



Input Tax Credit & Related Transitional Provisions

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WIRC- ICAI

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1 OCTOBER 2016

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Coverage

- ▶ Key definitions
- ▶ Broad contours
- ▶ Other qualifying criteria for ITC
- ▶ Mechanics for flow of ITC
- ▶ Breaking the GST Chain
- ▶ Wrong/ Mismatched credit
- ▶ ITC for specific situations
- ▶ Input Service Distributor (ISD)
- ▶ Transitional Provisions
- ▶ Parting thoughts

Key definitions

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Capital Goods

Input

Input Service

Input Tax

Zero rated supply

Input Service
Distributor (ISD)

Capital goods...

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- ▶ Section 2(20) - identical to CCR
 - ▶ means
 - ▶ specified goods
 - ▶ motor vehicles (MVs) for transport of goods
 - ▶ MVs to carry passengers
 - ▶ components, spares & accessories of MVs which are capital goods
 - ▶ used for specified purposes

...Capital goods...

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(A) Following specified goods used –

- ▶ at the place of business for supply of **goods**; or
- ▶ outside the place of business for generation of electricity for captive use at the place of business; or
- ▶ for supply of **service** (*place of business not relevant*)
 - i. all goods falling within Chapters 82,84,85, 90, heading 6805, etc.
 - ii. pollution control equipment
 - iii. components, spares and accessories of goods specified at (i) & (ii)
 - iv. moulds and dies, jigs and fixtures

...Capital goods...

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- v. refractories and refractory materials
- vi. tubes and pipes and fittings thereof
- vii. storage tank
- viii. motor vehicles other than those under Tariff heading 8702, 8703, 8704 & 8711 but including dumpers & tippers



...Capital goods

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- (B) MVs* designed for transportation of goods, when used by supplier of service for:
- i. supplying service of renting of such MV
 - ii. transportation of inputs and capital goods used for supply of service
 - iii. supply of courier agency service
- (C) MVs* designed to carry passengers, when used by supplier of service for:
- i. transportation of passengers
 - ii. renting of such motor vehicle
 - iii. imparting motor driving skills
- (D) components, spares & accessories of MVs which are capital goods

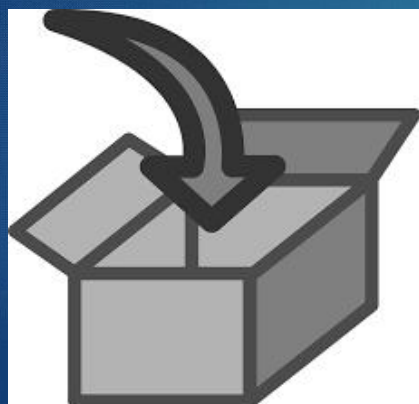
* Including the chassis of such MVs

MVs should be registered in the name of supplier of service

Input & Input Service

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- ▶ Input - Section 2(54)
 - ▶ any goods other than capital goods
- ▶ Input Service - Section 2(55)
 - ▶ any service



- ▶ subject to exceptions as may be provided
- ▶ used or intended to be used
- ▶ by a supplier
- ▶ for **making an outward supply**
- ▶ in the course or furtherance of business



Input Tax & Input Tax Credit

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- ▶ Input Tax in relation to a taxable person means
 - ▶ IGST, CGST and SGST
 - ▶ charged on any supply of goods and/or service to him
(need not be supply of 'input' and 'input service' ?)
 - ▶ which are **used in the course or furtherance of his business**
(need not be used for making an outward supply as is the case with 'input' and 'input service' ?)
 - ▶ includes the tax payable under reverse charge

[Section 2(57)]

- ▶ Input Tax Credit -
 - ▶ Credit of 'input tax'

[Section 2(58)]



Zero-rated supply

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- ▶ Means
 - ▶ supply of any goods and/or services
 - ▶ on which no tax is payable
 - ▶ but credit of Input tax
 - ▶ related to that supply is admissible
- ▶ Exports to be treated as 'zero-rated' supply
[Section 2(109)]

Input Service Distributor

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- ▶ an Office of the supplier of goods and/or services
- ▶ which receives tax invoices
- ▶ towards receipt of input services
- ▶ and issues tax invoices or other document for distributing credit
- ▶ to a supplier of taxable goods and/or services having same PAN as that of the Office

[Section 2(56)]



