

INPUT TAX CREDIT



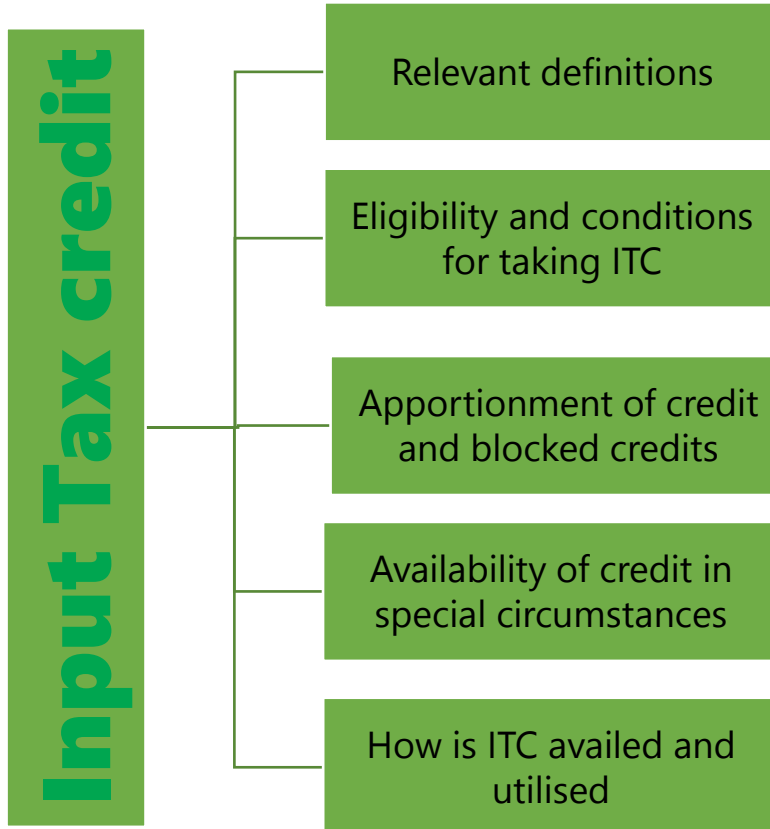
For the sake of brevity, input tax credit has been referred to as ITC in this Chapter. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

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 availment and utilization of ITC to compute the GST liability of a registered person payable in cash.

CHAPTER OVERVIEW



1. INTRODUCTION

In earlier indirect tax regime, the credit mechanism for indirect taxes levied by the Union Government 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 Acts and Rules. 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.

TAX CREDITS

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 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 backbone 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, wager

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

- 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) services provided by a race club by way of totalisator or a licence to 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)].

- ✔ **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)].
- ✔ **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)].
- ✔ **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 thirty-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)].

✔ **Zero-rated supply** 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 IGST Act].

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

	STATUTORY PROVISIONS	
Section 16	<i>Eligibility and conditions for taking input tax credit</i>	
Sub-section	Clause	<i>Particulars</i>
(1)	<i>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.</i>	
(2)	<i>Notwithstanding anything contained in this section, no registered</i>	

	<p>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,—</p>
(a)	<p>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;</p>
(b)	<p>he has received the goods or services or both.</p>
<p><i>Explanation.—For the purposes of this clause, it shall be deemed that 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;</i></p>	
(c)	<p>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 utilisation of input tax credit admissible in respect of the said supply; and</p>
(d)	<p>he has furnished the return under section 39:</p>
<p><i>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:</i></p>	
<p><i>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:</i></p>	
<p><i>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.</i></p>	

(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.
(4)	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.
Chapter V: Input Tax Credit of the CGST Rules	
Rule 36	Documentary requirements and conditions for claiming input tax credit
(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) a debit note issued by a supplier in accordance with the provisions of section 34;
	(d) 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;
	(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 FORM GSTR-2 by such 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
(1)	<p>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.</p> <p>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.</p>
(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 sub-rule (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 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 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 lead to availing of credit 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 a supplier of goods and/or services
- ii) Invoice issued by recipient (receiving goods and/or services from unregistered supplier) along with proof of payment of tax (in case of reverse charge)
- iii) A debit note issued by supplier
- iv) Bill of entry or similar document prescribed under Customs Act
- v) Revised invoice

vi) Document issued by Input Service Distributor²

The documents basis which ITC is being taken should have all the relevant particulars as prescribed in rule 46 of the CGST Rules. *[Rule 46 relating to tax invoice has been discussed in detail in Chapter 8: Tax Invoice, Credit and Debit Notes.]*

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 also been discussed in detail in Chapter 8: Tax Invoice, Credit and Debit Notes.]*

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

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

“Bill to Ship to” Model also included: Under this model, the goods are delivered to a third party on the direction of the registered person who purchases the goods from the supplier. Receipt of goods u/s 16(2)(b) includes delivery to another person on the direction of the registered person by way of transfer of documents of title to goods or otherwise either before or during the movement of goods. It would be deemed that the registered person has received the goods in such scenario. So, ITC will be available to the registered person on whose order the goods are delivered to 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, the condition of section 16(2)(b) is satisfied, and A is entitled to ITC on the consignment.

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

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. However, provisional ITC can be taken initially, prior to matching in the common portal, and used for payment of self-assessed tax on outward supply. *(More*

² Concept of Input Service Distributor will be dealt with at the Final level.

details on this are given under the Heading "How ITC is availed and utilized".)

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

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

Note: The details of inward supplies are to be filed in GSTR – 2 by the 15th of the month succeeding the month in which the supplies were received³. With the furnishing of such details, electronic credit ledger gets credited with the relevant ITC.

(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, the ITC can be taken only upon receipt of the last lot / instalment.



XYZ makes an advance payment in August and orders 10 MT of a particular chemical which is in short supply. The supplier of the chemical raises a bill for the entire amount in August and collects GST from XYZ on the advance paid. The chemical is delivered in lots over a period of three months and the supply is completed in November. Though XYZ paid some tax in advance as early as August, he can take the ITC 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 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 details of such supplies and corresponding credits thereon must be furnished in the GSTR 2 of the month immediately following such 180 days. Such credits availed by the registered person would be added to his output tax liability of the month in which the details are furnished, with interest.

³ For a detailed understanding of the various kinds of returns/statements and the manner of filing thereof, students may refer Chapter 10: Returns. GSTR 2 is a statement of inward supplies received by a registered supplier. The same has been explained in detail in Chapter 10: Returns

Interest will be paid @ 18% from the date of availing credit till the date when the payment is made to the supplier.

However, once the payment is made, the recipient 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:

- Supplies on which tax is payable under reverse charge
- Deemed supplies without consideration



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. Hercules Machinery 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.	
(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:	

	<i>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.</i>		
(5)	<i>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:—</i>		
	(a)	<i>motor vehicles and other conveyances except when they are used—</i>	
		(i)	<i>for making the following taxable supplies, namely:—</i>
			(A) <i>further supply of such vehicles or conveyances; or</i>
			(B) <i>transportation of passengers; or</i>
			(C) <i>imparting training on driving, flying, navigating such vehicles or conveyances;</i>
		(ii) <i>for transportation of goods;</i>	
	(b)	<i>the following supply of goods or services or both:—</i>	
		(i)	<i>food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category 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;</i>
			(ii) <i>membership of a club, health and fitness centre;</i>
		(iii)	<i>rent-a-cab, life insurance and health insurance except where —</i>
			(A) <i>the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or</i>

		(B)	<i>such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and</i>
		(iv)	<i>travel benefits extended to employees on vacation such as leave or home travel concession;</i>
	(c)		<i>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;</i>
	(d)		<i>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</i>
			<i>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</i>
	(e)		<i>goods or services or both on which tax has been paid under section 10;</i>
	(f)		<i>goods or services or both received by a non-resident taxable person except on goods imported by him;</i>
	(g)		<i>goods or services or both used for personal consumption;</i>
	(h)		<i>goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and</i>
	(i)		<i>any tax paid in accordance with the provisions of sections 74, 129 and 130.</i>
(6)	<i>The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.</i>		

	<i>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>					
	(i)	<i>land, building or any other civil structures;</i>				
	(ii)	<i>telecommunication towers; and</i>				
	(iii)	<i>pipelines laid outside the factory premises.</i>				
Chapter V: Input Tax Credit of the CGST Rules						
Rule 38	Claim of credit by a banking company or a financial institution					
	<i>A banking company or a financial institution, including a non-banking 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 sub-section (4) of that section, shall follow the following procedure, namely,-</i>					
	(a)	<i>the said company or institution shall not avail the credit of,-</i> <table><tr><td>(i)</td><td><i>the tax paid on inputs and input services that are used for non-business purposes; and</i></td></tr><tr><td>(ii)</td><td><i>the credit attributable to the supplies specified in sub-section (5) of section 17, in FORM GSTR-2;</i></td></tr></table>	(i)	<i>the tax paid on inputs and input services that are used for non-business purposes; and</i>	(ii)	<i>the credit attributable to the supplies specified in sub-section (5) of section 17, in FORM GSTR-2;</i>
(i)	<i>the tax paid on inputs and input services that are used for non-business purposes; and</i>					
(ii)	<i>the credit attributable to the supplies specified in sub-section (5) of section 17, in FORM GSTR-2;</i>					
	(b)	<i>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);</i>				
	(c)	<i>fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in FORM GSTR-2;</i>				

	(d)	the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.
Rule 42	Manner of determination of input tax credit in respect of inputs or input services and reversal thereof	
(1)	<p>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,-</p>	
	(a)	the total input tax involved on inputs and input services in a tax period, be denoted as 'T';
	(b)	the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as 'T ₁ ';
	(c)	the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T ₂ ';
	(d)	the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T ₃ ';
	(e)	<p>the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C₁' and calculated as-</p> $C_1 = T - (T_1 + T_2 + T_3);$
	(f)	the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T ₄ ';
	(g)	'T ₁ ', 'T ₂ ', 'T ₃ ' and 'T ₄ ' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2;

