

Input Tax Credit

3.0 Introduction

One of the much talked about feature of the Goods and Services Tax Law (GST) is seamless flow of input tax credit. In the earlier regime, traders were unable to offset the credit of input taxes/duties like excise duty paid on procurement of goods and service tax paid on procurement of services (like renting, freight, and advertisement etc.) against their output Value Added Tax (VAT) liability. To say it differently the output VAT liability could only be discharged by utilizing the VAT paid on purchase of such goods. Thus, Service Tax paid on input services such as renting, telephone, courier etc. and excise duty paid on purchase of goods was a cost for the traders. Similarly, service providers were not eligible to avail Input Credit of the VAT paid by them on purchase of goods which were to be used for the provision of services.

After implementation of GST, this issue has been sorted to a great extent which shall be of a great benefit to a large number of supplier of goods or services or both including retailers. Thus, more ITC shall be available to the traders, manufacturers and service providers in the GST Regime. Further, such credit shall be available when goods or services are used or intended to be used in the course or furtherance of business which has further expanded the scope of availment of Input Tax Credit. With the introduction of GST, cascading effect of taxes in goods and services has been removed to a great extent and accordingly, the ability of companies to compete globally has been enhanced. It may result in improvement of export prospect for the companies. Further, the supplies made in the domestic market, will benefit the ultimate consumers in terms of reduction in prices which, in turn, will stimulate the demand for the goods or services or both. However, here it is pointed out that under GST regime, cross-utilization of credit between Central GST and State GST has not been allowed. Nevertheless, the supplier of goods or services or both shall be able to claim ITC within the respective heads and so long as the suppliers have liabilities under both heads, ITC does not get wasted and it will have only temporary cash flow issues.

3.1 Detailed analysis of input tax credit provisions and rules

Analysis of Section 155 of CGST Act before discussing the provisions of tax credit enshrined in Sections 16 to 21 in Chapter V of the Act.

Section 155 - 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. It is also pertinent to mention here that it is the settled proposition of law that right to input tax credit is an indefeasible right and same cannot be denied merely because of procedural lapses if substantive conditions are satisfied.

3.2 Eligibility and conditions for taking input tax credit - Section 16

Registered person shall be eligible to claim ITC subject to conditions and restrictions

Input Tax Credit [ITC] can be taken by a Registered Person [RP] only. ARP shall be entitled to take credit of input tax paid on any supply of goods or services or both which are used in the course or furtherance of business and accordingly the said credit shall be credited to the electronic credit ledger of that person. Further "electronic credit ledger" means the electronic credit ledger referred to in section 49(2) of the Act.

<p><u>Increase in the scope of ITC consequent upon inclusion of the phrase ‘furtherance of his businesses</u> Use of the phrase “Furtherance of business” has further increased the scope of tax credit available to the registered person. In other words, credit shall be available to the registered person even in case such inputs/capital goods/input services are used for the furtherance of business and not for carrying out of the business. It clearly means that credit shall be available to the registered person for goods or services which are being used for the existing business or for the furtherance of business.</p>		
<p><u>Cumulative conditions for availing eligible ITC by registered person</u> <u>Possession of tax invoice or debit note or other prescribed taxpaying documents- Section 16(2)(a)</u></p>		
(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 in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to 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 assessment of integrated tax on imports;	
(e)	An ISD invoice or ISD credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of Rule 54 of CGST Rules.	
Rule 36(2)	Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in CGST Rules, 2017 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.	
Proviso	<p><u>Applicable with effect from 04.09.2018 - N.No. 39/2018-CT, dated 04.09.2018</u> <u>Credit can be availed if not all but following specified particulars are mentioned on the invoice</u> If following specified details (out of total 17 details given in Rule 46) are available on the aforesaid documents, ITC may be availed by the registered recipient:</p>	
	(a) Amount of tax charged;	(d) GSTIN of the supplier;
	(b) Description of goods or services;	(e) GSTIN of the recipient; and
	(c) Total value of supply of goods or services or both;	(f) Place of supply in case of inter-State supply.
Rule 36(3)	<p><u>No credit of input tax, where demand has been confirmed on account of fraud, willful misstatement etc.</u> 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, willful misstatement or suppression of facts. This was the position in pre-GST regime also.</p>	
First Proviso to 16(2)	<p><u>Tax credit in respect of goods received in lots or instalments</u> If the goods against an invoice are received in lots or instalments, the ITC can be availed only after receipt of the last lot or instalment. However, with regard to movement of goods the following procedure needs to be followed:</p>	
	(a) The supplier shall issue the complete invoice before dispatch of the first consignment;	
	(b) The supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;	
	(c) Each consignment shall be accompanied by copies of the corresponding delivery challan along with duly certified copy of the invoice ; and	
	(d) The original copy of the invoice shall be sent along with the last consignment.	

