INPUT TAX CREDIT



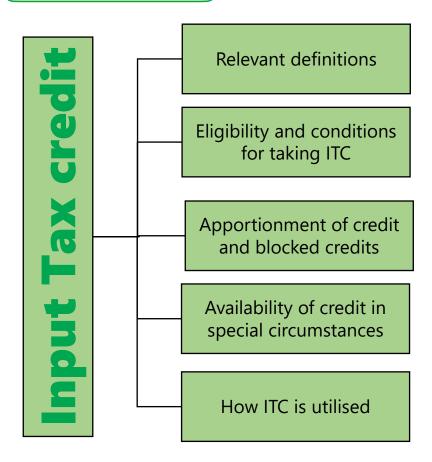
For the sake of brevity, input tax credit has been referred to as ITC in this Chapter. Examples/Illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 31.10.2020.

LEARNING OUTCOMES

After studying this Chapter, you will be able to:

- describe what are inputs, input services, capital goods and other relevant terms in relation to ITC.
- explain the various conditions, timelines, restrictions and processes for taking ITC on goods and services in general and special circumstances.
- identify the items on which ITC is available as also the blocked items on which ITC is not available.
- explain the concept relating to availing of proportionate ITC when common inputs or input service or capital goods are used or intended to be used for exempted and taxable supplies or business and non-business activities.
- comprehend and apply the above provisions as also the provisions relating to utilization of ITC to compute the GST liability of a registered person payable in cash.

CHAPTER OVERVIEW



1. INTRODUCTION

In earlier indirect tax regime, the credit mechanism for indirect taxes levied by the Union Government,

TAX CREDITS

(central excise duty and service tax) was governed by the CENVAT Credit Rules, 2004; and the credit mechanism for state-level VAT on sale of goods was governed by the States under their respective VAT laws. The VAT legislations allowed ITC of VAT on inputs and capital goods in transactions within the state, but not on inputs and capital goods coming in the State from outside the state, on which central sales tax was paid. CENVAT Credit Rules, 2004 allowed availing and utilization of credit of duty/tax paid on both goods (capital goods and inputs) and services by the manufacturers and the service providers across the country.

The credit across goods and services was integrated vide the CENVAT Credit Rules, 2004 in the year 2004 to mitigate the cascading effects of central levies namely, central excise duty and service tax. However, the credit chain remained fragmented on account of State-Level VAT as the credit of central taxes could not be set off against a State levy and *vice versa*. The chain further got distorted as ITC was not available on inter-State purchases. This resulted in cascading of taxes leading to increase in costs of goods and services.

The GST regime promises seamless credit on goods and services across the entire supply chain with some exceptions like supplies charged to tax under composition scheme and supply of exempted goods and/or services. ITC is considered to be the lifeline of the GST regime. In fact, it is the provisions of ITC, which essentially make GST a value added tax i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

Chapter V of the CGST Act [Sections 16 to 21] & Chapter V: Input Tax Credit of the CGST Rules [Rules 36-45] prescribe the provisions relating to ITC. State GST laws also prescribe identical provisions in relation to ITC. In this Chapter, provisions of sections 16, 17 and 18 have been discussed; first the statutory provisions of these sections together with the relevant rules have been extracted followed by their analysis.

Provisions of ITC under the CGST Act have also been made applicable to the IGST Act vide section 20 of the IGST Act.

Scheme of ITC - At a Glance

Given below are the salient features of the scheme of ITC as contained in the provisions of sections 16, 17 and 18 read with the relevant rules. The scheme has been discussed in detail in the ensuing pages of this Chapter.

- The scheme is designed to avoid cascading effect of taxes and make GST a destination-based tax.
- Broadly, ITC is available on all inputs, input services and capital goods used for purposes of business of a taxable person. The exception is 'blocked credit', where ITC is not available even when these goods or services are used for purposes of business.

¹ Provisions of ITC relating to job work and input service distributor [Sections 19, 20 and 21] will be discussed at the Final level.

- ITC is used for payment of tax on taxable output supply to avoid cascading effect of taxes.
 GST law does not require 'one to one' co-relation between inputs/input services and final products/services. Any eligible ITC can be used for payment of tax on any taxable output supply.
 IGST is another core aspect of GST. It is a transitory tax to enable transfer of ITC when goods or services move from one State to another. This is a unique feature of Indian GST.
 Since ITC can be availed for payment of tax on taxable output supply, as a natural corollary, ITC is not available when tax is not payable on output supply, i.e. on exempt supply.
- The exception to the above principle is 'zero rated supply'², i.e. exports or supplies to a special economic zone (SEZ) developer/unit, where ITC is available even if no tax is payable on output supply. Such ITC can be used either for payment of tax on supplies made with tax or refund of the same can be obtained. This simple mechanism is used to make exports and supplies to SEZ completely tax free.
- If a taxable person is making both taxable and exempt supply, he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for taxable supply and no credit at all for inputs, input services and capital goods exclusively used for exempt supply.
- If common inputs, input services and capital goods are used for taxable as well as exempt supply, only proportionate ITC attributable to the taxable supply is available. The common ITC is apportioned in the ratio of value of taxable supply and exempt supply. Elaborate provisions have been made in the GST law to prescribe the manner of calculation of proportionate ITC.

Before proceeding to understand the provisions of section 16, 17, 18 and the relevant rules let us first go through few relevant definitions.

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2. RELEVANT DEFINITIONS



Agent means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

 $^{^{2}}$ The concept of zero rated supply and the refund of ITC will be dealt in detail at the Final level.

Business includes

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) activities of a race club including by way of totalisator or a licence to book maker or activities of a licenced book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities [Section 2(17)].
- Capital goods means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business [Section 2(19)].
- Conveyance includes a vessel, an aircraft and a vehicle [Section 2(34)].
- **Exempt supply** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and includes non-taxable supply [Section 2(47)].
- Input means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business [Section 2(59)].

- Input service means any service used or intended to be used by a supplier in the course or furtherance of business [Section 2(60)].
- 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 under the provisions of sub-sections (3) and (4) of section 9;
 - (c) the tax payable under the provisions of sub-section (3) and (4) of section 5 of the IGST Act;
 - (d) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of sub-section (3) and sub-section(4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy [Section 2(62)].

- Input tax credit means the credit of input tax [Section 2(63)].
- Inward supply in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration [Section 2(67)].
- Motor vehicle shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 [Section 2(76)].
 - Motor vehicle or vehicle under the Motor Vehicles Act, 1988 means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimetres. [Section 2(28) of Motor Vehicles Act, 1988].
- Non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India [Section 2(77)].

- Principal means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88)].
- Quarter shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year [Section 2(92)].
- Recipient of supply of goods or services or both, means—
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

- Supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].
- Taxable supply means a supply of goods or services or both which is leviable to tax under CGST Act [Section 2(108)].
- Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(108)].
- Zero-rated supply means any of the following supplies of goods or services or both, namely:—
 - (a) export of goods or services or both; or
 - (b) supply of goods or services or both to a Special Economic Zone (SEZ) developer or a Special Economic Zone unit [Section 16(1) of the IGST Act].



3. ELIGIBILITY AND CONDITIONS FOR TAKING INPUT **TAX CREDIT [SECTION 16]**

	STATUTORY PROVISIONS		
Section 16	Elig	ligibility and conditions for taking input tax credit	
Sub-section	Clause	Particulars	
(1)	Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.		
(2)	Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—		
	(a)	he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;	
	(b)	he has received the goods or services or both.	
		Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—	
		(i) 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;	

		(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.		
	(c)	subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and		
	(d)	he has furnished the return under section 39:		
	lots or in	rovided that where the goods against an invoice are received in ts or instalments, the registered person shall be entitled to take edit upon receipt of the last lot or instalment:		
	Provided further that 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, in such manner as may be prescribed:			
	of input to	also that the recipient shall be entitled to avail of the credit ax on payment made by him of the amount towards the value of goods or services or both along with tax payable thereon.		
(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.			
(4)	A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both 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.			

Chapter V: Input Tax Credit of the CGST Rules			
Rule 36	Documentary requirements and conditions for claiming input tax credit		
(1)	The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:-		
	(a)	an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;	
	(b)	an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, 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 input service distributor invoice or input service distributor credit note or any document issued by an input service distributor in accordance with the provisions of sub-rule (1) of rule 54.	
(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 FORM GSTR-2 ³ by such person.		
	Provided that if the said document does not contain all the specific particulars but contains the details of the amount of tax charge description of goods or services, total value of supply of goods		

³ Filing of GSTR-2 has been deferred by the GST Council.

	services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered 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.
(4)	Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.
Rule 37	Reversal of input tax credit in the case of non-payment of consideration
(1)	A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to subsection (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice.
	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.
	Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2)	The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.
(3)	The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in subrule (2), is paid.
(4)	The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re- availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.



ANALYSIS

(i) Eligibility for taking ITC [Section 16(1)]

(a) Registration under GST

Every registered person shall be entitled to ITC of GST charged on inward supply of goods and / or services. This is subject to the provisions relating to use of ITC under section 49 and the conditions and restrictions in the rules. [Section 49 prescribes provisions relating to payment of tax, interest, penalty & other amounts. The same has been discussed in detail in Chapter 9: Payment of Tax.]

(b) Goods/services to be used for business purposes

ITC of GST will be available on goods and/or services which are used in the course or furtherance of the business [See definition of business]. The "intention to use" the goods and/or services in the course or furtherance of business would also suffice 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 purposes cannot be availed as credit. ITC will be credited in electronic credit ledger.

(ii) Conditions for taking ITC [Section 16(2)]

The registered person will be entitled to ITC on a supply only if **ALL** the following four conditions are fulfilled:

(a) Possession of tax paying document [Section 16(2)(a) read with rule 36 of the CGST Rules]

ITC can be availed on the basis of any of the following documents:

- (i) Invoice issued by the supplier of goods and/or services
- (ii) Invoice issued by the recipient receiving goods and/or services from unregistered supplier along with proof of payment of tax, in case of reverse charge
- (iii) Debit note issued by the supplier
- (iv) Bill of entry or similar document prescribed under the Customs Act
- (v) Revised invoice
- (vi) Document issued by input service distributor⁴

The documents basis which ITC is being taken should contain at least the following details:

- (i) Amount of tax charged
- (ii) Description of goods or services
- (iii) Total value of supply of goods and/or services
- (iv) GSTIN of the supplier and recipient
- (v) Place of supply in case of inter-State supply

No ITC of tax paid towards demands involving fraud [Rule 36(3)]: Tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts cannot be availed as ITC.

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⁴ Concept of Input Service Distributor will be dealt with at the Final level.

Restricted ITC on invoices/debit notes not uploaded by supplier in his GSTR-1⁵ [Rule 36(4) read with Circular No. 123/42/2019 GST, dated 11.11.2019]: It is observed that some taxpayers take inflated or bogus ITC, even if proper tax invoices or debit notes in respect of inputs or input services are not available. To exercise control over the malpractice of availing bogus ITC by the taxpayers, certain restrictions have been placed on availment of ITC.

ITC on all invoices/debit notes which are uploaded by the suppliers in their GSTR-1s can be availed in full. The recipient gets details of tax invoices and debit notes uploaded by the suppliers in their GSTR-1s, in his (recipient's) GSTR-2A and GSTR-2B.

GSTR-1 is a monthly/quarterly statement containing details of outward supplies made by a registered supplier. Such details of outward supplies furnished by the supplier are communicated and made available electronically (auto populated) to the respective recipient(s) in GSTR- 2A⁵. **GSTR-2B** is an auto-drafted ITC statement generated for every registered person based on GSTR-1 filed by supplier.

However, in respect of invoices/debit notes the details of which are not uploaded by the suppliers in their GSTR-1s (and hence cannot be seen in GSTR-2A and GSTR-2B of the recipient), ITC can be availed only upto 10% of the eligible credit available in respect of invoices/debit notes the details of which have been uploaded by the suppliers in their GSTR-1s under section 37(1).

In other words, the ITC claimed should not exceed 110% of ITC reflecting in GSTR-2A on the due date of filing of GSTR-1 of the suppliers for the said tax period. The taxpayer has to avail the ITC on self-assessment basis as the restriction is not imposed through the common portal.

The above concept has been illustrated in a diagram given at the next page.

The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He can claim proportionate ITC as and

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⁵ The provisions relating to filing of GSTR-1 and GSTR-2A have been discussed in detail in Chapter 10: Returns.]

when details of some invoices are uploaded by the suppliers provided that ITC on invoices, the details of which are not uploaded in GSTR-1 remains under 10% of the eligible ITC, the details of which are uploaded by the suppliers. In other words, taxpayer may avail full ITC in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent eligible [ITC/ 1.1].

ITC on invoices/debit notes which have been uploaded by the suppliers in their GTSR-1s



100% ITC can be claimed on such invoices/debit notes, if all other conditions of availing ITC are fulfilled

ITC on invoice/debit note which have not been uploaded by suppliers in their GTSR-1s



10% of the eligible ITC available on invoices/debit notes uploaded by suppliers in their GSTR-1s can be claimed on such invoices/debit notes.



- Restricted amount of ITC claimed on invoices/debit notes not uploaded by suppliers in their GSTR-1s should not exceed the actual eligible ITC available in respect of the invoices not uploaded.
- O Invoices on which ITC is not available under any of the provisions e.g., under section 17(5), are not to be considered for calculation of 10% of the eligible credit available.

- Full ITC can be availed in respect of IGST paid on imports, documents issued under reverse charge, credit received from ISD etc., which are outside the ambit of section 37(1).
- Restricted ITC (10%) is calculated on a consolidated basis on total eligible ITC from all suppliers against all supplies whose details have been uploaded by the suppliers.

ILLUSTRATION 1

Vijay Sales, a registered supplier, receives 100 invoices (for inward supply of goods/ services) involving GST of $\ref{thmodel}$ 10 lakh, from various suppliers during the month of October. Out of 100 invoices, 80 invoices involving GST of $\ref{thmodel}$ 6 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Compute the ITC that can be claimed by Vijay Sales in its GSTR-3B for the month of October to be filed by 20^{th} November assuming that GST of \raiset 10 lakh is otherwise eligible for ITC.

ANSWER

ITC to be claimed by Vijay Sales in its GSTR-3B for the month of October to be filed by 20th November will be computed as under-

Invoices	Amount of ITC involved in the invoices (₹)	Amount of ITC that can be availed (₹)
80 invoices uploaded in GSTR-1	6 lakh	6 lakh [Refer Note 1]
20 invoices not uploaded in GSTR-1	4 lakh	0.6 lakh [Refer Note 2]
Total	10 lakh	6.6 lakh

Notes:

- (1) 100% ITC can be availed on invoices uploaded by the suppliers in their GSTR-1.
- (2) As per rule 36(4), the ITC in respect of invoices not uploaded by the suppliers in their GSTR-1s is restricted to 10% of eligible ITC in respect of invoices uploaded in GSTR-1s. Thus, in respect of 20 invoices not uploaded in GSTR-1s, the ITC has been restricted to ₹0.6 lakh [10% of ₹6 lakh].

