Contents

1. What is ‘Input Tax’?
2. Eligibility and conditions for claiming ITC
3. Apportionment of ITC
4. Blocked Credit
What is ‘Input Tax’? [Sec 2(62)]

Input Tax means CGST / SGST / ITGST / UTGST charged on input supplies of goods or services and includes IGST on imports of goods. But does not include tax paid under Composition leavy Non-GST Taxes. Tax payable under RCM liability (imports of services are covered here).
Eligibility and conditions for claiming ITC
Section 16: Eligibility & Conditions for claiming ITC

Sec 16(1): Right to claim ITC

Every Registered Person

Entitled to take credit of Input Tax charged

On supply of goods or services or both

Used / intended to be used in course or furtherance of business

Subject to rule 36 to 45

In the manner specified in sec 49 (Manner of payment)

And said amount shall be credited to Electronic Credit Ledger.
Section 16 : Eligibility & Conditions for claiming ITC

Sec 16(2) : Specified Conditions to be fulfilled

(a) Possession of *Invoice/Debit Note/Other prescribed tax paying document*

(b) Receipt of *goods or services or both*

(c) *Tax paid* by supplier

(d) *Return* filed by recipient u/s 39
Condition 1: Supporting Documents for taking ITC

Rule 36(1): Eligible Supporting Documents

- Supplier Invoice as per sec 31
- Self invoice in cases of RCM
- Debit Note
- Bill of Entry
- ISD Invoice as per Rule 54(1)
Condition 1: Supporting Documents for taking ITC

Rule 36(2): Particulars to be mentioned in the documents

- All the required particulars as per the provisions of Chapter V should be contained in the said document, and
- The information is furnished in Form GSTR-2 by such person.

As per Proviso, even if the said document contains following particulars, ITC can be availed:

- Details of the amount of tax charged
- GSTIN of supplier
- Total value of goods / services / both
- GSTIN of the recipient
- Description of goods or services
- Place of supply (in case of inter-state supply)
Rule 36(3) GST demand order: ITC not admissible

Condition 1: Supporting Documents for taking ITC

GST paid on demand order on account of any
- fraud,
- willful misstatement or
- suppression of facts
Condition 1: Supporting Documents for taking ITC

Rule 36(4): Restrictions on availment of ITC i.r.o. Invoices/DNs which are not uploaded in GSTR 1 by supplier

ITC i.r.o. Invoices/DNs which are not uploaded in GSTR 1 by supplier **Shall Not** exceed 10%** of eligible ITC* i.r.o. Invoices/DNs which are uploaded in GSTR 1 by supplier

*But obviously, ITC cannot exceed actual amount

**Earlier this amount was capped at 20%. It is changed to 10% by *Notification No. 75/2019–Central Tax* dated 26/12/2019 (Applicable w.e.f. 01/01/2020)
Condition 1: Supporting Documents for taking ITC.

Rule 36(4): Restrictions on availment of ITC i.r.o Invoices/DNs which are not uploaded in GSTR 1 by supplier

Circular No. 123/42/2019-GST

This restriction applies to only those invoices/DNs, details of which are not uploaded by the suppliers u/s 37(1) – Furnishing details of Outward Supplies.

Therefore following are the cases where this restriction is not applicable since these are outside the gambit of sec 37(1):

- IGST paid on Imports
- Documents issued under RCM
- Credit received from ISD
Condition 1: Supporting Documents for taking ITC.

Rule 36(4): Restrictions on availment of ITC i.r.o Invoices/DNs which are not uploaded in GSTR 1 by supplier

Circular No. 123/42/2019-GST

Cut off date for determination of eligible ITC

Due date of filing of GSTR-1 as per sec 37
Condition 1: Supporting Documents for taking ITC

Rule 36(4): Restrictions on availment of ITC i.r.o Invoices/DNs which are not uploaded in GSTR 1 by supplier

ITC not availed due to this provision

Shall be available in any subsequent period in which invoice / DN of are declared by the supplier in GSTR-1

Circular No. 123/42/2019-GST
Condition 2 : Receipt of goods or services

**Special Circumstances**

Explanation to sec 16(2)(b),

- Where **the goods are delivered by the supplier to the agent or any other person** as directed by the recipient, it is deemed that the recipient has received the goods. Such delivery to the agent or any other person can take place before or during the movement of goods by way of transfer of title to goods or otherwise.
- Where the **services are provided by the supplier to any person on the direction of** and on account of the registered person (recipient) it shall be deemed that such registered person (recipient) has received the services.

