

# *Eligibility of Input Tax Credit under GST and Auditors Responsibility*



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# Eligibility for availing Input Tax Credit (ITC)

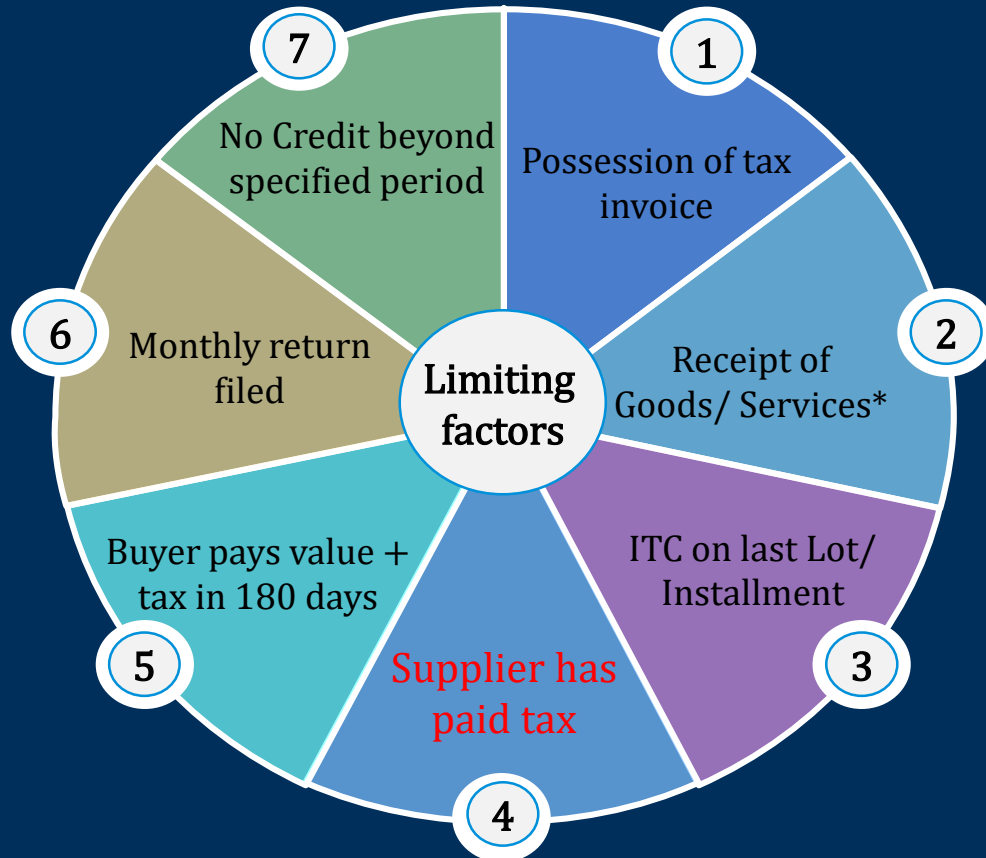
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# Eligibility and conditions for taking ITC

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Section 16. (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.

# Conditions for availing credit



# Condition 2 – Receipt of Goods or Services

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- Whether ITC can be availed upon making advance payment?
- Whether ITC of GST paid on services like insurance or AMC which are availed for a longer period say 12 months can be availed immediately or only upon completion of service period?

# Condition 4 – Payment of Tax by Supplier

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- Practical difficulties for the recipient/buyers.
- Against the long established concepts under the CENVAT and erstwhile MODVAT regime that credit is an inherent right and is indefeasible.
- Whether credit can be denied if not reflected in GSTR-2A?
  - Commissioner of Trade and Taxes Delhi vs. Arise India Limited (2018-VIL-01-SC) – Held that Section 9(2)(g) of Delhi VAT Act held to be extent it disallows ITC to purchaser due to default of selling dealer in depositing tax is violative of Article 14 and 19(1)(g) of the Constitution of India.
  - Bombay High Court in Mahalaxmi Cotton Ginning Pressing and Oil Industries vs. State of Maharashtra [2012 (051) VST 0001 BOM] – Upheld validity of granting credit only after payment by other person.

