

Input Tax Credit, Documentation & Rectification

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CHARTERED ACCOUNTANTS

Key sections associated with ITC include:

SECTION	DESCRIPTION
Section 16	Lays down the eligibility and conditions for taking ITC.
Section 17	Deals with the apportionment of credit and specifies blocked credits (where ITC is not available).
Section 18	Pertains to the availability of credit in special circumstances, such as new registration or switching from composition scheme.
Sections 19, 20, and 21	Cover aspects like ITC for job work, manner of distribution of credit by Input Service Distributor (ISD), and manner of recovery of credit distributed in excess.

Key rules associated with ITC include:

RULE	DESCRIPTION
Rule 36	Specifies the documentary requirements and conditions for claiming ITC
Rule 37	Governs the reversal of ITC in case of non-payment of consideration to the supplier within 180 days.
Rule 37A	Mandates reversal of ITC if the supplier has not paid the tax
Rule 41 (as substituted)	Relates to the availment of input tax credit (Note: Section 41 was substituted, and the concept of provisional ITC acceptance changed significantly).
Rules 42 and 43	Detail the manner of determination of ITC in respect of inputs/input services and capital goods respectively, and reversal thereof, for supplies used for taxable, exempt, and non-business purposes
Rule 60	Prescribes the form and manner of ascertaining details of inward supplies, leading to the generation of GSTR-2B.



BREAKDOWN OF SECTION 16

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16(1)	Eligibility for availing ITC	01.07.2017	<i>since inception of GST law</i>	Rule 36 Rule 46
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16(4)	Time Limit for availing ITC	01.07.2017	<i>since inception of GST law</i>	
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	Cut-off date changed to 30 th November	01.10.2022	<i>FA, 2022 dt. 30.03.2022 NN 28/2023-CT dt. 31.07.2023</i>	
Proviso to 16(4)	Special Extension for FY 17-18 extending Cut-off date to due date for filing of return for March 2019, subject to 2A matching	Inserted 31.12.2018	<i>Order No. 02/2018 –CT dt. 31.12.2018</i>	
16(5)	Relaxation in conditions of Section 16(4) w.r.e.f. 01.07.2017 (following KL HC decision in M-Trade Links)	<i>W.R.E.F 01.07.2017 brought into force w.e.f. 27.09.2024</i>	<i>FA, 2024 (No.2) dt. 16.08.2024 +</i>	
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Section 16(1)

Eligibility for availing ITC

Two Conditions: Every RTP is eligible to avail ITC on :

- ❖ Used / intended to be used in the course of furtherance of business
- ❖ Tax paid on inward supplies of Goods / Services

The “**intention to use**” the goods and /or services in the course or furtherance of business is a prerequisite for availing ITC on such goods and/or services.

Thus, tax paid on goods and/or services which are used or intended to be used for non- business purpose cannot be availed as credit.

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Section 16(2)

Conditions for availing ITC

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16(2)(a)	Possession of a Valid Tax Document	01.07.2017	since inception of GST law
16(2)(aa)	2B Matching	01.01.2022	Intro - FA, 2021 dt. 28.03.2021 NN 39/2021-CT dt. 21.12.2021
16(2)(b)	Receipt of Goods or Services	01.07.2017	since inception of GST law
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Section 16(2)(a)

ITC Claims - Foundation Documents (Rule 36(1))

These are the primary proofs for claiming Input Tax Credit:

Tax Invoice	From your supplier (Sec 31)
Recipient's Invoice (RCM)	If you pay tax under Reverse Charge (Sec 31(3)(f)) – <i>must be accompanied by tax payment proof</i>
Debit Note	Issued by your supplier (Sec 34)
Bill of Entry	for IGST on imports (Or similar customs document)
ISD Invoice/ Credit Note	From an Input Service Distributor

Section 16(2)(a)

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Circular No. 217/11/2024-GST

ITC for Insurance Companies - Vehicle Repair (Reimbursement Mode)

Insurance companies **are eligible** for ITC on repair services in reimbursement mode, as they are considered the recipients and are ultimately liable for the cost.

ITC Availability & Invoicing:

- ❖ **Separate Invoices:** If the repairer issues one invoice to the insurer (for the approved claim amount) and another to the insured (for excess amounts), the insurer can claim ITC on the invoice issued to them (for the amount they reimburse).
- ❖ **Single Invoice to Insurer:** If a single invoice for the full amount is issued to the insurer, ITC is available only to the extent of the approved claim cost that is reimbursed to the insured.

Key Condition: ITC is **not available** to the insurance company if the repair invoice is **not in its name**, as per Section 16(2).

Difference between GSTR-2A vs 2B?

Difference between GSTR-2A vs 2B?

Form GSTR-2A (Dynamic): A near real-time view of uploaded invoices.

Form GSTR-2B (Static & Critical): Generated on the 12th/14th of the month following the tax period.

This is the key document for ITC availment under Sec 16(2)(aa).

