INPUT TAX CREDIT



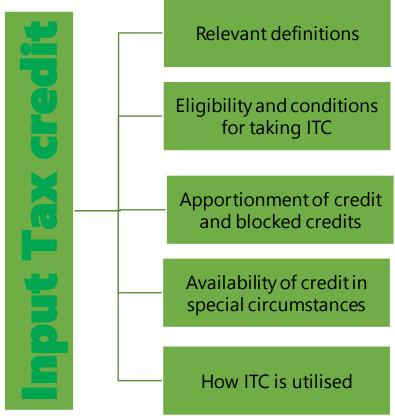
For the sake of brevity, input tax credit has been referred to as ITC in this Chapter. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

LEARNING OUTCOMES

After studying this Chapter, you will be able to:

- describe what are inputs, input services, capital goods and other relevant terms in relation to ITC.
- explain the various conditions, time-lines, restrictions and processes for taking ITC on goods and services in general and special circumstances.
- identify the items on which ITC is available as also the blocked items on which ITC is not available.
- explain the concept relating to availing of proportionate ITC when common inputs or input service or capital goods are used or intended to be used for exempted and taxable supplies or business and non-business activities.
- comprehend and apply the above provisions as also the provisions relating to utilization of ITC to compute the GST liability of a registered person payable in cash.

CHAPTER OVERVIEW F



1. INTRODUCTION

In earlier indirect tax regime, the credit mechanism for indirect taxes levied by the Union Government,

TAX CREDITS

(central excise duty and service tax) was governed by the CENVAT Credit Rules, 2004; and the credit mechanism for state-level VAT on sale of goods was governed by the States under their respective VAT laws. The VAT legislations allowed ITC of VAT on inputs and capital goods in transactions within the state, but not on inputs and capital goods coming in the State from outside the state, on which central sales tax was paid. CENVAT Credit Rules, 2004 allowed availing and utilization of credit of duty/tax paid on both goods (capital goods and inputs) and services by the manufacturers and the service providers across the country.

The credit across goods and services was integrated vide the CENVAT Credit Rules, 2004 in the year 2004 to mitigate the cascading effects of central levies namely, central excise duty and service tax. However, the credit chain remained fragmented on account of State-Level VAT as the credit of central taxes could not be set off against a State levy and *vice versa*. The chain further got distorted as ITC was not available on inter-State purchases. This resulted in cascading of taxes leading to increase in costs of goods and services.

The GST regime promises seamless credit on goods and services across the entire supply chain with some exceptions like supplies charged to tax under composition scheme and supply of exempted goods and/or services. ITC is considered to be the lifeline of the GST regime. In fact, it is the provisions of ITC, which essentially make GST a value added tax i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

Chapter V of the CGST Act [Sections 16 to 21] & Chapter V: Input Tax Credit of the CGST Rules [Rules 36-45] prescribe the provisions relating to ITC. State GST laws also prescribe identical provisions in relation to ITC. In this Chapter, provisions of sections 16, 17 and 18 have been discussed;¹ first the statutory provisions of these sections together with the relevant rules have been extracted followed by their analysis.

Provisions of ITC under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the provisions of section 16, 17, 18 and the relevant rules let us first go through few relevant definitions.



2. RELEVANT DEFINITIONS

- Agent means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].
- Business includes
 - (a) any trade, commerce, manufacture, profession, vocation, adventure,

¹ Provisions of ITC relating to job work and input service distributor [Sections 19, 20 and 21] will be discussed at the Final level.

- wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) activities of a race club including by way of totalisator or a licence to book maker or activities of a licenced book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities [Section 2(17)].
- Capital goods means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business [Section 2(19)].
- Conveyance includes a vessel, an aircraft and a vehicle [Section 2(34)].
- Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and includes non-taxable supply [Section 2(47)].
- 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(59)].
- Input service means any service used or intended to be used by a supplier in the course or furtherance of business [Section 2(60)].

- Input tax in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—
 - (a) the integrated goods and services tax charged on import of goods;
 - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
 - (c) the tax payable under the provisions of sub-section (3) and (4) of section 5 of the IGST Act;
 - (d) the tax payable under the provisions of sub-section (3) and sub-section(4) of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of sub-section (3) and sub-section(4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy [Section 2(62)].

- Input tax credit means the credit of input tax [Section 2(63)].
- Inward supply in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration [Section 2(67)].
- Motor vehicle shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 [Section 2(76)].
 - Motor vehicle or vehicle under the Motor Vehicles Act, 1988 means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimetres. [Section 2(28) of Motor Vehicles Act, 1988].
- Non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India [Section 2(77)].
- Principal means a person on whose behalf an agent carries on the business

of supply or receipt of goods or services or both [Section 2(88)].

- Recipient of supply of goods or services or both, means—
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

- Supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].
- Taxable supply means a supply of goods or services or both which is leviable to tax under CGST Act [Section 2(108)].
- Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(108)].
- Zero-rated supply² means any of the following supplies of goods or services or both, namely:—
 - (a) export of goods or services or both; or
 - (b) supply of goods or services or both to a Special Economic Zone (SEZ) developer or a Special Economic Zone unit [Section 16(1) of the IGST Act].

² Zero rated supply will be dealt in detail at the Final level.

3. ELIGIBILITY AND CONDITIONS FOR TAKING INPUT **TAX CREDIT [SECTION 16]**

	STATUTORY PROVISIONS			
Section 16	Eligib	ility and conditions for taking input tax credit		
Sub-section	Clause	Particulars		
(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.			
(2)	Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—			
	(a)	(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;		
	(b)	he has received the goods or services or both.		
	Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—			
		(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered 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;
		(ii)	where the services are provided by the supplier to any person on the direction of and on account of such registered person.
	(c)	in rest Govern	t to the provisions of section 41, the tax charged pect of such supply has been actually paid to the nment, either in cash or through utilisation of tax credit admissible in respect of the said supply;
	(d)	he has	furnished the return under section 39:
	Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:		
	Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the 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:		
	Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.		
(3)	compone under th	ent of the e provis	tered person has claimed depreciation on the tax ne cost of capital goods and plant and machinery sions of the Income-tax Act, 1961, the input tax d tax component shall not be allowed.
(4)	A registe	red pers	son 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.						
	Chapter	V: Input Tax Credit of the CGST Rules				
Rule 36	Docume tax cred	entary requirements and conditions for claiming input lit				
(1)	The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:-					
	(a)	an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;				
	(b)	an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;				
	(c)	(c) a debit note issued by a supplier in accordance with the provisions of section 34;				
	(d)	(d) a bill of entry or any similar document prescribed unde the Customs Act, 1962 or rules made thereunder for th assessment of integrated tax on imports;				
	(e)	an input service distributor invoice or input service distributor credit note or any document issued by an input service distributor in accordance with the provisions of sub-rule (1) of rule 54.				
(2)	Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in					

(1)

FORM GSTR-2³ by such person.

Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

Rule 37 Reversal of input tax credit in the case of non-payment of consideration

A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in **FORM GSTR-2** for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice.

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

³ Filing of GSTR-2 has been deferred till March 2019.

(2)	The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.
(3)	The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in subrule (2), is paid.
(4)	The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re- availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.



ANALYSIS

(i) Eligibility for taking ITC [Section 16(1)]

(a) Registration under GST

Every registered person shall be entitled to ITC of GST charged on inward supply of goods and / or services. This is subject to the provisions relating to use of ITC under section 49 and the conditions and restrictions in the rules. [Section 49 prescribes provisions relating to payment of tax, interest, penalty & other amounts. The same has been discussed in detail in Chapter 9: Payment of Tax.]

(b) Goods/services to be used for business purposes

ITC of GST will be available on goods and/or services which are used in the course or furtherance of the business [See definition of business]. The "intention to use" the goods and/or services in the course or furtherance of business would also suffice for availing ITC on such goods and/or services. Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit. ITC will be credited in electronic credit ledger.

(ii) Conditions for taking ITC [Section 16(2)]

The registered person will be entitled to ITC on a supply only if **ALL** the following four conditions are fulfilled:

(a) Possession of tax paying document [Section 16(2)(a) read with rule 36 of the CGST Rules]

ITC can be availed on the basis of any of the following documents:

- i) Invoice issued by the supplier of goods and/or services
- ii) Invoice issued by the recipient receiving goods and/or services from unregistered supplier along with proof of payment of tax, in case of reverse charge
- iii) Debit note issued by the supplier
- iv) Bill of entry or similar document prescribed under the Customs Act
- v) Revised invoice
- vi) Document issued by input service distributor⁴

The documents basis which ITC is being taken should contain at least the following details:

- > Amount of tax charged
- Description of goods or services
- > Total value of supply of goods and/or services
- > GSTIN of the supplier and recipient
- Place of supply in case of inter-State supply

Note: Section 16 and the CGST Rules do not specify that a particular copy of the invoice alone will form the basis of taking ITC. However, rule 48 of the CGST Rules specifies that the original copy is for the recipient of goods. The original copy may preferably be kept for record to support the credit entry. [Rule 48 has been discussed in detail in Chapter 8: Tax Invoice; Credit and Debit Notes; E-way Bill.]

No ITC of tax paid towards demands involving fraud [Rule 36(3)]: Tax paid in pursuance of any order where any demand has

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⁴ Concept of Input Service Distributor will be dealt with at the Final level.

been confirmed on account of any fraud, willful misstatement or suppression of facts cannot be availed as ITC.

(b) Receipt of the goods and / or services [Section 16(2)(b)]

The registered person taking the ITC must have received the goods and / or services.

"Bill to Ship to" Model: Under this model, the goods are delivered to a third party - ' ζ ' on the direction of the customer (registered person) – 'B' who purchases the goods from the vendor (supplier) – 'A'. In other words, 'A' bills to 'B' but ships the goods to ' ζ ' on direction of 'B'. In effect, two supplies take place in this scenario viz., from 'A' to 'B' and from 'B' to ' ζ '. Thus, under this model, the customer (registered person) who purchases such goods does not receive the said goods.

For such cases, by virtue of explanation to section 16(2)(b), it is deemed that the registered person (customer) has received the goods. In other words, goods delivered to another person on the direction of the registered person by way of transfer of documents of title or otherwise, either before or during the movement, are deemed to have been received by such registered person. So, ITC will be available to the registered person, on whose order the goods are delivered to a third person.

Similarly, services may also be provided to a third party by the service provider (supplier) on the direction of the service recipient (registered person). In this case also, though the service recipient (registered person) does not receive the service, by virtue of explanation to section 16(2)(b) it is deemed that the registered person (service recipient) has received the service. In other words, service provided to any person on the direction of and on account of the registered person, is deemed to have been received by such registered person. So, ITC will be available to the registered person, on whose direction the services are provided to a third person.



A is a trader who places an order on B for a consignment of soda ash. A receives a buying order from C for the same quantity of soda ash. A instructs B to deliver the goods to C, and in turn he raises an invoice on C. Though the goods

are not physically received at the premises of A, section 16(2)(b) allows ITC of such goods to A.



The registered head office (New Delhi) of ABC Pvt. Ltd. enters into a contract with DEF Pvt. Ltd. of New Delhi for repair and maintenance of computers systems installed at its registered branch office in Bengaluru, Karnataka. DEF

Pvt. Ltd. issues an invoice on ABC Pvt. Ltd., New Delhi for the services provided by it. Though the actual services are received by the branch office and not by the head office, section 16(2)(b) allows ITC of such repair and maintenance services to head office.

(c) Tax leviable on supply actually paid to Government [Section 16(2)(c)]

Subject to section 41, tax should actually have been paid, by cash or through utilization of ITC, on the goods and / or services for which ITC is being taken. Section 41 allows taking ITC in electronic credit ledger on self-assessment basis.

(d) Filing of return [Section 16(2)(d)]

The registered person taking the ITC must have filed his return under section 39.