ILLUSTRATION 2

Ajay Sales, a registered supplier, receives 100 invoices (for inward supply of goods/ services) involving GST of ₹10 lakh, from various suppliers during the month of October. Out of 100 invoices, 85

invoices involving GST of ₹ 9.5 lakh have been uploaded by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor.

Compute the ITC that can be claimed by Ajay Sales in its GSTR-3B for the month of October to be filed by 20^{th} November assuming that GST of \raiset 10 lakh is otherwise eliqible for ITC:

ANSWER

ITC to be claimed by Ajay Sales in its GSTR-3B for the month of October to be filed by 20th November will be computed as under-

Invoices	Amount of ITC involved in the invoices (₹)	
85 invoices uploaded in GSTR-1	9.5 lakh	9.5 lakh [Refer Note 1]
15 invoices not uploaded in GSTR-1	0.5 lakh	0.5 lakh [Refer Note 2]
Total	10 lakh	10 lakh

Notes:

- (1) 100% ITC can be availed on invoices uploaded by the suppliers in their GSTR-1.
- (2) As per rule 36(4), the ITC in respect of invoices not uploaded by the suppliers in their GSTR-1s is restricted to 10% of eligible ITC in respect of invoices uploaded in GSTR-1s. However, since in this case, 10% of the eligible ITC in respect of invoices uploaded in GSTR-1s [₹ 0.95 lakh (10% of ₹ 9.5 lakh)] exceeds the actual ITC [₹ 0.5 lakh] in respect of 15 invoices not uploaded in GSTR-1, ITC availed should be limited to actual amount of ITC.

(b) Receipt of the goods and / or services [Section 16(2)(b)]

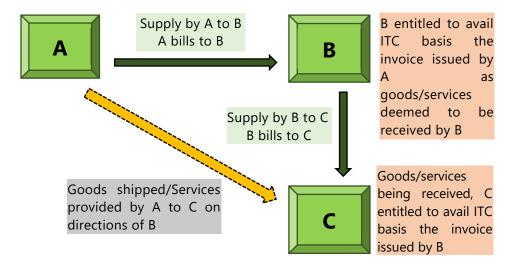
The registered person taking the ITC must have received the goods and / or services.

"Bill to Ship to" Model: Under this model, the goods are delivered to

a third party - ' ζ ' on the direction of the customer (registered person) – 'B' who purchases the goods from the vendor (supplier) – 'A'. In other words, 'A' bills to 'B' but ships the goods to ' ζ ' on direction of 'B'. In effect, two supplies take place in this scenario viz., from 'A' to 'B' and from 'B' to ' ζ '. Thus, under this model, the customer (registered person) who purchases such goods does not receive the said goods.

For such cases, by virtue of explanation to section 16(2)(b), it is deemed that the registered person (customer) has received the goods. In other words, goods delivered to another person on the direction of the registered person by way of transfer of documents of title or otherwise, either before or during the movement, are deemed to have been received by such registered person. So, ITC will be available to the registered person, on whose order the goods are delivered to a third person.

Similarly, services may also be provided to a third party by the service provider (supplier) on the direction of the service recipient (registered person). In this case also, though the service recipient (registered person) does not receive the service, by virtue of explanation to section 16(2)(b) it is deemed that the registered person (service recipient) has received the service. In other words, service provided to any person on the direction of and on account of the registered person, is deemed to have been received by such registered person. So, ITC will be available to the registered person, on whose direction the services are provided to a third person.





(1) A is a trader who places an order on B for a consignment of soda ash. A receives a buying order from C for the same quantity of soda ash. A instructs B to deliver the goods to C,

and in turn he raises an invoice on C. Though the goods are not physically received at the premises of A, section 16(2)(b) allows ITC of such goods to A.



(2) The registered head office (New Delhi) of ABC Pvt. Ltd. enters into a contract with DEF Pvt. Ltd. of New Delhi for repair and maintenance of computers systems installed at its

registered branch office in Bengaluru, Karnataka. DEF Pvt. Ltd. issues an invoice on ABC Pvt. Ltd., New Delhi for the services provided by it. Though the actual services are received by the branch office and not by the head office, section 16(2)(b) allows ITC of such repair and maintenance services to head office.

(c) Tax leviable on supply actually paid to Government [Section 16(2)(c)]

The supplier should have actually paid the tax charged on the goods and/or services, for which ITC is being taken, either in cash or by utilizing ITC. However, section 41 allows the taxpayer (recipient) to take ITC provisionally on self-assessment basis. The self-assessed ITC gets credited to the taxpayer's electronic credit ledger on provisional basis in terms of section 49(2).

Thus, even if the recipient has paid the tax to the supplier his claim for ITC gets confirmed only when the supplier deposits the tax so collected by him to the Government.

One of the significant features of the Indian GST is the 'matching concept', i.e. ITC claimed by the recipient of supply is matched with the tax paid by the supplier in relation to that supply. Matching seeks to ensure that only legit ITC is claimed by the recipient. This was intended to be achieved through a sophisticated automated return filing mechanism. Initially, the GST law provided for an elaborate system of return filing whereby the outward supplies of a supplier uploaded in GSTR-1 were to be auto-populated as inward supplies in the recipient's GSTR-2 and ITC could be availed only on such matched inward supplies. Basis GSTR-1 and GSTR-2 of the taxpayer, the consolidated return viz, GSTR-3 was to be auto-generated (for most part), and tax liability paid. However, the envisaged system could not be operationalized.

Presently, suppliers are required to file GSTR-1 (Statement of details of outward supplies), the details of which get auto-populated in GSTR-2A of the recipient for viewing. *Further, GSTR-2B, an auto-drafted ITC statement, is also generated for the taxpayer based on GSTR-1 filed by the supplier.* Basis the details available in GSTR-2A and GSTR-2B, the taxpayer takes provisional ITC on self-assessment basis in GSTR-3B for discharging the tax liability.

(d) Filing of return [Section 16(2)(d)]

The registered person taking the ITC must have filed his return under section 39. Presently, a summary return in form GSTR-3B is being filed on monthly basis. Thus, a taxpayer should file GSTR-3B to avail ITC on eligible inward supplies.

(iii) Goods received in lots: ITC available only on receipt of last lot [First proviso to section 16(2)]

In case the goods covered under an invoice are not received in a single consignment but are received in lots / instalments, ITC can be taken only upon receipt of the last lot / instalment.



(3) XYZ enters into a contract with ABC for supply of 10 MT of a chemical for ₹ 1,18,000 (inclusive of GST of ₹ 18,000) in the month of August. The chemical is to be delivered in lots over a period of

three months. ABC raises the invoice for the entire amount in August and XYZ also makes the payment in the same month but the supply is completed in November. Though XYZ paid the full tax as early as August, it can take the ITC of the same only on receipt of last instalment of the chemical in the month of November.

(iv) Payment for the invoice to be made within 180 days [Second proviso to section 16(2) read with rule 37 of CGST Rules]

The registered person must pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice. In the event of failure to do so, the corresponding credits availed by the registered person would be added to his output tax liability, with interest. Interest will be paid @ 18% from the date of availing credit till the date when the amount added to the output tax liability is paid.

However, once the recipient makes the payment of value of goods and/or services along with tax, he will be entitled to avail the credit again without

any time limit [See discussion on time limit for availing credit under point (vi)]. In case part-payment has been made, proportionate credit would be allowed.

Exceptions

This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

- a. Supplies on which tax is payable under reverse charge
- b. Deemed supplies without consideration
- c. Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply

Under situations given in points (b) & (c), the value of supply is deemed to have been paid.



(4) Due to a quality dispute, PZP Ltd withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by PZP on the invoice got added to the output tax liability of PZP and thus, it had

to pay back the credit. Only after the vendor rectified the machine and PZP released the payment, could PZP take the credit again.

(v) If depreciation claimed on tax component, ITC not allowed [Section 16(3)]

If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed. Thus, in respect of the tax paid on such items, dual benefit cannot be claimed under Income-tax Act, 1961 and GST laws simultaneously. In other words, either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST laws.

(vi) Time limit for availing ITC: Due date of filing of return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier [Section 16(4)]

ITC on invoices pertaining to a financial year or debit notes relating to invoices pertaining to a financial year can be availed any time till the due date of filing of the return for the month of September of the succeeding financial year or the date of filing of the relevant annual return, whichever is earlier.

It may be noted that the return for the month of September is to be filed by

20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

So, the upper time limit for taking ITC is 20th October of the next financial year or the date of filing of annual return, whichever is earlier. The underlying reasoning for this restriction is that no change in return is permitted after September of next financial year. If annual return is filed before the month of September, then no change can be made after filing of annual return.

Exception

The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.



(5) Hercules Machinery delivered a machine to XYZ in the month of January under Invoice no. 49 dated 28th January for ₹ 4,15,000 plus GST and undertook trial runs and calibration of the machine as per the requirements of XYZ. The amount chargeable for the

post-delivery activities was covered in a debit note raised in the month of April for ₹ 50,000 plus GST. XYZ did not file its annual return till the month of October.

Though the debit note is received in the next financial year, it relates to an invoice received in the preceding financial year. Therefore, the time limit for taking ITC available on ₹ 50,000 as well as on ₹ 4,15,000 is 20th October, earlier of the date of filing the annual return for the preceding financial year or the return for the month of September.

(vii) Restriction of ITC in proportion of (i) taxable supplies (ii) business purposes [Sub-sections (1) and (2) of section 17]

ITC is restricted in proportion of the use of the goods and/or services (i) in the taxable and / or zero-rated part of the supply (ii) for business purposes. This is elaborated in heading (4) below.

(viii) ITC not allowed on certain supplies [Section 17(5)]

ITC has been blocked for specified goods and services. This is elaborated in heading (4) below.



4. APPORTIONMENT OF CREDIT & BLOCKED CREDITS [SECTION 17]

	STATUTORY PROVISIONS	
Section 17	Apportionment of credit and blocked credits	
Sub-section	Clause Apportionment of credit and blocked credits	
(1)	Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.	
(2)	Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.	
(3)	The value of exempt supply under sub-section (2) 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 and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	
	Explanation.— For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.	
(4)	A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or 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:	

		Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year: Provided further that 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.		
	the tax			
(5)	16 and	standing anything contained in sub-section (1) of section sub- section (1) of section 18, input tax credit shall not be le in respect of the following, namely:—		
	(aa)	motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:— (A) further supply of such motor vehicles; or (B) transportation of passengers; or (C) imparting training on driving such motor vehicles; vessels and aircraft except when they are used— (i) for making the following taxable supplies, namely:— (A) further supply of such vessels or aircraft; or (B) transportation of passengers; or (C) imparting training on navigating such vessels; or (D) imparting training on flying such aircraft;		
	(ab)	services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa): Provided that the input tax credit in respect of such services shall be available— (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;		

(ii) where received by a taxable person engage	ad	
(1)	eu—	
(I) in the manufacture of such motor	vehicles,	
vessels or aircraft; or		
(II) in the supply of general insurance se	ervices in	
respect of such motor vehicles, ve	essels or	
aircraft insured by him;		
(b) the following supply of goods or services or both-	the following supply of goods or services or both—	
(i) food and beverages, outdoor catering,	. beauty	
treatment, health services, cosmetic and	•	
surgery, leasing, renting or hiring of motor		
vessels or aircraft referred to in clause (a)		
(aa) except when used for the purposes therein, life insurance and health insurance	•	
Provided that the input tax credit in respec	-	
goods or services or both shall be availab		
an inward supply of such goods or service.		
outward taxable supply of the same cat	•	
	goods or services or both or as an element of a	
taxable composite or mixed supply;		
(ii) membership of a club, health and fitnes	s centre:	
and	,	
(iii) travel benefits extended to employees on	vacation	
such as leave or home travel concession:		
Provided that the input tax credit in respec	ct of such	
goods or services or both shall be available		
it is obligatory for an employer to provide		
to its employees under any law for the tir		
in force.		
(c) works contract services when supplied for constr	uction of	
an immovable property (other than plant and mo		
except where it is an input service for further s	except where it is an input service for further supply of	
works contract service;		

	1	
	(d)	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
	(e)	extent of capitalisation, to the said immovable property 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; and
	(i)	any tax paid in accordance with the provisions of sections 74, 129 and 130.
(6)		vernment may prescribe the manner in which the credit to in sub-sections (1) and (2) may be attributed.
	Explanation.— For the purposes of this Chapter and Chapter VI, 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.
	Chapt	er V: Input Tax Credit of the CGST Rules
Rule 38	Claim institut	of credit by a banking company or a financial
		ing company or a financial institution, including a non- financial company, engaged in the supply of services by

	way of	accepting deposits or extending loans or advances that		
	chooses	chooses not to comply with the provisions of sub-section (2) of		
	section 17, in accordance with the option permitted under sub- section (4) of that section, shall follow the following procedure,			
	namely	· · · · · · · · · · · · · · · · · · ·		
	(a)	the said company or institution shall not avail the credit of,-		
		(i) the tax paid on inputs and input services that are used for non-business purposes; and		
		(ii) the credit attributable to the supplies specified in sub-section (5) of section 17, in FORM GSTR-2 ;		
	(b)	the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);		
	(c)	fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in FORM GSTR-2 ;		
	(d)	the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.		
Rule 42	Manner of determination of input tax credit in respect of inputs or input services and reversal thereof			
(1)	attract 17, bei other p includir supplie	out tax credit in respect of inputs or input services, which the provisions of sub-section (1) or sub-section (2) of section ing partly used for the purposes of business and partly for purposes, or partly used for effecting taxable supplies ing zero rated supplies and partly for effecting exempt s, shall be attributed to the purposes of business or for		
		g taxable supplies in the following manner, namely,-		
	(a)	the total input tax involved on inputs and input services in a tax period, be denoted as 'T';		

	(b)	the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as ' T_1 ';
	(c)	the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as ' T_2 ';
	(d)	the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under subsection (5) of section 17, be denoted as ' T_3 ';
	(e)	the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as C_1 and calculated as- $C_1 = T - (T_1 + T_2 + T_3);$
	(f)	the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as T_4 ;
	(g)	T_{1} , T_{2} , T_{3} and T_{4} shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 and at summary level in FORM GSTR-3B ;
	(h)	input tax credit left after attribution of input tax credit under clause (f) shall be called common credit, be denoted as C_2 and calculated as- $C_2 = C_1 - T_4;$
	(i)	the amount of input tax credit attributable towards exempt supplies, be denoted as ' D_1 ' and calculated as- $D_1 = (E \div F) \times C_2$ where, 'E' is the aggregate value of exempt supplies during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period:
		Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be

calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as ' D_2 ', and shall be equal to five per cent. of C_2 ; and

of List II of the said Schedule;

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as C_3 , where.-

 $C_3 = C_2 - (D_1 + D_2);$

(l) the amount ' C_3 ', ' D_1 ' and ' D_2 ' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B** or through **FORM GST DRC-03**;

(m) the amount equal to aggregate of $'D_1''$ and $'D_2''$ shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**:

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in T_1 and T_2 respectively, and the remaining amount of credit on such inputs or input services shall be included in T_4 .

