

# *INPUT TAX CREDIT*

## CHAPTER V

CA Kunal Kapoor B.Com;FCA;DISA(ICAI)

cakunal1997@gmail.com

# Definitions

- 2(59) “input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;
- 2(60) “input service” means any service used or intended to be used by a supplier in the course or furtherance of business;
- 2(61) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;

# Definitions

- (62) “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—
  - (a) the integrated goods and services tax charged on import of goods;
  - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
  - (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
  - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
  - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy;
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# Definitions

- (63) “input tax credit” means the credit of input tax;

# CHAIN for Eligibility & Conditions For Taking ITC

- Section 155 +(Burden of Proof)
- Section 16 + (Eligibility & Conditions For Taking ITC )
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- Section 49 + (Payment of tax , penalty & other Amt)
- Section 39 + (Furnishing of Returns)
- Section 41, 42 & 43 (Matching, reversal and reclaim of input tax credit.)

# SEC. 155

- Where any person **claims**
- that he is **eligible** for input tax credit under this Act,
- the **burden** of proving such claim
- shall lie **on such person.**

# Section 16

- There are some key criteria that the GST registered businesses/individuals **need to fulfill** in order to be eligible for input tax credit under current GST rules:
- **Availability of GST invoice** showing details of tax paid is mandatory .
- The **goods** on which GST has been paid have been **received**.
- The applicant has submitted the **relevant tax returns** .
- The **supplier** of the goods has paid the **due tax** to the government .
- The ITC applicant is registered under GST If goods have been received in installments, ITC can be claimed only after the **Final lot** has been received

# Input tax credit **cannot be claimed** in the following cases

- Composition tax registered businesses/individuals paying GST on inputs.
- If depreciation has been claimed on the tax component of a capital good
- On goods not used as business inputs such as supplies for personal use
- On goods on which ITC is not applicable under the GST Act such as exempt supplies
- ITC claimed after due date / date of furnishing GST return for the month of September of following financial year



# Documents Required to Avail Input Tax Credit

- Invoice provided by supplier of goods/services
- Debit note issued by the supplier to the recipient (if applicable)
- Bill of entry or Bill of supply (may be a replacement for tax invoice in certain cases)
- Credit note/invoice issued by input service distributor (ISD) as GST invoicing rules
- A bill of supply issued by supplier of goods/services

# Consequences of Non payment of consideration to supplier

- 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 interest thereon,

# Priority of set off

- As per old rules, following was the priority of set-off of ITC was as below:
- For CGST Output – First set off thru ITC of CGST, then IGST
- For SGST Output – First set off thru ITC of SGST, then IGST
- For IGST Output – First set off thru ITC of IGST, then CGST & then SGST

# **New Section 49A:**

## **on priority of set off**

- **As per CGST (Amendment) Act 2018, the priority of set-off of ITC is as below:**
- For CGST Output- First set off thru ITC of IGST, then CGST
- For SGST Output – First set off thru ITC of IGST, then SGST
- For IGST Output – First set off thru ITC of IGST, then CGST & then SGST

# Apportionment of credit and blocked credits

- In case of supply used partly for business or other purposes. ITC relating to **only business** use is allowed.
- ITC allowed only in respect of taxable supplies including zero rated supplies **not** for **exempt** supplies.
- Exempt supplies shall include supplies on which 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 scheduled II, sale of building.

Note :- “ 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.)

# Finance Companies and Banks

- A banking company or NBFC shall have the option to either comply with the normal provisions of sub-section 17(2), or  
avail of every month , an Amount equal to 50 % of the eligible input tax credit on inputs, capital goods and input services in that month.

Note :Option once exercised to be for F/Y.

Restriction not to apply to supply to distinct person under same PAN.

# Cases when ITC is not available under GST

- **1. Motor Vehicle for transportation of persons with seating capacity not more than 13 persons (including driver), except when the supply used for:**
- ITC is not available for motor vehicles and conveyances.
- But if such company purchase bus with seating capacity more than 13 persons for transportation of their employees, it can claim ITC.
- **Exceptions to ITC on motor vehicles**
- ITC will be available when the vehicle is used for the following.
- **a) Supply of other vehicles or conveyances**
- If you are in the business of supplying cars then ITC will be available.