(iii) Goods received in lots: ITC available only on receipt of last lot [First proviso to section 16(2)]

In case the goods covered under an invoice are not received in a single consignment but are received in lots / instalments, ITC can be taken only upon receipt of the last lot / instalment.



XYZ enters in to a contract with ABC for supply of 10 MT of a chemical for ₹ 1,18,000 (inclusive of GST of ₹ 18,000) in August, 20XX. The chemical is to be delivered in lots over a period of three months. ABC raises the invoice for the entire amount in August and XYZ also

makes the payment in the same month but the supply is completed in November. Though XYZ paid the full tax as early as August, it can take the ITC of the same only on receipt of last instalment of the chemical in the month of November.

(iv) Payment for the invoice to be made within 180 days [Second proviso to section 16(2) read with rule 37 of CGST Rules]

The registered person must pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice. In the event of failure to do so, the corresponding credits availed by the registered person would be added to his output tax liability, with interest. Interest will be

paid @ 18% from the date of availing credit till the date when the amount added to the output tax liability is paid.

However, once the recipient makes the payment of value of goods and/or services along with tax, he will be entitled to avail the credit again without any time limit [See discussion on time limit for availing credit under point (vi)]. In case part-payment has been made, proportionate credit would be allowed.

Exceptions

This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

- a. Supplies on which tax is payable under reverse charge
- b. Deemed supplies without consideration
- c. Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply

Under situations given in points (b) & (c), the value of supply is deemed to have been paid.



Due to a quality dispute, PZP Ltd withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by PZP on the invoice got added to the output tax liability of PZP and thus, it had to pay back

the credit. Only after the vendor rectified the machine and PZP released the payment, could PZP take the credit again.

(v) If depreciation claimed on tax component, ITC not allowed [Section 16(3)]

If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed. Thus, in respect of the tax paid on such items, dual benefit cannot be claimed under Income-tax Act, 1961 and GST laws simultaneously. In other words, either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST laws.

(vi) Time limit for availing ITC: Due date of filing of return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier [Section 16(4)]

ITC on invoices pertaining to a financial year or debit notes relating to

invoices pertaining to a financial year can be availed any time till the due date of filing of the return for the month of September of the succeeding financial year or the date of filing of the relevant annual return, whichever is earlier.

It may be noted that the return for the month of September is to be filed by 20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

So, the upper time limit for taking ITC is 20th October of the next financial year or the date of filing of annual return, whichever is earlier. The underlying reasoning for this restriction is that no change in return is permitted after September of next financial year. If annual return is filed before the month of September, then no change can be made after filing of annual return.

Exception

The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.



Hercules Machinery delivered a machine to XYZ in January 2018 under Invoice no. 49 dated 28th January, 2018 for ₹ 4,15,000 plus GST, and undertook trial runs and calibration of the machine as per the requirements of XYZ. The amount chargeable for the post-

delivery activities was covered in a debit note raised in April 2018 for ₹ 50,000 plus GST. XYZ did not file its annual return till October, 2018.

Though the debit note was received in the next financial year, it relates to an invoice received in the financial year ending March 2018. Therefore, the time limit for taking ITC available on ₹ 50,000 as well as on ₹ 4,15,000 is 20th October, 2018; earlier of the date of filing the annual return for 2017-18 or the return for September 2018.

(vii) Restriction of ITC in proportion of (i) taxable supplies (ii) business purposes [Sub-sections (1) and (2) of section 17]

ITC is restricted in proportion of the use of the goods and/or services (i) in the taxable and / or zero-rated part of the supply (ii) for business purposes. This is elaborated in heading (4) below.

(viii)ITC not allowed on certain supplies [Section 17(5)]

ITC has been blocked for specified goods and services. This is elaborated in heading (4) below.



4. APPORTIONMENT OF CREDIT & BLOCKED CREDITS [SECTION 17]

	STATUTORY PROVISIONS			
Section 17				
Sub-section	Clause Apportionment of credit and blocked credits			
(1)	Where the goods or services or both are used by the registered 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 is attributable to the purposes of his business.			
(2)	Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.			
(3)	The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.			
	Explanation.— For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.			
(4)	A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:			

		Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:			
	to the tax	Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.			
(5)	16 and s	Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—			
	(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—				
		(A)	further supply of such motor vehicles; or		
		(B)	transportation of passengers; or		
		(C)	imparting training on driving such motor vehicles;		
	(aa)	vesse	ls and aircraft except when they are used—		
		(i)	for making the following taxable supplies, namely:—		
			(A) further supply of such vessels or aircraft; or		
			(B) transportation of passengers; or		
			(C) imparting training on navigating such vessels; or		
			(D) imparting training on flying such aircraft;		
		(ii)	for transportation of goods;		
	(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor				

vehicles, vessels or aircraft referred to in clause (a) or clause (aa): Provided that the input tax credit in respect of such services shall be availablewhere the motor vehicles, vessels or aircraft (i) referred to in clause (a) or clause (aa) are used for the purposes specified therein; (ii) where received by a taxable person engaged in the manufacture of such motor (I)vehicles, vessels or aircraft; or in the supply of general insurance *(II)* services in respect of such motor vehicles, vessels or aircraft insured by him; (b) the following supply of goods or services or bothfood and beverages, outdoor catering, (i) beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance: Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply; membership of a club, health and fitness (ii) centre; and

		(iii) travel benefits extended to employees on vacation such as leave or home travel concession: Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being		
	(c)	works contract services when supplied for construction of an 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 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		
		Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property		
	(e)	goods or services or both on which tax has been paid under section 10;		
	(f)	goods or services or both received by a non-resident taxable person 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 of by way of gift or free samples; and		
	(i)	any tax paid in accordance with the provisions of sections 74, 129 and 130.		
(6)		ernment may prescribe the manner in which the credit to in sub-sections (1) and (2) may be attributed.		

Explanation.— For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and 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 land, building or any other civil structures; (i) (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises. Chapter V: Input Tax Credit of the CGST Rules Rule 38 Claim of credit by a banking company or a financial institution A banking company or a financial institution, including a nonbanking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under subsection (4) of that section, shall follow the following procedure, namely,the said company or institution shall not avail the credit (a) of,the tax paid on inputs and input services that are (i) used for non-business purposes; and (ii) the credit attributable to the supplies specified in sub-section (5) of section 17, in FORM GSTR-2; (b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a): fifty per cent. of the remaining amount of input tax shall (c)

be the input tax credit admissible to the company or the institution and shall be furnished in **FORM GSTR-2**;

-				
	(d) the amount referred to in clauses (b) and (c) she subject to the provisions of sections 41, 42 and 43, credited to the electronic credit ledger of the company or the institution.	, be		
Rule 42	Nanner of determination of input tax credit in respect in apputs or input services and reversal thereof	t of		
(1)	The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-			
	(a) the total input tax involved on inputs and input service a tax period, be denoted as 'T';	rs in		
	the amount of input tax, out of 'T', attributable to in and input services intended to be used exclusively for purposes other than business, be denoted as ' T_1 ';			
	(c) the amount of input tax, out of 'T', attributable to input and input services intended to be used exclusively effecting exempt supplies, be denoted as ' T_2 ';			
	(d) the amount of input tax, out of 'T', in respect of inputs input services on which credit is not available under section (5) of section 17, be denoted as 'T ₃ ';			
	(e) the amount of input tax credit credited to the electron credit ledger of registered person, be denoted as ${}^{\prime}C_{1}{}^{\prime}$ calculated as- $C_{1} = T - (T_{1} + T_{2} + T_{3});$			
	(f) the amount of input tax credit attributable to inputs input services intended to be used exclusively for effect supplies other than exempted but including zero resupplies, be denoted as T_4 ;	ting		
	(g) T_1' , T_2' , T_3' and T_4' shall be determined and declared the registered person at the invoice level in FORM GST and at summary level in FORM GSTR-3B;	-		

(h) input tax credit left after attribution of input tax credit under clause (**f**) shall be called common credit, be denoted as 'C₂' and calculated as-

$$C_2 = C_1 - T_4$$
:

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D₁' and calculated as-

$$D_1 = (E \div F) \times C_2$$

where.

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 **and entry 92A** of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

- (j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as ' D_2 ', and shall be equal to five per cent. of C_2 ; and
- (k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as C_3 , where,-

$$C_3 = C_2 - (D_1 + D_2);$$

(l)	the amount ' C_3 ', ' D_1 ' and ' D_2 ' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03 ;
	for input tax credit of central tax, State tax, Union territory
	tax and integrated tax and declared in FORM GSTR-3B or
	through FORM GST DRC-03;

(m) the amount equal to aggregate of 'D₁' and 'D₂' shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03:

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in T_1 and T_2 respectively, and the remaining amount of credit on such inputs or input services shall be included in T_4 .

The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and,-

(a) where the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂', such excess shall be **reversed by the registered person in FORM GSTR-3B or through FORM GST DRC- 03** in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under subrule (1) in respect of ' D_1 ' and ' D_2 ' exceeds the aggregate of the amounts calculated finally in respect of ' D_1 ' and ' D_2 ', such excess amount shall be claimed as credit by the registered person in his return for a month not later than

		the month of September following the end of the financial year to which such credit relates.		
Rule 43		ner of determination of input tax credit in respect of al goods and reversal thereof in certain cases		
(1)	tax cr of sub purpo for ef partly purpo	ct to the provisions of sub-section (3) of section 16, the input redit in respect of capital goods, which attract the provisions of sections (1) and (2) of section 17, being partly used for the uses of business and partly for other purposes, or partly used fecting taxable supplies including zero rated supplies and of or effecting exempt supplies, shall be attributed to the uses of business or for effecting taxable supplies in the pring manner, namely,-		
	(a)	the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall not be credited to his electronic credit ledger;		
	(b)	the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall be credited to the electronic credit ledger;		
	(c)	the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods:		
		Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;		

Explanation: An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of subsection (4) of section 18 if it is subsequently covered under this clause.

(d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as ' T_c ', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'Tc';

(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as T_m and calculated as:-

$$T_m = T_c \div 60$$

- (f) the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as T_r and shall be the aggregate of T_m for all such capital goods.
- (g) the amount of common credit attributable towards exempted supplies, be denoted as $T_{e'}$, and calculated as:

$$T_e = (E \div F) \times T_r$$

where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover **in the State** of the registered person during the tax period:

Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

		Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;	
	(h)	the amount T_e along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.	
	(i)	The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.	
•	•	ourposes of rule 42 and this rule, it is hereby clarified that the rempt supplies shall exclude:-	
(b)	the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and		
(c)	the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.		



ANALYSIS

Section 17 requires apportionment and concomitant restriction of ITC in two situations as also blocking of ITC on specified inward supplies.

A. Apportionment of ITC [Sub-sections (1) and (2) of section 17 read with rule 42 and rule 43 of CGST Rules]

The situations requiring apportionment are as follows:

- (a) when the goods and / or services are used by the registered person partly for the purpose of business (see the definition of business) and partly for other purposes [Section 17(1)]; and
- (b) when the goods and / or services are used by the registered person partly for making taxable supplies including zero-rated supplies and partly for making exempt supplies (see the definition of exempt supplies) [Section 17(2)].

In both the above situations, full ITC on inward supplies cannot be taken; only proportionate ITC is allowed in such scenarios. Where goods and/or services are used partly for non-business purposes and partly for business purposes, ITC attributable only to business purposes can be taken by the registered person. Similarly, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies, ITC attributable to taxable supplies and zero rated supplies can be taken by the registered person.



Section 16(2) of the IGST Act specifies that ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero-rated supply. Zero-rated supply is an expression that covers two

kinds of supplies: (i) exports, and (ii) supplies to a SEZ unit or SEZ developer. Therefore, ITC is available on goods and / or services used for supplies made in the course of export or to an SEZ unit or SEZ developer.



