



GST Refresher
Course for Beginners

Input Tax Credit
Time of Supply
CA Chetan V. Oswal

Topics for discussion

- ▷ Input Tax Credit
- ▷ Legal provisions
- ▷ Conditions and restrictions
- ▷ Special Circumstances
- ▷ Related Rules
- ▷ Relevant judgments
- ▷ Time of Supply

Input Tax Credit

Legal Provisions



Input Tax Credit

Sections and Rules governing ITC

Section	Description
Section 16 to 21	Sections governing the entitlement of ITC , blocking of ITC
Rule 36 to 45	Rules governing conditions to claim, reversal, distribution, transfer of ITC
Section 155 of the Chapter XXI of the CGST Act, 2017.	<u>Onus on Taxpayer:</u> Where any person claims that he is eligible for input tax credit under this act, the burden of proving such claim shall lie on such person.
Section 49	Provisions relating to payment of Tax through ITC. Order of ITC Utilization.
Section 41	Claim of input tax credit and provisional acceptance thereof.

Legal Provisions

Section 2(62) “**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 IGST 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-sections (3) and (4) of section 5 of the IGST Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective SGST Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the UTGST Act, but does **not include** the tax paid under the composition levy;

Section 2(63) “**Input Tax Credit**” means the credit of input tax.

Components of Input Tax Credit

Section	Description
Section 2(59): 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(60) Input service	means any service used or intended to be used by a supplier in the course or furtherance of business;
Section 2(19) Capital goods	means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business ;

Settled position under old law:

- ▷ Input tax credit is **indefeasible**. No **one to one** correlation required between raw material and final product. Collector of Central Excise, Pune V/s **Dai Ichi Karkaria Ltd-1999 (112) E.L.T. 353 (S.C.)**.
- ▷ Credit of ITC is **not an absolute right** but a **conditional** (*substantive and procedural*) ones and subject to fulfillment of conditions. No reversal for procedural lapse. **ALD Automotive Pvt. Ltd. V/s Commercial tax Officer 2019 (13) SCC 255**.
- ▷ It is a trite law that whenever concession is given by statute or notification, etc. the **conditions** thereof are to be **strictly complied with** in order to avail such concession. Thus, it is **not the right** of the “dealers” to get the benefit of ITC but it is a **concession** granted by virtue of section 19. **Jayam and Company versus Assistant Commissioner and Another, (2016) 15 SCC 125:**
- ▷ It is left to the wisdom and discretion of assessee which input or capital goods is required to be bought. **'Sing alloys & steel ltd vs CCE Manu/WB/0305/1993 (Cal)**

Settled position under old law:

- ▷ Classification cannot be challenged in **the hand of recipient**, therefore even if tax has been paid at a higher rate than what was leviable credit shall be available for the higher amount.
 - **Sarvesh Refractories (P) Ltd.** V/s Comm. Of C.Ex. & Customs – 2007(218) E.L.T.488(S.C.)
 - Comm. Of C. Ex. Ahemdabaad-III V/s **Nahar Granities Ltd.** – 2014(305) E.L.T. 9(Guj.)
 - Comm. Of C. Ex. Pondicherry V/s **Mohan Breweries & Distilleries Ltd** – 2010 (259) E.L.T 176 (Mad.)

- ▷ ITC cannot be **denied for procedural lapses** if substantive conditions are satisfied. – Comm of C. Ex. Chandigarh V/s **Varinder Agro Cheicals Ltd** – 2010-TOII-10-HC-P&H-CX

Legal Provisions

Entitlement and conditions

Summary of provisions

Section	Description
Section 16(1)	Eligibility
Section 16(2)	4 Conditions and 3 Proviso
Section 16(3)	ITC on Capital Goods or depreciation
Section 16(4)	Time limit to claim ITC



Eligibility and Condition of ITC

16. (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.

Points to ponder:

- Registered person
- Conditions
- Restrictions
- Manner
- Input Tax charged
- used or intended to be used
- course or furtherance of his **business**

Eligibility and Condition of ITC

▷ **Used or intended to be used**

‘Put to use’ is not a precondition to claim ITC. ‘**Intention to use**’ should be there.

