**GOODS AND SERVICE TAX**

**BBA-N 603**

**UNIT-3**

**Input Tax Credit**

Input credit means at the time of paying tax on output, you can reduce the tax you have already paid on inputs and pay the balance amount.

Here’s how:

When you buy a product/service from a registered dealer you pay taxes on the purchase. On selling, you collect the tax. You adjust the taxes paid at the time of purchase with the amount of output tax (tax on sales) and balance liability of tax (tax on sales *minus* tax on purchase) has to be paid to the government. This mechanism is called utilization of input tax credit.

For example- you are a manufacturer:

a. Tax payable on output (FINAL PRODUCT) is Rs 450

b. Tax paid on input (PURCHASES) is Rs 300

c. You can claim INPUT CREDIT of Rs 300 and you only need to deposit Rs 150 in taxes.

**Who can claim ITC?**

ITC can be claimed by a person registered under GST only if he fulfills ALL the conditions as prescribed.

* The dealer should be in possession of tax invoice
* The said goods/services have been received
* Returns have been filed.
* The tax charged has been paid to the government by the supplier.
* When goods are received in instalments ITC can be claimed only when the last lot is received.
* No ITC will be allowed if depreciation has been claimed on tax component of a capital goods.

**Reversal of Input Tax Credit**

ITC can be availed only on goods and services for business purposes. If they are used for non-business (personal) purposes, or for making exempt supplies ITC cannot be claimed. Apart from these, there are certain other situations where ITC will be reversed.

**ITC will be reversed in the following cases:**

**1) Non-payment of invoices in 180 days:** ITC will be reversed for invoices which were not paid within 180 days of issue.

**2) Credit note issued to ISD by seller:** This is for ISD. If a credit note was issued by the seller to the HO then the ITC subsequently reduced will be reversed.

**3) Inputs partly for business purpose and partly for exempted supplies or for personal use:** This is for businesses which use inputs for both business and non-business (personal) purpose. ITC used in the portion of input goods/services used for the personal purpose must be reversed proportionately.

**4) Capital goods partly for business and partly for exempted supplies or for personal use:** This is similar to above except that it concerns capital goods.

**5) ITC reversed is less than required:** This is calculated after the annual return is furnished. If total ITC on inputs of exempted/non-business purpose is more than the ITC actually reversed during the year then the difference amount will be added to output liability. Interest will be applicable.

**Reconciliation of ITC**

ITC claimed by the person has to match with the details specified by his supplier in his GST return. In case of any mismatch, the supplier and recipient would be communicated regarding discrepancies after the filling of GSTR 3.  Check out the reasons for mismatch of ITC and procedure to be followed to apply for re-claim of ITC.

**Documents Required for Claiming ITC**

The following documents are required for claiming ITC:

1. Invoice issued by the supplier of goods/services

2. The debit note issued by the supplier to the recipient (if any)

3. Bill of entry

4. An invoice issued under certain circumstances like the bill of supply issued instead of tax invoice if the amount is less than Rs 200 or in situations where the reverse charge is applicable as per GST law. 5. An invoice or credit note issued by the Input Service Distributor(ISD) as per the invoice rules under GST. 6. A bill of supply issued by the supplier of goods and services or both.

All these documents are to furnished at the time of filing form GSTR-2.

**Special cases of ITC**

* **ITC for Capital Goods**

The **definition of capital goods** under revised GST Law is given under section 2(19) which states that capital goods  means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

ITC is available for capital goods under GST.

However, ITC is **not** available for- i. Capital Goods used exclusively for making exempted goods ii. Capital Goods used exclusively for non-business (personal) purposes.

**Note: No ITC will be allowed if depreciation has been claimed on tax component of capital goods.**

Eligible and ineligible Input tax credit

**Eligible Input tax credit**

“Input Tax” in relation to a taxable person, means the Goods and Services Tax charged on him for any supply of goods and/or services to him, which are used or are intended to be used, for the furtherance of his business. Input Tax Credit under GST Conditions to Claim ITC must be fulfilled and forms one of the most critical activity for every business to settle its tax liability.

ITC is the backbone of GST and a major matter of concern for the registered persons. The conditions for eligibility to ITC and eligible ITC have been prescribed which is more or less in line with pre-GST regime. These rules are also quite particular and stringent in its approach.

