CLARIFICATIONS ISSUED

There are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Some of these schemes have been examined and clarification on the aspects of taxability, valuation, availability of ITC in the hands of the supplier in relation to the said schemes are detailed hereunder:

FREE SAMPLES AND GIFTS

- Free samples and gifts given free of cost will not be treated as supplies unless it falls within Schedule I (Supplies without consideration).
- If the activity does not fall within Schedule I, ITC in respect of inputs, input services and capital goods will not be available to the extent they are used in relation to the gifts or free samples distributed without any consideration.
- Where the activity falls within supply as per Schedule I, the supplier would be eligible to avail of the ITC.

Brief Comments

- This clarifies the position that there cannot be a double whammy to any registered person. If there is a supply without consideration involved, ITC reversal is not required. Only if there is no supply involved, ITC is required to be reversed.
- However, it must be clear whether supply is involved or not. If a supply is involved but is not shown, then mere ITC reversal may not be sufficient. Also, if there is no supply involved but is disclosed as a supply incorrectly, ITC may still be required to be reversed.

BUY ONE GET ONE OFFER

- 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 be dependent upon as to whether the supply is a composite supply or a mixed supply (i.e. whether they are naturally bundled or not).
- It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

Brief Comments

- ❖ This establishes the principle that nothing is free in this world
- ❖ If two or more items are naturally bundled, the rate of the principal supply will be taken (being a composite supply).
- ❖ If it is not naturally bundled, the highest rate out of all the supplies will be adopted (being a mixed supply).
- ❖ This should discourage businesses to club supplies which are not naturally bundled particularly wherein the 'free item' is attracting a higher tax rate. This is because it will result in the entire supply being taxed at a higher rate.
- ❖ Further, the fact that there is no ITC reversal involved comes as a huge welcome relief for the industry wherein provision of free items is part of their regular supply policies

DISCOUNTS INCLUDING 'BUY MORE, SAVE MORE' OFFERS

- ➢ Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example- Get 10 % discount for purchases above Rs. 5000/-. Such discounts are shown on the invoice itself.
- ➢ Some suppliers also offer periodic / year ending discounts / volume discount to their stockists, etc. For example- Get additional discount of 1% if you purchase 10000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected. Such discounts are passed on by the supplier through credit notes.
- ➢ It is clarified that such discounts offered will be reduced from the total value of supply for charging GST. However, the recipient should reverse the ITC in respect of the portion of the discount reduced.
- ➢ Supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts

Brief Comments

- ❖ The industry has been issuing credit notes without GST because of lack of clarity regarding the nature of discounts on which the reduction of GST is allowed
- ❖ This clarifies the position that where the discounts are established as per the agreement, then the same is allowed to be reduced from the total value in case of staggered/periodic/year end/volume discounts.
- ❖ This will provide certainty to the industry as to when credit notes with/without GST should be issued in case of discounts.

SECONDARY DISCOUNTS

- These are the discounts which are not known at the time of supply or are offered after the supply is already over.
  For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet
- It is hereby clarified that financial / commercial credit note (without charging GST) will be issued by the supplier since the conditions for post supply discount is not satisfied.
- This discount will not be reduced while determining the value of supply by the supplier.
- There is no impact on availability or otherwise of ITC in the hands of supplier in this case i.e. the supplier can take the entire ITC

Brief Comments

- Quite a few players in the industry had been issuing credit notes with GST showing the same as a valuation difference in terms of Section 34 even though the conditions of post supply discount were not satisfied.
- This brings clarity that the satisfaction of the condition of post supply discount is pertinent even though the same is shown as a downward valuation difference
- The biggest welcome relief is the clarification that ITC is not to be reversed by the recipient when commercial credit note is issued by the supplier

AMENDMENTS NOTIFIED

The following amendments have been brought in by the Government effective from 1st April 2019:

Lower rate of Tax for first supplies upto Turnover of Rs. 50 lakhs

- For certain category of persons, first supplies of goods or services or both upto an aggregate turnover of Rs. 50 lakhs made on or after 1st April in any financial year by a registered person can be taxed at the rate of 6% (3% - CGST and 3% - SGST).