(2) The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for

furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and,-

- where the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂', such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or
- (b) where the aggregate of the amounts determined under subrule (1) in respect of ' D_1 ' and ' D_2 ' exceeds the aggregate of the amounts calculated finally in respect of ' D_1 ' and ' D_2 ', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

Rule 43 Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases

Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in **FORM GSTR-2** and

(1)

FORM GSTR-3B and shall not be credited to his electronic credit ledger;

- (b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in **FORM GSTR-2** and **FORM GSTR-3B** and shall be credited to the electronic credit ledger;
- the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as 'Tie', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed;

Provided further that the amount $'T_{ie}'$ shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.

Explanation.- An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.

(d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains

during the tax period, to be denoted as T_c , shall be the common credit in respect of such capital goods:

Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'T_c';

(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as T_m and calculated as:-

$$T_m = T_c \div 60$$

Explanation.- For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

(g) the amount of common credit attributable towards exempted supplies, be denoted as T_e , and calculated as:

$$T_e = (E \div F) \times T_r^6$$

where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

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⁶ Clause (f) of the rule which contained the provisions for computation of ' T_r ' has been omitted vide Notification No. 16/2020 CT dated 23.03.2020. This has rendered the formula given in clause (g) otiose as the term ' T_r ' is now nowhere defined in the amended rule.

	(h)	Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule; the amount T_e along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit. The amount T_e shall be computed separately for central tax,		
		State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B .		
Explanation:-For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude:-				
(b)	the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and			
(c)	the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.			
Explanation	For the p	purposes of this Chapter,-		
(1)	the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;			
(2)	for determining the value of an exempt supply as referred to in subsection (3) of section 17-			
	(a)	the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and		
	(b)	the value of security shall be taken as one per cent. of the sale value of such security.		



Section 17 requires apportionment and concomitant restriction of ITC in two situations as also blocking of ITC on specified inward supplies.

A. Apportionment of ITC [Sub-sections (1) and (2) of section 17 read with rule 42 and rule 43 of CGST Rules]

The fundamental principle of credit scheme under value added tax is that tax paid on inputs, input services and capital goods can be availed as credit only when the output is taxable. Thus, when tax is not payable on output, credit cannot be availed.

Accordingly, ITC under GST can be availed and utilised for payment of tax on output supply. Consequently, ITC cannot be availed when tax is not payable on output supply, i.e. on exempt supply. The only exception to the above principle is 'zero rated supply, where ITC is available even if no tax is payable on output supply.

If a taxable person is making both taxable and exempt supply, he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for taxable supply and no credit at all for inputs, input services and capital goods exclusively used for exempt supply. If common inputs, input services and capital goods are used for taxable as well as exempt supply, only proportionate ITC attributable to the taxable supply is available. The common ITC is apportioned in the ratio of value of taxable supply and exempt supply. Elaborate provisions have been made in sub-sections (1) and (2) of section 17 and rules 42 and 43 for calculation of such proportionate ITC. Such provisions are discussed in detail in the ensuing pages.

The situations requiring apportionment are as follows:

- (a) when the goods and / or services are used by the registered person partly for the purpose of business (see the definition of business) and partly for other purposes [Section 17(1)]; and
- (b) when the goods and / or services are used by the registered person partly for making taxable supplies including zero-rated supplies and partly for making exempt supplies (see the definition of exempt supplies) [Section 17(2)].

In both the above situations, full ITC on inward supplies cannot be taken; only proportionate ITC is allowed in such scenarios. Where goods and/or services are used partly for non-business purposes and partly for business purposes, ITC attributable only to business purposes can be taken by the registered person. Similarly, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies, ITC attributable to taxable supplies and zero rated supplies can be taken by the registered person.



Section 16(2) of the IGST Act specifies that ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero-rated supply. Zero-rated supply is an expression that covers two

kinds of supplies: (i) exports, and (ii) supplies to a SEZ unit or SEZ developer. Therefore, ITC is available on goods and / or services used for supplies made in the course of export or to an SEZ unit or SEZ developer.



(6) A registered person is in the business of manufacturing shoes. He gave 50 pairs of shoes to his friends free of cost. ITC on inputs and input services attributable to such 50 pair of shoes being used

for non-business purposes will not be available.



(7) A registered person manufactures a product 'X' chargeable to 18% GST, a product 'Y' chargeable to NIL rate of tax and a product 'Z' which is exported without payment of tax under bond. All the three

products are manufactured from common inputs and input services. ITC on inputs and input services attributable to product 'Y' being an exempt supply, will not be available.

(i) Methodology of apportionment of credit on inputs and input services and reversal thereof [Rule 42 of the CGST Rules]

In many situations, the amount of input tax involved in exempt /non-business use is not easily discernible, as common goods and/or services are used for (i) making taxable supplies including zero rated supplies and exempt supplies and (ii) business and non-business purposes.

Rule 42 of the CGST Rules provides the methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit as follows:

Step 1 - Compute common credit

Total input tax involved on inputs & input services in a tax period			
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes			
Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T ₂)		
Less: Input tax on inputs & input services which are ineligible for credit [blocked credits- see discussion under point (B)]			
ITC credited to Electronic Credit Ledger	C ₁		
Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies			
Common ITC available for apportionment			

- \checkmark T₁, T₂, T₃ and T₄ will be determined and declared by the registered person at the invoice level in GSTR 2 and summary level in GSTR-3B.
- Where ITC on inputs and input services used partly for nonbusiness purposes and exempt supplies can be segregated at invoice level, the same will be added to T₁ and T₂ respectively and the balance credit will be added in T₄.
- The portion identified as pertaining to taxable supplies in C_2 will be allowed as ITC.

Example on how to arrive at the amount of common credit C2

Making an assumption that Hawai slippers are exempted, take a case of Eezee Footwear, manufacturer of two varieties of Hawai slippers and

five varieties of other sandals and shoes. Dyes are used in the manufacture of all footwear. However, bright pink is used only for one of the Hawai varieties, and black is used only for the sandals and shoes. Blue and yellow are used for all the varieties. Brown is used for non-business purposes.

In inward supplies during the month -

Input tax on brown dye: ₹ 10,000 (This is T₁)

Input tax on bright pink dye: ₹ 90,000. (This is T₂)

Input tax on black dye: ₹ 40,000. (This is T₄)

Input tax on blue dye: ₹ 1,00,000 Input tax on yellow dye: ₹ 15,000

Total input tax: ₹ 2,55,000 (This is T)

Total input tax reduced by $(T_1 + T_2 + T_4, i.e., by ₹ 1,40,000)$ is ₹ 1,15,000.

Amount of common credit (C_2) is $\ref{1}$,15,000. This has to be apportioned as given below in Step 2.

Step 2 - Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit

 \checkmark Apportion C_2 into credit attributable to exempt supplies D_1 as under:

$$D_1 = (E/F) \times C_2$$

Where

E = Aggregate value of exempt supplies during the tax period

F = Total turnover in the State during the tax period

Notes:

- (i) If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.
- (ii) Here, exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier. Thus, ITC attributable to such supplies will need to be reversed.

- (iii) Here, exempt supplies exclude-
 - (a) transactions/activities specified in Schedule III except sale of land and sale of building as specified in point (ii) above.
 - (b) supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.
 - (c) transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Thus, ITC attributable to such supplies need not be reversed.

- (iv) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, central sales tax and VAT.
- (v) The value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Presently, (i) central excise duty is leviable on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas (ii) State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and (iii) VAT/CST is leviable on intra-State/inter-State sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor. Petroleum crude, diesel, petrol, ATF, natural gas are presently not taxable under GST and alcoholic liquor is outside the ambit of GST. Thus, supply of both these products (petrol/petroleum products and alcoholic liquor) being non-taxable under GST, will be exempt supplies u/s 2(47) and taxes/duties (as mentioned above) leviable thereon will be excluded from the value thereof for the purpose of apportionment of credit.

Example on how to apportion common credit into credit attributable to exempt supplies

Ezee Footwear, which manufactures two varieties of exempt Hawai slippers and five varieties of taxable sandals and shoes, has the

following turnover in October and has ₹ 1,15,000 common credit that has to be apportioned:

Turnover of Hawai 1 plus Hawai 2: ₹ 3 crores (This is 'E')

Turnover of all varieties of taxable shoes and sandals: ₹ 2 crore

Total turnover of all footwear during the month: ₹ 5 crores (This is 'F')

No inputs/input services are used for non-business purposes.

(3,00,00,000 /5,00,00,000) x 1,15,000= ₹ 69,000 is the input tax that pertains to exempt supply (D₁).

✓ Compute credit attributable to non-business purposes D₂ as under

$$D_2 = 5\%$$
 of C_2 (common credit)

Step 3 - Compute eligible credits

Compute C₃ attributable to business purposes and taxable supplies including zero rated supplies as under:

$$C_3 = C_2 - (D_1 + D_2)$$

Step 4 - Restrict ineligible credits

Reverse D_{1 +} D₂

Compute C₃ separately for ITC of CGST, SGST/ UTGST and IGST.
 Compute ∑ (D₁ + D₂) for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September in the following financial year.
 If ∑ (D₁ + D₂) > the amount already reversed every month, the differential amount has to be reversed in any month till September in the following financial year and interest @ rate 18% should be paid on such differential amount from 1st April of succeeding year till the date of payment.
 If the amount reversed every month > ∑ (D₁ + D₂), the additional amount paid has to be claimed back as credit in the return of the month not later than September in the next financial year.

(ii) Methodology of apportionment of credit of capital goods and reversal thereof [Rule 43 of the CGST Rules]

Rule 43 of the CGST Rules provides the methodology for apportionment of ITC on capital goods and reversal of ineligible credit as follows:

Step 1 - Determine common credit 'T_c' on capital goods as under:

- (i) Identify input tax on capital goods used/ intended to be used exclusively for non-business purposes or making exempt supplies and declare the same in GSTR 2. Such amount will not be credited to electronic credit ledger [ECrL].
- (ii) Identify input tax on capital goods used/ intended to be used exclusively for making taxable supplies including zero rated supplies and declare the same in GSTR 2 and GSTR-3B. Such amount will be credited to ECrL.
- (iii) Identify input tax on capital goods not covered under (i) and (ii) above [i.e., the capital goods which are used/intended to be used commonly for making taxable and/or zero rated supplies as well as exempt supplies and/or non-business purposes] and denote the same as 'A'. Such amount (as reflected on the invoice) will be credited to ECrL. The useful life of such capital goods will be taken as 5 years from the date of invoice.
- (iv) Change from exclusive use for non-business purpose/exempt supplies to common use: Where capital goods which were initially covered under (i) above get subsequently covered under (iii), credit input tax in respect of the same, denoted as 'A', in the ECrL.
 - Simultaneously, compute the ineligible credit attributable to the period during which such capital goods were used for non-business purpose/making exempt supplies @ 5% per quarter or part thereof and denote the same as 'Tie'. Add such 'Tie' to the output tax liability of the tax period in which credit on such capital goods is claimed.
- (v) Add together the amounts of 'A' credited to ECrL in respect of common capital goods whose useful life remains during the tax period to arrive at common credit ' T_c '.

(vi) Change from exclusive use for taxable including zero rated supplies to common use: Where capital goods which were initially covered under (ii) above get subsequently covered under (iii), add input tax claimed in respect of the same to aggregate value of 'T_c'.

Step 2 - Determine common credit during the useful life of capital goods for a tax period as under and denote the same as T_m :

$$T_m = T_c \div 60$$

Step 3 - Apportion common credit attributable to exempt supplies as under:

$$T_e = (E \div F) \times T_r$$

Where

E = Aggregate value of exempt supplies made during the tax period

F = Total turnover in the State during the tax period

Notes:

- (i) T_m is to be computed during the useful life of capital goods which is five years from the date of invoice.
- (ii) If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.
- (iii) Here, exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier. Thus, ITC attributable to such supplies will need to be reversed.
- (iv) Here, exempt supplies exclude-
 - (a) transactions/activities specified in Schedule III except sale of land and sale of building as specified in point (ii) above.

- (b) supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.
- (c) transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Thus, ITC attributable to such supplies need not be reversed.

- (v) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, central sales tax and VAT.
- (vi) Amount of T_{ie} and T_e are to be computed separately for CGST, SGST/UTGST and IGST and declared in GSTR 3B.
- (vii) The value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Step 4: Restrict ineligible credit

Add T_e to the output tax liability along with applicable interest during every tax period of the useful life of the capital goods concerned.

(iii) Optional method for banks etc. [Section 17(4) read with rule 38]

- As an alternative to the above method, a banking company or a financial institution including a NBFC, which accepts deposits, or extends loans or advances, has the option to limit its availment of ITC to 50% of the eligible ITC on inputs, capital goods and input services each month and the remaining ITC shall lapse.
- Credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned u/s section 17(5) [blocked credits] cannot be availed.
- The restriction of availing 50% ITC shall not apply to the tax paid on supplies procured from another registration within the same entity i.e., 100% credit of such tax can be availed.
- The option once exercised cannot be changed during the remaining part of the financial year.

B. Blocked credits [Section 17(5)]

ITC of tax paid on almost every inputs and input services used for supply of taxable goods and/or services is allowed under GST except a small list of items provided u/s 17(5). Thus, ITC on such items is not allowed even though the same may qualify as inputs, input services or capital goods and are used in the course or furtherance of business.

The negative list covers mainly items of personal consumption, inputs and input services use of which results into formation of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. and taxes paid as a result of detection of evasion of taxes.

The various goods and/or services on which credit is blocked are discussed hereunder:

(i) Motor vehicles and other conveyances and related services (insurance, servicing and repair and maintenance)

Motor vehicles and conveyances have been defined in the CGST Act [See definition under the heading Relevant Definitions]. Motor vehicles exclude –

- > vehicle running upon fixed rails
- special purpose vehicles for being used in a factory or any enclosed premises
- vehicle with less than 4 wheels fitted with engine capacity of upto 25cc (Thus, railways, two/three wheelers with engine capacity of upto 25cc, bicycle etc. do not fall in the definition of motor vehicle.)

Broadly, ITC is blocked on motor vehicles, vessels and aircrafts used for passenger transportation with certain exceptions. Further, ITC is also blocked on certain services relating to motor vehicles, vessels and aircrafts namely, insurance, servicing and repair and maintenance. The basic principle here is that the motor vehicles, aircrafts and vessels on which ITC is blocked, the ITC on services of insurance, servicing and repair and maintenance pertaining to such motor vehicles, vessels and aircrafts is also blocked.

