

# INPUT TAX CREDIT

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- One of **main objective** of introducing GST was **to avoid cascading effect** and **tax credit plays** a very important role in it. Though it could not be fully avoided due to Custom Duties, Place of Supply provisions and non-taxable supplies.
- The **only beneficial provisions** for the suppliers, thus it will be a major contention of litigation as in the past.
- In my humble opinion it is the **“soul”** of GST

# INPUT TAX CREDIT

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- What is Tax Credit
- Tax credit is the **amount of tax paid** on receipt of goods or services or both **which is not expensed /capitalised** but debited in the financial statements as current asset and **used to discharge the liability of tax except tax payable RCM**. It can not be used for the discharge of payment of interest, penalty, fee or any other sum due under the Act. Credit **available in the month** in which invoices are received

# INPUT TAX CREDIT

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- **Non-claim of tax credit** for which the supplier is entitled to shall result into **loss of credit not claimed less reduction in income tax liability** due to claim of expense or depreciation.
- Excess claim of credit shall result in **denial of concessional rate of tax** where non claim of credit is a condition, otherwise amount of credit wrongly claimed along with interest and penalties.
- Claim of tax credit is **undoubtedly less than the profit of business** though vary depending on the activities carried out by the supplier. In this competitive world if claim of credit is not used judiciously, survival of the business can be jeopardized.

# INPUT TAX CREDIT – concept in GST

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- The concept of tax credit in GST is entirely different as compare to earlier taxation laws, **tax credit** is available **in the course or furtherance of business** and is **not linked to taxable event** which was the position in erstwhile laws. Further law is enacted keeping in view the matching concept through computers and without human intervention.
- While applying the ratios of case laws under the earlier fiscal statute one need to be careful about the scheme of ITC in GST.

# INPUT TAX CREDIT – Settled Positions

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- **Classification** cannot be challenged in the hand of recipient, therefore even if tax has been paid at a higher rate than what was leviable credit shall be available for the higher amount
- Credit is available for the tax paid under RCM even though at concessional rate of tax like in the case of GTA
- If credit is available to the recipient **conservative view** may be taken as it has **no financial implication** except of inverted duty structure in a very limited cases

# INPUT TAX CREDITS – Settled Positions

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- Input tax credit is **indefeasible** - Collector Of Central Excise, Pune Versus **Dai Ichi Karkaria Ltd** - 1999 (112) E.L.T. 353 (S.C.)
- No demand can not be made for recovery of **cenvat Credit that was validly earned by the assessee** - Eicher Motors Ltd VS Union of India 1999(106)ELT3(SC)
- No reversal of credit on **unsold flats** – **Alembic Ltd.** 2019-TIOL-1495-HC-AHM-ST
- Credit of ITC is **not an absolute right** but a **conditional one** and subject to fulfilment of conditions- ALD Automotive Pvt. Ltd. V. Commercial Tax Officer 2019 (13) SCC 255
- ITC cannot be **denied for procedural lapses** if substantive conditions are satisfied.

# INPUT TAX CREDIT - Provisions

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- Relevant Statutory Provisions
- Section **16 to 21** in chapter V and section 155 in Chapter XXI of CGST Act,2017.
- **Section 155 - Burden of proof** - Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.
- **Section 49** relating to payment of tax and **Section 41** Claim of input tax credit and provisional acceptance thereof
- **Rules 36 to 45**

# INPUT TAX CREDIT - Component

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## □ Components of Credit

- **“capital goods”** means goods, the value of **which is capitalised** in the books of account of the person claiming the input tax credit and which are **used or intended to be used** in the **course or furtherance of business**; [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 CREDITS – Other Definitions

- 2(63) “input tax credit” means the credit of input tax;
  
- 2(62) “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on **any supply of goods or services or both made to him and includes**–
  - a) the 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-sections (3) and (4) of section 5 of the IGST Act;
  - d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective SGST ; or
  - e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the UTGST Act,
  
- but does not include the tax paid under the composition levy;