- Machineries put to use after one year.
- RM stocked and used after few months.

▷ SC in **SAIL Vs CCE 1996 (5) SCC 484** observed 'Raw naphtha was intended to be used in the manufacture of fertilizer and was not actually used.'

▷ **In the course or furtherance of his business**

▷ **MD Yusuf Vs D AIR 1968 Bom 112** 'In the course of business' means the way that entire gamut of business activities are conducted.

Eligibility and Condition of ITC

CIT vs Malayalam Plantation Ltd 1964 AIR 1722, 1964 SCR (7) 693

- ▷ The expression "for the purpose of the business" in S.10(2)(xv) of the Act is **wider in scope** than the expression "for the purpose of earning profits". Its range is wide: it may take in not only the day to day running of a business but also the rationalization of its **administration and modernization** of its machinery; it may include measures for the **preservation** of the business and for the **protection** of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business.



Eligibility and Condition of ITC

Section 16(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:

Points to ponder:

- 4 cumulative conditions
- 3 provisos
- Related Rules

Eligibility and Condition of ITC

Section 16(2)(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;

Points to ponder:

- Valid Invoice
- By a registered person

Section 31 & Rule 36:

- Invoice
- Self Invoice – RCM
- Debit note
- Bill of entry

Eligibility and Condition of ITC

Section 16(2)(b): he has received the goods or services or both.

Explanation to sub clause (b)

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;

Points to ponder:

- Actual receipts must.
- Also for services.
- Document to prove receipt.
- Stock records, gate pass, GRN.
- B2S2 cases covered.
- No ITC on GST on advance.
- Prone to frauds

Eligibility and Condition of ITC

Section 16(2)(c):

subject to the provisions of section 41, **the tax charged** in respect of such supply has been **actually paid to the Government**, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

Points to ponder:

- Supplier to pay tax.
- How to find out complete payment in 3B?
- Divergent views earlier by HC.
- Dept taking actions for this non-failure.
- Prove the non-collusion.

Eligibility and Condition of ITC

- ▶ Delhi High court '**Arise India Ltd** (Manu/DE/3361/2017). ITC could **not be denied on non payment of tax by supplier**. In case of collusion between buyer and seller, then proceeding under section 40A of the DVAT Act can be initiated
*The customer can not be **asked to do the impossible**. It is trite that a **law that is not capable of honest compliance** will fail in achieving its objective. If it seeks to visit disobedience with **disproportionate consequences to a bona fide purchasing dealer**, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.*
SC dismissed the SLP of department in summerly manner. No speaking order by SC.
- ▶ ITC cannot be denied on default made by the selling dealer – Jharkhand High Court

Eligibility and Condition of ITC

▷ R.S. Infra-Transmission Ltd. v/s State of Rajasthan (Raj HC):

It was held that buying dealer cannot be defaulted for non-payment of tax by the selling dealer.

*We are in complete agreement that it will be **impossible** for the petitioner to prove that the selling dealer has paid tax or not as while making the payment, the invoice including tax paid or not he has to prove the same and the petitioner has already put a summary on record which clearly establish the amount which has been paid to the selling dealer including the purchase amount as well as tax amount. In that view of the matter, we are of the opinion that Rule 18 if it is accepted, then the respondents will take undue advantage and cause harassment.*

Eligibility and Condition of ITC

- Quest Merchandising India Pvt. Ltd and Ors. – 2018 (10) GSTL 182 (Del)(HC)

***Relevant para:** “53. In light of the above legal position, the Court hereby holds that the expression „dealer or class of dealers“ occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexure 2A and 2B.”*

- ▷ Contradictory judgement by Mumbai HC in [Mahalaxmi Cotton Ginning Pressing and Oil Industries v. The State of Maharashtra](#) (2012) 51 VST 1 (Bom.) :

Eligibility and Condition of ITC

Section 16(2)(d):

he has furnished the return under section 39:

Points to ponder:

- The person claiming ITC to file return.
- Return means GSTR3B.