	<p>(h) input tax credit left after attribution of input tax credit under clause (g) shall be called common credit, be denoted as 'C₂' and calculated as-</p> $C_2 = C_1 - T_4;$
	<p>(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D₁' and calculated as-</p> $D_1 = (E \div F) \times C_2$ <p>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:</p> <p><i>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;</i></p> <p><i>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 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;</i></p>
	<p>(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 'D₂', and shall be equal to five per cent. of C₂; and</p>
	<p>(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 'C₃', where,-</p> $C_3 = C_2 - (D_1 + D_2);$

	<p>(l) the amount 'C₃' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax;</p> <p>(m) the amount equal to aggregate of 'D₁' and 'D₂' shall be added to the output tax liability of the registered person:</p> <p>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 'T₁' and 'T₂' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T₄'.</p>
(2)	<p>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,-</p> <p>(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 added to the output tax liability of the registered person 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</p> <p>(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂', 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.</p>

Rule 43	Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases
(1)	<p data-bbox="417 353 1270 668"><i>Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (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,-</i></p> <div data-bbox="417 678 1270 880"> <p data-bbox="427 687 1270 880"><i>(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 shall not be credited to his electronic credit ledger;</i></p> </div> <div data-bbox="417 890 1270 1093"> <p data-bbox="427 900 1270 1093"><i>(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 shall be credited to the electronic credit ledger;</i></p> </div> <div data-bbox="417 1103 1270 1306"> <p data-bbox="427 1112 1270 1306"><i>(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:</i></p> </div> <div data-bbox="501 1315 1270 1557"> <p data-bbox="509 1325 1270 1557"><i>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;</i></p> </div> <div data-bbox="501 1566 1270 1725"> <p data-bbox="509 1576 1270 1725"><i>Explanation: An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18 if it is subsequently covered under this clause.</i></p> </div>

	(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 'T _c ';
	(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)	<p>the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as:</p> $T_e = (E \div F) \times T_r$ <p>where, 'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover of the registered person during the tax period:</p> <p>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;</p> <p>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 of List I of the Seventh Schedule</p>

		<i>to the Constitution and entry 51 and 54 of List II of the said Schedule;</i>
	(h)	<i>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>
(2)		<i>The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax.</i>



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:

- 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
- 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 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.



Out of 10 containers purchased by a registered person engaged in taxable supply of goods, 5 are used for storing non-taxable goods (exempt supply) such as petroleum (petroleum is out of GST gamut till the time the GST Council takes a decision in this regard). ITC on 5 containers used for non-taxable goods cannot be availed.



A registered person (partnership firm) purchases 5 laptops but one of the laptop is being used by the son of one of the partners of the firm. ITC will not be available on such laptop as it is used for personal purposes.

(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	T
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T₁)

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 (ii)]	(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.
- ✓ 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 T₁ and T₂ respectively and the balance credit will be added in T₄.
- ✓ The portion identified as pertaining to taxable supplies in C₂ 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 $(T_1 + T_2 + T_4, \text{ i.e., by ₹ 1,40,000})$ is ₹ 1,15,000.

Amount of common credit (C_2) is ₹ 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) Exempt supplies include supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority.

(iii) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty and VAT.

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 is leviable on intra-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 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.

$(3,00,00,000 / 5,00,00,000) \times 1,15,000 = ₹ 69,000$ is the input tax that pertains to exempt supply (D_1).

✓ Compute credit attributable to non-business purposes D_2 as under

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

Step 3 – Compute eligible credits

Compute C_3 attributable to business purposes and taxable supplies including zero rated supplies as under:

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

Step 4 – Restrict ineligible credits

Add $D_1 + D_2$ to the output tax liability.

- ❖ Compute C_3 separately for ITC of CGST, SGST/ UTGST and IGST.
- ❖ Compute $\sum (D_1 + D_2)$ 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 added to output tax liability every month, the differential amount has to be added to the output tax liability of 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 added to output tax liability 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 Ledge [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. 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:

$$T_r = T_m \text{ for such capital goods}$$

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 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) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty and VAT.

(iii) Exempt supplies include supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority.

(iv) Amount of T_e has to be computed separately for CGST, SGST/UTGST and IGST.

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 or services or both is allowed under GST except a small list of items provided u/s 17(5). The negative list covers mainly items of personal consumption, inputs 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 detailed list is given hereunder:

(a) Motor vehicles and conveyances, **EXCEPT WHEN USED**

- For transportation of goods
- For making the following taxable supplies:
 - Further supply of such vehicles or conveyances; or
 - Transportation of passengers; or
 - Imparting training on driving, flying, navigating such vehicles or conveyances.



A car dealer is allowed ITC on cars purchased for resale; a cab service is allowed ITC on cars purchased for use as cabs; a driving school is allowed ITC on cars purchased for use in teaching driving.

(b) Foods and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, **EXCEPT WHEN**

- An inward supply of these is used for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply.



A caterer for a wedding gets the sweet dish course supplied by a specialist in desserts. He is allowed ITC of the tax paid by him to the specialist.

- (c) Membership of a club, health and fitness centre
- (d) Rent-a-cab, life insurance and health insurance, **EXCEPT WHERE**
 - The Government has made it obligatory for an employer to provide any of these services to its employees; or
 - Inward supply of these services is used for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply.
- (e) Travel benefits to employees on vacation such as LTC or home travel concession
- (f) Works contract services for construction of an immovable property **EXCEPT WHEN**
 - It is input service for further supply of works contract service
 - Immovable property is plant and machinery
- (g) Inward supplies received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account even when such supplies are used in the course or furtherance of business



A company buys material and hires a contractor to construct an office building to house the plant supervisory staff. The input tax paid on such goods and services is not allowed as credit.

Meaning of construction and plant and machinery


“Construction”, both in this clause and the previous one, includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

“Plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural supports but excludes land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

- (h) Inward supplies on which tax has been paid under the composition scheme
- (i) Inward supplies received by a non-resident taxable person except goods imported by him

- (j) Goods and / or services used for personal consumption
- (k) Goods that are lost, stolen, destroyed, written off or disposed of by way of gift or free samples
- (l) Tax paid under sections 74, 129 and 130⁴. (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 circumstances	
Sub-section	Clause	Particulars
(1)	<i>Subject to such conditions and restrictions as may be prescribed—</i>	
	(a)	<i>a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration 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 on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;</i>
	(b)	<i>a person who takes registration under sub-section (3) of section 25 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 on the day immediately preceding the date of grant of registration;</i>
	(c)	<i>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</i>

⁴ These provisions will be discussed at Final level.

		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	

	<p><i>preceding the date of exercising of such option or, as the case may be, the date of such exemption:</i></p> <p><i>Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.</i></p>		
(5)	<i>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.</i>		
(6)	<p><i>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:</i></p> <p><i>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.</i></p>		
Chapter V: Input Tax Credit of CGST Rules			
Rule 40	Manner of claiming credit in special circumstances		
(1)	<p><i>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 -</i></p> <table> <tr> <td>(a)</td><td><i>the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be 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.</i></td></tr> </table>	(a)	<i>the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be 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.</i>
(a)	<i>the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be 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.</i>		

	(b)	the registered person shall within a period of thirty days from the date of his becoming eligible to avail the input tax credit under sub-section (1) of section 18 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;
	(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 sub-section (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)		<p>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, de-merger, 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:</p> <p>Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.</p>
(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 44	Manner of reversal of credit under special circumstances
(1)	<p>The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely,-</p>
	<p>(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;</p>
	<p>(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.</p>
(2)	<p>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.</p>
(3)	<p>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.</p>
(4)	<p>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.</p>
(5)	<p>The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.</p>

(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 will be available in the following manner:

S. No.	Persons eligible to take credit	Goods entitled to ITC		Restriction/conditions
		Inputs held in stock/capital goods	As on	
(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 voluntary registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration	
3.	Registered person who ceases to pay composition tax and switches to	Inputs held in stock and inputs contained in semi-finished or finished goods held in	The day immediately preceding the date from which he becomes liable to pay	→ 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

	regular scheme	stock and capital goods	tax under regular scheme	verified with the corresponding details furnished by the corresponding supplier.
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	→ 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 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 at composition rate 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 tax-paying 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 will be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, the ITC to be reversed will be based on the prevailing market price of such goods on the date of switch over/exemption. The details furnished on the basis of prevailing market value will be duly certified by a practicing Chartered Accountant/ Cost Accountant.
- ❖ ITC involved in the remaining useful life (in months) of the capital goods will 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 will have 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 shall lapse.
- ❖ 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 will be computed in the manner as applicable for sub-sections (4) and (6) of section 18 (discussed above). Such amount will then be compared with the output tax payable on such goods, and the higher of the two amounts will finally be paid by the registered person.

- ❖ The ITC to be reversed on inputs and capital goods will be calculated separately for ITC of CGST, SGST/UTGST and IGST.
- ❖ The reversal amount will be added to the output tax liability of the registered person.

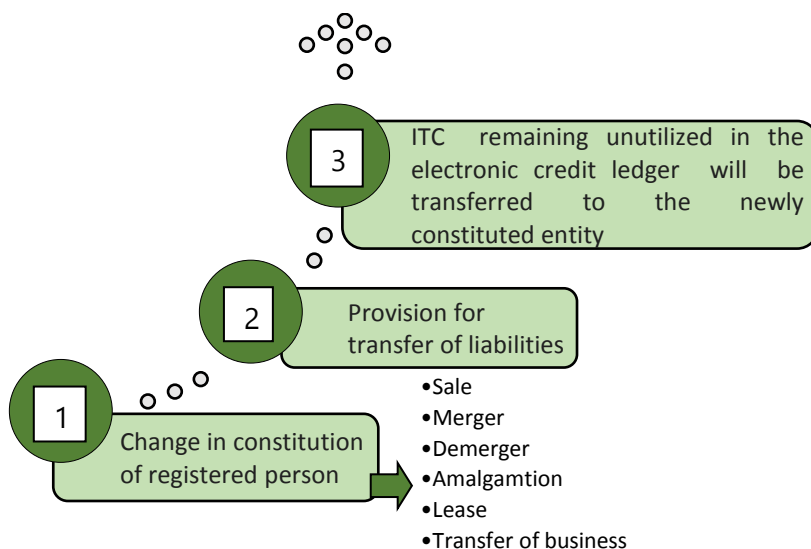
(iii) Amount payable on supply of capital goods or plant and machinery on which ITC has been taken [Section 18(6) read with rule 40(2) & rule 44(6) of CGST Rules]

- ❖ 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 will 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 will have to be paid and thus, will 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 change in constitution of a registered person like sale, demerger, transfer of business, amalgamation, merger 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.