BROAD CONTOURS

Nexus theory diluted

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- ▶ No nexus required with 'manufacture', 'output service', 're-sale'
- ▶ Credit to be allowed for goods / services 'used in the course or furtherance of business', **subject to exclusions**
- ▶ Cause or effect of seamless credit chain ?
 - ▶ Schedule I listing down supplies 'without consideration' to be made liable to GST (Illustrative):
 - ▶ Permanent transfer/ disposal of business assets e.g. *surrender of damaged assets to Insurer*
 - ▶ Temporary application of business assets to private/ non-business use e.g. *vehicles / accommodation given temporarily to employees / directors for personal use*
 - ▶ Supplies of goods by a taxable person to a non-taxable person e.g. *promotional schemes – e.g. Buy 1- Get 1 Free, Free telecom services*

Pot of Gold – improving bottom line

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- ▶ Following non-creditable current indirect taxes will effectively become creditable upon their being subsumed in GST:
 - ▶ Paid by all businesses:
 - ▶ Luxury Tax
 - ▶ Entertainment Tax
 - ▶ Octroi/ LBT
 - ▶ Paid by manufacturers:
 - ▶ VAT
 - ▶ KKC
 - ▶ SBC
 - ▶ Paid by service providers:
 - ▶ SAD
 - ▶ VAT
 - ▶ SBC
 - ▶ Paid by traders:
 - ▶ Excise
 - ▶ CVD
 - ▶ Service Tax
 - ▶ KKC
 - ▶ SBC

Full / Partial credit denial

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- ▶ No credit to:
 - ▶ Supplier below threshold - Rs. 20 lakhs
 - ▶ Supplier (only a trader ?) under Composition Scheme - Rs. 20 - 50 lakhs
 - ▶ Supplier not registering within 30 days of being liable – for period until registration is granted
 - ▶ Supplier of only exempt goods & services

- ▶ Partial credit to:
 - ▶ Supplier of taxable as well as exempt goods & services
 - ▶ Supplier of goods & services for business & other purposes

ITC on capital goods

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- ▶ Can be availed in one shot - unlike the current regimes
- ▶ Other conditions - similar to the current regimes
 - ▶ No ITC of GST treated as cost of capital goods on which depreciation is claimed
 - ▶ In case of subsequent supply of capital goods on which ITC was availed earlier, pay higher of:
 - ▶ GST equal to ITC availed less specified percentage points
 - ▶ GST on transaction value



OTHER QUALIFYING CRITERIA FOR ITC

Easier to satisfy...

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- ▶ Status – Registered Tax Payer (RTP)
- ▶ Possession of documents (tax invoice/debit note/supplementary invoice/other prescribed documents) – digital or hard copy?
- ▶ Receipt of goods* and/or services(?)
 - * Explained in Sec. 16(11) –
 - when delivered by supplier
 - to recipient / any other person
 - before / during the movement
 - by way of transfer of documents/title of goods /otherwise
- ▶ Payment of tax on output liability

...Easier to satisfy

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- ▶ Last date by which credit should be availed - **earlier** of
 - ▶ Filing of return of September following the end of FY - i.e. 20th October of the following FY
 - ▶ Filing of annual return - i.e. 31st December of the following FY

Illustration:

Invoice Date – 5th April, 16 (FY 16-17)

a) Sept 17 (FY 17-18) return filing due date - 20th Oct, 17

b) FY 16-17 Annual return filing due date - 31st Dec, 17

Hence, last date to avail credit - 20th Oct, 17

But, if Annual return for FY16-17 is filed on 31st Aug 17, last date to avail credit
– 31st Aug 17

Difficult to satisfy

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- ▶ Supplier has paid tax on such supply (through cash/credit admissible in respect of the said supply)
- ▶ Supplier has furnished return – GSTR -3
- ▶ Matching on GSTN:
 - ▶ recipient's GSTR-2 (inward supplies)
with
 - ▶ supplier's GSTR- 1 (outward supplies)
- ▶ Provisional credit for mismatched invoices - 2 months max.

If admissibility of credit of supplier in dispute – consequences for recipient?

Utilization of credits under GST

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ITC cannot be utilized for payment of interest, fine & penalty



MECHANICS FOR FLOW OF ITC

Matching on GSTN...

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ABC Ltd.



Supply
of Iron



20th Apr



XYZ Ltd.



...Matching on GSTN...

ABC Ltd.



GSTR-1



10th May



Furnishes 'Outward Supply' return



From 11th May, XYZ Ltd. can view their purchases & credits available in GSTR -2 generated due to 'auto-population'

...Matching on GSTN...

XYZ Ltd.