  Note:

  1) Aggregate Turnover will exclude interest or discount earned on extending loans, advances or deposits
  2) First supplies of goods or services or both will include supplies from 1st April of a financial year to the date when a person becomes liable to register for the purpose of determining eligibility under this scheme
  3) For the purpose of determination of tax payable, supplies from 1st April to the date when a person becomes liable for registration is not included

- Following are the categories of registered persons who are covered within this scheme:
  - whose aggregate turnover (excluding interest or discount earned on extending loans, advances or deposits) in the preceding financial year was fifty lakh rupees or below;
  - who is not eligible to pay tax under the composition scheme
  - who is not engaged in making any supply which is not leviable to tax under the said Act
  - who is not engaged in making any inter-State outward supply
  - who is neither a casual taxable person nor a non-resident taxable person
  - who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source
  - who is not engaged in making the following supplies:

Sl. No.	Tariff item, subheading, heading or Chapter	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2	2106 90 20	Pan masala
3	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

- Following are some other conditions which are required to be complied under the given scheme:
  - If there are multiple GSTINs within the same PAN, all of them should pay taxes under the same scheme
  - The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax
  - The registered person should issue a bill of supply (not a tax invoice)
  - At the top of the bill of supply, it is mandatory to write - 'taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'

- Irrespective of any notification to be issued for any person under normal scheme, a person registered under this notification will continue to pay tax at the rate of 3% under this scheme
- Reverse charge under Section 9(3) and 9(4) will continue to be paid separately for persons under this scheme

(Notification no. 2/2019-Central tax (rate) dated 7th March 2019)

Brief Comments

- As the act cannot be amended, a special scheme in the nature of composition scheme has been brought in for service providers (or mixed suppliers). However, this scheme cannot be legally called as a composition scheme.
- The conditions and restrictions placed in this scheme are very similar to the composition scheme
- It needs to be ensured that if a person is falling under regular composition scheme, they should not opt for this scheme. Even the tax rate under this scheme is quite high as compared to the regular scheme particularly for supplier of goods.
- A person whose service component is more than 10% of turnover or Rs. 5 lakhs whichever is higher and who wishes to opt for composition scheme can instead opt for this scheme
- It needs to be noted that since tax is payable on aggregate turnover, even exempt supplies will be liable for tax.
- There is no provision for payment of taxes (from input tax credit or in cash) required for persons holding stock on 31st March when they are opting for this scheme on 1st April of any year.
- Whether input tax credit accumulated by a person opting for this scheme can carry forward the said credit or not remains to be seen. There is no provision for lapsing of the accumulated ITC till now.

THRESHOLD LIMIT RAISED FOR REGISTRATION FOR SUPPLIER OF GOODS

- There would be two threshold limits for exemption from registration and payment of GST for the suppliers of goods i.e. Rs 40 lakhs and Rs 20 lakhs
- States would have an option to decide about one of the limits
- The threshold for registration for service providers would continue to be Rs 20 lakhs and in case of Special category States Rs 10 lakhs.
- Persons will get the benefit of enhanced threshold limit only if they are exclusively engaged in supply of goods

- Persons who are required to compulsorily register themselves will not get the benefit of the enhanced threshold limit either
- Persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand will not get the threshold enhancement of Rs. 40 lakhs
- Persons exercising option for voluntary registration or person who intends to continue with their registration will not be covered by the enhanced threshold limit
- Persons engaged in making the following supplies will not get the enhanced threshold benefit:

Sl. No.	Tariff item, subheading, heading or Chapter	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2	2106 90 20	Pan masala
3	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

(Notification no. 10/Central tax dated 7th March 2019)

Brief Comments

- The enhanced threshold limit is for persons exclusively engaged in the supply of goods. In our opinion, persons making composite supply wherein the principal supply is that of goods will also be covered under the enhanced threshold.
- It must be noted here that if a person provides even a single standalone supply of services, his threshold limit will drop from Rs. 40 lakhs to Rs. 20 lakhs straightaway

ENHANCED THRESHOLD LIMIT FOR COMPOSITION TAXPAYERS

- Threshold limit for composition taxpayers has been enhanced. A person will be eligible under the composition scheme if his aggregate turnover in the preceding financial year did not exceed Rs. 1.5 crores.
- In the states of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand, the threshold limit continues to be Rs. 75 lakhs in the preceding financial year. These states can decide internally if they wish to adopt the enhanced threshold.

NO GST ON TCS

- In determination of the value under GST, TCS under Income tax will not be included as it is an interim levy which is not having the character of tax.

(Corrigendum to Circular no. 76/50/2018-GST dated 31st December 2018)

Brief Comments

- This was a long pending issue. TCS was said to be applicable on GST whereas GST was said to be inclusive of TCS. This was incorrect and resulted in circular referencing. This has now been relaxed.

DUE DATES FOR APRIL TO JUNE 2019

Forms	Persons covered	Period	Due date
GSTR 1	Persons with aggregate turnover < Rs. 1.5 crore in PFY	April – June (Quarterly)	31st July 2019
GSTR 1	Persons with aggregate turnover > Rs. 1.5 crore in PFY	April – June (Monthly)	11th of next month
GSTR 3B	Every registered person	April – June	20th of next month

(Notification no. 11/Central tax dated 7th March 2019)

(Notification no. 12/Central tax dated 7th March 2019)

(Notification no. 13/Central tax dated 7th March 2019)

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