

Western India Regional Council of ICAI

GST: ITC – PART II: APPORTIONMENT & MATCHING OF CREDIT

PRESENTED BY:

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Outline

**Apportionment of the
Input Tax Credit.**

**Concept of Input
Service Distributor**

**Matching of Input Tax
Credit**

Apportionment of Input Tax Credit

What is Apportionment?

A well-known term in cost accounting.

It's a process of separation of Sales, expenditure, or income that are then distributed to different accounts, divisions or subsidiaries.

Allocation Vs. Apportionment Vs Attribution

A well-known concept in various laws including tax laws.

In income Tax-

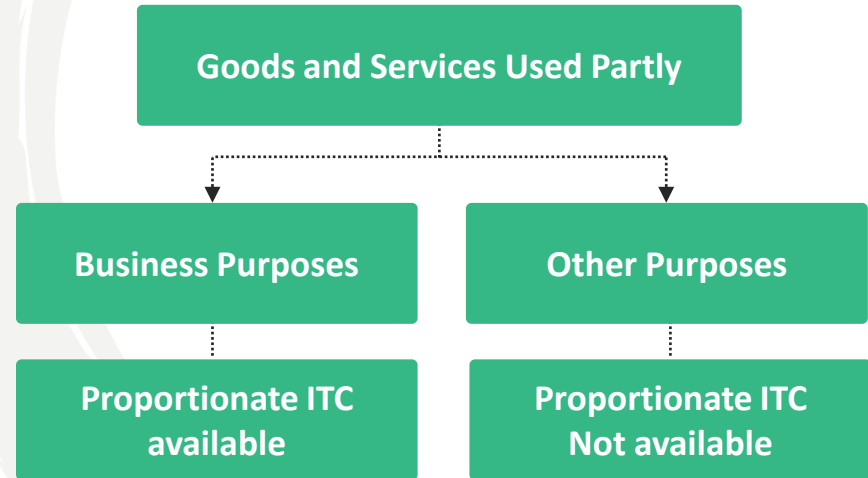
- Allocation of taxing Jurisdictions- Ishikawajma –Harima Heavy Indus Vs DIT Mumbai, 2007 (6) STR 3 (SC).
- Determination of the Profits under Section 80 HHC .
- Determination of the Expenses for business use – Section 37 etc.

In Land Laws-

- “Apportionment means distribution of compensation amongst the claimants in proportion to the value of their interest. It is in essence a rateable distribution amongst the claimants or between them.”
 - Land Acquisition Collector vs. Gajpal Singh (28.07.1980 - DELHC) : MANU/DE/0366/1980

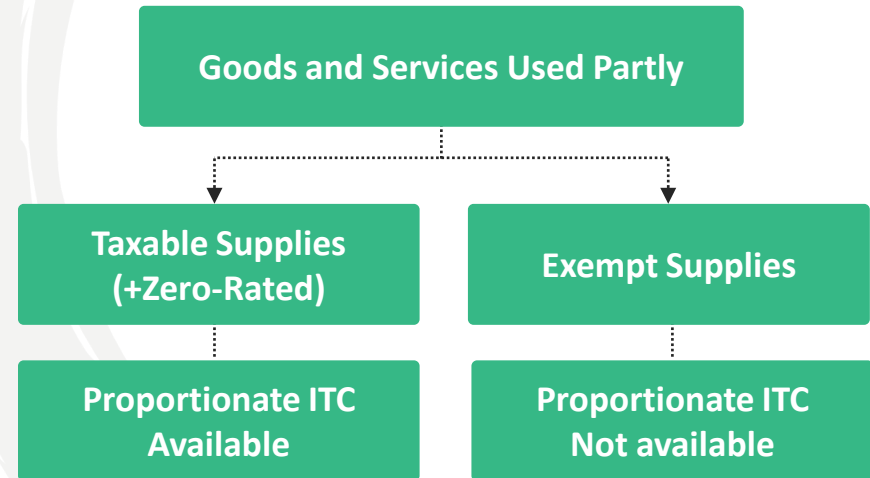
Section 17(1) – Partly Business & Partly Other Purposes

