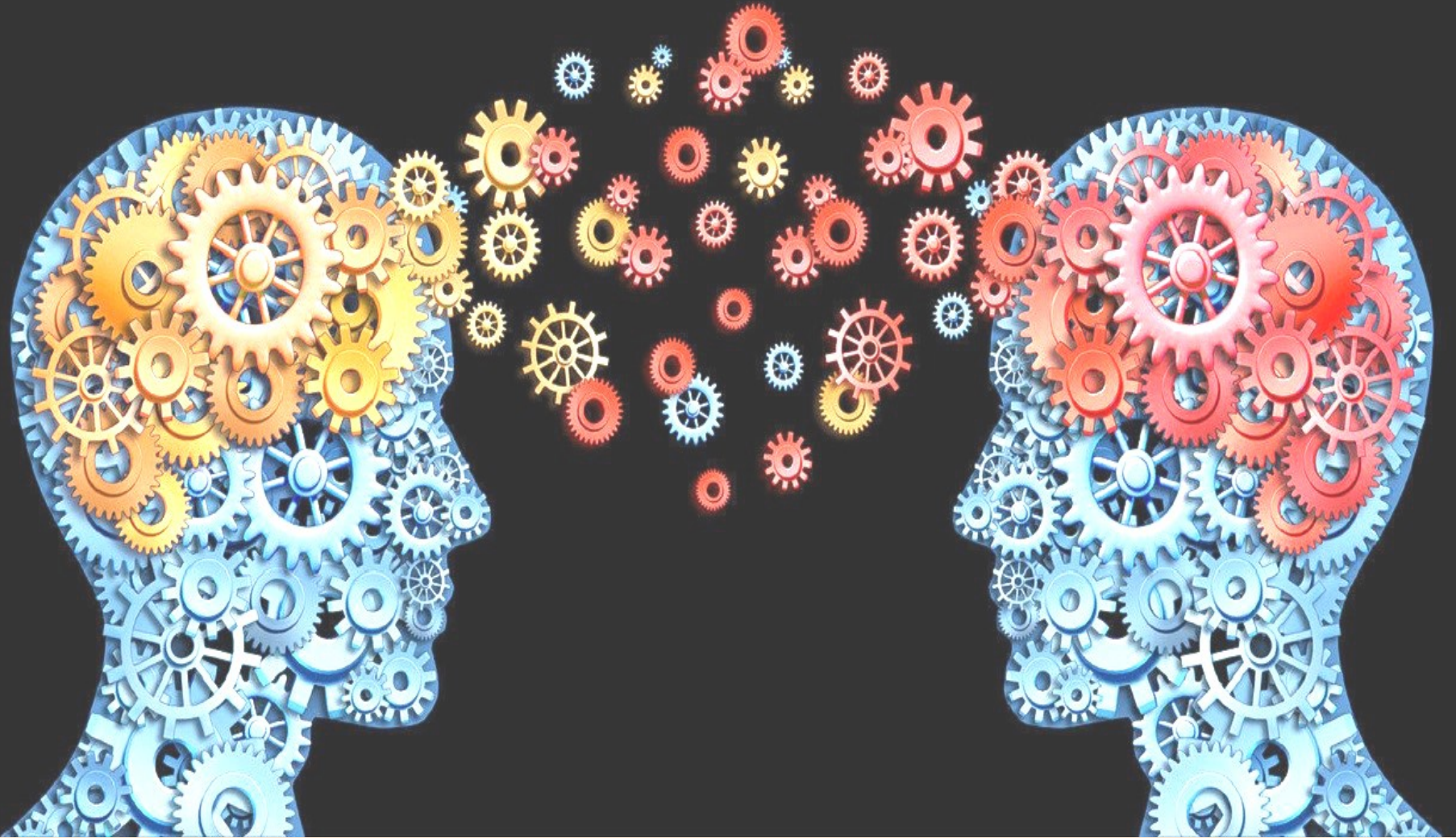


Refresher Course on GST

08-Apr-17



by CA Sanket Shah

Topics

- **Concept of Consideration**
- **Valuation especially Branch Transfers/ Related Party**
- **Input Tax Credit**
 - **Conditions**
 - **Mismatch Mechanism**
 - **Electronic Credit Ledger**
 - **ITC under Transition Provisions**

Concept of Consideration

What is the relevance of Consideration?

Section 7 – “supply” includes

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a **consideration** by a person in the course or furtherance of business;

...

