

SEMINAR ON GST

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Input Tax Credit and Related Transitional Provision

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Input Tax Credit

A. Section 2(58) defines 'input tax credit' as follows:

(58) "input tax credit" means credit of 'input tax' as defined in section 2(56);

In the Model GST Law in section 2(58), section 2(56) is wrongly mentioned. It should be section 2(57).

B. (i) 'Input tax' is defined in section 2(57) as follows:

(57) "input tax" in relation to a taxable person, means the {IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or services to him which are used, or are intended to be used, in the course or furtherance of his business and includes the tax payable under sub-section (3) of section 7;

(ii) 'Input' is defined in section 2(54) as follows:

(54) "input" means any goods other than capital goods, subject to exceptions as may be provided under this Act or the rules made thereunder.

(iii) 'Input service' is defined in section 2(55) as follows:

(55) "input service" means any service, subject to exceptions as may be provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business;

iv) 'Outward Supply' has been defined in Section 2(73) as follows:

(73) "outward supply" in relation to a person, shall mean supply of goods and/or services, whether by sale, transfer, barter, exchange,

- *The expression 'wholly and exclusive' in section 37(1) does not mean 'necessarily'. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of its or his business. Such expenditure may be incurred voluntarily and without any necessity, and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction therefor under section 37(1) even though there was no compelling necessity to incur such expenditure. – Bralco Metal Industries Pvt. Ltd. V. CIT, (1994) 206 ITR 477, 482 (Bom).*

➤ *The Hon. Supreme Court in the case of Eastern Investments Ltd v. CIT (1951) 20 ITR 1, 4 (SC) laid down following principles –*

a) though the question must be decided on the facts of each case the final conclusion is one of law.

b) It is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned

c) It is enough to show that the money was expended 'not necessity and with a view to a direct and immediate benefit to the⁵ trade but

- *The true test of an expenditure laid out wholly and exclusively for the purposes of trade or business is that it is incurred by the assessee as incidental to his trade for the purpose of keeping the trade going and of making it pay and not in any other capacity than that of a trade. CIT v. Delhi Safe Deposit Co Ltd (1982) 133 ITR.*
- *The manner to apply the test is to ask the question. Has the expense been incurred with the sole object of furthering the trade or business interest of the assessee unalloyed or unmixed with any other consideration? If the expense is found to bear an element other than the trade or business interest of the assessee the expenditure is not an allowable one. To arrive at the conclusion that the expenditure was dictated solely by business consideration one has to consider the nature of the business being adversely affected or its interest being promoted by the refusal or the incurring of the expenditure, as the case may be. When the assessee places all the facts and circumstances before the revenue authorities, the latter must examine the same and must make up their minds as to whether the expenditure was necessitated or justified by commercial expediency [Andrew Yule & Co Ltd v. CIT (1963) 49 ITR 57, 65 (Cal)*

- *An expenditure to which one cannot apply an empirical or subjective standard is to be judged from the point of view of a businessman and it is relevant to consider how the businessman himself treats a particular item of expenditure, whether as revenue expenditure or as a capital expenditure [Ford & Macdonald Ltd v. CIT, (1964) 54 ITR 133, 143 (All.)]*
- *The test is not what a prudent man would do in similar circumstances. Though an assessee may be an imprudent businessman, yet if he incurs an expenditure voluntarily for the purposes of his own business, it would be allowable as a proper deduction. [J K Commercial Corporation Ltd v. CIT , (1969) 72 ITR 296 (All)]*

(v) As per section 16(9) input tax credit will not be available for following”

<i>Sr. No.</i>	<i>Negative list of credit in the proposed law</i>	<i>Negative list on which credit is not available in current law</i>
(1)	(2)	(3)
1	<p><i>(a) motor vehicles, except when they are supplied in the usual course of business or are used for providing the following taxable services—</i></p> <ul style="list-style-type: none"> <i>(i) transportation of passengers, or</i> <i>(ii) transportation of goods, or</i> <i>(iii) imparting training on motor driving skills;</i> 	<p><i>Clause ‘D’ of input. ‘Motor vehicle’.</i></p>

Sr. No.	Negative list of credit in the proposed law	Negative list on which credit is not available in current law
(1)	(2)	(3)
2	(b) goods and / or services provided in relation to food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such goods and/or services are used primarily for personal use or consumption of any employee;	Clause 'C' of input service "such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption".