Restriction on ITC

- ▶ **Rule 36(4):** Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the **eligible credit** available in respect of invoices or debit notes the details of which have been **uploaded** by the suppliers under sub-section (1) of section 37.

Provided that the said condition shall apply cumulatively for the period February 20 to August 20 and the return in Form GSTR-3B for the tax period September 20 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

Notification No.
49/2019-CT dtd.
09.10.2019.

20% replaced with
10% w.e.f.
01.01.2020 vide
Not. No. 75/2019-
CT dtd.
26.12.2019.

Relaxation for
months from
Feb20 to Aug20.
Notf. No.
30/2020-CT dt.
03.04.2020.

Restriction on ITC

Month	Amount Available – Books	Amount Available – GSTR-2A	Credit Available
February 2020	1,50,000	50,000	1,50,000
March 2020	2,00,000	1,50,000	2,00,000
April 2020	50,000	75,000	50,000
May 2020	50,000	100,000	50,000
June 2020	50,000	25,000	50,000
July 2020	2,50,000	1,50,000	2,50,000
August 2020	1,50,000	1,50,000	1,50,000
	9,00,000	7,00,000	9,00,000

Month	Amount Available- Books	Amount Available – GSTR-2A	Credit Available	Credit Availed	Reversal Due in Sept 2020
Feb to Aug	9,00,000	7,00,000	7,70,000	9,00,000	1,30,000

Eligibility and Condition of ITC

ITC in case of continuous supply:

- ▷ 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.**

Reversal of ITC in case of non payment

Reversal of ITC in case of non payment:

- ▷ 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.

Reversal of ITC in case of non payment

Rule 37

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:

Reversal of ITC in case of non payment

Date	Action	Consideration
1.1.2020	Issue of Invoice	Rs.1 lakh + GST 18%: Rs. 1.18 Lakhs
5.1.2020	Receipt of Goods	-
10.1.2020	Accounting by recipient	-
15.10.2020	Payment made	Rs. 59000
25.12.2024	Final Payment made	Rs. 59000

Reversal of ITC in case of non payment

Eligible to claim when payment is made

- ▷ 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

Time Limit prescribed under section 16(4) is not applicable

- The registered person is **eligible to take the ITC** after the consideration has been paid and the time limit prescribed under section 16(4) of the CGST Act, 2017 is **not applicable**.

Reversal of ITC in case of non payment

Takeaways

- Failure period of 180 days to be calculated **from the date of Invoice** and **not** from the **date of supply** of goods or services.
- **Proportionate credit** permissible in case of part payments.
- What if ITC not utilised, only availed.
- Interest liability in case of non reversal or late reversal.
- Interest u/s 50(1) (Failure to pay) or 50 (3) (undue or excess claim)?



Not applicable

- in case of **RCM (IGST on import)**
- in case of supplies without consideration – Schedule I.

Reversal of ITC in case of non payment

Judicial Pronouncements

- ▷ AAR GM ordinance factory, bhandara 2019 (106) taxmann 246 AAR:
If **liquidated damages** are deducted while making payment of consideration, say 10%, then that **proportionate ITC to be reversed**.
- ▷ Senco Gold Ltd AAR 2019 (10) taxmann 143 AAA West bengal.
Payment can be made through **book adjustment or setting off debts**. ITC can not be denied.

Eligibility and Condition of ITC

Section 16(3):

Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

Machine cost Rs. 10.00 lakhs
GST @ 18% Rs. 1.80 Lakhs
Total Rs. 11.80 Lakhs

Either claim ITC 1.80 Lakhs
& Get depreciation on 10 Lakhs

OR

No claim of ITC
Get depreciation on 11.80 L

Eligibility and Condition of ITC

Section 16(4):

Time Limit for avaiement of Credit

A registered person 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**.

For FY 17-18 the date was extended up to due date of return for March 2019.