Journey of Input Tax Credit through Rule 36(4)

Notification No.	% on ITC appearing in GSTR-2A	Effective from (Date)	FY covered
49/2019 dt. 09/10/2019	20%	01/10/2019	FY 19-20 (Q3)
75/2019 dt. 26/12/2019	10%	01/01/2020	FY 2019-20 (Q4) + FY 2020-21 (Q1 to Q3)
94/2020 dt. 22/12/2020	5%	01/01/2021	FY 2020-21 (Q4) + FY 2021-22 (Q1 to Q3)
40/2021-CT dt. 29/12/2021	0% (2B enforced)	01/01/2022	FY 2021-22 (Q4) and onwards

Comparison of –pre and –post 36(4) amendment vide NN 40/2021 CT dated 29.12.2021

Pre-amendment Up to 31.12.2021	Post-amendment w.e.f 01.01.2022
<p>Unmatched ITC capped at 5%</p> <p>ie., If any invoice or debit note is not uploaded by supplier in his GSTR-1 i.e., not in GSTR-2A of recipient of supply, then the ITC for the same invoices or debit note can be claimed to the extent of 5% of total eligible credit of taxpayer.</p>	<p>100% invoice-matching made mandatory.</p> <p>ITC as per 3B = ITC as per 2B</p>

Section 16(2)(aa)

Introduction of GSTR-2B – the double-edged sword

Why Was This Condition Necessary?

Pre-Amendment Scenario:

ITC availment primarily based on self-assessment basis, based on recipient's books and tax invoices.

Rule 36(4) initially allowed provisional ITC (20%, then 10%, then 5%) for invoices not uploaded by suppliers in their GSTR-1 (not reflected in GSTR-2A).

Challenges Faced by the Government:

- a) **Fake Invoicing:** Rampant issue of entities issuing invoices without actual supply of goods/services to pass on fraudulent ITC.
- b) **Revenue Leakage:** Significant loss to the exchequer due to ineligible ITC claims.
- c) **Supplier Non-Compliance:** Suppliers collecting tax but not remitting to the government or not filing GSTR-1, yet recipients claiming ITC.
- d) **Difficulty in Matching:** GSTR-2 & GSTR-3 (matching concept) were deferred. GSTR-2A was dynamic and led to extreme challenges in reconciliation.

Section 16(2)(aa)

Introduction of GSTR-2B – the double-edged sword

Constitutional Validity: The condition has been challenged on grounds of being arbitrary or imposing undue hardship on genuine recipients. Courts have generally upheld such conditions if they are aimed at preventing tax evasion, but specific fact patterns can lead to different outcomes.

Example (General Observation, not specific to 16(2)(aa) yet): Courts have in some past ITC cases (e.g., related to supplier non-payment of tax) read down provisions if the recipient has taken all due care. However, Sec 16(2)(aa) is a specific condition for *availment* based on *reporting*.

Key Arguments against 16(2)(aa) by Taxpayers:

- a) Recipient has no control over supplier's actions.
- b) Denial of ITC for genuine transactions is unjust.
- c) Double taxation if recipient pays tax to supplier, and then cannot claim ITC.

Department's Stance in favour of 16(2)(aa):

- a) Necessary to curb fraud.
- b) Recipient should choose compliant suppliers.
- c) Mechanism provides for eventual credit once supplier complies.

Section 16(2)(b) - Receipt of Goods or Services

1. G / S/ both **should have been received** by the registered person to be eligible to claim ITC.
2. CGST Act does not mandate physical receipt of goods at a specific location for ITC eligibility. This is unlike earlier excise laws, where physical receipt at the factory was required.
3. In **BTST (Bill-to-ship-to) transactions**, the date of receipt of goods by such another person shall be deemed to be the date of receipt of goods by the said registered person.
4. Where service are provided by any person on the direction of and on account of the registered person, it is deemed to have been received by such registered person and ITC eligible accordingly.

Circular No. 241/35/2024-GST (Dated 31.12.2024)

Clarification on ITC availability [Section 16(2)(b)] for goods delivered by the supplier at their place of business under Ex-Works (EXW) contracts, particularly for the automobile sector.

"Receipt" of Goods for ITC (Sec 16(2)(b)):

- A registered person must have "received" goods to claim ITC.
- Physical receipt at the recipient's specific location is not mandatory under GST (unlike old excise laws).
- Deemed receipt occurs when goods are delivered to the recipient or their agent (e.g., transporter), by transfer of title or otherwise.

Deemed Receipt in EXW Contracts:

Goods are considered received by the buyer (e.g., dealer) for ITC purposes when handed over to the transporter at the supplier's factory gate, provided ownership passes at that point as per the contract.

Overarching Condition (Sec 16(1)):

ITC is available only if goods are used or intended for business use. ITC is disallowed if goods are later diverted for non-business use, lost, stolen, destroyed, or given as free samples.

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Section 16(2)(ba) - ITC should not be restricted u/s 38

1. This provision makes availability of ITC more stringent by insertion of clause (ba) in Section 16(2) of CGST Act, 2017 as it would **bar the ITC of the recipient for the defaults committed by the supplier.**
2. The conditions of section 38(2)(b) are provided hereunder:
 - ❖ Supplier is a **newly registered** business under GST
 - ❖ Supplier has **filed their GSTR-1 but not GSTR-3B**
 - ❖ Supplier's liability in the GSTR-1 is greater than in their GSTR-3B
 - ❖ Supplier's ITC in **GSTR-3B is greater than in their GSTR-2B**
 - ❖ Supplier has received demand notices and **defaulted in the payment of taxes (and the default continues)**
 - ❖ Supplier has **not fulfilled the conditions of Rule 86B** (i.e. paid their entire liability in ITC instead of partly in cash as prescribed)
3. However, **no mechanism** has been made available on the GST portal to identify whether the supplier has made specified violations or not.