*Section 17(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**.”*



Section 17(2) – Partly Taxable & Partly Exempt Supply

Section 17(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.**



Definitions: CGST Act 2017

- Section 2(47) “*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 Integrated Goods and Services Tax Act, and includes **non-taxable supply**
- Section 2(78) “*non-taxable supply*” means a supply of goods or services or both **which is not leviable to tax** under this Act or under the Integrated Goods and Services Tax Act.
- Section 2(108) “*taxable supply*” means a supply of goods or services or both **which is leviable to tax under this Act;**
- **16. Eligibility and conditions for taking input tax credit. —**
 - (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.

Section 17 (2) – Points for Consideration

No express provision for disallowing input tax credit if goods or services are used exclusively for effecting exempt supplies, unlike old Rule 6(1) of Cenvat Credit Rules, 2004.

- Exclusively used for effecting exempt supplies (but for business purposes) – Credit available as per Section 16(1), but no express provision for denial under Section 17(2) or any other provision.
 - *Casus Omissus cannot be supplied by court; or*
 - *Purposive interpretation to resolve the absurdity.*



Section 17 (3) – Value of Exempt Supply

*The value of exempt supply under 17(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: *w.e.f. 01.02.2019-*

*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.*

Section 17 (3) – Points for Consideration

- Why is the tax payable on reverse charge basis included in the value of exempt supply?
- Whether the said Explanation inserted w.e.f. 01-02-2019, prospective or retrospective in nature? What will be the position of law prior to the insertion of the explanation?
- Whether Schedule III transactions can be said to be attributable to taxable supplies? [as per Section 17(2)]
- What will be position where goods or services are used for –
 - *Exclusively for Schedule III transactions;*
 - *Taxable supplies and Schedule III transactions;*
 - *Exempt supplies and Schedule III transactions;*
 - *Taxable supplies, exempt supplies and Schedule III transactions.*
- GST – Concept and Status booklet dated 01.08.2019 released by CBIC.



Section 17 (6) – Manner of Attribution

Rule 42 - Reversal of Common Credit on Inputs and Input Services

Total Input Tax in a Tax Period	T	100
LESS: Exclusively for Non-Business Purpose	(T1)	5
LESS: Exclusively for Exempt Supplies	(T2)	15
LESS: Ineligible Credit (s.17(5))	(T3)	10
ITC credited to ECL (T – (T1+T2+T3))	C1	70
LESS: Exclusively for Taxable + Zero Rated	(T4)	40
COMMON CREDIT (C1-T4)	<u>C2</u>	<u>30</u>