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

CONSIDERATION necessary for qualifying as Supply

Schedule I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

2. *Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:*

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

3. Supply of goods-

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

What is the relevance of Consideration?

Levy and Collection:

- Section 9(1) of CGST Act and Section 5(1) IGST Act
- Provides that tax shall be levied on intrastate/ interstate supply of goods or services or both
- On value determined as per Section 15
- Section 15 - Value shall be Transaction Value i.e. price paid or payable in case of unrelated party transactions and where price is the sole **CONSIDERATION**

Concept of Consideration

Section 2(31) defines:

“consideration” in relation to the supply of goods or services or both includes –

(a) *any payment* made or to be made, whether *in money or otherwise*, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) *the monetary value* of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a *deposit* (~~whether refundable or not~~) given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Concept of Consideration

Consideration



Goods



Services



Deemed
Supply



Composite/
mixed
Supplies

Includes:

- any payment made or to be made in money or otherwise
- monetary value of act or forbearance

by recipient or any other person

Excludes:

- Any subsidy given by Central or State Government

Deposits:

- To be taken as consideration on application towards supply by supplier

Concept of Consideration

- Barter transactions
- Monetary value of any act or tolerance
- Irrelevant as to who makes the payment
- Excludes Government subsidies like Urea Subsidy, PSI Subsidy, Electricity Subsidy
- Food at subsidised rates in Office canteens – to be included
- Deposits for Rentals
- Advance yearly fees for Coaching classes which is refundable

Valuation especially Branch Transfers/ Related Party

Section 15 – Value of taxable supply

General Rule

(1) The value of a supply of goods or services or both shall be the **transaction value**, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are **not related** and the price is the **sole consideration** for the supply.



Conditions for falling under General Rule are:

1. Supplier and recipient are not related
2. Price is the sole consideration

All non-monetary and related party transactions have to follow Valuation Rules

Inclusions in Value

- Any taxes other than GST (CGST, SGST, IGST, UTGST, Cess)
- Amount payable by supplier in relation to the supply but paid by recipient (Like advertisement expense incurred on behalf of supplier)
- Incidental Expenses including commission/ packing or any amount charged for anything done before or at the time of delivery of goods of supply of services
- Interest/ Late Fee/ Penalty on delayed payment (*taxable at the time of receipt of such additional consideration*)
- Subsidies directly linked to price
 - Subsidy shall be included in the value of supplier who receives the subsidy

Exclusions in Value

- Discount given before or at the time of supply
 - If the same is duly recorded in the invoice
- Discount given after the supply
 - If it is as per terms of agreement entered into before or at the time of supply and is linked to relevant invoices and
 - ITC on such discount is reversed by the recipient

Related Persons

- (a) persons shall be deemed to be “related persons” if –
 - (i) such persons are officers or directors of one another’s businesses;
 - (ii) such persons are legally recognized partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or they are members of the same family;

- (b) the term “person” also includes legal persons;

- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Distinct Persons

Section 25:

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, *in respect of each such registration, be treated as distinct persons* for the purposes of this Act.

OMV and Value of like kind and quality

(OMV) “open market value” of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

“supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

Valuation Rules

1. Consideration is not wholly in money
2. Between related or distinct persons, other than agent
3. Through Agent
4. Value based on cost
5. Residual method
6. Value for certain supplies
7. Value of services in case of pure agent
8. Rate of exchange of currency

Rule 1 – Consideration is not wholly in money

Value of goods or services or both shall be:

- a) Open market value (OMV)
- b) If OMV not available than sum total of money consideration plus money value of non-monetary consideration if known at the time of supply
- c) Value not determined by (a) and (b) than value of like kind and quality of goods or services
- d) Value not determined by (a) to (c) than sum total of money consideration plus money value of non-monetary consideration determined by Rule 4 or 5 in order

Rule 1 – Consideration is not wholly in money

Example 1:

A sells new TV to B in exchange for old TV for Rs.45000/-
The Original price of new TV without exchange is
Rs.53000/-, than OMV is Rs.53000/-

Example 2:

A sells TV to B with a barter for new Mobile phone for
Rs.25000/-
The price of Mobile phone is Rs.12000/- at the time of
supply
The value of TV would be Rs.37000/-

Rule 2 – Between related or distinct persons, other than agent

Applicable to:

- Related persons
- Distinct persons

Value of goods or services or both shall be:

- a) Open market value (OMV)
- b) If OMV not available than value of like kind and quality of goods or services
- c) Value not determined by (a) and (b) than Rule 4 and 5 in order

If recipient eligible for full ITC, than value declared on invoice will be considered as OMV

Rule 3 – Supply of goods made or received through agent

Applicable to:

- Principal Agent transactions

Value of goods intended for further supply by recipient shall be:

- a) Open market value (OMV) or
- b) At option of supplier be 90% of the price charged by the recipient from an unrelated customer for supply of like kind and quality of goods

If the value is not determinable as per above than follow Rule 4 or 5 in order

Rule 4 – Value based on cost

Value is not determinable under Rule 1 to 3 than

Value of goods or services or both shall be 110% of:

- a) Cost of Production or
- b) Cost of Manufacture or
- c) Cost of acquisition of such goods or
- d) Cost of provision of such services

For services the supplier may opt for Rule 5, disregarding Rule 4

Rule 5 – Residual Method

Value is not determinable under Rule 1 to 4 than

Value of goods or services or both shall be determined using reasonable means consistent with the principles and general provisions of Section 15 and Valuation Rules

Rule 6 – Value for certain supplies

Valuation Rules provides for specific valuation mechanism for following categories:

- a) Forex Dealers
- b) Air Travel Agents
- c) Insurance Services
- d) *Dealing in 2nd hand goods*
 - *Does not change the nature of goods*
 - *No ITC availed on purchases*
 - *Value would be difference between sale and purchase price*
 - *If the value is negative than it should be ignored*

Rule 6(7)

Applicable to:

- Certain class of service providers
- To be notified by Government
- For value of taxable services provided between distinct persons
- Other than those where credit is not available under Section 17(5)

Value of such services shall be NIL

Rule 7 – Supply of services in case of pure agent

Pure Agent means a person who:

- enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- neither intends to hold nor holds any title to the goods or services or both so procured or provided as pure agent of the recipient of supply;
- does not use for his own interest such goods or services so procured; and
- receives only the actual amount incurred to procure such goods or services.

Rule 7 – Supply of services in case of pure agent

Expenditure incurred would be excluded from value on fulfilment of following conditions:

- Supplier acts as pure agent (under authorization) while making payment to third party;
- Recipient of services uses the services received from third party;
- Recipient of supply is liable to make payment to the third party;
- Supplier knows that the third party service provider is providing services
- Value of reimbursement is separately indicated in the invoice
- Recovers only cost
- Pure agent separately provides services on his own account to the recipient of service (in addition to third party services)

Input Tax Credit

Important Definitions

“capital goods” means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are *used or intended to be used in the course or furtherance of business*

Definition under current laws is based on Chapter headings and express list with attached conditions

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

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

“input tax credit” means the credit of input tax

Important Definitions

“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 Integrated Goods and Services Tax 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;

Input Tax Credit

- Every Registered Person subject to conditions and restrictions:
 - Is entitled to credit of input tax on goods or services or both
 - Used or intended to be used
 - In the course or furtherance of business
- And the said amount would be credited to Electronic Credit Ledger (ECL)

ITC Conditions

- **ITC allowance conditional**
 - Tax invoice, debit note etc.
 - Receipt of goods/ services
 - Goods received on instalment basis – on receipt of last instalment
 - Tax charged has been paid by supplier
 - *Own Valid Return is furnished*
 - Payment to vendor within 180 days from date of issue of invoice or reversal of credit with interest
 - Re-claim credit on payment to vendor
 - Restricted to the extent of dep claimed on tax component in capital goods
 - *Time limit on availment of ITC*

Documentation requirement for credits

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) a debit note issued by a supplier in accordance with the provisions of section 34;
- (c) a bill of entry;
- (d) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31; *(Invoice for RCM)*
- (e) a document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule invoice.7;
- (f) a document issued by an Input Service Distributor, as prescribed in clause (g) of sub-rule (1) of rule 4.