Section 16(2)(C) - Tax charged on supply actually paid to the Government

Core Principle:

A registered person can claim Input Tax Credit (ITC) on a supply **only if the tax charged on that supply has been actually paid to the Government** by the supplier. This payment can be in cash or through utilization of the supplier's eligible ITC.

Section 16(2)(c) makes the supplier's tax compliance a direct condition for the recipient's ITC. It aims to prevent revenue loss from defaulting suppliers.

Verification & Linkage:

1. Supplier's GSTR-1 (details of outward supplies) should reflect the invoice.
2. Crucially, the supplier must file their GSTR-3B (summary return showing tax payment) for the relevant period, covering that supply.
3. ITC typically appears in the recipient's GSTR-2B based on the supplier's GSTR-1, but its ultimate validity hinges on the supplier's tax payment (evidenced by GSTR-3B filing).

Section 16(2)(C) - Tax charged on supply actually paid to the Government

Consequence of Non-Payment by Supplier (Rule 37A):

If the supplier files GSTR-1 (invoice appears in recipient's GSTR-2B) but **fails to file GSTR-3B (and thus pay the tax) by October 3B** of the following financial year:

- The recipient **must reverse the ITC** claimed on such invoices by **November 30th** of that year.
- Failure to reverse by this date can lead to demand of the ITC amount along with interest.

If the supplier subsequently pays the tax (files GSTR-3B), the recipient can re-avail the reversed ITC.

Constitutional validity of this provision (placing onus on the recipient) has been challenged on multiple occasions, but courts have upheld 16(2)(c), emphasizing ITC as a concession subject to conditions.

Section 16(2)(d) - Filing of Return

The recipient taking the Input tax credit must have filed his **return under section 39 (GSTR- 3B)**.

Currently, no mechanism to check compliance status of suppliers in bulk. Suppliers' compliance can only be checked individually by referring to their 'Filing table' against their GSTIN.

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2nd Proviso to Sec 16(2)

ITC Reversal - Non-Payment to Supplier within 180 Days (read with Rule 37)

Core Rule: If a recipient fails to pay the supplier (invoice value + tax) within **180 days** from the invoice date, the ITC availed must be reversed.

Action:

- Pay the reversed ITC amount along with interest (not exceeding 18%) from the date of availing credit until the date the amount is paid/reversed. (Amendment effective 01/10/2023).
- Reversal to be done in GSTR-3B for the tax period immediately following the expiry of 180 days.

Reversal in 3B to be done by reporting in **Table 4B(2) – Temporary reversal**

3rd Proviso to Sec 16(2)

ITC Reversal - Non-Payment to Supplier within 180 Days (read with Rule 37)

Re-Availment of ITC:

- Allowed once the recipient makes the payment to the supplier.
- No time limit (as per Sec 16(4)) applies for this re-availment.
- Proportionate credit allowed for part-payments.

Reclaim of reversed ITC to be done by reporting in GSTR-3B
Table 4A(5) + 4D(1)

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Section 16(4) - Time Limit For Availing ITC

(As amended provisions by the Finance Bill, 2022 dated 01.02.2022, brought into force w.e.f. 01.10.2022 Vide Notification No. 18/2022-Central Tax dated 28.09.2022)

Core Rule: ITC on an invoice/debit note cannot be claimed after:

- **November 30th** (amended from September 30th by Finance Act 2022, effective from Oct 1, 2022) following the end of the financial year.
- OR Furnishing of the relevant **Annual Return**,
- **Whichever is earlier.**

Hence, it means the cut-off date shall be earlier of:
the due date of furnishing the ***GSTR-3B return for the month of October of subsequent FY***

OR

actual date/due date of furnishing of GSTR-9

Section 16(4)

- Time Limit

For Availing

ITC

(As amended provisions by the Finance Bill, 2022 dated 01.02.2022, brought into force w.e.f. 01.10.2022 Vide Notification No. 18/2022-Central Tax dated 28.09.2022)

***1. Time Limit in respect of RCM
supplies received from
unregistered persons?***

Section 16(4) - Time Limit For Availing ITC

(As amended provisions by the Finance Bill, 2022 dated 01.02.2022, brought into force w.e.f. 01.10.2022 Vide Notification No. 18/2022-Central Tax dated 28.09.2022)

1. Time Limit in respect of RCM supplies received from unregistered persons

Clarification vide Circular No. 211/05/2024-GST

For supplies received from URD where tax is paid on RCM basis, the relevant FY for section 16(4) is the financial year in which **the recipient issues the invoice.**

Recipient must fulfill all conditions and restrictions under sections 16 and 17 of the CGST Act.

Delayed issuance of the invoice will result in interest on delayed tax payment and may attract penal action under section 122 of the CGST Act.

Section 16(5) Relaxation in conditions of Section 16(4) w.r.e.f. 01.07.2017

The Finance (No.2) Act, 2024 (No. 15 of 2024) dated 16.08.2024, having retrospective effect from 01.07.2017 brought into force w.e.f. 27.09.2024 vide Notification No. 17/2024-Central Tax dated 27.09.2024 .

Previous Provision (Section 16(4)): ITC could be claimed by the 30th of November of the following financial year or the annual return filing date, whichever was earlier. For FY 2017-18 to 2019-20, this was effectively the due date for the September return or the annual return filing date.

