Institute of Chartered Accountant of India

Program	:	Live Webcast
Subject	:	Input tax Credit
Date & Day	:	19 th January, 2017 (Thursday)

Preamble

- Presentation is based on revised Model GST Law ('RMGL') put on public domain on 26.11.2016
- > RMGL is in draft form and hence can be regarded as tentative till final enactment of GST law
- Presentation needs to be revisited on enactment of final GST law
- > Reference to provision in presentation means reference to CGST/SGST Act unless otherwise specified

Legal provisions relating to Input tax credit :

- Sections 16 to 22 of CGST/ SGST Act
- Section 17 of IGST Act ITC related provisions under CGST/SGST Act which applies to IGST also

> Purpose of this presentation is to apprise participants of:

- Provisions relating to Input Tax Credit ('ITC') under GST
- its impact on trade and business
- Professional and legal challenges

Relevance & Purpose of ITC mechanism in indirect taxes

Input Tax Credit Mechanism – Relevance

- Basic principles/objectives of Indirect taxes such as VAT, Excise, Service Tax and GST:
 - It is a value added tax wherein every player in transaction chain pays tax on value added by him in the transaction
 - Business entities in transaction chain are pass through entities and should not bear indirect tax incidence
 - It is a destination based consumption tax
 - Tax on goods and services to be borne by ultimate customer
 - Ultimate consumer to bear tax on final value of goods / services excluding tax incidences in intermediate stages in distribution chain
- > Two alternative mechanism for achieving above objectives:
 - No tax at intermediate stages and levy of tax only at last stage of transaction chain i.e. at stage when goods are sold to end consumer
 - Levy tax on value of goods / service on vendors at each stage of transaction chain with set off input tax paid by such vendors on procurement of goods/service for business/profession

Existing Cenvat Credit Scheme - Shortcomings

- > Non-fungibility of input tax credit:
 - Manufacturers / Traders not eligible for input CST credit
 - Service provider not eligible for input VAT credit
 - Service provider not eligible for credit of SAD paid on imports
 - Traders not eligible for credit of input excise duty and service tax
 - Traders not eligible for credit of CVD paid on imports
- Restrictive tax credits non admissible tax credits
- Cascading effect of taxes
- ➢ High prices of goods/services for end consumers January 19, 2017

GST Input Tax Credit Mechanism – Purpose

- > To ensure fungibility of tax credit
- > To ensure levy of tax on value addition by respective assesse in transaction chain
- > To ensure efficient system of value added tax is in place
- > To eliminate or minimize possibilities of levy of tax on tax
- > To eliminate or minimize cascading effect of indirect taxes
- > To minimize tax incidence on ultimate consumer of goods / services

ITC under GST - Important definitions and concepts

Meaning- Capital Goods, Input, Input service

- Capital goods means [sec 2(19)] :
 - Goods, the value of which is capitalized in the books of accounts of the person claiming the credit; and
 - Which are used or **intended** to be used **in the course or furtherance of business**
- Input means [sec 2(52)] :
 - Any goods other than capital goods,
 - Used or **intended** to be used by a supplier **for in the course or furtherance of business**
- Input Service means [sec 2(53)] :
 - Any service;
 - used or **intended** to be used by a supplier **in the course or furtherance of business**

Meaning of Output tax, Outward supply, Taxable supply

- > **Output tax** in relation to a taxable person means [sec 2(71)] :
 - CGST/SGST chargeable under this Act;
 - On taxable supply of goods/services made by him or by his agent
 - **Excludes** tax payable by him on reverse charge basis
- > **Outward supply** in relation to a person means [sec 2(72)] :
 - Supply of goods and/or services
 - Whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other means
 - Made or agreed to be made by such person
 - In the course or furtherance of business,
- Taxable supply means [sec 2(99)] :
 - A supply of goods and/or services
 - Which is chargeable to tax under this Act January 19, 2017

Exempt Supplies and Non-Taxable supplies

Exempt Supply means [sec 2(44)]:

- Supply of any goods and / or services which are not taxable under this Act; and
- Includes:
 - such supply of goods and / or services which attract nil rate ; or
 - which may be exempt from tax u/s 11
- > Non-taxable supply means [sec 2(100)] :
 - A supply of goods or services
 - Which is not chargeable to tax under this Act

Zero Rated Supplies [Sec 2(111)] and Section 16 of IGST Act

Zero Rated Supply means [sec 2(111) of CGST/SGST Act]

• Supply of any goods and / or services in terms of Section 16 of IGST Act

Section 16 of IGST Act means :

- Following taxable supply of goods and/or services
 - Export of goods and/or services; or
 - Supply of goods and/or services to a SEZ developer or an SEZ unit
- Subject to provisions of sub section (3) of section 17 of the CGST Act, credit of input tax may be availed for making zero rated supplies, even if that supply is an exempt supply

Meaning of Input Tax Credit ('ITC')

- > Input Tax Credit means credit of 'input tax' as defined in [Section 2(56)]
- > Input Tax in relation to taxable person: [Sec 2(55)]:

Means	Includes	Excludes
• IGST (Including that on import of	Tax payable under section 8(3)	Tax paid under section 9 under
goods)	Under reverse charge	composition levy
CGST; and		
• SGST		
Charged on any supply of goods or		
services to him		

Particulars	Credit restricted on		
Motor vehicles and	All Motor Vehicle and other conveyance except when they are used for:		
other conveyance	 Making the following taxable supplies 		
[Section 17(4)(a)]	 Further supply of such vehicles or conveyance; or 		
	 Transportation of passengers ; or 		
	 Imparting training on driving, flying, navigating such vehicles or conveyance 		
	Transportation of goods		

Particulars	Credit restricted on	
Specified supply of goods or services [Section 17(4)(b)]	 Food and beverages Outdoor catering Beauty treatment Health services Cosmetic and plastic surgery 	Except where said category of inward supply of goods or services are used for making an outward supply of goods or service of same category
	 Membership of a club, Health and fitnes Rent-a-cab Life insurance Health insurance Travel benefits extended to employees of concession 	Except where the government notifies the services which are obligatory for an employer to provide to its employees on vacation such as leave or home travel

Particulars	Credit restricted on	
Works contract services	When supplied for construction of immovable property (other than plant and machinery	
[Section 17(4)(c)]	except where it is an input service for further supply of works contract service	
Goods or services	When it is received by a taxable person for construction of an immovable property on his	
[Section 17(4)(d)]	own account (other than plant and machinery) even when used in course or	
	furtherance of business	

> Construction includes :

Re-Construction	Renovation	Additions	Alterations	Repairs
To the extent capitalization, the said immovable property				

> Plant and Machinery means :

Apparatus	Equipment	Pipelines	Machinery
	5	or structural support that are ports but excludes land, bu	5

- > ITC of Works contract resulting into 'plant and machinery' is admissible
- Whether ITC on works contract for completion & finishing services, repairs, maintenance, renovation or restoration in respect of immovable property are also excluded from ITC?

Particulars	Credit restricted on		
Goods and/or services	Tax paid under Section 9 [Composition levy] - [Section 17(4)(e)]		
	Used for personal consumption - [Section 17(4)(f)]		
	Goods which are lost, stolen, destroyed, written off or disposed of by way of gift or free samples- [Section 17(4)(g)]		
	Any tax paid in terms of the following : [Section 17(4)(h)]		
	 Tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful – misstatement or suppression of facts [Section 67] 		
	 Detention and release of goods and conveyance in transit [Section 89] 		
	 Confiscation of goods or conveyance and levy of penalty [Section 90] 		
Central or a State government of the second seco	nment may, by notification issued in this behalf, prescribe the manner in which the		

credit referred above me attributed - [Section 17(5)]

>Whether services like car insurance, repairs and maintenance of cars, etc. availed for motor vehicles eligible for ITC?

>Double whammy' in case of supplies for private use/ consumption to related parties.