	<p><u>Payment of value of goods or services or both and tax thereon must be made within 180 days</u> Where a recipient fails to pay to the supplier of goods or services or both the amount towards the value of supply along with tax payable thereon within a period of 180 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 the manner given under Rule 37 of the CGST Rules, 2017. It is a self-control measure and supplier must do the same on self-assessment basis. In case he fails to do so, and department discovers the same during audit, investigation or by any other proceedings under the CGST Act, supplier shall be liable to reverse the same along with interest and may also be subjected to penalty on account of contravention of legal provisions. However, this provision shall not apply on the supplies engaged in making a supply on which tax is payable on reverse charge basis.</p>	
Second Proviso to 16(2)	Rule 37(1)	<p><u>Form and manner of reversal of input tax credit in case of non-payment of consideration</u> A registered person, who avails of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within 180 days, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to the amount not paid to the supplier in Form GSTR-2 for the month immediately following the period of 180 days from the date of issue of invoice.</p>
	First proviso	<p><u>Value of supplies made without consideration as specified in Schedule I shall be deemed to have been paid</u> The value of supplies made without consideration as specified in Schedule I shall be deemed to have been paid for the purposes of second proviso to Section 16(2). This proviso is clarificatory in nature. It deals with activities specified in Schedule I which considered as deemed supply and subject to tax as per the provisions of Act even if such supplies are made without consideration.</p>
	Second proviso	<p><u>Value of supplies on account of any amount added as per Section 15(2)(b) shall be deemed to have been paid</u> In terms of Section 15(2) (b) where any amount required to be paid by the supplier but the same is incurred by the recipient of supply, then such amount shall be included in the taxable value for discharge of GST liability by the supplier. The said amount shall be deemed to have been paid by the recipient to the supplier for the purposes of second proviso to Section 16 so that the recipient is not required to reverse input tax credit in respect of such amount.</p>
	Rule 37(2)	<p><u>Manner of reversing the aforesaid input tax credit</u> The amount of input tax credit, which is required to be reversed due to non-payment within 180 days, shall be added to the output tax liability of the registered person for the month in which the details of such non-payment are furnished by the registered person in Form GSTR-2.</p>
	Rule 37(3)	<p><u>Liability to pay interest</u> The registered person shall be liable to pay interest at the rate notified under Section 50(1) i.e. 18% p.a. for the period starting from the date of availing such credit on such supplies till the date when the amount of such credit added to the output tax liability is paid.</p>
Third Proviso	<p><u>Re-entitlement to avail credit of input tax</u> The recipient shall be entitled to avail of the credit of input tax on payment made by him. Such payment shall be of the amount towards the value of supply of goods or services or both along with tax payable thereon.</p>	
16(3)	<p><u>Tax credit not to be allowed if depreciation claimed on the component of tax</u> 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. This provision has been made to prevent the double benefit in respect of the same tax component of the cost of capital goods and plant</p>	

	and machinery-once under the Income Tax Act and secondly under GST Acts.	
16(4)	<u>Time limit for availing ITC in respect of any invoice or debit note for supply of goods or services or both</u> Earlier of: -	
	(i)	Due date of furnishing of Return under Section 39 for the month of September following the end of the financial year to which such invoice or invoice relating to such debit note pertains; or
	(ii)	Actual date of furnishing of Annual Return. Due date of furnishing Annual Return for every financial year is 31st December following the end of such financial year.
Proviso	<u>Applicable with effect from 31.12.2018 - ROD Order No. 02/2018-dated 31.12.2018</u> The registered person shall be eligible to avail input tax credit of the supplies received in financial 2017-18 upto the due date of furnishing the return for the month of March 2019 . However, this facility shall be available if the details of invoices pertaining to such supplies have been uploaded by the supplier till the due date of filing of their GSTR-1 for the month of March 2019. Similar provision shall apply to all the debit notes issued by the supplier for the supplies made during the financial year 2017-18.	
	Rule 37(4)	<u>No time limit for availing already reversed input tax credit</u> The time limit specified in section 16(4) shall not apply for re-availing of any credit , which has been reversed earlier in accordance with the provisions of the Act or these rules.