Earlier, Kerala HC in **M/s M Trade links** - held – as per Section 16(4), the last date for claiming Input Tax Credit (ITC) for the years 2017-18, 2018-19, and 2019-20 would be the 30th day of November following the end of the financial year to which the invoice or debit note pertains, or the furnishing of the GSTR-9, whichever is earlier. Later, GST Council also recommends to extend that time limits till 30th November 2021.

Section 16(5) Relaxation in conditions of Section 16(4) w.r.e.f. 01.07.2017

The Finance (No.2) Act, 2024 (No. 15 of 2024) dated 16.08.2024, having retrospective effect from 01.07.2017 brought into force w.e.f. 27.09.2024 vide Notification No. 17/2024-Central Tax dated 27.09.2024 .

ITC Claim Deadline Extended for FY 2017-18 to 2020-21

Section 16(5) of the CGST Act, introduced by the Finance (No. 2) Act, 2024 (notified 27.09.2024), extends the deadline for claiming Input Tax Credit (ITC) for invoices or debit notes.

Applicable Financial Years: 2017-18, 2018-19, 2019-20, and 2020-21.

Extended Deadline: 30th November 2021

Return Type: Applicable for ITC claimed in FORM GSTR-3B.

Retrospective Effect: This change is effective from 1st July 2017.

Section 16(6) Availment of ITC in case of revocation of cancellation of GST registration

The Finance (No.2) Act, 2024 (No. 15 of 2024) dated 16.08.2024, having retrospective effect from 01.07.2017 brought into force w.e.f. 27.09.2024 vide Notification No. 17/2024-Central Tax dated 27.09.2024 .

New Provision: Allows Input Tax Credit (ITC) availment for the period between GST registration cancellation and its revocation.

- ❖ **Condition:** Returns for this period must be filed within **30 days** of the revocation order.
- ❖ **Applicability:** ITC can be claimed on invoices/debit notes pertaining to the period from cancellation to revocation.
- ❖ **Legislative Basis:** Inserted by The Finance (No. 2) Act, 2024 (notified 27.09.2024).
- ❖ **Retrospective Effect:** Effective from **1st July 2017**.
- ❖ **Crucial Pre-Condition:** Original time limit for ITC u/s **16(4)** (generally 30th November of the following financial year or annual return filing, whichever is earlier) must **not have expired** as of the date of the cancellation order.

Rectification of Demand Orders (Sec 16(4) Violations) - Special Procedure under Section 148 (Notification No. 22/2024-Central Tax, 08.10.2024)

- 1. Purpose:** Streamlined process to rectify demand orders where Input Tax Credit (ITC), initially disallowed under Sec 16(4), is now permissible due to new Sec 16(5) or Sec 16(6). Aims to reduce litigation.
- 2. Applicability:**
 - Registered persons with an order confirming demand for wrongful ITC (violating Sec 16(4)).
 - ITC is now available under the new retrospective provisions of Sec 16(5) or Sec 16(6).
 - No appeal filed against the original order.
- 3. Rectification Process:**
 - Online application should have been filed within **6 months** from 08.10.2024 (ie., **08.04.2025**) and officer should issue order within 3 months of application.
- 4. Circular No. 237/31/2024-GST (Dated 15.10.2024) also issued** – all authorities to follow 16(5)/16(6) before issuing orders



A GLANCE INTO

SECTION 17

Sub-Section	Condition Summary	Effective since when?	Source of Amendment
17(1)	Where Goods or services partly for business and partly for other purposes, Credit restricted to those ITC attributable to business only	01.07.2017	
17(2)	Goods or services partly for taxable supplies and partly for exempt supplies, credit restricted to ITC attributable to said taxable supplies including zero rated supplies	01.07.2017	
17(3)	Inclusions in value of exempt supply – RCM supply, Txn in securities, sale of land, sale of building (subject to Sch II)		FA, 2023 dt. 31.03.2023 NN 28/2023-CT dt. 31.07.23
Expln to 17(3)	Exclusions from Value of Exempt Supply – mainly schedule III items except sale of land/building as above.	01.02.2019 01.10.2023	CGST Amendment Act, 2018 FA, 2023 dt. 31.03.23 + NN 28/2023-CT dt. 31.07.23
17(4)	Banks, NBFC, Fis – avail only 50% of eligible ITC; lapse balance 50%	01.07.2017	
17(5)	List of ineligible ITC	Amended 01.02.2019	CGST Amendment Act, 2018
17(6)	Power to Govt. to prescribe manner for attributing ITC		

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17(3)	Inclusions in value of exempt supply – RCM outward supply, Txn in securities, sale of land, sale of building (subject to Sch II)		FA, 2023 dt. 31.03.2023 NN 28/2023-CT dt. 31.07.23
Expln to 17(3)	Exclusions from Value of Exempt Supply – mainly schedule III items except sale of land/building as above.	01.02.2019 01.10.2023	CGST Amendment Act, 2018 FA, 2023 dt. 31.03.23 + NN 28/2023-CT dt. 31.07.23
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Section 17(5)

Clause	Category
(a), (aa)	Motor Vehicles, Vessels & Aircraft
(aa), (ab)	Insurance & Maintenance
(b)(i)	Personal & Lifestyle Services
(b)(ii)	Club & Fitness Memberships
(b)(iii)	Employee Travel Benefits
(c)	Works Contract Services
(d)	Construction on own account
(e)	Composition Scheme
(f)	Non-Resident Taxable Person
(fa)	CSR Obligations
(g)	Personal Consumption
(h)	Lost, Stolen & Disposed
(i)	Fraud & Suppression

(a). (aa)

Motor Vehicles, Vessels & Aircraft

Blocked Items:

Motor Vehicles (≤ 13 seating)

Vessels

Aircraft

✓ Exceptions - ITC Allowed When:

- **Further Supply:** Sale, transfer, barter of vehicles
- **Taxi Business:** Transportation of passengers
- **Driving School:** Training services
- **Demo Vehicles:** For dealers (Circular 231/24/2024)

Demo Vehicle Rules: ITC available even when capitalized, provided no depreciation claimed on tax component. Comply with s.18(6) on sale.