# Condition 5 – Payment to Supplier within 180 days

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- Recipient liable to reverse credit in cases where he fails to pay the supplier of goods and/or services the **amount towards the value of supply along with tax payable** within a period of 180 days from date of issue of invoice.
- Amount to be reversed by adding it in the output tax liability, along with interest, in the month immediately following period of 180 days. Interest applicable from date of availment of credit.
- Recipient can take credit once payment of consideration towards value of supply along with tax portion is made to supplier.
- Rule 37(4) of the CGST Rules – Time limit of Section 16(4) i.e. no credit post September of subsequent F.Y. is not applicable in case of such re-availment of ITC.
- Retention money – ITC to be reversed if kept beyond 180 days?

# Condition 7 - No Credit beyond specified period

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16. (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.



# Condition 7 - No Credit beyond specified period

## Whether FORM GSTR – 3B is return under section 39 of the CGST Act?

- Notification No.10/2017 – Central Tax dated 28th June, 2017

“61. (5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, return in FORM GSTR-3B, in lieu of FORM GSTR-3, may be furnished in such manner and subject to such conditions as may be notified by the Commissioner.”

- Notification No.17/2017-Central Tax dated 27th July, 2017

“61. (5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify that return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.”

- Writ Petition filed before Gujarat HC - FORM GSTR-3B is not in lieu of FORM GSTR-3 and is applicable only in the circumstances stipulated under sub-rule (5) of rule 61 of the rules.

# Condition 7 - No Credit beyond specified period

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- Press Release dated 22.12.2018

## Recommendations made during 31<sup>st</sup> Meeting of the GST Council

*“8. ITC in relation to invoices issued by the supplier during FY 2017-18 may be availed by the recipient till the due date for furnishing of FORM GSTR-3B for the month of March, 2019, subject to specified conditions.”*

# Apportionment of ITC

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# Apportionment of ITC

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- Where credit attributable to goods and/or services used partly for business purpose and partly for non-business purpose, credit restricted to input tax attributable to the purposes of his business.
- Similar restriction on ITC in respect of partly taxable supplies (including zero-rated supplies) and partly exempt supplies.

# Apportionment of ITC on Input & Input services

Exclusively used for providing exempted / non-business supplies and excluded under Section 17(5)

No credit

Exclusively used for providing taxable / zero-rated supplies

Full credit in the month of purchase

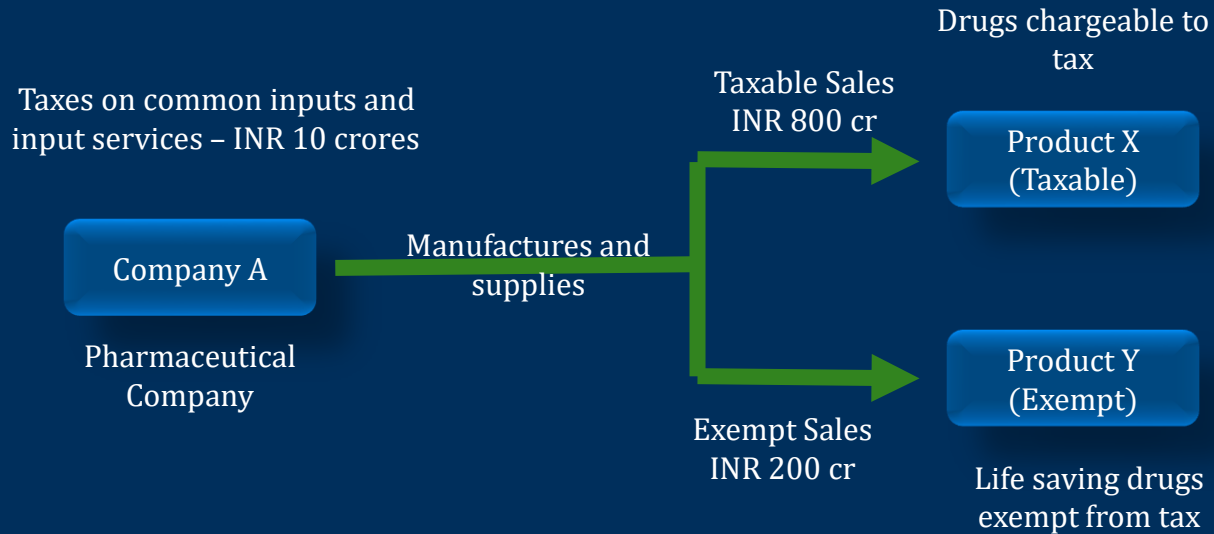
Used partly for business and partly for non-business purposes