<i>Sr. No.</i>	<i>Negative list of credit in the proposed law</i>	<i>Negative list on which credit is not available in current law</i>
(1)	(2)	(3)
3	<p><i>(c) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery;</i></p>	<p><i>Clause 'A' in input services and also in input "Goods and service in execution of a work contract and construction services including service listed under clause (b) of Section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for –</i></p> <p><i>(a) Construction or execution of works contract of a building or civil structure or a part thereof; or</i></p> <p><i>(b) Laying of foundation or making of structures for support of capital goods</i></p> <p><i>Except for the provision of one or more of the specified services.</i></p>

Sr. No.	Negative list of credit in the proposed law	Negative list on which credit is not available in current law
(1)	(2)	(3)
4	(d) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery;	
5	(e) goods and/or services on which tax has been paid under section 8; and	Tax paid under composition scheme. Not applicable earlier
6	(f) goods and/or services used for private or personal consumption, to the extent they are so consumed.	Personal consumption

- *LDO/HSD which were specifically excluded from the definition of input has not been excluded credit will be admissible only if GST is paid on such goods. LDO will attract GST, hence GST paid on LDO will be available as credit.*

C. Capital goods is defined in section 2(20) as follows:

(i) “capital goods” means: -

(a) the following goods, namely:-

- (i) all goods falling within Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the Schedule to this Act;
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof;
- (vii) storage tank; and
- (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers.

used-

- (1) at the place of business for supply of goods; or*
- (2) outside the place of business for generation of electricity for captive use at the place of business; or*
- (3) for supply of services,*

(b) motor vehicle designed for transportation of goods including their chassis registered in the name of the supplier of service, when used for

- (i) supplying the service of renting of such motor vehicle; or*
- (ii) transportation of inputs and capital goods used for supply of service also; or*
- (iii) supply of courier agency service;*

(c) motor vehicle designed to carry passengers including their chassis, registered in the name of the supplier of service, when used for supplying the service of-

- (i) transportation of passengers; or*
- (ii) renting of such motor vehicle; or*
- (iii) imparting motor driving skills;*

(d) Components, spares and accessories of motor vehicles which are capital goods for the taxable person.

The definition is identical to the definition of capital goods given in Cenvat Credit Rules, 2004. The proposed Model GST Law does not define various phrases like courier agency etc.

(ii) Claiming of depreciation

Sub section (10) reads as follows:

(10) Where the registered taxable person has claimed depreciation on the tax component of the cost of capital goods under the provisions of the Income Tax Act, 1961, the input tax credit shall not be allowed on the said tax component.

Earlier section specifically provided for not claiming of depreciation under section 32 of Income Tax Act, although Model GST Law does not specify this section. Further very often service tax paid on input service is capitalized in the books of accounts. The depreciation shall not be claimed not only for tax paid on capital goods but also for input services which have been capitalized. Sub section (10) does not specifically mention about non-availment of depreciation on capital goods only. Further there is no provision similar to rule 6(4) of Cenvat Credit Rules, 2004.

(iii) Removal of capital good as such or after being used

Sub section (14) reads as follows:

(14) 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 percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods under sub-section (1) of section 15, whichever is higher.

❖ *Availment of Credit.*

(a) Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed and within the time and manner specified in section 35, be entitled to take credit of input tax admissible to him and the said amount shall be credited to the electronic credit ledger of such person.

The relevant provisions relating to input tax credit under section 35 are reproduced below:

(b) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(c) The amount available in the electronic credit ledger may be used for making any payment towards tax payable under the provisions of the Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.¹⁸

(d) (i) The amount of input tax credit on account of IGST available in the electronic credit ledger shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, in that order.

(ii) The amount of input tax credit on account of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(iii) The input tax credit on account of CGST shall not be utilized towards payment of SGST.

❖ *Availment of credit in certain cases –*

(i) Exempted become taxable

(2) 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 shall, subject to such conditions and restrictions as may be prescribed, 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.

Provision in subsection (2) are similar to provisions contained in rule 3(2) of Cenvat Credit Rules, 2004.

(ii) Voluntary Registration

(2A) A person, who takes registration under sub-section (3) of section 19, shall, subject to such conditions and restrictions as may be prescribed, 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 of registration.

Section 19(3) provides that a person who may not be liable to be registered may get himself registered voluntarily. Normally such person will get registered for passing of credit to his customers. This section provides that such person will be entitled to the credit of tax paid on the stock.