The 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.

The registered person will have to 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 will be credited to his electronic credit ledger. The transferee will record the inputs and capital goods so transferred in his books of account.

6. HOW ITC IS AVAILABLE & UTILISED

	STATUTORY PROVISIONS	
Section 41	Claim of input tax credit and provisional acceptance thereof	
Sub-section	Clause	Particulars
(1)		<i>Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.</i>

(2)	The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.	
Section 42	Matching, reversal and reclaim of input tax credit	
Sub-section	Clause	Particulars
(1)	The details of every inward supply furnished by a registered person (hereafter in this section referred to as the "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched—	
	(a)	with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period;
	(b)	with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and
	(c)	for duplication of claims of input tax credit.
(2)	The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.	
(3)	Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.	
(4)	The duplication of claims of input tax credit shall be	

	<i>communicated to the recipient in such manner as may be prescribed.</i>
(5)	<i>The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.</i>
(6)	<i>The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.</i>
(7)	<i>The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.</i>
(8)	<i>A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.</i>
(9)	<p><i>Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:</i></p> <p><i>Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.</i></p>
(10)	<i>The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable</i>

	to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.	
Section 49	Payment of tax, interest, penalty and other amounts	
Sub-section	Clause	Particulars
(2)		The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.
(4)		The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
(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;
	(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;
	(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 utilised towards payment of central tax.



ANALYSIS

(i) Availing ITC

(a) Provisional credit

The Electronic Credit Ledger [ECrL] maintains the tax credits separately for IGST (on imports and inter-state inward supplies), CGST and STGST/ UTGST. Such details are fetched from the invoice-level data entered by the registered person in his GSTR 2 filed by the 15th of the month following the month in which supplies are received.

As seen earlier in this chapter, one of the conditions for taking ITC by the recipient of the supply is that *"the tax charged in respect of such supply has actually been paid to the Government, either in cash or through utilization of ITC admissible in respect of the said supply"* [Section 16(2)]. For this reason, the statute provides that the ITC will first be taken provisionally in the electronic credit ledger (Section 41), then after filing of GSTR 3 (consolidated monthly return) be matched with the available information of tax payment in respect of that supply (Section 42)⁵.

(b) Matching of credit

Matching of ITC would be done only after the due date of furnishing of GSTR 3. ITC taken provisionally by the recipient on the basis of GSTR-2 will be matched by the system-

- ⇒ with the details of outward supplies furnished by the supplier in GSTR 3 (filed by 20th of the month following the relevant month);
- ⇒ with the IGST paid on the goods imported by him;
- ⇒ for any duplication of claims of ITC.

Any discrepancy arising out of the verification ("matching") against a supplier's return of outward supplies will be communicated to the supplier, who will get a chance to rectify it while filing GSTR 3 for the month in which discrepancy

⁵ Refer Chapter 10 : Returns for a detailed understanding of the provisions relating to different types of returns and matching concept [Sections 41, 42 & 43].

has been communicated. If he does not do this, then under section 42(5), the amount of credit taken will be added to the output tax liability of the recipient in his return for the month succeeding the month in which the discrepancy has been communicated, and he has to pay the same with interest @ 18% from the date of taking the credit. Thus, in effect, the ITC can be taken provisionally for 2 months.



A's GSTR 2 for October includes an Invoice no. 47 from supplier 'B' on which 'A' has taken ₹ 3,600 as ITC, but B's GSTR 1 for October does not show this invoice. On matching of credit after filing of GSTR 3 (for the month of October) on 20th November, this discrepancy is communicated by the system to 'B', who rectifies his omission and includes Invoice no. 47 in his GSTR 3 for November and pays tax on it. This confirms the credit taken by 'A'.



In an alternate scenario, B does not add the Invoice in his GSTR 3 for November due to his accountant being on leave. 'A' finds ₹ 3,600 added to his output tax liability in GSTR 3 for the month of December, and pays it with interest @ 18% as required on 20th January (next year). He communicates the problem to 'B', who looks into the issue and rectifies the discrepancy and includes Invoice no. 47 in his GSTR-3 for January next year and pays tax on it. Under section 42(7), 'A' can reduce the amount from his output tax liability, and the interest paid will be refunded to his electronic cash ledger under section 42(9).

(ii) Utilisation of ITC

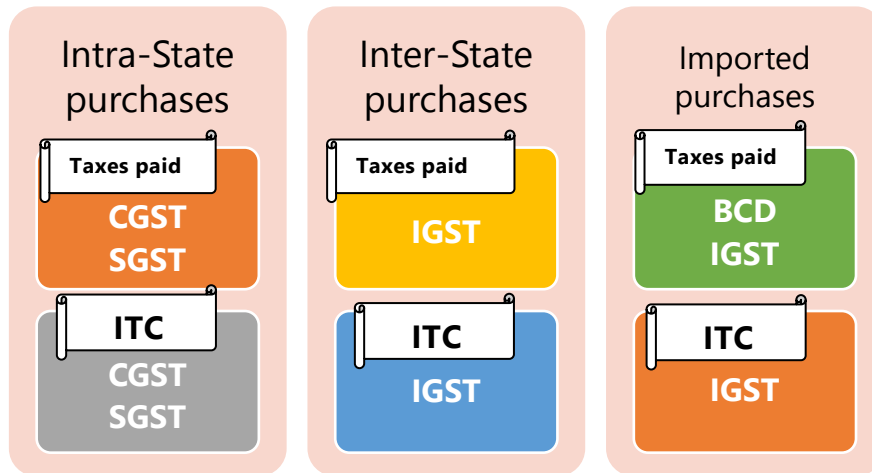
ITC is credited to a registered person's electronic credit ledger. The person may use this to pay his output tax liability. The use of ITC for payment of tax on inter-state supplies is the point in which GST differs sharply from the previous system of central and state taxation. In GST, inter-state supplies are levied to IGST, which is the sum of the applicable CGST and SGST / UTGST.

In terms of section 49(5),

- ITC of IGST can be used to pay IGST, CGST and SGST/UTGST in that order.
- ITC of CGST can be used to pay CGST and IGST in that order.
- ITC of SGST/UTGST can be used to pay SGST/UTGST and IGST in that order.
- ITC of CGST cannot be utilized towards payment of SGST/UTGST and *vice versa*.

Hence cross-utilization of credit is available only between CGST and IGST and SGST/UTGST and 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.

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



The supplier will use the ITC to pay tax as under:

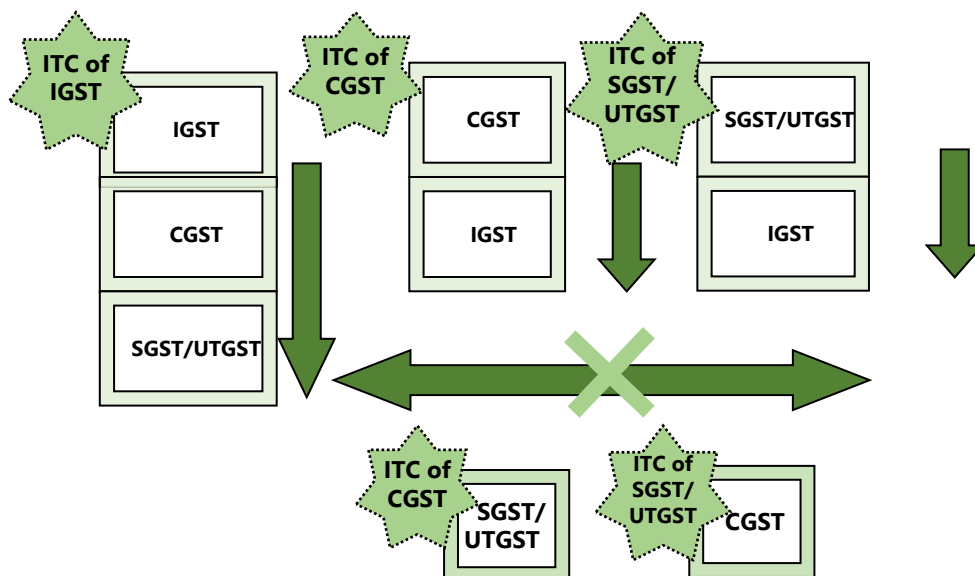


ILLUSTRATION 1

ABC Co. Ltd. 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 for consumption of employees working in the factory	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.

Note:

- (i) All the conditions necessary for availing the ITC have been fulfilled.
- (ii) ABC Co. Ltd. is not eligible for any threshold exemption.

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 [Though ITC on motor vehicles has been specifically disallowed under section 17(5)(a), ITC on motor vehicles used for transportation of goods is allowed under section 17(5)(a)(ii)]	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 employees working in the factory [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., is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 2018 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, 2018.
(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 20.01.2018 on which GST payable was ₹ 50,000 has been received in October, 2018.

Note:

- (i) All the conditions necessary for availing the ITC have been fulfilled.
- (ii) ABC Co. Ltd. is not eligible for any threshold exemption.
- (iii) The annual return for the financial year 2017-18 was filed on 15th September, 2018.

ANSWER**Computation of ITC available with XYZ Ltd. for the month of October, 2018**

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 2017-18 has been filed on 15 th September, 2018 (prior to due date of filing the return for September, 2018 i.e., 20 th October, 2018), ITC on the invoice pertaining to FY 2017-18 cannot be availed after 15 th September, 2018.	1,75,000
	Total	2,65,000

ILLUSTRATION 3

Mr. X, a supplier of goods, pays GST under regular scheme. Mr. X is not eligible for any threshold exemption. 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	(₹)
Intra-State purchases of goods	3,00,000
Inter-State purchases of goods	50,000

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

Particulars	(₹)
CGST	30,000
SGST	30,000
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 net GST payable by Mr. X during the tax period. Make suitable assumptions as required.