The blocked credits relating to motor vehicles, vessels, aircrafts and related services are discussed hereunder:

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(i)	Motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) — Referred to as ineligible motor vehicle in this table	Ineligible motor vehicles when used for any of the following eligible purposes - making further taxable supply of such motor vehicles; making taxable supply of transportation of passengers; making taxable supply of imparting training on driving such motor vehicles.	ITC on ineligible motor vehicles used for any purpose other than the eligible purposes is not allowed. ITC on motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose is allowed. ITC on motor vehicles other than ineligible motor vehicles (e.g. motor vehicles (e.g. motor vehicle used for transportation of goods, dumpers, tippers etc.) used for any purpose is
(ii)	Vessels and aircrafts	Vessels and aircraft when used for any of	allowed. ITC on vessels and aircrafts used for any

		the following eligible purposes- making further taxable supply of such vessels or aircraft; making taxable supply of transportation of passengers; making taxable supply of imparting training on navigating such vessels; making taxable supply of imparting training on flying such aircrafts; transportation of goods.	purpose other than the eligible purposes
(iii)	General insurance, servicing, repair and maintenance relating to: Ineligible motor vehicles Vessels Aircraft	□ Such services relating to ineligible motor vehicles, vessels or aircraft when used for eligible purposes □ Such services when received by- ○ Manufacturer of ineligible motor vehicles,	 □ ITC is not allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is not allowed. □ ITC is allowed on services of general insurance,

	vessels or aircraft; or Supplier of general insurance services in respect of ineligible motor vehicles, vessels or aircraft insured by him	servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is allowed.
(iv) Leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is not allowed	■ Such services when used for making an outward taxable supply of the same category of services or as an element of a taxable composite or mixed supply ■ Such services when provided by an employer to its employees under a statutory obligation	 □ ITC on leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is allowed, is also allowed. □ ITC on such services is allowed in the case of subcontracting, i.e. when such services are used by the taxpayer who is in the same line of business.



- **(8)** ITC on cars purchased by a manufacturing company for official use of its employees is blocked.
- (9) ITC on cars purchased by a car dealer for sale to customers is allowed.
- **(10)** ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed.
- (11) ITC on cars purchased by a car driving school is allowed.

- **(12)** ITC on buses (seating capacity for 24 persons) purchased by a company for transportation of its employees from their residence to office and back, is allowed.
- (13) ITC on trucks purchased by a company for transportation of its finished goods is allowed.
- **(14)** ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked.
- **(15)** ITC on aircraft purchased by an Aviation School providing training on non-flying aircrafts, is allowed.
- **(16)** ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.
- (17) ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed.
- **(18)** ITC on general insurance services taken on cars manufactured by a car manufacturing company is allowed.

(ii) Food & beverages, outdoor catering, health services and other services

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(i)	 Food and beverages Outdoor catering Beauty treatment Health services 	Such goods and/or services when used by a registered person for making an outward taxable supply of the same category	☐ ITC on such goods and/or services is allowed in the case of sub-contracting, i.e. when such goods and/or services are used by the taxpayer who is in the same line of

(ii)	Cosmetic and plastic surgery Life insurance and health insurance Membership of a club, health and fitness centre	of goods and/or services or as an element of a taxable composite or mixed supply Such goods and/or services when provided by an employer to its employees under a statutory obligation Such services when provided by an employer to its employees under a statutory obligation	business, e.g. outdoor catering service availed by another outdoor caterer. When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked. When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.
(iii)	Travel benefits extended to employees on vacation such as leave or home travel concession	Such services when provided by an employer to its employees under a statutory obligation	When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.



(19) A manufacturing company purchases food items for being served to its customers, free of cost. ITC on such goods is blocked.

(20) AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co., is allowed.

- **(21)** ITC on outdoor catering services availed by a garment exporter for a marketing event organised for its prospective customers, is blocked.
- (22) Outdoor catering service is availed by a company to run a free canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.
- **(23)** The Managing Director of a company has taken membership of a club, the fees for which is paid by the company. ITC on such service is blocked.
- **(24)** A company avails services of a travel agency for organizing a free vacation for its top performing employees. ITC on such services is blocked.

(iii) Works contract services for construction of immovable property [Clause (c) of section 17(5)]

One major input service ITC on which is blocked is input service relating to construction activity like office building, factory building etc. (except in case of persons like builders, developers and contractors who are undertaking construction for others). However, ITC is available for routine construction related services like repairs, maintenance, renovation etc. of office and factory building. Thus, broadly, ITC in respect of construction services is not available when the expenses are capitalised in books of account. Here, it needs to be noted that capitalisation of an expense does not depend on whether the taxpayer intends to avail ITC, but on the basis of Accounting Standards and GAAP.

Works contract has been defined in the CGST Act [See definition under the heading Relevant Definitions]. Essentially works contract is a composite supply involving both goods and services. Under the erstwhile laws, definition of works contract included work in relation to both movable and immovable properties. However, under GST law, the ambit of works contract has been **confined only to immovable property**.

Meaning of immovable property

Immovable property has not been defined under the GST law. Therefore, we will have to look for the definition of immovable property in other laws. Section 3(26) of the General Clauses Act, 1897, defines the term immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

The term "attached to the earth" is defined in section 3 of the Transfer of Property Act, 1882 to mean:

- (a) rooted in the earth, as in the case of trees and shrubs; [However, the term "immovable property" under the Transfer of Property Act does not cover standing timber, growing crops or grass.]
- (b) embedded in the earth, as in the case of walls or buildings.
- (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

Under GST law, a composite supply of works contract is treated as supply of services in terms of para 6(a) of Schedule II to the CGST Act.

ITC on works contract services for construction of an immovable property is blocked **EXCEPT WHEN**

- It is an input service for further supply of works contract service (sub-contracting);
 - [ITC on works contract services can be availed only by that taxpayer who is in the same line of business, i.e. only a works contractor can avail ITC on works contract services received by him.]
- Immovable property is plant and machinery
 [Plant and machinery affixed permanently to the earth constitutes
 an immovable property. However, ITC on works contract services
 used for construction of such plant and machinery is allowed as an
 exception.]

Meaning of construction

"Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Thus, if re-construction, renovation, additions or alterations or repairs are not capitalized, it would not tantamount to construction under GST law. Consequently, ITC on works contract services availed for such construction (which is not capitalized) whether for any immovable property or for any plant and machinery, would be allowed to all the recipients irrespective of their line of business.

Meaning of plant and machinery

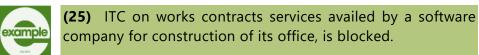
"Plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural supports that are used for making outward supply of goods and/or services and includes such foundation or structural support

but **excludes**

land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

Thus, ITC on works contract services availed for construction of eligible plant and machinery is allowed to the recipient irrespective of the line of business of such recipient.

For instance, ITC on works contract services for construction of machinery fixed to earth by a foundation, would be allowed. However, ITC on works contract services for construction of telecommunication towers, would be blocked.



(26) CD & Co., a works contractor of Noida, has been awarded a contract for construction of a commercial complex in Lucknow. The firm avails services of EF & Co., a local works contractor of Lucknow, for the construction of complex. ITC on such works contract services availed by CD & Co., is allowed.

- (27) ITC on works contract services availed by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.
- (28) ITC on works contract services availed by a manufacturing company for construction of pipelines to be laid outside its factory, is blocked.
- **(29)** A consulting firm has availed services of a works contractor for repair of its office building. The company has booked such expenditure in its profit and loss account. ITC on such services is allowed.
- **(30)** A telecommunication company has availed services of a works contractor for repair of its office building. The company has capitalized such expenditure. ITC on such services is blocked.



ITC on works contract services for construction of immovable property is available only in the following three situations:

(i) When the works contract service is availed by a works contractor for being used in providing the works contract service.

- (ii) For construction of plant and machinery. In this case, ITC is allowed to all recipients irrespective of their line of business.
- (iii) When the value of works contract service is not capitalized. In this case, ITC is allowed to all recipients irrespective of their line of business.

(iv) Self-construction of immovable property [Clause (d) of section 17(5)]

So now we know that ITC on works contract services availed by a taxpayer, other than a works contractor, for construction of immovable property (other than plant and machinery) is not available. But what happens if a taxpayer procures goods and services and constructs an immovable property, for being used in the course or furtherance of business, without availing services of a works contractor? Will ITC be allowed in such a case?

The answer is No. ITC is not allowed on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) **on his own account** even though such goods and/or services are used in the course or furtherance of business. Thus, ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use even if the immovable property being constructed is used in the course or furtherance of his business.

The discussion on terms, 'construction' and 'plant and machinery' for works contract services [Elaborated in point (iii) above] applies to construction on own account also.



ITC on goods and/or services used in construction of immovable property is available only in the following three situations:

- (i) For construction of plant and machinery
- (ii) When the value of goods and/or services is not capitalized
- (iii) When the construction is not on own account



- **(31)** A company buys cement, tiles etc. and avails the services of an architect for construction of its office building. ITC on such goods and services is blocked.
- (32) MN & Constructions procures cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients. ITC on such goods and services is allowed to MN & Co.
- **(33)** A company buys cement, tiles etc. and avails the services of an architect for renovation of its office building. The company has booked such expenditure in its profit and loss account. ITC on such goods and services is allowed.
- **(34)** ITC on goods and/or services used by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.

(v) Inward supplies charged to tax under composition levy [Clause(e) of section 17(5)]

A supplier registered under composition scheme cannot collect tax from its customers. Thus, such supplier issues bill of supply and not a tax invoice. A composition supplier pays a lumpsum tax at a specified rate on its quarterly turnover.

Tax paid on goods and/or services under composition scheme is not available as ITC.

Since a composition supplier cannot collect any tax on its supplies, from the recipient of its supplies, it is obvious that no ITC can be availed in respect of such supplies by the recipients. Nevertheless, section

17(5)(e) specifically blocks the ITC on inward supplies received by a taxable person from a composition supplier.

(vi) Inward supplies received by a non-resident taxable person [Clause (f) of section 17(5)]

Non-resident taxable person has been defined in the CGST Act [See the definition under the heading Relevant Definitions]. Essentially, a nonresident taxable person has no fixed place of business in India but he sporadically supplies goods or services in India.

Tax paid on goods and/or services received by such non-resident taxable person, is not available as ITC. However, tax paid by him on **imported goods** is allowed as ITC.



Whereas ITC on goods imported by a non-resident taxable person is allowed, ITC on services imported by him is blocked.

(vii) Inward supplies used for personal consumption [Clause (g) of **section 17(5)**]

One of the foremost conditions laid down in section 16 for availing ITC on goods and/or services is that such goods and/or services should be used in the course or furtherance of business. Further, where goods and/or services are used partly for the purpose of any business and partly for other purposes, section 17(1) restricts the credit to so much of the ITC as is attributable to business purposes.

Furthermore, section 17(5)(g) also specifically blocks the ITC on goods and/or service used for personal consumption.

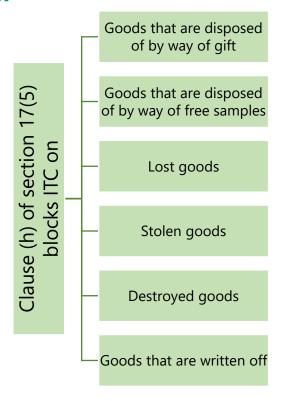
The term 'personal consumption' has not been defined in the GST law. Thus, it may be understood in the general sense which would mean non-business use.



(35) Mr. X owns a grocery store. He procures rice, wheat and biscuits for being sold in its store. Out of the inventory so purchased, he gives 10 kgs each of rice and wheat to his wife

for household use. Being used for personal consumption, ITC on 10 kg of rice and 10 kg of wheat is blocked.

(viii) Free samples, gifts, goods lost/stolen etc. [Clause (h) of section 17(5)]



ITC in respect of goods that are disposed of by way of gift or free samples is not available. Also, ITC is blocked on lost goods, stolen goods, destroyed goods and goods that are written off. This is because principally, ITC is available only for payment of tax on output supply. If no tax is payable on output supply, ITC on inputs/input services/capital goods relating to such output supply is not eligible. Hence, ITC on gifts and free samples is blocked as no tax is payable on its outward supply. In case of lost/destroyed/stolen written off goods also, ITC is not available as these goods cannot be said to have been used for making a taxable supply.

Meaning of 'gift'

The terms gift has not been defined in the GST law. Therefore, we will have to look for the definition of gift in other laws. Section 122 of the Transfer of Property Act, 1882, defines gift as transfer of certain existing moveable or immoveable property made voluntarily and without

consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right.

Meaning of 'sample'

Sample is also not defined in the GST law. The dictionary meaning of sample is "a small part or quantity intended to show what the whole is like". In commercial parlance, samples are given to prospective customers to enable them to test the quality of the item before making a decision to buy the same.

ITC in the hands of the supplier in respect of sales promotional schemes

Circular No. 92/11/2019 GST dated 28.03.2019 has clarified the entitlement of ITC in the hands of supplier in respect of various sales promotional schemes as under [Taxability of such schemes has been discussed at relevant places in Chapter 2: Supply Under GST and Unit II: Value of Supply of Chapter 5: Time and Value of Supply]:

A. Samples and free gifts

Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.

ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail the ITC.

B. Buy one get one free offer

This is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8.

ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including 'Buy more, save more' offers

Discounts offered by the suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3), including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

However, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

D. Secondary discounts

These are the discounts which are not known at the time of supply or are offered after the supply is already over. Such discounts shall not be excluded while determining the value of supply. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

ITC reversal when return of time expired medicines/drugs are treated as fresh supply

The common trade practice in the pharmaceutical sector is that the drugs or medicines (hereinafter referred to as "goods") are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. Such goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned to the manufacturer, on account of expiry, through the supply chain.

Circular No. 72/46/2018 GST dated 26.10.2018 has clarified that the

retailer/ wholesaler can return the time expired goods, either by treating the same as fresh supply or by issuing credit notes⁷.

Return of time-expired goods by treating the same as fresh supply

In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it is as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply"). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail ITC of the tax levied on the said return supply subject to the fulfillment of the conditions specified in section 16.

In case the person returning the time-expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply. In case the person returning the time-expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.

Where the goods returned by the retailer/wholesaler as a fresh supply, are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of section 17(5)(h). It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

The clarification may also be applicable to return of goods for reasons other than being time expired.



(36) If a manufacturer has availed ITC of ₹ 10/- at the time of manufacture of medicines valued at ₹ 100/-. At the time of return of such medicine on the account of expiry, the ITC

available to the manufacturer on the basis of fresh invoice issued by wholesaler is ₹ 15/-. So, when the time expired goods are destroyed by

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⁷ The procedure for return of time expired drugs or medicines by issuing credit note is covered in Chapter 8: Tax Invoice; Credit and Debit Notes; E-Way Bill.

the manufacturer, he would be required to reverse ITC of $\stackrel{?}{_{\sim}}$ 15/- and not of $\stackrel{?}{_{\sim}}$ 10/.

(ix) Tax paid in fraud cases, detention, confiscation etc. [Clause (i) of section 17(5)]

Tax paid under sections 74, 129 and 130⁸ is not available as ITC. These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.

