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Union Budget 2024

Proposals under Indirect Taxes (With Detailed Impact Analysis)

Indirect Tax Proposals in Budget 2024:

- ✓ Input Service Distributor (ISD) Mechanism to be made mandatory
- ✓ Insertion of new penalty provision for manufacturers of tobacco products

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Union Budget 2024

Proposals under Indirect Taxes

(To be effective from the date as the Central Government may, by notification in the Official Gazette, appoint)

1. Input Service Distributor (ISD) Mechanism to be made mandatory

- The proposals in Budget 2024 provide for changes in ISD mechanism under GST in two places in the GST law.
- Firstly, the definition of Input Service Distributor under Section 2(61) has been substituted as a result of which the scope has been expanded to include offices that receive tax invoices for input services for or on behalf of persons having same PAN, including those services liable to tax under Reverse Charge Mechanisms specified in sections 9(3) and 9(4) of CGST Act. The proposed substituted definition is extracted hereunder:
‘(61) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20;’
- The second amendment pertains to Section 20 which now makes it mandatory for an office which receives tax invoice for input services for and on behalf of other persons having same PAN to register as ISD and distribute credit.

HNA Comments:

1. *This proposed change in the law regarding ISD is being made in consequence to the recommendation made in the 52nd GST Council Meeting. Accordingly, this proposed amendment would make distribution of credits on input service invoices received by the Head Office mandatory by way of ISD mechanism. Currently, the ISD mechanism is optional. Thus, once the said amendments are made effective, the option for cross charging for input services invoiced from third parties would no longer be available.*
2. *Further, the present proposal made is only to the Central GST with respect to distribution of CGST and IGST. Each respective State should also make such amendments in their respective State GST Act for distribution of SGST credit to ensure uniform law.*
3. *However, cross charging for internally generated services would continue. Accordingly, point 1 of Circular No. 199/11/2023-GST dated 17th July, 2023 which provided option of either cross charge or ISD mechanism ceases to have effect.*
4. *Further, based on the proposal it could be inferred that where invoices are received by the ISD on which RCM is applicable, the ISD may be required to discharge GST on RCM and raise a self-invoice where necessary. However, currently, GSTR-6 (the return to be filed by the ISD for*

distribution of credits) does not have a specific table for discharge of liability. The said return needs to be amended to ensure ISD are made eligible to discharge RCM liability. Once such liability is paid, then credit of such RCM paid would then require distribution to other branches/persons having same PAN by way of ISD invoice.

5. *Government has to provide clarity on the same prior to notifying the said provision.*

Impact on Trade & Industry:

The industry would need to conduct a thorough review of their business processes to ensure preparedness for adopting the Input Service Distributor mechanism and in order to be prepared to obtain ISD registration once the provisions are made effective. Further, cross charge would apply instead of ISD only in the case of services provided by one office to another being distinct persons i.e., having separate GST registrations under a common PAN (internally generated services) and not for services received from third parties.'

Further, where RCM credit needs to be distributed, it is to be ensured that the ISD receives the invoice from the supplier with GSTIN of the ISD. Also, since the ISD would be required to discharge RCM in cash, necessary working capital needs to be considered for the ISD registration.

2. Insertion of new penalty provision

- A special procedure for manufacturers of tobacco products was notified in Notification 04/2024-CT dated 05-01-2024 which is made with effect from 1st April 2024. In this regard, a new section is proposed to be included for imposing penalty on contravention of such notified special procedure.
- The new section proposes to impose imposes penalty of Rs. 1,00,000 per machine (packing machines used for filling and packing of packages) which are not registered as per the special procedure.
- In addition to this penalty, such machines would also be liable for seizure and confiscation, subject to the condition that the imposed penalty is paid and the said machine gets registered within 3 days from the communication of the order of penalty.