For Example, “Bill to.....Ship to.....” Model
Condition 3: Actual payment of GST by supplier

Pending actual payment by supplier → ITC will be allowed on provisional basis as per sec 41

Supplies under RCM →
- RP shall make self invoice when supply is received
- RP shall pay GST (RCM) using e-cash ledger
- ITC shall be admissible only if GST (RCM) has been paid

Government has clarified –
If the RCM liability of the month is paid, then ITC is admissible in *same month* in which *supply is received* (Not in the month in which payment is made)
Condition 4: Filing of Sec 39 Return (Regular Return)

- ITC availment is to be made in e-credit ledger as maintained by portal
- When GSTR-3B is filed by recipient, then credit is posted into e-credit ledger (thus, availment takes place)
Section 16(2) Proviso: Payment to supplier within 180 days

Invoice issued by supplier

180 Days

ITC Admissible

Otherwise

ITC is reversed (Rule 37)

Payment to supplier (Total value + GST)

Exception: RCM Supplies (Rule 37)
Rule 37 : Non-payment of consideration within 180 days

Details of such supplies (including total value of such supply and Input Tax proportionate to unpaid value thereon) for which payment is not done to the supplier shall be furnished in GSTR-2 for the month immediately following the period of 180 days from date of issue of invoice.

Furnish details of unpaid supplies

Amount is added to Output Tax Liability of the corresponding month

Pay this liability along with interest @ 18%*

*Interest is payable for the period starting
   From the date of availing ITC
   Till date when amount is added to Output Tax Liability
Rule 37 : Non-payment of consideration within 180 days

Non-applicability : Proviso to Rule 37(1)

Expenditure to be incurred by the supplier but actually incurred by the recipient

Deemed to have been paid [since includible in total value u/s 15(2)(b)]

Supplies under *Schedule-1*

Deemed to have been paid
Rule 37: Non-payment of consideration within 180 days

Rebooking of ITC on Payment

Subsequent Payment to supplier → ITC can be availed

Time limit specified in sec 16(4) shall not apply in case of rebooking of ITC
Section 16: Eligibility & Conditions for claiming ITC

Proviso to sec 16(2): Supply in lot or instalment

Supply covered by single Invoice

Delivery in lots

ITC on receipt of last instalment
Section 16 : Eligibility & Conditions for claiming ITC

Proviso to sec 16(3): Depreciation on Tax portion

RP claimed depreciation in Tax component of cost of Capital Goods and Plant & Machinery

ITC becomes ineligible i.r.o. such amount
Section 16 : Eligibility & Conditions for claiming ITC

Proviso to sec 16(4): Time limitation for booking or taking ITC

Earlier of:

- **Due date** of furnishing return u/s 39 following the end of FY (20/22/24th Oct)
- **Actual date** of furnishing the relevant annual return
Apportionment of Credit
Sec 17: Apportionment of Credit and Blocked Credit

- Capital Goods
- Inputs
- Input Services

- Business Purpose
- Non-Business Purpose
- Mixed Use

Apportionment of ITC

Sec 17(1)
Sec 17: Apportionment of Credit and Blocked Credit

Capital Goods
Inputs
Input Services

Exempt Supply*
Non exempt Supply
Mixed Use

ITC
Apportionment of ITC

Sec 17(2)
Sec 17 : Apportionment of Credit and Blocked Credit

*Exempt Supply for the purpose of sec 17(2) shall include -

- Exempt supply u/s 2(47)**
- Supplies on which recipient is liable to pay tax on RCM basis
- Transactions in Securities (Value = 1% of Sales Value as per CGST Rules)
- Sale of Land, Sale of Building [subject to Schedule II para 5(b)***] (Value = Stamp Duty Value)

***Sale of Building after issuance of completion certificate or after first occupation, *whichever is earlier*, is exempt supply as per Schedule III Para 5.
Sec 17 : Apportionment of Credit and Blocked Credit

**Exempt Supply as per sec 2(47) means -

- Nil Rated Supply
- Supplies which may be wholly exempt from tax u/s 11
- And *includes* Non-taxable Supply
Sec 17 : Apportionment of Credit and Blocked Credit

*Exempt Supply for the purpose of sec 17(2) shall not include - the value of activities / transactions specified in Schedule III except those specified in Para 5 of the said schedule
Sec 17 : Apportionment of Credit and Blocked Credit

Schedule III Supplies

1. Services by an employee to the employer in the course of or in relation to his employment.

2. Services by any court or Tribunal established under any law for the time being in force.

3(a). the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities

3(b). the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity

3(c). the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

6. Actionable claims, other than lottery, betting and gambling.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8(a). Supply of warehoused goods to any person before clearance for home consumption;

8(b). Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.
Sec 17(4) : Special option for Banking Company / Financial Institutions (Including NBFC)

Banking co. / Financial institution (Incl. NBFC)

Engaged in supplying services by way of accepting deposits, extending loans or advances

Option 1

Comply with provisions of sec 17(2)

Option 2

Avail every month, 50% of eligible ITC in that month (Rest shall lapse)*
Sec 17(4) : Special option for Banking Company / Financial Institutions (Including NBFC)

Proviso to Sec 17(4)

Option once chosen cannot be withdrawn during the remaining part of FY

Restriction of 50% shall not apply to *Inter-branch supplies* (for inputs & input services)
Sec 17(4) : Special option for Banking Company / Financial Institutions (Including NBFC)

