

GST

Goods & Services Tax



INPUT TAX CREDIT - GST

Introduction:-

Chapter V of GST Act deals with input tax credit. The chapter is divided into 7 sections:

- (i) **Section 16** : Eligibility and conditions for taking input tax credit
- (ii) **Section 17** : Apportionment of credit and blocked credits
- (iii) **Section 18** : Availability of credit in special circumstances
- (iv) **Section 19** : Recovery of Input Tax Credit and Interest thereon
- (v) **Section 20** : Taking input tax credit on inputs sent for job work.
- (vi) **Section 21** : Manner of distribution of credit by ISD.
- (vii) **Section 22** : Manner of recovery of credit distributed in excess.

Input tax credit is the backbone of the GST regime. GST is nothing but a value added tax on goods & service combined. It is these provisions of Input Tax Credit that make GST a value added tax i.e., collection of tax at all points after allowing credit for the inputs. The procedures and restrictions laid down in these provisions are important to make sure that there is seamless flow of credit in the whole scheme of transition without any misuse.

Relevant Definitions:-

Section 2(98) read along with Section 9 of Model GST Act - Taxable person means a person who carries on any business at anyplace in India/State of _ and who is registered or required to be registered under Schedule III of the Act.

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Section 2 (55) of Revised Model GST Act - It means credit of “Input tax” as defined in Section 2 (56).

Section 2 (56) of Revised Model GST Act - “Input tax” in relation to a taxable person, means

- the {IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or service 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 reverse charge.

Section 8(3) of Revised Model GST Act -Levies tax on goods and/or services on reverse charge. Therefore, ‘input tax credit’ is the tax paid by a taxable person under the Act whether on forward charge or reverse charge for the use of such goods and/or services in course or furtherance of his business.

Section 2 (43) of Revised Model GST Act - Electronic Credit Ledger - The input tax credit ledger in electronic form maintained at the common portal for each registered taxable person in the manner as may be prescribed in this behalf.

Section 2 (19) of Revised Model GST Act -“Capital Goods” - means

- any goods,
- the value of which is capitalised in the books of accounts
- of the person claiming the credit
- and which are used or intended to be used
- In the course or furtherance of business.

Section 2 (52) of Revised Model GST Act - Input: “Input” means

- any goods,
- other than capital goods,
- used or intended to be used by a supplier
- In the course or furtherance of business

Section 2 (53) of Revised Model GST Act - Input service: “Input service” means

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- any service
- used or intended to be used
- by a supplier
- In the course or furtherance of business

Section 16 of Revised Model GST Act - Eligibility & Conditions for taking ITC:-

Registered person to take credit:

Every registered taxable person subject to Section 44 (Person liable to pay tax under GST Law), **shall be entitled to take credit of admissible input tax.** The input tax credit is credited to the electronic credit ledger.

Conditions for availing input tax credit: Registered taxable person is not entitled to input tax credit on supply of goods and/or services unless he:

- (i) is in possession of a
 - tax invoice, debit note, supplementary invoice or
 - such other taxpaying document as may be prescribed.
- (ii) Has received the goods and/or services. The goods are deemed to be received by the taxable person when
 - Goods are delivered by supplier to recipient or other person on direction of the taxable person whether an agent or otherwise before or during movement of goods by way of transfer of documents of title of goods or otherwise.
- (iii) Tax charged for such supply
 - is actually paid to the credit of the appropriate Government,
 - either through cash or through utilisation of input tax credit admissible in respect of such supply
- (iv) He has furnished return as per Section 34 of MGST Law.

In case of the goods which are received in lots or instalments, against an invoice the credit could be availed upon receipt of last lot or instalment by registered taxable person.

(a) Eligibility of input tax credit on inputs held in Stock and contained in Semi-Finished and Finished Goods held in Stock: (Sec 17 of MGST Law)

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The credit on inputs held in stock and inputs contained in semi-finished goods and finished goods held in stock are available in the following manner:

S.No.	Eligible persons	Credit entitled	As on	Restriction/conditions
1	Person applied for registration within 30 days from the date of liability to pay tax register and registered	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date from which he becomes liable to pay tax	→ Cannot avail credit of goods and / or services after 1 year from tax invoice date
2	Person applied for registration after 30 days from the date of liability to pay tax , registers and registered	Nil	NA	→ The amount of credit calculated as per GAAP
3	Person who is not required to register, but obtains voluntary registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration	
4	Person ceases to pay composition tax (Sec 9 to Sec 8)	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme	

(B) Proportionate Credit:

The goods and / or services are **used by a registered taxable person partly for business and partly for non-business**; he is eligible to input tax credit of goods and / or services attributable to the purposes of business.