Rule 42 – Computation of Eligible Credit Attributable

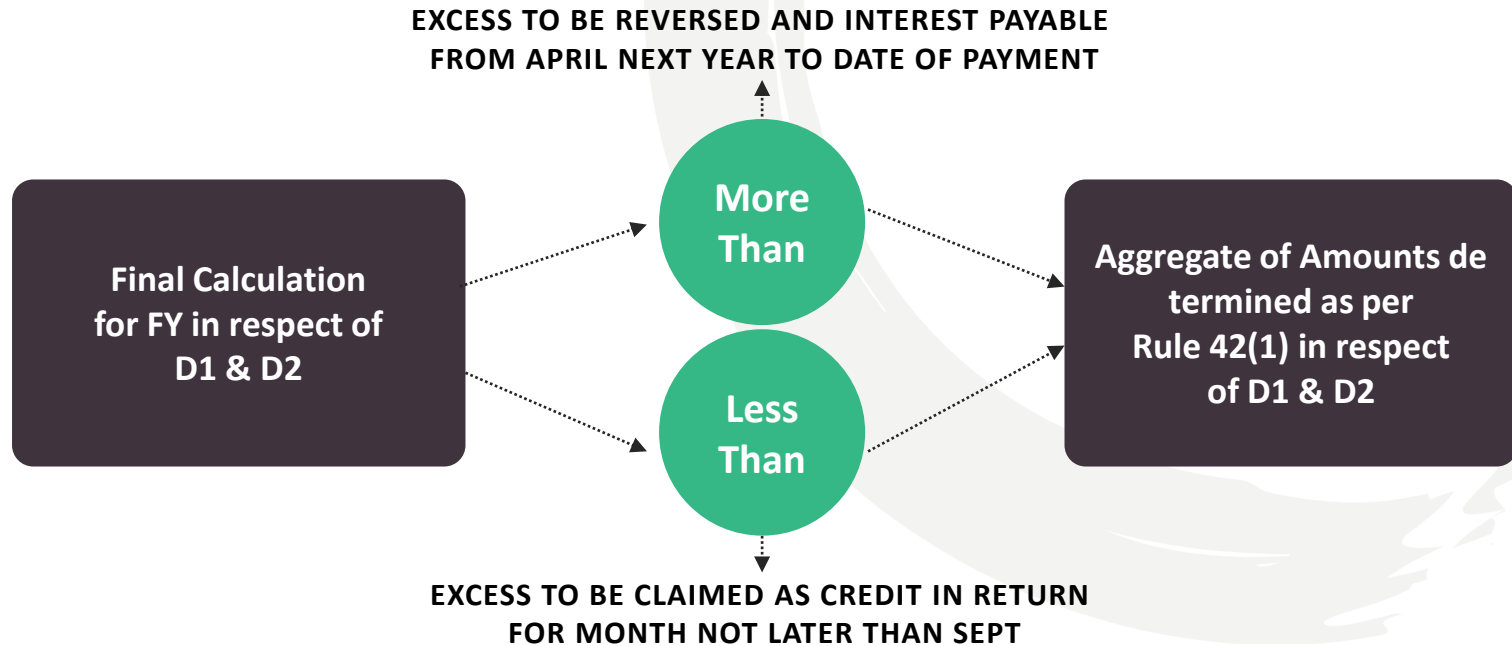
Common Credit (C2) = ITC of inputs and input services commonly used for Taxable Supplies, Exempt supplies, and non-business purposes.

Thus, ITC attributable towards exempt supplies and non-business purposes will have to be attributed.

Common Credit		C2 = 30
LESS: ITC Attributable to Exempt Supplies (D1 = E/F x C2)	<u>Total Value of Exempt X C2</u> Total Turnover (Assuming Total Value of Exempt – 2k and Total Turnover – 10k)	D1 = 6
LESS: ITC Attributable to Non-Business Purposes	5% of C2	D2 = 1.5
ELIGIBLE Common Credit	$C3 = C2 - (D1 + D2)$	C3 = 22.5
<u>ITC to be reversed = (D1 + D2) = 7.5</u>		<u>Total Eligible Credit (C3 + T4) = 62.5</u>

Rule 42(2) – Final Calculations

- The ITC determined under Rule 42(1), shall be calculated finally for the FY, before the Due Date of Furnishing Return for Sept. following the end of the year to which credit relates.



Rule 43 - Reversal of Common Credit on Capital Goods

A	Exclusively Non-Business Purposes/Exempt	No Credit in ECL
B	Exclusively for Taxable + Zero Rated Supply	Credit to ECL
C	Neither A nor B = Common Use	<ul style="list-style-type: none">• Credit to ECL• Useful life = 5 years• Monthly Reversal to be calculated.
D	Earlier Non-Business/Exempt, Now Common	<ul style="list-style-type: none">• Credit to ECL• Compute Ineligible Credit @ 5% per quarter• Add in Output Liability• Also add Eligible to Total ITC of Common Use (For calculating reversal)
E	Earlier Taxable + Zero Rated, Now Common Useful Life = 5 years	<ul style="list-style-type: none">• ITC already availed, thus, no availment again• Instead Add to Total ITC of Common Use (For calculating reversal)

Rule 43 - Reversal of Common Credit on Capital Goods

F	Monthly Common Credit	$\frac{\text{Total Common Credit}}{60}$
G	Amount to be added to Output Liability every month till the end of useful life	$\frac{\text{F x Exempt Turnover}}{\text{Total Turnover}}$

What if Capital Goods:

- Used for Exempt First, and now Taxable?
- Used for Taxable First, and now Exempt?
- Used for Common first, and now Taxable/Exempt?

