

Input Tax Credit

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CONCEPT OF INPUT TAX

Input Tax

- ***“Input tax”*** is defined in Section 2(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 (tax paid on reverse charge basis)
- ***“Input tax credit”*** means credit of ‘input tax’ as defined in section 2(56)
- It seems that there is some error in the definition of input tax credit. In the said definition, “input tax” is referred as defined in Section 2(56) whereas it is defined in Section 2(57).

Athena Comments

- In the current scenario [as present in Cenvat Credit Rules, 2004 (CCR)], credit is available only in respect of:
 - input,
 - input services, and
 - capital goods.
- Thus, to avail CENVAT credit in respect of any goods/ services, it is essential that they must be covered within the definitions of input/capital goods/input services, as the case maybe.
- However, in the GST scenario, the definition of input tax is very wide –
 - any GST
 - charged on
 - supply of goods or services
 - which are used (or to be used) in the course of furtherance of business
- Thus, there is no need to fit goods/ services within four corners of definition of input/capital goods/input service
- Further as per the definition of “input tax”, there is no need for creating a relationship between the goods or services availed and the output of a taxable person the only requirement is that such goods should be used in the furtherance of business

Athena Comments

- In the past, the definition of “input service” allowed credit in respect of “*activities relating to business*”. Such provision has been subject matter of interpretation by our courts in the context of CENVAT credit.
- In the landmark case of Coca Cola India Private Limited 2009-TIOL-449-HC-MUM-ST this phrase (*Activities relating to business*) was analyzed by the Hon’ble High Court in detail. High Court observed :
“27. ... that all and any activity relating to business falls within the definition of input service provided there is a relation between the manufacturer of concentrate and the activity. Therefore, the phrase “activities relating to business” are words of wide import.”
- Also in the case of **Jagriti Plastics v Commissioner of Trade and Taxes; (2015) 223 DLT 571** it was held that Input tax credit was available on DEPB Scrips.
- In the present context, the expression “in the course or furtherance of business” would cover all activities related to the functioning of a business. For example in relation to a manufacturer, business cannot be restricted only to the activity of manufacturing the final products; rather it would comprise of all the integrated activities comprising of whole of the business operations of the taxable person.

Athena Comments

- Lets examine whether in terms of the definition of “input tax”, credit can be made available on following goods/ services
 - Gardening services used in factory
 - Security services used for office of manufacturing unit
 - Transport services provided to the office staff for commuting between office and home
 - Hiring a company for undertaking corporate social responsibility on their behalf

Input and Input Service

- “***input***” is defined in Section 2(54)
- Input means any goods other than capital goods, 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
- “***input service***” is defined in Section 2(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

Athena Comments

- Although “input” and “input service” are defined in the GST Act, but in GST scenario these definitions have very limited use.
- It is pertinent to note that “input” and “input services” are defined in restrictive sense (used by a supplier for making an outward supply) in comparison to the definition of “input tax”; and thus, it creates an anomaly.

Input Tax Credit (ITC) to Registered Taxable Person

- 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.
- Such amount shall be credited to the electronic credit ledger of such person.

Newly Registered Person	Voluntary Registration	Dealer ceases to be a composition dealer
<p>A person who has applied for registration within 30 days from the date on which he becomes liable to registration, and has ultimately been granted such registration, shall also be entitled to take ITC in respect of inputs which are –</p> <ul style="list-style-type: none"> ○ held in stock, and ○ contained in semi-finished or finished goods held in stock <p>... on the day immediately preceding the date from which he becomes liable to pay tax</p>	<p>A person who has applied for voluntary registration (under section 19 (3)) shall be entitled to take ITC in respect of inputs which are -</p> <ul style="list-style-type: none"> ○ held in stock, and ○ contained in semi-finished or finished goods held in stock <p>... on the day immediately preceding the date of registration</p>	<p>Where any registered taxable person ceases to pay tax under section 8, he shall be entitled to take credit of input tax in respect of inputs which are-</p> <ul style="list-style-type: none"> ○ held in stock, and ○ inputs contained in semi-finished or finished goods held in stock <p>.....on the day immediately preceding the date from which he becomes liable to pay tax under section 7</p>

In above three cases, a taxable person shall not be entitled to take input tax credit in respect of any supply of goods and / or services to him after the expiry of 1 year from the date of issue of tax invoice relating to such supply.

