



INDORE BRANCH OF CIRC OF ICAI

# NEWSLETTER

July, 2023 ▶ Price ₹ 20



**CELEBRATION OF 75<sup>th</sup>  
CHARTERED ACCOUNTANTS DAY**

**HAPPY CA DAY**



## CHAIRMAN'S COMMUNIQUE

### Dear esteemed members

I congratulate you all on the 75th Anniversary of establishment of The Institute of Chartered Accountants of India (ICAI). The new Chartered Accountancy (CA) syllabus will launch on July 1st 2023 which has formulated the new Scheme of Education and Training in lines with International Education Standards and National Education Policy, 2020 (NEP).

The most appropriate day to introduce the syllabus would be July 1, 2023, when the ICAI celebrates its 75th anniversary. With the proper objections and ideas from the public and other stakeholders, the scheme has been changed. The ICAI has notified the same through the gazette publication. The new amendment has fixed a minimum stipend of Rs. 15,000 for the industrial training. Also, the article assistants are eligible for a 12 days leave per year in the training period.

In today's era of rapid technological advancements and disruptive innovations, the role of Chartered Accountants has expanded beyond traditional financial reporting and compliance. We must embrace emerging technologies such as artificial intelligence, blockchain, data analytics, and automation to enhance our professional capabilities and offer value-added services to our clients.

ICAI Indore is committed to equipping its members with the necessary knowledge and skills to thrive in the digital era. Through various initiatives, including continuous professional development programs, webinars, conferences, and collaborations with leading industry players, we strive to ensure that our members are well-prepared to face the challenges and seize the opportunities presented by the digital transformation. The branch has organised Cybernetics Convention on 24th June to improve the Audit Quality, Best Usage of AI for our office, cyber security & data analytics under the aegis of Digital Accounting Assurance Board. In last month we had also conducted seminar on capital markets, Full day Seminar on Real Estate specially related to JDA Transactions and Mentorship Programme for Career Counsellors. International Yoga day was observed on 21st June 2023 wherein members and students took part in large numbers which shows awareness towards good health.

2 days CA Student National Conference organised by BOS (Operations) and hosted by Indore Branch & CICASA Indore themed as YUVA Young Upcoming and Versatile Auditors was held on 17-18 June was great success as more than 1200 students participated. Furthermore, we would be celebrating the CA week from 1st July to 8th July. Detailed schedule is mentioned in the newsletter. I encourage all of you to be part of the 75th anniversary celebration of ICAI and make the events successful.

I encourage all members of the CA community to actively engage with ICAI and take advantage of the resources and support available to them. Whether it's participating in technical events, contributing to knowledge-sharing platforms, or volunteering for various committees, your involvement will not only enhance your professional growth but also contribute to the collective advancement of the profession. Let us work together, harnessing our collective knowledge and expertise, to shape a brighter future for our profession and contribute to a prosperous nation.

*Yours truly,*

**CA Mausam Rath**

Chairman-Indore Branch of ICAI

## MANAGING COMMITTEE

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# EPFO ISSUES INSPECTION FOR ALL NEWLY REGISTERED ENTITIES UNDER THE ABRY SCHEME



CA. Pratik Bansal



The Employees' Provident Fund Organization (EPFO) plays a crucial role in safeguarding the interests of employees in India. Established by the Indian government, EPFO is responsible for managing the country's largest social security scheme, the Employees' Provident Fund (EPF), which provides retirement benefits to millions of workers.

Under the Atal Beemit Vyakti Kalyan Yojana (ABRY) Scheme, EPFO issues inspections to ensure compliance with the provisions outlined in the scheme. ABRY is a welfare measure initiated by EPFO in 2018 to provide financial assistance to workers who become unemployed due to retrenchment or closure of the establishment.

To ensure the effective implementation of the ABRY Scheme and prevent any misuse of its provisions, EPFO periodically issues inspections. These inspections aim to assess whether employers are adhering to the guidelines and regulations associated with the scheme.

During these inspections, EPFO officials examine the records and documents maintained by the establishments to verify the accuracy of the information provided by employers and employees.

- The process of inspection under the ABRY Scheme involves checking various aspects such as:
- The number of eligible employees,
- The amount of contribution made by the employer and employee as per salary sheet vis a vis, the contribution remitted to the EPFO.
- The duration of employment, and the disbursement of ABRY benefits to the employee.

EPFO inspectors also review the establishment's compliance with other labour laws, such as the Employees' State Insurance (ESI) Act, to ensure holistic adherence to regulations. In

case any of the employer has not passed on the benefit of EPF employee share under ABRY to the employee will face penal action of revocation of the benefit.

Inspections under the ABRY Scheme act as a deterrent for employers who may be inclined to exploit the system or deny rightful benefits to their employees. They help maintain transparency, accountability, and fairness in the implementation of the scheme. By conducting these inspections, EPFO aims to protect the interests of workers and provide a safety net during times of financial distress.