ANSWER**Computation of GST payable by Mr. X on outward supplies**

S.No.	Particulars	(₹)	GST (₹)
(i)	Intra-State supply of goods		
	CGST @ 9% on ₹ 8,00,000	72,000	
	SGST @ 9% on ₹ 8,00,000	<u>72,000</u>	1,44,000
(ii)	Inter-State supply of goods		
	IGST @ 18% on ₹ 3,00,000		54,000
	Total GST payable		1,98,000

Computation of total ITC

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Opening ITC	30,000	30,000	70,000
Add: ITC on Intra-State purchases of goods valuing ₹ 3,00,000	27,000	27,000	Nil
Add: ITC on Inter-State purchases of goods valuing ₹ 50,000	Nil	Nil	9,000
Total ITC	57,000	57,000	79,000

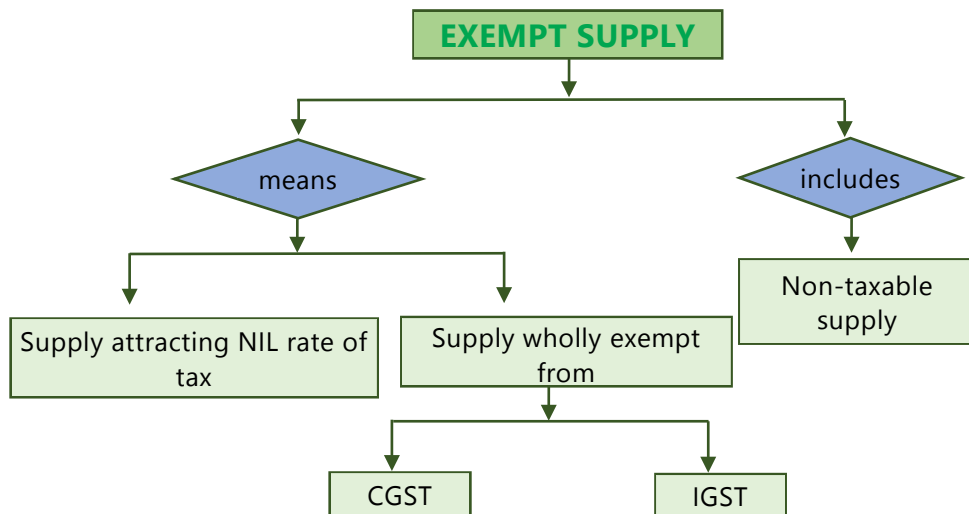
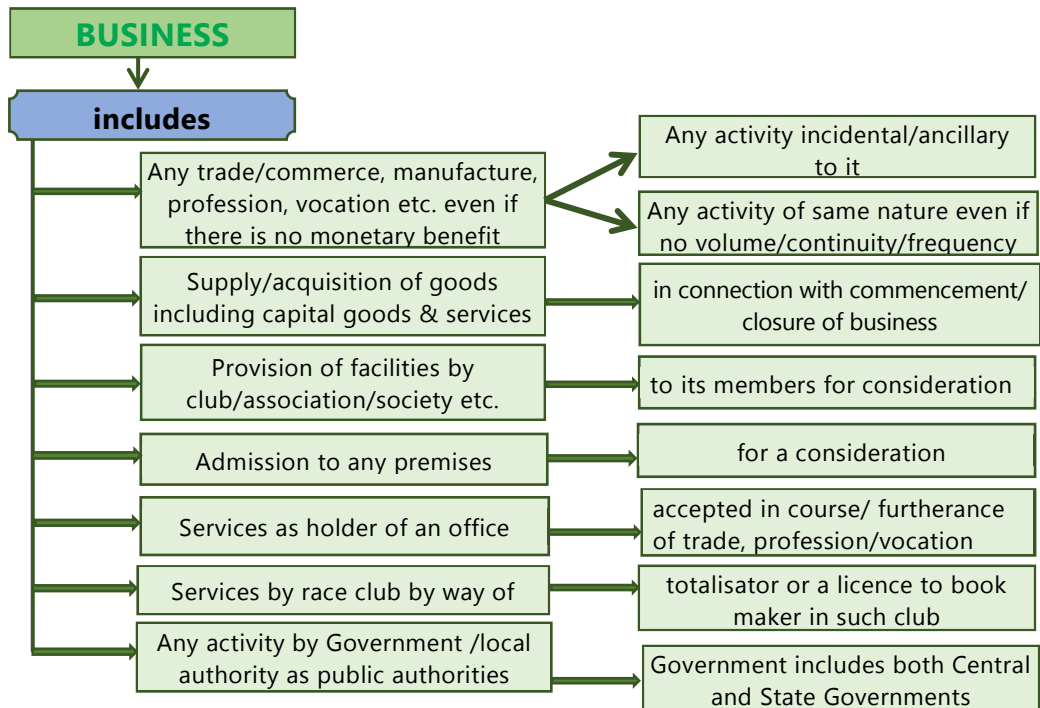
Computation of GST payable from cash ledger

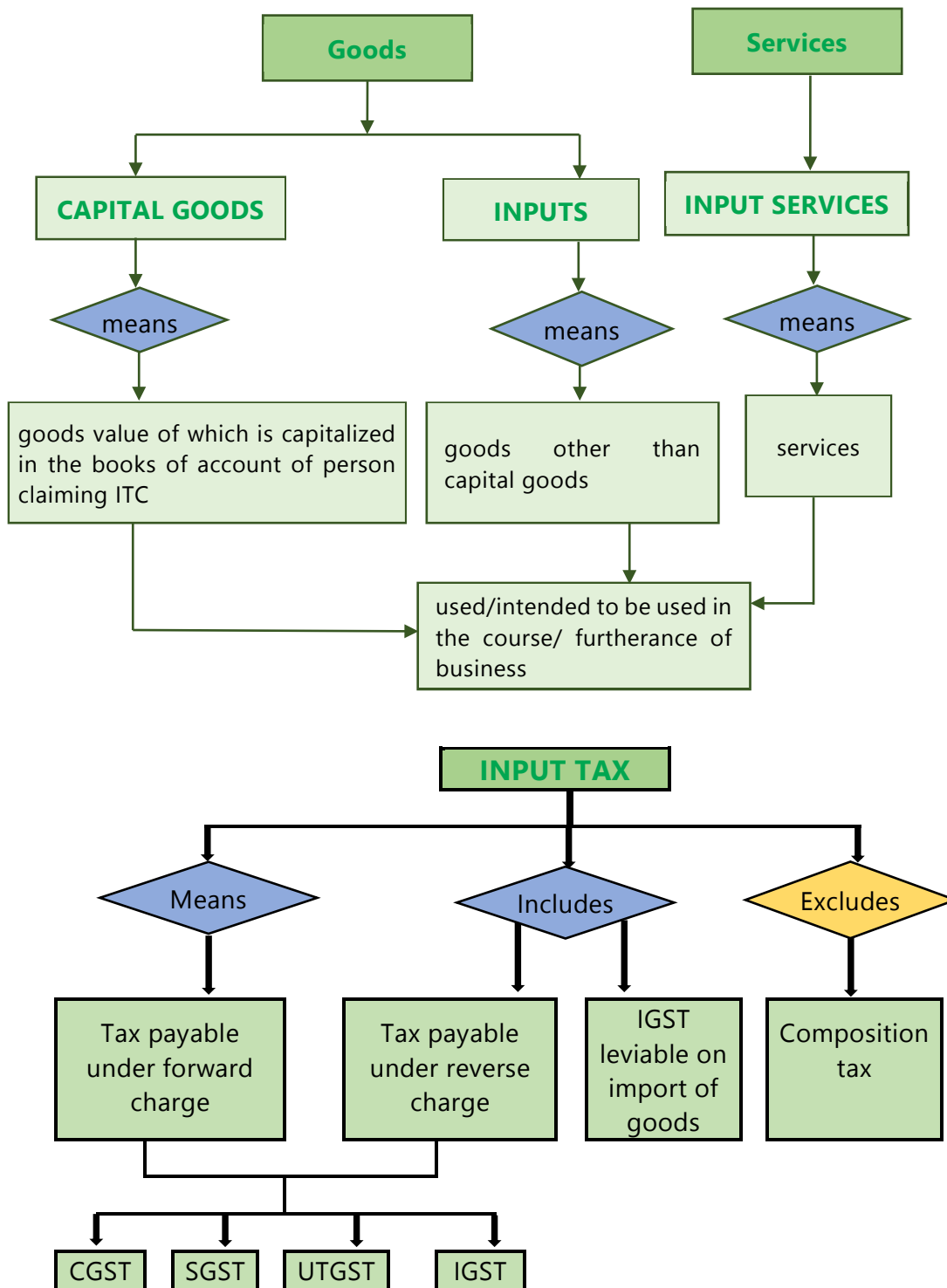
Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
GST payable	72,000	72,000	54,000
Less: ITC	(57,000)-CGST	(57,000)-SGST	(54,000)-IGST
	(15,000)-IGST	(10,000) – IGST	
Net GST payable	Nil	5,000	Nil