(iii) Composition Scheme

(3) Where any registered taxable person ceases to pay tax under section 8, he shall, subject to such conditions and restrictions as may be prescribed, 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 section 7. Section 8 is applicable to the person who have opted to pay tax on composition scheme. Tax on composition scheme can be paid by the taxable person if his turnover in a financial year does not exceed Rs.50 lakhs. If such person as against making payment on composition basis intends to pay tax on regular basis, he may apply for registration.

(iv) Computation of amount of credit available

He will be entitled to the credit of tax paid on the stock as on the date of application for registration. Entitlement of credit will be computed on the basis of general accounting principle. The credit will be available based on invoice issued with in one year from the date of opting.

(v) Switching over to composition scheme or services/goods become non-taxable or exempted.

Sub section (12) and (13) reads as follows:

(12) Where any registered taxable person who has availed of input tax credit switches over as a taxable person for paying tax under section 8 or, where the goods and / or services supplied by him become exempt absolutely under section 10, he shall pay an amount, by way of debit in the electronic

❖ *Reversal of credit when goods or service is partially used for business and partially for other purpose or for non-taxable supplies including exempted suppliers.*

(5) Where the goods and/or services are used by the registered taxable 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.

- ❖ *Provisions relating to transfer of credit on account of sale, merger, demerger etc.*

Provisions of sub section (8) reads as follows:

(8) Where there is a change in the constitution of a registered taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said registered taxable person shall be allowed to transfer the input tax credit that remains unutilized in its books of accounts to such sold, merged, demerged, amalgamated, leased or transferred business in the manner prescribed.

The provisions are similar to rule 10 of Cenvat Credit Rules, 2004. In this case also, there is no need of any permission for the purpose of transferring the credit.

❖ *Condition for availing credit*

Sub section (11) reads as follows:

(11) Notwithstanding anything contained in this section, but subject to the provisions of section 28, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless

- (a) he is in possession of a tax invoice, debit note, supplementary invoice or such other taxpaying document as may be prescribed, issued by a supplier registered under this Act or the IGST Act;*
- (b) he has received the goods and/or services;*
- (c) the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and*

(d) he has furnished the return under section 27:

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

Explanation.—For the purpose of clause (b), it shall be deemed that the taxable person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such taxable person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise.

Additional condition that tax charged in respect of supply has actually been paid to the Government is going to create tremendous problem in availing the credit. Further, the proviso about receipt of goods in instalment will create lot of difficulty in availment of credit.

❖ *Time limit for availment of credit*

Sub section (15) reads as follows:

(15) A taxable person shall not be entitled to take input tax credit in respect of any invoice for supply of goods and/or services, after the filing of the return under section 27

for the month of September following the end of financial year to which such invoice pertains or filing of the relevant annual return, whichever is earlier.

It is specifically provided in sub section (15) that credit shall not be availed after filing of return under section 27 for the month of September following the end of financial year to which such invoices pertains or filing relevant annual return whichever is earlier.

Sub section (3A) provides that input tax credit shall not be available after the expiry of one year from the date of tax invoice relating to such supply. This restriction is applicable for availment of credit under sub section (2) i.e. person applying for registration, sub section (2A) person who apply for registration voluntarily, and sub section (3) person shifting from composition to regular. The time limit for

❖ *Recovery of Tax*

Sub section (16) reads as follows:

(16) Where credit has been taken wrongly, the same shall be recovered from the registered taxable person in the manner as may be prescribed in this behalf.

❖ *Input Service Distributor*

Sub section (56) defines 'input service distributor' as follows:

(56) "Input Service Distributor" means an office of the supplier of goods and / or services which receives tax invoices issued under section 23 towards receipt of input services and issues tax invoice or such other document as prescribed for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above;

Explanation.- For the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST, Input Service Distributor shall be deemed to be a supplier of services.

Section 17 and 18 makes provision regarding distribution and excess credit. Explanation in section 2(56) specifically provides that ISD will be deemed to be supplier of service.