3.3 Apportionment of credit and blocked credits - Section 17

17(1)	<u>Proportionate input tax credit- Used partly for the purposes of business and partly for “other purposes”</u> 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” such registered person shall be eligible for the proportionate credit. Registered person shall be entitled to so much of the input tax as is attributable to the purposes of his business. The term “other purposes” is very wide and includes anything other than business. As per the provisions of Section 17(6) the Government may prescribe the manner in which the credit for business and for other purposes may be attributed.
17(2)	<u>Proportionate input tax credit - Used partly for the purposes of making taxable supplies and partly for making exempt supplies</u> Where the goods or services or both are used by the registered person partly for effecting taxable supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies. Taxable supplies for this purpose shall include zero-rated supplies. Such taxable supplies (including zero-rated supplies) may be made either under the CGST Act/IGST Act. If registered person is engaged in making taxable supplies including zero rated supplies and exempted supplies, 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 . As per the provisions of section 17(6), the Government may prescribe the manner in which the tax credit for taxable supplies including zero rated supplies and exempted supplies may be attributed.
	<u>Inclusions in value of exempt supply under Section 17(2)</u>
	(a) Such supplies as may be prescribed as exempted supplies;
	(b) Supplies on which the recipient is liable to pay tax on reverse charge basis;
	(c) Transactions in securities; and

17(3)	(d)	Sale of land and building subject to Para 5(b) of Schedule II . Supplies covered in Para 5(b) of schedule II shall not be included in the definition of exempt supply for the purpose of proportion of tax credit. This clause provides that construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. However, the above stated supply shall not be subject to tax where the whole consideration is received after issuance of completion certificate, where required, by the competent authority/after its first occupation. Hence the same will be included in the definition of exempt supply.
<u>Applicable with effect from 01.02.2019 - Explanation to 17(3)</u>		
<u>Exclusion from value of exempt supply under Section 17(2)</u>		
Activities or transactions specified in Schedule III (other than sale of land and sale of building after completion certificate) shall not be included in the expression ‘value of exempt supply’. This definition of exempt supply is valid only for the purpose of reversal of credit under section 17 and not for any other purpose. Hence, no reversal of ITC shall be required in respect of activities or transactions specified in Schedule III except sale of land and building subject to clause (b) of Para 5 of Schedule II.		
Rule42	Manner of determination of ITC in respect of inputs or input services and reversal thereof	
<u>Provisional reversal of input tax credit</u>		
The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (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 foreffecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely-		
(a)	Total input tax involved on inputs and input services in a tax period, be denoted as 'T'	
(b)	The amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for purposes other than business , be denoted as 'T1'	
(c)	The amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies , be denoted as 'T2'	
(d)	The amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T3' ;	
(e)	The amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C1' and calculated as: $C1 = T - (T1 + T2 + T3)$;	
Rule 42(1)	The amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as ‘T4’; With effect from 01.04.2019 vide Notification	

		<p>(f) <u>No. 16/2019-CT, dated 29.03.2019</u> Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of Construction of a complex, building, civil structure or a part thereof (including a complex or building intended for sale to buyer) services which are covered by paragraph 5(b) of Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.</p>
		<p>(g) <u>With effect from 01.04.2019-Notification No. 16/2019-CT, dated 29.03.2019</u> 'T1','T2','T3' and 'T4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 and at summary level in FORM GSTR-3B; A careful perusal of the amended Rule 42(1)(g) reveals that with effect from 01.04.2019 the registered person shall be required to determine and declare 'T1', 'T2', 'T3' and 'T4' at summary level in FORM GSTR-3B in addition to invoice level in FORM GSTR-2.</p> <p><u>For the period 01.07.2017 to 31.03.2019</u> 'T1','T2','T3' and 'T4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2;</p>
		<p>(h) <u>With effect from 01.04.2019 -Notification No. 16/2019-CT, dated 29.03.2019</u> Input tax credit left after attribution of input tax credit under clause (f) shall be called common credit, be denoted as 'C2' and calculated as- $C2 = C1 - T4$;</p> <p><u>For the period 01.07.2017 to 31.03.2019</u> Input tax credit left after attribution of input tax credit under clause (g) shall be called common credit, be denoted as 'C2' and calculated as- $C2 = C1 - T4$;</p>
		<p>(i) The amount of input tax credit attributable towards exempt supplies, be denoted as 'D1' and calculated as: $D1 = (E/F) \times C2$ Where, ' E ' is the aggregate value of exempt supplies during the tax period, and ' F ' is the total turnover in the State of the registered person during the tax period: <u>With Effect From 01.04.2019, vide Notification No 16/2019 - CT dated 29.03.2019</u></p>