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The goods and / or services are **used partly for effecting taxable supplies (plus zero-rated supplies) and partly for effecting non-taxable supplies (plus exempt supplies)**; he is eligible for credit attributable to the taxable supplies including zero-rated supplies.

(C) Input Tax Credit and Change in constitution of Taxable Person:

The change in constitution of taxable person due to sale merger, demerger, amalgamation, lease or transfer of business with provision for transfer of liabilities, **the registered taxable person allowed transferring the input tax credit remaining unutilized in the books of account** to such sold, merged, demerged, amalgamated, leased or transferred business.

(D) Ineligible Credit:

(i) **motor vehicles**, except when they are supplied in the usual course of business or are used for providing taxable services of –

- Transportation of passengers
- Transportation of goods
- Imparting training or motor driving skills

(ii) Goods and / or services provided in relation to –

- food and beverages, outdoor catering, cosmetic and plastic surgery
- life insurance, health insurance
- travel benefits to employees on vacation such as leave or home travel concession
- membership of a club, beauty treatment,
- health services,
- health and fitness centre

Such goods and / or services as are used primarily for personal use or consumption of employee

(iii) Goods and/or services acquired by principal in the **execution of works contract**

- **when such contract results in construction of immovable property,**
- Other than Plant and Machinery.

(iv) Goods acquired by principal, **the property in which is not transferred**

- **whether as goods or in some other form**
- **to any other person,**
- **which are used in construction of immovable property,**
- Other than Plant and Machinery.

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- (v) Goods and/or services on which composition tax has been paid as per Sec 9 of Model GST Law.
- (vi) Goods and/or services used for **private or personal consumption** to the extent they are so consumed.

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.

When taxable person switches over from regular scheme to composition scheme:

- pay an amount by debiting electronic cash ledger,
- equivalent to input tax credit of –
- inputs held in stock or
- inputs contained in semi-finished or finished goods held in stock
- On the day immediately preceding the date of such switch over.
- Balance of input tax credit lying in the electronic credit ledger, after payment of the above said amount, shall lapse.
- The amount payable is to be determined as per general accepted accounting principles (GAAP).

The above provision is also applicable where goods or services supplied by taxable person are absolutely exempt.

Supply of capital goods on which Input Tax Credit is taken: The registered taxable person shall:

- pay an amount equal to input tax credit taken on such capital goods
- **reduced by percentage points** as prescribed or
- Tax on the transaction value of such capital goods, whichever is higher.

Credit in respect of invoice for supply of goods or services for the month of September, after filing returns:

A taxable person shall not take input tax credit

- in respect of any invoice for supply of goods and/or services,
- after the filing of the return 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.

Section 19 of Revised Model GST Law - Recovery of ITC and Interest thereon:-

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Input tax credit taken wrongly; the same shall be recovered from the registered taxable person in the manner prescribed.

Section 20 of Revised Model GST Law - Input Tax Credit - Job Work:-

(i) **Relevant Definitions:**

- **Job work:** Any treatment or process done by a person on goods belonging to a registered taxable person
- **Job worker:** A person who does any treatment or process on goods of a registered taxable person.
- **Principal:** A person on whose behalf an agent carries on the business of supply or receipt of goods and/or services.

(ii) **Entitlement of Credit on Inputs:**

- The principal can **take credit of input tax** on inputs sent to job-worker, for job work
- subject to such **conditions and restrictions** as may be prescribed
- the inputs, **after completion of job-work**, are received back by him **within 1 Year** of their being sent out
- Credit of inputs can be taken **even if inputs are sent directly to job-worker's** place without bringing to principal's place of business.
- If input sent directly to job worker, the period of 180 days is counted from the date when job worker receives input.
- If the inputs are **not received back within 180 days**, the principal shall pay an **amount equal to input tax credit taken** on the said inputs.
- If the inputs are received back by the principal, he **may reclaim the input tax credit and interest paid earlier**.

(iii) **Entitlement to Credit on Capital Goods:** The principal can take credit of input tax on capital goods sent to job-worker

- The said capital goods, **after completion of job-work**, are received back by him **within 3 years** of their being sent out
- The principal can take credit of capital goods even if such capital goods are **sent directly to job-worker's place** without bringing to principal's place of business.