In conclusion, EPFO's issuance of inspections under the ABRY Scheme is a significant step in monitoring the proper implementation of this welfare measure. These inspections ensure that employers adhere to the guidelines, mitigating the risk of exploitation and ensuring that eligible workers receive the benefits they are entitled to. By safeguarding the interests of employees, EPFO continues to fulfill its role as a guardian of social security and welfare in India.



# CHAOS ON THE TAXABILITY OF VOUCHERS



CA. Shubham Jain



## 1. INTRODUCTION:

As digitalization has increased, there has been a rapid increase in the use of money vouchers and gift cards have also increased along with. Nowadays, gift cards, e-vouchers, cash back vouchers, etc., have become extremely popular as they offer flexibility of choice and convenience of purchase and usage to the buyer and receiver. This ever growing demand of money vouchers is satiated by companies who procure vouchers from their issuers and supply them to buyers. Money vouchers are redeemable against the supply of goods or services. The applicability of Goods and Service Tax (GST) liability upon these vouchers was a grey area. There is this belief that voucher, being a mode of payment, are neither goods nor services and therefore, there can be no levy of GST upon their supply. During pre-GST period also, there has been confusion on the concern of taxability of money vouchers under VAT/ Service Tax Law.

## 2. HOW DOES MONEY VOUCHER INDUSTRY WORK?

To brief about money voucher industry, the customer buys various things such as games, articles, products etc. through online site of companies for e.g., from Make my Trip, Flipkart etc.

The voucher company is involved in buying and selling of e-voucher/money vouchers of these games, articles, products etc through online platform. The company operates and runs a website through which e-vouchers is sold to customer. The main source of generation of business is through website. All the transaction has been carried out through digital channel and recording of all the transaction has been done in the database. This means mostly the company is dealing in one kind of product for various companies. All the vouchers

have been redeemed by the companies at their own portal under Closed Prepayment Instrument Model.

The process to purchase all the vouchers is very easy. The company receives all the money vouchers code from the issuer companies once the advance payment is made to the companies. Later, these vouchers can be purchased by the customer from the website by making the payment to the company. All the money vouchers describe by its value equivalent to money value for example money voucher of Rs. 100 and can be redeemed to wallet balance of the respective companies for the Rs 100 only. The main objective to issue these money vouchers is to facilitate and enable the customers to make the payment in easy and hassle-free modes. Since major of these companies are not operating in India. Majorly all these companies are registered in India as OIDAR and discharging their tax liabilities accordingly. The money voucher company only acts as an authorized seller of E-vouchers of the companies. When the customer decides to buy something through the wallet balance and want to recharge or load the wallet balance then the customer need to buy the money vouchers. After the customer completes the purchase on website, he is then handed over the copy of invoice (which is inclusive of GST). Thus, it is quite crystallised that the amount collected by the company from its customers is inclusive of GST. This is the instance when the GST is collected by the company. The liability is then thereby discharged to the kitty of the government through regular filing of GST Returns by respective companies. This clarifies that the GST is charged on the said transaction and there shall be no further scope for charging tax on the same transaction thereupon.



### 3. What are the provisions of GST w.r.t business model in case of money voucher industry?

Money Vouchers classified as Prepaid Payment Instruments (PPI)

These money vouchers are supposed to be classified as Prepaid Payment Instruments (PPIs) and not goods and services in accordance with the GST law. It is demonstrated below how money vouchers can be classified as PPI:

#### What do you mean by Prepaid Payment Instruments (PPI)?

In exercise of the power conferred under section 18 read with section 10(2) of the Payments and Settlement Systems Act, 2007 (PSS Acts), RBI has issued the master directions which states definitions and clarifications related to PPIs.

As per the master direction, “PPIs are instruments that facilitate purchase of goods and services, conduct of financial services, enable remittance facilities, etc., against the value stored therein”

PPI can only be used in Indian Rupees.

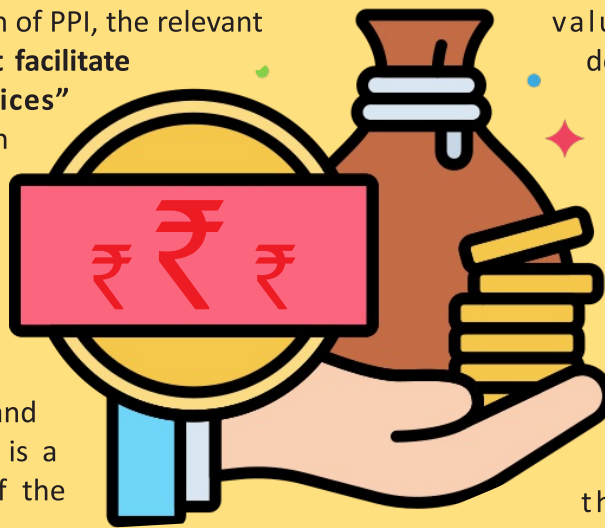
PPI can be in the form of mobile wallet, physical smart card, secure tokens, vouchers or any other method that allows access to prepaid funds.

PPI are further classified into 4 types.

