

UPDATE

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GST implication on vouchers, coupons and codes and the continuous legal battle

A. *Setting the context*

With more and more e-commerce companies trying to gain dominance, vouchers, promo codes and coupons have become spotlight of marketing campaigns.

The GST treatment of the transactions associated with vouchers, codes and coupons is dependent upon the specific characteristics of the vouchers, codes and coupons. It is therefore necessary to distinguish between various types of vouchers, codes and coupons and the distinction needs to be made out in the light of the definition of "voucher" as given in the GST law and also the guidelines given in the RBI's Master Direction on Prepaid Payment Instruments ("**PPIs**").

The GST law defines "voucher" to mean an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument. Further, the time of supply of underlying goods or services against such voucher triggering payment of GST has been linked either with the issuance or the redemption of the voucher depending upon whether the supply of goods or services is identifiable on the date of issuance of voucher.

This explicit mention in the law has given some clarity to the extent of the tax treatment of the underlying goods or services. But this remains a question whether voucher independently can be taxed in addition to the underlying goods or services especially considering the definitions of goods and services which do not find exclusion of "voucher" per se, thereby, lead us again to the epic battle interpreting vouchers as goods or services.

This update attempts to discuss various types of vouchers, codes and coupons and their independent tax treatment when they themselves are bought and sold in the open market freely in addition to the underlying goods or services. For discussion purpose, this Nota Bene divides vouchers, codes and coupons, whether physical or electronic, in the following three categories:

- an instrument entitling a person to obtain supply of underlying goods or services, say, a gift voucher entitling you to buy merchandise upto a certain price only from the issuer entity or recharge vouchers of mobile phone communication, DTH broadcasts enabling you to avail particular service only from the issuer entity and not permitting any cash withdrawal ("**Supply Vouchers type 1**");
- an instrument entitling a person to obtain supply of underlying goods or services, say, a voucher entitling you to buy merchandise or avail services upto a certain price from a group of identified entities and not permitting any cash withdrawal ("**Supply Vouchers type 2**");

- an instrument entitling a person to a discount or reduction in the consideration for the provision of goods or services, say, discount vouchers and codes entitling you to get percentage/absolute discount on purchase of merchandise or availment of services from one or more identified entities ("**Discount Vouchers**");

B. *Position under GST laws*

Before proceeding to discuss the GST implications on these vouchers, codes and coupons, let us also look at the RBI guidelines on PPIs.

Supply Vouchers type 1 are classified as Closed System PPIs. These vouchers do not require approval or authorization from the RBI and therefore, are not regulated or supervised by the RBI. Supply Vouchers type 2 are classified as Semi-closed System PPIs/Small PPIs and require approval/authorization from the RBI. The PPIs may be issued as vouchers, cards, wallets, and any such form / instrument which can be used to access the PPI and to use the amount therein which may or may not be reloadable. Further, Discount Vouchers are not recognized as PPIs.

Now proceeding to discuss the GST implications, notably, definitions of both goods as well as services exclude 'money' which in turn is defined under law to mean *inter alia* any other instrument recognized by the RBI when used as a consideration to settle an obligation.

Closed System PPIs are not money as they are not recognized by the RBI. Therefore, in the absence of exclusion, Closed System PPIs would be classified as goods if otherwise covered by the definition of goods. The term "goods" is defined under the law to mean every kind of movable property. Herein, it may seem that this controversy had already been settled by the Hon'ble Supreme Court way back in 2011 in the case of Idea Mobile Communication Ltd [2011 (23) S.T.R. 433 (S.C.) - 2011-TIOL-71-SC-ST] wherein the court held that dominant position of the SIM card transaction is to provide telecommunication services and not to sell the SIM Cards. If we apply the dominant intention test, gift vouchers and recharge vouchers under Supply Vouchers type I would be taxed only as underlying goods or services and not separately.

Here, we may also refer to the recent AAAR in the case of Kalyan Jewellers India Ltd [2021-VIL-20-AAAR - 2021-TIOL-12-AAAR-GST], wherein the Tamil Nadu AAAR held that voucher is only an instrument of consideration and not goods or services, the same is not classifiable separately but only the supply associated with the voucher is classifiable according to the nature of the goods or services supplied in exchange of the voucher earlier issued to the customer.

Given this position, taxation of margin earned during the intermediate transactions as distribution/promotion services of underlying goods or services would be another thrust area for the department.

In another landmark decision in the case of Sodexo SVC India Private Ltd [2015-VIL-137-SC - 2015-TIOL-293-SC-MISC], the Supreme Court held that Sodexo Meal Vouchers are not goods. The court rendered this decision noting that those vouchers were printed for a particular customer, which were used by the said customer for distribution to its employees and those vouchers were not transferrable at all. Further, the court also noted that these were PPIs recognized by RBI wherein the money is always kept in escrow account.

Now coming to the case of Closed System PPIs, these vouchers are generally transferrable and also not recognized by the RBI. Therefore, the instant case of gift vouchers, operating under Closed System PPIs, can be distinguished from Sodexo case (*supra*) and said to be covered within the ambit of goods independent of the underlying supply of goods or services. In such a case, each transfer of these voucher would make them liable for GST.

In case of case of Supply Vouchers type 2 falling under the category of Semi-closed System PPIs/Small PPIs, one may attempt to classify them as money since they are recognized by the RBI and therefore, not to be considered as goods or services.

However, recently, the Karnataka AAAR in the case of M/S Premier Sales Promotion Pvt Ltd [2021-VIL-74-AAAR - 2021-TIOL-37-AAAR-GST], held that these types of vouchers take on the colour of money only when they are redeemed by the beneficiary at the time of purchase of goods or services. Until then it is just an instrument recognized by the RBI but is not 'money'. The appellate authority further distinguished the instant case from the Sodexo case (supra) and held that the vouchers qualify to be considered as movable property and consequentially as 'goods'. If one follows the ratio of this decision, each transfer of these voucher would make them liable for GST.

Let us now move on to discuss the last case of discount vouchers. In this case, one possible view is that any discount extended at the time of supply of goods or services on presentation of voucher shall not be includible in transaction value of goods or services if the same is recorded as discount in the invoice as per the GST law. However, as per another view, the amount paid by the issuer of discount voucher to the merchant entity can be considered as third-party consideration for future supply of goods or services to the voucher holder and hence, liable for GST. Moreover, where the discount vouchers are of absolute value, they may be equated with Supply Vouchers type 2 as there is an obligation to accept them as part consideration. Even for discount vouchers and promo codes, the taxability of intermediate transactions is a grey area and any margin earned could be taxed as distribution/promotion services of underlying goods or services.

Moreover, where the intermediaries are not paying any GST on the voucher value or the margin amount earned on a note that the tax has already been paid upon issuance or would be paid upon redemption of vouchers, the issue of reversal of ITC on exempt supply might arise for them.

C. Conclusion:

The taxation of vouchers, codes and coupons is an evolving law and still far from settling down. Most industry players are not treating vouchers per se as goods or services and are paying GST basis ultimate supply against which such vouchers are used but the ruling in the case of Premier Sales Promotion has held vouchers to be goods. This ruling is set to result in scrutiny by the tax department in the coming months as there are already divergent views over the issue.

This Update has been prepared by Rajarshi Dasgupta who can be reached at rajarshi.dasgupta@aquilaw.com. This Update is only for informational purposes and is not intended for solicitation of any work. Nothing in this Update constitutes legal advice and should not be acted upon in any circumstance.