A registered person is in the business of manufacturing shoes. He gave 50 pairs of shoes for his friends free of cost. ITC on inputs and input services attributable to such 50 pair of shoes being used for non-business purposes will not be available.



A registered person manufactures a product 'X' chargeable to 18% GST, a product 'Y' chargeable to NIL rate of tax and a product 'Z' which is exported without payment of tax under bond. All the three

products are manufactured from common inputs and input services. ITC on inputs and input services attributable to product 'Y' being an exempt supply, will not be available.

(i) Methodology of apportionment of credit on inputs and input services and reversal thereof [Rule 42 of the CGST Rules]

In many situations, the amount of input tax involved in exempt /non-business use is not easily discernible, as common goods and/or services are used for (i) making taxable supplies including zero rated supplies and exempt supplies and (ii) business and non-business purposes.

Rule 42 of the CGST Rules provides the methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit as follows:

Step 1 - Compute common credit

Total input tax involved on inputs & input services in a tax period	Т
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T ₁)
Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T ₂)
Less: Input tax on inputs & input services which are ineligible for credit [blocked credits- see discussion under point (B)]	(T ₃)
ITC credited to Electronic Credit Ledger	C ₁
Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T ₄)
Common ITC available for apportionment	C ₂

[✓] T₁, T₂, T₃ and T₄ will be determined and declared by the registered person at the invoice level in GSTR 2 *and summary level in GSTR-3B*.

- Where ITC on inputs and input services used partly for non-business purposes and exempt supplies can be segregated at invoice level, the same will be added to T_1 and T_2 respectively and the balance credit will be added in T_4 .
- \checkmark The portion identified as pertaining to taxable supplies in C_2 will be allowed as ITC.

Example on how to arrive at the amount of common credit C₂

Making an assumption that Hawai slippers are exempted, take a case of Eezee Footwear, manufacturer of two varieties of Hawai slippers and five varieties of other sandals and shoes. Dyes are used in the manufacture of all footwear. However, bright pink is used only for one of the Hawai varieties, and black is used only for the sandals and shoes. Blue and yellow are used for all the varieties. Brown is used for non-business purposes.

In inward supplies during the month -

Input tax on brown dye: ₹ 10,000 (This is T₁)

Input tax on bright pink dye: ₹ 90,000. (This is T₂)

Input tax on black dye: ₹ 40,000. (This is T₄)

Input tax on blue dye: ₹ 1,00,000

Input tax on yellow dye: ₹ 15,000

Total input tax: ₹ 2,55,000 (This is T)

Total input tax reduced by $(T_1 + T_2 + T_4$, i.e., by ₹ 1,40,000) is ₹ 1,15,000.

Amount of common credit (C_2) is $\stackrel{?}{\underset{?}{?}}$ 1,15,000. This has to be apportioned as given below in Step 2.

Step 2 – Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit

✓ Apportion C_2 into credit attributable to exempt supplies D_1 as under:

$$D_1 = (E/F) \times C_2$$

Where

E = Aggregate value of exempt supplies during the tax period

F = Total turnover in the State during the tax period

Notes:

- (i) If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.
- (ii) Here, exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier. Thus, ITC attributable to such supplies will need to be reversed.
- (iii) Here, exempt supplies exclude-
 - (a) transactions/activities specified in Schedule III except sale of land and sale of building as specified in point (ii) above.
 - (b) supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.
 - (c) transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Thus, ITC attributable to such supplies need not be reversed.

- (iv) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, central sales tax and VAT.
- (v) The value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Presently, (i) central excise duty is leviable on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas (ii) State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and (iii) VAT/CST is leviable on intra-State/inter-State sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor. Petroleum crude, diesel, petrol, ATF, natural

gas are presently not taxable under GST and alcoholic liquor is outside the ambit of GST. Thus, supply of both these products (petrol/petroleum products and alcoholic liquor) being non-taxable under GST, will be exempt supplies u/s 2(47) and taxes/duties (as mentioned above) leviable thereon will be excluded from the value thereof for the purpose of apportionment of credit.

Example on how to apportion common credit into credit attributable to exempt supplies

Ezee Footwear, which manufactures two varieties of exempt Hawai slippers and five varieties of taxable sandals and shoes, has the following turnover in October and has ₹ 1,15,000 common credit that has to be apportioned:

Turnover of Hawai 1 plus Hawai 2: ₹ 3 crores (This is 'E')

Turnover of all varieties of taxable shoes and sandals: ₹ 2 crore

Total turnover of all footwear during the month: ₹ 5 crores (This is 'F')

No inputs/input services are used for non-business purposes.

(3,00,00,000 /5,00,000,000) x 1,15,000= ₹ 69,000 is the input tax that pertains to exempt supply (D₁).

✓ Compute credit attributable to non-business purposes D₂ as under

$$D_2 = 5\%$$
 of C_2 (common credit)

Step 3 – Compute eligible credits

Compute C₃ attributable to business purposes and taxable supplies including zero rated supplies as under:

$$\mathbf{C}_3 = \mathbf{C}_2 - (\mathbf{D}_1 + \mathbf{D}_2)$$

Step 4 - Restrict ineligible credits

Reverse D₁₊ D₂

- **❖** Compute C₃ separately for ITC of CGST, SGST/ UTGST and IGST.
- ❖ Compute \sum (D₁ + D₂) for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September in the following financial year.

- If $\sum (D_1 + D_2)$ > the amount already **reversed** every month, the differential amount has to be **reversed** in any month till September in the following financial year and interest @ rate 18% should be paid on such differential amount from 1st April of succeeding year till the date of payment.
- If the amount **reversed** every month $> \sum (D_1 + D_2)$, the additional amount paid has to be claimed back as credit in the return of the month not later than September in the next financial year.

(ii) Methodology of apportionment of credit of capital goods and reversal thereof [Rule 43 of the CGST Rules]

Rule 43 of the CGST Rules provides the methodology for apportionment of ITC on capital goods and reversal of ineligible credit as follows:

Step 1 - Determine common credit 'T_c' on capital goods as under:

- (i) Identify input tax on capital goods used/ intended to be used exclusively for non-business purposes or making exempt supplies and declare the same in GSTR 2. Such amount will not be credited to electronic credit ledger [ECrL].
- (ii) Identify input tax on capital goods used/ intended to be used exclusively for making taxable supplies including zero rated supplies and declare the same in GSTR 2 *and GSTR-3B*. Such amount will be credited to ECrL.
- (iii) Identify input tax on capital goods not covered under (i) and (ii) above (i.e., the capital goods which are used/intended to be used commonly for making taxable as well as exempt supplies & business & non-business purposes] and denote the same as 'A'. Such amount will be credited to ECrL. The useful life of such capital goods will be taken as 5 years from the date of invoice.
- (iv) Change from exclusive use for non-business purpose/exempt supplies to common use: Where capital goods which were initially covered under (i) above get subsequently covered under clause (iii), compute 'A' by reducing ITC @ 5% per quarter or part thereof. Such reduced amount will be credited to ECrL.
- (v) Add together the amounts of 'A' credited to ECrL to arrive at common credit ' T_c '.

(vi) Change from exclusive use for taxable including zero rated supplies to common use: Where capital goods which were initially covered under (ii) above get subsequently covered under clause (iii), compute 'A' by reducing ITC @ 5% per quarter or part thereof and add such value to T_c

Step 2 - Determine common credit during the useful life of capital goods for a tax period as under and denote the same as ' T_m ':

$$T_m = T_c \div 60$$

Step 3 - Determine common credit at the beginning of a tax period for all capital goods whose useful life remains during the tax period as under:

$$T_r = T_m$$
 for such capital goods

Step 4 - Apportion common credit attributable to exempt supplies as under:

$$T_e = (E \div F) \times T_r$$

Where

E = Aggregate value of exempt supplies made during the tax period

F = Total turnover in the State during the tax period

Notes:

- (i) If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.
- (ii) Here, exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier. Thus, ITC attributable to such supplies will need to be reversed.
- (iii) Here, exempt supplies exclude-
 - (a) transactions/activities specified in Schedule III except sale of land and sale of building as specified in point (ii) above.

- (b) supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.
- (b) transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Thus, ITC attributable to such supplies need not be reversed.

- (iv) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, central sales tax and VAT.
- (v) Amount of Te has to be computed separately for CGST, SGST/UTGST and IGST **and declared in GSTR 3B**.
- (vi) The value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Step 5: Restrict ineligible credit

Add T_e to the output tax liability along with applicable interest during every tax period of the useful life of the capital goods concerned.

(iii) Optional method for banks etc. [Section 17(4) read with rule 38]

- As an alternative to the above method, a banking company or a financial institution including a NBFC, which accepts deposits, or extends loans or advances, has the option to limit its availment of ITC to 50% of the eligible ITC on inputs, capital goods and input services each month and the remaining ITC shall lapse.
- Credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned u/s section 17(5) [blocked credits] cannot be availed.
- The restriction of availing 50% ITC shall not apply to the tax paid on supplies procured from another registration within the same entity i.e., 100% credit of such tax can be availed.
- ❖ The option once exercised cannot be changed during the remaining part of the financial year.

B. Blocked credits [Section 17(5)]

ITC of tax paid on almost every inputs and input services used for supply of taxable goods and/or services is allowed under GST except a small list of items provided u/s 17(5). Thus, ITC on such items is not allowed even though the same may qualify as inputs, input services or capital goods and are used in the course or furtherance of business.

The negative list covers mainly items of personal consumption, inputs and input services use of which results into formation of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. and taxes paid as a result of detection of evasion of taxes.

The various goods and/or services on which credit is blocked are discussed hereunder:

(i) Motor vehicles and other conveyances and related services (insurance, servicing and repair and maintenance)

Motor vehicles and conveyances have been defined in the CGST Act [See definition under the heading Relevant Definitions]. Motor vehicles exclude –

- vehicle running upon fixed rails
- special purpose vehicles for being used in a factory or any enclosed premises
- vehicle with less than 4 wheels fitted with engine capacity of upto 25cc – (Thus, railways, two/three wheelers with engine capacity of upto 25cc, bicycle etc. do not fall in the definition of motor vehicle.)

Broadly, ITC is blocked on motor vehicles, vessels and aircrafts used for passenger transportation with certain exceptions. Further, ITC is also blocked on certain services relating to motor vehicles, vessels and aircrafts namely, insurance, servicing and repair and maintenance. The basic principle here is that the motor vehicles, aircrafts and vessels on which ITC is blocked, the ITC on services of insurance, servicing and repair and maintenance pertaining to such motor vehicles, vessels and aircrafts is also blocked.

The blocked credits relating to motor vehicles, vessels, aircrafts and related services are discussed hereunder:

(1)	Goods and/or services on which credit is blocked (2) Motor vehicles* for transportatio n of persons with seating	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed (3) Ineligible motor vehicles when used for any of the following eligible purposes -	(4) • ITC on ineligible motor vehicles used for any purpose other than the eligible nurposes is not
	capacity ≤ 13 persons (including the driver) - Referred to as ineligible motor vehicle in this table	 making further taxable supply of such motor vehicles; making taxable supply of transportation of passengers; making taxable supply of imparting training on driving such motor vehicles. 	purposes is not allowed. ITC on motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose is allowed. ITC on motor vehicles other than ineligible motor vehicles (e.g. motor vehicle used for transportation of goods, dumpers, tippers etc.) used for any purpose is allowed.