Explanation to Rule 42 & 43

Aggregate Value of exempt supplies **shall exclude**

- 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.
- Value of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Reversal Formula (Rule 42) – Schematic Interpretation

- Reversal amount =
$$\frac{\text{Exempt Turnover X Common Credit}}{\text{Total Turnover}}$$
- Whether the formula has to be mechanically followed or any other methodology can be adopted in case the formula leads to absurdity?
- CIT v. Lakshmi Machine Works [2007] 290 ITR 667
 - *Schematic Interpretation of Section 80HHC – Profits derived from export business.*
 - *Whether Sales Tax and Excise Duty can be reduced from total turnover, when the formula does not specifically provides?*
- Mercedes Benz India Pvt. Ltd. v. Commissioner of Central Excise – 2020-TIOL-373-CESTAT-MUM
 - *Reversal in respect of trading of goods to be done on margin or entire sale value of goods?*

Section 17 (4) – Financial Institutions

*(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:***

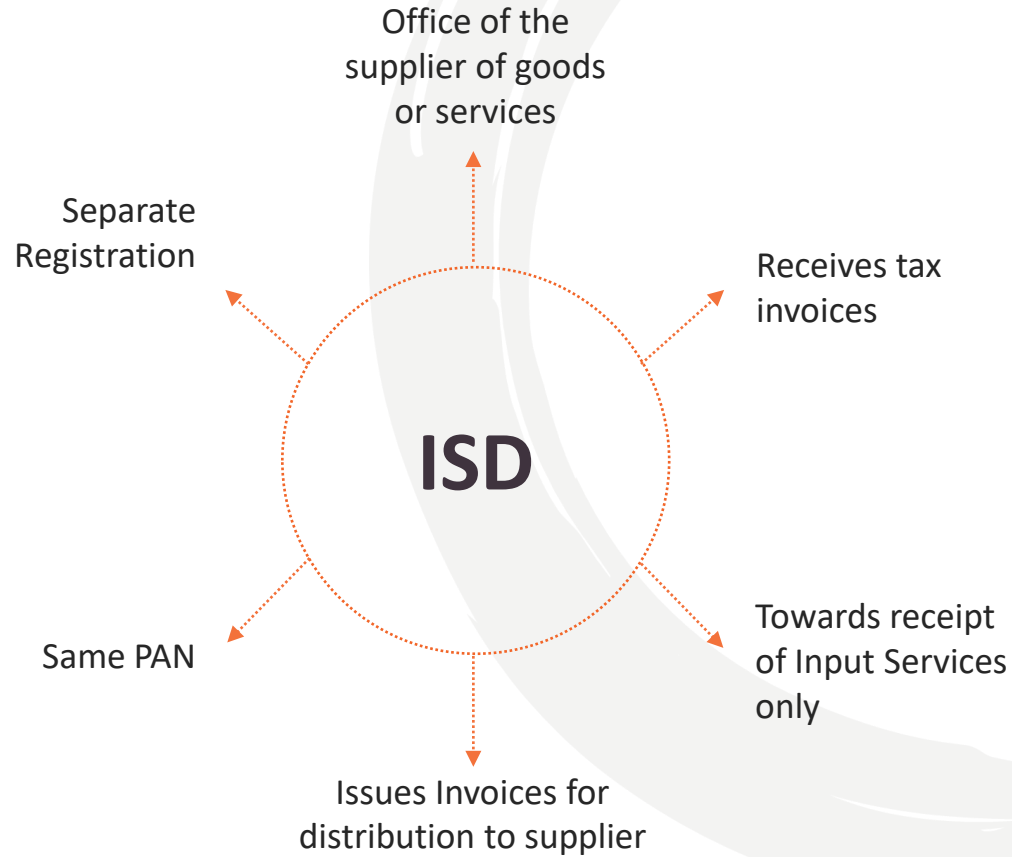
Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