CLASSIFICATION	DESCRIPTION
Closed System Payment Instruments	<ul style="list-style-type: none"><li>Generally issued by business establishments for use at their respective establishment only.</li><li>Do not permit cash withdrawal or redemption.</li><li>RBI approval is not required for issuing them.</li><li>Eg. Web portals for online shopping – Make my Trip, Flipkart, etc, run wallets for its customers.</li></ul>
Semi-closed System Payment Instruments	<ul style="list-style-type: none"><li>Redeemable at a group of clearly identified merchant locations/ establishments which contract specifically with the issuer to accept the payment instrument.</li><li>Do not permit cash withdrawal or redemption by the holder.</li></ul>
Semi-open System Payment Instruments	<ul style="list-style-type: none"><li>Used for purchase of goods and services at any card accepting merchant locations (Point of Sale terminals)</li><li>Do not permit cash withdrawal or redemption by the holder.</li></ul>
Open System Payment Instrument	<ul style="list-style-type: none"><li>Payment instruments which can be used for purchase of goods and services and also permit cash withdrawal at ATMs.</li></ul>

- Issuing PPI: Banks and Non Bank Finance Companies (NBFC) who comply with the eligibility criteria, would be permitted issue of prepaid payment instruments.
- Only Banks which have been permitted to provide Mobile Banking Transactions by the RBI shall be permitted to launch mobile based prepaid payment instruments ( mobile wallets and mobile accounts).
- Other entities would be permitted to issue only closed system prepaid payment instruments and semi closed system prepaid payment instruments.

In context to the above definition of PPI, the relevant part **“PPIs are instruments that facilitate purchase of goods and services”** should be analyzed deeply. In accordance with the same, since the companies are engaged in supplying money voucher to the customers which further facilitates purchase of service, as a result of this, money voucher shall be strictly classified as PPIs and not goods or service. The PPIs is a consideration for the supply of the underlying goods or services.



value; With reference to above definition of “money”, it must be highlighted that “or any other instrument recognized by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination”.

In accordance with the above, it is stated that PPIs are duly recognized by RBI and therefore they shall be covered under

definition of money. As a result of the above,

money vouchers shall be treated same money because money vouchers are classified as PPIs and PPIs are further covered under the definition of money.

The definition of goods and services both exclude money from their definition which further leads to the interpretation that money vouchers being covered under the definition of money shall be excluded from the definition of goods or services. Hence, money vouchers must not be treated as goods or services under GST Law.

### Levy of GST

As per Section 9(1): Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

### Sec 7-Scope of supply

**7.(1)** For the purposes of this Act, the expression “supply” includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;

Further, 'money voucher' by definition means that it is an instrument where there is an obligation to accept it as consideration or part consideration for the goods or services or both to be supplied. Therefore where the money voucher is defined as consideration for the goods or services to be supplied the same money voucher cannot be itself treated as “goods”.

### PPIs excluded from definition of Goods and services as defined in CGST Act. 2017

PPIs are excluded from definition of Goods and services.

As per section 2(52) of the CGST Act, 2017 “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

As per section 2(102) of the CGST Act, 2017 “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

As per section 2(75) of the CGST Act, 2017 “money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic

- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

- (a) activities or transactions specified in Schedule III; or
  - (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
- (3) Subject to the provisions of sub-sections (1) and (2), the Govt. may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as-

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

From above definition if we lay emphasis on the words “there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both.” Then, it can be concluded that there must be a supply of goods and services. But money vouchers are neither treated as goods nor as services by virtue of them being simply the payment instruments or consideration for the supply of goods or services at a future date and therefore, there is no chance that GST shall be levied on money vouchers.

### Who is the person responsible to levy and discharge GST under this business model?

Quoting the extracts of 51\_GST FlyerChapter 42 pdf issued by CBIC as follows:

#### WHAT IS OIDAR?

Online Information Database Access and Retrieval services (hereinafter referred to as OIDAR) is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services. E.g. downloading of an e-book online for a payment would amount to receipt of OIDAR services by the consumer

downloading the e-book and making payment. The IGST Act defines OIDAR to mean services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, –

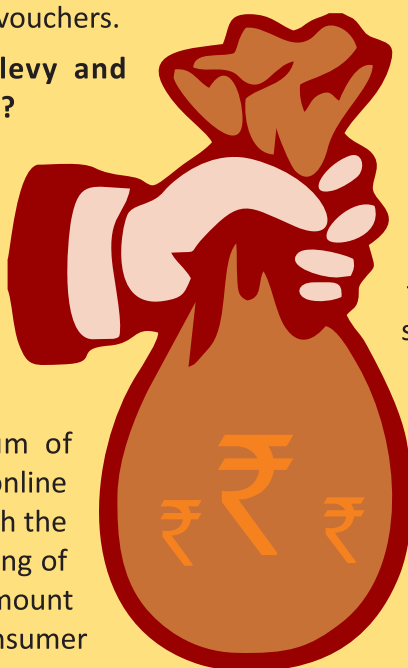
- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

#### WHO WILL BE RESPONSIBLE FOR PAYING THE TAX?

If the supplier is located outside India and the recipient in India is an individual consumer, in such cases the place of supply would be India and the transaction is amenable to levy of GST, but the problem would be, how such tax would be collected. It would be impractical to ask the individual in India to register and undertake the necessary compliances under GST for a

one of the purchases on the internet. For such cases the IGST Act provides that on supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.