➤Whether assesse would be entitled to ITC of following :

- Pick up and drop facility for employees section 17(4)(iii)
- Food provided to employees section 17(4)(i)
- Medical or health kit for employees section 17(4)(i)
- Group insurance for employees section 17(4)(iii)
- Free crèche services for employees
- Security expenses of staff quarter
- Insurance of staff quarter

ITC availment

Persons Eligible for ITC

Person Eligible to take ITC:

- Registered Taxable person [Section 16 of CGST/ SGST Act]
- Person making zero rated supplies [Section 16(3) of IGST Act]

Person Not Eligible to take ITC:

- Non-registered taxable person
- Person having aggregate turnover below threshold limit
- Supplier under Composition Scheme
- Supplier exclusively engaged in making **exempt or non-taxable** supplies
- Agriculturist
- Government or any local authority making supplies specified in Schedule IV to MGL

Manner of availing ITC [sec 16(1)]

- Every registered taxable person

 subject to such conditions and restrictions as may be prescribed; and



- Within the time and manner specified in section 44

Entitled to **take ITC admissible** to him



Said amount to be credited to the **electronic credit ledger** of such person

For pipelines and telecommunication tower fixed to earth by foundation or structural support including foundation and structural support thereto **shall not exceed** 1/3 of total ITC in the financial year in which the said goods are received

2/3 of total ITC (including the credit availed in 1st financial year **immediately succeeding** the year in which goods were received

Balance ITC in any subsequent financial year

Conditions for availing ITC [Section 16(2)]

Registered person shall **not** be entitled to take credit of any input tax in respect of any supply of goods and/or services to him **unless**:

He is **possession** of:

- Tax invoice
- Debit note
- Such other tax paying document as may be prescribed

Issued by supplier registered under the Act

Receipt of goods and / or services

- Can ITC be claimed on tax paid on advance? **Payment** of tax charged in respect of such supply to credit of appropriate government in:

- Cash; or
- Utilization of ITC admissible in respect of said supply

Furnished **return** u/s 34

- Whether this refers to return filed by :

- Vendor ; or
- Assesse

Where goods against an invoice are received in instalments / lots – ITC will be available only after receipt of last lot / instalment

Conditions for availing ITC [Section 16(2)]

- > **Explanation** as to term receipt of goods [Explanation to sec 16(2)]:
 - For the purpose of receiving goods it shall be deemed that the taxable 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 taxable 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
- > Q 27 of Chapter of FAQs released by CBEC on 21.09.2016 clarifies that:
 - In 'Bill to ship to' scenario, ITC on goods will be available to person on whose order the goods are delivered to third person

Conditions for availing ITC [Section 16(2)]

Where recipient fails to pay the supplier of services within 3 months from the date of issuance of invoice

by the supplier, following consequences follows :

- Amount of ITC credit taken on such services shall be added to recipient's output tax liability ; and
- Interest thereon will have to be discharged
 - in the manner as may be prescribed

Denial of ITC and Time limit [Section 16(3) & 16(4)]

- Input tax credit will not be allowed to the registered taxable person on the tax component who has already claimed depreciation on the tax component of the cost of capital goods under the provisions of Income Tax Act, 1961 (43 of 1961)
- A taxable person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods and/or services after:
 - Filing of the return u/s 34 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

Time limit for availing ITC [Section 16(4)]



--X-X – ITC cannot be claimed for this period

Apportionment of ITC and blocked credits



Central or State Govt. may by notification prescribe the manner for attributing the above credit [Section 17(5)]

ITC – Exempt Supplies [section 17(2)]



- Zero rated supply is defined u/s 2(111) r.w. section 16 of IGST Act to mean :
- Exports of goods/service
- Goods/service supplied to SEZ units / developer of SEZ
- Zero rated supply does not include goods/services supplied to EOU
- Does this provision apply to ITC related to 'capital goods'?