5% of common credit

Used for making partly exempt & partly taxable supplies

Proportionate reversal in terms of Rule 42

# Example - Apportionment of Credit



*\*Final amount of Input tax credit for the FY to be determined – Excess credit to be claimed or differential credit to be paid along with interest on or before 30<sup>th</sup> September*

# Formula for Apportionment of Common ITC

## Amount of Input Tax Credit Attributable to Exempt Supply Formula (Same month's actual turnover basis)

$$\text{Common Credit} \times \frac{\text{Exempt Supply of state (Monthly basis)}}{\text{Total Turnover of state (Monthly basis)}}$$

## Amount of Input Tax Credit Attributable to Exempt Supply Formula (Entire Year turnover Basis)

$$\text{Common Credit} \times \frac{\text{Exempt Supply of state ( Yearly Basis)}}{\text{Total Turnover of state (Yearly Basis)}}$$

# Apportionment of ITC – Computation

Sl. No.	Invoice No.	Input Tax	Remark	ITC Availability
A	Invoice # 1	10,000	Used exclusively for exempted output supply	No Credit
	Invoice # 2	30,000	Used exclusively for taxable output supply	Full credit available
	Invoice # 3	15,000	Used exclusively for zero rated (say exports)	Full credit available
	Invoice # 4	25,000	Used for exempted and taxable output supply	Proportionate reversal
	Invoice # 5	30,000	Used for business and non business purpose	Proportionate reversal
	Invoice # 6	20,000	Negative list item	Credit can't be availed
B	Value of exempted output supplies			4,500,000
C	Total turnover of registered person			10,000,000
	<b>Credit to be reversed in respect Invoice # 4 &amp; # 5</b>			
D	Common credit attributable to taxable and exempted supplies and business and non business use			55,000
E	Credit attributable to exempted supplies ( $[B/C]*D$ )			24,750
F	Credit attributable to non business purpose supplies ( $D*5\%$ )			2,750
G	Total ineligible common input tax credit (E+F)			27,500
H	Eligible common credit (D-G)			27,500



# ITC for Banking and Financial Services Sector

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- Banking companies or a financial institution including an NBFC shall exercise one of the following options during a financial year
  - ✓ Option I – Avail credit and do ITC reversal as per normal provisions
  - ✓ Option II - Avail 50% of eligible ITC for Inputs, Input services and Capital Goods used for business purpose (excluding blocked ITC)
- Restriction of 50% shall not apply to tax paid on supplies made between deemed distinct persons.

# ITC on Capital Goods

## Capital Goods:

Goods the value of which is capitalized in the books of accounts of the person claiming credit and which are used in the course or furtherance of business

<b>Pre-GST Scenario</b>	<b>GST Scenario</b>
CENVAT on Capital Goods used for both dutiable as well as Non-dutiable goods/Services was 100% allowed.	No credit on capitals goods used exclusively for non-business purposes or exclusively for effecting exempt supplies.
In the first FY in which capital goods are received, only 50% of the Cenvat credit could be availed	Proportionate reduction on capital goods used on account of making common supplies, i.e. taxable & exempt supplies.

# ITC on Capital Goods – Exempt to Taxable

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## Pre-GST Scenario – Rule 6(4) of CENVAT Credit Rules, 2004

“Rule 6(4) No CENVAT credit shall be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made or services provided in a financial year.

Provided that where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods”

# ITC on Capital Goods – Exempt to Taxable

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## GST Scenario – Section 18 of the CGST Act

18. (1)(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable :

**Provided** that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him **after the expiry of one year from the date of issue of tax invoice** relating to such supply.

