L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

GST Update No. 15 of 2019
8th March, 2019

- **Sales promotion schemes – Clarification on treatment under GST**

Sales promotion schemes – Clarification on treatment under GST

- CBIC has issued **Circular No. 92/11/2019-GST** dated 7.3.2019 to clarify treatment of free samples and gifts, buy one get one offer, discounts including volume discounts and secondary discounts offered under GST.

Free samples and gifts - Clarification

- Samples supplied free of cost, without any consideration, do not qualify as "supply" under CGST Act, except where the activity is covered under Schedule I.
- Input Tax Credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed.
- Where such distribution is covered within the scope of "supply" (under Schedule I), the supplier would be eligible to avail ITC.

Sales promotion schemes – Clarification on treatment under GST

Buy one get one free offer

- In such cases, there is no individual supply of free goods but a supply of two goods for the price of one.
- Taxability of such supply is to be determined based on whether the same is in the nature of composite supply or mixed supply *[L&S Comment: This will involve determination of whether the free supply is naturally bundled in the ordinary course of business.]*
- ITC will be available to the supplier for the inputs, input services and capital goods used in relation to goods or services or both supplied as part of such offers.

Sales promotion schemes – Clarification on treatment under GST

Discounts including 'Buy more, save more' offers

- Staggered discounts under buy more - save more and volume discounts shall be excluded to determine the value of supply. Conditions under Section 15(3) of the CGST Act (linkage with invoices and reversal of ITC by the recipient) to be satisfied.
- Supplier shall be entitled to avail ITC on inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

Sales promotion schemes – Clarification on treatment under GST

Secondary Discounts

- Secondary discounts (not known at the time of supply or offered after completion of supply) shall not be excluded while determining the value of supply as such discounts are not known at the time of supply.
- Financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of Section 15 of CGST Act are not satisfied.
- No impact on availability or otherwise of ITC in the hands of supplier in this case due to issuance of commercial credit notes.

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