(4)

CREDIT IN SPECIAL CIRCUMSTANCES [SECTION 18]

	STATUTORY PROVISIONS		
Section 18		Availability of credit in special circumstances	
Sub-section	Clause	Particulars	
(1)	Subject to such conditions and restrictions as may be prescribed—		
	(a)	a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration 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 under the provisions of this Act;	
	(b)	a person who takes registration under sub-section (3) of section 25 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 of grant of registration;	
	(c)	where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax	

⁸ These provisions will be discussed at the Final level.

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		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: Provided that the credit on capital goods shall be reduced	
		by such percentage points as may be prescribed;	
	(d)	where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person 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 relatable 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:	
		Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.	
(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.		
(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 in such manner as may be prescribed.		
(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:		
	Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.		
(5)	The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.		
(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 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 under section 15, whichever is higher:		
Provided that where refractory bricks, moulds and dies, fixtures are supplied as scrap, the taxable person may per the transaction value of such goods determined under second			
	Chapter V: Input Tax Credit of CGST Rules		
Rule 40	Manner of claiming credit in special circumstances		
(1)	The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely -		
	(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.		

(b)	from credi furth by a electi 01 to	egistered person shall within a period of thirty days the date of becoming eligible to avail the input tax t under sub-section (1) of section 18, or within such er period as may be extended by the Commissioner notification in this behalf, shall make a declaration, ronically, on the common portal in FORM GST ITC -to the effect that he is eligible to avail the input tax t as aforesaid:
	the C Unio	ded that any extension of the time limit notified by Commissioner of State tax or the Commissioner of n territory tax shall be deemed to be notified by the missioner.
(c)	detai conta	leclaration under clause (b) shall clearly specify the ls relating to the inputs held in stock or inputs nined in semi-finished or finished goods held in stock, 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;
	(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 subsection (1) of section 18;
	(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;
(d)	shall	letails furnished in the declaration under clause (b) be duly certified by a practicing chartered untant 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;		
	(e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR-4, on the common portal.		
(2)	The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.		
Rule 41	Transfer of credit on sale, merger, amalgamation, lease or transfer of a business		
(1)	A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, demerger, amalgamation, lease or transfer of business, in FORM GST ITC-02 , electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:		
	Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.		
	Explanation: - For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.		
(2)	The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.		
(3)	The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-		

	utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.	
(4)	The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.	
Rule 41A	Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory	
(1)	A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner: Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.	
	Explanation For the purposes of this sub-rule, it is hereby clarified that the 'value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.	
(2)	The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.	
Rule 44	Manner of reversal of credit under special circumstances	
(1)	The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely,-	

	(a) for inputs held in stock and inputs contained in semi- finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;	
	(b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.	
(2)	The amount, as specified in sub-rule (1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.	
(3)	Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under subrule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.	
(4)	The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM GST ITC-03 , where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10 , where such amount relates to the cancellation of registration.	
(5)	The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.	
(6)	The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax:	
	Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1 .	



ANALYSIS

Section 18 provides for

- (1) entitlement of ITC on inputs in stock and contained in finished goods or work-in-progress and capital goods (i) at the time of registration/voluntary registration, (ii) on coming into regular tax-paying status by exiting composition levy, (iii) on coming into tax-paying status on account of exempt supply becoming taxable supply
- (2) reversal of ITC on inputs in stock and contained in finished goods or work-in-progress and capital goods (i) at the time of exit from regular tax-paying status by opting for composition levy, (ii) at the time of exit from tax-paying status on account of taxable supply becoming exempt supply
- (3) amount payable on supply of capital goods or plant and machinery on which ITC has been taken
- (4) transfer of ITC on account of change in constitution of the registered person
- (i) Entitlement of ITC at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Sub-sections (1) and (2) of section 18 read with rule 40 of CGST Rules]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax/tax-paying status is available in the following manner:

S. No	Persons eligible to take credit	Goods entitled to ITC		Restriction/condit
		Inputs held in stock/capital goods	As on	ions
(1)	(2)	(3)	(4)	(5)
1.	Person who has applied	Inputs held in stock and	The day immediately	→ ITC to be availed within 1 year from

	for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration	inputs contained in semi-finished or finished goods held in stock	preceding the date from which he becomes liable to pay tax	the date of the issue of the tax invoice by the supplier.
2.	Person who is not required to register, but obtains voluntary registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration	
3.	Registered person who ceases to pay compositio n tax and switches to regular scheme	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme	→ ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice. → ITC claimed shall be verified with the
4.	Registered person whose exempt supplies	Inputs held in stock and inputs contained in semi-finished	The day immediately preceding the date from which	corresponding details furnished by the corresponding supplier.

In all the above cases, the registered person has to make an electronic declaration in the prescribed form on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be filed within 30 days (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant/Cost Accountant.



(37) 'Z' becomes liable to pay tax on 1st August and has obtained registration on 15th August. 'Z' is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in

stock as on 31st July. 'Z' cannot take ITC on capital goods.



(38) 'A' applies for voluntary registration on 5th June and obtains registration on 22nd June. 'A' is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in

stock as on 21st June. 'A' cannot take ITC on capital goods.



(39) 'B', a registered taxable person, was paying tax under composition scheme upto 30th July. However, w.e.f. 31st July, 'B' becomes liable to pay tax under regular scheme. 'B' will be eligible

for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as on 30th July. ITC on capital goods will be reduced by 5% per guarter from the date of the invoice.

(ii) Reversal of ITC on switching to composition levy or exit from taxpaying status [Section 18(4) read with rule 44 of CGST Rules]

- Section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.
- ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption. The details furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant/ Cost Accountant.
- ITC involved in the remaining useful life (in months) of the capital goods should be reversed on *pro-rata* basis, taking the useful life as 5 years.



(40) Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in months = 5 months ignoring a part of the month.

ITC taken on such capital goods = C

ITC attributable to remaining useful life = $C \times 5/60$

- The registered person has to debit the electronic credit or cash ledger by the reversal amount in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods on the day immediately preceding the date of switch over/ date of exemption.
- Balance of ITC, if any, lying in the electronic credit ledger lapses.
- Cancellation of registration also requires reversal of ITC on inputs held in stock/ contained in semi-finished goods or finished goods held in stock, capital goods or plant and machinery on the day immediately preceding the cancellation date. The amount to be reversed on inputs and capital goods is computed in the manner as applicable for subsections (4) and (6) of section 18 (discussed above). Such amount is then compared with the output tax payable on such goods, and the higher of the two amounts is finally paid by the registered person.

- ITC to be reversed on inputs and capital goods is calculated separately for ITC of CGST, SGST/UTGST and IGST.
- The reversal amount is added to the output tax liability of the registered person.

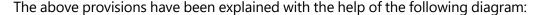
(iii) Amount payable on supply of capital goods or plant and machinery on which ITC has been taken [Section 18(6) read with rule 40(2) & rule 44(6) of CGST Rules]

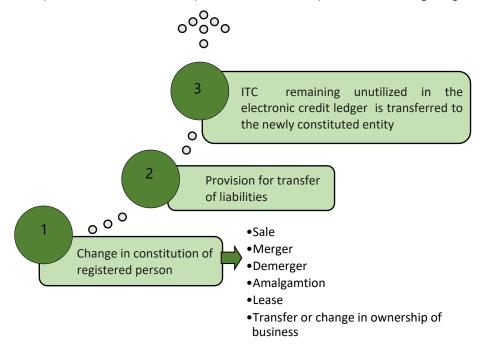
- If capital goods or plant and machinery on which ITC has been taken are supplied outward by the registered person, he must pay an amount that is the **higher of the following:**
 - ✓ ITC taken on such goods reduced by 5% per quarter of a year or part thereof from the date of issue of invoice for such goods (i.e., ITC pertaining to remaining useful life of the capital goods), or
 - √ tax on transaction value
- ITC pertaining to remaining useful life of the capital goods should be computed separately for ITC of CGST, SGST/UTGST and IGST.
- Where the amount so determined exceeds the tax payable on the transaction value of the capital goods, such amount need to be paid and thus, should be added to the output tax liability.
- If refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value.

*Note: Under rule 44(6), ITC involved in the remaining useful life (in months) of the capital goods is reversed on *pro rata* basis, taking the useful life as 5 years.

(iv) Transfer of ITC on account of change in constitution of registered person [Section 18(3) read with rule 41 of CGST Rules]

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. *Circular No. 96/15/2019 GST dated 28.03.2019* has clarified that transfer or change in the ownership of business includes transfer or change in the ownership due to death of the sole proprietor.





In the case of demerger, ITC will be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. Here, "value of assets" means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The registered person should furnish the details of change in constitution on the common portal and submit a certificate from practicing Chartered Account/Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities. Upon acceptance of such details by the transferee on the common portal, the unutilized ITC gets credited to his electronic credit ledger. The transferee should record the inputs and capital goods so transferred in his books of account.

(v) Transfer of ITC on obtaining separate registrations for multiple places of business within a State/ Union Territory [Rule 41A of CGST Rules]

Section 25 enables a taxpayer to obtain separate registrations for multiple places of business in a State/ Union territory [Provisions of section 25 are discussed under Chapter 7: Registration]. The registered person (transferor), having separate registrations for multiple places of business within a

State/Union Territory, can transfer the unutilised ITC (wholly or partly) lying in his electronic credit ledger to any or all of the newly registered place(s) of business in the ratio of the value of assets held by them at the time of registration. Here, the 'value of assets' means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The registered person should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations. Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC gets credited to his electronic credit ledger.



6. HOW ITC IS UTILISED

	STATUTORY PROVISIONS				
Section 49	Payment of tax, interest, penalty and other amounts (Relevant extract)				
Sub-section	Clause	Particulars			
(5)		The amount of input tax credit available in the electronic credit ledger of the registered person on account of—			
	(a)	integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;			
	(b)	the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;			
	(c)	the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;			
		Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax			

		only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;
	(d)	the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
		Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;
	(e)	the central tax shall not be utilised towards payment of State tax or Union territory tax; and
	(f)	the State tax or Union territory tax shall not be utilised towards payment of central tax.
Section 49A	Utilisatio	on of input tax credit subject to certain conditions
	credit on a be utilised Union tern available	randing anything contained in section 49, the input tax account of central tax, State tax or Union territory tax shall towards payment of integrated tax, central tax, State tax or ritory tax, as the case may be, only after the input tax credit on account of integrated tax has first been utilised fully uch payment.
Section 49B	Order of	utilisation of input tax credit
	the provi section 49 Council, p tax credit	randing anything contained in this Chapter and subject to sions of clause (e) and clause (f) of sub-section (5) of 9, the Government may, on the recommendations of the prescribe the order and manner of utilisation of the input on account of integrated tax, central tax, State tax or ritory tax, as the case may be, towards payment of any

Chapter IX: Payment of Tax of the CGST Rules

Rule 88A

Order of utilization of input tax credit

Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order.

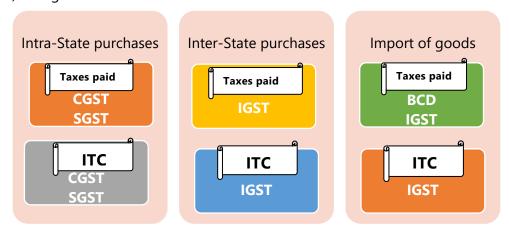
Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.



ANALYSIS

ITC is credited to a registered person's electronic credit ledger. A taxable person is entitled for ITC of CGST, SGST/UTGST and IGST depending upon the nature of supplies received by him.

To illustrate, a supplier making intra-State, inter-State and imported purchases (of goods) is eligible for ITC as under:



The person may use the ITC to pay his output tax liability. As we know that Indian GST is a dual GST wherein two taxes viz, CGST and SGST/UTGST are levied concurrently on a supply transaction. While the CGST revenue accrues to Central Government, SGST and UTGST revenue accrue to respective State Government and

Union Territory respectively. Hence, ITC of CGST and SGST/UTGST is not interchangeable and thus, cross utilisation of CGST and SGST/UTGST is not permissible.

IGST is a transitory tax. IGST paid by taxpayer initially goes to the Central Clearing Authority. ITC of IGST can be utilised for payment of CGST or SGST/UTGST (or *vice versa*). Thus, cross utilization of IGST and CGST, SGST/UTGST is permissible. Flexibility has been provided to the taxpayer to utilise ITC of IGST for payment of CGST and/or SGST/UTGST in any proportion and in any order. If ITC of IGST is used for payment of SGST/UTGST (or *vice versa*), corresponding debit/credit is made to respective State Government/Union Territory.

Sections 49(5), 49A, 49B, rule 88A and *Circular No. 98/17/2019 GST dated 23.04.2019* together prescribe the sequence of utilisation of ITC. A combined reading of such provisions shows that the order of utilization of ITC is as per the order (of numerals) given below:

ITC of	Output IGST liability	Output CGST liability	Output SGST/ UTGST liability
IGST	(I)	(II) – <u>In any orde</u>	er and in any proportion
(III) ITC of IGS	T to be complete	ly exhausted mar	ndatorily
CGST	(V)	(IV)	Not permitted
SGST/UTGST	(VII) Only after ITC of CGST has been utilized fully	Not permitted	(VI)
The numerals	given above can	be further explai	ned in the following manner:
(I)	IGST credit sho	uld first be utilize	ed towards payment of IGST.
(II)	of CGST and Si.e. remaining I	GST/UTGST in an TC of IGST can be ds payment of CO	an be utilized towards payment by order and in any proportion, e utilized – GST and then towards payment

	 first towards payment of SGST and then towards payment of CGST; or towards payment of CGST and SGST simultaneously in any proportion e.g. 50: 50, 30: 70, 40: 60 and so on.
(III)	Entire ITC of IGST should be fully utilized before utilizing the ITC of CGST or SGST/UTGST.
(IV) & (V)	ITC of CGST should be utilized for payment of CGST and IGST in that order. ITC of CGST cannot be utilized for payment of SGST/UTGST
(VI) & (VII)	ITC of SGST /UTGST should be utilized for payment of SGST/UTGST and IGST in that order. However, ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully. ITC of SGST/UTGST cannot be utilized for payment of CGST.

- Cross-utilization of credit is available only between CGST IGST and SGST/UTGST - IGST.
- CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment of CGST.
- ITC of IGST need to be exhausted fully before proceeding to utilize the ITC of CGST and SGST in that order.



(41) Amount of ITC available and output tax liability under different tax heads

Head	Output tax liability (₹)	ITC (₹)
IGST	1000	1300
CGST	300	200
SGST/UTGST	<u>300</u>	<u>200</u>
Total	1600	1700

Option 1				
ITC of	Discharge of output IGST liability (₹)	_	•	Balance of ITC (₹)
IGST	1000	200	100	0
ITC of IGST ha	as been complet	ely exhausted		
CGST	0	100	-	100
SGST/UTGST	0	-	200	0
Total	1000	300	300	100

Option 2

ITC of	Discharge of output IGST liability (₹)	_		Balance of ITC (₹)
IGST	1000	100	200	0
ITC of IGST has	been complete	ly exhausted		
CGST	0	200	-	0
SGST/UTGST	0	-	100	100
Total	1000	300	300	100

There can be other options also for utilization of ITC of IGST against CGST and SGST liabilities. In this example, two options for utilizing ITC of IGST against CGST and SGST liabilities are shown.

