Lakshmikumaran & Sridharan attorneys

L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

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Model GST Law – Input Tax Credit

Input Tax Credit

Availability of Credit

- Input Tax Credit (ITC) is available in respect of defined inputs, capital goods and input services.
- The term inputs and input services has been defined in a wide manner to cover goods/services used or intended to be used by a supplier for making an outward supply in the course or furtherance of business. The definition of Capital goods is similar to existing definition under Cenvat Credit Rules, 2004.

Items excluded for ITC

- Motor vehicles, except when used for providing specified taxable services.
- Specified goods and / or services used primarily for personal use or consumption of any employee.
- Goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery.
- Goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery.

Conditions for availing ITC

- Taxpayer is in possession of a valid document.

- Taxpayer has received the goods and/or services. Further, an *Explanation* has been added to enable the availment of ITC in certain situation without actual receipt of goods. Further in case where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment.

- The tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply.

- Taxpayer has furnished the return under section 27 i.e. GSTR 3.

- ITC on an invoice is not available after the filing of the return under section 27 for the month of September following the end of financial year to which such invoice pertains or filing of the relevant annual return, whichever is earlier.

Matching Concept

- ITC is available only on provisional basis until the supplier makes the tax payment and files a valid return.
- The claim of input tax credit in respect of invoices and/or debit notes relating to inward supply shall be matched with the details of corresponding outward supply.
- In case of mismatch and where the supplier has not made the tax payment, the ITC shall be reversed with interest.
- Interest is from the date of wrong availment or utilization.
- There is specific provision for reclaim of ITC and interest in case of subsequent matching.

Emerging Issues

- Whether the phrase “through utilization of input tax credit admissible in respect of the said supply” in section 16(11)(c) suggests one-to-one correlation between input supplies and outward supplies in respect of such utilization?
- What will be the criteria for matching of data between the Supplier and Receiver for the purpose of ITC?
- What is scope of exclusion under (e) and (f) above?

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