GSTR-2



15th May



Furnishes 'Inward Supply' return

XYZ Ltd.
Electronic Credit Ledger

(Before 15th May, XYZ Ltd. can add/modify the auto-populated information & fill in balance details)



ITC credited on provisional basis

...Matching on GSTN...

XYZ Ltd.



Furnish their monthly returns

GSTR-3



20th May

Auto-populated from GSTR-1 & GSTR -2



Payment of tax by ABC Ltd. & XYZ Ltd.

&

ABC Ltd.



XYZ Ltd.

Electronic Credit Ledger



ITC finally eligible

Utilization of ITC

XYZ Ltd.
Electronic **Credit** Ledger



Dr.	Cr.
	100
100	

Credit reduced

XYZ Ltd.
Electronic **Cash** Ledger



Dr.	Cr.
100	
	100

Output liability discharged



BREAKING GST CHAIN

Exclusions [Sec 16(9)]..

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1. To the extent goods / services used for private / personal consumption
2. Goods / services on which GST is paid as Composition Levy
3. Motor vehicles, **except when** supplied in the usual course of business (?) or are used for providing services of transportation of goods/passengers or for imparting training on driving
4. Goods/services provided in relation to food and beverages, outdoor catering, health and fitness centre, life insurance, health insurance etc. when used primarily for personal use / consumption of an employee

More exclusions to follow in ITC Rules?

Exclusions [Sec 16(9)]..

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5. **Goods / services acquired** by principal (?) **in execution of works contract** resulting in construction of immovable property, **other than P & M**
6. **Goods acquired** by principal (?) **used** in construction of immovable property (other than P & M) but property in such goods is not transferred to any one (?)

ITC allowed for goods/services used by supplier itself in construction of immovable property – factory, warehouse, office, shop?

Proportionate Reversal

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Applies to input, input services and capital goods (unlike CCR)
Manner of reversal – to be notified by CG/SG



MISMATCHED/ WRONG CREDIT

Consequences

- ▶ Mismatched claims – both supplier & recipient intimated -
 - ▶ If Supplier **does not** rectify in month of communication : Added to recipient's output liability (with interest) in Return of month after the month of communication
 - ▶ If Supplier rectifies later: Reduced from recipient's output liability along with interest paid earlier
- ▶ Duplicate claims – recipient intimated & amount added to its output liability (with interest) in Return of the month of communication
- ▶ Wrongly claimed credit – recovery with interest within:
 - ▶ 5 years – fraud/ wilful misstatement /suppression of facts
 - ▶ 3 years – any other reasonfrom due date or actual date (whichever is earlier) of filing Annual Return



SPECIFIC SITUATIONS

- ✓ When GST liability arises for the first time
- ✓ Shift from normal to Composition Scheme / Exempt supplies
- ✓ Reconstruction of business
- ✓ Job work

When GST liability arises for the first time

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- ▶ For following stocks held:
 - ▶ Inputs
 - ▶ Inputs contained in semi finished goods
 - ▶ Finished goods

Category of person	For stock held on	Time limit for availing credit
1. Person liable to register – applies for registration within 30 days and is granted registration	Day immediately preceding date from which liability arises	Till expiry of one year from 'Date of invoice'
2. Shifting from Composition levy to normal levy		
3. Person registering voluntarily	Day immediately preceding date of registration	

Shifting from normal to Composition Scheme/ exempt supplies

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RTP availing ITC

- ▶ Composition Scheme
- ▶ Supplier of exempt goods /services

- ▶ Pay amount equal to credit in respect of specified stocks held on preceding day of shifting by debit in:
 - ▶ electronic **credit** ledger or
 - ▶ electronic **cash** ledger
- ▶ Balance carried forward credit to lapse

Reconstruction of business

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- ▶ Change in constitution of RTP on account of:
 - ▶ sale
 - ▶ merger
 - ▶ demerger
 - ▶ amalgamation
 - ▶ lease
 - ▶ transfer of business with specific provision for transfer of liabilities
- ▶ RTP allowed to transfer unutilized ITC
- ▶ to such sold, merged etc. business
- ▶ in manner to be prescribed



JOB-WORK

Broad scheme

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- ▶ Supply of goods by RTP to a job-worker **not** to be treated as supply of goods (Proviso to Schedule I)
- ▶ Special permission to be taken by RTP from Commissioner to:
 - ▶ send taxable goods to job-worker (without payment of GST)
 - ▶ send taxable goods from one job-worker to another and so on (without payment of GST)
 - ▶ bring **such** goods (including processed goods?) back (without payment of GST)
 - ▶ supply directly from the job-worker's premises (**on payment of GST and** declaring job-worker's place of business as RTP's additional place, unless job-worker is registered or RTP engaged in supply of notified goods)
- ▶ RTP responsible for accountability of goods and payment of GST

Entitlement of credit...