# INPUT TAX CREDIT – 16(1)

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- **SECTION 16(1)**
- **Every registered person shall,**
  - not taxable person including casual taxable person but not composition dealer
- 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
  - Charged and not chargeable
- which are **used or intended** to be used
  - Law is enacted to be administered by machine with minimum human intervention
  - In the month of purchase even though value of supply and tax thereon has not been discharged by the recipient

# INPUT TAX CREDIT

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- in the course **OR** furtherance of his business
  - Segregated by the conjunction “**or**” makes it clear beyond doubt that credit is available in both the situations independently
  - **One** to one correlation is not required in the past but presently not linked with taxable event but with the business
  - Business has been defined in section 2(17) of CGST and includes supply or acquisition of goods including capital goods and services in connection with commencement or closure of business.
  - Credit can be used if supplies are used in establishing an office from where no revenue is generated
  - Research and development activities
  - Starting another independent line of business
  
- **and the said amount shall be credited to the electronic credit ledger of such person.**

# INPUT TAX CREDIT – 16(2)

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- Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —
- **(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;**
  - Not a conclusive condition, other conditions also need to be satisfied cumulatively
  - Rule 36 prescribe document requirement
  - Must be issued by registered person i.e. registered u/s 25 but does not include a person having a UID

# RULE 36 - Documentary requirements and conditions for Claiming input tax credit.

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- (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 for **reverse charge**, 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.

# RULE 36 - Documentary requirements and conditions for Claiming input tax credit.

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- (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 :
- [**Provided** that if the said document **does not contain all the specified particulars** but **contains the** details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.]
- (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, wilful misstatement or suppression of facts.**
- [(4) **Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers** under sub-section (1) of section 37, shall not exceed [10 per cent.] of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.]

# INPUT TAX CREDIT – 16(2)

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- (b) he has received the goods or services or both.
  - ▣ **most of the arrest** has been made for non compliance of this provision
  - ▣ **No credit on payment of advance** to the supplier of goods or services or both
  - ▣ Detailed **accounting and stock records** to be maintained by the recipient
  - ▣ In terms of **section 155** onus is on the person who is claiming the credit, difficult to comply with in case of services

# INPUT TAX CREDIT

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- [***Explanation.*** — For the purposes of this clause, it shall be deemed that the **registered person has received the goods** or, as the case may be, services —
- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]



# INPUT TAX CREDIT – 16(2)

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- (c) subject to the provisions of [section 41 (provisional credit) or section 43A (Procedure for furnishing return and availing input tax credit)], the tax charged in respect of such supply has been **actually paid to the Government**, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
  - ITC cannot be denied for default made by selling dealer – Jharkand High Court
  - Delhi High Court in the case of Arise India Ltd. V Commissioner of Trade and Taxes affirmed by SC by rejecting the SLP of revenue and not by passing a speaking order.
  - Chunni Lal Prasadi Lal (SC) in the context of Sales Tax
- (d) he has **furnished the return under section 39** :
- **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** :

# 16(2) – payment to be made in 180 days

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- **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 :
- **Eligible to claim when payment is made**
- **Provided** also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.
- **Time limit prescribed under section 16(4) is not applicable**
- The registered person is eligible to take ITC after the consideration has been paid and the time limit prescribed under section 16(4) of the CGST Act, 2017 is not applicable.

# ISSUES - payment to be made in 180 days

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- One 180 days **to be calculated from the date of invoice** and not from the date of supply of goods or services
- It is a **self disciplined mechanism** and has no check and balances on the portal
- Whether this **provision is applicable** in view of judgment in the case of Commissioner of Income Tax, Bangalore vs. B.C. Srinivasa Setty MANU/SC/0285/1981 as mechanism provided in law has not been made available
- **Proportionate credit** permissible in case of part payments.
- Whether any interest is payable by the registered person and if yes what shall be the Rate of Interest? **18% u/s 50(1) or 24% u/s 50(3) – undue or excess claim of credit**
- What shall be the **period for determining the amount of interest?** - Interest is to be calculated from the date of availment of credit and from the date of invoice.