**Input Tax Credit under GST: Conditions to Claim**

A registered person will be eligible to claim Input Tax Credit (ITC) on the fulfillment of the following conditions:

* Possession of a tax invoice or debit note or document evidencing payment
* Receipt of goods and/or services
* Goods delivered by supplier to other person on the direction of a registered person against a document of transfer of title of goods
* Furnishing of a return
* Where goods are received in lots or instalments ITC will be allowed to be availed when the last lot or instalment is received
* Failure of the supplier towards supply of goods and/or services within 180 days from the date of invoice, ITC already claimed by recipient will be added to output tax liability and interest to paid on such tax involved. On payment to supplier, ITC will be again allowed to be claimed
* No ITC will be allowed if depreciation has been claimed on the tax component of a capital good
* Time limit to claim ITC against an Invoice or Debit Note is **earlier** of below dates:

The due date of filing GST Return for September of next financial year

OR

Date of filing the Annual Returns relevant for that financial year

For instance, XY Corp, a buyer has a Purchase Invoice was dated 8th July 2017( FY 2017-18), wants to claim GST paid on that purchase. As per the criteria laid down to reckon the time limit:

The Due date of filing GST return for September 2018( belonging to FY 2018-19) is 20th October 2018 and the Date of filing GST Annual Return for FY 2017-18 is 31st December 2018, whichever is earlier will be the time period within which XY Corp has to claim ITC. Therefore, the date is 20th October 2018 and XY Corp can claim this ITC in any of the months between July 2017 to September 2018.

Note: For Debit Notes, above condition must be considered with respect to Original Invoice Date.

* Common credit of ITC used commonly for
* Effecting exempt and taxable supplies
* Business and non-business activity
* Since 9 October 2019, a regular taxpayer can claim provisional ITC in GSTR-3B only to the extent of 20% of the ITC available in GSTR-2A. It means the amount of ITC reported in GSTR-3B from 9 October 2019 will be a total of Actual ITC in GSTR-2A and provisional ITC being 20% of actual ITC in GSTR-2A. Hence, matching purchase register or expense ledger with GSTR-2A becomes crucial.

**Ineligible Input tax credit**

Cases when ITC is not available under GST

* **Motor vehicles & conveyances**

ITC is not available for Motor vehicles used to transport persons, having a seating capacity of less than or equal to 13 persons (including the driver).

Further, ITC is not available on vessels and aircraft.

For example, XYZ & Co. buys a car for their business. They cannot claim ITC on the same.

Exceptions to ITC on motor vehicles/vessels/aircrafts

ITC will be available when the vehicle is used for making taxable supplies by the following.

a) Supply of other vehicles or conveyances, vessels or aircrafts.

If you are in the business of supplying cars then ITC will be available.

For example, a car dealer purchases a car for Rs.50 lakh plus 14 lakh GST (ignoring cess calculations). The same car was later sold for 70 lakhs along with Rs.19.60 lakh GST. Since he is a dealer, he can claim ITC of 14 lakhs and pay only Rs.5.60 lakh (19.60 – 14).

b) Transportation of passengers

If you are providing transportation of passengers then ITC will be allowed on the vehicle purchased.

For example, Happy Tours purchased a bus for inter-city transport of passengers. ITC is available.

c) Imparting training on driving, flying, navigating such vehicle or conveyances or vessels or aircrafts, respectively.

A driving school purchases a car to give training to students. The school can claim ITC on the GST paid on the car.

d) Transportation of goods

ITC will be allowed on motor vehicles (and other conveyances) used to transport goods from one place to another. However, this is concerning other transporters and not goods transport agencies (GTA).

* **Food, beverages, club memberships and others**

ITC is not for the supply of following goods or services or both:

Food and beverages

Outdoor catering

Beauty treatment

Health services

Cosmetic and plastic surgery

However, ITC will be available if the category of inward and outward supply is same or the component belongs to a mixed or composite supply under GST.

* **Services of general insurance, servicing, repair and maintenance**

No ITC is allowed on services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in (1).

Exceptions to ITC on insurance, repair or maintenance

Same as exceptions mentioned for motor vehicles/vessels/aircrafts where received by a taxable person engaged:

(I) In the manufacture of such motor vehicles, vessels or aircraft

(II) In the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him

* **Sale of membership in a club, health, fitness centre**

No ITC will be allowed on any membership fees for gyms, clubs etc.

Example:

X, a Managing Director has taken membership of a club and the company pays the membership fees.  ITC will not be available to the company or Mr. X.

* **Rent-a-cab, life insurance, health insurance**

ITC is not available for rent-a-cab, health insurance and life insurance.