Further, there is no mandation in law that intermediary i.e., the seller of money voucher on behalf of the online company to pay tax on such supply of services. Thus, in such circumstances, the onus to discharge the liability under GST shall be laid on the company selling





online as in this whole business model, the companies selling money vouchers merely act as the intermediary and do not involve in supplying anything directly to customers. Therefore, they shall not be made liable to levy GST and discharge the liability on the same.

### **HOW WOULD THE ENTITY LOCATED OUTSIDE INDIA COMPLY WITH THE RESPONSIBILITIES ENTRUSTED UNDER GST?**

The supplier of online information and database access or retrieval services (OIDAR) shall, for payment of Integrated tax, take a single registration under the Simplified Registration Scheme in Form GST REG-10. The supplier shall take registration at Principal Commissioner of Central Tax, Bengaluru West who has been the designated for grant registration in such cases. In case there is a person in the taxable territory (India) representing such overseas supplier in the taxable territory for any purpose, such person (representative in India) shall get registered and pay integrated tax on behalf of the supplier:

In case the overseas supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

### **RELEVANT CASE LAW**

**Sodexo SVC India Pvt. Ltd. v. State of Maharashtra & Others (2015) 16 SCC 479/AIR 2016 SC 413/(2016) 53 GST 293(SC)/2016 (331) ELT 23 (SC)**

#### **Summary of the case law**

Goods for levy of Octroi or Local Body Tax – Entry of Sodexo meal vouchers into the municipal limits of Mumbai-whether liable to LBT which is tax on entry of the “goods” for use, sale or consumption-meal vouchers issued to customers for definite value which are meant for distribution amongst their employees-employees visit the affiliated restaurants, departmental stores, shops etc which are affiliated-Vouchers are not “goods” and are not liable to Local Body Tax.

#### **Facts of case law**

Appellants were in the business of providing pre-printed paper meal vouchers to the customers with whom an agreement was entered into and who were

establishments with number of employees. The customers paid the price equivalent to the face value of the vouchers and also service charges at specified percentage. The vouchers known as “sodexo meal vouchers” were given over to the employees of such establishments who redeemed them with affiliated establishments such as restaurants, shops, departmental stores etc. for purchase of food, gifts etc. with whom the appellants had made arrangements. The said affiliates presented the vouchers to the appellants and were reimbursed with the cost thereof after recovery of service charges.

The said vouchers were circulated under the authorization by RBI to operate a payment system based on “paper based vouchers” under section 7 of the “Payment and Settlement Systems Act, 2007”. Appellants were also required to adhere to the Prepaid Issuance & operations of the Payment Instruments (Reserve Bank) Directives, 2009 and Consolidated Guidelines, 2014 there under.

The payment instruments introduced by this Act merely facilitates the purchase of goods and services up to the value mentioned on such instruments. The amount paid by the customers was strictly required to be kept in escrow account and used to reimburse the affiliates for sales effected by them against such vouchers. RBI as a regulator had strict control over operation of the scheme.

The appellants resisted the levy of LBT on the vouchers since according to them; the system of vouchers was introduced only for providing service. The High Court negated the contention on the ground that vouchers were “sold” to the establishments and then distributed to their employees who in turn purchased goods against such vouchers. In the opinion of the High Court, the vouchers were capable of being sold after entering the limits of Municipal Corporation. Therefore, they were “goods” within the meaning of sec. 2(25) of the Maharashtra Municipal Corporation Act (1949 Act) and hence, liable to LBT.

#### **View**

The Supreme Court considered the provisions and objectives of the “Payment and Settlement Systems Act, 2007” under which the vouchers were issued. The Court found that the system was introduced only to facilitate the provision of meals and other essentials to

the employees of the organizations and the activity was purely in the nature of service. The appellants were merely a facilitator or medium through which the service was provided to bridge the gap between customers and affiliates. The vouchers could not take the nature of goods. High Court had erred in treating the vouchers as goods.

The Court also examined the provisions of 1949 Act and observed that LBT is a tax on the “goods” which enter the municipal limits for the purpose of sale, use or consumption. If vouchers do not bear the character of “goods”, then no LBT can be levied thereon. Under Income Tax Act as well, the distribution of vouchers is considered as “perquisites” and therefore, they cannot be considered as “goods”.

### **Held**

“sodexo meal vouchers” are not “goods” and not liable to Local Body Tax. (CA No. 4385-4386 of 2015 dt. 9-12-2015)

### **In what manner levy of GST could lead to Double Taxation?**

As briefly explained in above para's, the companies involved in buying and selling of e-vouchers/money vouchers issued by issuer company. To easily explain the process, an example is quoted stage wise.

**Stage 1:** (Purchase of voucher by the company involved in selling money voucher)

Say we buy Rs.100 voucher from another company by making respective payment to the that company.

**Stage 2:** (Selling of vouchers to customer)

Now we sell this Rs. 100 voucher to customer where customer can redeem the voucher against the desired article which he wants to buy.