Details in the invoices should be furnished in the FORM GSTR-2

Apportionment of Credits

ITC Exclusions

- **ITC will not be available for following:**
 - Motor vehicles and other conveyances
 - Except where the same are used
 - Further supply of such vehicles or conveyances
 - Transportation of passengers
 - Imparting training in driving, flying, navigating such vehicles or conveyances
 - For transport of goods

ITC Exclusions

- **ITC will not be available for following:**
 - Supply of goods or services or both
 - Food and beverages for consumption
 - Outdoor catering
 - Beauty treatment
 - Health services
 - Cosmetic and plastic surgery
 - Membership of club
 - Health and fitness centre
 - Rent-a-cab services
 - Life insurance
 - Health insurance
 - Travel benefits extended to employees on vacation such as LTC
 - Except where commissioner notifies services obligatory for employer to provide to employee under any law
 - Credit would be allowed for same nature of outward supply of goods/ services

ITC Exclusions

- **ITC will not be available for following:**
 - Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service
 - 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
 - Tax has been paid under composition levy
 - Goods or services or both used for personal consumption
 - Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

Matching Mechanism

ITC on provisional basis – Section 41

Subject to such conditions and restrictions prescribed

- RTP will be entitled to take credit of input tax
- As self assessed, in his return
- Such amount shall be credited on a provisional basis in his ECL

This credit can be utilized only for payment of self-assessed liability as per return

Matching/ Reversal and Reclaim of Credit – Section 42

Matching

Following details of RTP in GSTR-2 will be matched with GSTR-1 of Supplier:

- GSTIN of supplier and recipient
- Date and number of invoice/debit note
- Taxable value and tax amount

ITC shall be considered matched:

- If supplier details are accepted by recipient without changes
- If amount claimed by recipient is less than output tax paid by supplier on such invoices/ debit notes

Matched claims shall be finally accepted and communicated to RTP

Rectifications

- All unmatched claims are communicated to RTP and supplier
 - For invoice not captured
 - For higher amount claimed
- RTP and supplier are allowed to rectify the error in the return for the month in which discrepancy is communicated
- If the discrepancy is not rectified by either party, the output tax liability of the recipient would be increased to the extent of discrepancy in the month succeeding the month in which discrepancy is communicated
- Recipient would be liable to pay interest on such amount

Reclaim credit

- In future if the supplier furnishes details of the pending invoice in his valid return, recipient would be eligible to re-claim the credit by way of reduction in output liability of the recipient
- Interest would be credited to Electronic Cash Ledger

Electronic Credit Ledger

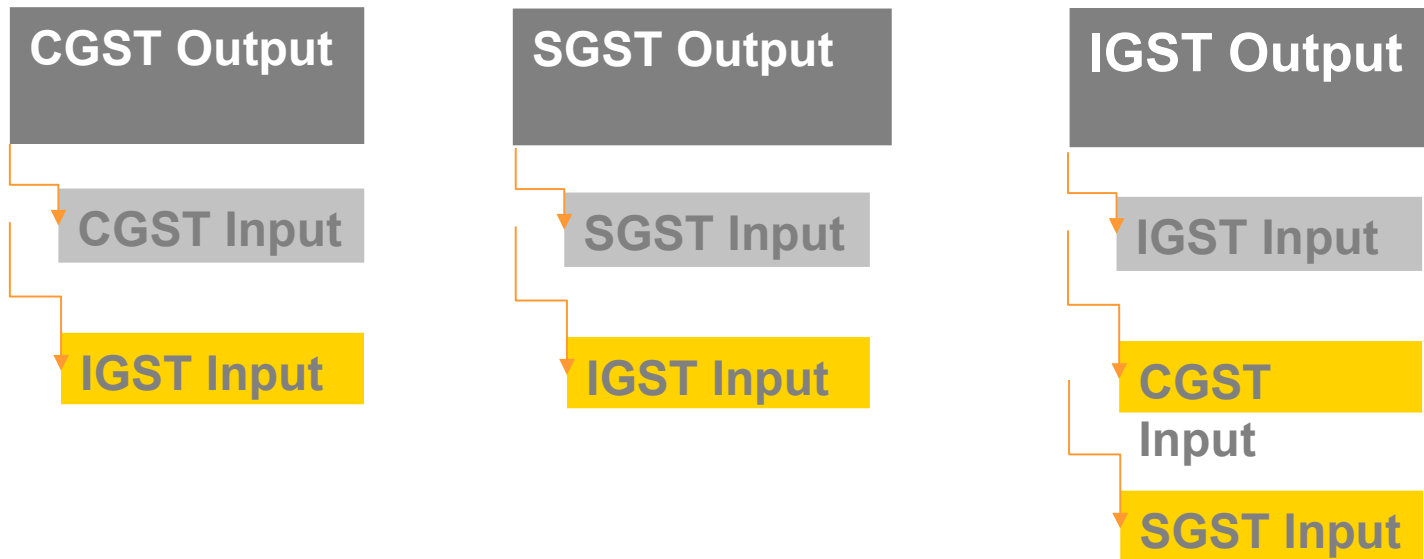
Electronic Credit Ledger

The input tax credit as self-assessed in the return of a registered person shall be credited to his **electronic credit ledger**, in accordance with section 41, to be maintained in such manner as may be prescribed.

