KIRTANE & PANDIT

KEY HIGHLIGHTS

INDIRECT TAX

February 2025

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Foreword

The Finance bill has proposed various changes which are primarily aimed at the implementation of the recommendations put forward by the GST Council. These amendments inter alia include the removal of Time of supply provisions in respect of vouchers, compliance in case of Credit Notes, amendments to ISD mechanism, implementation of Track and Trace mechanism and such others.

In the process of simplifying compliance procedures, a major procedural revamp is introduced by the CBIC on the GST portal in the form of Invoice management system. This mechanism aims to ensure transparency in the flow of Input Tax Credit amongst taxpayers. The Finance bill seeks to amend various existing provisions to provide legal enforceability to the Invoice management system.

1. Resolution of Issues pertaining to taxability of vouchers

- In order to address the long-standing concerns related to taxability of vouchers, the Finance Bill has proposed to omit Section 12(4) relating to Time of supply for Goods in respect of transactions in voucher & Section 13(4) relating to Time of supply for services provided in respect of vouchers.

- As discussed in the 55th GST Council meeting held on 21st December, 2024, transactions in vouchers will be treated as neither a supply of goods, nor as a supply of services.

- Taxability of vouchers has also been clarified by Circular No. 243/37/2024-GST as under-

  a. Irrespective of whether a voucher is recognised by RBI as a pre-paid instrument or not, a voucher is an instrument creating obligation on supplier to accept it as a part consideration, and therefore cannot be either as a supply of goods or a supply of services.
  b. Pure trading of vouchers by distributors/dealers on a P2P basis would constitute neither as a supply of goods nor services.
  c. Where vouchers are being traded on a principal to agent basis where any form of fee is being charged, GST would be chargeable on such amount of commission/fee.
  d. In cases where additional services such as co-branding, marketing or advertisement are also provided to the voucher issuer against additional consideration, GST would be chargeable on such additional service fee/ service charge/affiliate charge.
  e. Due to absence of any underlying supply, the amount retained for non-redemption of vouchers cannot be construed as a consideration. Hence, unredeemed vouchers (breakage) would not attract any GST liability.

2. Amendment in Section 17(5) to override judgement of Supreme Court in case of M/s Safari Retreat

- It has been proposed that in Section 17(5)(d), for the words “plant or machinery”, the words “plant & machinery” should be substituted with retrospective effect from 1st July, 2017.
- Further, the bill has also proposed the insertion of an explanation to further clarify that any reference to “plant or machinery” should be construed as “plant and machinery” irrespective of anything contrary contained in any judgement, decree or order of any court or tribunal.

3. Amendment in Section 20 to include inter-state RCM transactions in ISD mechanism

- The bill has proposed to make amendments to Section 20 of the CGST Act to enable the distribution of inter-state RCM ITC through input service distributor.
- For the said purpose, the bill seeks to include references to Sections 5(3) and 5(4) of the IGST Act with effect from 1st April 2025.

4. Amendment in Section 34 to incorporate ITC reversal requirements in case of Credit Notes

- The bill has proposed an amendment to Section 34 in order to incorporate the restriction on reduction of outward liability in the said section.
- It has been specified that no reduction in outward liability shall be permitted unless
  - the ITC attributable to such credit note, if availed, has been reversed by the recipient, &
  - the incidence of tax in respect of such credit note has been passed on to the recipient.

5. Amendment in Section 107 & 112 w.r.t pre-deposit amount in cases of appeals against orders where only penalty is involved.

- The bill has proposed to amend Section 107 & Section 112 to specify the payment of pre-deposit amount as 10% of Penalty amount for filing appeals before the Appellate Authority & Appellate Tribunal in cases where only demand of penalty is involved.

6. Insertion of Section 122B & 148A to introduce "Track & Trace mechanism" in respect of certain goods

- The bill has proposed the insertion of a new section 148A in CGST Act, 2017 to provide for an enabling provision for implementation of **track and trace mechanism** for ensuring effective monitoring and control of supply of specified commodities.
- Further the insertion of new section 122B is proposed to provide for penal provisions for contraventions of the provision relating to track and trace mechanism.

7. New entry in Schedule III of the CGST Act, 2017

- It has been proposed to insert a new entry in Schedule III of CGST Act as under-

  Supply of goods warehoused in a Special Economic Zone or in a Free Trade Warehousing Zone to any person before clearance for exports or to the Domestic Tariff Area shall be treated neither as supply of goods nor as supply of services.
- Accordingly, explanations are also proposed to be inserted in clause (a) of paragraph 8 of Schedule III for defining the terms "Special Economic Zone", "Free Trade Warehousing Zone" and "Domestic Tariff Area".

8. Waiver of Late fee for delayed filing of GSTR-9C

- The CBIC, vide Notification No. 08/2025-CT and Circular No. 246/03/2025-GST has waived the late fees payable under Section 47 of the CGST Act, 2017 for delayed filing of GSTR-9C upto FY 2022-23.
- The Bill has clarified that no refund shall be made in respect of late fees already paid by the taxpayers for such delayed filing.

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