However, the following are exceptions, i.e., ITC is available for:

Any services which are made obligatory for an employer to provide its employee by the Indian Government under any current law in force

For example, assuming the government passes a rule for all employers to provide mandatory cab services to female staff in night shifts. ABC Ltd. hires a rent-a-cab to provide to transportation to its female staff on night shifts. Then ITC will be available to ABC Ltd. on the GST paid to the rent-a-cab service.

If the category is same for the inward supply and outward supply or it is a part of the mixed or composite supply

For example, ABC Travels lends out a car to XYZ Travels. Then XYZ Travels can claim ITC on the same.

leasing, renting or hiring of motor vehicles, vessels or aircraft with exceptions same as those mentioned for (1).

**6. Travel**

ITC is not available in the case of travel, benefits extended to employees on vacation such as leave or home travel concession.

**7. Works contract**

ITC shall not be available for any work contract services. ITC for the construction of an immovable property cannot be availed, except where the input service is used for further work contract services.

For example, XYZ Contractors are constructing an immovable property. They cannot claim any ITC on the works contract. However, XYZ hires ABC Contractors for a portion of the works contract. XYZ can claim ITC on the GST charged by ABC Contractors.

**8. Composition Scheme**

No ITC would be available to the person who has made the payment of tax under composition scheme in GST law.

* **No ITC for Non-residents**

ITC cannot be availed on goods/services received by a non-resident taxable person. ITC is only available on any goods imported by him.

* **No ITC for personal use**

No ITC will be available for the goods/ services used for personal purposed and not for business purposes.

* **Free samples and destroyed goods**

No ITC is available for goods lost, stolen, destroyed, written off or given off as gift or free samples.

* **No ITC in fraud cases**

 ITC will not be available for any tax paid due to fraud cases which have resulted into:

* Non or short tax payment
* Excessive refund
* ITC utilised

Fraud cases include fraud or wilful misstatements or suppression of facts or confiscation and seizure of goods.

* **No ITC on restaurants**

As per Notification No. 46/2017-Central Tax (Rate), dated 14th November 2017, standalone restaurants will charge only 5% GST but cannot enjoy any ITC on the inputs.

However, restaurants as part of hotels with room tariffs exceeding Rs. 7,500 still continue pay 18% GST and enjoy ITC.

**Credit and Debit Notes**

When goods supplied are returned or when there is a revision in the invoice value due to goods (or services) not being up to the mark or extra goods being issued a Debit Note or Credit Note is issued by the supplier and receiver of goods and services.

A debit note or a Credit Note can be issued in 2 situations:

* When the amount payable by buyer to seller decreases –There can be a change in the value of goods after the goods are delivered and invoice is issued by the seller. This can be due to a return of goods or due to the bad quality of the goods delivered, etc. In this case, the value of goods decreases due to which a Debit Note is issued by the purchaser to the seller. The Debit Note provides details of the amount of money debited from the sellers’ account and also states the reason for the same. The reason behind this – In the purchaser’s books of account the seller will have a credit balance. When a debit note is issued the credit balance of the Sellers account decreases, thus reducing the seller’s balance. It means that that lesser amount is required to be paid by the buyer to the seller to settle his liability. Thus debit note reduces the liability for the buyer. The seller issues a Credit Note as a response or acknowledgment to the Debit Note
* When the amount payable by buyer to seller increases-When the value of invoice increases due to extra goods being delivered or the goods already delivered have been charged at an incorrect value a Debit Note is required to be issued. The Debit Note, in this case, is issued by the seller to the buyer. And the buyer as an acknowledgment to the receipt of Debit Note issues a Credit Note. The reason behind this – In the seller’s books of account the buyer will have a debit balance. When a debit note is issued the debit balance of the buyer’s account increases. It means that more amount is required to be paid by the buyer to the seller to settle his liability. Thus, credit note increases the liability for the buyer.



**Debit Note under GST**

Cases when Debit note is to be issued by supplier:

|  |  |
| --- | --- |
|  | Cases Where Debit note has to be issued by the Supplier |
| **A.** | Original tax invoice has been issued and taxable value in the invoice is less than actual taxable value. |
| **B.** | Original tax invoice has been issued and tax charged in the invoice is less than actual tax to be paid. |
| **Note** | Debit note will include a supplementary invoice. |

**Credit Note under GST**

Cases when Credit note is to be issued by supplier:

|  |  |
| --- | --- |
|  | Cases Where Credit note has to be issued by the Supplier |
| **A** | Original tax invoice has been issued and taxable value in the invoice exceeds actual taxable value. |
| **B** | Original tax invoice has been issued and tax charged in the invoice exceeds actual tax to be paid. |
| **C** | Recipient returns the goods to the supplier |
| D | Services are found to be deficient |
| **Note:** | Credit note will include a supplementary invoice |

**TDS, TCS in GST**

People are responsible for deducting tax:

(a) A department or establishment of the Central or State Government

(b) Local authority

(c) Governmental agencies

(d) Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council.

