

ISSUES & INTRICACIES OF INPUT TAX CREDIT UNDER GST

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Important provisions in relation to Input tax credit (ITC) under GST

SEC.	
2(19)	Capital Goods
2(59)	Inputs
2(60)	Input services
2(61)	Input service distributor
2(62)	Input tax
16	Eligibility & conditions for taking input tax credit (ITC)
17	Apportionment of credit & blocked credit
18	Availability of credit in special circumstances
19	Taking ITC in respect of inputs and capital goods sent for job work.
20	Manner of distribution of credit by Input service distributor
21	Manner of recovery of credit distributed in excess

2(19) “capital goods” *means*: -

goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

- The definition of the capital goods under GST regime has been simplified compared to the definition under the earlier regime.
- Basic conditions to be satisfied to be considered as capital goods:
 1. Value of such goods has to be capitalized in the books of accounts
 2. They have to be used or intended to be used in the course or furtherance of business.

2(59) “input” *means* any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

- Goods in turn is defined in 2(52) to mean 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.
- Further the definition of actionable claim has been linked to Transfer of property act, 1882 (Section 3)

2(60) “input service” *means* any service used or intended to be used by a supplier in the course or furtherance of business.

- Services in turn is defined in 2(102) as follows “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”

INPUT SERVICE DISTRIBUTOR

2(61) “input service distributor” *means* an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office

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*–

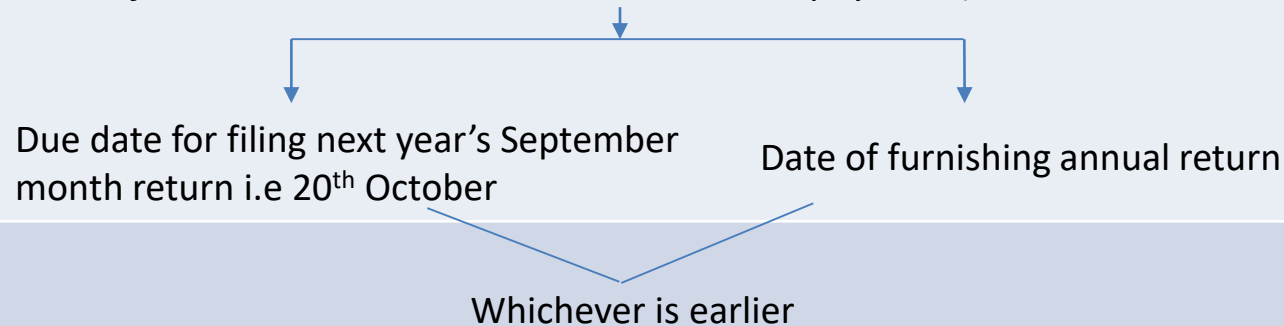
- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable u/s 9(3) & (4);
- (c) the tax payable u/s 5(3) & (4) of IGST act;
- (d) the tax payable u/s 9(3) & (4) of respective SGST acts; or
- (e) the tax payable u/s 7(3) & (4) of UTGST act

but does not include the tax paid under the composition levy;

- *Sub- sec (3) & (4) of respective acts deals with tax paid under RCM & tax paid by recipient upon supply from unregistered persons.*

- Registered person shall be entitled to take credit of input tax charged on supply of goods/services/both & said amount shall be credited to his electronic credit ledger – Conditions and restrictions as prescribed. Manner of availment specified in Sec.49.
- Sub-sec (2) overrides the entire sec.16 & specifies the conditions subject to which ITC can be availed which are as follows:
 1. Possession of tax invoice or debit note issued by supplier
 2. He has received the goods or services or both. (Constructive receipt also covered)
 3. Tax charged in respect of such supply has been actually paid to govt. either in cash or through utilization of credit.
 4. He has furnished the return u/s 39.
- In case of goods received in **lots or installments** – credit can be availed upon receipt of *last lot or installment*.
- Payment to supplier towards the **value of supply & tax thereon** has to be made within 180 days from date of invoice else ITC to be reversed along with interest. (Not applicable to RCM cases). Entitled to retake the credit once the payment is made.

- In case depreciation has been claimed on tax component under IT act, 1961 then ITC on the said tax component shall not be allowed i.e. mutually exclusive.
- **Time limit for availing ITC in respect of an invoice/ debit note:** *(Shall not apply to re-avaiement of credit which was reversed due to non-payment)*



- For availing credit in case of RCM & tax paid on supply from unregistered persons – self-invoice is to be issued in accordance with sec. 31(3)(f).
- If tax has been paid upon an order where demand has been confirmed on account of fraud, willful misstatement or suppression of facts, such ITC cannot be availed – rule 36(3)

- Analysis of Sec. 17(1) and 17(2) read with Rule 42.