Whether ITC on special vans used for carrying cash is eligible for ITC?	MAAAR in CMS Info Systems Ltd.: Held that cash being transported in specialized cash-carrying vans, in the context of the appellant's business, qualifies as "goods." Consequently, ITC on such cash carry vans used for transportation of these "goods" was allowed under the exception in Section 17(5)(a).
Whether ITC on repair and maintenance services for Diving Support Vessels (DSV) and Special Patrol Vehicles (SPV) are eligible?	Gujarat AAAR in Sikka Ports & Terminals Ltd.: Denied ITC on repair and maintenance services for such vessels, as these vessels were not found to be used for the specified eligible purposes like transportation of goods or passengers. ITC on hiring of SPVs was also denied as it was not for making an outward taxable supply of the same category. This highlights that the use must directly align with the exceptions.

(aa), (ab)

Insurance & Maintenance Services

Blocked Items:

General Insurance

Servicing & Repair

Maintenance

For motor vehicles, vessels, and aircraft

✓ Exceptions - ITC Allowed When:

- Vehicles used for excepted purposes (as per clause a)
- Services received by **manufacturer** of conveyances
- Services received by **general insurer**

(b)(i)

Personal & Lifestyle Services

Blocked Items:

Food & Beverages

Outdoor Catering

Beauty Treatment

Health Services

Cosmetic Surgery

Rent-a-cab

Life Insurance

Health Insurance

✓ Exceptions - ITC Allowed When:

- **Statutory Obligation:** Mandatory for employer under law
- **Business Use:** For making taxable supply of same category
- **Composite Supply:** Part of taxable composite/mixed supply

(b)(ii)

Club & Fitness Memberships



Blocked Items:

Club Membership

Health Centre

Fitness Centre



Generally Blocked
No specific exceptions mentioned

Note: May be eligible if provided to employees under statutory obligation

(b)(iii)


Employee Travel Benefits

Blocked Items:

LTC (Leave Travel Concession)

HTC (Home Travel Concession)

Vacation Travel Benefits

 **Generally Blocked**
No specific exceptions mentioned

Note: May be eligible if provided under statutory obligation

GST Treatment: Employee Benefits

Contractual vs Statutory Obligations Impact on ITC

Contractual Obligation

Definition: Benefits provided as per employment contract terms

Examples: Health insurance, transport, accommodation per contract

Supply Status: Not treated as supply (Circular 172/04/2022-GST)

Output GST: No GST liability on employer

Business Purpose: Talent attraction & retention strategy

Statutory Obligation

Definition: Benefits mandated by specific laws/regulations

Examples: Canteen (Factories Act), safety equipment, PF contributions

Legal Compliance: Mandatory under labor laws

ITC Eligibility: Qualifies under "obligatory by law" exception

Regulatory Basis: Factories Act, Labor laws, Safety regulations

GST Impact Analysis

STATUTORY BENEFITS

- ✓ ITC Available under Section 17(5)(b) exception
- ✓ "Obligatory by law" condition satisfied

CONTRACTUAL BENEFITS

- ✗ ITC Often Denied (Personal consumption)
- ✗ Not covered by statutory mandate

CASE LAW EXAMPLE

Maharashtra AAR: Transport ITC allowed (business purpose)
Telangana AAAR: Transport ITC denied (no statutory obligation)

COMPLIANCE CHALLENGE

Modern employment benefits often contractual, creating ITC disadvantage vs statutory obligations

Key Takeaway: Circular 172 resolves output tax issues for contractual benefits, but ITC eligibility still hinges on "obligatory by law" test, creating competitive disadvantage for voluntary employee welfare providers.

(d)

Own Construction Activities

Blocked Items:

Own Account Construction

Immovable Property Goods/Services

Excluding plant and machinery

No Exceptions

Except for plant & machinery as per Explanation to Sec 17

Important Updates:

- Safari Retreats SC decision
- FA 2025: "Plant or Machinery" → "Plant and Machinery" (w.e.f. 01.07.2017)

GST Blocked Credits: Construction & Works Contract

Section 17(5)(c) & (d) - ITC Restrictions on Immovable Property



Section 17(5)(c) - Works Contract Services

✗ ITC BLOCKED

Works contract services for construction of immovable property

✓ EXCEPTIONS

1. Input service for further supply of works contract service
2. Construction of "plant and machinery"



Section 17(5)(d) - Own Account Construction

✗ ITC BLOCKED

Goods/services for construction of immovable property on own account (including business use)

✓ EXCEPTION

Construction of "plant and machinery" only

Safari Retreats vs Finance Act 2025 Impact



Supreme Court Judgment

Safari Retreats: "Functionality test" - buildings for letting could qualify as "plant" under "plant OR machinery"

Finance Act 2025

Retrospective Amendment: Changed to "plant AND machinery" w.e.f. July 1, 2017 - nullifies Safari Retreats benefit

Key Definitions

Plant & Machinery

Apparatus, equipment fixed to earth for making taxable supplies

Excludes: Land, buildings, civil structures

Construction

Includes reconstruction, renovation, additions, alterations, repairs (to extent of capitalisation)



Critical Impact: Retrospective amendment creates uncertainty for businesses who claimed ITC based on Safari Retreats interpretation. "Plant and machinery" remains the narrow gateway for construction ITC.