# Apportionment of ITC on Capital Goods

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Exclusively used  
for providing  
exempted / non-  
business supplies

No credit

Exclusively used  
for providing  
taxable / zero-  
rated supplies

Full credit in the month of  
purchase

Used for making  
partly exempt &  
partly taxable  
supplies

Full credit in the month  
of purchase – Subsequent  
reversal of ITC towards  
exempt supplies (Rule 43  
of CGST Rules)

# Apportionment of ITC on Capital Goods

Pro rata reversal of ITC on capital goods used partly for making exempt supplies and partly for taxable supplies

$$\begin{array}{l} \text{Amount to be} \\ \text{reversed} \\ \text{monthly (T€)} \end{array} = \frac{\text{Amount of} \\ \text{ITC taken}}{60 \text{ (5 years} \\ \text{deemed as} \\ \text{useful life)}} \times \frac{\text{Exempt Turnover of relevant month}}{\text{Total Turnover of relevant month}}$$

# Apportionment of ITC on Capital Goods

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- T€ (amount to be reversed monthly) along with applicable interest to be added to output tax liability during every tax period.
- Whether interest to be payable from the first month of availment of credit or from subsequent months?

# Apportionment of ITC on Capital Goods

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- Change in use from exclusively exempt to partly exempt & partly taxable
  - ITC to be taken = Total credit – 5% deduction per quarter
  - Admissible from month of change in use
- Change in use from exclusively taxable to partly exempt & partly taxable
  - ITC already availed in month of purchase. However, from month of change, ITC amount shifted to separate basket.
  - ITC to be taken = Total credit – 5% deduction per quarter



# Input Service Distributor

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# Concept of Input Service Distributor

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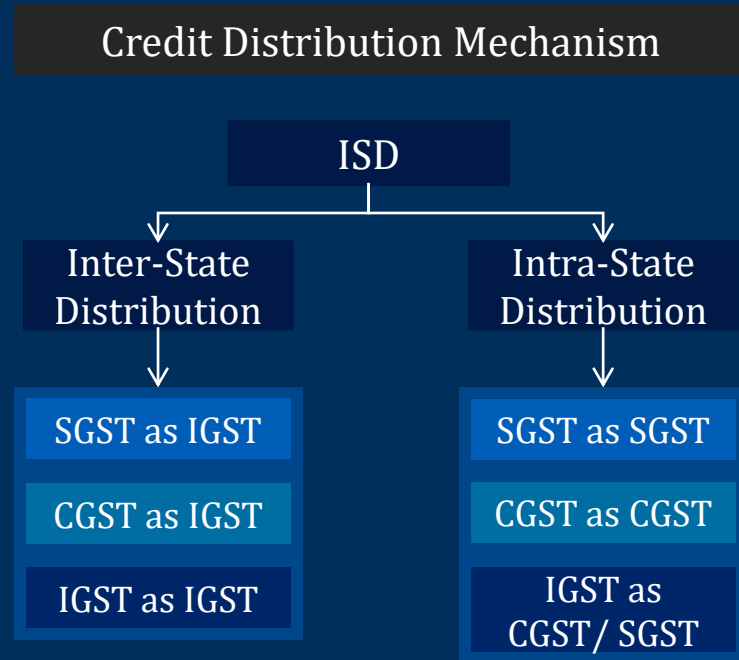
ISD means an office of the supplier of goods and / or services which receives tax invoices issued under Section 31 towards receipt of input services and issues tax invoices for the purpose of distributing credit of CGST / SGST and / or IGST paid on the said services to a supplier of taxable goods and / or services having the same PAN as that of the office referred above.

Separate Registration

# Credit Distribution Mechanism

ISD Concept retained :

For the purposes of distributing credit of CGST / SGST and / or IGST, ISD shall be deemed to be a supplier of services.



# Important Aspects

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- Supplier tax invoice to contain ISD GSTIN
  - ✓ Invoice not to mention State GSTIN
- Ratio of distribution – turnover as per section 20
- ISD to issue invoice to various GSTINs
- ISD has to maintain accounts of credit distribution invoice-wise, as well as tax-wise (IGST / CGST / SGST / UTGST).
- Distribution of credit ineligible under Section 17(5) of the CGST Act
  - ✓ ISD has to pass on credit - Disallowance at Unit's end.
- Pro rata distribution to registration engaged exclusively in making exempt supplies
  - ✓ ISD must compute and distribute.