Restrictions on utilisation of ITC [Rule 86A]

The Commissioner/ an officer (not below the rank of an Assistant Commissioner) authorised by him is empowered to impose restrictions on utilization of ITC available in the electronic credit ledger if he has reasons to believe that such ITC has been fraudulently availed or is ineligible.

The restrictions can be imposed in the following circumstances:

- (i) ITC has been availed on the basis of tax invoices/valid documents -
 - issued by a non-existent supplier or by a person not conducting any business from the registered place of business; or

- without receipt of goods or services or both; or
- the tax in relation to which has not been paid to the Government
- (ii) the registered person availing ITC has been found non-existent or not to be conducting any business from the registered place of business; or
- (iii) the registered person availing ITC is not in possession of tax invoice/valid document.

If the ITC is so availed, the restrictions can be imposed by not allowing such ITC to be used for discharging any liability under section 49 or not allowing refund of any unutilised amount of such ITC. Such restrictions can be imposed for a period up to 1 year from the date of imposing such restrictions. However, the Commissioner/officer authorised by him, can withdraw such restriction if he is satisfied that conditions for imposing the restrictions no longer exist.

ILLUSTRATION 3

ABC Co. Ltd., registered under GST, is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

S. No.	Items	GST (₹)
(i)	Electrical transformers to be used in the manufacturing process	5,20,000
(ii)	Trucks used for the transport of raw material	1,00,000
(iii)	Raw material	2,00,000
(iv)	Confectionery items. These items were supplied free of cost to the customers in a customer meet organized by the company	25,000

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

ANSWER

Computation of ITC available with ABC Co. Ltd. for the month of July

S. No.	Items	ITC (₹)
(i)	Electrical transformers [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	5,20,000
(ii)	Trucks used for the transport of raw material [ITC on motor vehicles used for transportation of goods is not blocked under section 17(5)(a)]	1,00,000
(iii)	Raw material [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	2,00,000
(iv)	Confectionery items for consumption of customers at customers meet [ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply-Section 17(5)(b)(i)]	Nil
	Total ITC	8,20,000

ILLUSTRATION 4

XYZ Ltd., registered under GST, is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October from the following particulars:-

S. No.	Inward supplies	GST (₹)	Remarks
(i)	Inputs 'A'	1,00,000	One invoice on which GST payable was ₹10,000, is missing

(ii)	Inputs 'B'	50,000	Inputs are to be received in two instalments. First instalment has been received in October
(iii)	Capital goods	1,20,000	XYZ Ltd. has capitalised the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.
(iv)	Input services	2,25,000	One invoice dated 20 th January on which GST payable was ₹ 50,000 has been received in October

Note:

- (i) Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.
- (ii) The annual return for the previous financial year was filed on 15th September.

ANSWER

Computation of ITC available with XYZ Ltd. for the month of October

S. No.	Inward supplies	ITC (₹)
(i)	Inputs 'A' [ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC-Section 16(2)(a)]	90,000
(ii)	Inputs 'B' [When inputs are received in instalments, ITC can be availed only on receipt of last instalment-First proviso to section 16(2)]	Nil
(iii)	Capital goods [Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component – Section 16(3)]	Nil

has been filed on 15 th September (prior to due date of filing the return for the month of September, i.e. 20 th October), ITC on the invoice pertaining to previous financial year cannot be availed after 15 th September.	annual return, whichever is earlier. Since the annual return for the previous financial year has been filed on 15 th September (prior to due date of	[As per section 16(4), ITC on an invoice cannot be availed after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains or the date of filing
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ILLUSTRATION 5

XT Pvt. Ltd., a supplier of goods, pays GST under regular scheme. It has made the following outward taxable supplies in a tax period:

Particulars	Amount (₹)
Intra-State supply of goods	8,00,000
Inter-State supply of goods	3,00,000

It has also furnished the following information in respect of purchases made by it in that tax period:

Particulars	Amount (₹)
Intra-State purchases of goods	2,00,000
Inter-State purchases of goods	50,000

The company has following ITCs with it at the beginning of the tax period:

Particulars	Amount (₹)
CGST	57,000

SGST	Nil
IGST	70,000

Note:

- (i) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively.
- (ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.
- (iii) All the conditions necessary for availing the ITC have been fulfilled.

Compute the minimum GST, payable in cash, by XT Pvt. Ltd. for the tax period. Make suitable assumptions as required.

ANSWER

Computation of GST payable on outward supplies

S. No.	Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)	Total (₹)
(i)	Intra-State supply of goods for ₹ 8,00,000	72,000	72,000		1,44,000
(ii)	Inter-State supply of goods for ₹ 3,00,000			54,000	54,000
	Total GST payable				1,98,000

Computation of total ITC

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Opening ITC	57,000	Nil	70,000
Add: ITC on Intra-State purchases of goods valuing ₹ 2,00,000	18,000	18,000	Nil

Add: ITC on Inter-State purchases goods valuing ₹ 50,000	of	Nil	Nil	9,000
Total ITC		75,000	18,000	79,000

Computation of minimum GST payable from electronic cash ledger

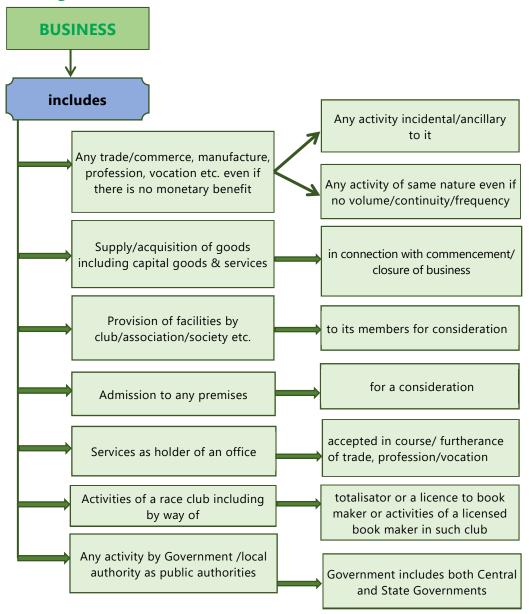
Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)	Total (₹)
GST payable	72,000	72,000	54,000	1,98,000
Less: ITC [First ITC of IGST should be utilized in full - first against IGST liability and then against CGST and SGST liabilities in a manner to minimize cash outflow]	(Nil) IGST	(25,000) IGST	(54,000) IGST	79,000
	(72,000) CGST	(18,000) SGST		90,000
Minimum GST payable in cash	Nil	29,000	Nil	29,000

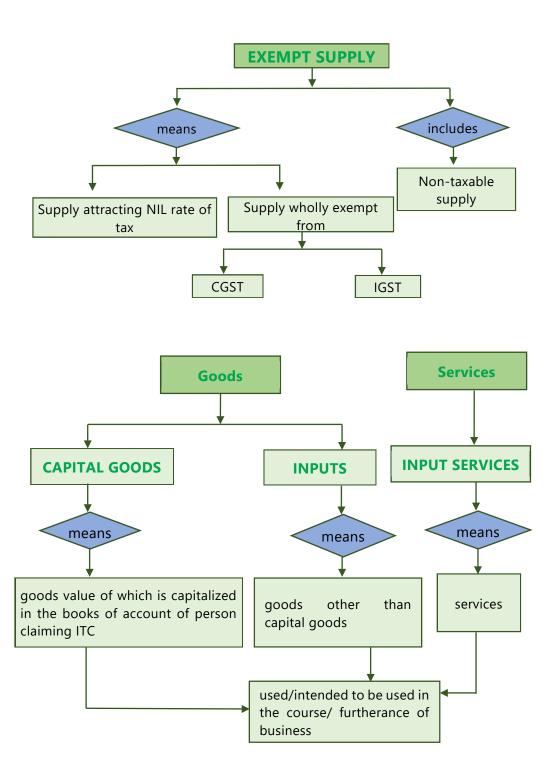
Note: Since sufficient balance of ITC of CGST is available for paying CGST liability and cross utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) to minimize cash outflow.

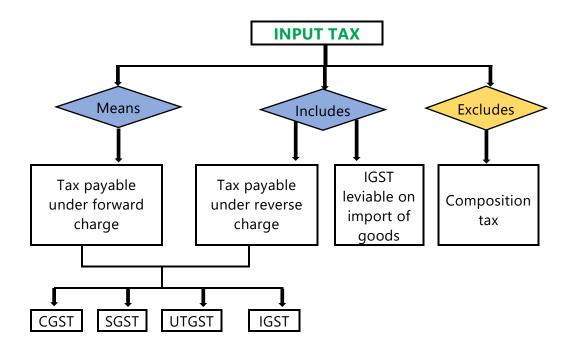


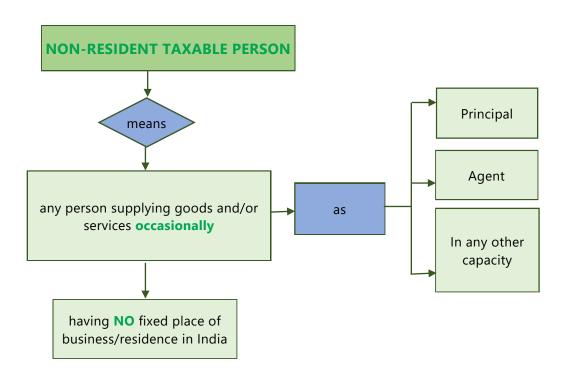
7. LET US RECAPITULATE

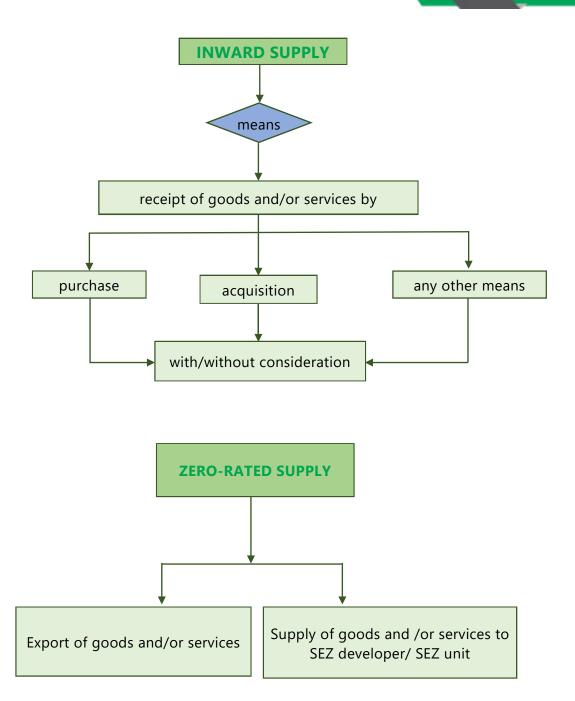
Definitions of certain key terms are summarized by way of diagrams as under:



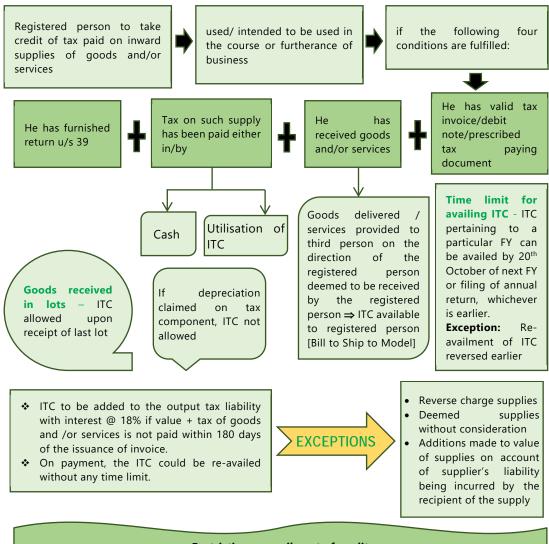








II. Provisions of section 16 relating to eligibility and conditions for taking ITC read with relevant rules are summarized below:

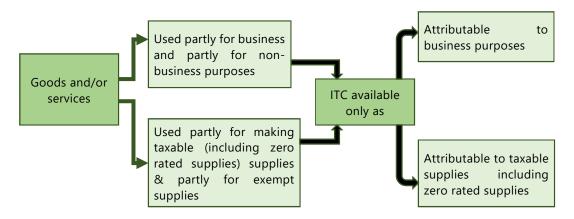


Restriction on availment of credit

ITC to be availed in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in GSTR-1, cannot exceed 10% of eligible ITC available in respect of invoices or debit notes the details of which have been uploaded by the suppliers in GSTR-1.

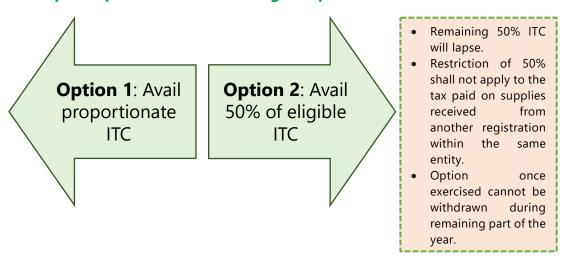
III. Provisions of section 17 relating to apportionment of credit and blocked credits read with relevant rules are summarized as under:

A. Apportionment of credit

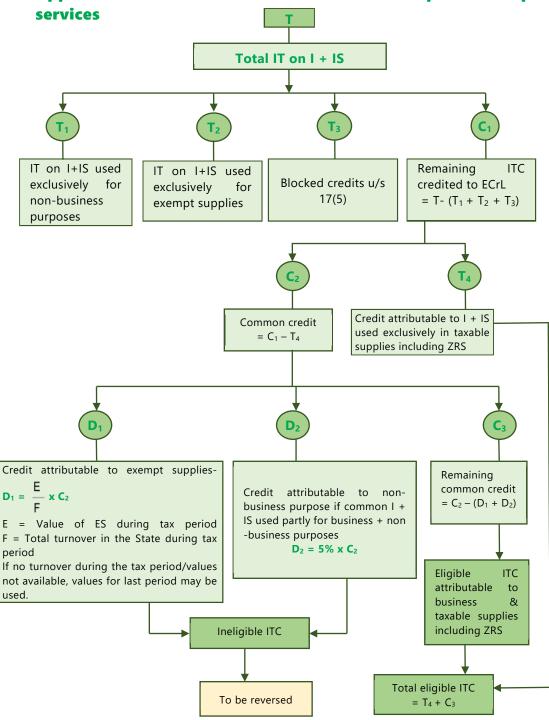


Exempt supplies include reverse charge supplies & transactions in securities and exclude activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier.