# ISSUES - payment to be made in 180 days

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- **“Fails to pay to the supplier” - Whether payment can be made in kind or by making book entry.**
- Credit allowed for more than 180 days or **payment made in more than 6 monthly instalments** – whether still applicable ?
- What shall be the method to be adopted where **no impact has been taken in books of accounts** or in the returns filed with the GST Department with respect to second proviso to section 16(2) of the CGST Act, 2017, but the **consideration has been paid subsequently**
- Whether, act of God like present scenario shall get the period extended beyond 80 days?
- **Not applicable**
  - (a) in case of **RCM**
  - (b) in case of **transaction between two distinct persons under the same PAN** number

# INPUT TAX CREDIT- 16(3)

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- 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 (43 of 1961), the input tax credit on the said tax component shall not be allowed.
  - On the line of earlier Laws
  - Dual Benefit not permissible

# Section 16(4) – Time Limit

- 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 :
  - [Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

# INPUT TAX CREDIT – 17(1) 7 (2)

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- (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.

# RULE 42 & 43

- **42(1)** The input tax credit in respect of inputs or input services, which attract the **provisions of sub-sections (1) or (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,-
- **43(1)** 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,-



# ISSUES - 17(1) & 17(2)

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- 2(47) “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 Integrated Goods and Services Tax Act, **and includes non-taxable supply;**
- Whether provisions of Section 17(1)/17(2) are applicable to all input supplies or only on common input supplies ?
- As the language suggest it shall be applicable **on common supplies** in such a situation supplier of taxable supplies and exempt supply also shall not be required to reverse the credit on supplies used exclusively for exempt supply.
- Whether these provisions are applicable if **carrying out any activity specified in schedule III** of the Act.

# Approach to be followed

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## □ Past Experience

- Definition of **Renting of immovable property** amended retrospectively by Finance Act, 2010 with effect from 01.06.2017
- **Commercial Training or Coaching services** amended with effect from 01.07.2003
- **Composite contract made liable with effect from 01.06.2007** and demand for the earlier period was dropped
- **Rule 5(1)** of Point of Taxation Rule was struck down in the case of Intercontinental by Delhi High Court and affirmed by Supreme Court
- Free supplies by contractee not to be included in the value of taxable services – Bhyana Builders Pvt. Ltd.
- Restaurants never discharged service tax liability in the state of Kerala

# INPUT TAX CREDIT – 17(3)

- The **value of exempt supply** under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the **recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.**
- **[Explanation. —** For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.]

# INPUT TAX CREDIT 17(4)

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- **(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** :
- **Shall not apply to supplies made by one RP to another RP having the same PAN**
- **Provided** further that the restriction of fifty per cent. **shall not apply** to the tax paid on supplies made **by one registered person to another registered person having the same Permanent Account Number.**

# Blocked Credit – 17(5)

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- 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 :—
- [(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely :—

  - (A) further supply of such motor vehicles; or
  - (B) transportation of passengers; or
  - (C) imparting training on driving such motor vehicles;

# Meaning of “motor vehicle”

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- **“Motor vehicle”** shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988—  
**Source 2(76) of CGST Act**
- **“Motor vehicle” or “vehicle”** 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 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 35 cubic centimetre.— Source Section 2(28) of the Motor Vehicles Act, 1988.**
- **Fork lift, two & three wheelers not included**

# Blocked Credit – 17(5)

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- (aa) **vessels and aircraft** except when they are used
- (i) for making the following taxable supplies, namely  
:—
- (A) further supply of such vessels or aircraft; or
- (B) transportation of passengers; or
- (C) imparting training on navigating such vessels; or
- (D) imparting training on flying such aircraft;
- (ii) for transportation of goods;

# Blocked Credit – 17(5)

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- **(ab) services of general insurance, servicing, repair and maintenance** in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) :
- **Provided** that the input tax credit in respect of such services **shall be available —**
- **(i)** where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are **used for the purposes specified** therein;
- **(ii)** where **received by a taxable person engaged —**
- **(I)** **in the manufacture of such motor vehicles, vessels or aircraft;**  
or
- **(II)** **in the supply of general insurance services** in respect of such motor vehicles, vessels or aircraft insured by him;



