

Input Tax Credit (ITC)

9.1 ITC is core provision of GST

Input Tax Credit (ITC) is the core concept of GST as GST is destination based tax. ITC avoids cascading effect of taxes and ensures that tax is collected in the State in which goods or services or both are consumed.

“Input tax credit” means credit of ‘input tax’- section 2(56) of CGST Act.

Burden of proof on taxable person availing input tax credit - 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 155 of CGST Act.

9.1-1 Input Tax

Section 2(62) of CGST Act defines ‘input tax’ as follows—

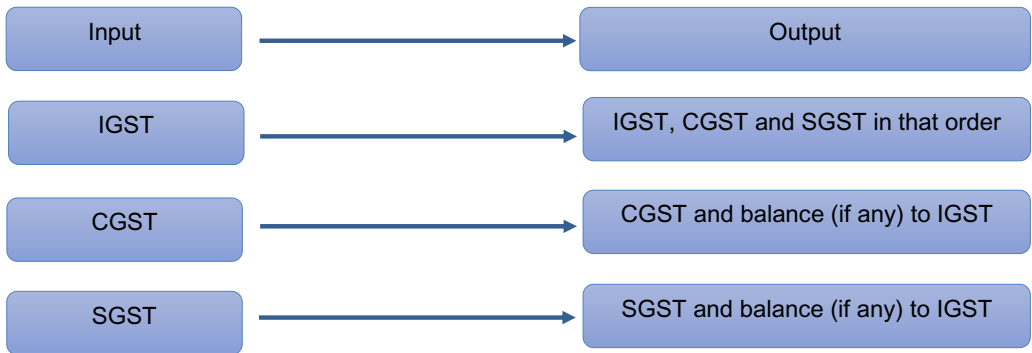
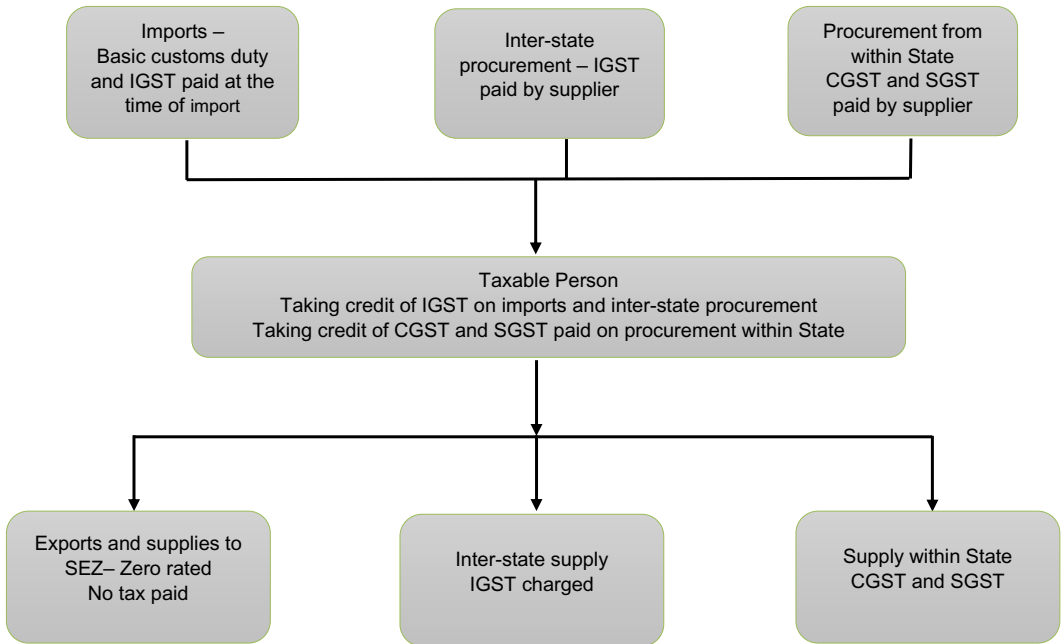
“Input tax” in relation to a registered person, means the Central tax (CGST), State tax (SGST), Integrated tax (IGST) or Union territory tax (UTGST) charged on any supply of goods or services or both made to him and includes--

- (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 [reverse charge of CGST]
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act [reverse charge of IGST]
- (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 [reverse charge of SGST] 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 [reverse charge of UTGST],

but does not include the tax paid under the composition levy.

Input Tax Credit is eligible only when it is credited to electronic credit ledger of taxable person.

Flow of Input Tax Credit



9.2 Manner of taking input tax credit

Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of CGST Act, 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 - section 16(1) of CGST Act.

Electronic Credit Ledger means the electronic credit ledger referred to in section 49(2) of CGST Act - section 2(46) of CGST Act.

“Electronic Credit Ledger” is the input tax credit ledger in electronic form maintained at the common portal for each registered taxable person. This credit can be utilized for GST liability as specified in section 49(4) of CGST Act.