Restrictions

Reversal and Blocking of ITC

Summary of provisions



Section	Description
Section 17(1)	Reversal of ITC for non business purpose supplies
Section 17(2)	Reversal of ITC for Exempt Supplies
Section 17(3)	Reversal of ITC for Exempt Supplies
Section 17(4)	Option for banking company
Section 17(5)	Blocked Credit

Restriction on ITC

Section 17(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.

Restriction on ITC

Section 17(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**.

Restriction on ITC

Section 17(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;]

Reversal of ITC – Rule 42

Product	Taxability	TV Rs.	Tax Rs.
Milk	Exempt	600	
Shrikhand	Taxable	300	20
Paneer	Export	100	
Total		1000	

ITC on used for		ITC Rs.
For Milk	Ineligible	5
Shrikhand	Eligible	5
Others	Common (C)	5

Eligibility %	
Exempt	600
Taxable	400
Exempt Proportion	60%

Eligible	
Shrikhand	5
Others (C-@60%*C)	2
Total	7

Rule 42(2): Annual calculation and reversal /reclaim again before September of next FY

ITC Reversal

Section 17(4)/Rule 38

- ▷ 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 subsection (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:**
- ▷ **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**

Blocked Credit



Section 17(5)

- ▶ **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:—**

17(5)(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;

Blocked Credit

2(28) of the Motor Vehicles Act, 1988:

“motor vehicle” or “vehicle” means any mechanically propelled vehicle adopted 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 rail or a vehicle of a special type adopted 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 centimeters**

Blocked Credit

- 17(5)(aa) vessels 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;

Blocked Credit

17(5)(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 available –**

- (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) **are used for the purposes specified** therein;
- (ii) where received by a taxable person engaged –
 - (I) in the **manufacture of such motor vehicles**, vessels or aircraft; or
 - (II) in the **supply of general insurance services in respect of such motor vehicles**, vessels or aircraft insured by him.

(w. e. f. 01.02.2019)

Blocked Credit

17(5)(b):

the following supply of goods or services or both –

- (i) (a) food and beverages, (b) outdoor catering, (c) beauty treatment, (d) health services, (e) cosmetic and plastic surgery, (f) 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, (g) life insurance and (h) 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**;

(ii) membership of a club, health and fitness 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 in force.

Blocked Credit

17(5)(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.

17(5)(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

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**-

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

Blocked Credit

Safari Retreats Private Limited Vs Chief Commissioner of Central Goods & Service tax (Orissa High Court) - W.P. (C) No. 20463 of 2018

In that view. of the Matter, in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, in as much as keeping in mind the language used in **(1999) 2 SCC 361 (supra)**, the very purpose of the credit is to **give benefit to the Assessee** ‘

Credit of goods and services used in construction of immovable property allowed when such property is to be let out and GST is paid on output.

Blocked Credit

17(5)(e): goods or services or both on which tax has been paid under section 10 (Composition supplier)

17(5)(f): goods or services or both received **by a non-resident** taxable person except on goods imported by him

17(5)(g): goods or services or both used for **personal consumption**;

17(5)(h): goods lost, stolen, destroyed, **written off** or disposed of by way of gift or free samples; and

17(5)(i): any tax paid in accordance with the provisions of sections 74, 129 and 130

17(6): The Government **may prescribe the manner** in which the credit referred to in sub-sections (1) and (2) may be attributed

Power to block Credit – Rule 86A

Notification – No. 75/2019 – Central Tax Dated 26th December 2019.

(1) The Commissioner or an officer authorized by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been **fraudulently availed or is ineligible** in as much as

- a) the credit of input tax has been availed on the strength of **tax invoices** or debit notes or any other document prescribed under rule 36-
 - i. issued by a registered **person who has been found non-existent** or not to be conducting any business from **any place for which registration has been obtained**;
or
 - ii. **without receipt** of goods or services or both; or

Power to block Credit – Rule 86A

b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, **the tax charged in respect of which has not been paid** to the Government; or

c) the registered person **availing** the credit of input tax has been **found non-existent or not to be conducting any business from any place** for which registration has been obtained; or

d) the registered person **availing** any credit of input tax is **not in possession of a tax invoice** or debit note or any other document prescribed under rule 36,

may, for reasons to be **recorded in writing**, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any un utilised amount.