**Stage 3:** (Purchase of article by customer on redemption of voucher)

Once the purchase is made by the customer, he gets respective invoice in which GST is charged by the online company itself (as explained in above para's) where it clearly shows bifurcation of invoice as Taxable value Rs 84.75 and GST as Rs 15.25. Hence, GST is charged by online company directly to the customers who redeems the voucher/ or in simple words, GST is charged in stage 3. Now, if we charge GST in Stage 2 i.e., while selling of vouchers to customer this will lead to

double taxation as in every case GST is levied in Stage 3 also i.e., when customer downloads the game as ultimately gaming company is selling its vouchers to customer. Further, if we charge GST at stage 2 i.e., while selling vouchers to the customer it will lead to cascading effect i.e., double taxation of same transaction.

It must be learned that the Goods and Service Tax (GST) was implemented to bring the biggest reform in India's indirect tax structure i.e., abolishing the cascading effect. Accordingly, it shall be noted that if the GST will be levied on the money vouchers as well then, there will be a cascading burden of 'tax on tax'.

Double taxation frustrates the goal of tax neutrality. Levying of GST twice on the same transaction only shows the insatiable greed to collect taxes. It must be analyzed that how many times the government should collect taxes and the moot question is that whether the businesses only exist for paying the taxes. One of the primary function of Goods and services Tax Act, 2017 is to eliminate the cascading effect i.e., double taxation. If we again levy GST on selling of money voucher to customer, it would disregard the main purpose of GST.

Issuance gift cards/vouchers is governed and regulated by the Reserve Bank of India (RBI) vide Master Directions on Prepaid Payment Instruments in exercise of powers conferred on RBI under Section 18 read with Section 10(2) of the Payment and Settlement Systems Act, 2007. PPI's can be classified into three categories, i) closed, ii) semi closed and iii) open system of PPIs.

The ruling of Tamil Nadu AAAR in case of M/s Kalyan Jewellers India Ltd., held the such supply to be neither supply of goods, nor of services. It is also contrary to the widely accepted position both in the previous Service Tax / Value Added Tax (VAT) regime as well as the present GST regime.

Under the pre-GST era as well, gift cards / vouchers were taxed at the time of their redemption with the rate of tax being applied basis the goods/ services supplied against the voucher. It was a well-settled and largely undisputed position across States under the VAT/ service tax era.

We understand that this treatment is similar in overseas jurisdictions such as European Union, Australia, UK, Ireland, amongst others, where VAT / GST is applied only at the time of redemption of voucher. Hence, current

industry position is aligned to settled position in pre-GST era as well as international best practices.

### What the court has to say in this matter?

Following views/judgement of AAAR w.r.t gift card/ voucher and their treatment as money are important to be highlighted here:

- The term “Money” is defined under Section 2(75) of Central Goods and Services Tax Act, 2017 (CGST Act) as any instrument recognised by RBI when used as consideration to settle an obligation. Further, Section 2(118) 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. On a conjoint reading of the above, it can be said that gift vouchers (i.e., PPIs which are recognized as payment instrument by RBI) which carry with them an inherent obligation to be consideration for supply, is essentially “Money”.
- A plain reading of Section 12(4) and Section 13(4) of CGST Act also bring out the clear position that “money vouchers” are liable to be taxed only at the final stage of redemption. Rule 32 of Central Goods and Services Tax Rules, 2017 (CGST Rules) provides that value of a token, voucher, coupon or a stamp (other than postage stamp) which is redeemable against supply of goods/ services/ both shall be equal to the money value of goods/ services/ both redeemable against such token, voucher, coupon, or stamp. Therefore, GST law does recognise that the taxability of the money vouchers is triggered only at the time when there is an underlying supply against the voucher.
- Also, the nature/character (including the inherent monetary value) of voucher, being an instrument recognised and regulated by RBI, remains the same through the supply chain. It does not change from being a pre-paid instrument (i.e., money) in the hands of the issuer to being goods in the hands of the distributor.

### How conclusion of AAAR would result in double taxation?:

- The Ld. Karnataka AAAR has held in the case of Premier Sales Promotion Pvt Ltd. that buying and supplying of vouchers is liable to pay GST @ 18% on the premises that vouchers are goods in the hands of such supplier. While coming to the conclusion, it also



held that time of supply has to be determined as per Section 12(5) and 13(5) of CGST Act, i.e. where a periodical return has to be filed; time of supply will be the date on which such return is to be filed.

- However, the above ruling of AAAR Karnataka, had been quashed by Hon. High Court of Karnataka vide writ petition no 5569 of 2022 (T-RES) wherein the High Court ruled that the “Order dated Dec. 22, 2021 passed by the The Karnataka Authority for Advance Ruling and the order no. KAR/AAAR/11/2021-22 dated December 22, 2021 passed by the Appellate Authority affirming the order passed by the Advance Ruling Authority are quashed holding that voucher do not fall under the category of goods and services and they are exempted from levy of tax.”
- Basis the reading of definition of actionable claim under Section 2(1) of CGST Act read with S.3 of Transfer of Property Act, 1882, it could be said that vouchers are akin to actionable claims, which are in nature of payment instruments.
- In terms of Section 7 read with Schedule III of CGST Act, any activity or transaction in actionable claims (other than lottery, betting, and gambling) shall neither be treated as supply of goods nor services; Hence, vouchers (which are PPIs) are not goods or services, hence, not liable to GST.