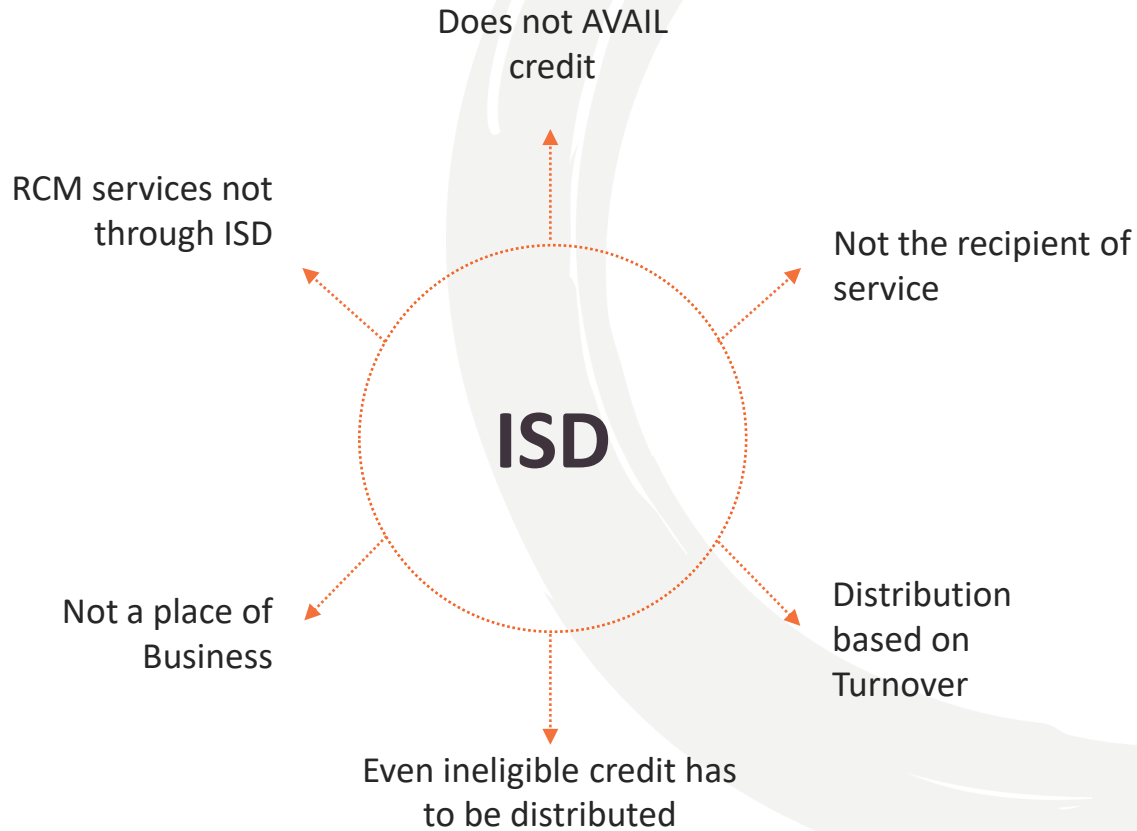
Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

Concept of Input Service Distributor & Manner of Distribution

Concept of Input Service Distributor

Section 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.