# Input Tax Credit – Negative List

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# ITC – Negative List Items

SL	Negative list Item	Exceptions
1.	Motor vehicles and other conveyances	<ol style="list-style-type: none"><li>Further supply of such vehicles</li><li>Transportation of passengers</li><li>Imparting training</li><li>Transportation of goods</li></ol>
2.	Food & Beverage, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery	Providing outward taxable supply of same category of goods or services or as part of a composite/mixed supply
3.	Membership of a club, health and fitness center	
4.	Rent a cab, life insurance, health insurance	Except where government notifies services which are obligatory for an employer to provide to his employees under law; Providing outward taxable supply of same category or as part of a composite/mixed supply

# ITC – Negative List Items

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SL	Negative list Item	Exceptions
5	Works contract services for construction of immovable property other than Plant & Machinery	When it is used as an input service for further supply of works contract service
6	Goods or services used in construction of any immovable property on his own account, even if used for business (other than Plant & Machinery)	

# Construction of Immovable Property

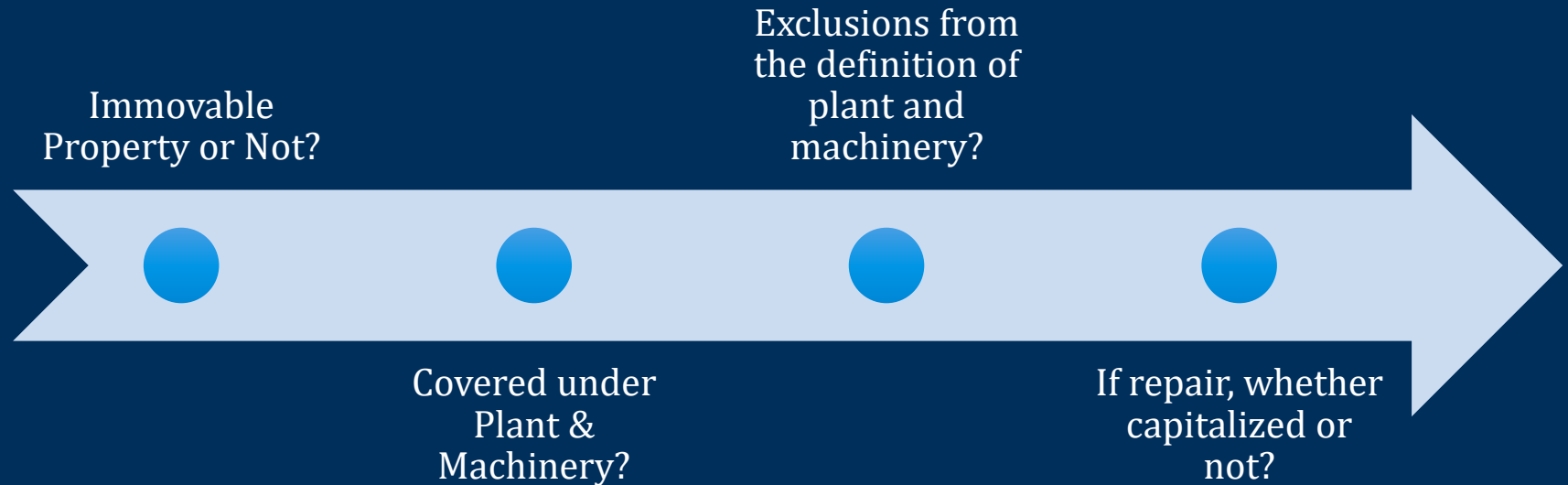
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- Explanation 1 - For the purpose of this clause, the word “construction” includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.
- Explanation 2 - ‘Plant and Machinery’ means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes:
  - ✓ *land, building or any other civil structures;*
  - ✓ *Telecommunication towers; and*
  - ✓ *Pipelines laid outside factory premises.*



# Checklist for evaluation

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# Input Tax Credit – Negative List of items

SL	Negative list Item	Exceptions
7	Goods and/or services on which tax has been paid under Composition Scheme	
8	Taxes if any paid under following circumstances ; i. Wrongful utilization by reason of fraud, willful-misstatement, credits wrongly utilized or availed, erroneously refunded ii. Detention, seizure and release of goods and conveyances in transit iii. Confiscation of goods and/or conveyances and levy of penalty	