Conditions as per Rule 38 for banking companies who are availing ITC as per Option 2

- Tax paid on inputs and input services for non-business purpose
- Supplies on which ITC is Blocked
Sec 17(4) : Special option for Banking Company / Financial Institutions (Including NBFC)

ITC on inputs and input services on Inter-branch supplies

50% of remaining amount of ITC furnished in Form GSTR-2

Shall be credited to E-Credit Ledger
Blocked Credit
Sec 17(5) : Blocked ITC

Sec 17(5)(a)+(aa)

Motor Vehicles for Transportation

Goods

Motor Vehicles

Seating capacity : 13+

Passengers*

Seating capacity : 13 / less

Vessels

Aircraft

ITC Admissible

ITC Admissible

X

X

X

X
Sec 17(5) : Blocked ITC

*Exceptions : When used for making following taxable supplies

- Further supply of such motor vehicles or vessels or aircraft
- Transportation of passengers
- Imparting training on driving on such motor vehicles
- Imparting training on navigating such vessels
- Imparting training on flying such aircraft
Sec 17(5) : Blocked ITC

Sec 17(5)(ab)

- Relating to motor vehicles, vessels and aircraft referred in Sec 17(a) & 17(aa)
- Other cases
- Relating to exceptions in Sec 17(a) & 17(aa)
- Other Exceptions mentioned

Services of General Insurance, Servicing, Repairs and Maintenance

ITC
Sec 17(5) : Blocked ITC

*Exceptions : When received by taxable person engaged in

- Manufacture of such motor vehicles or vessels or aircraft
- Supply of general insurance services in respect of such motor vehicles, vessels or aircrafts insured by him
Sec 17(5) : Blocked ITC

- Food & Beverages
- Outdoor Catering
- Beauty Treatment
- Health Services
- Cosmetic & Plastic Surgery
- Life Insurance & Health Insurance

Exceptions*
Sec 17(5) : Blocked ITC

Sec 17(5)(b)(i)

Relating to motor vehicles, vessels and aircraft referred in Sec 17(a) & 17(aa)

Leasing, renting or hiring of motor vehicles, vessels or aircrafts

Other cases

Relating to exceptions in Sec 17(a) & 17(aa)

Other Exceptions mentioned*

ITC

ITC

ITC

ITC

ITC

ITC

ITC

ITC
Sec 17(5) : Blocked ITC

**Sec 17(5)(b)(i)**

*Exceptions*

**Outward Supply**

- Is of Same Category as of Inward supply
- Is supplied as an element of a taxable Composite or mixed supply
Sec 17(5) : Blocked ITC

Sec 17(5)(b)(ii)&(iii)

• Health & Fitness services
• Membership of Club
• Travel benefits extended to employees on vacation

If Goods / Services mentioned in Sec 17(5)(b) are provided by an employer to employee under statutory Obligation, ITC is admissible
Sec 17(5) : Blocked ITC

Sec 17(5)(c) : Works Contract

ITC Admissible

Works Contract (Sub-Contractor)

Works Contract (Main Contractor)

Plant & Machinery**

Construction*** of Immovable Property*

Others

Expense Booked

Capitalized

ITC Admissible

ITC Admissible

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Sec 17(5) : Blocked ITC

Sec 2(119) : Works Contract

Works Contract *means* a contract for

- Building
- Construction
- Fabrication
- Erection
- Completion
- Installation
- Fitting Out
- Maintenance
- Renovation
- Alteration
- Commissioning
- Improvement
- Modification
- Repair

Wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract
Sec 17(5) : Blocked ITC

**Contents**

Sec 17(5) : Blocked ITC

Immovable Property does not include Standing timber, growing crops or grass

Immovable Property shall include
1. land,
2. benefits to arise out of land, and
3. things attached to the earth, or permanently fastened to anything attached to the earth;

Immovable property includes
1. land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or
2. any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass

*Definition of Immovable Property under various acts*
Sec 17(5) : Blocked ITC

**Plant & Machinery**

**Plant and machinery** means apparatus, equipment, machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports.

But excludes

1. land, building or any other civil structures,
2. telecommunication towers; and
3. pipelines laid outside the factory premises.
construction includes,
1. re-construction,
2. renovation,
3. additions or
4. alterations or
5. repairs,
to the extent of capitalisation, to the said immovable property.
Sec 17(5)(d) : Construction on own account

Goods or services or both received by a taxable person for **construction** of an **immovable property** (other than plant or machinery) on his own account **including** when such goods or services or both are **used in the course or furtherance of business**.
Sec 17(5) : Blocked ITC

(e) Goods or Services or both on which tax is paid u/s 10 (Composition Scheme)

(f) Goods or Services or both received by NRTP except on goods imported by him

(g) Goods or Services or both used for personal consumption

(h) Goods lost, stolen, destroyed, written off or disposed off by way of gift or free samples

(i) Any tax paid in accordance with the provisions of sections 74, 129 and 130
Thank you!!