

3

CHAPTER

INPUT TAX CREDIT

3.1 INPUT TAX CREDIT

The entire provisions related to Input Tax Credit in the GST Law is contained under Chapter V of the GST Act, 2017 and GST Rules, 2017. Section 16 to 21 deals with the provisions of Input Tax Credit contained under the GST Act, 2017 while Rules 36 to 45 deals with the rules in regard to Input Tax Credit contained under the GST Rules, 2017.

3.2 SYNOPSIS OF THE PROVISIONS RELATED TO INPUT TAX CREDIT

Description	GST Act [Section]	GST Rules
Eligibility and conditions for taking input tax credit	16	36, 37
Apportionment of credit and blocked credits.	17	38, 42, 43
Availability of credit in special circumstances.	18	40, 41, 44
Taking input tax credit in respect of inputs and capital goods sent for job work.	19	45
Manner of distribution of credit by Input Service Distributor.	20	39
Manner of recovery of credit distributed in excess.	21	NA

Input Tax Credit has been defined under Section 2(63) of the GST Act, 2017 which means the credit of **Input Tax**. The Act has unfolded the meaning of Input Tax *vide* Section 2(62) which defines “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) IGST charged on **import** of goods;
- (b) CGST payable under Reverse Charge Mechanism under section 9(3) and 9(4) of CGST Act;
- (c) IGST payable under Reverse Charge Mechanism under section 5(3) and 5(4) of the IGST Act;
- (d) SGST payable under Reverse Charge Mechanism under section 9(3) and 9(4) of SGST Act; or
- (e) UTGST payable under Reverse Charge Mechanism under section 7(3) and 7(4) of UTGST Act,

but **excludes** the **tax paid under the composition levy**.

Input tax is the GST incurred on any purchase or acquisition of goods &/ or services by a taxable person for the purpose of making a taxable supply in the course or furtherance of business. So basically the Input tax credit (ITC) is the credit of the aforementioned taxes paid on supply of goods &/ or services by a supplier which can be used by a receiver for payment of its output tax liability.

3.3 SECTION 16 OF THE GST ACT, 2017 READ WITH RULES 36 AND 37 OF THE GST RULES, 2017

3.3-1 Eligibility for Input Tax Credit

Input Tax Credit (ITC) is a vital pillar of GST and an important element for the registered persons which helps them in making the payment of output liability of GST. A person is **entitled** to claim input tax if he satisfy the following criteria as stipulated under Section 16(1) of the GST Act, 2017:

- (a) He is a taxable person, *i.e.* a person who is **registered**;
- (b) **Input tax** has been incurred;
- (c) He should satisfy the **conditions** and **restrictions** as may be prescribed and in the **manner specified in Section 49**;
- (d) Goods or services acquired **should be used or intended to be used** in the **course or furtherance of business**; and
- (e) **Input Tax** incurred shall be **credited to the Electronic Credit Ledger** of such registered person.

3.3-2 Conditions for availing Input Tax Credit

The pre-requisites or the conditions for availing credit by registered person as per Section 16(2) of the GST Act, 2017 is mentioned below:

- a. He is in **possession** of a tax invoice, debit note, supplementary invoice or such other tax paying document as may be prescribed.

Documents required for availing Input Tax Credit

The input tax credit shall be availed by a registered person on the basis of any of the following documents as prescribed under Rule 36(1) of the GST Rules, 2017:

- (i) An invoice issued by the supplier of goods &/or services in accordance with the provisions of Section 31 - ***Inward Supplies on which GST is charged under the forward charge basis i.e. by the supplier;***
- (ii) An invoice issued in accordance with the provisions of Section 31(3)(f) subject to the payment of tax - ***Inward Supplies on which GST is payable under the reverse charge mechanism both under Section 9(3) and 9(4) where the supplier is not registered;***
- (iii) A debit note issued by a supplier in accordance with the provisions of Section 34 - ***Debit Note forms the basis of document for availing Input Tax Credit in case of amendments;***
- (iv) A bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports - ***Usually Bill of Entry forms the basis of document for availing Credit of Input Tax i.e. IGST paid on import of goods;***
- (v) An ISD Invoice or ISD Credit Note or any document issued by an ISD in accordance with the provisions of Rule 54(1) - ***Special Invoice/Note for availing ISD Credit.***

All the particulars as prescribed should be contained in the aforesaid documents:

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 FORM GSTR-2 by such person. In order to avoid room for litigation, CBIC vide ***Notification No. 39/2018-Central Tax dated 4th September, 2018***, Rule 36(2) has been amended wherein a new *proviso* has been inserted which clearly stipulates 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.*

Restriction on availing Input Tax Credit:

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, wilful misstatement or suppression of facts.

- b. He has **received** the goods or services or both. However, it is significant to note that the Act has extended its arm to introduce a deeming fiction where the **registered person has received the goods** where the **goods are delivered by the supplier** to a recipient or any other person **on the direction of such 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. The deemed fiction is only in a special situation in case of goods only wherein reference shall be placed to Place of Supply Rules as per Section 10(1)(b) of the IGST Act, 2017.

In other words, one of the conditions for availing of credit by the registered person under the Act is the receipt of goods or services or both by him. The aforesaid *Explanation* is basically the case of “bill-to-ship-to” situations, for the purposes of availing of ITC on goods by the registered person, a deeming provision is present as an *Explanation* to section 16(2)(b) *vide* which the registered person is deemed to have received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of the said registered person.

It is now proposed to provide this deeming fiction in case of services as well which will be taxpayer-friendly as stipulated in Sl. No. 14 of the Draft Paper on Proposal of Amendment in the GST Law by insertion of *Explanation (ii)* to section 16(2)(b) which reads as ‘**where the services are provided by the supplier to any person on the direction of and on account of such registered person**’.

It is worthwhile to note that same has been amended *vide* The Central Goods and Services Tax (Amendment) Act, 2018, however, the same shall be effective from the date to be notified.

- c. Tax charged in respect of such supply has **actually been paid to the Government** either in cash or through utilization of input tax credit admissible in respect of the said supply. However, the same shall be subject to Section 41. It has been further subjected to the provisions of Section 43A *vide* The Goods and Services Tax (Amendment) Act, 2018.
- d. He has **furnished the return** as per Section 39.