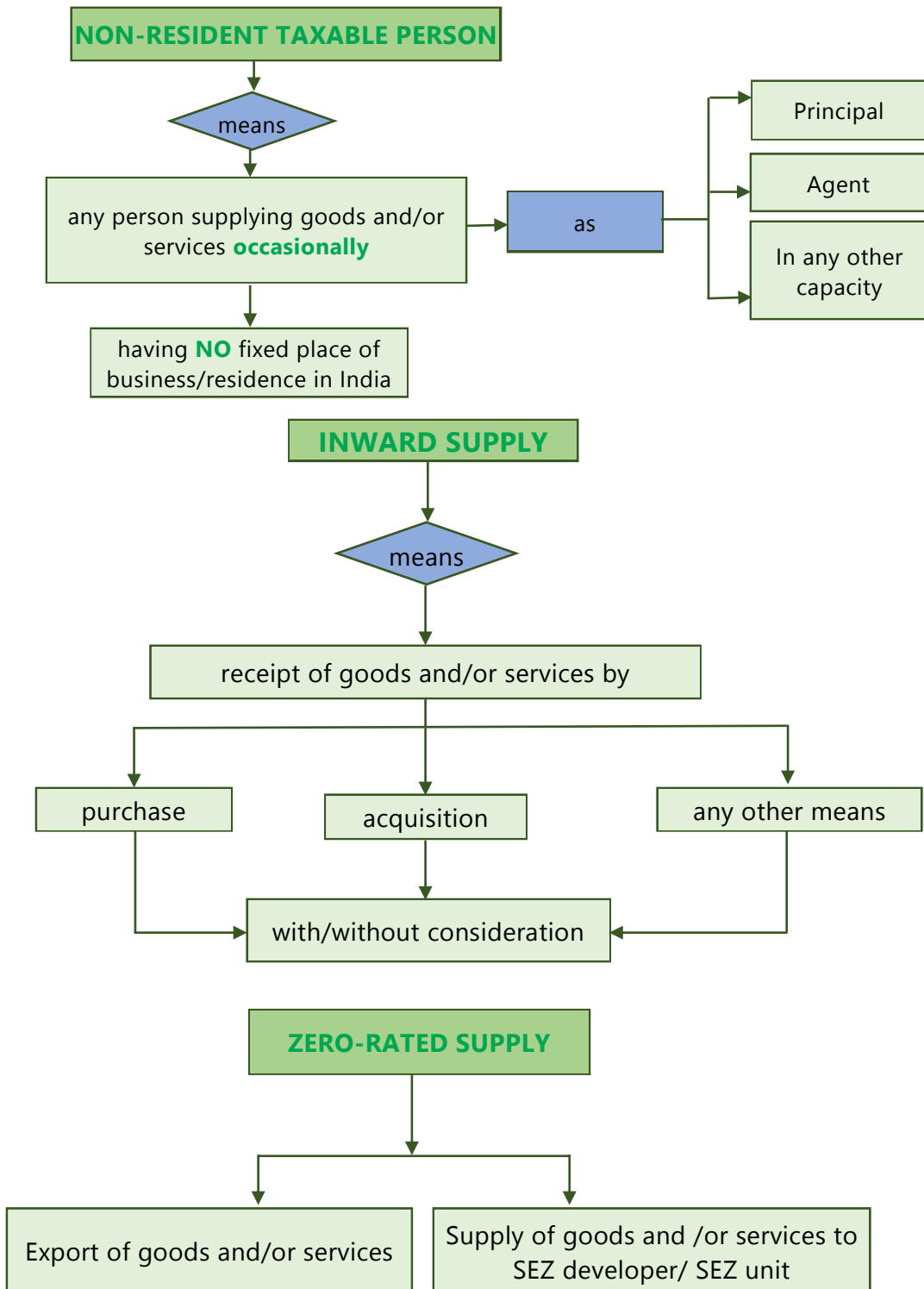
Note : ITC of IGST has been used to pay IGST, CGST and SGST in that order.

7. LET US RECAPITULATE

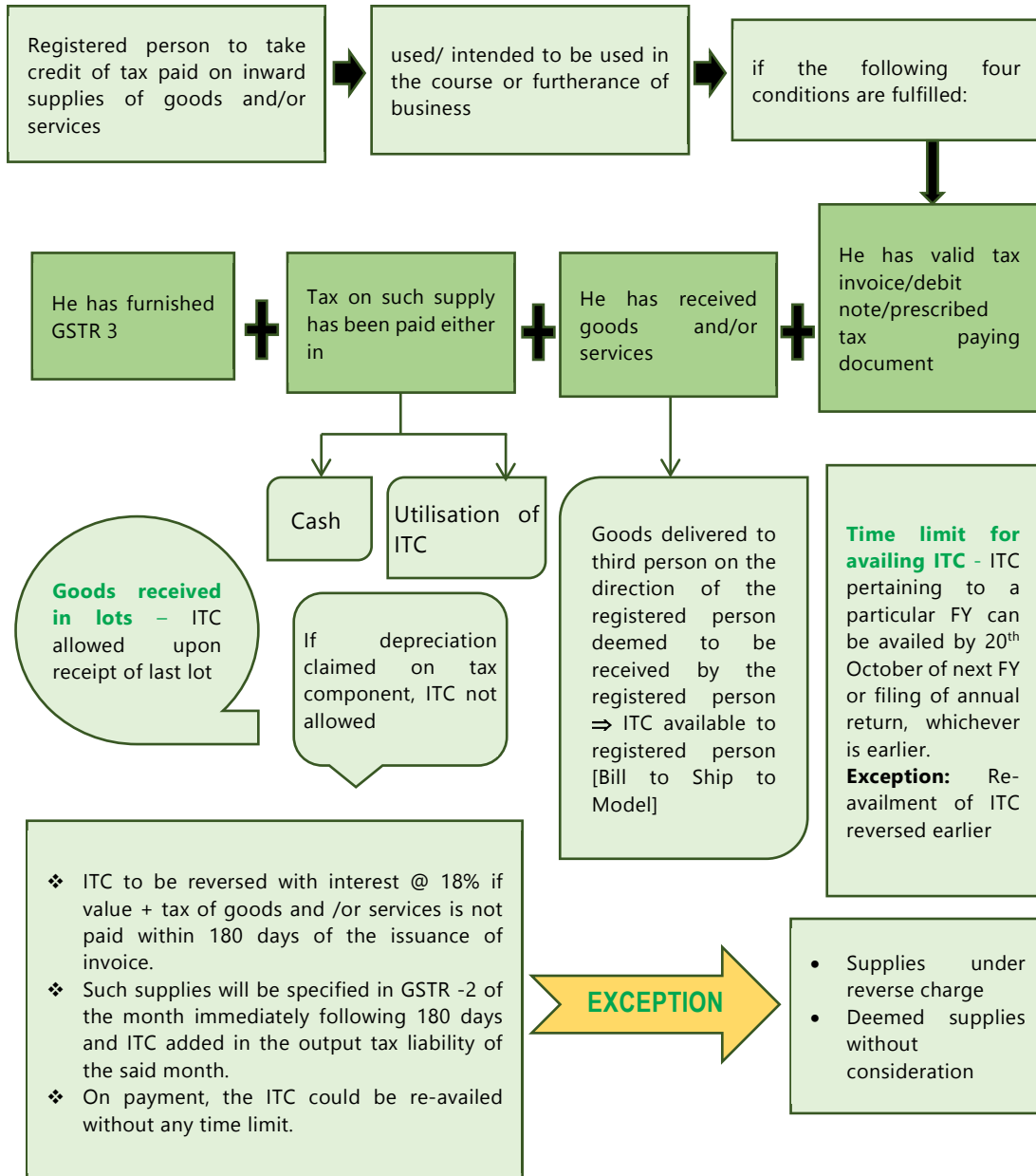
I. Definitions of certain key terms have been summarized by way of diagrams as under:





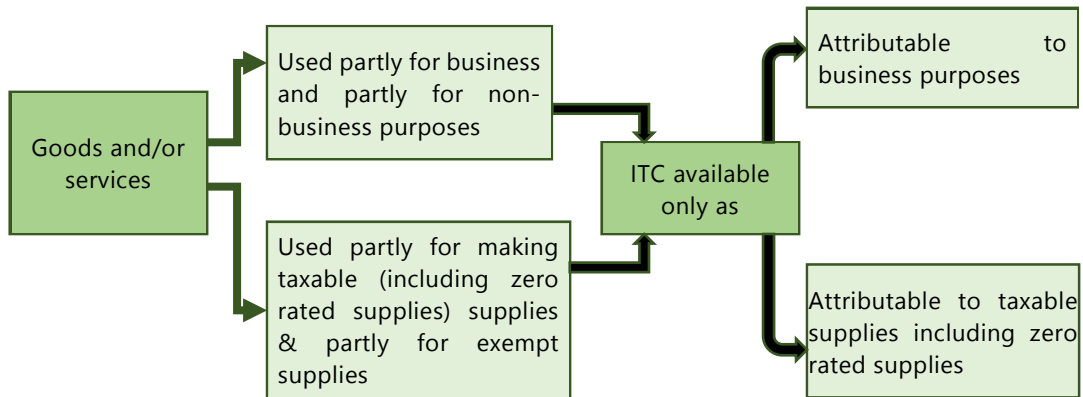


II. Provisions of section 16 relating to eligibility and conditions for taking ITC read with relevant rules are summarized below:



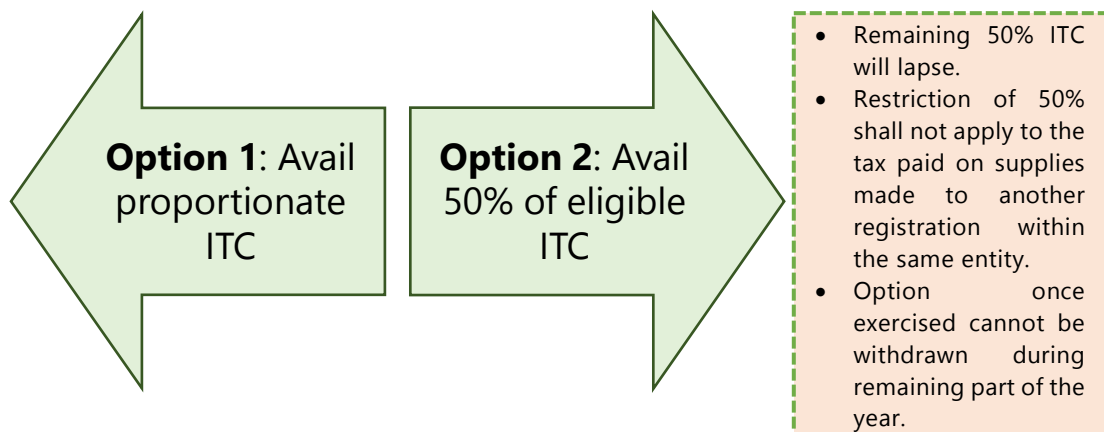
III. The provisions of section 17 relating to apportionment of credit and blocked credits read with relevant rules are summarized as under:

A. Apportionment of credit

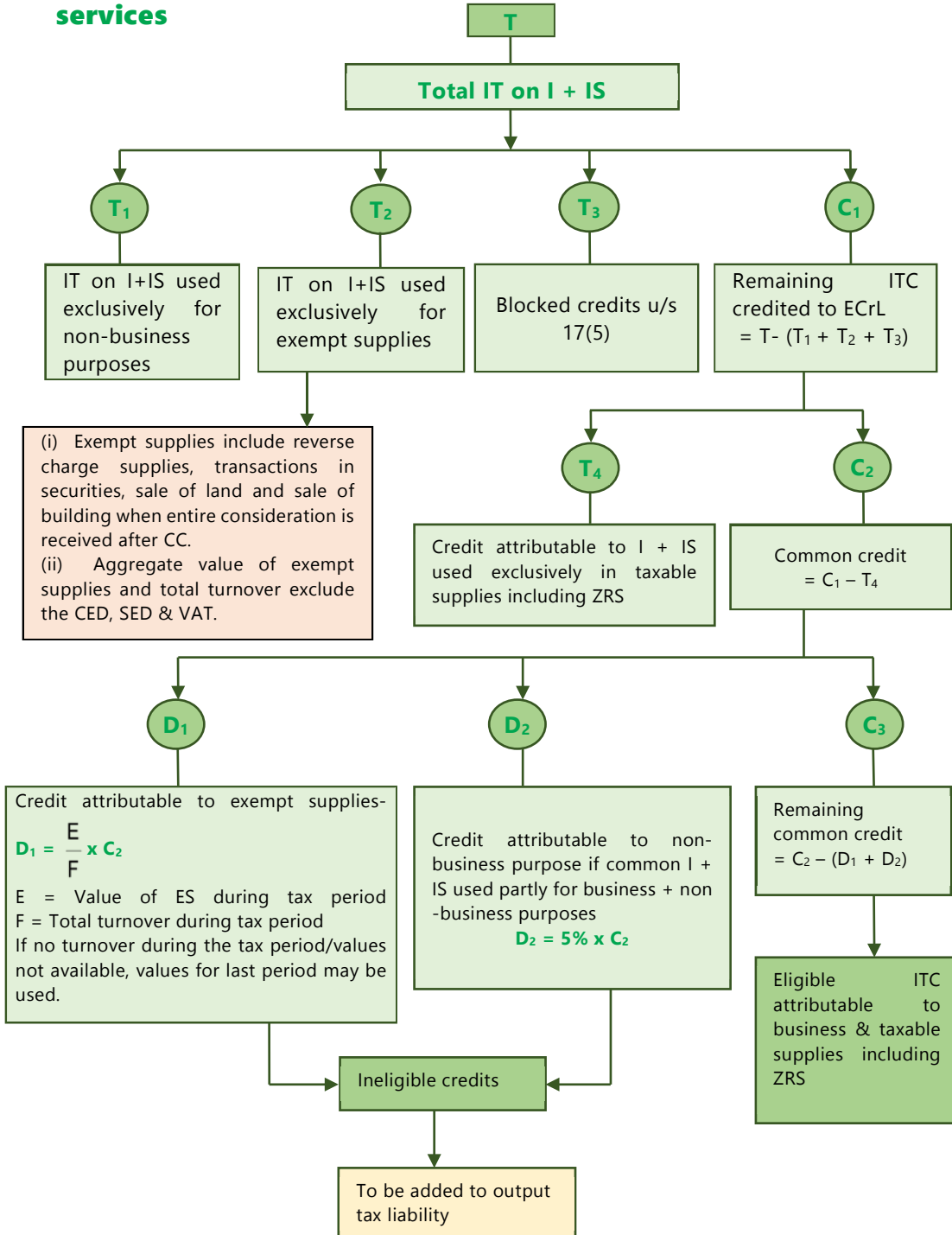


Exempt supplies include supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received post completion certificate.

B. Special provisions for banking companies and NBFCs



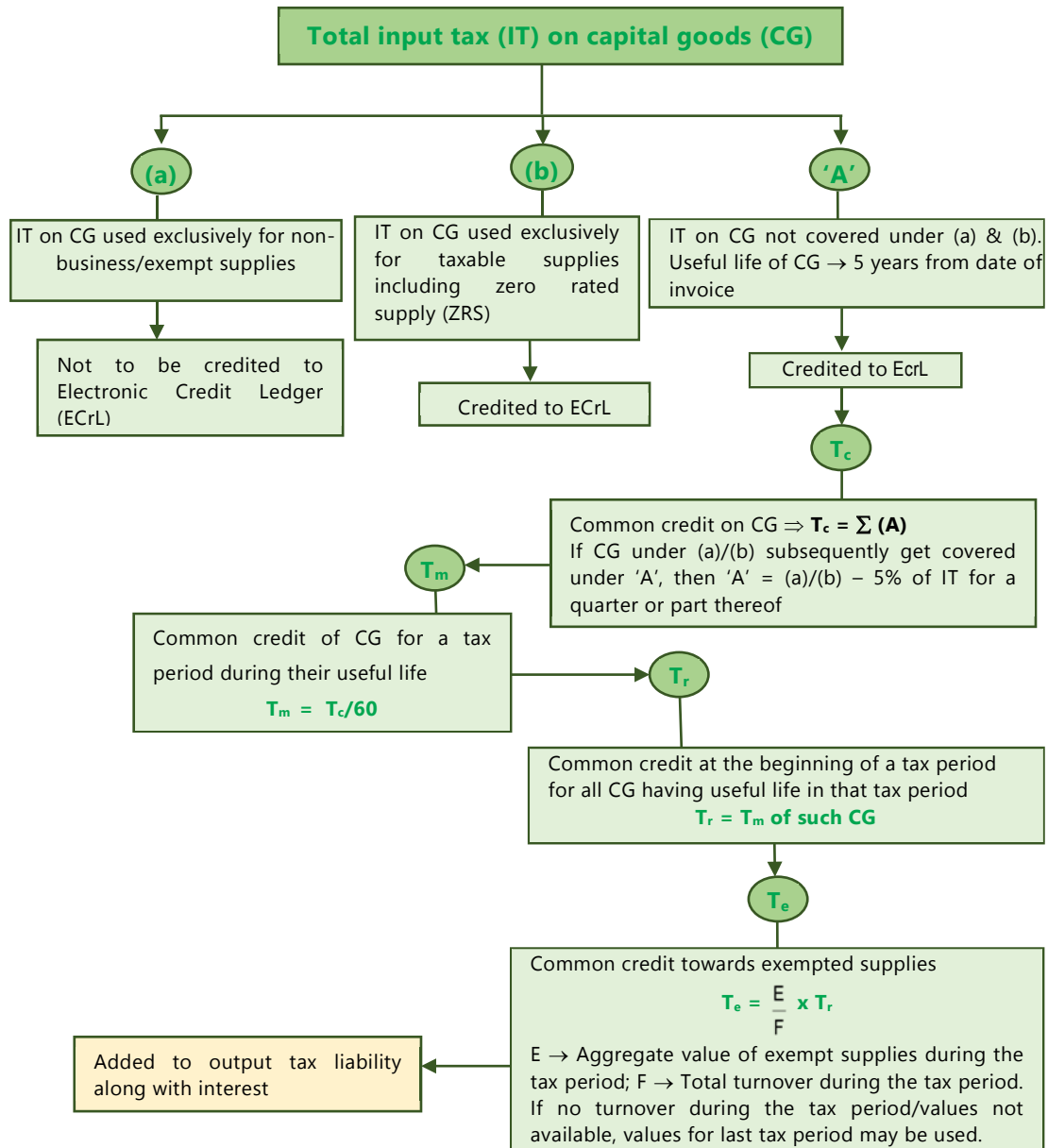
C. Apportionment of common credit in case of inputs and input services



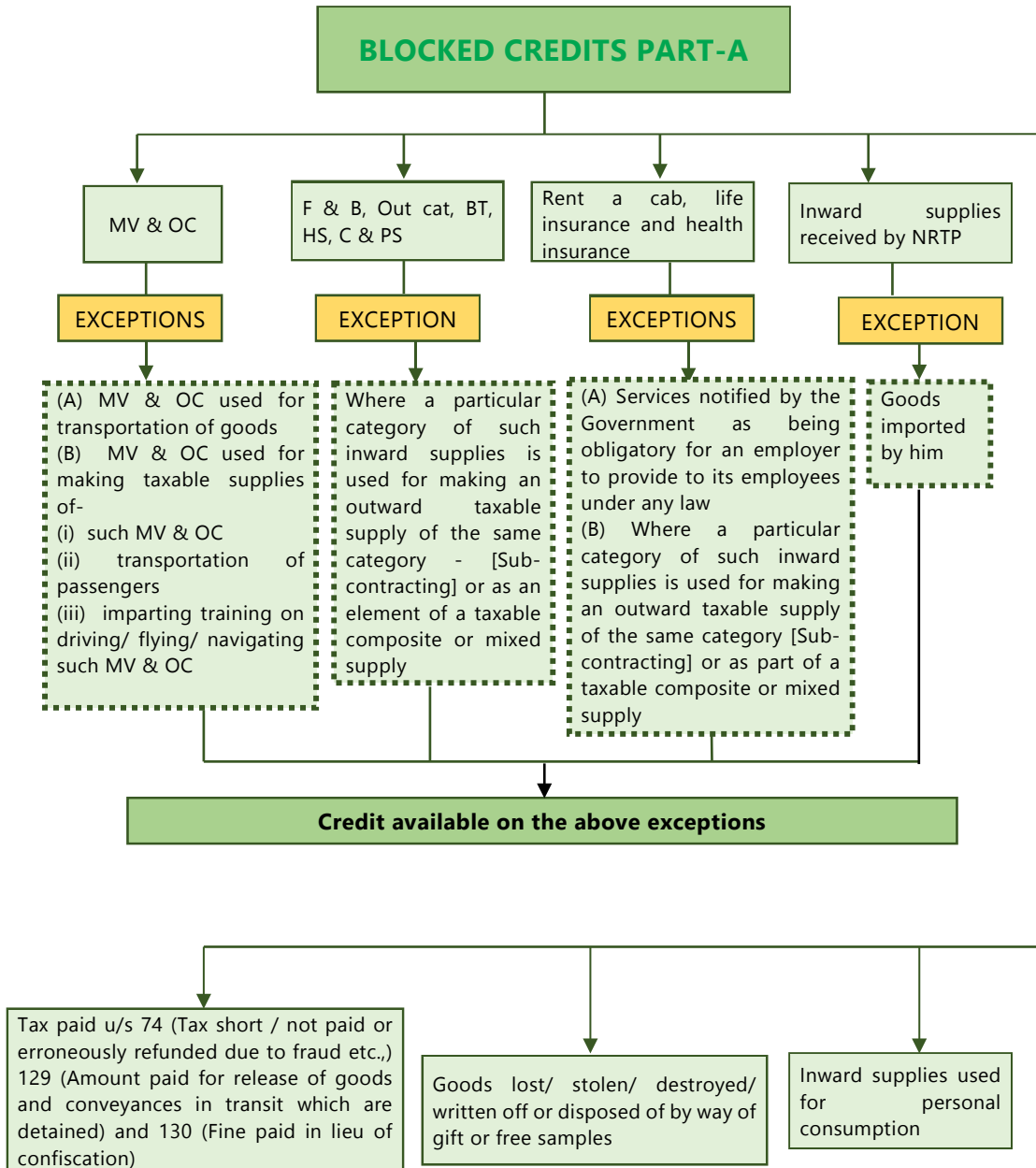
- C_3 will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- $\sum (D_1 + D_2)$ will be computed for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year. If this amount is more than the amount already added to output tax liability every month, the differential amount will be added to the output tax liability 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 added to output tax liability every month, the additional amount paid has to be claimed back as credit in GSTR 3 of any month till September of the succeeding year.

