

Circulars issued as per recommendations made in 55th GST Council meeting on 21st December 2024

1. Place of supply of online services provided to unregistered recipients - Circular No. 242/36/2024-GST dated 31 December 2024

· in case of online money gaming, OIDAR services and supply of services by or through an E-commerce operator to unregistered persons, it is clarified that **the supplier is required to mandatorily record the name of the State of the unregistered recipient on the tax invoice** irrespective of the value of supply. Such state is deemed as the address on record of the recipient for determination of place of supply.

· The above-mentioned requirement is applicable in respect of all online services supplied to an unregistered recipient. For ex. subscription of e-newspapers and e-magazines, OTT platforms, online telecom services, digital services through mobile applications, etc.

· **The circular also clarifies that the supplier should devise suitable mechanism to ensure collection of such details from unregistered recipient before making any supplies to him.**

· In case the supplier fails to issue invoice in accordance with the abovementioned provisions, then he may be liable to penalty which may extend to Rs.50,000.

USISPF Comments: Recently, there have been increasing enquiries around details of unregistered recipients of supplies from the tax authorities of various States. The clarification, which is aligned with Rule 46 of the CGST Rules, 2017, will help in

determination of correct place of supply and will also ensure flow of revenue to the correct State.

2. GST implications on vouchers - Circular No. 243/37/2024-GST dated 31 December 2024

· **The circular clarifies that irrespective of whether a voucher is covered as a pre-paid instrument recognized by RBI or not, it is just an instrument which creates an obligation on the supplier to accept it as consideration and the transactions in voucher themselves cannot be considered either as a supply of goods or as a supply of services.** However, supply of underlying goods or services, for which vouchers are used as consideration, will be taxable under GST.

· Where vouchers are distributed through the distributors/ sub-distributors/ dealers on Principal-to-Principal(P2P) basis, such transactions are to be considered as **pure trading of vouchers**, which would neither constitute supply of goods nor as supply of services. On the other hand, where vouchers are distributed using distributors/ sub-distributors/ agents on commission/ fee basis, then **GST would be payable on the commission/fee** as a supply of services to the voucher issuer.

· In case of additional services such as advertisement, co-branding, customization services, technology support services, customer support services, etc., provided by either the distributor/ sub-distributor or by another person to the voucher issuer against a service fee, in such a case, the said **service fee would be liable to GST** in the hands of the service provider.

· In case of **unredeemed vouchers** accounted for in the statement of income, there is **no supply of underlying goods and/ or services and consequently, the amount**

retained for unredeemed vouchers by the voucher issuer cannot be construed as consideration for any supply. Accordingly, such breakage should not be leviable to GST.

USISPF comments: Given the plethora of advance rulings on the subject which had resulted in ambiguities among the trade, the circular is a welcome one and would put to rest various issues regarding taxability of vouchers, specifically on the breakage income.

3. Reversal of ITC pertaining to supplies on which tax is payable under Section 9(5) - Circular No. 240/34/2024-GST dated 31 December 2024

- The circular clarifies that there is no requirement to reverse the proportionate input tax credit ('ITC') by ECOs in respect of section 17(1) or section 17(2) of CGST Act, to the extent of inputs and input services, towards notified supplies for which ECOs are deemed as suppliers under Section 9(5) of the CGST Act, 2017.

- This is specifically in scenario ECOs pay tax as if they are the supplier, as it has also been clarified that the input tax credit will not be allowed to be utilized for payment of tax liability under section 9(5) and whole of the tax liability under section 9(5) will be required to be paid in cash. However, this credit can be used to discharge tax liability for supplies made on their own account.

- This clarification extends the principle outlined in Circular No. 167/23/2021-GST, dated 17 December 2021, which addressed restaurant services, to other services specified under Section 9(5).

USISPF comments: This is a much-needed clarification to put to rest litigations about the requirement of reversal of ITC by ECOs for deemed supplies.

4. ITC eligibility for ex-works contracts - Circular No. 241/35/2024-GST dated 31 December 2024

- Unlike the previous Central Excise regime which required physical receipt of goods at the buyer's premises for credit eligibility, there is no reference of any particular place where goods are required to be "received" by the registered person for credit to be availed under Section 16(2).

- In ex-works contracts, particularly for OEMs, goods are considered "received" by the buyer for ITC purposes once ownership and risk transfer at the supplier's premises, even if the goods haven't physically reached the buyer's location. Accordingly, ITC can be availed at this point, subject to other conditions under Section 16 of the CGST Act.

- In instances where 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. This also includes instances where such goods are lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

USISPF comments: The clarification is particularly beneficial for sectors where ex-works contracts are common.