

GST AN UPDATE

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ISSUES IN INPUT TAX CREDIT

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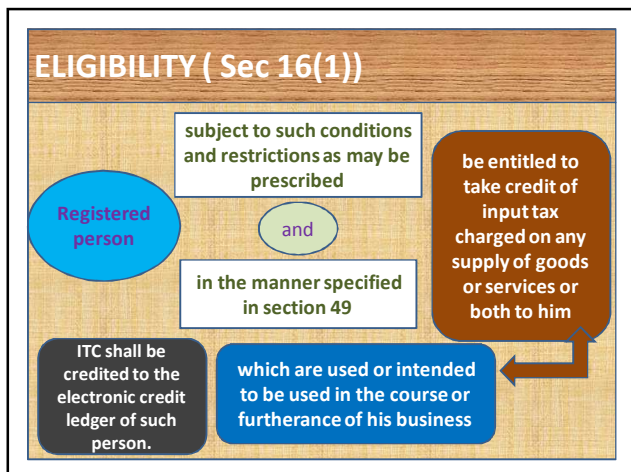
Definitions (Sec 2)

(63) "input tax credit" means the credit of input tax;

Definitions (Sec 2)

(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- (a) the IGST charged on import of goods;
 - (b) the tax payable u/s 9(3) and 9(4) of CGST Act;
 - (c) the tax payable u/s 5(3) and 5(4) of IGST Act;
 - (d) the tax payable u/s 9(3) and 9(4) of SGST Act; or
 - (e) the tax payable u/s 7(3) and 7(4) of UTGST Act,
- but does not include the tax paid under the composition levy;**



Sec 49(2)

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

- ### Documentary requirements for claiming ITC (Rule 36 (1))
- (a) an invoice issued u/s 31;
 - (b) an invoice u/s 31(3)(f), subject to the payment of tax;
 - (c) a debit note issued by a supplier in accordance with the provisions of section 34;
 - (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
 - (e) an ISD invoice ISD credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

- ### Conditions for claiming ITC (Rule 36(2) &(3))
- (2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORMGSTR-2 by such person.
 - (3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

Conditions for taking ITC (Sec 16(2))

- (a) he is in possession of a tax invoice or debit note, or such other tax paying documents as may be prescribed;
- (b) he has received the goods or services or both.
- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government; and
- (d) he has furnished the return under section 39:

Claim of ITC and provisional acceptance thereof (Sec 41)

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
- (2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

Conditions for taking ITC (Sec 16(2))

Explanation to Sec 16(2)(b)

For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;



Conditions for taking ITC (Sec 16(2))

1st Proviso to Sec 16(2)

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment

Qn:-

A purchase order was raised on 1st July for supply of a machinery which has various components, some of which are received on 30th July vide inv No.302 and the balance were received on 31st October vide inv. No.362. Discuss when the ITC in relation to Inv No. 302 and 362 can be taken.

Conditions for taking ITC (Sec 16(2))

2nd Proviso to Sec 16(2)

Where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.

Conditions for taking ITC (Sec 16(2))

3rd Proviso to Sec 16(2)

The recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Conditions for taking ITC (Sec 16(2))

Proviso to Rule 37(1)

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

No ITC if depreciation claimed on tax component(Sec 16(3))

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

Restrictions on taking ITC after the due date for september/annual return(Sec 16(4))

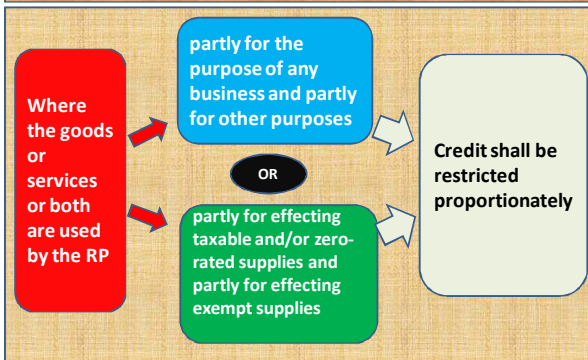
(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note - after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains, or -furnishing of the relevant annual return, whichever is earlier.