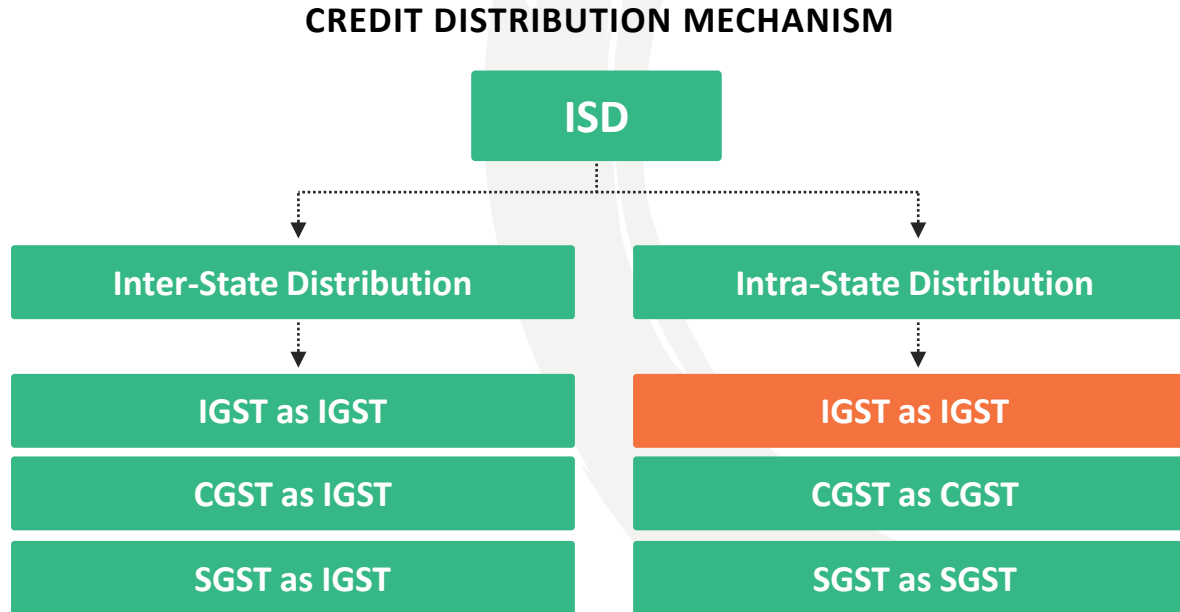
Section 20(1) – Obligation to Distribute

The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and **integrated tax as integrated tax or central tax**, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed

WHEREAS

Rule 39(e) – “the input tax credit on account of **integrated tax shall be distributed as input tax credit of integrated tax** to every recipient;”

Rule 39 - Credit Distribution Mechanism

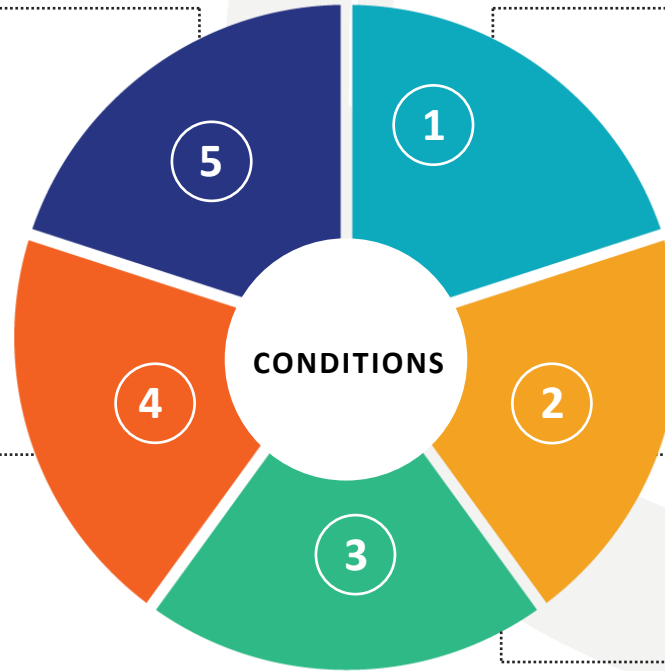


Section 20 (1) provides that IGST can be distributed as IGST or Central Tax but Rule 39 provides that IGST can be distributed as IGST only. How to resolve?