Athena Comments

- **Availability of credit is linked with registration** i.e. only registered taxable persons are allowed credit. Therefore, it is advisable to take registration immediately.
- However, as per CCR, registration is not required for availing Cenvat credit and this position has also been affirmed by various courts.
- In the case of any **new business** with a high initial investment and long gestation period to earn any revenue from such investment (for example, research and development for a pharmaceutical company), it would be difficult to claim input tax credit in respect of the expenses made during investment stage
- In such cases, business would be liable to be registered at a later stage when it generates revenue (for example, when the pharmaceutical sales begin in the market)
- **For newly registered person**, ITC is allowed in respect of **inputs held in stock** on the day preceding the date from which the person becomes liable to pay tax.
- It does not specify as to what shall happen in respect of **goods and services received during the interval** from the date on which he becomes liable to pay the tax and the date which he is actually granted the registration.
- If registration is not taken within 30 days then no credit will be allowed on the raw material and the material used in semi-finished goods or finished goods. For all other purpose, credit will be allowed even if registration is taken after 30 days.

Negative List: Input Tax Credit not available

- Input tax credit will not be available in respect of the following:

A. MOTOR VEHICLES

However credit in respect of motor vehicles would be available in the following cases:

- when supplied in usual course of business – for example, a Trader in motor vehicles purchases motor vehicles and supplies them in usual course of his business. He shall be eligible to claim credit of GST paid on purchase of vehicles.
- Motor vehicles used for providing the following taxable services:
 - transportation of passengers,
 - transportation of goods, or
 - imparting training on motor driving skills

Athena comments

- If motor vehicles used for:
 - Courier agency [transporting **documents**]
 - Outdoor catering
 - Pandal and shamiana
 - Tour operator [may be said that they transport passengers – but revenue may say that they transport **tourists**]

No Input tax allowed

B. Goods and 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
- travel benefits extended to employees on vacation such as leave or home travel concession

... when such goods and services are used **primarily** for **personal** **use** or consumption **of any employee**

Athena Comments

- This exclusion is a re-iteration of current exclusions.
- If use of such goods and services can be shown to be more than just for personal use or consumption of the employees, input tax credit would be available.
- **For example,**
 - a modelling agency hiring services of beauticians for its model employees would be eligible to claim credit of GST charged by the beauticians.
 - This is so because even though the models are employees, the services of beauty treatment are not for mere personal use or consumption of the models; it is rather for the provision of output services by the modelling agency itself.
- **FOOD FOR THOUGHT No. 1 -**
 - If any goods and services are to be purchased by a company as per mandatory legal requirement for benefit of employees, will ITC be available for these??
 - For example, a factory buys health insurance for all employees as per requirements defined by Factories Act; will ITC be available even though such insurance is for personal benefit of employees while being a requirement for furtherance of business also ??

Athena Comments

- **FOOD FOR THOUGHT No. 2**

- Whether ITC be available in respect of an outdoor catering services where a company hires such outdoor catering for a training event of employees;
- It should be noted that this catering provides food for personal consumption of employees; but such catering is a part of a larger goal of training the employees for furtherance of business.
- While Sodexo might not be available at ITC, such training catering must be treated as outside the list.

No Input Tax Allowed (Cont.)

C. Works Contracts

- Goods and 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
- This covers cases where:
 - The person gives works contract to another contractor

Athena Comments

- If the result of works contract is **plant and machinery**, then credit remains available.
- Plant and machinery is **not defined** anywhere under the act.
- These expressions have been interpreted to be **very wide** under other fiscal statutes.
- This exclusion is guided from the predecessor laws where credit was generally not allowed in respect of activities resulting in immovable property.
- There is no sound logic to denying the credit of tax paid on goods and services used in integral activities for furtherance of business; for example, construction of factory or office building.
- When the very philosophy of GST is to tax only the value additions, then denying the credit on this integral activity relating to business seems to be guided by the past rather than any sound logic.

No Input Tax Allowed (Cont.)

D. Goods purchased for use in the construction

- Goods acquired by the principal
- which are used in the construction of immovable property, other than plant and machinery, **and**
- which are not transferred by him to any other person.
- This covers cases where:
 - The person purchase goods and uses them in construction of immovable property for his own use
 - Renting business shall be greatly affected

No Input Tax Allowed (Cont.)

