



## CONDITIONS FOR CLAIMING GST CREDIT

As per sec 16 of CGST Act 2017 there are certain eligibility criteria or conditions which are required to be fulfilled for claiming input tax credit under GST. In the current article provisions as per CGST Act 2017 have been reproduced and summary has been given to understand the provisions easily.

### Conditions For Claiming Credit

1. As per 16(1), every registered person shall be subject to such conditions and restrictions as may be prescribed and in the manner in section 49, is entitled to take credit of input tax credit on any supply of goods or furtherance of business and the said amount shall be credited to the electronic credit ledger of such person. 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.

**Summary:** As per the above provision every registered person is entitled to take the credit of tax paid on the input, input services or capital goods which must be "used or intended to be used" in the course or

2. Notwithstanding anything contained in this section, no registered person shall be entitled to the input tax 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:** As per the explanation to clause (b) it would be deemed that the registered person has received the goods when the goods are received by the recipient or any other person on the direction of registered person. This is a case when the registered person who has purchased goods wants delivery of goods to third party so for claiming input tax credit it would be deemed that goods are being delivered to the registered person when goods are delivered to the third person.

**Summary:** As per the above provision a registered person shall be entitled to take input tax credit of the amount of GST paid on Input unless registered person:-

- He should be in possession of "Tax invoice or Debit note".
- He should have "received the goods or services" or both.

## EDITORS NOTE

Dear Reader, this edition features an overview on GST credit claiming and deductions from income in general, etc., Awaiting your feedback.

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## TAX DUE DATES - OCTOBER 2018

30-10-18	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of September, 2018
30-10-18	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of September, 2018
30-10-18	Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2018
30-10-18	Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for accounting year 2017-18.
31-10-18	Country-By-Country Report in Form No. 3CEAD by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2017-18.
31-10-18	Quarterly statement of TDS deposited for the quarter ending September 30, 2018
31-10-18	Due date for furnishing of Annual audited accounts for each approved programmes under section 35(2AA)
31-10-18	Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending September 30, 2018
31-10-18	Copies of declaration received in Form No. 60 during April 1, 2018 to September 30, 2018 to the concerned Director/Joint Director
31-10-18	Due date for filing of audit report under section 44AB for the assessment year 2018-19 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on September 30, 2018) has been further extended from October 15, 2018 to October 31, 2018 vide Order [F.NO.225/358/2018-ITA.II], dated 08-10-2018.
31-10-18	Due date for filing of annual return of income for the assessment year 2018-19 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited) has been further extended from October 15, 2018 to October 31, 2018 vide Order [F.NO.225/358/2018-ITA.II], dated 08-10-2018.



As per the explanation given it shall be deemed that the registered person has received the goods, where the goods are delivered by the supplier to the third person. It means in case of bill to ship model if registered person has given direction to supplier to deliver the goods to any other person then also the registered person is eligible to claim the input tax credit if the goods have been received by the other person or third person.

As per Rule 36 of CGST Rules 2017, 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.
  - (f). 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 utilization of input tax credit in respect of such supply.

As per the above clause input tax credit can only be claimed if cash or input tax credit has been utilized for the payment such supply.

Summary: As per the above provision input tax credit can be claimed by the registered person only if tax charged on input, input service or capital goods has actually been paid to the government by the supplier, so it can be said that if supplier does not pay the tax to government then he is not eligible to claim the Input tax credit it should also be noted that GSTR-2A is auto-populated only when the supplier pays the GST collected.

Example Mr A purchased goods of from Mr B of 50,000 on which CGST and SGST was liable to be paid of 15,000 now if Mr B fails to make the payment on due date as per section 41 then Mr A is will not be eligible to take Input tax credit.

- (d). He has furnished the return under section 39.

Summary: As per the above provision he should have furnished the return to claim the input tax credit.

*Continued*





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

Summary: As per the above provision registered person can claim input tax credit on input or capital goods only when the last lot of goods have been received, in case goods have to be received in lots then credit can only be availed when the last lot is received by the registered person.

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 "180" 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 the interest thereon, in such manner as may be prescribed.

Provided also that the recipient shall be entitled to avail the credit of input tax on payment made by him later on.

Summary: As per the above proviso if a registered person fails to pay to the supplier of goods or services or both, within a period of 6 months(180 DAYS) then he has to add the amount of credit claimed in the output tax liability however he is eligible to claim input tax credit once he pays the amount to the supplier. The above provision is not for reverse charge mechanism.

3. Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant & machinery under the provision of Income tax act 1961, then the input tax credit on the said tax component shall not be allowed.

Summary: As per the above provision if the registered person has claimed depreciation on the capital goods, in other words he should not have capitalized the tax amount he must not take benefit of depreciation and credit at the same time.

4. A registered person shall not be entitled to take input tax credit in respect of any invoices 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 such debit note pertains or

Furnishing of the relevant annual return, whichever is "Earlier"

Summary: As per the above provision it is very important point to be noted by the taxable person, that he would not be eligible to claim input tax credit after:-

- Due date of return for the month of September or
- Date of annual return, whichever is earlier

So it can be said that input tax credit has to be taken till the date of 20th October.



## Deductions from income in general

Dividend from shares held in Indian companies and specified mutual funds are exempt from tax. However in case of a Resident and Ordinary residents, dividend income from investments outside India is taxable, subject to treaty benefits. Expenses incurred specifically for earning such taxable investment income are deductible.

From FY 2016-17, dividends received (except deemed dividend) by a resident taxpayer from domestic companies, where the aggregate dividend received exceeds INR 1 Million in the tax year shall be taxed at 10 per cent (plus applicable surcharge and education cess) on gross basis. It is proposed in Finance Bill, 2017 that interest would not be leviable on account of shortfall in advance tax payment on account of dividend taxable in excess of INR 1 million.

Interest income earned in respect of the investments made in India is subject to tax in India. Also, in case of Resident and Ordinarily residents, interest income from foreign investment is taxable, subject to treaty benefits. Rental income from a house property is taxable in the hands of its legal owner. The net rental income (i.e. gross rent less municipal taxes) is chargeable to tax after making the following deductions:

- Standard deduction – 30 per cent of the net rental income;
- Interest on loan taken for purchase of House property. – INR 2,00,000 / INR 30,000 / Amount of interest paid or payable during the tax year, depending on the facts and circumstances of each case.

No other deductions are permissible from the said rental income.

As proposed in the Finance Bill 2017, the maximum amount of loss which can be set off against other income is capped at INR 2,00,000. The balance loss can be carried forward of 8 subsequent tax years and set-off against house property income only.

### Gains from stock option exercises.

Benefits from Employees Stock Option Plan (ESOP) are taxed as perquisite in the hands of employees. The taxability of a benefit arising out of ESOPs is triggered at the time of allotment of the specified securities. The perquisite value is determined as the Fair Market Value (FMV) on the date on which the “option” is exercised by the employee as reduced by the amount actually paid by, or recovered from the employee in respect of such ESOPs. FMV means the value determined in accordance with the method prescribed by the Central Board of Direct Taxes.

Further, if after exercising the options, the employee holds the shares for some time and sells the same subsequently, the difference between the sale consideration and the FMV considered for calculating the perquisite value would be subject to capital gains tax. Depending on the period of holding of the shares, capital gains would be considered either as short-term or long-term.

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