Restrictions on taking ITC after the due date for september/annual return(Sec 16(4))

Time limit not applicable in the case of Reavailing of credit (Rule 37(4))

The time limit specified in sub-section (4) of section 16 shall not apply to a claim for reavailing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

Apportionment of credit and blocked credits (Sec 17(1)&(2))



Meaning of Exempt Supply for sec-17(2) [Sec 17(3)]

The value of exempt supply shall be such as may be prescribed, and shall include

supplies on which the recipient is liable to pay tax on reverse charge basis	transactions in securities	sale of land	subject to clause (b) of paragraph 5 of Schedule II, sale of building.
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Option for Banking Company (Sec 17(4))

A banking company or a financial institution including a non-banking financial company

Shall have the option to avail of every month

an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse

The option once exercised shall not be withdrawn during the remaining part of the financial year.
The restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

Blocked Credits (Sec 17(5))

Notwithstanding anything contained in subsection (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

Blocked Credits(Sec 17(5))

(a) input tax credit shall not be available in respect of motor vehicles and other conveyances except when they are used

for making the following taxable supplies, namely:—
(A) further supply of such vehicles or conveyances; or
(B) transportation of passengers; or
(C) imparting training on driving, flying, navigating such vehicles or conveyances

OR

for transportation of goods

Blocked Credits(Sec 17(5))

(b) input tax credit shall not be available in respect of the following supply of goods or service or both

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery	(ii) membership of a club, health and fitness centre	(iii) rent-a-cab, life insurance and health insurance	(iv) travel benefits extended to employees on vacation such as leave or home travel concession
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Blocked Credits(Sec 17(5))

In the case of
 Sec 17(5)(b)(i) – Food & Beverages
 &
 Sec 17(5)(b)(iii) – rent a cab, life and health insurance

↓

Credit shall not be blocked where such inward supply of goods or services or both of a particular category is used by a RP for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply

Blocked Credits(Sec 17(5))

In the case of
 Sec 17(5)(b)(iii) – rent a cab, life and health insurance

↓

Credit shall not be blocked where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force

Blocked Credits(Sec 17(5))

(c) Input tax credit shall not be available in respect of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service

Blocked Credits(Sec 17(5))

(d) Input tax credit shall not be available in respect of goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property

Blocked Credits(Sec 17(5))

Explanation.—The expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes— (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

Blocked Credits(Sec 17(5))

input tax credit shall not be available in respect of the following supply of goods or service or both

(e) goods or services or both on which tax has been paid under section 10	(f) goods or services or both received by a non-resident taxable person except on goods imported by him	(g) goods or services or both used for personal consumption	(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;
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Blocked Credits(Sec 17(5))

(i) Input tax credit shall not be available in respect of any tax paid in accordance with the provisions of sections 74, 129 and 130

Availability of credit in special circumstances (Sec 18)

(1)(a). a person who has applied for registration within thirty days from the date on which he becomes liable to registration and has been granted such registration	(1)(a) shall be entitled to take credit of input tax	in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax
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Availability of credit in special circumstances (Sec 18)

<p>A person who takes registration under sub-section (3) of section 25</p>	<p>(1)(b) shall be entitled to take credit of input tax</p>	<p>in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration</p>
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Availability of credit in special circumstances (Sec 18)

<p>Where any registered person ceases to pay tax under section 10</p>	<p>(1)(C) he shall be entitled to take credit of input tax</p>	<p>in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:</p>
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Availability of credit in special circumstances (Sec 18)

<p>Where an exempt supply of goods or services or both by a RP becomes a taxable supply</p>	<p>(1)(d) he shall be entitled to take credit of input tax</p>	<p>in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:</p>
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Availability of credit in special circumstances (Sec 18)

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply

Availability of credit in special circumstances (Rule 40(a))

(a) the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

Manner of claiming credit in special circumstances (Rule 40)

(b) the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid

Manner of claiming credit in special circumstances (Rule 40)

(c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods—
 (i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18;

Manner of claiming credit in special circumstances (Rule 40)

(ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;
 (iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;

Manner of claiming credit in special circumstances (Rule 40)

(iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18

Manner of claiming credit in special circumstances (Rule 40)

(d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees

Availability of credit in special circumstances (Sec 18(3))

Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities

the said registered person shall be allowed to transfer the input tax credit

which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business

Availability of credit in special circumstances (Sec 18(4))

Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt,

he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption

Availability of credit in special circumstances (Sec 18(6))

In case of supply of capital goods or plant and machinery, on which input tax credit has been taken,

the registered person shall pay an amount equal to

an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed,
or

the tax on the transaction value of such capital goods or plant and machinery determined u/s 15, whichever is higher



Thank You