### View of the author:

In summary, money vouchers are certainly not “goods” that are liable to GST, per se. If money vouchers are taxed other than in the hands of the actual supplier of goods/ services and at their redemption, the same shall be contrary to express provisions of the Act and result in an anomalous situation of dual taxation. This will in turn completely wear away the contention of 'One Nation, One Tax'.





CA. Shubham Jain

# CHARITABLE TRUST IN INDIA

## INTRODUCTION

A charitable trust is a trust that is created for the purpose of benefiting a charitable organization or purpose. Charitable trusts are subject to a different set of tax rules than other types of trusts.

Charitable trusts are generally exempt from income tax. This means that the trust does not pay taxes on the income it generates subject to conditions. However, the trust must still file a tax return each year to report its income and expenses and even carry out audit for gaining the benefit of section 11 and 12 of the Income-tax Act, 1961 ("the Act").

Main source of income of any charitable and religious trust is donation received from various donors. It may be in the form of cash or kind. Donation can be received with specific instruction to form it as part of corpus of the trust. It can be received for any specific work such as construction or renovation of building or premises, celebration of any festival or occasion etc. It can be received from individual or from any other trusts. Taxability of donation depends on nature and type of donation received.

Taxability of various type of donation is discussed hereunder in detail.

## VOLUNTARY CONTRIBUTION

Section 2(24)(iia) and section 11(1)(d) uses the term "contribution" and not the term "donation". There is difference between the term "contribution" and "donation". For the "donation", the donor receives nothing from the trust in return to the amount or gift donated by him. But for the "contribution", the donor may receive something in return to the contribution. The "contribution" may be either voluntary or under any legal obligation, but the "donation" can only be "voluntary".

In the Income Tax Act, the term "contribution" is qualified by the term "voluntary", which directs that voluntary contribution will be deemed to be income otherwise such contribution will be capital receipt.

The donation received without specific instruction to form it as part of corpus can be considered as voluntary contribution. Such voluntary contribution is taxable in the hands of the trust. The trust has to maintain separate record of such donation received with name and address and identity of the donor and issue separate receipt to each donor.

## CORPUS DONATION

The donation received by the trust with specific instruction in writing from the donor to form it as part of corpus can be termed as corpus donation.

Section 11(1) (d) exempts corpus donations received by the trust. But as per the amendment made in section 11(1)(d) vide Finance Act, 2021, the amount of corpus donation will be taxable, unless it is invested in forms or modes specified in section 11(5) of the Act. Hence investment of corpus donation in forms or modes specified under section 11(5) of the Act is mandatory condition to claim it as exempt.

There is no binding requirement to keep separate bank account for each and every corpus donation. But the separate bank account shall be maintained in a manner that all corpus donation received from different donors shall be deposited in such bank account, so that such corpus fund can be distinguished from general fund of the trust.

### **Amount accumulated or set apart as per the provisions of section 11(2) of the Act:**

That, if a charitable trust has opted the option to accumulate or set apart voluntary donation of the trust as per the provisions of section 11 (2) of the Act, then, the assessee has to maintain the details of such donation and report the same to the department through ITR Form 7 and even the accumulated funds has to be kept in the specified modes as per the section 11(5) of the Act.

That, such funds has to be utilized within the time as mentioned in the prescribed form i.e. Form 10, in case of failure to do so, the same will lead to taxation in the hands of trust.

### **Unspent amount as per the provisions of section 11(1) of the Act:**

That, if a charitable trust due to the reason the funds could not be utilized for the reason that the whole or any part of the income has not been received during that year or any other reason, the trust may make application in Form 9A before the Ld. AO at least two months prior to the due specified for filing of return of income.

That, the trust has to maintain separate details for such fund because as soon as the trust is in receipt of any of such funds, the trust has to utilize such funds for the object of the trust, otherwise it will lead to taxation in the hands of the assessee.

Once such receipt is considered as deemed application in the hands of the trust, the actual expenditure incurred at the time of actual receipt of such funds would not be considered as application of income.