HNA Comments:

1. *The proposal of such a penalty is an indication from the Government that they want to regularize the quantity of tobacco products in the market and thus stop the illegal production of such products. Post the 50th Council meeting in July 2023, Notification 30/2023-CT w.e.f. 31st July 2023 was issued to notify a set of special procedures for the manufactures of specified tobacco products, along with certain other compliances in the form of submission of details of packing & filling machines and special monthly returns. (The list of specific tobacco products has been provided in Annexure A).*

2. *Recently the said Notification No. 30/2023-CT was rescinded vide Notification 03/2024-CT dated 5th January 2024 with effect from 1st January 2024. Further, Notification 04/2024-CT dated 5th January 2024 was issued to provide for streamlined procedures wherein certain disclosures were consolidated and the number of forms were reduced. This new procedure is made effective from 1st April 2024. Thus, there seems to be a gap of three months (1st Jan 2024 to 31st March 2024) allowed for the manufacturers to prepare for the implementation of these new procedures. However, there was no specific penal provision provided in the law in case of non-compliance.*
3. *The imposition of penalty vide Budget 2024 has been proposed to ensure strict compliance of these procedure from new financial year onwards subject to the notification issued by the Central Government to notify the effective appointed date and also amendments by the State Government in their respective GST Acts.*
4. *It may be noted that the penalty of Rs. 1,00,000 per unregistered machine proposed under Section 122A would be in addition to any other penalties leviable as per other provisions (such as Section 122 or demand sections u/s 73 or 74). For instance, where the details of packing machines in Form SRM-I, as specified in Notification 4/2023-CT is not furnished, penalty of Rs. 10,000 or amount equal to tax evaded can be leviable as per Section 122(1)(vii). This would be in addition to the penalty of Rs. 1,00,000/- per unregistered machine.*
5. *It may be noted that the proposal provides that the penalty u/s 122A is in addition to penalty under Chapter XV – Demand & Recovery. However, it is in contradiction to section 75(13) of the Act which circumvents the duplication of penal proceedings under any other section once the penalty is levied under chapter XV.*
6. *On a harmonious construction, the following can be inferred, penalty under section 122A is only for non-registration and other contraventions if any like short payment/non-payment or levy of tax, the penalty under chapter XV may be levied. However, clarity on the same from the Government would be welcome.*

Impact on Trade & Industry:

The special procedure notified in Notification 04/2024-CT provides additional compliance burden to the manufacturers of tobacco products (similar to compliance existed in the pre-GST regime). These procedures need to be followed the said manufacturers from FY 2024-25. The proposed penal provisions

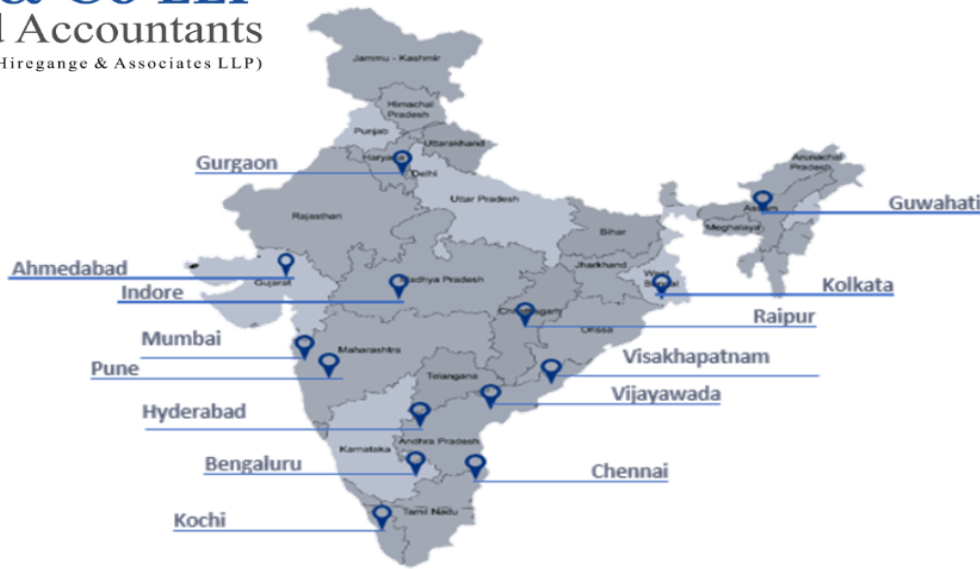
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Annexure – A

List of Goods for which Details of machinery, inputs and Special Monthly Statement is applicable

Sl. No	Chapter/Heading/Sub-heading/Tariff item	Description of Goods
(1)	(2)	(3)
1.	2 106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube) - bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube) -bearing a brand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
6.	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	"Homogenised" or '-reconstituted " tobacco, bearing a brand name
12.	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff
19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco ·Gutkha
23.	2403 99 90	All goods. other than pan masala containing tobacco 'gmkha', bearing a brand name
24.	2403 99 90	All goods, other than panmasala containing tobacco 'gutkha', not bearing a brand name



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