- Balance in ECL shall be used for payment of output taxes
- Excess balance in the ECL after payment of taxes can be claimed as refund, subject to Section 54
- Credits from last return under current law will have to be recorded in ECL

Set off of Input Tax Credit available in ECL

Order for utilisation of credits and payment of taxes



ITC under Transition Provisions

Transfer of credits availed under existing law

Allowances/ Conditions:

- All Credits under existing law to be carried forward to ECL
- Credit should be admissible under new law
- Should not relate to goods manufactured and cleared under such exemption notifications as are notified by Government
- Returns for last 6 months under old law to be filed
- Online Application in FORM GST TRAN-1 to be submitted within 60 days from the appointed day

Availment of un-availed credit on capital goods

Allowances/ Conditions:

- Un-availed portion of credit of CG means that portion which was eligible under the old law to the extent not availed
- Credit should be admissible under new law
- Credit is not carried forward in the return furnished under existing law
- Online Application in FORM GST TRAN-1 to be submitted within 60 days from the appointed day
- Following particulars in respect of every item of capital goods are to be specified in the application:
 - ITC availed under each of the existing laws
 - ITC yet to be availed under each of the existing laws till the appointed day

Credit on input held by RTP

Credit of eligible duties in respect of inputs held in:

- Stock
- Contained in semi-finished goods
- Contained in finished goods

Available to:

- RTP not registered under existing law
- Engaged in Manufacture of exempted goods or provision of exempted services
- Providing WCT Services, availing exemption under 26/2012 ST
- FSD/ SSD/ Registered Importer/ Depot of Manufacturer

Allowances/ Conditions:

- Used for making taxable supplies under new law
- Document evidencing payment of tax
- Not earlier than 12 months from appointed day
- Credit is eligible under new law
- Supplier of services is not eligible for any abatement under new law
- RTP passes on the benefit by reduction of price
- Online Application in FORM GST TRAN-1 to be submitted within 60 days from the appointed day specifying details of stock held

Credit on input held by RTP – Document evidencing payment of tax not available

Credit shall be allowed as below:

- At 40% of the Central tax applicable on supply of such goods after the appointed date
- Shall be credited to ECL after Central tax is paid on such supply
- Scheme is available for six tax periods from the appointed date

Conditions:

- Goods not wholly exempt from excise duty under First Sch of Central Excise or were not nil rated
- Document for procurement of goods is available
- Online Application in FORM GST TRAN-1 to be submitted within 60 days from the appointed day specifying details of stock held
- Separate form to be filed for each of the six tax period giving details of supplies of such goods
- Stock of goods on which credit is availed is so stored that it can be easily identified by RTP

Credit of input or input services received after appointed date

Credit of eligible duties in input or input services received after appointed date on which tax was paid by the supplier under the existing law will be available

Allowances/ Conditions:

- Invoice of duty paying document is accounted in books within 30 days from the appointed day
- Following Details are to be submitted online within 60 days
 - Details i.e. name of supplier, invoice details, description, quantity and value of goods or services
 - Amount of eligible taxes or duties charged by the supplier
 - Date of receipt of goods or services is entered in the books of accounts of recipient

ITC in transition – Other cases

Cases where credits are allowed:

- **Tax being paid at fixed rate or paying fixed amount in lieu of tax under the existing law**
- **Centralized registration**
 - Credit of cenvat balance in the last return under the existing law be credited to ECL
 - Return under the existing law needs to be filed within 3 months (including revision if any only to the extent of reduction in ITC)
 - Credit should be admissible under the new law
 - Such credit can be transferred to any other registered person with same PAN, who was already covered under Centralized registration under the existing law
- Credit reversed on completion of 3 months due to non-payment to vendor
 - Credit can be re-claimed if payment to vendor has been done within 3 months from the appointed day

Thank you

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Q & A



**Are you
ready
for
GST?**



Disclaimer:

- My comments are based on GST Bill released in March 2017 and various updates (available in public domain)
- This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. On any specific matter, reference should be made to the appropriate advisor.
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