(ii)	Vessels and aircrafts	Vessels and aircraft when used for any of the following eligible purposes- • making further taxable supply of such vessels or aircraft; • making taxable supply of transportation of passengers; • making taxable supply of imparting training on navigating such vessels; • making taxable supply of imparting training on flying such aircrafts; • transportation of goods.	ITC on vessels and aircrafts used for any purpose other than the eligible purposes
(iii)	General insurance, servicing, repair and maintenance relating to: Ineligible motor vehicles	 Such services relating to ineligible motor vehicles, vessels or aircraft when used for eligible purposes Such services when received by- 	ITC is not allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on

- Vessels
- Aircraft
- Manufacturer
 of ineligible
 motor
 vehicles,
 vessels or
 aircraft; or
- Supplier of general insurance services in respect of ineligible motor vehicles, vessels or aircraft insured by him
- which is not allowed.
- ITC is allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is allowed.

(iv) Leasing,
renting or
hiring of
motor
vehicles,
vessels or
aircraft on
which ITC is
not allowed

- Such services when used for making an outward taxable supply of the same category of services or as an element of a taxable composite or mixed supply
- Such services when provided by an employer to its employees under a statutory obligation
- ITC on leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is allowed, is also allowed.
- ITC on such services is allowed in the case of subcontracting, i.e. when such services are used by the taxpayer who is in the same line of business.



- (1) ITC on cars purchased by a manufacturing company for official use of its employees is blocked.
- (2) ITC on cars purchased by a car dealer for sale to customers is allowed.
- (3) ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed.
- (4) ITC on cars purchased by a car driving school is allowed.
- (5) ITC on buses (seating capacity for 24 persons) purchased by a company for transportation of its employees from their residence to office and back, is allowed.
- (6) ITC on trucks purchased by a company for transportation of its finished goods is allowed.
- (7) ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked.
- (8) ITC on aircraft purchased by an Aviation School providing training on flying aircrafts, is allowed.
- (9) ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.
- (10) ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed.
- (11) ITC on general insurance services taken on cars manufactured by a car manufacturing company is allowed.
- (ii) Food & beverages, outdoor catering, health services and other services

S. No.	Goods and/or services on which credit is blocked	goods and/or	Remarks
(1)	(2)	(3)	(4)
(i)	 Food and beverages 	• Such goods and/or services	• ITC on such goods and/or services is

(ii) Membership of a club, healt and fitnes centre (iii) Travel benefit extended t	and/or services when provided by an employer to its employees under a statutory obligation f Such services when provided by an employer to its employees under a statutory obligation	and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked. When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked. When such goods and/or services are
•	composite or mixed supply Such goods and/or services when provided by an employer to its employees under a statutory obligation Such services	the employer to its employees without any statutory obligation, ITC thereon is blocked.
 Outdoor catering Beauty treatment Health services Cosmetic and plasti 		allowed in the case of sub-contracting, i.e. when such goods and/or services are used by the taxpayer who is in the same line

home travel	obligation, ITC
concession	thereon is blocked.



- (1) A manufacturing company purchases food items for being served to its customers, free of cost. ITC on such goods is blocked.
- (2) AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co., is allowed.
- (3) ITC on outdoor catering services availed by a garment exporter for a marketing event organised for its prospective customers, is blocked.
- (4) Outdoor catering service is availed by a company to run a free canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.
- (5) The Managing Director of a company has taken membership of a club, the fees for which is paid by the company. ITC on such service is blocked.
- (6) A company avails services of a travel agency for organizing a free vacation for its top performing employees. ITC on such services is blocked.

(iii) Works contract services for construction of immovable property [Clause (c) of section 17(5)]

Works contract has been defined in the CGST Act [See definition under the heading Relevant Definitions]. Essentially works contract is a composite supply involving both goods and services. Under the erstwhile laws, definition of works contract included work in relation to both movable and immovable properties. However, under GST law, the ambit of works contract has been **confined only to immovable property**.

Meaning of immovable property

Immovable property has not been defined under the GST law. Therefore, we will have to look for the definition of immovable property in other laws. Section 3(26) of the General Clauses Act, 1897, defines the term immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

The term "attached to the earth" is defined in section 3 of the Transfer of Property Act, 1882 to mean:

- (a) rooted in the earth, as in the case of trees and shrubs; [However, the term "immovable property" under the Transfer of Property Act does not cover standing timber, growing crops or grass.]
- (b) embedded in the earth, as in the case of walls or buildings.
- (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

Under GST law, a composite supply of works contract is treated as supply of services in terms of para 6(a) of Schedule II to the CGST Act.

ITC on works contract services for construction of an immovable property is blocked **EXCEPT WHEN**

- It is an input service for further supply of works contract service (sub-contracting);
 - [ITC on works contract services can be availed only by that taxpayer who is in the same line of business, i.e. only a works contractor can avail ITC on works contract services received by him.]
- Immovable property is plant and machinery
 [Plant and machinery affixed permanently to the earth constitutes
 an immovable property. However, ITC on works contract services
 used for construction of such plant and machinery is allowed as an
 exception.]

Meaning of construction

"Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Thus, if re-construction, renovation, additions or alterations or repairs are not capitalized, it would not tantamount to construction under GST law. Consequently, ITC on works contract services availed for such construction (which is not capitalized) whether for any immovable property or for any plant and machinery, would be allowed to all the recipients irrespective of their line of business.

Meaning of plant and machinery

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

but excludes

land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

Thus, ITC on works contract services availed for construction of eligible plant and machinery is allowed to the recipient irrespective of the line of business of such recipient.

For instance, ITC on works contract services for construction of machinery fixed to earth by a foundation, would be allowed. However, ITC on works contract services for construction of telecommunication towers, would be blocked.



ITC on works contract services for construction of immovable property is available only in the following three situations:

- (i) When the works contract service is availed by a works contractor for being used in providing the works contract service.
- (ii) For construction of plant and machinery. In this case, ITC is allowed to all recipients irrespective of their line of business.
- (iii) When the value of works contract service is not capitalized. In this case, ITC is allowed to all recipients irrespective of their line of business.



- (1) ITC on works contracts services availed by a software company for construction of its office, is blocked.
- (2) CD & Co., a works contractor of Noida, has been awarded a contract for construction of a commercial complex in Lucknow. The firm avails services of EF & Co., a local works contractor of Lucknow, for the construction of complex. ITC on such works contract services availed by CD & Co., is allowed.
- (3) ITC on works contract services availed by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.
- **(4)** ITC on works contract services availed by a manufacturing company for construction of pipelines to be laid outside its factory, is blocked.
- **(5)** A consulting firm has availed services of a works contractor for repair of its office building. The company has booked such expenditure in its profit and loss account. ITC on such services is allowed.
- **(6)** A telecommunication company has availed services of a works contractor for repair of its office building. The company has capitalized such expenditure. ITC on such services is blocked.

(iv) Self-construction of immovable property [Clause (d) of section 17(5)]

So now we know that ITC on works contract services availed by a taxpayer, other than a works contractor, for construction of immovable property (other than plant and machinery) is not available. But what happens if a taxpayer procures goods and services and constructs an immovable property, for being used in the course or furtherance of business, without availing services of a works contractor? Will ITC be allowed in such a case?

The answer is No. ITC is not allowed on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) **on his own account** even though such goods and/or services are used in the course or furtherance of business. Thus, ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use even if the

immovable property being constructed is used in the course or furtherance of his business.

The discussion on terms, 'construction' and 'plant and machinery' for works contract services [Elaborated in point (iii) above] applies to construction on own account also.



ITC on goods and/or services used in construction of immovable property is available only in the following three situations:

- (i) For construction of plant and machinery
- (ii) When the value of goods and/or services is not capitalized

(iii) When the construction is not on own account



- (1) A company buys cement, tiles etc. and avails the services of an architect for construction of its office building. ITC on such goods and services is blocked.
- (2) MN & Constructions procures cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients. ITC on such goods and services is allowed to MN & Co.
- (3) A company buys cement, tiles etc. and avails the services of an architect for renovation of its office building. The company has booked such expenditure in its profit and loss account. ITC on such goods and services is allowed.
- (4) ITC on goods and/or services used by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.

(v) Inward supplies charged to tax under composition levy [Clause (e) of section 17(5)]

A supplier registered under composition scheme cannot collect tax from its customers. Thus, such supplier issues bill of supply and not a tax invoice. A composition supplier pays a lumpsum tax at a specified rate on its quarterly turnover.

Tax paid on goods and/or services under composition scheme is not available as ITC.

Since a composition supplier cannot collect any tax on its supplies, from the recipient of its supplies, it is obvious that no ITC can be availed in respect of such supplies by the recipients. Nevertheless, section 17(5)(e) specifically blocks the ITC on inward supplies received by a taxable person from a composition supplier.

(vi) Inward supplies received by a non-resident taxable person [Clause (f) of section 17(5)]

Non-resident taxable person has been defined in the CGST Act [See the definition under the heading Relevant Definitions]. Essentially, a nonresident taxable person has no fixed place of business in India but he sporadically supplies goods or services in India.

Tax paid on goods and/or services received by such non-resident taxable person, is not available as ITC. However, tax paid by him on imported goods is allowed as ITC.



Whereas ITC on goods imported by a non-resident taxable person is allowed, ITC on services imported by him is blocked. hainaninananananananananananananah

(vii) Inward supplies used for personal consumption [Clause (g) of section 17(5)]

One of the foremost conditions laid down in section 16 for availing ITC on goods and/or services is that such goods and/or services should be used in the course or furtherance of business. Further, where goods and/or services are used partly for the purpose of any business and partly for other purposes, section 17(1) restricts the credit to so much of the ITC as is attributable to business purposes.

Furthermore, section 17(5)(g) also specifically blocks the ITC on goods and/or service used for personal consumption.

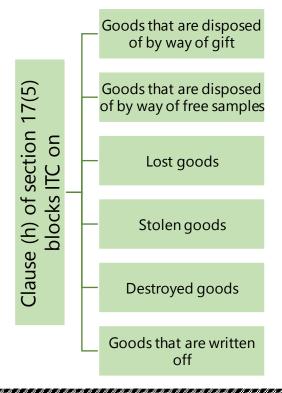
The term 'personal consumption' has not been defined in the GST law. Thus, it may be understood in the general sense which would mean non-business use.



Mr. X owns a grocery store. He procures rice, wheat and biscuits for being sold in its store. Out of the inventory so purchased, he gives 10 kgs each of rice and wheat to his wife

for household use. Being used for personal consumption, ITC on 10 kg of rice and 10 kg of wheat is blocked.

(viii) Free samples, gifts, goods lost/stolen etc. [Clause (h) of section 17(5)]



Meaning of 'gift'

The terms gift has not been defined in the GST law. Therefore, we will have to look for the definition of gift in other laws. Section 122 of the Transfer of Property Act, 1882, defines gift as transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right.

Meaning of 'sample'

Sample is also not defined in the GST law. The dictionary meaning of sample is "a small part or quantity intended to show what the whole is like". In commercial parlance, samples are given to prospective customers to enable them to test the quality of the item before making a decision to buy the same.

ITC in the hands of the supplier in respect of sales promotional schemes

Circular No. 92/11/2019 GST dated 28.03.2019 has clarified the entitlement of ITC in the hands of supplier in respect of various sales promotional schemes as under [Taxability of such schemes has been discussed at relevant places in Chapter 2: Supply Under GST and Unit II: Value of Supply of Chapter 5: Time and Value of Supply]:

A. Samples and free gifts

Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.

ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail the ITC.

B. Buy one get one free offer

This is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8.

ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. <u>Discounts including 'Buy more, save more' offers</u>

Discounts offered by the suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in subsection (3) of section 15, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

However, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

D. <u>Secondary discounts</u>

These are the discounts which are not known at the time of supply or are offered after the supply is already over. Such discounts shall not be excluded while determining the value of supply. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

ITC reversal when return of time expired medicines/drugs are treated as fresh supply

The common trade practice in the pharmaceutical sector is that the drugs or medicines (hereinafter referred to as "goods") are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. Such goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned back to the manufacturer, on account of expiry, through the supply chain.

Circular No. 72/46/2018 GST dated 26.10.2018 has clarified that the retailer/ wholesaler can return the time expired goods, either by treating the same as fresh supply or by issuing credit notes⁵.