# Blocked Credit – 17(5)

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- (b) the following supply of goods or services or both —
- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance :
- Used for making an outward taxable supply per se or as an element of a taxable composite or mixed supply;
- Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
- (ii) membership of a club, health and fitness centre; and
- (iii) travel benefits extended to employees on vacation such as leave or home travel concession :
- Where it is obligatory under any law for the time being in force
- **Provided** that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]

# Blocked Credit – 17(5)

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- (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
- **Explanation.** — For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;
  - Orissa High Court in the case of **Safari Retreats Pvt. Ltd** (2019)105 Taxmann.com 324

# Blocked Credit – 17(5)

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- (e) goods or services or both on which tax has been paid under section 10;
- (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
- (g) goods or services or both used for personal consumption;

# Blocked Credit – 17(5)

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- (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and (deemed supply v. reversal of credit)
  - Gift of pen to son on his birthday)
  - Distribution of samples through branches needs to be avoided to save the transaction cost
  - Gift means gratuitous and voluntary payments without any obligation
- (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.
- (6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

# Blocked Credit – 17(5)

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- **Explanation.** — For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes —
  - (i) land, building or any other civil structures;
  - (ii) telecommunication towers; and
  - (iii) pipelines laid outside the factory premises.

# RCM - Objectives

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- Safeguarding the interest of revenue
- Administrative convenience
- Ease of Collection
- Additional Source of Revenue

# Statutory Provisions -9(3)/5(3)

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- **Section 9(3)** The Government **may**,
- on the recommendations of the Council,
- by notification,
- specify **categories of supply of goods or services or both**,
- the tax on which **shall** be paid on reverse charge basis
- **by the recipient** of such goods or services or both and
- **all the provisions of this Act shall apply** to such recipient
- as if **he is the person liable for paying the tax** in relation to the supply of such goods or services or both.

# RCM – Statutory Provisions – 9(4)/5(4)

- ❖ **Section 9(4)** The central tax in respect of the supply of **taxable goods or services** or both by a **supplier, who is not registered**, to a registered person **shall be paid by such person on reverse charge basis** as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- ❖ **With Effect From 01.02.2019**
- ❖ **Section 9(4) Amended:** The Government may, on the recommendations of the Council, by notification, specify a **class of registered persons** who shall, in respect of **supply of specified categories of goods or services or both** received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”



# RCM – Procedural Aspects

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Particulars	Procedure
Input Tax Credit (ITC)	Input tax credit of the GST paid on the goods and services under reverse charge mechanism shall be available if such goods and/or services are used in the furtherance of business., and subject to Section 17(5)
Registration	All persons procuring goods or services notified under Section 9(3) are mandatorily required to obtain GST Registration. (even if less than 20L)
Tax Invoice	<u>Recipient of supply to issue invoice in case the supplier is not registered.</u> Consolidated invoice at the end of a month for all the supplies made for unregistered persons <5K per day.
Payment Voucher	A registered person who is liable to pay tax under RCM shall issue a payment voucher at the time of making payment to the supplier
Records	Every registered person shall keep and maintain an the Accounts/records as may be prescribed

# RCM – Procedural Aspects

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Particulars	Procedure
<b>Due date of Payment</b>	GST levied under the Reverse Charge mechanism should be deposited with the Govt by the 20th of the next month
<b>Returns</b>	GST paid under Reverse Charge Mechanism (RCM) would not be auto-populated in the GSTR 2A and these details would be required to be manually furnished in GSTR-2
<b>RCM to be paid in Cash only</b>	Input Tax Credit with the recipient cannot be used for payment of Reverse Charge to the Govt.
<b>Composition Scheme dealers</b>	Even persons registered under the Composition Scheme shall also discharge liability under Reverse Charge. No Credit of RCM is available in such cases.
<b>Advance Payment</b>	RCM is levied on advance payments as well.