- E. Goods and services on which tax has been paid under the composition levy under section 8.**
- F. Goods and services used for private or personal consumption to the extent they are so consumed.**

Athena comments

- Goods and services used for private / personal consumption – deemed as supply
- No logic of denying credit

CONDITIONS AND RESTRICTIONS FOR CLAIMING INPUT TAX

Conditions for claiming Credit

- No taxable person shall be entitled to the credit of any input tax unless following four conditions are satisfied:
 - he is in possession of a tax invoice, debit note, supplementary invoice or such other taxpaying document as prescribed, issued by registered supplier
 - he has received the goods or services
 - ***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.
 - the tax is charged in respect of such supply has been actually paid to the credit of the appropriate government, either in cash or utilization of input tax credit admissible in respect of the said supply
 - Person claiming ITC has furnished the return under section 27
 - *A return furnished under sub-section (1) by a registered taxable person without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person.*

Athena Comments

- The third condition as per the list above is a severe provision.
- When the buyer of goods and services has already paid tax to the supplier, he should be allowed to claim credit of such tax.
- Buyer has no resources to track that such tax has been deposited by supplier in government treasury.
- Further, the buyer who has followed all legal provisions should not be penalized due to the fault of supplier who has not deposited tax on time to the government treasury.
- This provision is defeating the very purpose of GST i.e. to ensure availability of credit of tax paid in a easy and convenient manner to taxpayers.
- Such provision is not present in CCR, however, such provision is there in certain state VAT acts.
 - Gheru Lal case (P&H HC)
 - Mahalaxmi Cotton case (Bombay HC)
 - Suvasini case (Delhi HC) – issue pending

Conditions for claiming Credit

- It has further been stated that where the goods against an invoice are received in lots or installments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or installment. [Proviso to Section 19(ii)]

Restrictions for claiming Credit

- *Time Limit for claiming Credit*

A taxable person shall not be entitled to take input tax credit in respect of any supply after the earlier of following two events

1. filing of return under section 27 for the month of September following the end of financial year to which such invoice pertains; or
2. filing of the relevant annual return

- 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.

Athena Comments

- Time limit for claiming credit of tax is present even in CCR. Currently, the time limit is 1 year from date of invoice. Thus, presently in respect of all the invoices taxable person can claim credit any time within 1 year from the date of invoice. In GST scenario, in respect of invoices for the month of Jan – March tax payer would be available with a little time for availing credit. Due to this, the taxpayer has to be vigilant to ensure that all invoices have been booked on time and GST has been claimed.
- This provision may discourage timely filing of annual return by taxpayers since they would be at an advantage (get more time to claim credit) if they delay the annual filing for financial year to the month of November.
- The table below illustrates the time limit of claiming credit under different scenarios of filing of annual return by taxpayer for the same month of invoice:

Month of Invoice	Time Limit 1 - Month of filing annual return for FY of invoice	Time Limit 2 – Month of filing for return u/s 27 for month of September following end of FY of invoice	Applicable Time limit	Time limit available to claim credit
20 Mar'15	20 July'15	20 Oct'15	20 July'15	4 months
20 Mar'15	20 Dec'15	20 Oct'15	20 Oct'15	8 months

APPORTIONMENT OF CREDIT

Apportionment of credit in certain cases

- Where the goods and 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 attributable to the purposes of his business.
- where the goods and services are used by the registered taxable person partly for effecting taxable supplies and partly for effecting non-taxable supplies, including exempt supplies but excluding zero-rated supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies including zero-rated supplies.
- The appropriate government may, by notification, prescribe the manner in which the credit referred above may be attributed.

TRANSFER OF CREDIT

Transfer of credit

- 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.

REVERSAL OF CREDIT

Reversal of credit in certain cases

- Where
 - a registered taxable person switches to composition levy scheme (under section 8) or where the goods; or
 - services supplied by him become exempt absolutely under section 10,...he shall pay an amount equal and to the credit of input tax in respect of
 - imports held in stock; and
 - inputs contained in semi finished or finished goods held in stock.....on the day immediately preceding the date of such switchover or the date of such exemption.
- If after payment of such amount, any balance remains in input tax credit the same shall be lapsed.

Reversal of credit in certain cases (contd.)