Return of time expired goods by treating the same as fresh supply

In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it is as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply"). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail ITC of the tax levied on the said return supply subject to the fulfilment of the conditions specified in section 16.

In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply. In case the person returning the time expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.

Where the goods returned by the retailer/wholesaler as a fresh supply, are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of section 17(5)(h). It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

The clarification may also be applicable to return of goods for reasons other than being time expired.

⁵ The procedure for return of time expired drugs or medicines by issuing credit note is covered in Chapter 8: Tax Invoice; Credit and Debit Notes; E-Way Bill.



If a manufacturer has availed ITC of Rs. 10/- at the time of manufacture of medicines valued at Rs. 100/-. At the time of return of such medicine on the account of expiry,

the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is Rs. 15/-. So, when the time expired goods are destroyed by the manufacturer, he would be required to reverse ITC of Rs. 15/- and not of Rs. 10/.

(ix) Tax paid in fraud cases, detention, confiscation etc. [Clause (i) of section 17(5)]

Tax paid under sections 74, 129 and 130⁶ is not available as ITC. These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.

5. CREDIT IN SPECIAL CIRCUMSTANCES [SECTION 18]

	STATUTORY PROVISIONS	
Section 18	Availability of credit in special c	ircumstances
Sub-section	Clause Particulars	
(1)	Subject to such conditions and restrictions a	s may be prescribed—
	(a) a person who has applied for region within thirty days from the date liable to registration and has registration shall be entitled to take respect of inputs held in stock as semi-finished or finished goods himmediately preceding the date finished to pay tax under the provision.	on which he becomes been granted such ke credit of input tax in and inputs contained in the day rom which he becomes
	(b) a person who takes registration usection 25 shall be entitled to take respect of inputs held in stock as	e credit of input tax in

⁶ These provisions will be discussed at the Final level.

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		semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;
	(c)	where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:
		Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;
	(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 relatable 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.	
(3)	Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.	
(4)	Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or	

	both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:
	Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.
(5)	The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.
(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:
	Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.
	Chapter V: Input Tax Credit of CGST Rules
Rule 40	Manner of claiming credit in special circumstances
(1)	The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely -

the input tax credit on capital goods, in terms of clauses

(c) and (d) of sub-section (1) of section 18, shall be

(a)

	claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.
(b)	the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid:
	Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.
(c)	the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods—
	(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub- section (1) of section 18;
	(ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;
	(iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of subsection (1) of section 18;

		(iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub- section (1) of section 18;
	(d)	the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;
	(e)	the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR-4 , on the common portal.
(2)	The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.	
Rule 41	Transfer of credit on sale, merger, amalgamation, lease or transfer of a business	
(1)	A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, demerger, amalgamation, lease or transfer of business, in FORM GST ITC-02 , electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:	
Provided that in the case of demerger, the input tax credit sample apportioned in the ratio of the value of assets of the new use specified in the demerger scheme.		ned in the ratio of the value of assets of the new units as

	Explanation: - For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.	
(2)	The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.	
(3)	The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the unutilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.	
(4)	The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.	
Rule 41A	Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory	
(1) A registered person who has obtained separate reg for multiple places of business in accordance of provisions of rule 11 and who intends to transfe wholly or partly, the unutilised input tax credit lying electronic credit ledger to any or all of the newly re place of business, shall furnish within a period of the from obtaining such separate registrations, the de FORM GST ITC-02A electronically on the common either directly or through a Facilitation Centre notification.		
	Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.	
	Explanation For the purposes of this sub-rule, it is hereby clarified that the 'value of assets' means the value of the	

	entire assets of the business whether or not input tax credit has been availed thereon.	
(2)	The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.	
Rule 44	Manner of reversal of credit under special circumstances	
The amount of input tax credit relating to inputs held in sinputs contained in semi-finished and finished goods held in and capital goods held in stock shall, for the purposes of sub-sec (4) of section 18 or sub-section (5) of section 29, be determined the following manner, namely,-		
	(a) for inputs held in stock and inputs contained in semi- finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;	
	(b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.	
(2)	The amount, as specified in sub-rule (1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.	
(3)	Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.	
(4)	The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the	

	amount shall be furnished in FORM GST ITC-03 , where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10 , where such amount relates to the cancellation of registration.
(5)	The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.
(6)	The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax:
	Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1 .



ANALYSIS

Section 18 provides for

- (1) entitlement of ITC on inputs in stock and contained in finished goods or work-in-progress and capital goods (i) at the time of registration/voluntary registration, (ii) on coming into regular tax-paying status by exiting composition levy, (iii) on coming into tax-paying status on account of exempt supply becoming taxable supply
- (2) reversal of ITC on inputs in stock and contained in finished goods or work-in-progress and capital goods (i) at the time of exit from regular tax-paying status by opting for composition levy, (ii) at the time of exit from tax-paying status on account of taxable supply becoming exempt supply
- (3) amount payable on supply of capital goods or plant and machinery on which ITC has been taken
- (4) transfer of ITC on account of change in constitution of the registered person

(i) Entitlement of ITC at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Sub-sections (1) and (2) of section 18 read with rule 40 of CGST Rules]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax/tax-paying status is available in the following manner:

s.	Persons	Goods enti	itled to ITC	Restriction/conditi
No.	eligible to take credit	Inputs held in stock/capit al goods	As on	ons
(1)	(2)	(3)	(4)	(5)
1.	Person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration	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	→ ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.
2.	Person who is not required to register, but obtains	Inputs held in stock and inputs contained in semi-finished	The day immediately preceding the date of registration	

	voluntary registration	or finished goods held in stock		
3.	Registered person who ceases to pay composition tax and switches to regular scheme	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme	 → ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice. → ITC claimed shall be verified with the
4.	Registered person whose exempt supplies become taxable supplies	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and capital goods exclusively used for such exempt supply	The day immediately preceding the date from which such supply becomes taxable	corresponding details furnished by the corresponding supplier. → ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.

In all the above cases, the registered person has to make an electronic declaration in the prescribed form on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be filed within

30 days (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant/Cost Accountant.



Mr. Z becomes liable to pay tax on 1st August and has obtained registration on 15th August. Mr. Z is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held

in stock as on 31st July. Mr. Z cannot take ITC on capital goods.



Mr. A applies for voluntary registration on 5th June and obtains registration on 22th June. Mr. A is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in

stock as on 21st June. Mr. A cannot take ITC on capital goods.



Mr. B, a registered taxable person, was paying tax under composition scheme upto 30th July. However, w.e.f. 31st July, Mr. B becomes liable to pay tax under regular scheme. Mr. B will be

eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter from the date of the invoice.

(ii) Reversal of ITC on switching to composition levy or exit from taxpaying status [Section 18(4) read with rule 44 of CGST Rules]

- Section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.
- ❖ ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption. The details furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant/ Cost Accountant.
- ❖ ITC involved in the remaining useful life (in months) of the capital goods should be reversed on *pro-rata* basis, taking the useful life as 5 years.



Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in months = 5 months ignoring a part of the month.

ITC taken on such capital goods = C

ITC attributable to remaining useful life = $C \times 5/60$

- The registered person has to debit the electronic credit or cash ledger by the reversal amount in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods on the day immediately preceding the date of switch over/ date of exemption.
- Balance of ITC, if any, lying in the electronic credit ledger lapses.
- Cancellation of registration also requires reversal of ITC on inputs held in stock/ contained in semi-finished goods or finished goods held in stock, capital goods or plant and machinery on the day immediately preceding the cancellation date. The amount to be reversed on inputs and capital goods is computed in the manner as applicable for sub-sections (4) and (6) of section 18 (discussed above). Such amount is then compared with the output tax payable on such goods, and the higher of the two amounts is finally paid by the registered person.
- ❖ ITC to be reversed on inputs and capital goods is calculated separately for ITC of CGST, SGST/UTGST and IGST.
- The reversal amount is added to the output tax liability of the registered person.

(iii) Amount payable on supply of capital goods or plant and machinery on which ITC has been taken [Section 18(6) read with rule 40(2) & rule 44(6) of CGST Rules]

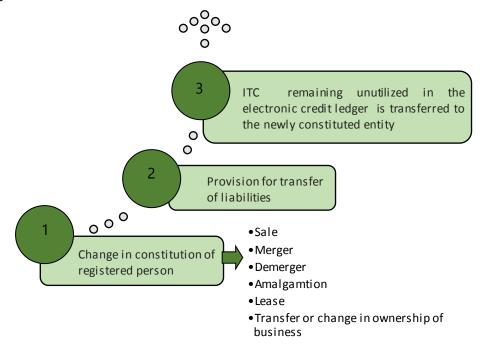
- If capital goods or plant and machinery on which ITC has been taken are supplied outward by the registered person, he must pay an amount that is the higher of the following:
 - ✓ ITC taken on such goods reduced by 5% per quarter of a year or part thereof from the date of issue of invoice for such goods (i.e., ITC pertaining to remaining useful life of the capital goods), or
 - ✓ tax on transaction value

- ITC pertaining to remaining useful life of the capital goods should be computed separately for ITC of CGST, SGST/UTGST and IGST.
- Where the amount so determined exceeds the tax payable on the transaction value of the capital goods, such amount need to be paid and thus, should be added to the output tax liability.
- If refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value.

(iv) Transfer of ITC on account of change in constitution of registered person [Section 18(3) read with rule 41 of CGST Rules]

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. Circular No. 96/15/2019 GST dated 28.03.2019 has clarified that transfer or change in the ownership of business includes transfer or change in the ownership due to death of the sole proprietor.

The above provisions have been explained with the help of the following diagram:



In the case of demerger, ITC will be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. Here, "value of assets" means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The registered person should furnish the details of change in constitution on the common portal and submit a certificate from practicing Chartered Account/Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities. Upon acceptance of such details by the transferee on the common portal, the unutilized ITC gets credited to his electronic credit ledger. The transferee should record the inputs and capital goods so transferred in his books of account.

(v) Transfer of ITC on obtaining separate registrations for multiple places of business within a State/ Union Territory [Rule 41A of CGST Rules]

Section 25 enables a taxpayer to obtain separate registrations for multiple places of business in a State/Union territory [Provisions of section 25 are discussed under Chapter 7: Registration]. The registered person (transferor), having separate registrations for multiple places of business within a State/Union Territory, can transfer the unutilised ITC (wholly or partly) lying in his electronic credit ledger to any or all of the newly registered place(s) of business in the ratio of the value of assets held by them at the time of registration. Here, the 'value of assets' means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The registered person should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations. Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC gets credited to his electronic credit ledger.

6. HOW ITC IS UTILISED

	STATU	STATUTORY PROVISIONS			
Section 49		Payment of tax, interest, penalty and other amounts (Relevant extract)			
Sub-section	Clause	Particulars			
(5)		The amount of input tax credit available in the electronic credit ledger of the registered person on account of—			
	(a)	integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;			
	(b)	the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;			
	(c)	the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;			
		Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;			
	(d)	the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;			
		Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance			

		of the input tax credit on account of central tax is		
		not available for payment of integrated tax;		
	(e)	the central tax shall not be utilised towards payment of State tax or Union territory tax; and		
	(f) the State tax or Union territory tax shall not be uti towards payment of central tax.			
Section 49A	Utilisatio	on of input tax credit subject to certain conditions		
	tax credi tax shall tax, State after the	standing anything contained in section 49, the input t on account of central tax, State tax or Union territory be utilised towards payment of integrated tax, central e tax or Union territory tax, as the case may be, only input tax credit available on account of integrated tax been utilised fully towards such payment.		
Section 49B	Order of utilisation of input tax credit			
	subject to section (recomme manner (integrate	Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of subsection (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.		
	Chapter I	X: Payment of Tax of the CGST Rules		
Rule 88A	Order of utilization of input tax credit			
utilised amoun payme		tax credit on account of integrated tax shall first be d towards payment of integrated tax, and the not remaining, if any, may be utilised towards the ent of central tax and State tax or Union territory tax, case may be, in any order.		