### **Application of corpus donation between trusts**

As per the provisions of section 11(1)(d), any amount spent by the trust out of corpus donation cannot be treated as application of income. The amount of corpus donation has to be used for the purpose for which it is received. The amount of corpus donation should be invested in the forms or modes specified under section 11(5) of the Act within five years from the end of the previous year in which such application is made from corpus. It will be treated as application of income only when it is deposited back to corpus. However, if the deduction for application of income out of corpus donation has been claimed before 1 April, 2021, it cannot be claimed as application of income again when it is deposited back to corpus. Moreover, at the time of depositing back the amount to the corpus, it will be allowed as application of income, only if following conditions are satisfied for its application for charitable or religious purpose:

- (1) Such application should not be in the form of corpus donation to another trust
- (2) TDS, if applicable, should be deducted on such application.
- (3) Application whereby payment or aggregate of payments made to a person in a day exceeds Rs. 10,000/- in other than specified modes (such as cash) is not allowed.
- (4) Carry forward and set off of excess application is not allowed;
- (5) Application is allowed in the year in which it is actually paid;
- (6) Application should not directly or indirectly benefit any person referred to in sub-section (1) of section 13 of the Act and the income of the trust or institution should not enure any benefit to such person;
- (7) Application should be in India except with the approval of the Board in accordance with the provisions of clause (c) of sub-section (1) of section 11 of the Act

These conditions are applicable to the trusts or

institutions approved under section 10(23C) as well as trusts or institutions registered under section 12AA/12AB of the Act.

Sometimes one trust gives donation to another trust with or without condition to form part of corpus of donee trust. If the amount of donation given to another trust to form it as part of corpus of donee trust, such donation cannot be treated as application of income of donor trust.

If such donation is given to another trust without condition to form part of corpus of donee trust, it will be treated as application of income. However, as per the amendment made vide Finance Bill 2023, such donation will be treated as application of income only up to 85% of amount credited or paid. For example, if A trust has given donation (without condition to form part of corpus) to B trust for Rs.100000/-, A trust can treat only Rs.85000/- as application of income.

### Cash Donation

Many trusts receive remarkable amount of donation in cash from the donors. It can be received for specific event or occasion or for various event from single donor. Section 269ST, which restricts cash receipt in a day or for any single transaction from any person more than Rs.2 Lakh is applicable to trust also. Hence any trust cannot receive more than Rs.2 Lakh as cash donation from any single person for any single event or occasion. This requirement is applicable to religious trusts also. Further, section 269ST is applicable to voluntary contribution as well as corpus donation also. Hence corpus donation received from single donor in cash should not exceed more than Rs.2 Lakh.

If the trust contravenes provisions of section 269ST, penalty under section 271DA for the amount equal to the amount of such receipt may be imposed.

Also, donation given to charitable trust or institution registered under section 80G cannot be claimed as exempt by the donee, if the amount of donation more than Rs.2000/- is given in cash.

### Anonymous donation

If identity of donor indicating name and address of donor is not maintained, it is considered as anonymous donation. Section 115BBC defines anonymous donation as "any voluntary contribution referred to in sub-clause (iia) of clause (24) of section



2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed."

The donation received in cash cannot be termed as anonymous donation, if identity of the donor is available and can be disclosed. But it is necessary for the trust to maintain detailed record of the donation received in cash with name and address of the donor with identity of the donor.

If the trust is established wholly for charitable purpose and receives anonymous donation, it is taxable. But if the trust is wholly for religious purpose or wholly for charitable and religious purpose, such anonymous donation is not taxable. If the trust is created partly for charitable or religious purposes, provisions of section 115BBC are not applicable, except for any anonymous donation made with a specific direction that such donation is for education or medical institutions run by such trust or institution.

As per section 115BBC, such anonymous donation received is taxable at aggregate of

- (i) 30% on the aggregate of anonymous donation received in excess of the higher of the following namely:
  - (A) 5% of the total donation received by the assessee; or
  - (B) Rs.1,00,000/- and
- (ii) the amount of income tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) above.

### Conclusion:

Major amendments have been made in the recent past in provision of section 11 and 12 and corresponding changes and amendment have also been made in the ITR Form 7, so that the department could get all the relevant information so as to assess the correct and true income of trust. This has made very important for the trust to maintain all type of funds and even ensure that assets could be allocated against such funds, so that the any utilization of funds can be justified and explained to the department at the time of assessment proceedings.





CA. Oshin Bansal

**Introduction:** The European Commission has adopted a sustainable finance package that includes the Corporate Sustainability Reporting Directive (CSRD). This directive expands reporting requirements compared to the Non-Financial Reporting Directive (NFRD), affecting approximately 50,000 companies in the EU from 2023 onwards.

ESG, short for Environmental, Social, and Governance, encompasses the non-financial risks and opportunities inherent in a company's operations. It has gained prominence due to global challenges such as climate change, inequality, and the need to balance economic and societal needs. Investors, regulators, consumers, and employees now expect companies to be responsible stewards of natural and social capital, making ESG considerations crucial for securing capital. ESG reporting and sustainability reporting have gained significant importance as businesses recognize the need for responsible and sustainable practices. This article aims to provide insights into the background, current scenario, and future prospects of ESG reporting and sustainability reporting.

ESG reporting involves three pillars: environmental, social, and governance. The environmental pillar covers emissions, resource use, water management, land use, and sustainability impacts. The social pillar focuses on employee management, product safety, supply chain practices, and accessibility for underprivileged groups. The governance pillar addresses shareholder rights, board diversity, executive compensation, and corporate behaviour.

Each industry has its own material ESG issues, which are financially material factors impacting a company's financial performance. In addition, socially material issues are gaining recognition as relevant considerations. Companies typically utilize reporting frameworks like the Global Reporting Initiative (GRI) and the Sustainable Accounting Standards Board (SASB) to guide their reporting processes.