“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) of CGST Act.

“Input Service” means any service used or intended to be used by a supplier in the course or furtherance of business - section 2(60) of CGST Act.

“Outward supply” in relation to a person, means supply of goods or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business - section 2(83) of CGST Act.

9.2-1 Documentary requirements and conditions for claiming input tax credit

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 - Rule 36 of CGST and SGST Rules, 2017 :

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31 [Invoice of supplier of goods or services or both]
- (b) an invoice issued in accordance with the provisions of section 31(3)(f), subject to payment of tax [tax paid on reverse charge basis]
- (c) a debit note issued by a supplier in accordance with the provisions of section 34.
- (d) a bill of entry or similar document prescribed under Customs Act or Rules for assessment of IGST
- (e) an invoice or credit note issued by an Input Service Distributor in accordance with rule 54(1) of CGST Rules, 2017.

Input Tax Credit only if invoice complete in all respects - Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in Invoice Rules 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 - Rule 36(2) of CGST and SGST Rules, 2017.

9.2-2 Input tax credit cannot be taken after one year from date of invoice or filing of annual return

A taxable person shall not be entitled to take input tax credit in respect of any supply of goods and/or services to him after the expiry of one year from the date of issue of tax invoice relating to such supply - section 18(2) of CGST Act.

Further, a taxable 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 filing of the return under section 39 of CGST Act for the month of September following the end

of financial year to which such invoice or invoice relating to debit note pertains or filing of the relevant annual return, *whichever is earlier* - section 16(4) of CGST Act. Really, in view of section 16(4), in case of invoices received after October, the taxable person gets less than one year to take input tax credit.

9.2-3 No Input tax credit if GST was paid by supplier on advance paid to him

Normally, ITC is taken on basis of 'Electronic Credit Ledger'. However, if advance payment was made before receipt of goods and services, input tax credit cannot be taken as goods and services are not received.

At the time of payment of GST on advance, the supplier of goods and services cannot issue tax invoice. He has to issue only 'receipt voucher'.

9.3 Requirements for availing Input Tax Credit

As per section 16(2) of CGST Act, registered taxable person shall not be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless following conditions are satisfied :

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under GST Act or such other taxpaying document as may be prescribed,
- (b) he has received the goods or services or both,
- (c) subject to section 41 of CGST Act, the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply [section 41 of CGST Act allows taking input tax credit in electronic credit ledger on self assessment basis], and
- (d) he has furnished the return under section 39 [every taxable person is required to file electronic return every month as per section 39 of CGST Act].

Inputs or capital goods received in instalments- Where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment - first *proviso* to section 16(2) of CGST Act.

Delivery to transporter by supplier is sufficient to take input tax credit - For the purpose of section 16(2)(b) of CGST Act, 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 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 - *Explanation* to section 16(2)(b) of CGST Act.

Section 39(1) of Sale of Goods Act states that delivery of goods to carrier is *prima facie* delivery to buyer.

As per section 23(2) of Sale of Goods Act, if, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee, for the purpose of

transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. It does not make difference whether the bailee or buyer was named by buyer or not.

In *Manwar Tent Factory v. UOI* AIR 1990 SC 1735, it was held that when contract stipulates for delivery of goods F.O.R. basis at place of despatch, risk passes from consignor to consignee as soon as goods are loaded at the place of despatch.

Thus, transporter is agent of buyer for collection of goods. Hence, in my view, delivery to transporter is delivery to agent and ITC can be taken even if goods do not physically reach the place of taxable person.

Of course the supplier has to upload the invoice in his GSTR-1 and the recipient has to accept it and include it in his GSTR-2.

Input tax credit only after supplier makes payment of GST - The receiver (of goods and services) can take provisional credit on basis of return filed by supplier. However, he will be eligible to take final Input Tax Credit only after the supplier of such goods and services has paid the tax.

Taking input tax credit in respect of inputs sent for job work - Input tax credit is available in respect of goods sent for job work and brought back for further use. Provisions are contained in another chapter under job work.

9.3-1 Reversal of input tax credit if payment not made to supplier within 180 days

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 180 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 - second *proviso* to section 16(2) of CGST Act.

If partial payment is made, the reversal will be proportionate to the amount not paid to the supplier.

If the recipient later makes payment to supplier, he can take credit of input tax - third *proviso* to section 16(2) of CGST Act.

Really, the recipient can take input tax credit only if tax has been actually paid by supplier. Then how Government is concerned about payment of invoice amount to supplier? Why Government is acting as recovery agent?

It seems that the intention is to avoid bogus transfers of input tax credit e.g. if a person has excess input tax credit, he can pass on this credit to others. However, the remedy thought of seems to be worse than disease as many genuine transactions will get affected.

Often in case of large works contracts, some retention money is kept which is released after warranty period.

Further, some deductions from invoice for various reasons is common. In such case, this provision will create great nuisance to taxable persons.