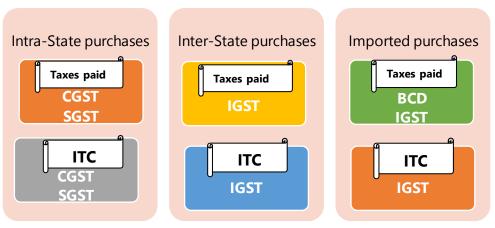
Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.



ANALYSIS

ITC is credited to a registered person's electronic credit ledger. A taxable person is entitled for ITC of CGST, SGST/UTGST and IGST depending upon the nature of supplies received by him.

To illustrate, a supplier making intra-State, inter-State and imported purchases is eligible for ITC as under:



The person may use the ITC to pay his output tax liability. Since the GST law comprises of multiple taxes viz, CGST, SGST/UTGST and IGST, one many wonder if ITC of one tax can be used to pay any kind of output tax, i.e. if ITC of CGST can be used to pay IGST liability and vice versa or ITC of CGST can be used to pay SGST liability and vice versa. One needs to read the provisions of section 49(5), section 49A, section 49B, rule 88A and Circular No. 98/17/2019 GST dated 23.04.2019, to find the answer to such questions.

A combined reading of the above shows that the order of utilization of ITC is as per the order (of numerals) given below:

ITC of	Output IGST liability	Output CGST liability	Output SGST/ UTGST liability
IGST	(1)	(II) – <u>In any o</u> <u>proportion</u>	rder and in any
(III) ITC of IGST to	be completely exha	usted mandatorily	
CGST	(V)	(IV)	Not permitted
SGST/UTGST	(VII) Only after the ITC of CGST has been utilized fully	Not permitted	(VI)

The numerals given in above table can be further explained in the following manner:

- (I) IGST credit should first be utilized towards payment of IGST.
- (II) Remaining IGST credit, if any, can be utilized towards payment of CGST and SGST/UTGST in any order and in any proportion, i.e. remaining ITC of IGST can be utilized
 - first towards payment of CGST and then towards payment of SGST; or
 - first towards payment of SGST and then towards payment of CGST; or
 - towards payment of CGST and SGST simultaneously in any proportion e.g. 50: 50, 30: 70, 40: 60 and so on.
- (III) Entire ITC of IGST should be fully utilized before utilizing the ITC of CGST or SGST/UTGST.
- (IV) & (V) ITC of CGST should be utilized for payment of CGST and IGST in that order. ITC of CGST cannot be utilized for payment of SGST/UTGST
- (VI) & (VII) ITC of SGST /UTGST should be utilized for payment of SGST/UTGST and IGST in that order. However, ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully. ITC of SGST/UTGST cannot be utilized for payment of CGST.

Hence cross-utilization of credit is available only between CGST - IGST and SGST/UTGST - IGST. The main restriction is that the CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment

of CGST. Further, ITC of IGST need to be exhausted fully before proceeding to utilize the ITC of CGST and SGST in that order.



Amount of ITC available and output tax liability under different tax heads

Head Output tax liability		ITC
IGST	1000	1300
CGST	300	200
SGST/UTGST	<u>300</u>	200
Total	1600	1700

Option 1

ITC of	Discharge of output IGST liability	Discharge of output CGST liability	Discharge of output SGST/UTGST liability	Balance of ITC		
IGST	1000	200	100	0		
ITC of IGST h	ITC of IGST has been completely exhausted					
CGST	0	100	-	100		
SGST/UTGST	0	-	200	0		
Total	1000	300	300	100		

Option 2

ITC of	Discharge of output IGST liability	Discharge of output CGST liability	9	Balance of ITC		
IGST	1000	100	200	0		
ITC of IGST h	ITC of IGST has been completely exhausted					
CGST	0	200	-	0		
SGST/UTGST	0	-	100	100		
Total	1000	300	300	100		

There can be other options also for utilization of ITC of IGST against CGST and SGST liabilities. In this example, two options for utilizing ITC of IGST against CGST and SGST liabilities are shown.

ILLUSTRATION 1

ABC Co. Ltd., registered under GST, is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

S. No.	Items	GST paid (₹)
(i)	Electrical transformers to be used in the manufacturing process	5,20,000
(ii)	Trucks used for the transport of raw material	1,00,000
(iii)	Raw material	2,00,000
(iv)	Confectionery items. These items were supplied free of cost to the customers in a customer meet organized by the company	25,000

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items. Assume all the conditions necessary for availing the ITC have been fulfilled.

ANSWER

Computation of ITC available with ABC Co. Ltd. for the month of July

S. No.	Items	ITC (₹)
(i)	Electrical transformers [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	5,20,000
(ii)	Trucks used for the transport of raw material [ITC on motor vehicles used for transportation of goods is not blocked under section 17(5)(a)]	1,00,000
(iii)	Raw material [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	2,00,000

(iv)	Confectionery items for consumption of customers at customers meet [ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply-Section 17(5)(b)(i)]	Nil
	Total ITC	8,20,000

ILLUSTRATION 2

XYZ Ltd., registered under GST, is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 20XX from the following particulars:-

S. No.	Inward supplies	GST (₹)	Remarks
(i)	Inputs 'A'	1,00,000	One invoice on which GST payable was ₹10,000, is missing
(ii)	Inputs 'B'	50,000	Inputs are to be received in two instalments. First instalment has been received in October, 20XX.
(iii)	Capital goods	1,20,000	XYZ Ltd. has capitalised the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.
(iv)	Input services	2,25,000	One invoice dated 20.01.20XX on which GST payable was ₹ 50,000 has been received in October, 20XX.

Note:

- (i) All the conditions necessary for availing the ITC have been fulfilled.
- (ii) The annual return for the financial year ending 31st March 20XX was filed on 15th September, 20XX.

ANSWER

Computation of ITC available with XYZ Ltd. for the month of October, 20XX

S. No.	Inward supplies	GST (₹)
(i)	Inputs 'A' [ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC-Section 16(2)(a)]	90,000
(ii)	Inputs 'B' [When inputs are received in instalments, ITC can be availed only on receipt of last instalment-First proviso to section 16(2)]	Nil
(iii)	Capital goods [Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component – Section 16(3)]	Nil
(iv)	Input services [As per section 16(4), ITC on an invoice cannot be availed after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains or the date of filing annual return, whichever is earlier. Since the annual return for the FY ending 31st March 20XX has been filed on 15th September, 20XX (prior to due date of filing the return for September, 20XX i.e., 20th October, 20XX), ITC on the invoice pertaining to FY ending 31st March 20XX cannot be availed after 15th September, 20XX.	1,75,000
	Total	2,65,000

ILLUSTRATION 3

Mr. X, a supplier of goods, pays GST under regular scheme. He has made the following outward taxable supplies in a tax period:

Particulars	(₹)
Intra-State supply of goods	8,00,000
Inter-State supply of goods	3,00,000

He has also furnished the following information in respect of purchases made by him in that tax period:

Particulars Particulars	(₹)
Intra-State purchases of goods	2,00,000
Inter-State purchases of goods	50,000

Mr. X has following ITCs with him at the beginning of the tax period:

Particulars	(₹)
CGST	57,000
SGST	Nil
IGST	70,000

Note:

- (i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.
- (ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.
- (iii) All the conditions necessary for availing the ITC have been fulfilled.

Compute the minimum GST, payable in cash, by Mr. X during the tax period. Make suitable assumptions as required.

ANSWER

Computation of minimum GST payable in cash by Mr. X on outward supplies

S.No.	Particulars	(₹)	GST (₹)
(i)	Intra-State supply of goods		
	CGST @ 9% on ₹ 8,00,000	72,000	

	Total GST payable		1,98,000
	IGST @ 18% on ₹ 3,00,000		54,000
(ii)	Inter-State supply of goods		
	SGST @ 9% on ₹ 8,00,000	<u>72,000</u>	1,44,000

Computation of total ITC

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18%(₹)
Opening ITC	57,000	Nil	70,000
Add: ITC on Intra-State purchases of goods valuing ₹ 2,00,000	18,000	18,000	Nil
Add: ITC on Inter-State purchases of goods valuing ₹ 50,000	Nil	Nil	9,000
Total ITC	75,000	18,000	79,000

Computation of minimum GST payable from cash ledger

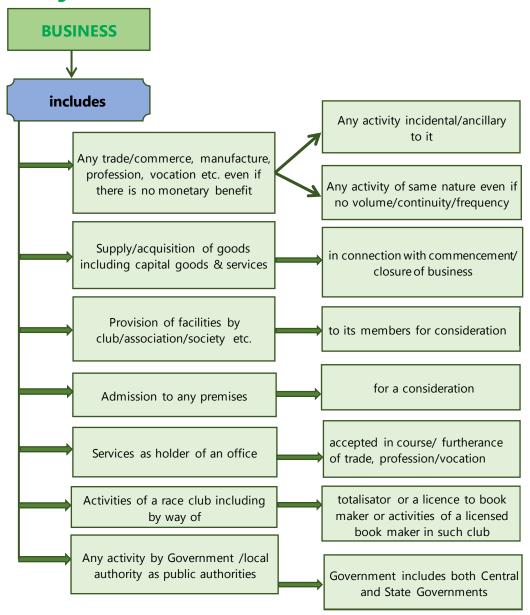
Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
GST payable	72,000	72,000	54,000
Less: ITC	(Nil)-IGST	(25,000)-IGST	(54,000)-IGST
	(72,000)-CGST	(18,000) – SGST	
Minimum GST payable in cash	Nil	29,000	Nil

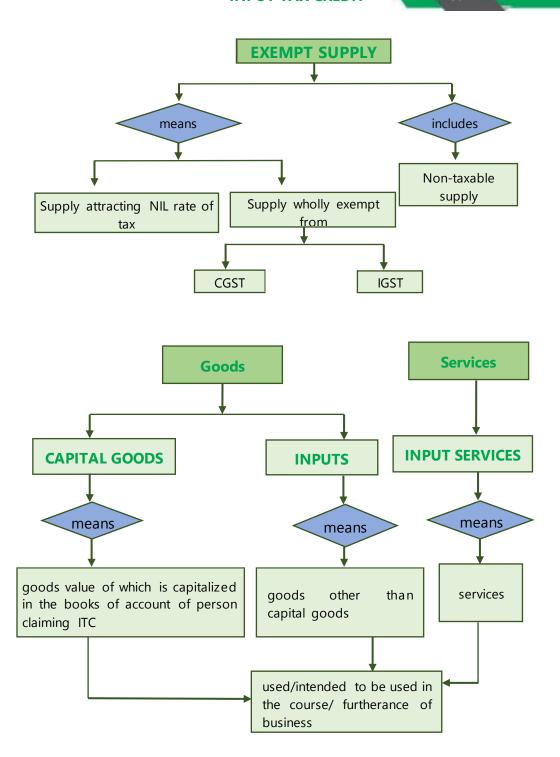
Note: Since sufficient balance of ITC of CGST is available for paying CGST liability and cross utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) to minimize cash outflow.