B. Special provisions for banking companies and NBFCs



C. Apportionment of common credit in case of inputs and input



- C₃ will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- ∑ (D₁ + D₂) will be computed for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year. If this amount is more than the amount already reversed every month, the differential amount will be reversed in any of the month till September of succeeding year along with interest @ 18% from 1st April of succeeding year till the date of payment.
- If this amount is less than the amount reversed every month, the additional amount paid has to be claimed back as credit in the return of any month till September of the succeeding year.
- Exempt supplies include reverse charge supplies & transactions in securities.
- Exempt supplies exclude (i) activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier, (ii) services of accepting deposits, extending loans/advances where the consideration is interest/discount and the same are provided by persons other than banking company/financial institution including NBFC, and (iii) outbound (overseas) transportation of goods by a vessel.
- Aggregate value of exempt supplies and total turnover exclude central excise duty, state excise duty, central sales tax and VAT.
- Value of exempt supply in respect of land and building is the stamp duty value and for security is 1% of the sale value of such security.

IT = Input tax

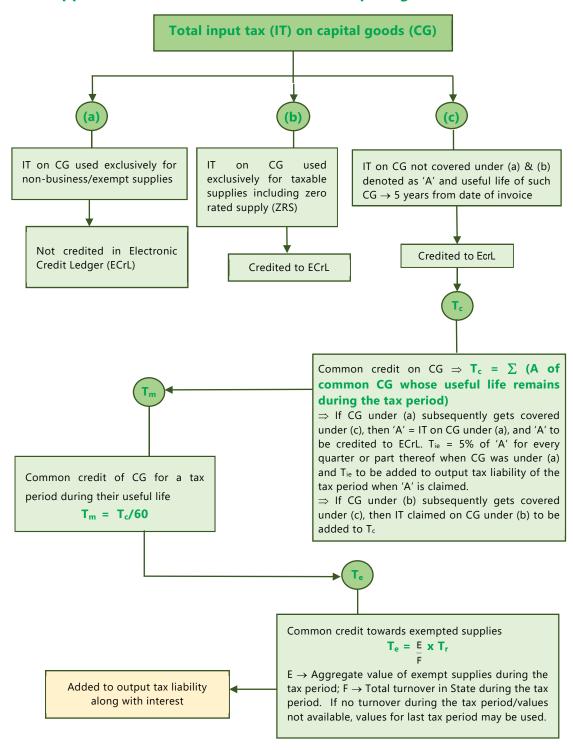
I = Inputs

IS = Input services

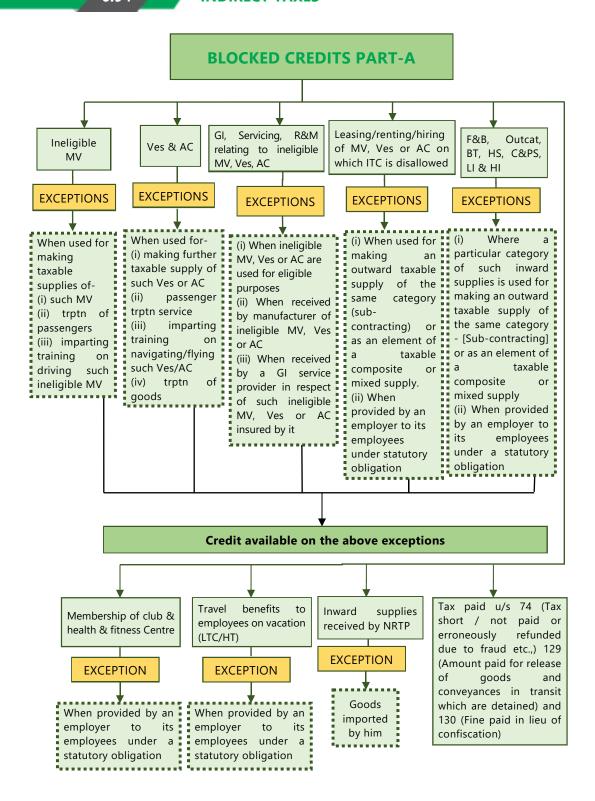
ECrl = Electronic Credit Ledger

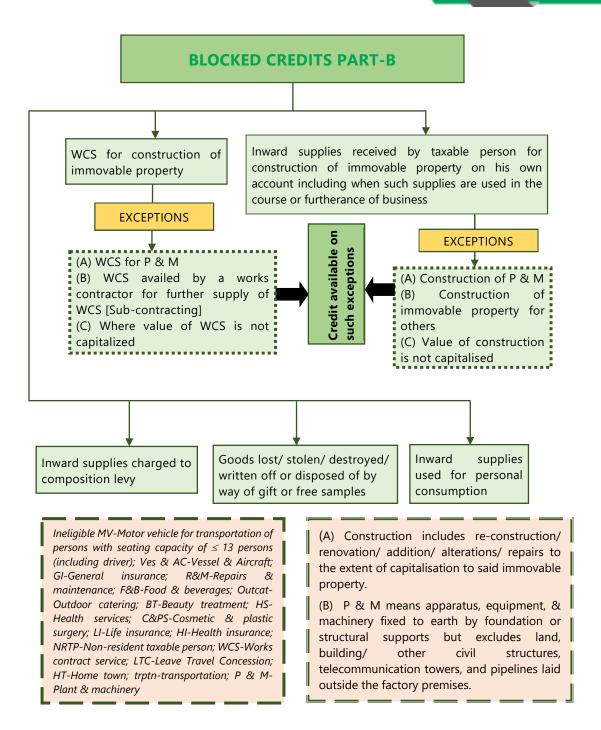
ZRS = Zero rated supply ES = Exempt supplies

D. Apportionment of common credit on capital goods



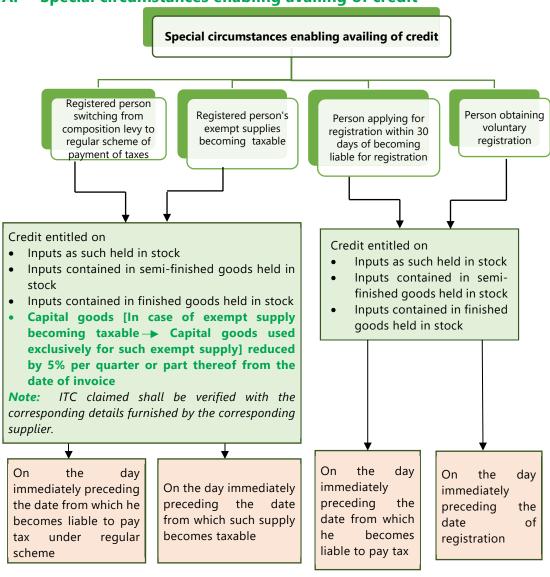
- T_m is to be computed during the useful life of capital goods which is five years from the date of invoice.
- T_{ie} and T_e are to be computed separately for ITC of CGST, SGST/ UTGST and IGST and declared in GSTR-3B
- Exempt supplies include reverse charge supplies & transactions in securities.
- Exempt supplies exclude (i) activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier, (ii) services of accepting deposits, extending loans/advances where the consideration is interest/discount and the same are provided by persons other than banking company/financial institution including NBFC, and (iii) outbound (overseas) transportation of goods by a vessel.
- Aggregate value of exempt supplies and total turnover exclude central excise duty, state excise duty, central sales tax and VAT.
- Value of exempt supply in respect of land and building is the stamp duty value and for security is 1% of the sale value of such security.





III. Provisions of section 18 read with relevant rules are summarized as under:

A. Special circumstances enabling availing of credit

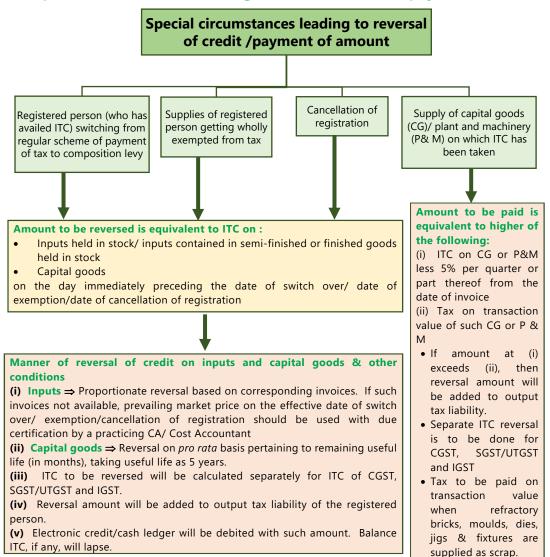


ITC, in all the above cases, is to be availed within 1 year from the date of issue of invoice by the supplier.

Conditions for availing above credit:

- (i) Filing of electronic declaration giving details of inputs held in stock/contained in semi-finished goods and finished goods held in stock and capital goods on the days immediately preceding the day on which credit becomes eligible.
- (ii) Declaration has to be filed within 30 days from becoming eligible to avail credit.
- (iii) Details in (i) above to be certified by a CA/ Cost Accountant if aggregate claim of CGST, SGST/ IGST credit is more than ₹ 2,00,000.

B. Special circumstances leading to reversal of credit/payment of amount



Transfer of unutilised ITC on account of change in constitution of registered person

In case of sale, merger, amalgamation, lease or transfer of business, unutilised ITC can be transferred to the new entity if there is a specific provision for transfer of liabilities to the new entity. The inputs and capital goods so transferred should be duly accounted for by the transferee in his books of accounts.

In case of demerger, ITC is apportioned in the ratio of value of entire assets (including assets on which ITC has not been taken) of the new units as per the demerger scheme.

Details of change in constitution are to be furnished on common portal along with request to transfer unutilised ITC. CA/Cost Accountant certificate is to be submitted certifying that change in constitution has been done with specific provision for transfer of liabilities.

Upon acceptance of such details by the transferee on the common portal, the unutilized ITC is credited to his Electronic Credit Ledger.

Transfer of unutilised ITC on obtaining separate registrations for multiple places of business within a State/UT

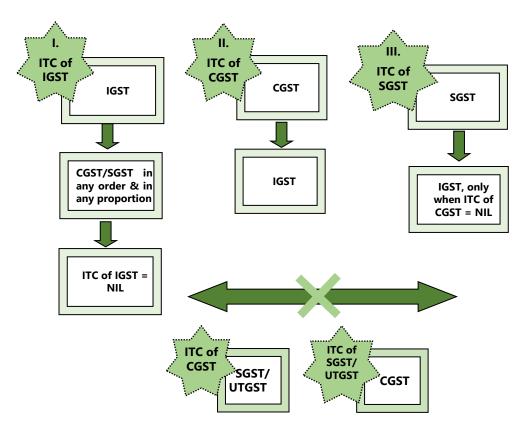
Registered person having separate registrations for multiple places of business can transfer the unutilised ITC to any or all of the newly registered place(s) of business in the ratio of the value of assets held by them at the time of registration.

Value of assets means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The resgistered person should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations.

Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC is credited to his electronic credit ledger.

IV. Provisions relating to utilization of ITC are summarized as under:



8. TEST YOUR KNOWLEDGE

- 1. What is input tax?
- 2. What are the conditions necessary for availing ITC?
- 3. Can a person take ITC without payment of consideration for the supply along with tax?
- 4. What is the time limit for taking ITC and reasons therefor?
- 5. What is the ITC entitlement of a newly registered person?
- 6. What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?

- 7. A registered person transfers its business to another person.
 - Is such registered person allowed to transfer the unutilized ITC lying in its electronic credit ledger to such transferred business? Discuss.
- 8. Swastik Pvt. Ltd. is a manufacturer of taxable goods. It purchased a machinery for ₹8,00,000 on which IGST of ₹14,400 is paid. The company has claimed depreciation under the Income-tax Act, 1961 on the full value of the machine, i.e. including the IGST component as also availed ITC of ₹14,400 paid by it as IGST.
 - Examine if the stand taken by the company is correct in law.
- 9. Sigma Consultants, an LLP of finance professionals, provides financial consultancy services. It made an advance payment of ₹ 1,18,000 (inclusive of IGST @ 18%) in the month of October to Azuro Computer Services for developing a software. The software would be used by the LLP to enhance the precision of the financial advice given by it to various clients. The balance payment is to be made after the successful test run of the software in the month of December. Sigma Consultants has availed ITC of IGST of ₹ 18,000 in the month of October.
 - Do you think Sigma Consultants can avail such ITC? Examine the scenario with reference to the relevant legal provisions.
- 10. A taxable person is in the business of information technology. He buys a car (maximum seating capacity 5 persons) for use of his Executive Directors.
 - Can he avail the ITC in respect of GST paid on purchase of such car?
- 11. A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable.
 - The finance personnel of BMT Ltd. want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.
- 12. 'AB', a registered person, was paying tax under composition scheme up to 30^{th} July. However, w.e.f. 31^{st} July, 'AB' becomes liable to pay tax under regular scheme.
 - *Is 'AB' eligible for any ITC?*

- 13. Babla Enterprises is exclusively engaged in making exempt supply of goods and is thus, not registered under GST. On 1st October, the exemption available on its goods gets withdrawn. On that day, the turnover of Babla Enterprises was ₹50 lakh.
 - Examine the eligibility of Babla Enterprises for availing ITC, if any.
- 14. Mamta Trade Links trades in exempt goods and provides taxable services. It is registered under GST. On 1st October, the exemption available on its goods gets withdrawn.
 - Analyze the scenario and determine the eligibility of Mamta Trade Links for availing ITC, if any, on inputs and/or capital goods used in the supply of exempt goods.
- 15. Harshgeet Pvt. Ltd., a registered supplier, is engaged in the manufacture of taxable goods. The company provides the following information pertaining to purchases made/services availed by it during the month of July:

S. No	Particulars	GST (₹)
(1)	Raw material (to be received in the month of September)	2,50,000
(2)	Membership of a club availed for employees working in the factory	1,45,000
(3)	Inputs to be received in 5 lots, out of which 3 rd lot was received during the month	80,000
(4)	Trucks used for transport of raw material	40,000
(5)	Capital goods (out of 3 items, invoice for 2 items is missing and GST paid on those items is ₹80,000)	1,50,000

Determine the amount of ITC available with Harshgeet Pvt. Ltd. for the month of July by giving the necessary explanation for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

16. Jamku Ltd., a registered person, is engaged in the business of spices. It provides following details in relation to GST paid on inward supplies procured by it during the month of October.

S. No.	Particulars	GST (₹)
(1)	Raw spices purchase - Raw spices sold to customers - Raw spices used for personal use of directors	50,000 20,000
(2)	Electric machinery purchased for being used in the manufacturing process	25,000
(3)	Motor vehicle used for transportation of the employee	55,000
(4)	Payment made to contractor for construction of staff quarter	1,25,000

Determine the amount of ITC available with Jamku Ltd. for the month October by giving the necessary explanation for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

17. Dina Ltd., a registered supplier from Maharashtra, is engaged in the manufacture of passenger autos. The company provides the following details of purchases made/services availed by it during the month of March:

S. No.	Particulars	GST (₹)
(1)	Purchase of iron which is used as a raw material [Goods were received in two instalments - first in March and the second in April]	2,50,000
(2)	Purchase of accessories which were delivered directly to the dealers of the company on the direction of Dina Ltd. [Only invoice was received by Dina Ltd.]	90,000
(3)	Purchase of bus (seating capacity 15) for the transportation of employees from their residence to company and back	1,97,000
(4)	General insurance taken on a car used by executives of the company for official purposes	5,200

You are required to determine the ITC available with Dina Ltd. for the month of March, by giving brief explanations for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

18. Comfortable (P) Ltd. is registered under GST in the State of Odisha. It is engaged in the business of manufacturing of iron and steel products. It has received IT engineering services from High-Fi Infotech (P) Ltd. for ₹ 11,00,000/- (excluding GST @ 18%) on 28th October. Invoice for service rendered was issued on 5th November.

