

EY Tax Alert

CBIC issues clarification on treatment of sales promotion schemes under GST

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

This Tax Alert summarizes a recent circular^[1] issued by Central Board of Indirect Taxes and Customs (CBIC) clarifying tax treatment of various sales promotion schemes under Goods and Services Tax (GST). The key clarifications are as follows:

- The supplier of gifts/ free samples would be eligible to avail Input Tax Credit (ITC) if the activity of distributing gifts or free samples falls within the scope of "supply" in terms of the provisions of Schedule I of the Central Goods and Services Tax (CGST) Act.
- In offers like "Buy One, Get One Free", there are two or more individual supplies for which a single price is charged. Taxability of such supply will depend on whether it is a composite or mixed supply. ITC shall be available to the supplier with respect to goods or services supplied under such offers.
- Post-sale discounts shall not be excluded while determining the value of supply under GST, if conditions laid down in Section 15(3)(b) of the Central Goods and Services Tax (CGST) Act are not satisfied.

Further, CBIC, vide Corrigendum^[2], has clarified that the amount of TCS (tax collected at source) collected under the provisions of the Income Tax Act would not be includible for the purpose of determining value of supply under GST.

^[1]Circular No.92/11/2019-GST, dated 7 March 2019.

^[2]Corrigendum dated 7 March 2019 to Circular No.76/50/2018-GST

Background

- Several promotional schemes are offered by suppliers to increase sales volume and to attract new customers for their products.
- Various representations were received by CBIC seeking clarification on issues raised with respect to tax treatment of sales promotion schemes under GST.
- CBIC has examined some of these schemes and issued clarification on the aspects of taxability, valuation and availability of Input Tax Credit (ITC).

Clarifications³

Free samples and gifts

- It is a common practice among certain sections of trade and industry, to provide free samples and gifts. For example, pharmaceutical companies often provide drug samples to their stockists, dealers, medical practitioners, etc., without charging any consideration.
- Samples which are supplied free of cost, without any consideration, do not qualify as 'supply' under GST (except where the activity falls within the ambit of Schedule I of the CGST Act).
- ITC shall not be available on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration.
- However, where the activity of distribution of gifts or free samples falls within the scope of supply in terms of the provisions contained in Schedule I of the CGST Act, the supplier of gifts/ free samples would be eligible to avail ITC.

Buy one, get one free offer

- Sometimes, companies announce offers like 'Buy One, Get One free'. It may appear at first glance that in case of offers like 'Buy One, Get One Free', one item is being supplied free of cost without any consideration.
- In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply.
- Taxability of such supply will depend upon whether it is a composite or a mixed supply and the rate of tax shall be determined accordingly.
- ITC shall be available with respect to inputs, input services and capital goods used in relation to supply of goods or services as a part of such offers.

Discounts including 'Buy more, save more' offers

- Sometimes, the supplier offers staggered discount to the

customers (i.e. increase in discount rate with increase in purchase volume). Such discounts are shown on the invoice itself.

- Some suppliers also offer periodic/ year ending discounts to their stockists, etc. Such discounts are not shown on the invoice as the actual quantum of such discount gets determined after the supply has been effected, generally at the year end. However, such discounts are established in terms of an agreement entered into at or before the time of supply. Further, the discount is passed on by supplier through credit notes.
- Such discounts offered by the suppliers to customers (including staggered and post supply discounts) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in Section 15(3) of the CGST Act.⁴
- Further, the supplier shall be entitled to avail the ITC on inputs, input services and capital goods used in relation to such supply of goods or services at discount.

Secondary Discounts

- These are the discounts which are not known at the time of supply or are offered after the supply is already over.
- In such cases, financial / commercial credit notes can be issued by the supplier for passing of discount, even if the conditions mentioned in Section 15(3)(b) of the CGST Act are not satisfied.
- However, such discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in Section 15(3)(b) of the CGST Act are not satisfied.
- In this case, there will be no impact on availability of ITC in the hands of supplier.

Corrigendum

- CBIC had earlier clarified⁵ that taxable value for the purposes of GST shall include the amount of tax collected at source (TCS) collected under the provisions of the Income Tax Act, since the value to be paid to the supplier by the recipient is inclusive of TCS.
- However, in the light of various representations received from the stakeholders, the matter was re-examined in consultation with the Central Board of Direct Taxes (CBDT).
- CBDT clarified that TCS was not a tax on goods but an interim levy on the possible 'income' arising from the sale of goods by the buyer. The same is to be adjusted against the final income tax liability of the buyer.
- Accordingly, CBIC modified the circular through a

³ Circular No.92/11/2019-GST, dated 7 March 2019.

⁴ The parameters laid down by Section 15(3) of CGST Act are as follows:

(a) Discount given before or at the time of supply is duly recorded in the invoice issued in respect of such supply;

(b) In case of post supply discount, such discount is established in terms of an agreement entered into before or at the time of supply and specifically linked to relevant invoices.

⁵ Vide Circular No. 76/50/2018-GST dated 31 December 2018

Corrigendum to clarify that TCS collected under the provisions of the Income Tax Act would not be includible for the purpose of determining value of supply under GST.

Comments

The explicit clarification on tax treatment of various sales promotional schemes under GST, particularly on eligibility of input tax credit, will provide a much-awaited relief to industries like pharmaceutical and FMCG. It will also eliminate the unwarranted litigation.

Analyses of the supply of products under the promotional scheme like "Buy one, get one Free", whether classifiable as composite or mixed supply shall be crucial. In case where supply is classified as mixed supply in which free product attracts a higher tax rate, such supply could be taxed at higher rate of GST.

The circular emphasizes on the concept of issuance of financial/ commercial credit notes in case where credit note is not permissible under GST.

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