

### ***CBIC clarifies treatment of sales promotion schemes under GST***

The Central Board of Indirect Taxes and Customs (CBIC) has recently issued a circular<sup>1</sup> clarifying various issues relating to the treatment of sales promotion schemes. The clarifications are summarised below:

- ***Free samples and gifts***

Goods or services or both supplied free of cost will not be treated as supply (except in the case of activities mentioned in Schedule I of the Central Goods and Services Tax [CGST] Act, 2017). However, input tax credit (ITC) will not be available on the inputs, input services or capital goods to the extent used in relation to such gifts or free samples, except in cases where such gifts or free samples are treated as a [deemed] supply under Schedule I of the CGST Act.

- ***“Buy one, get one free” offers***

- For offers such as “buy one soap and get one soap free” or “get one toothbrush free with the purchase of toothpaste,” there is no individual supply of free goods but is a case of two or more individual supplies with a single price being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.
- The taxability of such a supply would depend on whether it is a composite supply or a mixed supply as defined in CGST Act.
- The supplier would be eligible to claim ITC on inputs, input services and capital goods used in relation to the supply of goods or services or both as part of such offers.

- ***Discounts including “buy more, save more” offers***

- Discounts that would be eligible for deduction from the taxable value of the supplier include:
  - i. Upfront discounts offered by suppliers (e.g. discounts on the invoice based on the quantity/ value, which may be higher for high quantity/ value procurements); or
  - ii. Periodic discounts based on the total quantum of purchases, when established in the terms of agreement entered into at or before the time of supply.
- The recipient would need to reverse the ITC.
- The supplier will be eligible for availing full ITC on inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

- ***Secondary discounts***

For secondary market schemes, where discounts are announced after the original supply, the supplier can issue commercial credit notes. However, such discounts would not be eligible for any deduction from the value of the supply under section 15(3)(b) of the CGST Act, as it was not known at or before the time of supply. Further, there would not be any impact on the ITC in the hands of the supplier.

### **The takeaways**

This is an important clarification, as there were multiple views prevailing on the GST implications of sales promotional schemes. There have also been reports of tax authorities launching investigations on various assesseees on such schemes, and this circular will put all such disputes to rest, while giving clarity to the industry on how to devise sales promotion schemes in the future.

The clarification is silent on one aspect, which is, the situations where secondary sales promotion schemes potentially being treated as subsidies. The industry will look forward to clarity on this issue as well. This circular, along with recent legislative changes to allow consolidated credit notes on discounts, is indicative of the CBIC adopting a liberal philosophy.

<sup>1</sup> Circular No. 92/11/2019-GST dated 7 March 2019

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