Special Circumstances

Availability of ITC or reversal

ITC to Newly Taxable Person

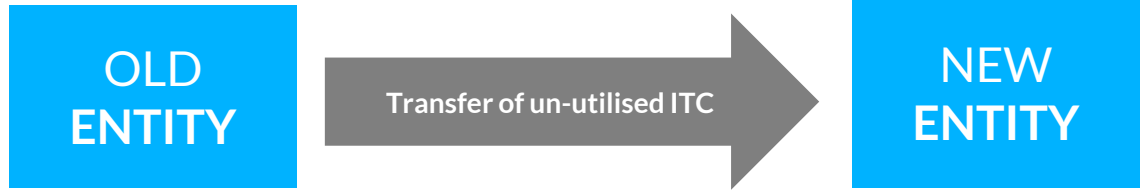
Newly Registered Person (Exceeding TO) Section 18(1)(a)	Voluntary Registration Section 18(1)(b)	Composition to Regular Dealer - Section 18(1)(c) Exempt supply to taxable supply Section 18(1)(d)
<p>A person <u>who has applied for registration within 30 days</u> from the date on which he becomes liable to registration, and has ultimately been granted such registration,</p>	<p>A person who has applied for voluntary registration.</p>	<p>Where any registered taxable person ceases to pay tax under section 10,</p> <p>Where an exempt supply of g/s becomes taxable</p>
<p>shall also be entitled to take ITC in respect of inputs (<i>input services not specified here</i>) which are –</p> <ul style="list-style-type: none"> ○ held in stock, and ○ contained in semi-finished or ○ finished goods held in stock (<i>Latest one year old invoice eligible</i>) 		<p>← This + Capital goods (with ITC reversal of 5% per qrtr) of Rule 40(1)(a)</p>
<p>... on the day immediately preceding the date from which he becomes liable to pay tax.</p>	<p>... on the day immediately preceding the date of registration</p>	<p>....on the day immediately preceding the date from which he becomes liable to pay tax.</p>
<p>Rule 40 (1)(b) File declaration in FORM GST-ITC-01 within 30 days from respective date.</p>		

Transfer of ITC - Change in Constitution

18(3)/Rule 41

Where there is a change in the constitution of a registered taxable person on account of

- sale,
- merger,
- demerger,
- amalgamation,
- lease or
- transfer of the business



- ▷ with the **specific provision for transfer of liabilities**,
- ▷ the said registered taxable person shall be allowed to transfer the input tax credit that **remains unutilized in its books** of accounts to such sold, merged, demerged, amalgamated, leased or transferred business *in the manner prescribed*.
- ▷ **Rule 41 (1)** Transferor to furnish details in **FORM GST-ITC-02** to transfer ITC to transferee.
- ▷ **Rule 41 (3)/(4)** Transferee to accept the above and account for in his books of accounts.

Reversal of ITC

18(4)/Rule 44

Where a registered taxable person who has availed ITC

- ▷ switches to **composition** levy scheme
- ▷ where the goods or services supplied by him **become wholly exempt**

he shall **pay** (Credit ledger/cash ledger) an amount equal 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
- capital goods (pro-rata basis)

on the day immediately preceding the date of such switchover or the date of such exemption.

If after payment of such amount, any balance remains in input tax credit the same shall be lapsed.

Supply of Capital Goods

18(6)/Rule 40(2)

In case the taxable person supplies capital goods or plant and machinery, on which ITC has been taken, he shall **pay** an amount equal to

- input tax credit taken less 5% per quarter or part thereof from invoice date.
- the tax on transaction value

whichever is **higher**.

Exceptions: Refractory bricks, moulds and dies, jigs and fixtures supplied as scrap, where tax on transaction value can be paid.