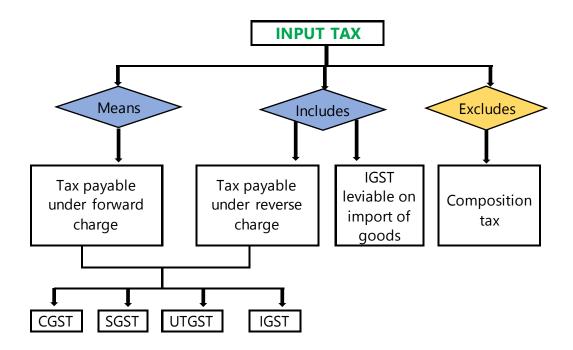


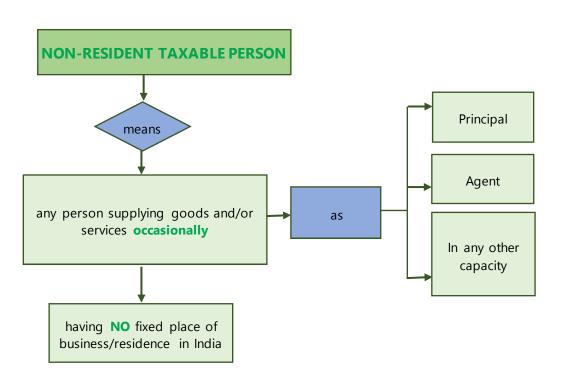
7. LET US RECAPITULATE

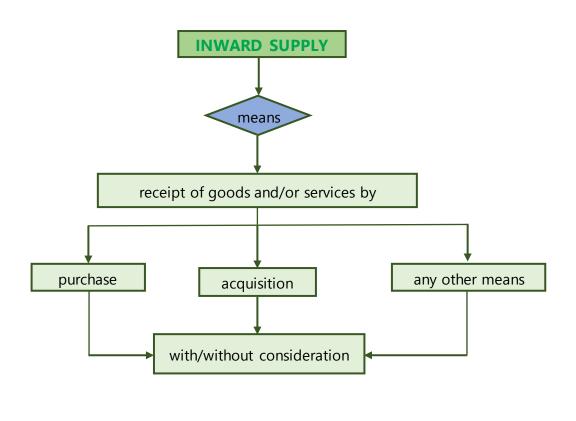
Definitions of certain key terms are summarized by way of diagrams as under:

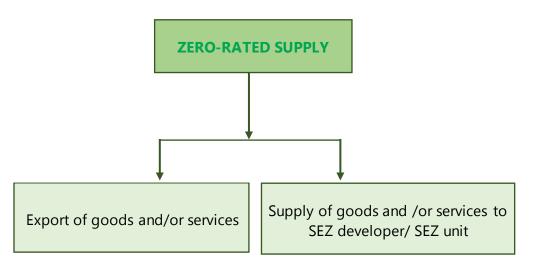




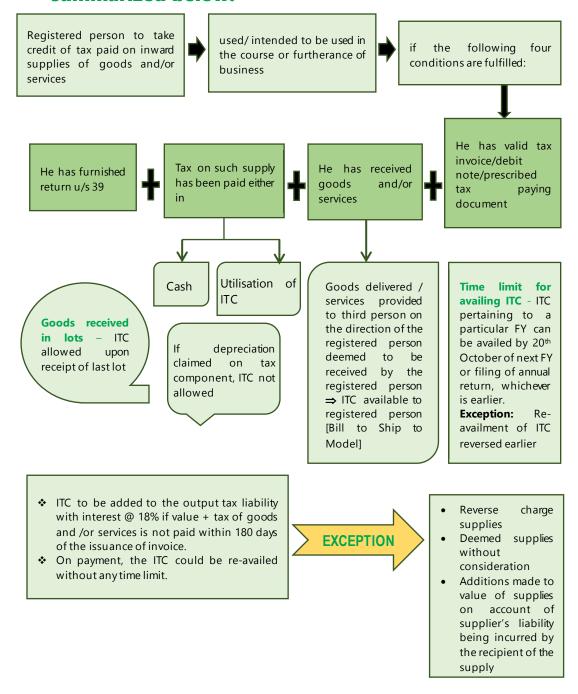






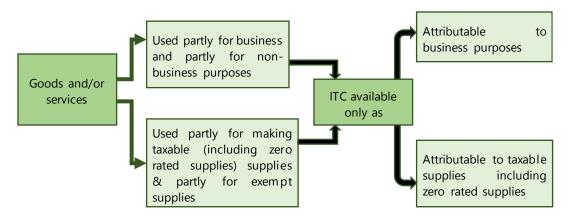


II. Provisions of section 16 relating to eligibility and conditions for taking ITC read with relevant rules are summarized below:



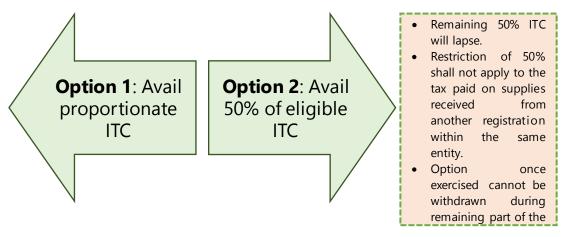
III. Provisions of section 17 relating to apportionment of credit and blocked credits read with relevant rules are summarized as under:

A. Apportionment of credit

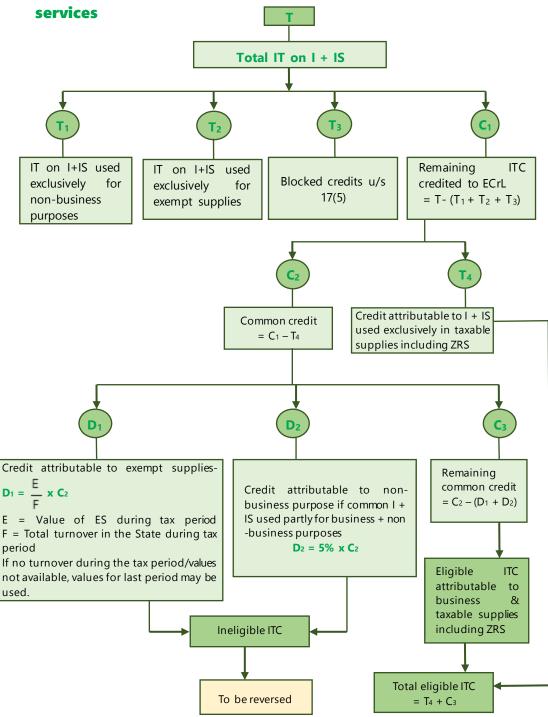


Exempt supplies include reverse charge supplies & transactions in securities and exclude activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier.

B. Special provisions for banking companies and NBFCs







- C₃ will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- ∑ (D₁ + D₂) will be computed for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year. If this amount is more than the amount already reversed every month, the differential amount will be reversed in any of the month till September of succeeding year along with interest @ 18% from 1st April of succeeding year till the date of payment.
- If this amount is less than the amount reversed every month, the additional amount paid has to be claimed back as credit in the return of any month till September of the succeeding year.
- Exempt supplies include reverse charge supplies & transactions in securities.
- Exempt supplies exclude (i) activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier, (ii) services of accepting deposits, extending loans/advances where the consideration is interest/discount and the same are provided by persons other than banking company/financial institution including NBFC, and (iii) outbound (overseas) transportation of goods by a vessel.
- Aggregate value of exempt supplies and total turnover exclude central excise duty, state excise duty, central sales tax and VAT.
- Value of exempt supply in respect of land and building is the stamp duty value and for security is 1% of the sale value of such security.

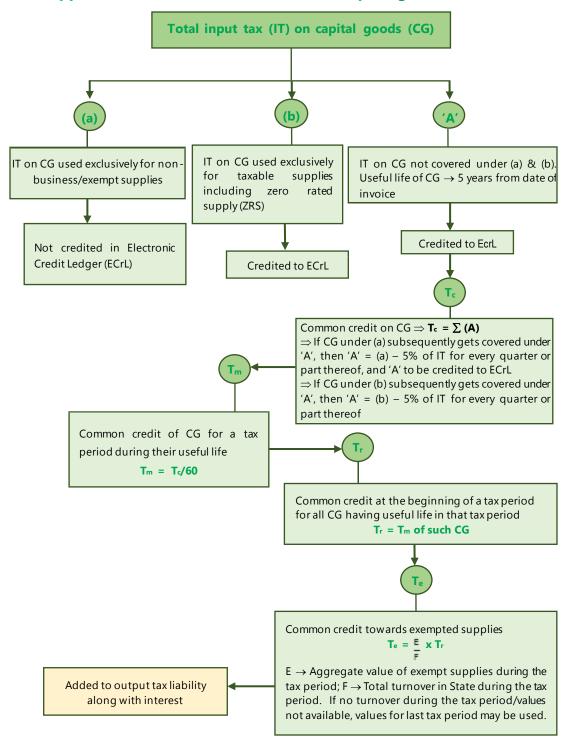
IT = Input tax I = Inputs

IS = Input services

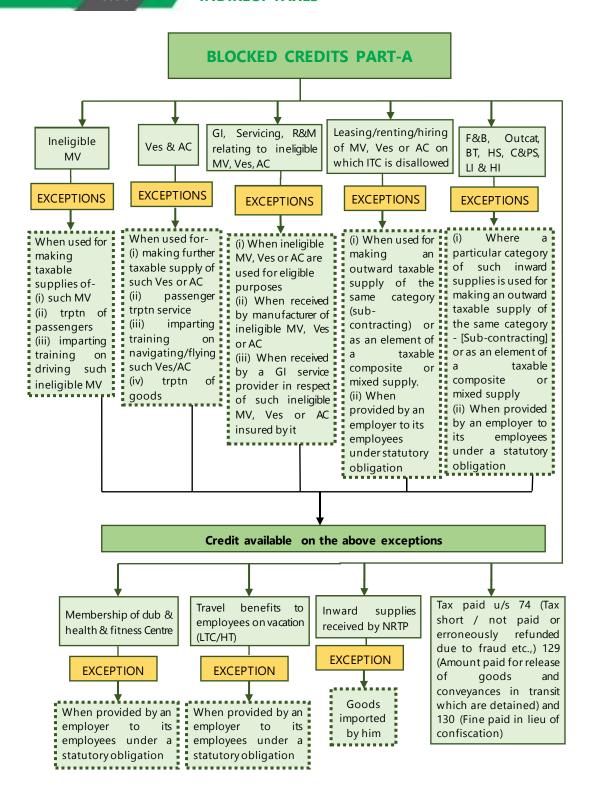
ECrl = Electronic Credit Ledger

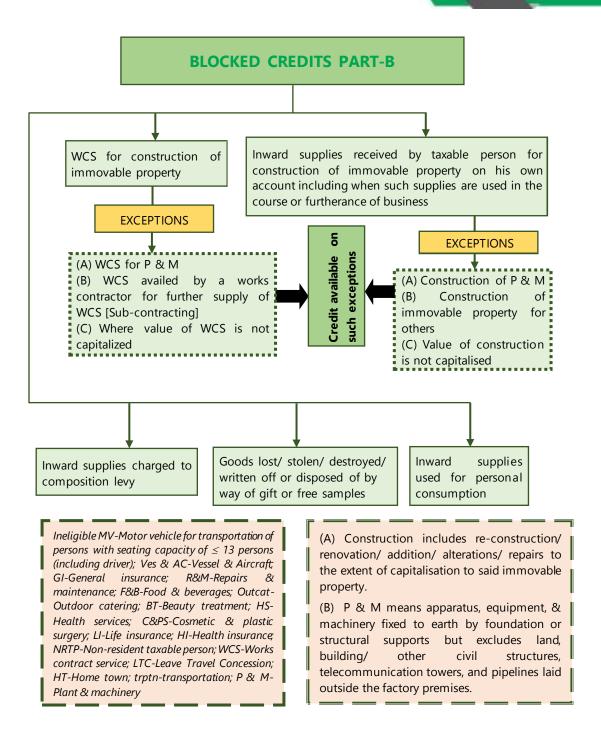
ZRS = Zero rated supply ES = Exempt supplies

D. Apportionment of common credit on capital goods

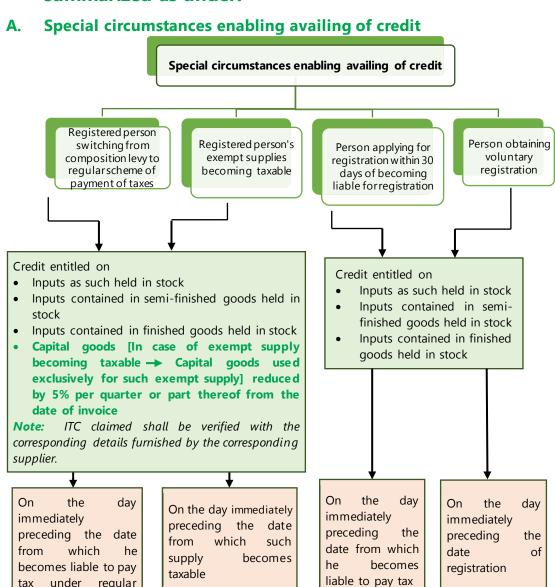


- Te will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- Exempt supplies include reverse charge supplies & transactions in securities.
- Exempt supplies exclude (i) activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier, (ii) services of accepting deposits, extending loans/advances where the consideration is interest/discount and the same are provided by persons other than banking company/financial institution including NBFC, and (iii) outbound (overseas) transportation of goods by a vessel.
- Aggregate value of exempt supplies and total turnover exclude central excise duty, state excise duty, central sales tax and VAT.
- Value of exempt supply in respect of land and building is the stamp duty value and for security is 1% of the sale value of such security.