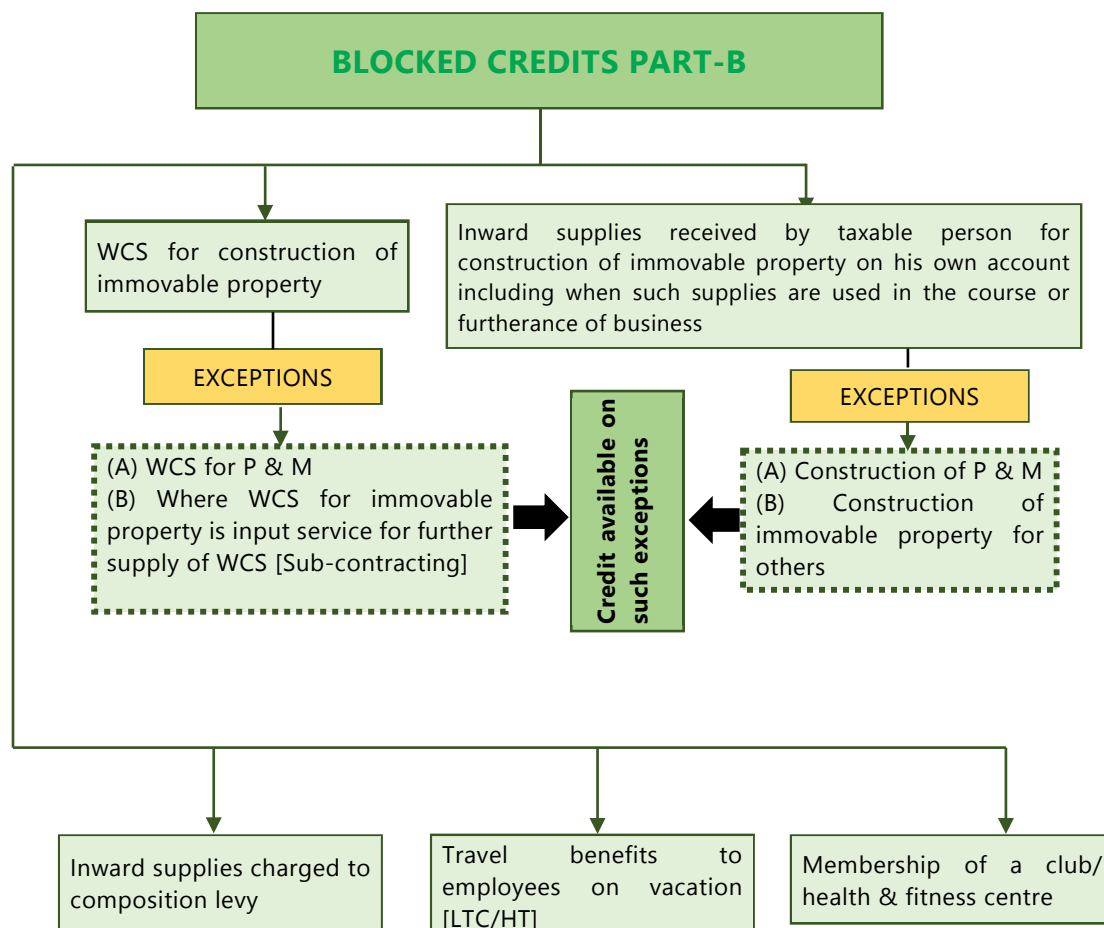
IT = Input tax
I = Inputs
IS = Input services
ECrI = Electronic Credit Ledger
CC = Completion Certificate
CED = Central Excise Duty
SED = State Excise Duty
ZRS = Zero rated supply
ES = Exempt supplies

D. Apportionment of common credit on capital goods



- T_e will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- Exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate.
- Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty & VAT.



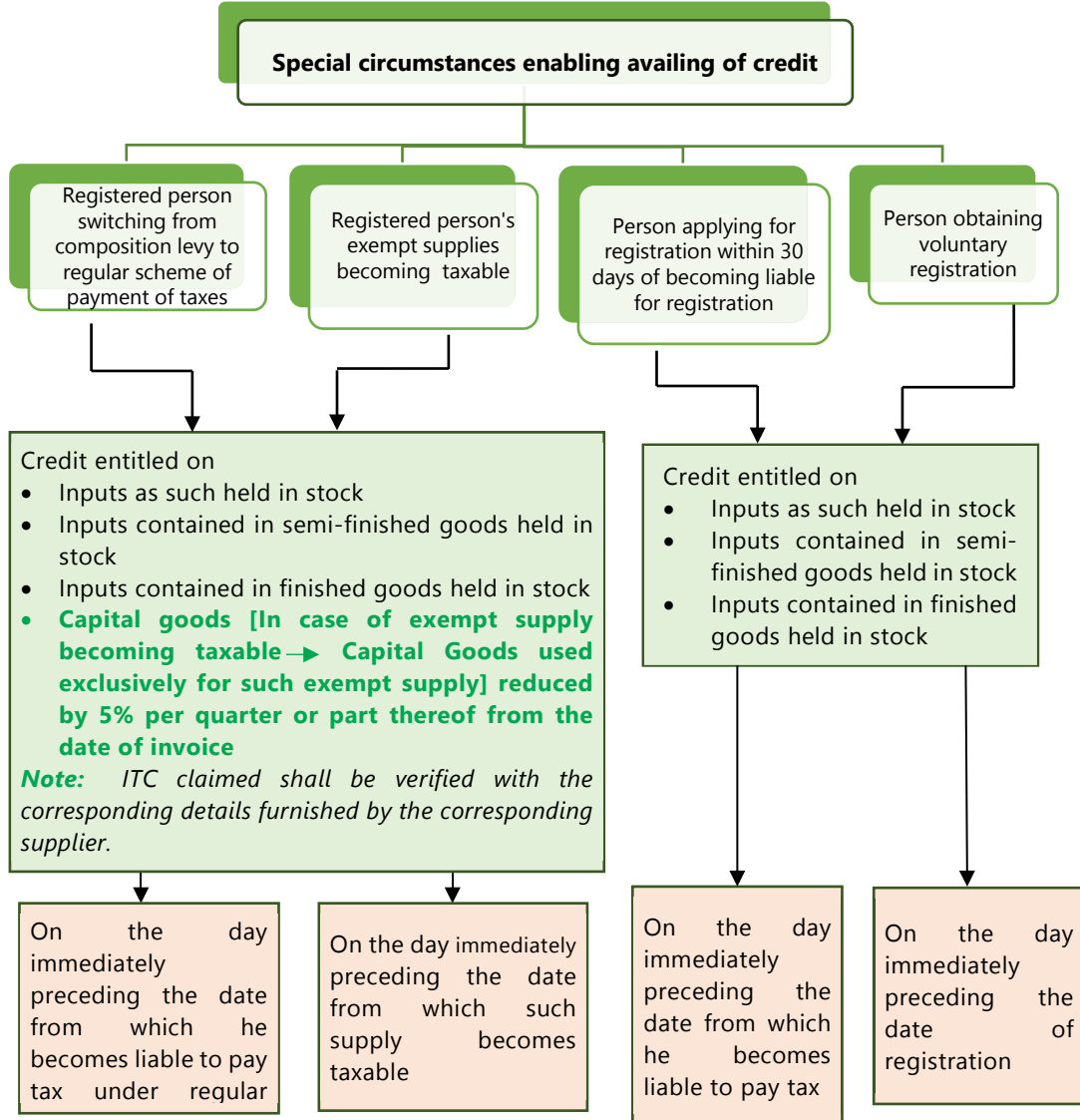


MV&OC-Motor vehicle & other conveyance; F&B-Food & beverages; Out cat-Outdoor catering; BT-Beauty treatment HS-Health services; C&PS-Cosmetic & plastic surgery; NRTP-Non-resident taxable person; WCS-Works contract service; LTC-Leave Travel Concession; HT-Home town

(A) Construction includes re-construction/ renovation/ addition/ alterations/ repairs to the extent of capitalisation to said immovable property.
(B) P & M means apparatus, equipment, & machinery fixed to earth by foundation or structural supports but excludes land, building/ other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