ITC on inputs sent for Job Work

Section 19/Rule 45

- ▷ The principal shall be entitled to take ITC on inputs or capital goods sent to job worker or directly delivered by vendor to job worker.
- ▷ No need of actual receipt of goods at principal place as per Section 16(2)(b).
- ▷ Condition for allowing such ITC:

Such inputs or capital goods to be returned after processing:

Time limit of returning:

- In case of Inputs: within 1 year from date of sending.
 - In case of Capital goods: within 3 years from the date of sending.
 - If I/CG sent directly to JW: within 1 year from date of receipt by job worker
- ▷ Exceptions: Moulds, dies, jigs and fixtures or tools sent to job worker.
 - ▷ If inputs or CG are **not received back** within time prescribed, credit attributable to such inputs or capital goods shall be paid along with interest and on receipt can reclaim input tax credit and interest.

Time of Supply

Liability to pay tax

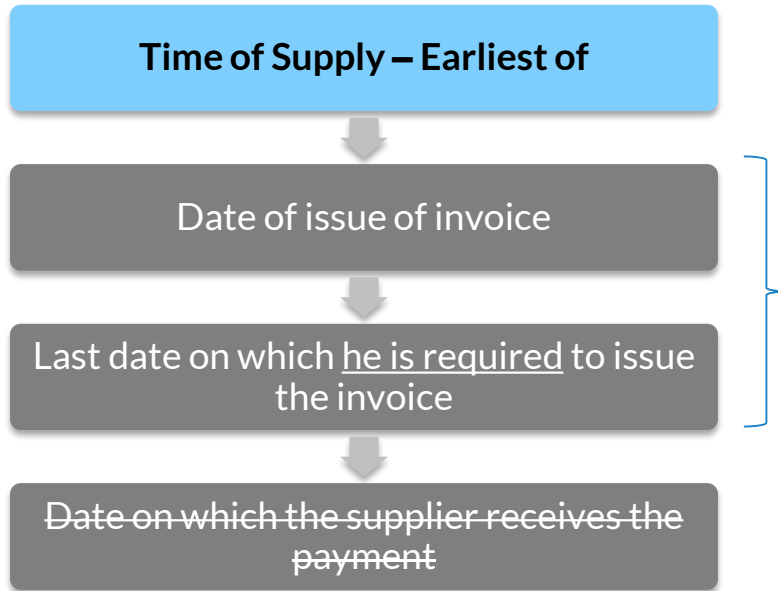
Time of Supply

- ▷ Taxable event under GST is SUPPLY.
- ▷ **Time of Supply → Liability to Pay GST**
- ▷ Time of supply is the time when supply is treated **as being made** under GST Act .
- ▷ Supplier must account for Tax when PoS occurs and must include in return and pay tax.
- ▷ ToS different for goods and services due to the very nature of the activities.
- ▷ Specific provisions overrides general provisions.

Summary of provisions

Section	Description
Section 12(1)/13(1)	Liability to pay tax
Section 12(2)/13(2)	Time of supply of Goods / Services
Section 12(3)/13(3)	Time of supply of Goods / Services – RCM
Section 12(4)/13(4)	ToS for Vouchers
Section 12(5)/13(5)	Residuary mechanism
Section 12(6)/13(6)	ToS for addition to value
Section 14	Change in tax rate for goods/service

Time of Supply - Goods



Tax Invoice: Section 31(1)

Tax Invoice (goods) shall be issued before or at the time of,-

- removal of goods for supply to the recipient, where the supply involves movement of goods, or
- delivery of goods or making available thereof to the recipient, in any other case,

