

ERGO

BUDGET 2024 | INDIRECT TAX PROPOSALS





This year the Union Government has presented only an interim budget and thus, keeping with convention, no major changes have been introduced under indirect tax laws except for the following amendments under Goods and Services Tax (GST) laws.

GOODS & SERVICES TAX

Proposed Legislative Changes

The Finance Bill proposes the following amendments to the Central Goods and Services Tax Act, 2017 (GST Act):

01

Provisions pertaining to Input Service Distributor (ISD):

- ▶ Clause (61) of Section 2 of the GST Act to be substituted to provide that an ISD means an office of supplier of goods or services or both which receives tax invoice of input service 'for or on behalf of' distinct person. Such office shall distribute input tax credit in respect of the invoice so received in terms of Section 20 of the GST Act.
- ▶ Section 20 to be substituted. Clause (1) of Section 20 to provide that an office which receives a tax invoice in respect of input services, including services attracting tax under reverse charge mechanism, 'for or on behalf of' other distinct persons (i.e., other GST registered establishments within the same company/entity) shall be required to be registered as an ISD.

- ▶ Clause (2) of Section 20 provides that ISD shall distribute credit of central and or integrated tax, including tax payable under reverse charge mechanism, when paid by a distinct person registered in the same state, in such manner and within such time and subject to such restrictions and conditions as may be prescribed.

- ▶ Clause (3) of Section 20 provides that the credit is to be distributed by way of issuance of a document containing the amount of credit, in \ manner as prescribed.

Comments

The proposed amendments have been made in light of the decision taken by the GST Council in its 50th Meeting held on 11 July 2023.

GST law deems various GST registered branches of the same legal entity as different taxpayers/ 'taxable persons' who are supposed to raise invoice and charge GST on goods/services supplied to each other despite being within the same legal entity (commonly referred to as 'cross-charge'). Parallely, the ISD concept has also been there under GST law wherein input GST credit for common input side goods and services are supposed to be distributed in a prescribed manner and quantum to various GST registered branches of the same legal entity. GST authorities have frequently raised disputes against taxpayers on the issue as to whether the ISD mechanism was to be mandatorily adopted or whether the taxpayers could opt for a simple cross-charge mechanism.

During the 50th Meeting, the GST Council had taken note of the report of the law committee which highlighted that currently it is not mandatory to follow ISD mechanism, in as much as, head office of a company which procures a service from a third party, partly for itself and partly for its branch office or entirely for consumption by its branch office, can pass on the input GST credit taken on such service by issuance of a tax invoice to its branch office under the cross charge route. Accordingly, the Central Board of Indirect Taxes and Customs vide its Circular No. 199/2023-GST, dated 17 July 2023 clarified that mechanism of ISD is not mandatory. However, the Law Committee proposed to the GST Council that going forward ISD mechanism shall be made compulsory and input services received from third party and attracting tax under reverse charge mechanism shall also be brought within the ambit of ISD. The proposals of the Law Committee had been accepted by the GST Council.

It appears that the proposed amendments seek to implement the said decision taken by the GST Council. However, whether these amendments lead to a scenario where taxpayers have no option but to opt for the ISD mechanism, remains to be seen - especially in cases where services are first received by one distinct person and thereafter, are provided to another distinct person on an agreement basis. The interpretation accorded to the phrase "for or on behalf of distinct persons" by the GST authorities as well as the judiciary will be determinative in this regard.

Further, while as per the proposed amendment an ISD registration can receive invoices for services under reverse charge mechanism too (for example legal services), however, the payment for such services is to be made by a distinct person (i.e., another GST registered office/branch) registered in the same state as that of ISD. The manner of payment and distribution would be specified under CGST Rules through relevant amendments.

[Clause 11 and 12 of the Finance Bill]



02

Penalty on account of failure to register certain machines:

- ▶ The Finance Bill has proposed to insert Section 122A which provides for penalty on account of failure to register certain machines used for manufacturing goods as per a special procedure.

Comments

The proposed amendment has been introduced in light of decision of the GST Council taken in its 50th Meeting held on 11 July 2023, wherein, the Council had recommended for compulsory registration of machines used in manufacture of pan masala, gutka, etc. in order to plug existing leakages of tax in this sector.

[Clauses 13 of the Finance Bill]



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