

GST updates

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Issues: Clarification on treatment of sales promotion schemes under GST.

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Under Circular no. 92/11/2019-GST, dated 7 March 2019, clarification has been on GST treatment for some of the sales promotion schemes with respect to taxability, valuation and availability of input credit.

> Free samples and gifts

Distribution of gifts or free samples to distributors / customers would be a supply without consideration. Under Section 7 of the CGST Act, 2017, for an activity to qualify as 'supply' receipt of consideration is a requisite. Accordingly, distribution of gifts / free samples, should not qualify as supply under the said Act.

In addition, under Section 17(5)(h) of the said Act, input credit is not available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

The circular has created an exception for disposal of 'business assets' without consideration, as mentioned in Schedule I of the said Act. In such cases, input credit should be available even on disposal of business assets without consideration. However, the term 'business assets' has not been defined under the said Act. The Circular does not shed light on whether inventory (which is distributed as gifts or free samples) should be treated as business assets or not.

In our view, distribution of gifts / free sample should not qualify as supply and input credit for the same should not be available.

> Buy one get one free offer

In case of such offers one product is being without any consideration. The Circular clarifies that it should be treated as supply of two goods for a single price. Accordingly, such supply should qualify as a mixed supply or composite supply, to be determined on a case-to-case basis. Accordingly, input credit should be available to the supplier for the inputs, input services and capital goods used in relation to such supply.

It is pertinent to note that in case such a supply qualifies as a 'mixed supply', the applicable tax rate should be the higher of the two, in case the goods involved have different tax rates. This should be borne in mind in cases where the product being supplied free of cost carries a higher tax rate.

> Discounts on 'buy more, save more' offers and periodic volume discounts

In case of discount offered under 'buy more, save more' schemes, the supplier mentions the value of discount on the invoice. The value of discount should be reduced from the value of taxable supply. Accordingly, the supplier should be entitled to avail the input credit.

In case of periodic volume discounts, typically, the terms of such discounts are mentioned in the contract. Such discounts are passed through a credit note at the end of the period. In such cases, the volume of discount should be reduced from the taxable value of goods and the supplier should be eligible to avail input credit.

However, in case the volume discount scheme is not clarified under the contract, the value of discount should not be reduced from the taxable value as the conditions of Section 15(3) of the CGST Act, 2017, are not fulfilled. Accordingly, the supplier, should not be eligible to reverse / reduce output tax on account of such credit notes.

> Secondary discounts

In cases where discounts which are not known at the time of supply or are offered after the supply is made, the value of such secondary discounts should not be excluded while determining the value of supply. This is because the conditions mentioned in Section 15(3) of the CGST Act, 2017, are not fulfilled. In such cases, the supplier would be required to generate a financial credit note without reversal of proportionate GST.