

Importance & Procedures to take ITC

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INPUT TAX CREDIT

Section – 16 Eligibility and conditions for taking input tax credit Section – 17 – Apportionment of credits and blocked credits Section – 18 – Availability of credit in special circumstances Section – 19 – Recovery of Input Tax Credit and Interest thereon Section – 20 – Taking ITC in respect of inputs sent for job-work Section – 21 – Manner of distribution of credit by Input Service

Distributor

**Section – 22 – Manner of recovery of credit distributed in excess
Section – 36 – Claim of ITC and provisional acceptance thereof Section – 37 – Matching, reversal and reclaim of ITC**

INPUT TAX CREDIT

Section – 2(56) - “input tax credit” means credit of ‘input tax’ as defined in sub-section (55)

Section – 2(55) - "input tax" in relation to a taxable person, means the IGST, including that on import of goods, CGST and SGST charged on any supply of goods or services to him and includes the tax payable under **sub-section (3) of section 8**, but does not include the tax paid under **section 9**

Section – 8(3) – Reverse Charge

Section – 9 – Composition levy

INPUT TAX CREDIT-SECTION 16

Section – 16(1)

Every **registered taxable person** shall.....be entitled to take credit of input tax charged on any **supply of goods or services....**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.

Provided.....ITC in respect of pipelines and telecommunication towers fixed to earth.....shall not exceed $1/3^{\text{rd}}$ of the total ITC, for three years starting from the year in which said goods are received.

INPUT TAX CREDIT - SECTION 16

Section – 16(2)

To avail ITC, a RTP must satisfy the following:

- (a) he is in **possession** of a **tax invoice or debit note** issued by a supplier registered under this Act, or such other taxpaying document(s) as may be prescribed;
- (b) he has **received** the goods and/or services;
- (c) the **tax charged** in respect of such supply **has been actually paid** to the account of the appropriate Government; and
- (d) he has **furnished the return** under section 34.

INPUT TAX CREDIT - SECTION 16

Section – 16(2)

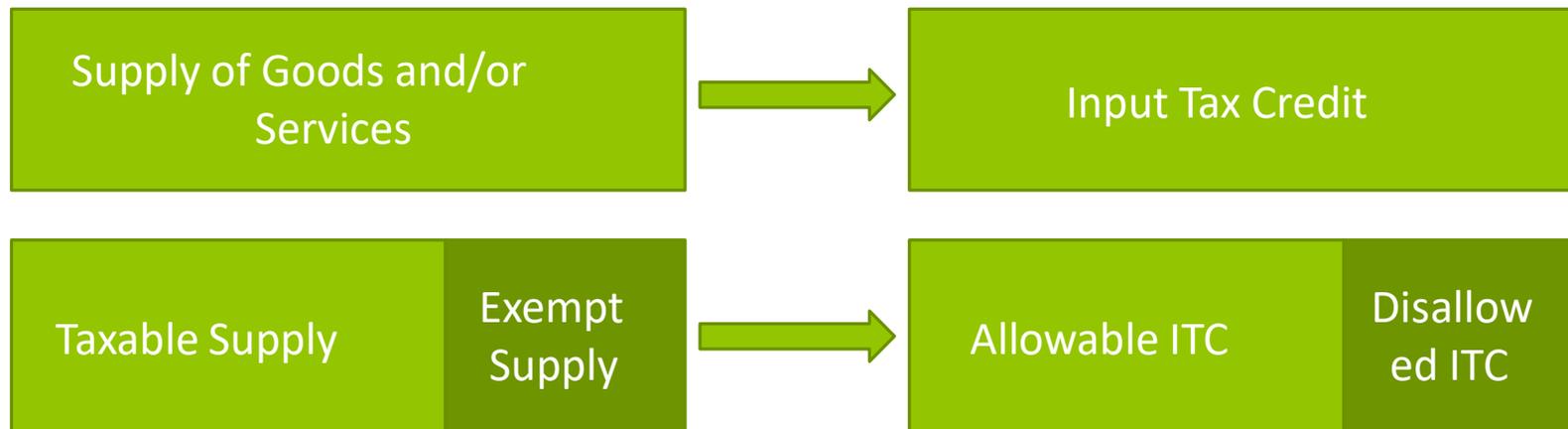
PROVIDED that where the **goods** against an invoice **are received in lots or instalments**, the registered taxable person shall be entitled to take **credit upon receipt of the last lot or instalment**