❖ *Manner of Distribution of Credit*

Section 17 provides the manner of distribution of credit. It will be evident from the sub-section (1), that if the credit distributor and recipient are located in different States, credit (CGST and SGST) should be distributed as IGST only. But if the credit are to be distributed within the business vertical of the same person in same States, the credit shall be distributed as CGST or SGST. The method of distribution given in sub-section (3) is almost similar to the current method given in Rule 7 of Cenvat Credit Rules, 2004. Section 17 reads as follows:

- (1) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of CGST as IGST and IGST as IGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit are located in different States.*
- (2) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of CGST and IGST as CGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit, being a business vertical, are located in the same State.*

(3) The Input Service Distributor may distribute the credit subject to the following conditions, namely:

(a) the credit can be distributed against a prescribed document issued to each of the recipients of the credit so distributed, and such invoice or other document shall contain such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a supplier shall be³³ distributed

❖ *Recovery of Credit Distributed In Excess*

The section 18 reads as follows:

- (1) Where the credit distributed by the Input Service Distributor is in excess of the credit available for distribution by him, the excess credit so distributed shall be recovered from such distributor along with interest, and the provisions of section 51 shall apply mutatis mutandis for effecting such recovery. This section is applicable when credit distributed is in excess of credit available.*
- (2) Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 17 resulting in excess distribution of credit to one or more suppliers, the excess credit so distributed shall be recovered from such supplier(s) along with interest, and the provisions of section 51 shall apply mutatis mutandis for effecting such recovery.*

Explanation. –For the purposes of section 17 and this section, the relevant period shall be-

(a) if the recipients of the credit have turnover in their States in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(b) if some or all recipients of the credit do not have any turnover in their States 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.

This section will apply when credit is distributed in excess to unit.

Matching, Reversal and Reclaim of Input Credit

Section 29 makes provision with regard to verification of credit. This section reads as follows:

29 (1) The details of every inward supply furnished by a taxable person (hereinafter referred to in this section as the 'recipient') for a tax period shall, in the manner and within the time prescribed, be matched –

- a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,*
- b) with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him, and*
- c) for duplication of claims of input tax credit.*

(2) The claim of input tax credit in respect of invoices and/or debit notes relating to inward supply that match with the details of corresponding outward supply or with the additional duty of customs paid shall, subject to the provisions of section 16, be finally accepted and such acceptance shall be communicated, in the manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in the manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in the manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the supplier declares the details of the invoice and/or debit note in his valid return within the time specified in sub-section (7) of section 27.

(8) A recipient in whose output tax liability any amount has been added under subsection (5) or, as the case may be, under sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 36 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in the manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 36.

GST Black-Listing of Taxable Person to Block Credit

Section 116 of Model GST Law provides that every taxable person shall be assigned a GST compliance rating score based on his records of compliance with the provisions of this Act. The rating score will be determined on the basis of parameters which will be prescribed.

CBEC has published business process note for returns. Annexure X of the business process note gives details of black-listing of dealers for blocking tax credits. Trigger for blacklisting, default, rating and compliance profile and blacklist⁴⁰ are given

IX.B. Default

- *Not doing the activity within the prescribed cut off dates. A system of rating the dealers based on their compliance should also be done and put in public domain to inform prospective buyers.*

IX.C. Rating and Compliance Profile

There should also be a continuous rating system, provided under model law, for dealers based on parameters such as promptness in e-return filing, discrepancies detected where the dealer has had to make corrections, making prompt payment in lieu of reversed ITC, etc. The profiles for all dealers would be posted in public domain so that the dealer community is kept aware of the compliance profile of all registered dealers with whom they may have to deal with during the course of their business. While the system of blacklisting may only highlight deviant behaviour after it crosses a certain threshold, a system-updated dealer profile will serve as a continuing rating mechanism for the entire community and leaders within a certain industry can set a benchmark for others to emulate.

IX.D. Blacklisting

- i. Only for regulating ITC by others.*
- ii. Will be based on dealer rating. A dealer will be blacklisted if dealer rating falls below the prescribed limit.*
- iii. To be put in public domain.*
- iv. To be notified (auto-SMS) to all dealers who have pre-registered this dealer (black listed now) as their supplier.*
- v. To be prospective only (from month next to blacklisting)*
- vi. Blacklisted GSTINs cannot be uploaded in purchase details. Corresponding denial of ITC to be supported by suitable provision in the law.*
- vii. ITC reversal in hands of the buyer should take place for disowning of any tax invoice with date prior to effect of blacklisting of the seller.*
- viii. Once blacklisting is lifted, buyers can avail unclaimed ITC subject to this dealer uploading sales details along with tax and interest.*

THANK YOU

BALANCED VIEW

PRESENTED BY

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