(e)

Composition Scheme



Blocked Items:

Goods under Composition

Services under Composition

Tax paid under Section 10



No Exceptions

ITC completely blocked for composition scheme

(f)

Non-Resident Taxable Person



Blocked Items:

All Goods

All Services

Received by non-resident taxable person

✓ Exceptions - ITC Allowed for:

- **Imported Goods:** Goods imported by non-resident

CSR Expenses - ITC Blockage

Section 17(5)(fa) CGST Act

Before Oct 1, 2023

ITC Debatable

No specific provision blocking CSR ITC. Arguments for business nexus possible.

From Oct 1, 2023

ITC Blocked

Section 17(5)(fa) explicitly denies ITC on CSR-related expenses.

? Pre-October 2023 Position

- ▶ No explicit ITC denial provision
- ▶ Mandatory CSR as business necessity argument
- ▶ Legal compliance & reputation protection
- ▶ Conflicting AAR & CESTAT rulings
- ▶ Strong case for ITC eligibility

X Post-October 2023 Position

- ▶ Section 17(5)(fa) blocks ITC explicitly
- ▶ Applies to all CSR-related goods/services
- ▶ Increases compliance cost for companies
- ▶ GST becomes expense, not credit
- ▶ Clear legislative intent

(g)

Personal Consumption

Blocked Items:

Personal Use Goods

Personal Use Services



No Exceptions

Completely blocked for personal use

Note: Apportionment required if partly used for business

(h)

Lost, Stolen & Disposed Goods



Blocked Items:

Lost Goods

Stolen Goods

Destroyed Goods

Written-off Goods

Gifts

Free Samples



No Exceptions

ITC reversal required in all cases

ITC Denial on Gifts & Free Samples

Section 17(5)(h) CGST Act

ITC NOT AVAILABLE

- Goods actually lost, stolen, or destroyed
- Items written off from books
- Pure gifts without business nexus
- Free samples with no consideration

ITC AVAILABLE

- "Buy One Get One Free" offers
- Target-based dealer incentives
- Loyalty program rewards
- Promotional items with business purpose

Key Challenge: No Statutory Definition of "Gift"

- Tax authorities often apply common parlance meaning broadly
- Circular 92/11/2019-GST provides some clarity but grey areas remain
- Sales promotion schemes face maximum litigation

Clear Business Purpose

Maintain documentation showing promotional items serve legitimate business objectives and marketing strategy.

Contractual Linkage

Structure schemes with explicit contractual obligations or performance targets from recipients.

Embedded Consideration

Show that promotional item costs are factored into overall pricing of taxable supplies.

Judicial Trend

Madras High Court (ARS Steels case) - Denied ITC on promotional gold coins & T-shirts. **Various AARs** take restrictive view on sales promotion items.

(i)

Fraud & Suppression Cases



Blocked Items:

Tax paid due to Fraud

Suppression Cases

Detention of Goods



No Exceptions

ITC blocked for penal tax payments

Mandatory ISD Mechanism

⚡ Effective April 1, 2025

🔄 Major Change

ISD mechanism becomes **mandatory** for distributing ITC on common input services across multiple GSTINs under same PAN. No more flexibility to choose between ISD and cross-charge for third-party services.

Service Scenarios & Applicable Mechanisms



Third-Party Common Services

Audit fees, software licenses, consultancy for entire organization across multiple locations

Mandatory ISD Route



Internal Services

Head office providing HR/IT support to branch offices (internally generated services)

Cross-Charge Continues



Location-Specific Services

Services exclusively for one specific GSTIN/location only

Direct Availment

Key ISD Compliance Requirements

- ✓ Separate ISD registration mandatory (even if regular GSTIN exists)
- ✓ Monthly GSTR-6 filing by 13th of succeeding month
- ✓ Issue ISD invoice to distribute credits
- ✓ Separate distribution of CGST, SGST, IGST, UTGST
- ✓ Eligible/ineligible ITC distributed separately in same month
- ✓ RCM credit distribution now allowed (new addition)

Key Challenges

- ⚠ Very tight GSTR-6 deadline (only 2 days after GSTR-1)
- ⚠ System upgrades needed for ISD processes
- ⚠ Vendor communication for correct invoicing
- ⚠ Team training on new requirements
- ⚠ Accurate expense bifurcation
- ⚠ Penalty: Min ₹10,000 or irregular ITC amount

Critical Timeline

11th
GSTR-1 Due

13th
GSTR-6 Due

Only 2 days gap creates significant compliance risk!