17(1) – Goods/services partly used for business purpose and partly for other purpose : ITC to be restricted to business purpose.

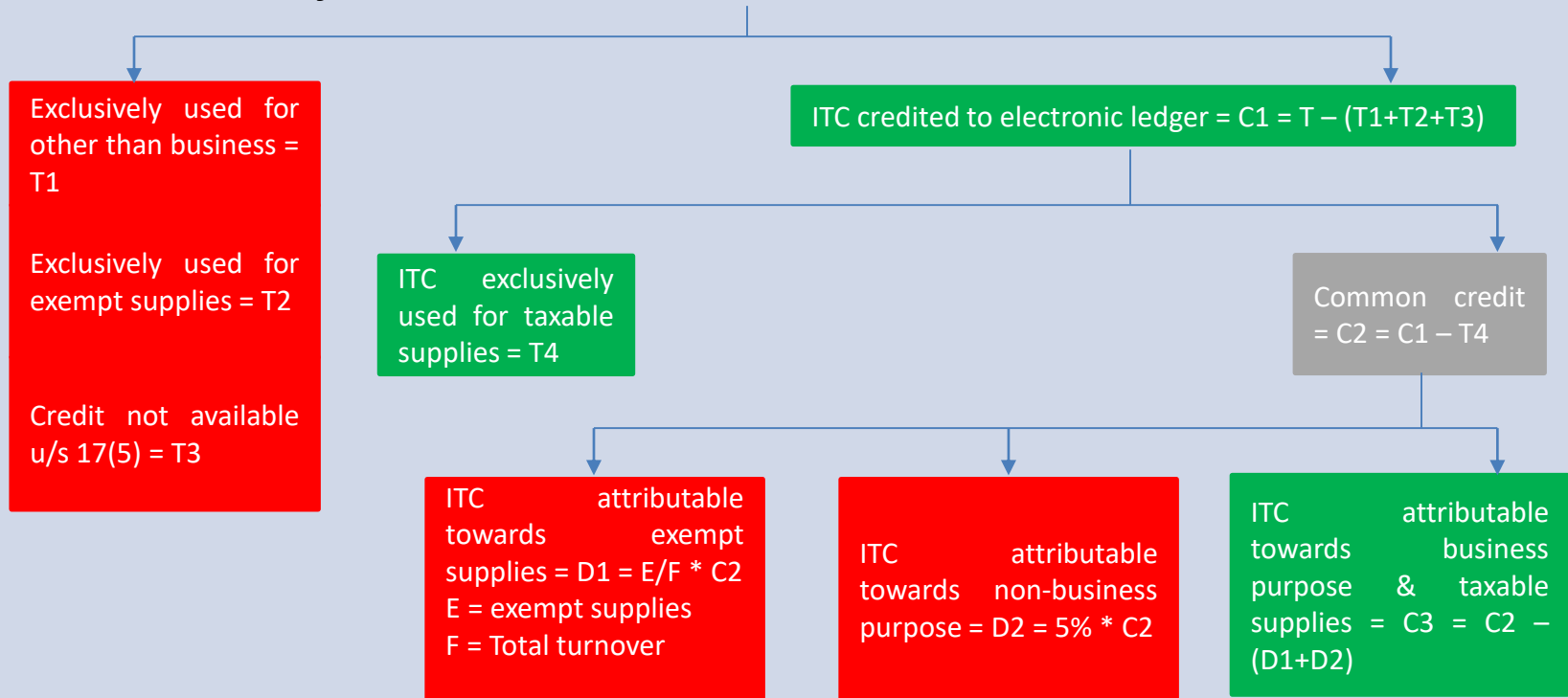
17(1) – Goods/services partly used for taxable supplies and partly used for exempt supplies : ITC to be restricted to taxable supplies.

Rule 42 – Manner of determination of ITC in relation to above sections. This applies with respect to inputs and input services.

- *Note: IT and ITC in next slide denotes Input tax and Input tax credit.*

Attribution is as follows:

Total IT = T



- T1, T2, T3 and T4 to be determined and declared at invoice level in GSTR-2.
- E and F values for the said tax period to be considered. If not available then values for the last tax period to be considered.
- Final determination (as discussed above) of ITC for the financial year shall be done before the due date for furnishing September month's return. If there is a shortfall then it is to be paid along with interest, otherwise excess amount can be claimed as credit.

- Analysis of Sec. 17(1) and 17(2) read with Rule 43.

*Rule 43 – Manner of determination of ITC in relation to above sections.
This applies with respect to capital goods.*

- *Note: IT , ITC and CG in next slide denotes Input tax, Input tax credit and capital goods.*

IT in respect of CG used

(a) Exclusively for non-business purpose or exempt supplies = Not credited to electronic ledger.

(b) Exclusively for taxable supplies = Credited to electronic ledger.