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- If the capital goods are **not received back within 2 years, the principal shall pay an amount equal to input tax credit taken** on the said capital goods.
- If the capital goods are received back by the principal, he **may reclaim the input tax credit and interest paid earlier**.

Section 21 of Revised Model GST Law - Manner of distribution of credit by Input Service Distributor:-

Input Service Distributor (ISD) is an office of the supplier of goods and/or services where document (like invoice) of services attributable to other locations are received (since they might be registered separately). Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as the output services are being provided there.

It is deemed that an ISD is a supplier of services for the purposes of distributing the credit.

Distribution of credit where ISD and recipient are located in different States under CGST Act: ISD can distribute as prescribed, credit of CGST or IGST as the case maybe **as IGST** by issuing prescribed document mentioning the amount of credit distributed to recipient of credit located in different States.

Distribution of credit where ISD and recipient are located in different States under SGST Act: ISD could distribute as prescribed credit of SGST **as IGST** by issuing a prescribed document containing the amount of credit distributed.

Distribution of credit where ISD and recipient are located within the State under CGST Act: In case of different registrations within the same State by an entity, it may have to distribute credit to such locations also as in the case of locations with different registrations outside the State. In order to enable the same, it is provided that ISD can distribute in the prescribed manner, credit of CGST and IGST **as CGST** by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

Distribution of credit where ISD and recipient are located within the State under SGST Act: Similar to the premises of CGST as indicated supra under CGST Act, even under the SGST Act, it is provided that an ISD can distribute in the prescribed manner, credit of SGST and IGST **as SGST** by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

Section 22 of Revised Model GST Law - Manner of recovery of credit distributed in excess:-

Excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 66 or 67, as the case may be, shall apply *mutandis mutandis* for effecting such recovery.

Transitional Provisions

Introduction:

Transitional Provisions in GST Act is to clarify as to when and how the operative parts of the enactments are to take effect. The Transitional Provisions generally are intended to take care of the events during the period of transition.

- ✓ **What is the Status of Existing Officers?**
- ✓ **What is the Status of Existing Dealers, Manufacturers & Service Provider?**
- ✓ **ITC Related Transitional Provisions?**
- ✓ **Refund of Cenvat Credit & Input Tax Credit?**
- ✓ **Movement of Goods after the enactment of GST?**
- ✓ **Price Fluctuations?**
- ✓ **Taxability in case of Job Work?**
- ✓ **Adjudication /Appeals under earlier law?**
- ✓ **How transactions in midway can be treated?**

01. ITC Related Transitional Provisions? (Other than Cenvat Credit on Inputs, Input Services & Capital Goods)

01.1 Credit distribution of service tax by ISD? (Sec 190 of Model GST Law)

- The **input tax credit** on account of services
- **received prior** to the appointed day by an ISD

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- Shall be **eligible** for distribution **as credit** under this Act
- Even if **invoices** relating to such services
- **received on or after** the **appointed day**
- **Date of receipt of services is more important.**
- Provision only CGST Law

01.2 Provision for transfer of unutilized Cenvat Credit by Taxable Person having Centralised Registration (Sec 191 of Model GST Law)

- Where a taxable person having **Centralized Registration.**
- Obtained a registration under GST.
- The registered person is allowed to take, in his Electronic Credit Ledger, credit of the **amount of Cenvat Credit** carried forward in a return, furnished under the earlier law.
- If the taxable person files his return for the period ending with the day immediately preceding the appointed day **within 3 Months** of the appointed day, such credit shall be allowed subject to the condition that the said **return is either an original return or a revised return** where the credit has been reduced from that claimed earlier:
- The taxable person **shall not be allowed** to take credit unless said amount admissible as Input Tax Credit under GST Law.
- The cenvat credit may be **transferred to any of the registered taxable persons** having the same PAN for which the centralized registration was obtained under the earlier law.
- Provision only under CGST Law.

01.3 Tax paid on Goods lying with Agents to be allowed as credit? (Sec 192 of Model GST Law)

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- **Goods** of Principal **lying at the premises** of the **agent** on the appointed day
- The **agent** shall be **entitled to take credit**
- If Agent is **registered** under GST Law
- Such **stock is declared by both** the principal and agent in the form and manner within such time as may be prescribed
- Invoices relating to such goods **not earlier than 12 months** from appointed day
- The principal has either reversed or not **availed input tax credit** in respect of such goods.
- Provision only under SGST Law.