- In case the taxable person supplies capital goods on which input tax credit has been taken, he shall pay an amount equal to
 - input tax credit taken on said capital goods reduced by the percentage points as may be specified in this behalf; or
 - the tax on transaction value such goods,
 - whichever is higher

MANNER OF TAKING CREDIT

Claim of ITC on provision basis

Step 1 for taking ITC

- As per Section 28, every taxable person shall 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 to be maintained in the manner as may be prescribed
- Provided that a taxable person who has not furnished a valid return under section 27 of the Act shall not be allowed to utilize such credit till he discharges his self-assessed tax liability

Finalization of Claim of ITC

Step 2 for taking ITC (Section 29)

Matching of claim of ITC

- The details of inward supply furnished by taxable person (“recipient”) for a tax period be matched-
 - With the corresponding details of outward supply furnished by the corresponding taxable person (“Supplier”) in his valid return for the same tax period or any preceding tax period
 - With the additional duty of customs paid under Section 3 of the Customs Tariff Act, 1975
- The claim of input tax credit be finally accepted and shall be communicated to the recipient where-
 - Invoices and/ or debit notes relating to inward supply matches with the details of corresponding outward supply or with the additional duty of customs paid

Finalization of Claim of ITC

- Where *ITC* claimed by recipient in respect of inward supply is in excess of tax declared by the supplier for the same supply or the outward supply is not declared by supplier in his valid return then:
 - The discrepancy shall be communicated to both i.e. the recipient and the supplier
 - If such discrepancy is not rectified by the supplier in his valid return for the month in which discrepancy is communicated then the amount of discrepancy shall be added to the output tax liability of the recipient for the month succeeding the month in which discrepancy is communicated
 - The recipient is also required to pay interest on said addition of output liability at the rate specified under Section 36(1)
 - Interest from date of availing : till date it is treated as output liability

Finalization of Claim of ITC

Excess of ITC on account of duplication of claim

- The duplication of claim of ITC shall be communicated to the recipient
- The amount of claim of ITC that is found to be in excess on account of duplication of claim shall be added to the output tax liability of the recipient - for the month in which duplication is communicated
- In such case recipient is also required to pay interest at the rate specified in Section 36(1)
- If vendor declares detail of invoice in his return- then recipients liability received. But vendor must declares with respect of the time allowed for revised return

Manner of taking Input Tax Credit in respect of Job-work (Section 16A)

- The principal could claim input tax credit on inputs or capital goods sent to job worker or directly delivered by vendor to job worker.
- The said inputs after processing shall have to be returned within 180 days from date of supply. Capital goods shall have to be returned within 2 years from the date of supply.
- The principal is the person who is responsible for accountability of goods and payment of tax as per section 43A
- If not received back within time prescribed, credit attributable to such inputs or capital goods shall be paid and on receipt can reclaim input tax credit and interest.

INPUT SERVICE DISTRIBUTOR

Input Service Distributor(Section 17)

- 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; Where distribution is to a business vertical within that state, CGST or IGST can be distributed as CGST.
- 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 be distributed only to that supplier;
 - d) the credit of tax paid on **input services** attributable to more than one supplier shall be distributed only amongst such supplier(s) to whom the input service is attributable and such distribution shall be *pro rata on the basis of the turnover in a State of such* supplier, during the relevant period, to the aggregate of the turnover of all such suppliers to whom such input service is attributable and which are operational in the current year, during the said relevant period.

Recovery of credit distributed in excess (Section 18)

- When the credit distributed by ISD is in excess of what is available for distribution by him, it can be recovered with interest and in the manner specified in section 51.
- When the credit distributed by ISD in excess to one or more suppliers, it can be recovered from such suppliers with interest in manner as specified in section 51.

UTILIZATION OF CREDIT

Utilizing ITC

- The ITC as self assessed (Section 28) in the return of the taxable person shall be credited to his electronic credit ledger
- The amount available in electronic credit ledger may be used for making any payment towards tax payable under the act-
 - In such manner
 - Subject to such conditions; and
 - Within such time as may be prescribed

Order of Preference for using ITC relating to different taxes i.e. IGST/ SGST/ CGST

- The taxable person may have ITC on account of various taxes such as IGST/ CGST/ SGST – following is the table that summaries the order of preference for using the credit available on account of different taxes

Type of credit	First preference	Second preference	Third preference	Comments
IGST	IGST	CGST	SGST	
CGST	CGST	IGST	-	Credit pertaining to CGST cannot be used for payment of SGST
SGST	SGST	IGST	-	Credit pertaining to SGST cannot be used for payment of CGST

Questions??

THANK YOU

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