PROVIDED – Provided further that where a recipient fails to pay to the supplier of goods or services or both, amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed

INPUT TAX CREDIT - SECTION 17

Section – 17 – ITC in the following cases to be allowed to the extent attributable to business purpose:

1. Where goods and/or services are used partly for the purpose of any **business** and partly for **other purposes**.
2. Where goods and / or services are used partly for effecting **taxable supplies** including zero-rated supplies and partly for effecting **exempt supplies**



BLOCKED CREDIT UNDER GST- SECTION 17

Section – 17 – ITC shall not be available in respect of the following:

(a) motor vehicles and other conveyances except when they are used

(i) for making the following taxable supplies, namely

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods.

BLOCKED CREDIT UNDER GST- SECTION 17

ITC shall not be available in respect of the following:

(b) supply of goods and services, namely,

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery **except** where these are used as input services by a RTP providing the same services.

(ii) membership of a club, health and fitness centre,

(iii) rent-a-cab, life insurance, health insurance **except** where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession

BLOCKED CREDIT UNDER GST- SECTION 17

ITC shall not be available in respect of the following:

(c) works contract services when supplied for construction of immovable property, other than plant and machinery, **except** where it is an input service for further supply of works contract service;

(d) goods or services received by a taxable person **for construction of an immovable property** on his own account, other than plant and machinery, even when used in course or furtherance of business;

(e) goods and/or services on which tax has been paid under composition scheme;

(f) goods and/or services used for personal consumption;

(g) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

BLOCKED CREDIT UNDER GST- SECTION 17

ITC shall not be available in respect of the following:
(h) any tax paid in terms of sections 67, 89 or 90

Section 67 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts

Section 89 – Detention, seizure and release of goods and conveyances in transit

INPUT TAX CREDIT - SECTION 19

Recovery of Input Tax Credit and Interest thereon

Where credit has been taken wrongly, the same shall be recovered from the registered taxable person in accordance with the provisions of this Act.

INPUT TAX CREDIT - SECTION 36

Claim of input tax credit and provisional acceptance thereof

- (1) Every registered taxable person shall, subject to such conditions and restrictions be entitled to take credit of input tax, as self assessed in his return and such amount shall be credited, on a provisional basis, to his electronic credit ledger
- (2) The credit referred to in sub-section (1) shall be utilised only for payment of self assessed output tax liability as per the return referred to in sub-section (1).

NOTIFICATION A NEW SUB-RULE (4) UNDER RULE 36

The CBIC released an important notification on 9 October 2019, inserting a new sub-rule (4) under rule 36 of the CGST Rules, 2017. The rule states that the provisional tax credit (without invoices on GSTR-2A) can be claimed in the GSTR-3B only to the extent of 10%* of eligible ITC reflected in the GSTR-2A. Hence, the total ITC that can be claimed in GSTR-3B is 110% of the eligible ITC appearing in the GSTR-2A of a particular period.

**With effect from 1 Jan 2020; Was earlier restricted to 20% for the period from 9 Oct 2019 to 31 Dec 2019*

A circular clarifying the issues relating to the implementation of this new rule was released on 11 November 2019.

WHAT IS NEW RULE 36 (4) ON PROVISIONAL ITC IN GSTR-3B?

As per the new sub-rule (4) inserted in rule 36 of the Central Goods and Service Tax Rules, 2017, a taxpayer filing GSTR-3B can claim provisional Input Tax Credit (ITC) only to the extent of 10% of the eligible credit available in GSTR-2A. The amount of eligible credit is arrived upon those invoices or debit notes, the details of which have been uploaded by the suppliers in the GSTR-2A only. The new percentage applies from 1 Jan 2020 onwards only. The ITC claim was earlier restricted to 20% for the period from 9 Oct 2019 till 31 Dec 2019.

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WHAT IS NEW RULE 36 (4) ON PROVISIONAL ITC IN GSTR-3B?

(The notification no. 49/2019- Central Tax dated 9 October 2019 adds a new clause to the rule 36 of CGST Rules).