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- ▶ 'Principal' entitled to take credit of input tax, if after completion of job work
 - ▶ **inputs** are received back within **180 days**
 - ▶ **capital goods** are received back within **two years**
- ▶ If inputs/capital goods **not** received back within 180 days/2 years-
 - ▶ Principal liable to pay amount equivalent to ITC availed earlier along with interest
 - ▶ Principal can reclaim such amount as and when input/capital goods are received back
- ▶ Obvious omissions in drafting to allow credit for sending
 - ▶ 'partially processed goods' to job worker and
 - ▶ to allow receipt of 'products made from such inputs / partially processed goods' - to provide for change in form, loss during processing etc.



INPUT SERVICE DISTRIBUTOR (ISD)

Basics of ISD

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- ▶ Same concept as in CCR
- ▶ ISD is deemed to be a supplier of services
- ▶ Registration:
 - ▶ Compulsory - No threshold limit
 - ▶ No auto-migration from current registration under CCR
- ▶ Person with same PAN can have multiple ISDs for different verticals(registered in same State)

No ITC distribution mechanism for input/capital goods

Mechanics...



Distributor
XYZ Ltd (Division X),
Gujarat

Credit of:
CGST/ SGST/ IGST

As IGST



Recipient
XYZ Ltd, Maharashtra

CGST/IGST
as
CGST



Recipient
XYZ Ltd, (Division Y), Gujarat

SGST/IGST
as
SGST

...Mechanics

- ▶ Distribution Mechanism : Attributable to
 - ▶ specific recipient (unit) - distribute there only
 - ▶ more than one recipient (units) – pro rata based on specified turnover
- ▶ Distribution through serially numbered signed 'Tax Invoice' with particulars like:
 - ▶ Name, address & GSTIN of distributor, supplier & recipient (unit) of service
 - ▶ Date of issue
 - ▶ Amount of credit distributed
- ▶ Amount distributed should not exceed amount availed for distribution
- ▶ Recovery with interest:
 - ▶ Excess distribution – from distributor
 - ▶ Contravention of provisions – from recipient (unit) (and also from distributor ?)



TRANSITIONAL PROVISIONS

Draft Model GST Law

Bucket list

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- ▶ Migration of Credit in respect of:
 - ▶ Carried forward credit
 - ▶ Not availed and not carried forward credit
- ▶ Credit distribution of ISD
- ▶ Allowing/surrendering credit on goods held in stock by:
 - ▶ Self
 - ▶ Agent
- ▶ Credit reversal for Branch Transfers

Migration of Credit (Sec. 143 & 144)

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Particulars	CGST	SGST
Credit carried forward in the last returns filed	CENVAT Credit	Input tax Credit under relevant State VAT Act
Credit not availed and not carried forward in the last returns filed	Unavailed ($\leq 50\%$) CENVAT credit on 'Capital Goods' (as defined in CCR)	Unavailed Input Tax credit on 'Capital Goods' (?)
Conditions	<ul style="list-style-type: none"> ▶ Allowed only to RTP ▶ Credit should be admissible also under relevant GST Act (?) ▶ Migrated credit later found recoverable under earlier laws as a result of any proceedings, to be recovered as arrear of tax under GST Laws 	
Mechanics	To be taken in 'electronic credit ledger'	

Migration of Credit - Issues

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- ▶ Impractical & unfair to impose condition of carried forward credit being admissible as 'input tax credit' under relevant GST Act also
- ▶ Carried forward credit balance is a 'pool', where source of credit had lost identity upon availment of credit
- ▶ An eligible transaction of credit under earlier law may not qualify for credit under GST Law – e.g. food and beverages – what if more such instances are listed in GST ITC Rules?



Credit distribution by ISD (CGST) (Sec. 162)

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Service received



By ISD
before AD



Received by ISD
on / after AD



'ITC' eligible for
distribution as CGST credit

Will ITC be available for SBC as well as KKC to every Supplier?

