Commissioner dismissed it using vague language and confirmed the demand without proper reasoning. Citing a similar case, Xerox India Limited v. Assistant Commissioner, the court criticized the lack of application of mind by the officer. It quashed the order, directed a fresh consideration of the SCN, and mandated a review by the Principal Commissioner. The petition was allowed.

Source: M/S SARENS HEAVY LIFT INDIA PRIVATE LIMITED VERSUS THE ASSISTANT COMMISSIONER DGST & ORS. [HON'BLE DELHI HIGH COURT, W. P. (C) 16300/2024 DATED 04TH DECEMBER 2024]

GST Order Quashed for Jurisdictional Error, Directs Fresh Proceedings After Considering Petitioner's Reply.

Summary: The petitioner challenged an order dated 9th April 2024, issued under Section 73 of the Odisha GST Act, citing failure to consider a reply submitted on 29th July 2021 to an earlier notice under Section 61. The court noted that the revenue-initiated proceedings under Section 73 without jurisdiction, as the petitioner's reply was overlooked. Although the revenue claimed sufficient hearing was granted later, the court found procedural violations. It quashed the order, directing the revenue to first address the reply under Section 61 before proceeding further. The writ petition was disposed of accordingly.

Source: M/S. QUALICUM SOLUTIONS PVT. LTD. VERSUS THE CHIEF COMMISSIONER OF CT AND GST, ODISHA, CUTTACK AND OTHERS [HON'BLE ORISSA HIGH COURT, W. P. (C) No. 27986 of 2024 DATED 14TH NOVEMBER 2024]

IMPORT

EXPORT

Other Indirect Tax Updates

Roll out of Automated Out of Charge for AEO T2 and T3 certified Clients.

- Central Board of Indirect Taxes & Customs (CBIC) has announced the roll-out of the Automated Out of Charge (Auto-00C) for Authorized Economic Operator (AEO) T2 and T3 clients, effective from 1st January 2025.
- This initiative aims to simplify trade procedures, enhance efficiency, and reduce administrative burdens. AEO T2 and T3 clients meeting certain criteria, such as no examination, scanning, or PGA-related NoC, complete assessment, and OTP-based BE authentication for duty deferment, will be eligible for Auto-00C on web-based goods registration.
- The system will allow the Out of Charge to be granted on a risk basis, but officers can override it in case of intelligence or concerns. This move is expected to streamline customs clearance processes and reduce dwell time for businesses, benefiting genuine trade.

Circular No. 01/2025-Customs dated 01st January 2025

Foreign Trade policy

Important Update for Exporters – DGFT Public Notice No. 27/2024-25 dated 23rd October 2024.

- Directorate General of Foreign Trade (DGFT) introduced a mandatory Annual Return (ARR) for exporters claiming RoDTEP benefits exceeding ₹1 crore in a financial year. This return, due by 31 March of the following year, includes detailed reporting of taxes and levies on raw materials, transportation, electricity, and fuel.
- Failure to file the ARR on time incurs late fees, and non-filing results in the freezing of scrips and ineligibility for future claims.
- Exporters face challenges such as difficulty in estimating certain taxes and lack of provision for return corrections. DGFT is urged to address these concerns to ease compliance.

DGFT public notice no. 27/2024-25 dated 23rd October 2024

Service Tax

Marketing support services by Indian Company to its Foreign Head Quarters qualify as 'Export'.

Summary: The CESTAT, New Delhi, ruled in favor of M/s Nokia India Pvt. Ltd. in a service tax case involving "Business Auxiliary Services" (BAS) provided to Nokia Corporation, Finland. The issue was whether these services qualified as "export of services" under the Export of Service Rules, 2005. The court held that since the benefits of the services accrued outside India, they constituted exports, even though performed in India. The department's demand for higher service tax and penalties was based on incorrect presumptions and lacked sufficient evidence of suppression or evasion by Nokia India.

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About Us

Founded in 1981, our firm is dedicated to providing unparalleled financial services to our clients and assisting in navigating the business landscape. With a commitment to deliver exceptional services while upholding the highest ethical standards, our team of over 125+ professionals, led by 11 experienced partners, brings a diverse range of expertise to the table. This allows us to act as your trusted advisor for all aspects of your financial needs, including Audit & Assurance, Taxation (both domestic and cross-border), Valuations, Mergers & Acquisitions and Corporate Finance. We operate as a progressive and well-structured full-service firm with a Pan India presence and a network of various international forums, groups & chambers. We deliver end-to-end business solutions through a dedicated panel of experts, maintaining long-term trust and reliance from our clients.

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