Distribution of Credit is subject to Conditions : Sec.20(2)

All Recipients – Pro rata
Basis Turnover basis

Against a document
containing such Details
(ISD Invoice)

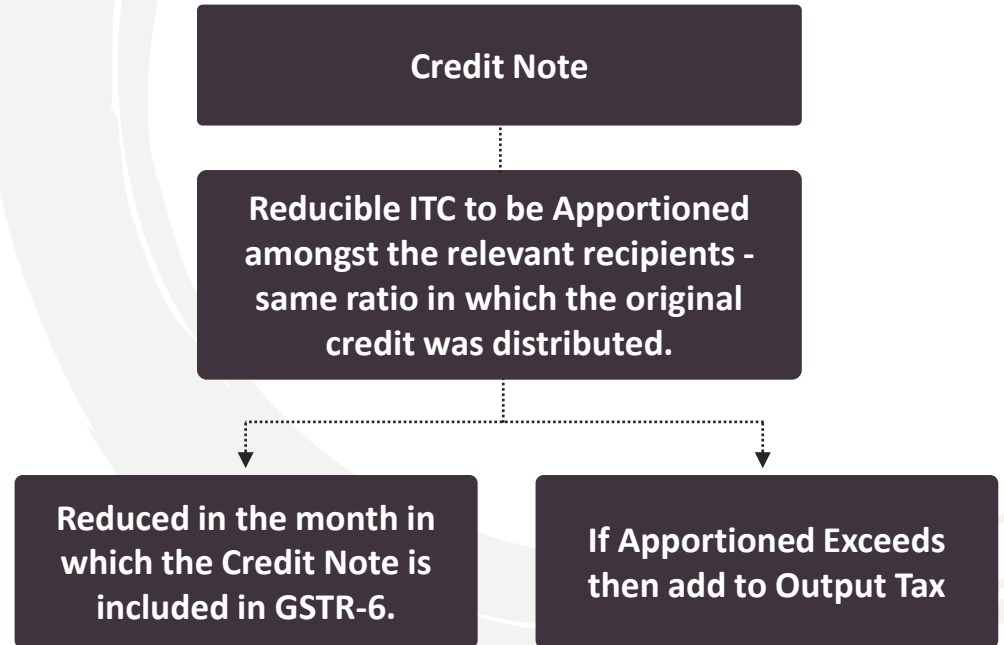
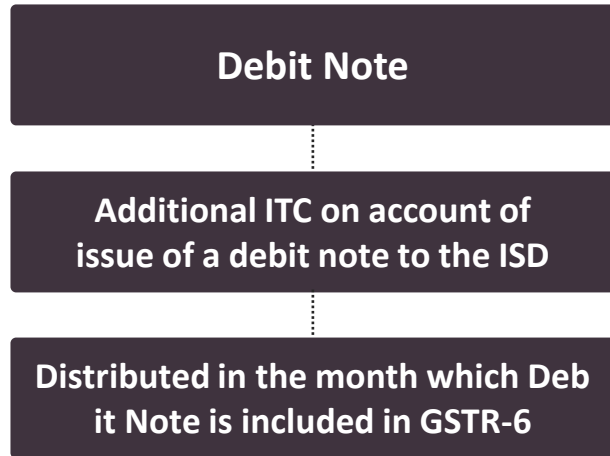


One or more Pro Rata
Basis – Turnover / Agg
regate Turnover of all
such Recipients

Shall not exceed the
amount of credit
available.

To be Distributed
only to the attributable
recipient

Issue of Debit Note & Credit Note to ISD – Rule 39



Explanation to Section 20

(a) the “relevant period” shall be—

- (i) if the **recipients of credit have turnover** in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the **said financial year**; or
- (ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the **last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed**

What shall be the relevant period for a unit that has been newly established in a new State and when will be the first period when such credit is to be distributed to such a unit?

Section 21 – Manner of recovery of credit distributed in excess



Section 73 or section 74 shall, *mutatis mutandis*, apply for determination of amount to be recovered.