01.4 Tax paid on Capital Goods lying with Agents to be allowed as credit? (Sec 193 of Model GST Law)

- **Capital Goods** of Principal lying at **the premises of the agent** on the appointed day.
- The agent shall be **entitled** to take **credit of tax** paid on such **capital goods** subject to the conditions:
 - The Agent is **registered** under GST Law.
 - Such **stock is declared by the principal and agent** in the form and manner within such time as may be prescribed.
 - **Invoices** relating to such goods **not earlier than 12 months** from appointed day.
 - The **principal has not availed input tax credit or reversed the tax credit** to the extent availed by him.
 - Provision only under SGST Law.

01.05 In case of Branch Transfers? (Sec 194 of Model GST Law)

- Any amount of **Input Tax Credit reversed** prior to the appointed day

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- Shall **not be eligible** as credit of input tax
- Under GST Law.
- Reversal of ITC in case of Branch Transfer is Important.
- Provision only under SGST Law.

02. Refund of Cenvat Credit & ITC?

02.01 If refund claims are Pending to be disposed of under earlier law? (Sec 179 of Model GST Law)

- Every claim of **Refund of any duty/tax/interest/any** other amount filed before the appointed day
- Shall be **disposed off** in accordance with the provisions of earlier law
- Refund claim accepted shall be **paid in cash.**
- Partially/ completely **rejected refund** claim shall be lapsed
- If the amount has been carried forwarded under GST Law as on the appointed day, refund claim on such amount shall not be allowed.
- Provision applicable for CGST & SGST Law

Illustration:

An export manufacturer files a claim for refund of Rs. 15,00,000/- on 15th June, 2017. Assume applicability of GST from 1st July, 2017. Explain the treatment?

Sol: The refund claim will be processed under the provision of the earlier law i.e. Central Excise Law itself. If the refund is considered as admissible by the Department, then the same will be paid in cash subject to the Doctrine of Unjust Enrichment

02.02 Refund claims filed after the appointed day for goods cleared or services provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law? (Sec 180 of Model GST Law)

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Every **claim for refund** of any duty or tax paid under earlier law, filed after the appointed day, for the goods or services exported **before or after the appointed day**, shall be disposed of in accordance with the provisions of earlier law.

Where any claim for refund of **Cenvat credit** is **fully or partially rejected**, the amount so rejected shall **lapse**:

That **no refund claim shall be allowed** of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under GST Law.

Provision only under CGST Law.

Illustration to discuss?

02.03 Refund claims filed after the appointed day for payments received and tax deposited before the appointed day in respect of services not provided? (Sec 181 of Model GST Law)

Every **claim for refund** of tax deposited under the earlier law in respect of **Services Not Provided**, filed **after** the appointed day, shall be disposed of in accordance with the provisions of earlier law.

Any amount eventually accruing to him shall be **paid in cash**, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944 (1 of 1944).

Provision only under CGST Law.

Illustration to discuss?

03.Movement of Goods After the enactment of GST: (Only Sale or Return)

03.01 If Goods sent on approval basis returned on or after the appointed day? (Sec 195 of Model GST Law)

- Goods sent on approval basis, **not earlier than 6 months** before the appointed day,
- **Goods returned** within **six months** or extended period (2 Months) from the appointed day.
- **No tax** shall be payable under GST Law
- **Goods not returned** within given period, **GST Payable by Supplier.**
- **Goods returned** after given period, **GST Payable by person returning goods.**

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- Provision only under SGST Law.

Illustration:

A Trader had removed goods on sale on approval basis worth Rs. 5,00,000/- on 1st November, 2016. These goods was confirmed by the recipient on 10th September 2017. GST is assumed to be applicable from 1st July, 2017. I GST Tax is Payable?

In the above Illustration, if the person returned goods on 10th January, 2018, is there any change in taxability?

04.Price fluctuation?

04.01 Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract (Sec 178 of Model GST Law)

➤ **Upward Revision in Contract:**

- **Contract prior** to the appointed day
- **Price revised** upwards on or after the appointed day
- Issue **debit note/supplementary invoices** to the recipient
- **Within 30 days** of such revision
- Debit note shall be **deemed** to have been issue under **GST Law**

➤ **Downward Revision in Contract:**

- **Price revised downwards** on or after the appointed day
- Issue **credit note/supplementary** invoices to the recipient
- **Within 30 days** if such revision
- Taxable person **allowed to reduce output tax liability**, when the recipient has **reduced his input tax credit** to the extent reduction in price.