III. The provisions of section 18 read with relevant rules have been summarized as under:

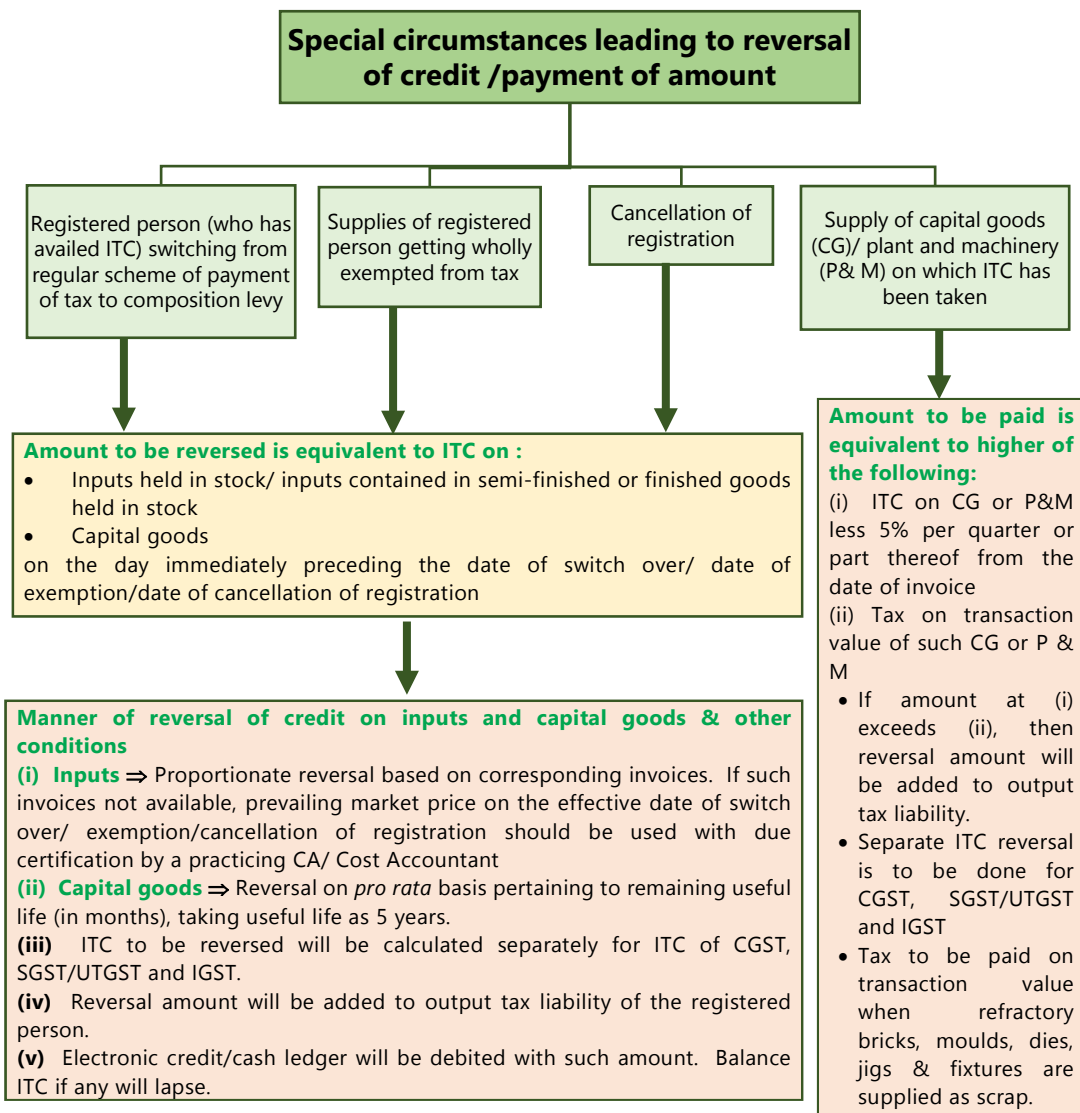
A. Special circumstances enabling availing of credit



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 shall be duly accounted for by the transferee in his books of accounts.

In case of demerger, ITC will be apportioned in the ratio of value of assets of new unit as per the demerger scheme.

Details of change in constitution will have to be furnished on common portal along with request to transfer unutilised ITC. CA/Cost Accountant certificate will have 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 will be credited to his Electronic Credit Ledger.

IV. Provisions relating to availing and utilizing the ITC are summarized as under:

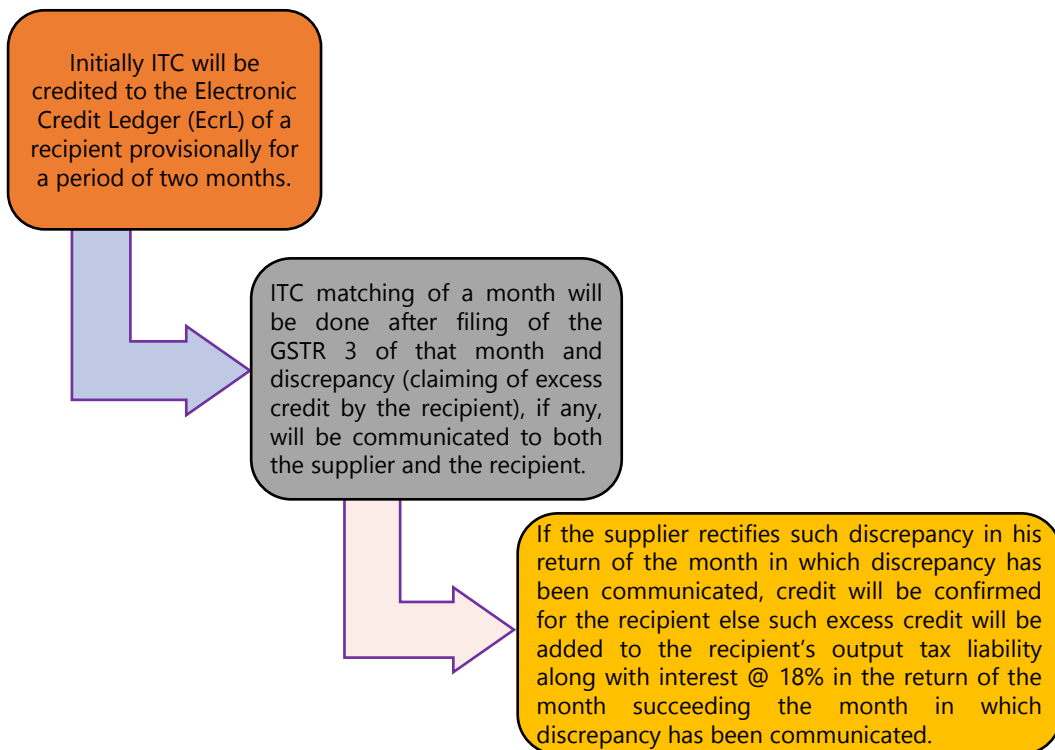
A registered person is entitled to credits as under:

Transaction	Credit
Intra-State supply	CGST & SGST/UTGST
Inter-State-supply	IGST
Imports of goods and services	IGST

The protocol to avail and utilize the credit of CGST, SGST/UTGST and IGST is as follows:

Credit of	To be utilized first for payment of	May be utilized further for payment of
CGST	CGST	IGST
SGST/UTGST	SGST/UTGST	IGST
IGST	IGST	CGST, then SGST/UTGST

Credit of CGST cannot be used for payment of SGST/UTGST and credit of SGST/UTGST cannot be utilised for payment of CGST.



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?
 - (a) 180 days
 - (b) 1 year

- (c) 20th October 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 taken 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
- (b) Outdoor catering
- (c) Health services
- (d) All of the above

7. If there is a mis-match of supplier's outward supply and recipient's claim for ITC on the same transaction (tax paid is claimed to be more by the recipient than the tax shown as payable in the invoice of the supplier)-
- (a) The disputed amount shall be added as output tax liability in the return of the recipient
 - (b) The disputed amount shall be reduced from the ITC of the recipient
 - (c) The disputed amount shall be increased in the outward supply of the supplier
 - (d) A demand notice will be issued on the recipient for the disputed amount
8. 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.
9. What is input tax?
10. What are the conditions necessary for obtaining ITC?
11. Can a person take ITC without payment of consideration for the supply along with tax to the supplier?
12. What is the time limit for taking ITC and reasons therefor?
13. What is the ITC entitlement of a newly registered person?
14. What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?
15. What happens where the details of inward supplies furnished by the recipient do not match with the outward supply details furnished by the supplier in his valid return?
16. A flying school imports an aircraft for use in its training activity, and takes ITC of the IGST paid on the import. The departmental audit raises an objection that aircrafts fall within the definition of "conveyance" in section 2(34) of the Act and that ITC is not allowed on conveyances. Offer your comments.

17. A taxable person is in the business of information technology. He buys a motor vehicle for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such motor vehicle?
18. 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.
19. 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 ₹ 4 crore and ₹ 1 crore respectively, the ITC on thread and lining material procured in July is ₹ 5000 and ₹ 15000 respectively.
Calculate the eligible ITC on thread and lining material.
20. Mr. A, a registered person was paying tax under Composition Scheme up to 30th July. However, w.e.f. 31st July, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for ITC?

9. ANSWERS/HINTS

1. (c) 2. (c) 3. (b) 4. (c) 5. (b) 6. (d) 7. (a) 8. (c)
9. 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.
10. 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) 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.
11. 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.
 12. 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]"*.
 13. 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.
 14. 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.
 15. In case of mismatch, the communication is made to the both the parties. If the mismatch is not rectified, then the amount will be added to the output tax liability of recipient in the return for the month succeeding the month in which discrepancy is communicated.
 16. Under section 17(5)(a)(i)(C) of the CGST Act, ITC is allowed on aircraft if they are used to make the taxable supply of imparting training on flying an aircraft. Therefore, the credit is correctly taken.
 17. No. As per section 17(5)(a), ITC on motor vehicles 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/flying/navigating motor vehicles or is in the business of supply of motor vehicles.

18. 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.
19. 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 added to the output tax liability in terms of rule 43 of the CGST Rules, 2017.

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 added to the output tax liability for the month of July. Credit of ₹ 16,000 will be eligible credit for the month of July.

20. 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)].