ITC Issues & Challenges



ECL Blocking (Rule 86A)

- **Power:** Assistant Commissioner+ can block ITC for up to 1 year
- **Grounds:** Non-existent suppliers, no actual receipt of goods/services, unpaid taxes
- **Impact:** Immediate freeze on working capital
- **Court View:** Karnataka HC mandates pre-decisional hearing
- **Protection:** Requires written reasons & natural justice principles

"Reasons to believe" must be recorded in writing with independent application of mind

ITC Issues & Challenges



Fake Invoice Crisis

- **Problem:** ITC claimed on non-existent supplier invoices
- **Penalties:** Sections 74, 122 & prosecution under Section 132
- **SC Stance:** CJI Khanna emphasizes protecting genuine buyers
- **Key Quote:** "How can a buyer who paid GST be penalized for supplier's fraud?"
- **Shift:** Focus moving from recipients to fraud originators

Supreme Court strongly supports bonafide purchasers acting in good faith

ITC Issues & Challenges



Invoice Management System

- **Launch:** October 2024 - Real-time ITC matching
- **Process:** Recipients must Accept/Reject/Defer transactions
- **Impact:** Auto-generation of GSTR-2B based on actions
- **Benefit:** Reduces mismatches between GSTR-1 & GSTR-2B
- **Challenge:** Requires prompt action & efficient internal controls

Real-time compliance responsibility shifts to recipients

ITC Issues & Challenges



Immediate Actions Required

- **ECL Blocked:** Seek written reasons, submit detailed representation
- **Fake Invoice Notices:** Prove actual receipt, payment evidence, supplier verification
- **IMS Compliance:** Establish timely review processes for invoice actions
- **Documentation:** Maintain e-way bills, payment proofs, GRNs
- **Due Diligence:** "Know Your Supplier" protocols essential

Proactive compliance & documentation is the best defense

Best Practices for Safeguarding ITC Claims & Business Operations



Vendor Due Diligence

Establish stringent onboarding procedures, verify GST registration & compliance history using GSTN portal



Record Keeping

Maintain comprehensive documentation: invoices, delivery challans, payment proofs & supplier communications



Regular Reconciliation

Monthly reconciliation of purchase register with GSTR-2B, identify & resolve mismatches promptly



ITC Register Management

Track ITC availed, utilized, reversed & reclaimed. Segregate credits for accurate apportionment



Contractual Safeguards

Include GST compliance clauses in vendor agreements with indemnity provisions for non-compliance



Technology Leverage

Use GST compliance software for automated reconciliation, ITC tracking & return preparation

Safeguarding against Fake invoicing issues:

Bonafide Purchaser Protection Framework

1 Valid Invoice

GST rule-compliant invoices with all mandatory fields

2 Actual Receipt

E-way bills, delivery challans, goods receipt notes

3 Payment Proof

Banking channels, avoid cash transactions

4 GSTIN Verification

Check supplier validity on GST portal

5 GSTR-2B Matching

Ensure invoice details reflect in GSTR-2B

6 Due Diligence

Supplier onboarding & regular verification

GST Returns Overview

Understanding Key Returns & Rectification Timelines



Outward Supplies

Monthly/quarterly return for outward supplies disclosure



Rectification Timeline

- Can be corrected in subsequent GSTR-1
- Before due date of GSTR-3B for **October** following FY end
- Before filing annual return (GSTR-9)



Input Tax Credit

Auto-generated ITC statement from suppliers' data



Rectification Process

- Read-only document - cannot be amended directly
- Contact supplier to rectify their GSTR-1
- Claim provisional ITC as per eligibility



Annual Return

Yearly consolidation of all monthly/quarterly returns

⚠ Key Points

- Cannot be revised once filed
- Due date: December 31st of succeeding year
- Additional tax via Form DRC-03



Reconciliation

Reconciliation between GSTR-9 and audited financials



Requirements

- For turnover > ₹5 crore
- Self-certified from FY 2020-21
- Cannot be revised once filed

E-invoicing Explained - The Digital Shift

What is E-invoicing?

A system for **electronic authentication of B2B invoices** (and credit/debit notes) by the GST Network (GSTN).

How it Works:

- Supplier generates a standard invoice.
- Uploads to Invoice Registration Portal (IRP).
- IRP validates & generates:
 - ❖ **Unique Invoice Reference Number (IRN)**
 - ❖ Digital signature on the e-invoice
 - ❖ QR code containing key invoice details

Purpose:

Enhances transparency, reduces errors, enables real-time tracking, and strengthens ITC verification.

Who, What & When? Reporting Timelines?

- ❖ It involves submitting already generated standard invoices on a common portal (Invoice Registration Portal - IRP), which then generates a unique Invoice Reference Number (IRN), digitally signs the e-invoice, and adds a QR code.

- ❖ E-invoicing is applicable on:

- ✓ Tax Invoices,
- ✓ Credit Notes, and
- ✓ Debit Notes

- issued to registered persons (B2B supplies) or for Exports.

Turnover Threshold (AATO in any preceding FY from 2017-18) and Time Limit for Reporting to IRP:

S. No.	Threshold Limit (AATO* in any preceding FY from 2017-18)	Date of Applicability	Time Limit for Reporting to IRP
1	> ₹500 crore	1st October 2020	No specific limit initially; 30 days from 1 st Nov 2023
2	> ₹100 crore	1st January 2021	No specific limit initially; 30 days from 1 st Nov 2023
3	> ₹50 crore	1st April 2021	No specific limit initially
4	> ₹20 crore	1st April 2022	No specific limit initially
5	> ₹10 crore	1st October 2022	No specific limit initially; 30 days from 1st April 2025
6	> ₹5 crore	1st August 2023	No specific limit currently announced for this threshold

Certain categories of registered persons are exempt from e-invoicing, including:

- ❖ Special Economic Zone (SEZ) Units (however, SEZ Developers are not exempt).
- ❖ Insurers, banking companies, or financial institutions, including NBFCs.
- ❖ Goods Transport Agencies (GTAs) supplying services for transportation of goods by road in a goods carriage.
- ❖ Suppliers of passenger transportation services.
- ❖ Persons supplying services by way of admission to exhibition of cinematograph films in multiplex screens.
- ❖ Government departments and local authorities.