Allowing/surrendering credit on goods held in stock

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Three parameters

- ▶ Types of goods
- ▶ Types of duties and taxes
- ▶ Types of taxpayers:
 - ▶ Self
 - ▶ Agent



Sections 145-147, 162B & 162C

Types of goods

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- ▶ Held on AD (other than capital goods)
 - ▶ Inputs
 - ▶ Inputs contained in semi-finished goods
 - ▶ Finished goods

Eligible duties and taxes

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For CGST	For SGST
<ul style="list-style-type: none">▶ Central Excise - First & Second Schedule of CETA▶ ADE - Textiles and Goods of Special Importance▶ NCCD▶ CVD▶ SAD▶ Service Tax	<ul style="list-style-type: none">▶ Value Added Tax (?)

Types of taxpayers

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Status under earlier laws	Status under GST	Sections	Treatment under GST
<ul style="list-style-type: none"> ▶ Person not liable for registration ▶ Manufacturer of exempted goods ▶ Dealer of exempted goods ▶ Composition taxpayer 	RTP- not opting for Composition Scheme	145 & 146	Credit allowed for 'eligible duties & taxes'
Manufacturer/Service Provider/Dealer who has carried forward eligible credit in the last return	RTP - opting for Composition Scheme	147	Surrender of credit

Credit on goods lying unsold with a First / Second Stage Dealer?
Conditions and mechanics laid down as per status under GST

Conditions for person becoming RTP

- **not** opting for Composition

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- ▶ Stocks used / intended to be used for 'taxable supply'
- ▶ RTP could have been eligible for ITC under earlier laws, if it were liable to registration or goods were not exempt under earlier laws
- ▶ RTP eligible for ITC under GST
- ▶ RTP possesses invoice/other documentary evidence for duty/tax paid under earlier laws
- ▶ Such evidence issued not more than 12 months prior to AD
- ▶ If credit availed post GST, later found recoverable under earlier laws as a result of any proceedings, will be recovered as arrear of tax under GST Laws

Mechanics for person becoming RTP - **not** opting for Composition

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GST Credit

- ▶ To be calculated as per GAAP in prescribed manner
- ▶ To be taken in 'electronic credit ledger'

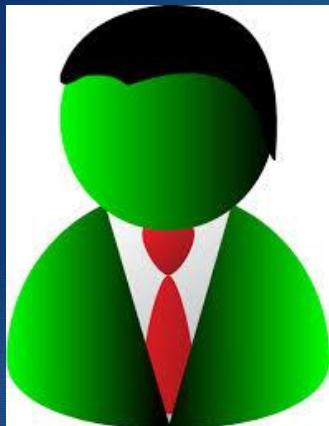
Person becoming RTP - opting for Composition

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- ▶ Pay amount equal to credit in respect of specified stocks held on AD by debit in:
 - ▶ electronic **credit** ledger or
 - ▶ electronic **cash** ledger
- ▶ Balance carried forward credit to lapse

Credits of goods lying with agent (SGST) (Sec. 162A & 162B)



PRINCIPAL



AGENT

Belonging to



Stock at premises on AD
(Goods/ Capital Goods)



Agent entitled to take credit if:

- ▶ Agent is RTP
- ▶ Both Principal and Agent declare details of such stock (prescribed- time, manner & form)
- ▶ Invoice issued not earlier than 12 months from AD
- ▶ Principal has reversed/ not availed input tax credit

Credit reversed for Branch Transfers (SGST) (Sec. 162C)

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- ▶ Input tax credit reversed prior to AD
- ▶ Not admissible as credit of input tax under SGST

Provision made with non-obstante clause out of abundant caution?



PARTING THOUGHTS

Recommendations of GSTC

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- ▶ Recommendations of GSTC for ITC – not specifically provided in
 - ▶ Article 279A
 - ▶ Model GST Law
- ▶ However, Article 279A(4) empowers GSTC to inter alia make recommendations for:
 - ▶ Model GST Laws
 - ▶ any other matter that GSTC may decide

No Legislative mechanism in place to ensure States do not deviate from Model SGST Law post implementation

ITC story to soon fully unfold

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ITC Rules awaited - to deal with (illustrative):

- ▶ Conditions & restrictions for availing credit [Section 16]
- ▶ Manner of carrying forward credit (in transitional provisions) [Section 143]
- ▶ Grant of ITC of tax paid of input supplies used in or in relation to providing output taxable supplies and manner of utilization of such credit
- ▶ Lapse of credit unutilized in specified circumstances
- ▶ Revocation/ suspension/withdrawal of facilities/imposition of restriction on RTP for misuse of credit

[Section 132]





**TIME TO START CRYSTAL
GAZING....**

...On your marks, get set.....

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