The 37th GST Council meeting held on 20 September 2019 had announced that the provisional ITC claim will be restricted under the present GST return filing system of GSTR-1 and GSTR-3B. The ITC claim will not be allowed in full for any recipient if their suppliers have not furnished the details of their outward supplies

HOW WILL THIS NEW RULE IMPACT TAXPAYERS?

Before 9 October 2019, all taxpayers claimed ITC on a self-declaration basis in Table 4(a) of GSTR-3B. This means that they declared the summary figure of eligible tax credits under IGST, CGST, and SGST. There was no compulsion to reconcile the ITC figure with the GSTR-2A until now, although it was always advised.

Even if the GSTR-2A reflected an ITC amount lower than the books of accounts, taxpayers could still make their ITC claim in full in the GSTR-3B, and the unreflected amount was treated as provisional credit.

HOW WILL THIS NEW RULE IMPACT TAXPAYERS?

After the implementation of this rule, the provisional ITC amount will be restricted only to the extent of 10%* of the eligible ITC value already reflected in the GSTR-2A for that period. Apart from the 10%* of eligible ITC which a taxpayer can claim as provisional credit, the balance tax liability will need to be paid in cash.

This new rule could affect the working capital of a taxpayer, as he will be required to make GST payments in cash, despite having paid his supplier for the tax invoice raised to him and having eligible ITC in his books

**With effect from 1 Jan 2020; Was earlier restricted to 20% for the period from 9 Oct 2019 to 31 Dec 2019*

NOTIFICATION NO. 30/2020-CENTRAL TAX - TEMPORARY RELIEF IN LOCKDOWN

Considering the lock down situation, the Government has relaxed the provisions of Rule 36(4). Therefore, for the GST returns relating to periods from February 2020 to August 2020, ITC as per Books can be claimed without considering the ITC as per GSTR 2A.

However, the ITC claimed has to be matched in a cumulative manner with GSTR 2A before filing GSTR 3B of September 2020 with restrictions of Rule 36(4). Hence cumulative working from Feb to Sep.

EXAMPLE OF HOW PROVISIONAL CREDIT WILL BE CALCULATED

Let's decode the new rule on provisional ITC limit with an example. If a taxpayer is filing his GSTR-3B for the month of January 2020, here is how he would claim the input tax credit in his GSTR-3B before and after the implementation of the rule.

EXAMPLE OF HOW PROVISIONAL CREDIT WILL BE CALCULATED

No		Before	After
A	Eligible ITC** available in the Purchase register	10,00,000	10,00,000
B	Eligible ITC** available in the GSTR-2A	6,00,000	6,00,000
C	ITC that can be claimed as the provisional credit	4,00,000	60,000 (6,00,000*10%)
D	Total ITC that can be claimed in the GSTR-3B	10,00,000	6,60,000
E	ITC not allowed in the GSTR-3B of January 2020	NIL	3,40,000

EXAMPLE OF HOW PROVISIONAL CREDIT WILL BE CALCULATED

*[**Eligible ITC is the ITC relating to a taxpayer's business activities such as purchases made, services received, capital assets bought, etc. which is eligible to be claimed to set-off GST liabilities. The GSTR-2A could also contain ineligible ITC reflecting that relates to expenses such as food, club memberships, personal expenditure, etc or even ITC mistakenly reflecting due to the wrong GSTIN entered by a supplier. Hence, only eligible ITC will be considered while calculating the limit for 10% provisional credit.]*

Here is an example to understand how eligible ITC will be computed:



TABLE 1: COMPUTATION OF ELIGIBLE ITC AS PER BOOKS OF ACCOUNTS

A	ITC appearing in the books for Jan 2020	12,00,000
B	ITC relating to business purchases for Jan 2020 (eligible ITC)	10,00,000
C=A-B	Ineligible ITC reflecting in books in Jan 2020	2,00,000
D=B	Total eligible ITC that can be claimed as per books for Jan 2020	10,00,000

TABLE 2: COMPUTATION OF ELIGIBLE ITC AS PER GSTR-2A

A	ITC appearing in GSTR-2A for Jan 2020	7,50,000
B	ITC relating to business purchases for Jan 2020 (eligible ITC)	6,00,000
C=A-B	Ineligible ITC reflecting in GSTR-2A in Jan 2020	1,50,000
D=B	Total eligible ITC that can be claimed as per GSTR-2A for Jan 2020	6,00,000

4. HOW AND WHEN CAN BALANCE ITC BE CLAIMED?

The balance ITC that has not been claimed as provisional ITC may be claimed in the succeeding months once details have been actually uploaded by the suppliers. If a supplier has only uploaded part of the pending invoices in a later period, the taxpayer will be able to claim ITC only proportional up to 10% of these pending invoices uploaded.

