

Input Tax Credit

V. Sridharan, Senior Advocate, Bombay High Court

Definition

- ▶ Section 2 (59) :
 - ▶ '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 (60) :
 - ▶ 'Input Service' means any service used or intended to be used by a supplier in the course or furtherance of business.
- ▶ Section 2 (19) :
 - ▶ '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.

Recipient of supply

▶ Section 2(93) –

▶ “recipient” of supply of goods or services or both, means –

(a) where 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;

Eligibility for Taking ITC

▶ Section 16 (1) –

- ▶ 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.

Conditions for Taking ITC

▶ Section 16(2) – No registered person shall be entitled to the credit of input tax unless:

- ▶ he is in possession of a tax invoice/ debit note/ other tax paying document;
- ▶ he has received the goods or services or both;

Explanation – For the purpose 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.

- ▶ subject to provisions of section 41 (provisional acceptance), the tax charged in respect of supply has been actually paid to the government;
- ▶ he has furnished the return under section 39.

Recipient

- ▶ British Airways plc, QB [1996] STC 1127
 - ▶ Meals provided for delayed airline passenger.
- ▶ Redrow Group plc, HL [1999] STC 161
 - ▶ Housebuilding company arranging house sales for prospective purchaser.
- ▶ British Airways plc, QB [2000] VATDR 74 (VTD 16446)
 - ▶ Meals provided for delayed airline passengers – whether supplied to airline.
- ▶ Coca Cola India Pvt. Ltd. v. Comm. of C. Ex. (2009) 242 ELT 168
 - ▶ Manufacturer of concentrates availing input services of advertisement of soft drink.

ITC vis-à-vis Depreciation

- ▶ Section 16(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.

Time Limit for Claiming Credit

- ▶ Section 16(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.

Apportionment of Credit

- ▶ Where the goods or services are used –
 - ▶ Partly for the purpose of business and partly for other purposes
 - ▶ Partly for effecting taxable supplies ***including zero-rated supplies*** and partly for effecting exempt supplies

The amount of credit shall be restricted to so much of input tax as is attributable to the purpose of business and for effecting taxable supplies including zero-rated supplies.

Section 16(2) of IGST Act-

Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

Exempt Supply

- ▶ Section 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;
- ▶ For the purpose of apportionment of credit under section 17(2), exempt supply will include –
 - ▶ Supplies on which the recipient is liable to pay tax on reverse charge basis,
 - ▶ Transactions in securities,
 - ▶ Sale of land and sale of building.

Blocked Credits – Section 17(5)

Motor Vehicle

- ▶ Motor vehicles and other conveyances except when used for –
 - ▶ Further supply of such vehicle or conveyances;
 - ▶ Transportation of passenger;
 - ▶ Imparting training on driving, flying, navigating;
 - ▶ Transportation of goods.

- Motor vehicle taken on lease – Whether credit available?
- Will lease of motor vehicle be considered as further supply of such vehicle or conveyance?
- Whether ITC of insurance, repairs and maintenance of motor vehicle will be available?

Specified Goods and Services

- ▶ Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery
 - ▶ except when used for making outward taxable supply of same category or as an element of taxable composite or mixed supply;
 - ▶ Membership of club, health and fitness center;
 - ▶ Rent-a-cab, life insurance and health insurance except when
 - ▶ Government notifies the services as obligatory for an employer to provided to its employees,
 - ▶ used for making outward taxable supply of same category or as an element of taxable composite or mixed supply;
 - ▶ Travel benefits extended to employees on vacation such as leave or home travel concession.
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- Food and beverages used for making outward supply –
 - Neither a supply of same category,
 - Nor as an element of composite or mixed supply.

Works Contract

- ▶ 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;
- ▶ 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
 - ▶ even if such goods or services or both are used in the course or furtherance of business.

Explanation.– the expression “construction” includes re-construction, renovation, additions or alterations or repairs, **to the extent of capitalisation**, to the said immovable property.

Plant and Machinery

- ▶ Explanation– 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.

- Lift
- Conveyor belt
- Rope way
- Rides in amusement park

Personal Consumption, Gift, Free Sample

- ▶ Goods or services or both used for *personal consumption*
- ▶ Goods lost, stolen, destroyed, *written off* or disposed of by way of *gift* or *free samples*
 - ▶ Partially written off or fully written off
 - ▶ What is gift – As per section 122 of Transfer of Property Act, 1882, “Gift” is the transfer of certain existing moveable or immovable property **made voluntarily** and **without consideration**.

ITC on promotional items:

- Buy One Get One Free,
- Get a bucket free with detergent,
- Calendar, diaries, pen, etc.,
- Promotional item given to retailer on attaining target.

GST Implications - Gifts

- ▶ Under UK VAT law, free business gifts – Taxable + Available input tax credit

Above 50
pounds

- VAT due on the price of identical products
- Also applicable on series of gifts to a single person

Below 50
Pounds

- No VAT due, input tax credit available

Mixed Supply/ Linked Goods

- ▶ Promotion of Goods/Services for a single Price
- ▶ Considered to be a 'multiple supply' of goods/services under both UK VAT and Australia GST laws.
- ▶ In case combination of goods/services with differential rates of VAT or taxable and non taxable supplies – Rules of apportionment provided.

Apportionment Rules in UK

- VAT Notice 700: The VAT Guide
- Linked Supplies Concession

Apportionment Rules in Australia

- Section 9-75 – 10/11 of the consideration
- Section 9-80 – value of actual supply = price of actual supply * 10 / 10 + Taxable proportion

Samples

- ▶ “Specimen of a product which intends to promote the sales of that product and which allows the characteristics and qualities of that product to be assessed without resulting in final consumption, other than where final consumption is inherent in such promotional transactions”
- ▶ In UK – No VAT payable
- ▶ In Australia – Free Samples are GST-free
 - ▶ Under GST Act,
 - ▶ No distinction between free samples and gifts made in course or furtherance of business

Promotion of a
new product



THANK YOU!