**Current Scenario:** In today's business landscape, ESG reporting plays a vital role in corporate transparency and accountability. Investors, consumers, employees, and regulators increasingly demand transparent information regarding ESG performance. Companies



embracing ESG reporting benefit from increased investment attractiveness, consumer trust, and reduced reputational risks. Moreover, regulatory bodies and stock exchanges globally are introducing mandatory ESG reporting requirements, making it integral to corporate governance.

**Future Prospects:** The future prospects for ESG reporting and sustainability reporting are promising. As sustainable investing gains momentum, investors incorporate ESG factors into their decision-making processes. This trend is driving the demand for robust ESG reporting frameworks and standards. Technological advancements, such as big data analytics and blockchain, facilitate accurate and efficient ESG data collection and reporting.

Looking ahead, ESG reporting will likely evolve to include standardized metrics, comparability, and assurance. The harmonization of reporting frameworks like the Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB), and Task Force on Climate-related Financial Disclosures (TCFD) will enhance consistency and credibility. Furthermore, organizations must integrate ESG considerations into their risk management strategies and proactively address emerging ESG issues.

**ESG Report:** An ESG (Environmental, Social, and Governance) report provides stakeholders with a comprehensive overview of a company's sustainability performance. While the contents may vary based on the organization and industry, an ESG report typically includes the following elements:

#### 1. **Governance:**

Information about the company's governance structure, board composition, executive compensation, and ethical business practices.

#### 2. **Environmental Performance:**

Data and insights on the company's environmental impact, such as energy consumption, greenhouse gas emissions, waste management, and water usage.

#### 3. **Social Performance:** Details about the company's social initiatives, including employee diversity, labor practices, health and safety standards, community engagement, and social impact programs.

#### 4. **ESG Strategy and Policies:**

An explanation of the company's ESG strategy, policies, and frameworks in place to drive sustainable practices and manage ESG risks.

#### 5. **Certifications and Recognitions:**

Any certifications, awards, or industry recognitions received for the company's sustainability and ESG efforts.

#### 6. **Assurance and Verification:**

If applicable, information on external assurance or verification of the ESG report to enhance credibility.

#### 7. **Glossary and Definitions:**

A section that clarifies terms and abbreviations used throughout the report for better understanding.

It's important for ESG reports to be tailored to the specific needs of stakeholders and adhere to recognized reporting frameworks, such as the Global Reporting Initiative (GRI) or the Sustainability Accounting Standards Board (SASB) standards, to ensure consistency and comparability in reporting practices.

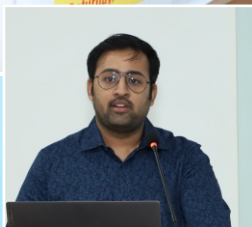
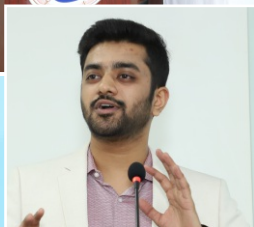
ESG reporting and sustainability reporting have become indispensable tools for organizations committed to responsible business practices. These reporting practices enhance transparency, accountability, and enable companies to align their operations with the growing demand for sustainability.

As the world moves towards a more sustainable future, ESG reporting will continue to evolve, guiding businesses towards resilience, social responsibility, and environmental consciousness.





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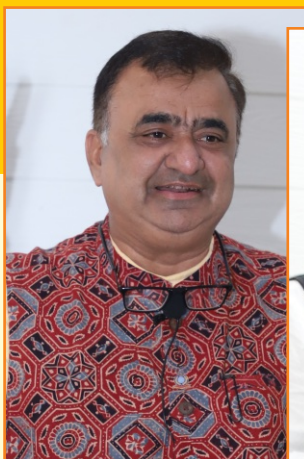


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## PROGRAM SCHEDULE

1st to 9th July, 2023

1<sup>ST</sup> JULY 2023

### CA DAY & DOCTORS DAY CELEBRATION

With Chief Guest- **Shri Pushyamitra Bhargav** (Mayor, Indore)

**HEALTH CHECK UP** 8:30AM **BLOOD DONATION CAMP** 8:30AM

**CA FLAG HOSTING** 10:00AM

2<sup>ND</sup> JULY 2023

**TREASURE HUNT** 8:30AM **CA PICNIC** at Goyal Resort 10:00AM

3<sup>RD</sup> JULY 2023

**TAX AND FINANCE LITERACY SEMINARS**

4<sup>TH</sup> JULY 2023

**FOOD DISTRIBUTION DRIVE - TOGETHER BEAT THE HUNGER**

5<sup>TH</sup> JULY 2023

**INDUSTRIAL VISIT**

6<sup>TH</sup> JULY 2023

**ARTICLESHP REFERESHER COURSE**

7<sup>TH</sup> JULY 2023

**BACK TO BASICS CLASSES**

8<sup>TH</sup> JULY 2023

**YOUNG MEMBERS CONCLAVE** At The Park Hotel

9<sup>TH</sup> JULY 2023

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