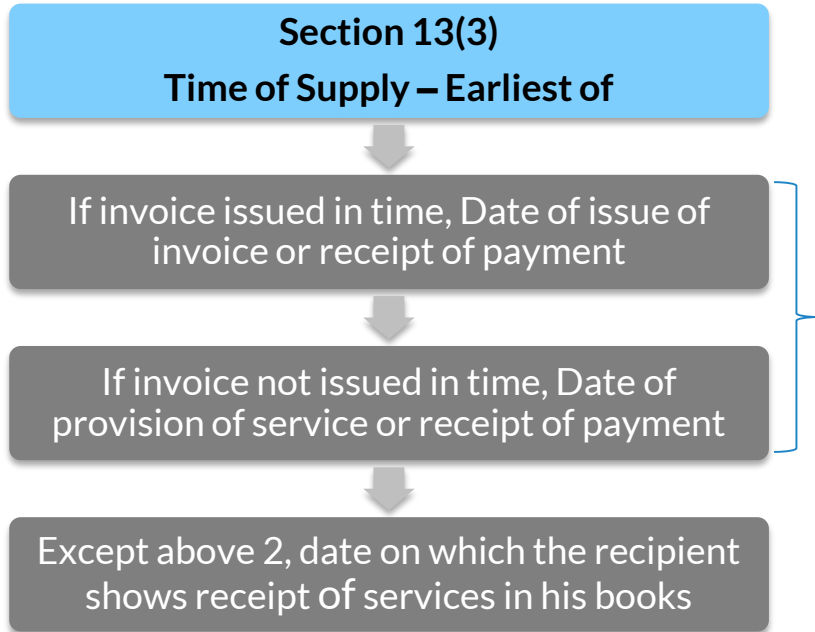
Sale on approval: Earlier of:

Before or at the time it is known that supply has taken place

6 months from removal date.

- ▷ *Date of payment shall be earlier of entry in books of recipient or credit in bank account.*
- ▷ *Amount received in excess of invoice upto Rs. 1000, ToS can be date of invoice. (Optional)*

Time of Supply – Services

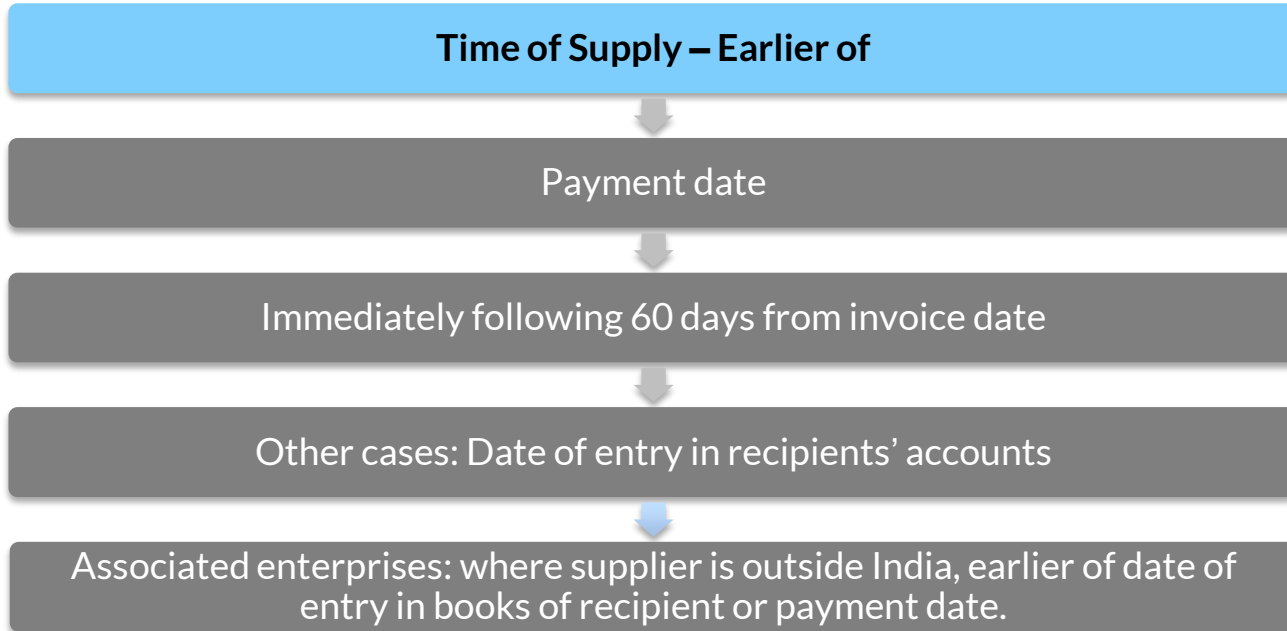


Tax Invoice: Section 31(2)/(Rule 47)