Here is an illustration of how provisional ITC will be calculated in a later tax period, once pending invoices have been uploaded by suppliers:

COMPUTATION OF PROVISIONAL ITC ON PENDING INVOICES UPLOADED IN FEB 2020

No	Particulars	Case - I	Case -II
A	Provisional ITC claimed (as per example given above)	6,00,000	6,00,000
B	Provisional ITC remaining to be claimed (as per the example above)	3,40,000	3,40,000
C	Eligible ITC uploaded by suppliers in the month of Feb 2020	2,90,000	3,20,000
D=C*10%	Provisional ITC which can be claimed for the month of Feb 2020	2,90,000 (2,90,000*10%)	3,20,000 (6,00,000*10%)
E=C+D	Total ITC that can be claimed in Feb 2020 (ITC reported by suppliers + provisional ITC)	3,19,000	3,40,000
F=B-E	Balance eligible ITC still not allowed in Feb 2020	21,000	NIL

COMPUTATION OF PROVISIONAL ITC ON PENDING INVOICES UPLOADED IN FEB 2020

^Provisional ITC cannot exceed the total eligible ITC available. As the total eligible ITC available is Rs.1,00,000 and Rs.66,000 had already been claimed in the month of Jan 2020, only the balance Rs.34,000 can be claimed now.

5. IMPORTANT POINTS -WHILE CLAIMING PROVISIONAL CREDIT

1. The restriction on 10% provisional credit will not be supplier-wise. It will be linked to the total eligible ITC from all suppliers based on details uploaded in the GSTR-2A.
2. The restriction on provisional credit will apply to those invoices/debit notes which were supposed to be uploaded by the suppliers and have not been uploaded. This means that a taxpayer can avail full ITC in terms of IGST paid on imports, credit that has been received from an Input Service Distributor (ISD), credit from documents received under reverse charge mechanism and any other such credit.

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5. IMPORTANT POINTS -WHILE CLAIMING PROVISIONAL CREDIT

3. As GSTR-2A is a dynamic form which updates based on details uploaded by suppliers, the cut-off date for claiming provisional credit will be the due date of filing returns only. Hence, a taxpayer may claim up to 10% of ITC based on invoices uploaded by his suppliers as on the date of filing his GSTR-1.

4. If part of the pending invoices of a supplier is uploaded in a later month, the taxpayer must make sure that provisional credit does not exceed 10% of eligible ITC.

6. WHAT CAN TAXPAYERS DO TO MITIGATE ISSUES ARISING FROM THIS RULE?

1. A taxpayer should have a full understanding of the invoices appearing in his GSTR-2A - the types of credit available, the extent of ITC reported and the cataloguing of its defaulting suppliers. This will help him raise accurate ITC claims.
2. *As the implementation of this new rule could impact a company's working capital, businesses will need to invest additional time in managing their accounts payables more effectively.*

6. WHAT CAN TAXPAYERS DO TO MITIGATE ISSUES ARISING FROM THIS RULE?

3. A taxpayer could benefit by setting up a system of invoice tracking,

4. Small suppliers who do not use a software for keeping track of provisional credit claimed/claimable will need to be vigilant, and install a mechanism where the same can be effectively monitored.

5. There is no functionality currently available on the GSTN, however, the system can check where ITC exceeds the 10% limit and the AO may question and send notices where excess ITC has been claimed

6. WHAT WILL BE THE IMPACT ON TAX FILERS?

1. *The new rule could impact working capital as he would be required to make payments in cash in excess of 10% of the Provisional ITC*
2. *To compute Provisional ITC, due date of filling GSTR-1 shall be considered*
3. *Taxpayer could face hardships, as he may have eligible ITC in books but he will not be able to utilise beyond 10% unless the supplier has uploaded the Invoices*



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Thank
you