ITC availability - Summary

Nature of Supply made by taxable person	Credit Admissible
Wholly taxable supplies	Yes
Wholly zero-rated supplies	Yes
Both taxable and zero-rated supplies	Yes
Wholly non-taxable or exempt supply	No
Wholly for non-business purpose	No
Both business and non-business purpose	Proportionate credit
Both taxable and non-taxable supply	Proportionate credit



Job Work - ITC availment

ITC – Inputs sent for job worker (Section 20)

Principal can avail ITC on inputs to the job worker on receipt of inputs by him or directly by job worker



• RM- Raw material ; SFG- Semi finished goods; FG – Finished goods

ITC – Capital goods sent for job worker (Section 20)

Principal can avail ITC on capital goods to the job worker **on receipt of capital goods by him or directly by job worker**



ITC- Utilisation

ITC Availment and utilisation – basic

- Input tax credit (as self assessed in the return of taxable person) shall be credited to its electronic credit ledger [Section 44(2)]
- Amount available in the electronic credit ledger can be utilised for making payment towards output tax : [Section 44(4)]:
 - In such manner; and
 - subject to conditions; and
 - Within such time as may be prescribed (Is it an intention to provide time limit for utilization of ITC?)
- > Electronic credit ledger balance cannot be utilised for payment of:

Interest Penalty	Fees	Liability under Reverse charge	Any other amount payable under Act or Rules made thereunder
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- > Whether payment for pre-deposit u/s 98(6) and 101(9)(a) can be made from electronic credit ledger?
- Balance in electronic credit ledger after permitted payments can be [section 44(6)]:
 - Refunded under provisions of section 48 ; or
 - Carry forward

Manner of Utilization – IGST Credit [Section 44(5)(a)]



- > Can it be utilised for arrears of eligible tax payments?
- > Whether IGST balance in one state can be utilised against output liability of IGST in other states?
Manner of Utilization – CGST Credit [Section 44(5)(b) & (c)]



- Can it be utilised for arrears of eligible tax payments?
- > Whether CGST balance in one state can be utilised against output liability of CGST in other states?

Manner of Utilization – SGST Credit [Section 44(5)(b) & (c)]



- SGST Credit can be utilised for payment of tax
- It cannot be utilisedfor payment of:
 - interest
 - penalty
 - fees

- > Can it be utilised for arrears of eligible tax payments?
- > Whether SGST balance in one state can be utilised against output liability of SGST in other states?

Cenvat credit vs ITC in GST - Major Distinctions

Particulars	Pre-GST	Post-GST	Impact
Pre-registration period credit	 Cenvat credit of pre-registration period was available 	 Not available, if failure to take registration within 30 days 	
	 Jurisprudence: I Knowledge Factory v. CCE (2011) 30 STT 177 (CESTAT SMB) Imagination Technologies v. CCE (2011) 32 STT 227 (Mag) 	 Existing jurisprudence on availability of pre-registration period credit will no longer be valid in GST regime 	
	 Well Known Polyesters v. CCE (2011) 267 ELT 221 (CESTAT) 		
Allowance of Input tax credit when supplier does not discharge his	 Cenvat credit was allowed to buyer even when supplier did not discharge the liability 	 One of the conditions for availaing ITC is that tax is to be paid by supplier 	
liability	 Jurisprudence: Supreme Court in CCE v. Kay Kay Industries (2013) 42 GST 50 (SC) 	 SC decision will lose its validity in GST regime 	

Particulars	Pre-GST	Post-GST	Impact
Matching of Invoice	 No such provision under Cenvat Credit Rules In CCE v Tata Motors [(2014) 43 GST 555 (Jar HC DB)] has held that it would be unreasonable / unrealistic to expect buyer to verify accounts of supplier to find out whether duty has been paid or not 	 ITC will be allowed to buyer only when the outward return of supplier matches with inward return of buyer HC decision in Tata Motors no longer valid in GST regime 	
Cenvat credit is indefeasible right of assesse	 Supreme Court in case of Dai Ichi Karkaria Ltd [112 ELT 353 (SC)] held that: Cenvat credit validly availed cannot be reversed by tax authorities Benefit of credit is available without any limitation and scheme is indefeasible 	 SC decision will lose its validity in GST regime as there will be reversal of valid ITC if: supplier does not discharge his liability Mismatch in invoice 	