# Input Tax Credit – Negative List of items

SL	Negative list Item	Exceptions
9	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples	
10	Goods or services or both received by a non-resident taxable person	Goods imported by him
11	Goods or services or both used for personal consumption	

# Input Tax Credit – Other Issues

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# Capital Goods purchased in erstwhile regime sold in GST regime

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Section 18(6) of the CGST Act, 2017 states as under:

*18(6). In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher”*

# Issues for Discussion

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- Whether an importer engaged in high sea sales, bonded warehouse sales and third party exports shall be required to reverse common ITC?
- Whether ITC reversal is required in case of Buy 1 Get 1 offers schemes?
- In case discount is given by way of financial credit note then whether the recipient will be entitled to full ITC or not?

# ITC – Reporting in Annual Return GSTR-9

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# Annual Return – Part - III (1/6)

Pt. III Details of ITC as declared in returns filed during the financial year						
	Description	Type	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
<b>6 Details of ITC availed as declared in returns filed during the financial year</b>						
A	Total amount of input tax credit availed through FORM GSTR-3B (sum total of Table 4A of FORM GSTR-3B)		<Auto>	<Auto>	<Auto>	<Auto>
B	Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs)	Inputs				
		Capital Goods				
		Input Services				
C	Inward supplies received from unregistered persons liable to reverse charge (other than B above) on which tax is paid & ITC availed	Inputs				
		Capital Goods				
		Input Services				
D	Inward supplies received from registered persons liable to reverse charge (other than B above) on which tax is paid and ITC availed	Inputs				
		Capital Goods				
		Input Services				



# Annual Return – Part - III (2/6)

E	Import of goods (including supplies from SEZs)	Inputs				
		Capital Goods				
F	Import of services (excluding inward supplies from SEZs)					
G	Input Tax credit received from ISD					
H	Amount of ITC reclaimed (other than B above) under the provisions of the Act					
I	Sub-total (B to H above)					
J	Difference (I - A above)					

# Annual Return – Part - III (3/6)

K	Transition Credit through TRAN-I (including revisions if any)
L	Transition Credit through TRAN-II
M	Any other ITC availed but not specified above
N	Sub-total (K to M above)
O	Total ITC availed (I + N above)

## Key points:

### Table 6K & 6L -

- Details to be compiled from Electronic Credit Ledger and TRAN-I/II.

### Table 6 M -

- Reporting of ITC availed by way of filing Form ITC-01 & ITC-02
- ITC-01 is to be filed, on conversion from URD to RD or dealer opting out of composition levy or exempted goods becomes taxable.
- ITC - 02 to be filed, on transfer of business by ways of sale / merger / demerger.

# Annual Return – Part - III (4/6)

7	Details of ITC Reversed and Ineligible ITC as declared in returns filed during the financial year				
A	As per Rule 37				
B	As per Rule 39				
C	As per Rule 42				
D	As per Rule 43				
E	As per section 17(5)				
F	Reversal of TRAN-I credit				
G	Reversal of TRAN-II credit				
H	Other reversals (pl. specify)				
I	Total ITC Reversed (A to H above)				
J	Net ITC Available for Utilization (60 - 7I)				

## Key points:

- **Table 7A** - Rule 37 - Reversal of ITC due to non-payment of consideration within 180 days of invoice.
- **Table 7B** – Rule 39 - Reversal on account of excess distribution of ITC by ISD.
- **Table 7C** – Rule 42 - Reversal of common ITC in respect of input and input services. (Partly exempt /partly taxable)
- **Table 7D** – Rule 43 - Reversal of common ITC in respect of capital goods. (Partly exempt /partly taxable)
- **Table 7H** –
  - ITC availed under normal scheme then opted for composition scheme.
  - ITC availed in respect of taxable goods which subsequently became exempt.
  - Cancellation of registration – ITC-03

# Annual Return – Part - III (5/6)

8	Other ITC related information				
A	ITC as per GSTR-2A (Table 3 & 5 thereof)	<Auto>	<Auto>	<Auto>	<Auto>
B	ITC as per sum total of 6(B) and 6(H) above	<Auto>			
C	ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during 2017-18 but availed during April to September, 2018				
D	Difference [A-(B+C)]		<i>Negative Figure?</i>		
E	ITC available but not availed (out of D)				
F	ITC available but ineligible (out of D)				
G	IGST paid on import of goods (including supplies from SEZ)				