# RCM on URD purchases – 9(4)/5(4)

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Original	Amended	Impact
<p>All supplies received from URD liable to reverse charge.</p> <p>Exemption provided for a limit of Rs. 5000 per RP per day</p>	<p>RCM liability only on such classes of persons or specified categories of goods or services as are notified in this regard.</p>	<ul style="list-style-type: none"> <li>❖ Earlier Notification had rescinded liability only till 30.9.2019</li> <li>❖ No liability post such date on URD as levy provisions amended</li> <li>❖ Presently only builders covered in this category</li> </ul>
<p>Notification No. 38/2017 – Central Tax (Rate) dated 13.10.2017 – prospective/retro-prospective??</p>		

# RCM- Goods Transport Services

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- ❖ **Supplier of service:** Goods transport agency (GTA) in respect of transportation of goods by road
- ❖ **Recipient of service liable to pay tax under RCM:**
  - ✓ Any registered factory;
  - ✓ Any registered society;
  - ✓ Any Co-operative Society established under any law;
  - ✓ Any body corporate established under any law;
  - ✓ Any partnership firm;
  - ✓ Any casual taxable person located in taxable territory;
  - ✓ Any person registered under GST Act.
- ❖ **Note:** RCM is not applicable to services provided by a GTA , by way of transport of goods in a goods carriage by road, to, - *A Department or Establishment of the CG, SG or UT; or Local authority; or Governmental agencies*, - taken registration under CGST only for deducting tax u/s 51 and not for making a supply.

# RCM- Legal Services

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## ❖ Supplier of service:

- An individual advocate including a senior advocate or firm of advocates

## ❖ Recipient of service liable to pay tax under RCM:

- Any business entity located in the taxable territory

## ❖ Scope of service:

- Legal services to a business entity directly or indirectly.

- S. No. 45 Heading 9982 or Heading 9991
- Services provided by-
- (a) an arbitral tribunal to -
- (i) any person other than a business entity; or
- (ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year;

# RCM – Legal Services

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- **(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to**
- (i) an advocate or partnership firm of advocates providing legal services;
- (ii) any person other than a business entity; or
- (iii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year;
- **(c) a senior advocate by way of legal services to -**
- (i) any person other than a business entity; or
- (ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year.

# RCM - GOVERNMENT

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## ❖ Supplier of service

- ❖ CG, SG, UT or local authority

## ❖ Recipient of service liable to pay tax under RCM:

- ❖ Any business entity located in the taxable territory.

## ❖ Scope of services:

- All services supplied by CG, SG, UT or local authority excluding the following:

- Renting of immovable property, and
- Services by the Department of Posts (speed post, express parcel post, life insurance, and agency services) provided to a person other than Govt.
- Services in relation to an aircraft or a vessel
- Transport of goods or passengers.

## ❖ Note:

1. In case service of renting of immovable property has been provided by the Government to any registered person under CGST, then such registered person is liable to pay tax under RCM w.e.f. 25.01.2018.



# RCM – Security Services

49

- ❖ **Supplier of service:** Any person other than a body corporate
- ❖ **Recipient of service liable to pay tax under RCM:** A registered person, located in the taxable territory
- ❖ **Scope of service:** Security services (services provided by way of supply of security personnel) provided to a registered person
- ❖ **Note:** RCM is not applicable to, -
  - ❖ A Department or Establishment of the CG, SG or UT; or
  - ❖ Local authority; or Governmental agencies,
  - ❖ Who have taken registration under CGST only for deducting tax u/s 51 and not for making a taxable supply.
  - ❖ A registered person paying tax under section 10 of the said Act.

Sr. No	Supplier of Service	Recipient of Service	Description
1	An arbitral tribunal.	Any business entity	Services supplied by an arbitral tribunal to a business entity
2	Any person providing sponsorship service	Any body corporate or partnership firm	Services provided by way of sponsorship
3	A director of a company/body corporate	The company or a body corporate	Services by a director of a company/body corporate to the said company/body corporate.

# RCM - Director

51

- ❖ **Supplier of service:** A director of a company or a body corporate
- ❖ **Recipient of service liable to pay tax under RCM:** A registered person, located in the taxable territory
- ❖ **Scope of service:** Services by a director of a company/body corporate to the said company/ body  
□ corporate.

# RCM - Others

52

Sr. No	Supplier of Service	Recipient of Service	Description
4	An insurance agent	Any person carrying on insurance business.	Services by an insurance agent to any person carrying on insurance business.
5	A recovery agent	A banking company or a financial institution or a NBFC	Services by a recovery agent to a banking company/ financial institution or a NBFC
6	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like.	Supply by way of transfer or permitting the use or enjoyment of a copyright relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.