# Cases when ITC is not available under GST

- **b) Transportation of passengers**
- If you are providing transportation of passengers then ITC will be allowed on the vehicle purchased.
- For example, Happy Tours purchased a bus for inter-city transport of passengers. ITC is available.
- **c) Imparting training on driving, flying, navigating such vehicle or conveyances**
- A driving school purchases a car to give training to students. The school can claim ITC on the GST paid on the car.
- **d) Transportation of goods**
- ITC will be allowed on motor vehicles (and other conveyances) used to transport goods from one place to another. However, this is concerning other transporters and not [goods transport agencies \(GTA\)](#).



# Cases when ITC is not available under GST

- **Food, beverages, club memberships and others**
- ITC is not for the supply of following goods or services or both:
- Food and beverages
- Outdoor catering
- Beauty treatment
- Health services
- Cosmetic and plastic surgery
- **However, ITC will be available if the category of inward and outward supply is same or the component belongs to a mixed or composite supply under GST.**
- Examples-
- Ajay Enterprises arranges for an office party for its employees. Ajay Enterprises will not be able to claim ITC on the food & beverages served.

# Cases when ITC is not available under GST

- **Sale of membership in a club, health, fitness centre**
- No ITC will be allowed on any membership fees for gyms, clubs etc.
- Example-
- X, a Managing Director has taken membership of a club and the company pays the membership fees. ITC will not be available to the company or Mr. X.

# Cases when ITC is not available under GST

- **4. Rent-a-cab, life insurance, health insurance**
- **ITC is not available for rent-a-cab, health insurance and life insurance.**
- However, the following are exceptions, i.e., ITC is available for-
- a. Any services which are **made obligatory** for an employer to provide its employee by the Indian Government under any current law in force
- For example, assuming the government passes a rule for all employers to provide mandatory cab services to female staff in night shifts. ABC Ltd. hires a rent-a-cab to provide transportation to its female staff on night shifts. Then ITC will be available to ABC Ltd. on the GST paid to the rent-a-cab service.
- b. If the category is same for the inward supply and outward supply or it is a part of the mixed or composite supply
- For example, ABC Travels lends out a car to XYZ Travels. Then XYZ Travels can claim ITC on the same.

# Cases when ITC is not available under GST

- **5. Travel**
- ITC is not available in the case of travel, benefits extended to employees on vacation such as leave or home travel concession.
- For example,
- ABC Ltd. offers a travel package to its employees for personal holidays. ITC on GST paid by ABC Ltd. for the holiday package will not be allowed.
- **ITC will be allowed for travel for business purposes.**

# Cases when ITC is not available under GST

- **6. Works contract**
- ITC shall not be available for any work contract services. ITC for the construction of an immovable property cannot be availed, except where the input service is used for further work contract services.
- For example, XYZ Contractors are constructing an immovable property. They cannot claim any ITC on the works contract. However, XYZ hires ABC Contractors for a portion of the works contract. XYZ can claim ITC on the GST charged by ABC Contractors.

# Cases when ITC is not available under GST

- **7. Constructing an immovable property on own account**
- No ITC is available for goods/services for construction of an immovable property on his own account. Even if such goods/services are used in the course or furtherance of business, ITC will not be available.
- *But this rule does not apply to plant or machinery. ITC is available on inputs used to manufacture plant and machinery for own use.*
- Example-
- Ajay Steel Industries constructs an office building for its headquarters. ITC will not be available.
- Ajay Steel Industries also constructs a blast furnace to manufacture steel. ITC is available since it is a plant.

# Cases when ITC is not available under GST

- **8. Composition Scheme**
- No ITC would be available to the person who has made the payment of tax under composition scheme in GST law.

# Cases when ITC is not available under GST

- **9. No ITC for Non-residents**
- ITC cannot be availed on goods/services received by a non-resident taxable person. ITC is only available on any goods imported by him.



# 10. No ITC for personal use

- No ITC will be available for the goods/ services used for personal purposes and not for business purposes.
- Also see rule no. 42 of chapter V

# 11. Free samples and destroyed goods

- No ITC is available for goods lost, stolen, destroyed, written off or given off as gift or free samples.
- See Circular no.92 Dated the 7th March, 2019

## 12. No ITC in fraud cases

- ITC will not be available for any tax paid due to fraud cases which has resulted into –
- Non or short tax payment or
- Excessive refund or
- ITC utilised or
- Fraud cases include fraud or willful misstatements or suppression of facts or confiscation and seizure of goods.

# 13. No ITC on restaurants

- As per Notification No. 46/2017-Central Tax (Rate), dated 14th November 2017, standalone restaurants will charge only 5% GST but cannot enjoy any ITC on the inputs.
- Note :Restaurants as part of hotels with room tariffs exceeding Rs. 7,500 still continue pay 18% GST and enjoy ITC.
- Eg :McDonald's charges 5% GST and cannot claim any ITC.
- Taj's Grill by the Pool restaurant in Kolkata is a part of the Taj Bengal hotel and so it will charge 18% GST while enjoying ITC.