# Annual Return – Part - III (6/6)

H	IGST credit availed on import of goods (as per 6(E) above)	<Auto>			
I	Difference (G-H)				
J	ITC available but not availed on import of goods (Equal to I)				
K	Total ITC to be lapsed in current financial year (E + F + J)	<Auto>	<Auto>	<Auto>	<Auto>

# ITC Reconciliation in GSTR-9C

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# Form GSTR-9C - Part - A (Part IV)

Pt.	Reconciliation of Input Tax Credit (ITC)	
IV		
12	Reconciliation of Net Input Tax Credit (ITC)	
A	ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)	
B	ITC booked in earlier Financial Years claimed in current Financial Year	(+)
C	ITC booked in current Financial Year to be claimed in subsequent Financial Years	(-)
D	ITC availed as per audited financial statements or books of account	<Auto>
E	ITC claimed in Annual Return (GSTR9)	
F	Un-reconciled ITC	
		ITC 1

- ITC availed after reversal for the specific GSTIN as per the books.
- Even in case where the books of accounts are maintained PAN India basis, ITC has to be identified on GSTIN basis.
- Certificate of Statutory Auditor?
- ITC booked in FY 16-17 financials but ITC claimed in FY 17-18 in the GST returns
- ITC booked in FY 17-18 financials but ITC to be claimed in FY 18-19 in the GST returns.

# Form GSTR-9C - Part - A (Part IV)

13	<b>Reasons for un-reconciled difference in ITC</b>	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>



# Form GSTR-9C - Part - A (Part IV)

14 Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account				
	Description	Value	Amount of Total ITC	Amount of eligible ITC availed
	1	2	3	4
A	Purchases			
B	Freight / Carriage			
C	Power and Fuel	Coal		
D	Imported goods (Including received from SEZs)			
E	Rent and Insurance			
F	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples			
G	Royalties			
H	Employees' Cost (Salaries, wages, Bonus etc.)			

These are general expenses in the financials or books of accounts. ITC may or may not be available on such expenses. The list is Indicative of expenses. Taxpayer may add or delete any of these heads. All heads of expenses on which GST has been paid/payable are to be declared in this table.

Amount of total ITC to be filled (3) but amount of eligible ITC availed (4) would be NIL

No ITC. Hence column 3, 4 would be NIL

# Form GSTR-9C - Part - A (Part IV)

14	<b>Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account</b>			
	Description	Value	Amount of Total ITC	Amount of eligible ITC availed
	1	2	3	4
I	Conveyance charges			
J	Bank Charges			
K	Entertainment charges			
L	Stationery Expenses (including postage etc.)			
M	Repair and Maintenance			
N	Other Miscellaneous expenses			
O	Capital goods			
P	Any other expense 1			
Q	Any other expense 2			
R	Total amount of eligible ITC availed			<<Auto>>
S	ITC claimed in Annual Return (GSTR9)			
T	Un-reconciled ITC			<b>ITC 2</b>

# Form GSTR-9C - Part - A (Part IV)

15	<i>Reasons for un - reconciled difference in ITC</i>	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

# Form GSTR-9C - Part - A (Part IV)

16	<b>Tax payable on un-reconciled difference in ITC (due to reasons specified in 13 and 15 above)</b>	
	Description	Amount Payable
	Central Tax	
	State/UT Tax	
	Integrated Tax	
	Cess	
	Interest	
	Penalty	

# Form GSTR-9C - Part - A (Part V)

Pt. V	Auditor's recommendation on additional Liability due to non-reconciliation					
	To be paid through Cash					
	Description	Value	Central tax	State tax / UT tax	Integrated tax	Cess, if applicable
1	2	3	4	5	6	
5%						
12%						
18%						
28%						
3%						
0.25%						
0.10%						
Input Tax Credit						
Interest						
Late Fee						
Penalty						
Any other amount paid for supplies not included in Annual Return (GSTR 9)						
Erroneous refund to be paid back						
Outstanding demands to be settled						
Other (Pl. specify)						



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exceeding expectations  
since 1985

**Thank You**