E-invoicing: Critical Consequences

- **Goods in transit can be detained-** The transport of goods without accompanied by the e-way bill and e-invoice is not valid. It can lead to detention of conveyance and the goods under Section 129 of CGST Act 2017.
- **Holding up invoice payments**
- **Recipient's ITC may be at Risk:** Difficulty or inability to claim ITC.

E-invoicing: Penal Consequences

- The penalty for non generation of e invoice along with the penalty for incorrect or invalid e-invoice:
 - ☐ Penalty for non generation of e invoice – 100% of the tax due or Rs.10,000, whichever is higher, for every invoice.
 - ☐ General Penalty for incorrect invoicing – Rs.25,000 per invoice.

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TAX INVOICE: MANDATORY FIELDS CHECKLIST As per GST Rules 36(2) & Rule 46

- | | |
|---|---|
| 1. Word "TAX INVOICE" prominently displayed | 8. HSN code for goods or SAC for services |
| 2. Name, address and GSTIN of supplier | 9. Quantity (for goods) and unit of measurement |
| 3. Name, address and GSTIN/UIN of recipient (if registered) | 10. Rate of tax (CGST, SGST, IGST, UTGST) |
| 4. Serial number of invoice (unique) | 11. Taxable value of goods/services |
| 5. Date of issue of invoice | 12. Amount of tax charged (CGST, SGST, IGST, UTGST) |
| 6. Place of supply and its state code | 13. Total value of supply |
| 7. Description of goods or services | 14. Signature or digital signature of supplier |

Additional Notes:

- For interstate supply, IGST replaces CGST+SGST
- For Union Territory, UTGST may apply
- Round off amount (if any) should be shown separately
- Reverse charge mechanism details (if applicable)
- Whether tax is payable on reverse charge basis

Tax Invoice Format

TAX INVOICE

Supplier Details

ABC Private Limited
123, Business Street, Commercial Area
Mumbai, Maharashtra - 400001
GSTIN: 27ABCDE1234F1Z5
State: Maharashtra (27)

Bill To

XYZ Enterprises
456, Client Road, Business District
Delhi - 110001
GSTIN: 07XYZAB5678C1D2
State: Delhi (07)

Invoice No: INV/2024/001

Invoice Date: 15/03/2024

Place of Supply: Delhi (07)

Description	HSN/SAC	Qty	Rate	Taxable Value	CGST	SGST	Total
Software Development Services	998314	1	₹100,000	₹100,000	₹9,000 (9%)	₹9,000 (9%)	₹118,000

Total Invoice Value: ₹118,000

Amount in Words: One Lakh Eighteen Thousand Only

Bill of Supply (Rule 49) - Informational, No ITC

Used for:

- Exempt supplies (no GST applicable)
- Nil-rated supplies
- Supplies by unregistered dealers
- Supplies to unregistered recipients

Key Features:

- No GST charged or collected
- Cannot be used for Input Tax Credit
- Must contain "BILL OF SUPPLY" heading
- HSN/SAC codes still required

Bill of Supply Format

BILL OF SUPPLY				
ABC Enterprises 123, Market Street Mumbai, Maharashtra - 400001 GSTIN: 27ABCDE1234F1Z5				
Bill To				
XYZ Customer 456, Buyer Road Pune, Maharashtra - 411001 GSTIN: Not Registered				
Bill No: BOS/2024/001 Date: 15/03/2024 Place of Supply: Maharashtra (27)				
Description	HSN/SAC	Qty	Rate	Amount
Wheat (Exempted)	1001	100 Kg	₹30	₹3,000
Total Amount: ₹3,000 Amount in Words: Three Thousand Only Note: Supply is exempt from GST				
Authorized Signatory For ABC Enterprises				

Self-invoice by Registered Recipient

Issued in instances where:

- Reverse Charge Mechanism applies
- Registered buyer receives supplies from unregistered supplier
- Recipient pays GST on behalf of supplier

Key Features:

- Issued by the **registered recipient (not supplier)**
- Contains full GST calculations
- References original supplier invoice
- Enables Input Tax Credit claim
- Supplier's PAN mandatory if unregistered

Self- invoice Format

SELF-INVOICE

Recipient (Self):
XYZ Manufacturing Ltd.
789, Industrial Area
Chennai, Tamil Nadu - 600001
GSTIN: 33XYZAB5678C1D2

Unregistered Supplier

ABC Traders
456, Local Market
Chennai, Tamil Nadu - 600002
GSTIN: Unregistered
PAN: ABCDE1234F

Self-Invoice No: SI/2024/001
Date: 15/03/2024
Place of Supply: Tamil Nadu (33)
Supplier Invoice: INV/001 dated 14/03/2024

Description	HSN	Qty	Rate	Taxable Value	CGST	SGST	Total
Raw Materials	3901	500 Kg	₹100	₹50,000	₹4,500	₹4,500	₹59,000

Total Tax: ₹9,000
Total Amount: ₹59,000
Amount in Words: Fifty Nine Thousand Only
Tax payable on Reverse Charge: Yes

Authorized Signatory



THANK YOU

Email:

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