# Special cases of availing ITC

- What is the ITC entitlement of a person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration?

- He 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.

Note : The credit on pre-registration stock would not be admissible if the registration has not been obtained within a period of 30 days from the date on which he becomes liable to registration.

- A person becomes liable to pay tax on 1st August, 2017 and has obtained registration on 15th August, 2017. Such person is eligible for input tax credit on inputs held in stock as on 31st July, 2017.

- What is the eligibility of input tax credit on inputs in stock for a person who obtains voluntary registration?

- The person who obtains voluntary registration is entitled to take the input tax credit of input tax on inputs in stock, inputs in semi-finished goods and finished goods in stock, held **on the day immediately preceding the date of registration.**



- What would be input tax eligibility in cases where there is a change in the constitution of a registered taxable person?

- The transferor shall be allowed to transfer the input tax credit that remains unutilized in its books of accounts to the transferee provided that there is a specific provision for transfer of liabilities.

- What would be input tax eligibility in a case where the goods and/or services supplied by a registered taxable person become absolutely exempt?

- The registered taxable person who supplies goods and / services which become absolutely exempt has to pay an amount equivalent to the input tax credit 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 such exemption.
- It has also been provided that after payment of the amount on such goods, the balance if any available in electronic credit ledger would **lapse**.

- What would be input tax eligibility in cases where the taxable person paying tax under section 7 opts to pay tax **under Compounding Scheme under Section 10?**

- The registered taxable person, who was paying tax under section 7 opts to pay tax under Compounding Scheme under Section 10, has to pay an amount equivalent to the input tax credit 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 such switch over.
- It has also been provided that after payment of the amount on such goods, the balance if any available in electronic credit ledger would lapse.

- A dealer paying tax on compounding basis crosses the compounding threshold and becomes a regular taxable person. Can he avail ITC and if so from what date?

- The dealer can avail ITC 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 section 7.



- Mr. B, a registered taxable person was paying tax under composition rate up to 30th July, 2017. However, w.e.f 31st July, 2017. Mr. B becomes liable to pay tax under the regular scheme. Is he eligible for ITC?

- Mr. B is eligible for input tax credit on inputs held in stock and inputs contained in semi-finished or finished goods held in stock as on 30th July,2017.

- Mr. A applies for voluntary registration on 5th June, 2017 and obtained registration on 22nd June, 2017. As on which date Mr. A is eligible for input tax credit on inputs in stock?

- Mr. A is eligible for input tax credit on inputs held in stock and inputs contained in semi-finished or finished goods held in stock as on 21st June, 2017.

The details furnished in the declaration under this clause shall be duly certified by a **practicing chartered accountant or a cost accountant** if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds Rs.2,00,000.00 ;

- Whether the principal is eligible to avail input tax credit of inputs sent to job worker for job work?
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- Yes, the principal is eligible to avail the input tax credit on inputs sent to job worker for job work.

- What is the time period within which the inputs sent for job work has to be received back by the principal?

- The time period for this is 1 year. The principal has to reverse the credit along with interest on inputs which have not been received back from job worker within 1 year but he can reclaim the credit on receipt of inputs.



- What is the time period within which the capital goods sent for job work has to be received back by the principal?

- 3 years

- Who will get the ITC where goods have been delivered to a person other than the taxable person ('bill to'- 'ship to' scenarios)?

- For this purpose of receiving the goods, it would be deemed that the taxable person has received the goods when the goods have been delivered to a third party in the direction of such taxable person. So ITC will be available to the person on whose order the goods are delivered to the third person.

- What will be the tax impact when capital goods on which ITC has been taken are supplied by the taxable person?

- In case of supply of capital goods **on which input tax credit has been taken**, the registered taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the **(5 % points per quarter or part thereof )** as may be specified in this behalf or the tax on the transaction value of such capital goods, whichever is higher.

# Rule 41A ITC Related

- **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:

- Note 1 : 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.
- Note 2: value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.



# Rule 41A

- (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 no.42

- 42. Manner of determination of input tax credit in respect of inputs or input services and **reversal** thereof.

# Rule 43

- Manner of determination of input tax credit in respect of **capital goods** and reversal thereof in certain cases

- Thank You

CA Kunal Kapoor