# RCM - Others

53

Sr. No	Supplier of Service	Recipient of Service	Description
7	Any person Located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.	Any service by any person is located in non-taxable territory to any person other than non-taxable online recipient.
8	A person located in non-taxable territory	Importer as u/s 2(26) of Customs Act located in taxable territory.	Services by way of transportation of goods by vessel from a place outside India up to customs station of clearance in India.*

Note :If the value of ocean freight is not available it shall be taken as 10% of CIF Value.

# RCM - Others

54

Sr. No	Supplier of Service	Recipient of Service	Description
9	Members of Overseeing Committee to RBI	RBI	Any service by members of overseeing committee to RBI
10	Business facilitator (BF)	A banking company, located in the taxable territory	Services by BF to a banking Company.
11	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.	Services by an agent of BC to BC.

# RCM - Others

55

Sr. No	Supplier of Service	Recipient of Service	Description
12	Any Person other than a body corporate	Any registered person, located in the taxable territory.	Security services (services by way of supply of security personnel) provided to a registered person
13	Any person, other than a body corporate and does not issue an invoice charging central tax at the rate of 12 % to the service recipient	Any body corporate located in the taxable territory	Services provided by way of renting of any motor vehicle designed to carry passengers where the <i>cost of fuel is included</i> in the consideration charged from the service recipient, provided to a body Corporate

# RCM amendments – Analysis of Renting of motor vehicle

56

Service Provider	Recipient	Liability
Individual, HUF, Firm	LLP, Company (body corporate- BC)	<b>Under RCM</b>
Individual, HUF, Firm	Individual, HUF, Firm	Under FCM
Company, LLP	Any	Under FCM
Individual, HUF, Firm	Employee of BC (acting as agent of the BC)	<b>Under RCM</b>
Individual, HUF, Firm	Employee of BC (employee availing services on P2P)	Under FCM



# RCM - Others

57

Sr. No	Supplier of Service	Recipient of Service	Description
14	Lender who deposits the securities	Borrower who borrows under this scheme.	Services of lending securities lending scheme, 1987 of SEBI

# RCM – Real Estate

58

Sr. No	Supplier of Service	Recipient of Service	Description
1	Any Person	Promoter	Services by any person by way of TDR or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.
2	Any Person	Promoter	Long term lease of land (30 yrs or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, etc.) and/or periodic rent for construction of a project by a promoter.

# Discussion on Notification on RCM – 07/2019

59

Description	Liability of RCM
Supply of any goods and services (shortfall of 80%) other than capital goods and cement	Recipient of goods and services
Cement	Recipient of goods and services
Capital goods	Recipient of goods and services

# Illustration

60

Sl. No	Name of input goods and services	% of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Y
2	Cement	<b>15</b>	<b>N</b>
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows, Ply, commercial wood	15	Y

Here the promoter has procured 80% of the inputs from a registered person but the cement procured by him was from unregistered person and hence he is required to pay GST on cement at the applicable rates on reverse charge basis.

# Notification on RCM – 08/2019

61

- ❖ The rate applicable to the supply of any goods and services (shortfall of 80%) other than capital goods
  - and cement shall be paid on reverse charge basis shall be @18%.
- ❖ The said entry was added in the Schedule III after the entry 452P in column(1) as 452Q.mm
- ❖ **Note:-**
  - Computation of 80% should be done only upto the receipt of Completion certificate i.e Unregistered procurement done after receipt of CC should not be included in the computation. Therefore, Expenditure incurred after CC will not effect the 80% of procurements.

Sr. No	Description	Supplier of Goods	Recipient of Goods
1	Cashew Nuts (not shelled or peeled), bidi wrapper leaves (tendu), tobacco leaves & raw cotton	Agriculturist	Any registered person
2	Silk Yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons	Any registered person
3	Lottery	SG, UT or local authority	Lottery Distributor or selling agent
4	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	CG, SG, UT or local authority	Any registered person
5	Priority Sector Lending Certificate	Registered Person	Recipient who is registered person.

# thanks