Particulars	Pre-GST	Post-GST	Impact
Reversal of common credit pertaining to capital goods	 Common cenvat credit in respect of capital goods need not be reversed 	 Proportionate reversal of common ITC in respect of capital goods (Q 8 of Chp 10 of FAQs dtd 21.09.2016) 	
Availment of credit in respect of capital goods	 Cenvat credit up to 50% was available in first year and balance in subsequent year 	 Entire ITC in respect of capital goods can be availed in first year itself except for pipelines and communication tower 	
		(Q4 of Chp 10 of FAQs dtd 21.09.2016)	
Refund of accumulated Cenvat credit January 19, 2017	 Generally not allowed except for export of goods / services 	 Allowed only in cases for exporters and where there is inverted duty structure 	42

Particulars	Pre-GST	Post-GST	Impact
Allowability of Input and	 Narrow meaning given to 	 Wider meaning is given to terms 	
input services used in	term 'inputs' and 'input	'inputs' and 'input services' by using	
course or furtherance of	services' by deleting the word	the words 'in course or furtherance of	
business	'in relation to business' from	business'	
	relevant definitons	• Decision of Bombay HC in case of Coca	
		Cola India Pvt Ltd [2009-TIOL-449-HC-	
		MUM-ST]	

Refund of ITC

- ➢ Balance in the credit ledger after payment of tax [section 44(6) r.w. sec 48]:
 - may be refunded in accordance with provisions of section 48; and
 - the amount collected as CGST / SGST shall stand reduced to that extent
- ▶ Refund of unutilized ITC to be allowed only in following cases [Proviso to section 48(3)]:
 - Exports (including zero rated supplies)
 - Exception No ITC on exports which are subject to export duty
 - credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs
- Refund to be claimed within two years from relevant date [section 48(1)]

- > Refund of unutilised credit on account of export of goods / services to be granted as under :
 - provisional refund of 90% of claim amount without detailed verification (time limit??)
 - Balance 10% to be granted after due verification within 60 days [sec 48(6) and 48(7)]
- In case claimant has defaulted in furnishing any return or payment of tax, interest or penalty, Officer has power to:
 - Withhold payment of refund due until the said claimant has submitted the return or has paid the tax, interest or penalty as the case may be
 - Deduct from the refund due, any tax, interest or penalty which claimant (taxable person) is liable to pay but remains unpaid
- If refund is not granted within 3 months from date of receipt of application, interest at prescribed rate shall be payable for the period of due date of sanction of refund till actual date of refund

Relevant date for refund:

Provision	Particulars	Relevant date
Exp. 2(a) to sec 48	Export of goods	
	- By sea or air	 Date on which ship or aircraft leaves India
	- By land	 Date on which goods passes the Frontier
	- By post	 Date of dispatch of goods by the Post Office
Exp. 2(b) to sec 48	Supply of goods as deemed exports	Date of filing of return relating to such deemed export
Exp. 2(c) to sec 48	 Export of service Supply of service complete before receipt of payment Payment of service received prior to date of issue of invoice 	 Date of receipt of payment in convertible foreign exchange Date of issue of invoice

➢ Relevant date for refund:

Provision	Particulars	Relevant date
Exp. 2(d) to sec 48	As a consequence of judgement, decree, order or direction of Appellate Authority, Appellate Tribunal or any court	Date of communication of such judgement, decree, order or direction
Exp. 2(e) to sec 48	Refund of Unutilised ITC due to inverted duty rate structure	End of the financial year in which such claim for refund arises
Exp. 2(f) to sec 48	Tax is paid provisionally under this Act or the Rules made thereunder	Date of adjustment of tax after the final assessment
Exp. 2(g) to sec 48	In case of a person other than the supplier	Date of receipt of goods or service
Exp. 2(h) to sec 48	In any other case	Date of Payment of Tax

Words of Caution

- > Views expressed are the personal views of faculty based on his interpretation of model draft law
- Presentation is based on draft law (Revised Model GST Law)
- Presentation needs to be revised and revisited on enactment of GST Law
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