For example: If the Finance department, Government of India, enters into a contract with Reliance then the department would be liable to deduct TDS.

* The max rate of TDS is 2% under GST, to be notified by CBIC.
* If the total value of supply under a contract exceeds Rs 2.5 lakhs then the person/entity would be liable to deduct TDS.
* The deductor would be liable to make the payment of TDS by the 10th day of the next month.

**Impact of TDS on Government civil contractors**

The Indian government, on an average, gives out more than 10,000 civil contracts every year throughout the country. The contract for constructing/repairing of the national highways average more than Rs 100 crores. These contracts are acquired by big construction companies and then sub-contracted to smaller firms and then again further sub-contracted to another small firm. This loop will face problems due to GST and in particular due to the TDS liability.

The government would need to deduct TDS from the contractor which would ensure tax compliance by the contractors and all the other sub-contractors. Currently, many small civil/labour contractors do not fulfill tax compliance. Under GST it will be imperative for them to get registered and fulfill tax compliance.

**TCS compliance for e-commerce sector**

A clause has been inserted under GST law for all the e-commerce aggregators. E-commerce aggregators are made responsible under the GST law for deducting and depositing tax at the rate of 1% from each of the transaction. Any dealers/traders selling goods/services online would get the payment after deduction of 1% tax. It is a significant change which would increase a lot of compliance and administration cost for online aggregators like Flipkart, snapdeal, amazon etc. They would need to deposit the tax deducted by the 10th day of the next month.

All the traders/dealers selling goods/services online would need to get registered under GST even if their turnover is less than 20 Lakhs for claiming the tax deducted by Ecommerce operators.

**TDS and TCS under GST**

TDS rule will help in achieving transparency in the operations of government contracts and tax compliance. Online sellers like Amazon, Flipkart, Snapdeal etc would need to make certain changes in their online payment process and administration/finance department to incorporate the TCS rule inserted under GST.

**CST Calculations**

**Formulation of Principles for determining when a Sale or Purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of Import or Export**

Section 3,4 and 5 of the CST Act formulate the principles for determining when a sale or purchase of goods takes place in the course of inter-state trade or commerce or outside a state or in the course of import or export from India respectively. After studying this chapter we will be able to understand:

– When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1

Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (a) be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. In the following cases, though goods are moving from one state to another, it is not a sale or purchase in the course of inter-state trade or commerce:

(1) When the goods are transported from a place of business in a State of dealer to another place of business in another State.

(2) When goods are sent on consignment from one State to another State.

(3) When goods are sent from factory(in one State) to a godown or branch or sales office    situated in another State.

Explanation 2

Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

**When is a sale or purchase of goods said to take place outside a State**

(1) Subject to the provisions contained in Section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State-

(a) in the case of specific or ascertained goods, at the time the contract of sale is made, and

(b) in the case of unascertained or future goods, at the time of their  appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Explanation

Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places.

**When is a sale or purchase of goods said to take place in the course of import or export**

(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

Explanation

For the purposes of this sub-section, “designated Indian carrier” means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.

**Inter-State Sales Tax Liability to tax on inter-State sales**

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified,

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section5, is a sale in the course of export of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,-

(a) to the Government, or

(b) to a registered dealer other than the Government,

 if the goods are of the description referred to in sub-section (3) of section 8,

shall be exempt from tax under this Act.

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit, –

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made—

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of Section 8,

Provided  further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if, –

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section.

(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of –

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be.

**Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale**

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale..

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

Explanation

 In this section, “assessing authority”, in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.

**Job work**

**Meaning & Nature of job work:**

The definition of job work has been defined in the Section 2(68) of CGST Act, “Job work” means any *treatment or process* under taken by a person on goods belonging to another registered person.

For the purpose of this article, ‘Principal’ will be the persons who sends the goods for job work.

Treatment or process include packing, labelling, testing, re-conditioning, re-packing, inspection etc.,

Schedule II clause 3 of CGST Act, considers any treatment or process applied to another person goods as a supply of services.

To determine the value of job work charges, value of goods sent by the principal shall not be included.