III. Provisions of section 18 read with relevant rules are summarized as under:

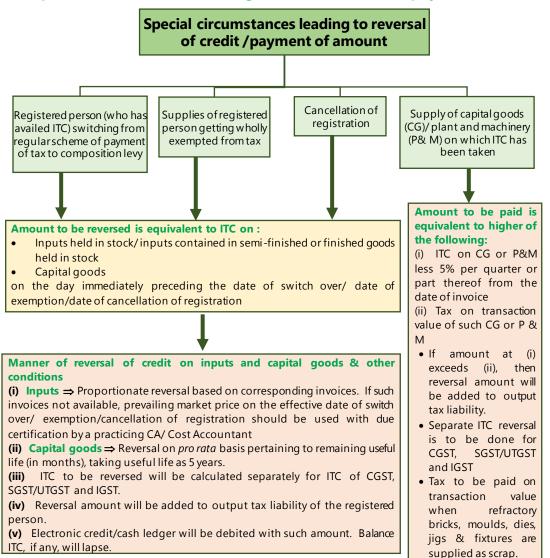


ITC, in all the above cases, is to be availed within 1 year from the date of issue of invoice by the supplier.

Conditions for availing above credit:

- (i) Filing of electronic declaration giving details of inputs held in stock/contained in semi-finished goods and finished goods held in stock and capital goods on the days immediately preceding the day on which credit becomes eligible.
- (ii) Declaration has to be filed within 30 days from becoming eligible to avail credit.
- (iii) Details in (i) above to be certified by a CA/ Cost Accountant if aggregate claim of CGST, SGST/ IGST credit is more than ₹ 2,00,000.

B. Special circumstances leading to reversal of credit/payment of amount



Transfer of unutilised ITC on account of change in constitution of registered person

In case of sale, merger, amalgamation, lease or transfer of business, unutilised ITC can be transferred to the new entity if there is a specific provision for transfer of liabilities to the new entity. The inputs and capital goods so transferred should be duly accounted for by the transferee in his books of accounts.

In case of demerger, ITC is apportioned in the ratio of value of entire assets (including assets on which ITC has not been taken) of the new units as per the demerger scheme.

Details of change in constitution are to be furnished on common portal along with request to transfer unutilised ITC. CA/Cost Accountant certificate is to be submitted certifying that change in constitution has been done with specific provision for transfer of liabilities.

Upon acceptance of such details by the transferee on the common portal, the unutilized ITC is credited to his Electronic Credit Ledger.

Transfer of unutilised ITC on obtaining separate registrations for multiple places of business within a State/UT

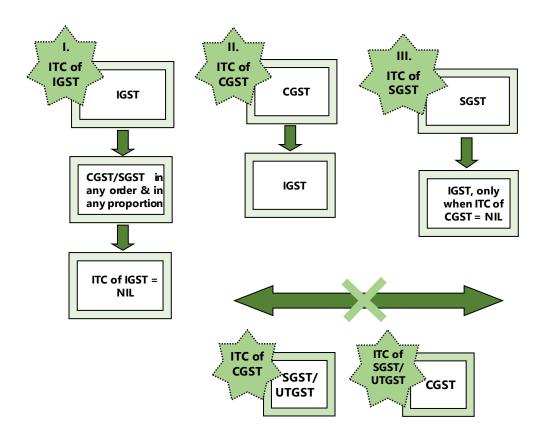
Registered person having separate registrations for multiple places of business can transfer the unutilised ITC to any or all of the newly registered place(s) of business in the ratio of the value of assets held by them at the time of registration.

Value of assets means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The resgistered person should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations.

Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC is credited to his electronic credit ledger.

IV. Provisions relating to utilization of ITC are summarized as under:



8. TEST YOUR KNOWLEDGE

- 1. In which of the following situations, taxpayer needs to reverse the credit already taken?
 - (a) If payment is not made to the supplier within 45 days from the date of invoice
 - (b) If payment is not made to the supplier within 90 days from the date of invoice
 - (c) If payment is not made to the supplier within 180 days from the date of invoice

- (d) None of the above
- 2. What is the time limit for taking ITC on invoices pertaining to a financial year?
 - (a) 180 days
 - (b) 1 year
 - (c) Due date of filing return for the month of September of the next financial year or the date of filing annual return, whichever is earlier
 - (d) No limit
- 3. If the goods are received in lots/installment, -----
 - (a) 50% ITC can be taken on receipt of 1st installment and balance 50% on receipt of last installment.
 - (b) ITC can be availed upon receipt of last installment.
 - (c) 100% ITC can be taken on receipt of 1st installment.
 - (d) Proportionate ITC can be availed on receipt of each lot/installment.
- 4. For banking companies using inputs and input services partly for taxable supplies and partly for exempt supplies, which of the statement is true?
 - (a) ITC shall be compulsorily restricted to credit attributable to taxable supplies including zero rated supplies
 - (b) 50% of eligible ITC on inputs, capital goods, and input service shall be mandatorily availed in a month and the rest shall lapse.
 - (c) Banking company can choose to exercise either option (a) or option (b)
 - (d) None of the above
- 5. A supplier takes deduction of depreciation on the GST component of the cost of capital goods as per Income- tax Act, 1961. The supplier can-
 - (a) avail only 50% of the said tax component as ITC
 - (b) not avail ITC on the said tax component
 - (c) avail 100% ITC of the said tax component
 - (d) avail only 25% of the said tax component as ITC
- 6. Which of the following inward supplies are not eligible for ITC in case of a company manufacturing shoes?
 - (a) Food and beverages

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- (b) Outdoor catering
- (c) Health services
- (d) All of the above
- 7. Which of the following statement is true for a composition tax payer?
 - (a) A composition tax payer can avail only 50% of ITC on capital goods.
 - (b) A composition tax payer can avail 100% ITC on inputs.
 - (c) ITC is not available on inward supplies made by a composition tax payer.
 - (d) Composition tax will be available as ITC to the recipient only if the tax is mentioned separately in the invoice raised by the composition tax payer.
- 8. What is input tax?
- 9. What are the conditions necessary for obtaining ITC?
- 10. Can a person take ITC without payment of consideration for the supply along with tax?
- 11. What is the time limit for taking ITC and reasons therefor?
- 12. What is the ITC entitlement of a newly registered person?
- 13. What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?
- 14. A taxable person is in the business of information technology. He buys a car (maximum seating capacity 5 persons) for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such car?
- 15. A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable. The finance personnel of BMT Ltd. want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.
- 16. A garment factory receives a Government order for making uniforms for a commando unit. This supply is exempt from tax under a special notification. The fabric is separately procured for the supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory.

The turnover of the other products of the factory and exempted uniforms in July is $\not\equiv 4$ crore and $\not\equiv 1$ crore respectively, the ITC on thread and lining material procured in July is $\not\equiv 5000$ and $\not\equiv 15000$ respectively.

Calculate the eligible ITC on thread and lining material.

17. Mr. A, a registered person was paying tax under Composition Scheme up to 30^{th} July. However, w.e.f. 31^{st} July, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for any ITC?

©9. ANSWERS/HINTS

- 1. (c) 2. (c) 3. (b) 4. (c) 5. (b) 6. (d) 7. (c)
- 8. Input tax means the central tax (CGST), State tax (SGST), integrated tax (IGST) or Union territory tax (UTGST) charged on supply of goods or services or both made to a registered person. It also includes tax paid on reverse charge basis and integrated goods and services tax charged on import of goods. It does not include tax paid under composition levy.
- 9. Following four conditions are to be satisfied by the registered taxable person for obtaining ITC:
 - (a) he is in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;
 - (b) he has received the goods or services or both;
 - (c) subject to section 41, the supplier has actually paid the tax charged in respect of the supply to the Government; and
 - (d) he has furnished the return under section 39.
- 10. Yes, the recipient can take ITC. However, he is required to pay the consideration along with tax within 180 days from the date of issue of invoice. This condition is not applicable where tax is payable on reverse charge basis.
- 11. Refer point (vi) "Time limit for availing ITC: Due date of filing return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier" under Heading No. 3 "Eligibility and Conditions for Taking Input Tax Credit [Section 16]".
- 12. A person applying for registration can take input tax credit of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day immediately preceding the date of grant of registration. If the

person was liable to take registration and he has applied for registration within thirty days from the date on which he became liable to registration, then ITC of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken.

In case of voluntary registration, ITC of such goods held in stock on the day immediately preceding the date of registration can be taken.

- 13. In case of supply of capital goods or plant and machinery on which ITC has been taken, the registered person shall pay an amount equal to the ITC taken on the said capital goods or plant and machinery reduced by 5% per quarter or part thereof from the date of invoice or the tax on the transaction value of such capital goods, whichever is higher.
 - However, in case of refractory bricks, moulds and dies, jigs and fixtures when these are supplied as scrap, the person can pay tax on the transaction value.
- 14. No. As per section 17(5)(a), ITC on motor vehicles for transportation of persons with seating capacity of up to 13 persons (including driver), can be availed only if the taxable person is in the business of transport of passengers or is providing the services of imparting training on driving such motor vehicles or is in the business of supply of such motor vehicles.
- 15. Under section 16(2) of the IGST Act, credit of input tax is allowed to be taken for inward supplies used to make zero rated supplies. Under section 17 of the CGST Act also, ITC is disallowed only to the extent it pertains to supplies used for non-business purposes or supplies other than taxable and zero-rated supplies. Supplies to SEZ units are zero rated supplies in terms of section 16(1) of IGST Act. Thus, full ITC is allowed on inward supplies of BMT Ltd. used for effecting supplies to the unit in the SEZ.
- 16. Thread and lining material are inputs which are used for making taxable as well as exempt supplies. Therefore, credit on such items will be apportioned and credit attributable to exempt supplies will be reversed in terms of rule 42 of the CGST Rules.

Credit attributable to exempt supplies = Common credit x (Exempt turnover/ Total turnover)

Common credit = ₹ 15,000 + ₹ 5,000 = ₹ 20,000

Exempt turnover = ₹ 1 crore

Total turnover = ₹ 5 crore [₹ 1 crore + ₹ 4 crore]

Credit attributable to exempt supplies = (₹ 1 crore /₹ 5 crore) x ₹ 20,000 = ₹ 4,000.

Ineligible credit of ₹ 4,000 will be reversed. Credit of ₹ 16,000 will be eligible credit for the month of July.

17. Mr. A is eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of invoice [Section 18(1)(c)].