Illustration:-

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A contract for supply of manpower was entered on 10th March, 2017 for Rs. 8,00,000. Due to certain renegotiations, this price was escalated to Rs. 10,60,000 on 15th April, 2017. Assuming applicability of GST from 1st April, 2017, how the variation in price should be treated?

Sol: The supplier should issue a supplementary invoice/debit note for Rs. 2,60,000 within 30 days of 15th April, 2017 i.e 15th May, 2017. This supplementary invoice/debit note will be assumed to be for outward supply of Rs. 60,000.

05.Adjudication /Appeals under earlier law?

05.01 Claim of CENVAT Credit to be disposed of under the earlier law? (Sec 182 of Model GST Law)

- Every **proceeding of appeal, revision, review** or reference relating to a **claim of CENVAT Credit** under the earlier law.
- Shall be **disposed** of in accordance with the **provisions of earlier law**, and any amount of **credit** found to be **admissible shall be refunded** in cash.
- If anything contrary contained under the earlier law other than **Section 11B(2)** of Central Excise Act, 1944
- Shall be disposed of in accordance with the provisions of earlier law, and if any **amount of credit** becomes recoverable as a result of such appeals etc.
- The same shall be **recovered** as an **arrears of tax** revenue under GST Law and the amount so recovered shall **not be admissible** as **input tax credit** under GST Law.
- Provision applicable for Both CGST & SGST Law.

05.02 Finalization of proceedings relating to output duty liability? (Sec 183 of Model GST Law)

- Every proceeding of **appeal, revision, review or reference** relating to any **output duty liability** initiated before the appointed day, **shall be disposed** of in accordance with the provisions of earlier law,

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- If any **amount becomes recoverable** as a result of such appeal etc., revision, review or reference, the same **shall be recovered as an arrear of tax** under GST Law and amount so recovered shall not be admissible as input tax credit under GST Law.
- If any amount found to be **admissible** shall be **refunded in cash**, notwithstanding anything contained under the provision of earlier law other than provisions of **11B (2)**.
- Provision applicable for Both CGST & SGST Law.

05.03 Amount recovered or refunded in pursuance of assessment or adjudication proceedings? (Sec 184 of Model GST Law)

- Where in **pursuance of an assessment or adjudication** instituted, whether before or after the appointed day, under the earlier law any amount of tax, interest, fine or penalty payable.
- During the course of assessment or adjudication tax or duty is **recoverable as an arrear of tax** under GST Law and the amount so recovered shall **not be eligible for input tax credit** under GST Law.
- **Refundable to the taxable person**, the same **shall be refunded** to him in cash under the earlier law, subject to Section 11B (2) of Central Excise Act 1944.
- Provision applicable for Both CGST & SGST Law.

05.04 Amount recovered or refunded pursuant to revision of returns? (Sec 185 of Model GST Law)

- Where any **return**, furnished under the earlier law, is **revised** and if, pursuant to such revision,
- Any **amount is found to be recoverable** from the taxable person, the same shall be recovered as an **arrear of tax** under GST Law and the amount so recovered shall **not be admissible** as **input tax credit** under GST Law.

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- Any amount found to be **refundable** to any taxable person, the same shall be **refunded to him in cash** under the earlier law, **subject to provisions** of **Section 11B(2)** of the Central Excise Act, 1944.
- Provision applicable for Both CGST & SGST Law.

06.How transactions in midway can be treated?

06.01 Deduction of tax source? (Sec 196 of Model GST Law)

Where a **supplier** has made any **sale of goods** in respect of which tax was required to be **deducted at source** under the earlier law and has also **issued an invoice** for the same **before** the appointed day, **no deduction of tax at source** under **section 46** shall be made by the Deductor under the said section where **payment to the said supplier** is made **on or after** the appointed day.

06.02 Transitional provisions for availing Cenvat Credit in certain cases (Sec 197 of Model GST Law)

Where any **Cenvat credit** availed for the **input services** provided under the earlier law has been **reversed** due to **non-payment** of the consideration within a period of **three months**, such credit can be **reclaimed** provided that the taxable person has made the **payment** of the **consideration** for that **supply of services within** a period of **three** months from the appointed day.

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