(c) IT w.r.t CG not covered under (a) & (b) = Denoted as "A" credited to electronic ledger (Tc)
Useful life = 5 years

Earlier covered under (a) now covered under (c)
=> Value of "A" = Reduce IT @ 5% for every qtr and credited to ledger. (Tc)

Earlier covered under (b) now covered under (c)
=> Value of "A" = Reduce IT @ 5% for every qtr and credited to ledger. (Tc)

ITC attributable to a tax period on common CG = $T_m = T_c/60$ – (This is w.r.t one CG.)
 T_m on all CG be denoted as T_r .

Common credit attributable to exempt supplies = $T_e = E/F * T_r$

Amount of Te (as discussed above) along with interest shall during every tax period of useful life of asset shall be added to output tax liability of the person.

- Options available to banking company/financial institution including NBFC – comply with provisions of 17(2) or avail 50% of the eligible ITC on inputs, input services & capital goods.
- 50% restriction shall not apply to tax paid on supplies made by one registered person to another registered person having same PAN.

- Sec 17(5) – Overrides sec. 16(1) & 18(1). No credit available in following cases:

Not eligible	Exceptions
Motor vehicles & other conveyances	When used for making further taxable supply of such vehicles, conveyances, transportation of passengers, imparting training on driving, flying. When used for transportation of goods.

- Sec 17(5) – Overrides sec. 16(1) & 18(1). No credit available in following cases:

Practical issues:

1) Car dealer (Arvind motors) – Lets say out of 100 vehicles procured from manufacturer 2 vehicles are kept for test drive and not sold. Whether credit would be available on such 2 vehicles?

2) Distributor of goods (Medicines) – Lets say the distributor buys 3 vehicles which are used for transportation of medicines to Pharmacists. Whether credit eligible on such vehicles?

3) Airlines (Indigo airlines) – Lets say they own buses for transporting the passengers within the airport from the checking point to the aeroplane. Whether credit eligible?

4) A corporate (Infosys) owns buses for transportation of employees and recovers some portion of expenses from employees. Whether credit eligible in this scenario?

Not eligible

Food & beverages, outdoor catering, beauty treatment, health services, cosmetic & plastic surgery.

Exceptions

Inward supply of goods/services are used for making outward taxable supply of same category of goods/services or as element of taxable composite or mixed supply

Practical issues:

- 1) Boarding and lodging service provider provides accommodation as well as food as part of the package. Whether eligible for credit on food items supplied by outdoor cateror in such scenario?

Not eligible

Membership of club, health and fitness centre

Exceptions

No exceptions provided.

Not eligible**Exceptions**

Rent-a-cab,
life insurance
and health
insurance

Govt. notifies the services making it obligatory for an employer to provide to its employees under any law.
Inward supply of goods/services are used for making outward taxable supply of same category of goods/services or as element of taxable composite or mixed supply

Travel benefits extended to employees on vacation (LTC)

No exceptions provided.

Practical issues:

- 1) Whether leasing of vehicles would be covered under rent-a-cab?
- 2) Lets say a company takes life insurance on its key employees voluntarily. Whether credit will be available in such scenario?
- 3) Insurance on car/ vehicles is eligible ?

Not eligible

Works contract services when supplied for construction of immovable property

Goods/services received for construction of an immovable property on his own account even when used in the course or furtherance of business.

Exceptions

When further used for supply of works contract service. Immovable property excludes plant and machinery

Immovable property excludes plant and machinery.

Construction = includes re-construction, renovation, addition, alterations or repairs to the extent of capitalization, to the immovable property.

Practical issues:

- 1) Lets say a company enters into contract for renovation of warehouse wherein goods required will be procured by the company itself and contractor only provides labour service. Whether credit eligible on goods procured and services received in the given case?

Not eligible**Exceptions**

When tax is paid under composition scheme.

No exceptions

Goods/services received by non-resident taxable person

Goods imported by him

Goods/services used for personal consumption

No exceptions

Goods lost, stolen, destroyed, written off, disposed of by way of gift or free samples

No exceptions

Practical issues:

- 1) Warranty replacements – Lets say a car dealer supplies some parts to the customer free of cost under the AMC contract. Such parts would have been procured from the manufacturer and credit availed. In this case whether credit to be reversed because of supply free of cost?
- 2) A manufacturer supplies 2 units of his products to customers as free samples and later receives the order for a consignment of such goods for an agreed price. Whether ITC attributable to raw materials used in manufacture of such 2 units to be reversed?

- Expression “plant & machinery” (as discussed above) 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 1) land, building, other civil structures 2) telecommunication towers 3) pipelines laid outside factory premises.

Practical issues:

- Whether person undertaking works contract would be eligible to avail credit on goods or services procured by him
- Whether GST paid on supply and installation of lift is eligible credit for building owner providing renting services

Questions ??

Thank You

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