Points for Consideration

- Can the excess credit distributed to the wrong unit be recovered and distributed to the correct unit?
- What if proceedings have been initiated by the Department under Sections 73 or 74? - *Rule 39(3)*

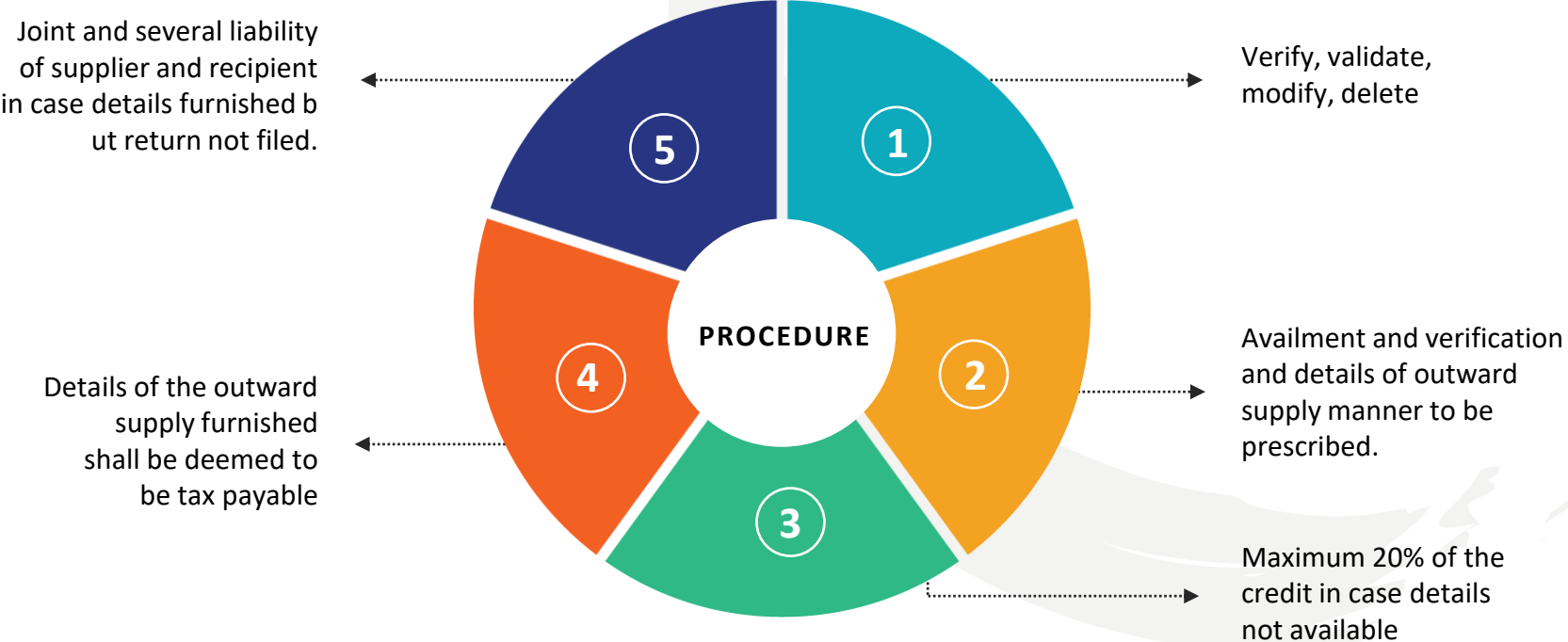


Matching of Input Tax Credit

Matching of Input Tax Credit

- Section 42 – Matching Reversal and Reclaim of ITC – GSTR -3 not notified hence *mechanism not put in place*
- Section 43A Procedure for furnishing return and availing input tax credit- ***Yet to be notified.***
- 16(2)(aa) – *the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37; inserted by Union Budget 2021-* ***Yet to be notified.***

Section 43A Procedure for furnishing return and availing input tax credit



Matching of Input Tax Credit

- Rule 36(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 furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility, **shall not exceed 5 per cent.** of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility.*
- Mismatch of ITC between GSTR 3B and 2A?