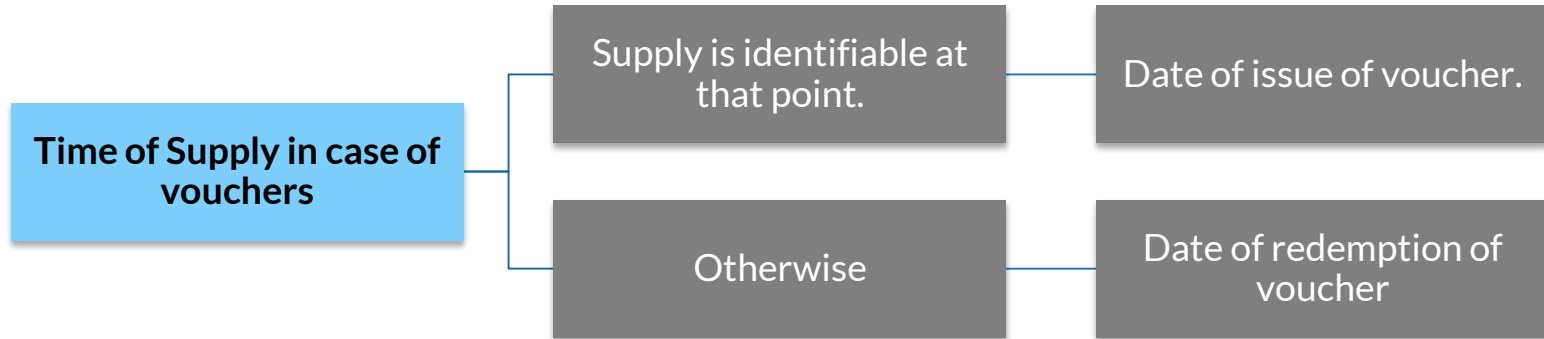
Tax Invoice (services) shall be issued before or after the provision of services but within the period prescribed in this behalf i.e. 30/45 days from the date of supply of service.

- ▷ *Date of payment shall be earlier of entry in books of recipient or credit in bank account.*
- ▷ *Amount received in excess of invoice upto Rs. 1000, ToS can be date of invoice. (Optional)*

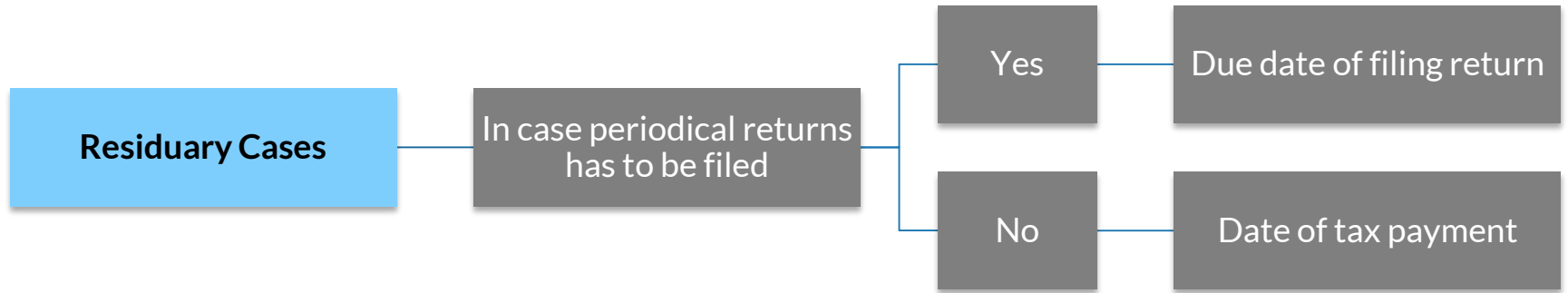
Time of Supply - RCM



Time of Supply - Vouchers



Time of Supply - Residuary





*We don't have to be **smarter** than the rest.
We have to be more **disciplined** than the rest.*

Warren Buffet

Thanks!

Any questions?

Chetan Oswal and Associates

Chartered Accountants

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