Comfortable (P) Ltd. made part payment of $\not\equiv$ 4,20,000/- on 30th November. Being unhappy with service provided by High-fi Infotech (P) Ltd., it did not make the balance payment. Deficiency in service rendered was made good by High-Fi Infotech (P) Ltd. by 15th April of next year. Comfortable (P) Ltd. made the balance payment on 6th July of next year.

Examine the availability of ITC with Comfortable (P) Ltd. in respect of IT engineering services received by it from High-Fi Infotech (P) Ltd.

19. M/s. Diwan & Sons of New Delhi, has placed an order for 250 kg of plastic granules @ ₹50 per kg (exclusive of GST) on M/s. Karim & Bros. of Noida, U.P. M/s. Karim & Bros. has agreed to deliver the goods at the warehouse of M/s. Diwan & Sons at New Delhi.

While the order was getting packed at the factory of M/s. Karim & Bros., M/s. Diwan & Sons got an order from Shubhkamna Sales of Hapur, U.P. for 250 kg of plastic granules @ ₹ 60 per kg (exclusive of GST). In order to save on transportation cost, M/s. Diwan & Sons asks M/s. Karim & Bros. to directly deliver the plastic granules to Shubhkamna Sales at its godown located in Hapur. Accordingly, M/s. Karim & Bros. has delivered the plastic granules at the godown of Shubhkamna Sales at Hapur.

Examine the availability of ITC with M/s. Diwan & Sons & M/s. Karim & Bros.

Note: All the parties are registered under GST and rate of GST is 18%.

20. Paritosh & Co., a supplier of goods, pays GST under regular scheme. It has made the following outward taxable supplies in a tax period:

Particulars	Amount (₹)
Intra-State supply of goods	10,00,000

Inter-State supply of goods	8,00,000

It has also furnished the following information in respect of purchases made by it in that tax period:

Particulars	Amount (₹)
Intra-State purchases of goods	3,00,000
Inter-State purchases of goods	2,50,000

Paritosh & Co. has following ITCs with it at the beginning of the tax period:

Particulars	Amount (₹)	
CGST	57,000	
SGST	60,000	
IGST	1,40,000	

Note:

- (i) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively.
- (ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.
- (iii) All the conditions necessary for availing ITC have been fulfilled.

Compute the minimum GST, payable in cash, by Paritosh & Co. for the tax period and the ITC to be carried forward to the next month. Make suitable assumptions as required.

©9. ANSWERS/HINTS

1. Input tax means the central tax (CGST), State tax (SGST), integrated tax (IGST) or Union territory tax (UTGST) charged on supply of goods or services or both made to a registered person. It also includes tax paid on reverse charge basis and integrated goods and services tax charged on import of goods. It does not include tax paid under composition levy.

- **2.** Following four conditions are to be satisfied by the registered taxable person for obtaining ITC:
 - (a) he is in possession of 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 section 41, the supplier has actually paid the tax charged in respect of the supply to the Government; and
 - (d) he has furnished the return under section 39.
- **3.** Yes, the recipient can take ITC. However, he is required to pay the consideration along with tax within 180 days from the date of issue of invoice. This condition is not applicable where tax is payable on reverse charge basis.
- **4.** Refer point (vi) "Time limit for availing ITC: Due date of filing return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier" under Heading No. 3 "Eligibility and Conditions for Taking Input Tax Credit [Section 16]".
- 5. A person applying for registration can take input tax credit 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. If the person was liable to take registration and he has applied for registration within thirty days from the date on which he became liable to registration, then ITC of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken.
 - In case of voluntary registration, ITC of such goods held in stock on the day immediately preceding the date of registration can be taken.
- **6.** In case of supply of capital goods or plant and machinery on which ITC has been taken, the registered person shall pay an amount equal to the ITC taken on the said capital goods or plant and machinery reduced by 5% per quarter or part thereof from the date of invoice or the tax on the transaction value of such capital goods, whichever is higher.
 - However, in case of refractory bricks, moulds and dies, jigs and fixtures when these are supplied as scrap, the person can pay tax on the transaction value.
- **7.** As per section 18(3), in case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains

unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution.

The registered person should furnish the details of change in constitution on the common portal and submit a certificate from practicing Chartered Account/Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities. Upon acceptance of such details by the transferee on the common portal, the unutilized ITC gets credited to his electronic credit ledger. The transferee should record the inputs and capital goods so transferred in his books of account.

- **8.** As per section 16(3), if the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed.
 - Since in the given case, Swastik Pvt. Ltd. has claimed depreciation on the tax component of the cost of the machine, it cannot claim ITC of IGST of ₹ 14,400 paid by it on the machine. It can either claim depreciation on the tax component or avail ITC of such tax but cannot avail both the benefits simultaneously.
- **9.** As per section 16(2)(b), tax paid on supply of goods and/or services can be availed as ITC only if such goods and/or services are received by the registered person.
 - In the given case, Sigma Consultants has paid IGST of ₹ 18,000, in the month of October, on advance for IT services intended to be used in the course or furtherance of business. However, it cannot avail ITC of such tax in the month of October as the services in relation to which the advance payment has been made have not been received in that month.
- **10.** No. ITC on motor vehicles for transportation of persons with seating capacity of up to 13 persons (including driver), can be availed only if the taxable person is in the business of transport of passengers or is providing the services of imparting training on driving such motor vehicles or is in the business of supply of such motor vehicles.
- 11. ITC is disallowed only to the extent it pertains to supplies used for non-business purposes or supplies other than taxable and zero-rated supplies. Supplies to SEZ units are zero rated supplies in terms of section 16(1) of the

- IGST Act. Thus, full ITC is allowed on inward supplies of BMT Ltd. used for effecting supplies to the unit in the SEZ.
- 12. 'AB' is eligible for ITC on inputs held in stock and inputs contained in semifinished or finished goods held in stock and capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of invoice.
- 13. Since the exemption available on goods being supplied by Babla Enterprises gets withdrawn, it becomes liable to registration as its turnover has crossed the threshold limit on the day when the exemption is withdrawn.
 - Assuming that Babla Enterprises applies for registration within 30 days of 1st October and it obtains such registration, it will 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 it becomes liable to pay tax, i.e. 30th September [Section 18(1)(a)]. Input tax paid on capital goods will not be available as ITC in this case.
- **14.** If the exempt supply made by a **registered person** becomes a taxable supply, provisions of section 18(1)(d) become applicable. In the given case, since Mamta Trade Links is a registered person, section 18(1)(d) will be applicable.
 - As per section 18(1)(d), Mamta Trade Links will 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 relatable 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, i.e. 30th September. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of invoice.
- 15. Computation of ITC available with Harshgeet Pvt. Ltd. for the month of July

Particulars	ITC (₹)
Raw Material [ITC not available as raw material is not received in July]	Nil
Membership of a club availed for employees working in the factory	Nil

[Blocked credit in terms of section 17(5)]	
Inputs to be received in 5 lots, out of which 3 rd lot was received during the month [In case of goods received in lots, ITC can be taken only upon receipt of the last lot]	Nil
Trucks used for transport of raw material [ITC of GST paid on motor vehicles used for transportation of goods is allowed unconditionally]	40,000
Capital goods [ITC can be availed only on the basis of a valid document (invoice). Thus, GST paid on items for which invoice is missing, i.e. ₹ 80,000, is not available.]	70,000
Total ITC	1,10,000

16. Computation of ITC available with Jamku Ltd. for the month of October

Particulars	ITC (₹)
Purchase of raw spices which are sold to customers [Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business.]	50,000
Purchase of raw spices for personal use of directors [ITC is not available on goods used for personal consumption.]	
Electric machinery purchased for being used in the manufacturing process [Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business.]	25,000
Motor vehicle used for transportation of employee	Nil

Total ITC	75,000
Payment made to contractor for construction of staff quarter [ITC is not available on 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.]	Nil
[ITC on motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) is blocked except when the same are used for (i) making further taxable supply of such motor vehicles (ii) making taxable supply of transportation of passengers (iii) making taxable supply of imparting training on driving such motor vehicles. In the given case, since the supplier is in the business of spices, ITC on motor vehicle used for transportation of the employee is blocked credit.]	

17. Computation of ITC available with Dina Ltd. for the month of March

Particulars	ITC (₹)
Purchase of iron used as a raw material [When inputs are received in instalments, ITC can be availed only on the receipt of last instalment. Hence, since last instalment is received in April, ITC cannot be availed in March.]	Nil
Purchase of accessories delivered directly to the dealers of the company [Goods delivered to another person on the direction of the registered person by way of transfer of documents of title or otherwise, either before or during the movement, are deemed to have been received by such registered person. Thus, ITC is available to the registered person, on whose order/direction the goods are delivered to a third person.]	90,000

Bus for the transportation of employees [ITC on motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose is allowed.	1,97,000
General insurance taken on car used by executives of the company for official purpose [ITC on motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) is blocked except when the same are used for (i) making further taxable supply of such motor vehicles (ii) making taxable supply of transportation of passengers (iii) making taxable supply of imparting training on driving such motor vehicles. Further, ITC is not allowed on services of general insurance relating to such ineligible motor vehicles. Since, the car is not used for any of the eligible purposes, ITC thereon is blocked and thus, ITC on general insurance taken on such car is also blocked.]	Nil
Total ITC	2,87,000

18. Every registered person is entitled to take credit of input tax charged on any supply of goods and/or services which are used or intended to be used in the course or furtherance of his business if, *inter alia*, he is in possession of a tax invoice issued by a supplier and he has received the goods and/or services.

The registered person must pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice. In the event of failure to do so, the corresponding credits availed by the registered person would be added to his output tax liability, with interest. However, once the recipient makes the payment of value of goods and/or services along with tax, he will be entitled to avail the credit again without any time limit. In case part-payment has been made, proportionate credit would be allowed.

In the given case, High-fi Infotech (P) Ltd. provides the service in the month of October and Comfortable (P) Ltd. receives the invoice in the month of November. Therefore, in view of the above provisions and assuming all other

conditions required for availing ITC having been fulfilled, ITC of ₹ 1,98,000 (₹ 11,00,000 x 18%) will be availed by Comfortable (P) Ltd. in the month of November when it receives the invoice issued by High-fi Infotech (P) Ltd.

However, proportionate ITC amounting to ₹ 1,33,932 \Rightarrow [(₹ 12,98,000 - ₹ 4,20,000)/118] x 18] will be added to the output tax liability of Comfortable (P) Ltd. as full payment has not been made within 180 days of issuance of the invoice, i.e. by 4th May of next year. ITC of ₹ 1,33,932 can, however, be availed again by Comfortable (P) Ltd. in the month of July next year when it makes the balance payment.

19. One of the conditions for availing ITC is that the registered person taking the ITC must have received the goods and / or services. However, goods delivered to a third person on the direction of the registered person by way of transfer of documents of title or otherwise, either before or during the movement, are deemed to have been received by such registered person. So, ITC is available to the registered person, on whose order the goods are delivered to a third person even though the registered person does not receive the goods.

In the given case, goods have been delivered by M/s. Karim & Bros. (supplier) to Shubhkamna Sales (third person) on the direction of M/s. Diwan & Sons (registered person). Therefore, in view of the above provisions, ITC of ₹ 2,250 (₹ 50 x 250 x 18%) will be available to M/s. Diwan & Sons (registered person) on the purchase of 250 kg of plastic granules @ 50 per kg.

Further, in this case there is another supply between Diwan & Sons (supplier) and Shubhkamna Sales (recipient). Therefore, Shubhkamna Sales can avail ITC of $\stackrel{?}{\sim} 2,700$ ($\stackrel{?}{\sim} 60 \times 250 \times 18\%$) on the purchase of 250 kg of plastic granules @ 60 per kg.

20. Computation of GST payable on outward supplies

S.No.	Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)	Total (₹)
(i)	Intra-State supply of goods for ₹ 10,00,000	90,000	90,000		1,80,000

(ii)	Inter-State supply of goods for ₹8,00,000	1,44,000	1,44,000
	Total GST payable		3,24,000

Computation of total ITC

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Opening ITC	57,000	60,000	1,40,000
Add: ITC on Intra-State purchases of goods valuing ₹ 3,00,000	27,000	27,000	Nil
Add: ITC on Inter-State purchases of goods valuing ₹ 2,50,000	Nil	Nil	45,000
Total ITC	84,000	87,000	1,85,000

Computation of minimum GST payable from electronic cash ledger

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)	Total (₹)
GST payable	90,000	90,000	1,44,000	3,24,000
Less: ITC [First ITC of IGST should be utilized in full - first against IGST liability and then against CGST and SGST liabilities in a manner to minimize cash outflow]	(38,000) IGST	(3,000) IGST	(1,44,000) IGST	1,85,000
	(52,000) CGST	(87,000) SGST		1,39,000

Minimum GST payable in cash	Nil	Nil	Nil	Nil
ITC balance to be carried forward next month	32,000	Nil	Nil	32,000

Note: The above computation is one of the many ways to set off the ITC of IGST (₹ 41,000-after set off against IGST liability) against CGST and SGST liability to compute minimum GST payable in cash. To illustrate, IGST of ₹ 10,000 can be set off against SGST payable and IGST of ₹ 31,000 can be set off against CGST payable. In this situation also, the net GST payable will be nil but the ITC of CGST and SGST to be carried forward will be ₹ 25,000 and ₹ 7,000 (totaling to ₹ 32,000) respectively. However, if the entire ITC of ₹ 41,000 is set off against CGST payable, then SGST of ₹ 3,000 will be payable in cash thus, increasing the cash outflow. Therefore, such a set off would not be advisable for computing the minimum GST payable.

AMENDMENTS MADE VIDE THE FINANCE ACT, 2020

The Finance Act, 2020 has become effective from 27.03.2020. However, most of the amendments made in the CGST Act and the IGST Act vide the Finance Act, 2020 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2021 and/or November 2021 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions⁹ relating to section 16 are compared with the provisions as amended by the Finance Act, 2020.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions

Sub-section (4)

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both 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 invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provisions as amended by the Finance Act, 2020

Sub-section (4)

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both 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 debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Remarks

Date of issuance of debit note and date of issue of underlying invoice is being delinked for the purpose of availing input tax credit. Therefore, under the amended position, ITC can be availed on a debit note raised after 30th September following the end of the financial year to which the invoice linked to such debit note pertains.

 $^{^{9}}$ Provisions existing as on the date when the Study Material was released for printing