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L&S Update

an e-update to clients from
Lakshmikumaran & Sridharan

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Draft Input Tax Credit Rules

Draft Input Tax Credit Rules

- As per Clause 16 of the CGST Bill, credit of input taxes shall be available if the goods or services are used or intended to be used for business. The eligibility of credit under the CGST Bill is wider as compared to the existing tax regime.

- Thus, the Input Tax Credit ('ITC') provisions of CGST Bill seek to achieve the purposes of introducing GST, including that of eliminating cascading effect of taxes.

- In view of the GST Law, which provide for prescription of certain conditions, the rules have been drafted and put into public domain for comments. This update is prepared to highlight some of the important provisions contained in the Draft Rules.

Few of the important highlights of the ITC rules are as under:

Documents for availing credit:

- The following documents have been prescribed for availing credit:
  - ✓ Invoice/debit note issued by supplier
  - ✓ Bill of entry
  - ✓ Invoice issued by recipient, in reverse charge cases where goods/services are received from unregistered persons
  - ✓ Document issued by Input Service Distributor ('ISD')

Conditions for availing input tax credit (in addition to those provided in Act):

- All the particulars required to be mentioned on the invoice are specified
- No ITC of tax paid under an order where demand was raised on account of fraud, willful misstatement or suppression of facts

Credit to banking companies:

- Credit in case of banking companies will be available to the extent of 50% of eligible credit, excluding intra-company supplies. In case of intra-company supplies, full credit will be available

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Distribution of credit by ISD:

- ITC available for distribution in a month shall be distributed in the same month on the basis of previous year's/previous quarter's turnover, as may be applicable
- In-eligible and eligible ITC are to be distributed separately, and in-eligible ITC will not be claimed by the recipient. ISD by itself shall not have the option of not availing ineligible credit.
- Credit attributable specifically to 2 or more registrations shall be distributed to such specific registrations, and credit commonly attributable to all registrations shall be distributed to all registrations.
- The ISD shall distribute credit as follows:
  - ✓ IGST as IGST (Clause 20 allows distribution of IGST as CGST. However, rules provide for distribution of IGST as IGST)
  - ✓ CGST as CGST and SGST as SGST, if ISD and recipient are in same State
  - ✓ CGST/SGST as IGST, if ISD and recipient are in different States
- In case of receipt of credit note by ISD on account of any reasons, ITC distributed shall be reversed in the same proportion in which credit of original invoice pertaining to such credit note was distributed

Credit attributable to exempt supplies, non-business use:

- Credit availment in case inputs or input services which are used partly for business and non-business purposes and partly for effecting taxable and exempt supplies shall be as follows:
  - ✓ Credit attributable for exclusive non-business use, exempt supplies and in-eligible credit u/s 17(5) [negative list of credits] will not be available
  - ✓ Credit attributable for exclusive business use and taxable supplies will be available
  - ✓ Balance common credit will be available on proportionate basis provisionally on monthly basis
  - ✓ Credit attributable to non-business use if common inputs and input services are used for business and non-business use will be 5% of common credit
  - ✓ At the end of the year, if credit availed provisionally is more than credit available on annual basis, excess amount will be required to be paid along with interest, from 1st April of next financial year to date of payment of such excess amount.
  - ✓ If credit availed provisionally less than credit available on annual basis, the short amount will be available as credit. The excess/short amount is to be declared by September return of next year.

Credit attributable to exempt supplies, non-business use contd…):

- Transaction in securities, sale of land, sale of building (where GST is not applicable) will be considered exempt supplies.

- Value of such exempt supplies will be determined as under:
  - ✓ For transaction in securities, value will be 1% of the sale value of securities,
  - ✓ For land and building, value will be the value adopted for paying stamp duty.

L&S observation:

- In case of companies where treasury operations are also involved, as also in case of sale of land/building in a particular year, the valuation provided for exempt supply may lead to a higher reversal of common credit.

Credit of capital goods used in taxable and exempt supplies:

- Under the present excise law and few VAT laws, if the capital goods are used in manufacture of both taxable and exempt supplies, full credit is available.
- However, under the GST law, in case capital goods are used in manufacture of both taxable and exempt supplies, credit will be apportioned between the same and that attributable to taxable supply alone will be available as credit. The amount so attributable will be computed as per method given in the rules.
- Thus, in addition to attribution of credit towards exempt supplies on inputs and input services, GST will additionally require attribution of credits on capital goods.

Payment to supplier:

- The Act provides that in case payment to supplier of goods/services is not made within 180 days, credit will be required to be reversed (by way of addition to output tax liability) and interest will be payable from the date of availment of credit to the date when payment of such added output tax liability is paid.

Situations where interest is payable under ITC rules:

Sr. No.	Situation	Period for which interest payable	Rate of interest
1	Payment to supplier not made within 180 days from the date of issue of invoice	From date of availment of credit to date on which amount added as output tax liability is paid	Rate to be prescribed u/s 50(1) (Not exceeding 18%)
2	In case of taxable and exempt supplies (including non-business supplies), credit availed on monthly (provisional) basis is more than that calculated on annual basis, excess amount availed to be paid along with interest	From 1st April of succeeding financial year till date of payment	

- **Detailed provisions have been provided in the ITC rules for:**
  - ✓ Availment of credit in case of switchover from composition scheme to normal scheme
  - ✓ Availment of credit in case of exempt supplies becoming taxable
  - ✓ Reversal of credit in case of switchover from normal scheme to composition scheme
  - ✓ Reversal of credit in case of taxable supplies becoming exempt
  - ✓ Transfer of credit on sale, merger, amalgamation, lease or transfer of a business
  - ✓ Cancellation of registration

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