		<p>Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:</p> <p>E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;</p> <p>F = aggregate carpet area of the apartments in the project;</p> <p>Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;</p> <p>Explanation 2:</p> <p>In simple words, this explanation provides that where rate of tax for any service is prescribed subject to the condition of non-availment of Input tax Credit, in such a case tax credit on GSB used exclusively for providing such services is not to be availed. Further, tax credit attributable to common goods or services is to be reversed proportionately. In other words, in such case, such services on which tax credit is not available shall be considered as exempted service for the purpose of availment of input tax credit. In cases where GST liability is to be discharged as per clauses (i), (ia), (ib), (ic) or (id), the supplier is not eligible to avail input tax credit. Accordingly, in view of this explanation the carpet area of such units is to be added in the value of 'E' considering the same as exempted supply.</p> <p>Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;</p> <p><u>With Effect From 01.02.2019 - Notification No 03/2019 - CT dated 29.01.2019</u></p> <p>Explanation. - For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A] of List I of the Seventh</p>
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		<p>Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;</p> <p>Comments: In terms of this explanation the aggregate value of exempt supplies and total turnover shall exclude the following:</p> <p>F = aggregate carpet area of the apartments in the project;</p> <p>Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;</p> <p>Explanation 2:</p> <p>In simple words, this explanation provides that where rate of tax for any service is prescribed subject to the condition of non-availment of Input tax Credit, in such a case tax credit on GSB used exclusively for providing such services is not to be availed. Further, tax credit attributable to common goods or services is to be reversed proportionately. In other words, in such case, such services on which tax credit is not available shall be considered as exempted service for the purpose of availment of input tax credit. In cases where GST liability is to be discharged as per clauses (i), (ia), (ib), (ic) or (id), the supplier is not eligible to avail input tax credit. Accordingly, in view of this explanation the carpet area of such units is to be added in the value of 'E' considering the same as exempted supply.</p> <p>Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;</p> <p><u>With Effect From 01.02.2019 - Notification No 03/2019 - CT dated 29.01.2019</u></p> <p>Explanation. - For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;</p> <p>Comments: In terms of this explanation the aggregate value of exempt supplies and total turnover shall exclude the following:</p> <p>a) The amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution which deals</p>
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			with duties of excise on specified goods manufactured or produced in India.
		b)	The amount of any duty or tax levied under entry 92A of List I of the Seventh Schedule to the Constitution. The said entry 92A deals with taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce
		c)	The amount of any duty or tax levied under entry 51 of List II of the Seventh Schedule to the Constitution. The said entry 51 deals with Duties of excise on specified goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India.
		d)	The amount of any duty or tax levied under entry 54 of List II of the Seventh Schedule to the Constitution. The aforesaid entry 54 deals with taxes on sale of specified goods.
		(j)	The amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2', and shall be equal to five percent of C2; and
		(k)	The remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C3', where, - $C3 = C2 - (D1+D2)$
		(l)	<p><u>With Effect From 01.04.2019 - Notification No 16/2019 - CT dated 29.03.2019</u></p> <p>The amount 'C3', 'D1' and 'D2' shall be computed separately for input tax credit of Central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03 .</p> <p><u>Comments:</u> A careful perusal of the aforesaid substituted clause (l) of Rule 42(1) reveals that with effect from 01.04.2019, in addition to the amount 'C3', the amount 'D1' and 'D2' is also required to be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax. Further, the aforesaid amount of 'C3', 'D1' and 'D2' is to be declared in FORM GSTR-3B or through FORM GST DRC-03 .</p> <p><u>For the period 01.07.2017 to 31.03.2019</u></p> <p>The amount 'C3' shall be computed separately for input tax credit of central tax, State tax, Union</p>

			territory tax and integrated tax.
			<p><u>With Effect From 01.04.2019 - N. No 16/2019 - CT dated 29.03.2019</u></p> <p>The amount equal to aggregate of 'D1' and 'D2' shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 .</p> <p><u>Comments:</u> A careful perusal of the aforesaid amended Rule 42(1)(m) reveals that the amount equal to aggregate of 'D1' and 'D2' is required to be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 .</p>
		(m)	<p><u>For the period 01.07.2017 to 31.03.2019</u></p> <p>The amount equal to aggregate of 'D1' and 'D2' shall be added to the output tax liability of the registered person.</p> <p>Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T1' and 'T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T4'.</p> <p><u>Comments:</u> Further the proviso to the aforesaid Rule 42(1) provides that where the amount of input tax relating to inputs or input services used partly for purposes other than business and partly for effecting exempt supplies has been identified and segregated at invoice level by the registered person, the same shall be included in 'T1' and 'T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T4'.</p>
			<p><u>Final reversal of input tax credit</u></p> <p>The amount of reversal of Input Tax is required to be computed finally at the end of financial year. The said rule reads as under:</p>
			<p><u>With effect from 01.04.2019 as amended vide N.No.16/2019 - CT dated 29.03.2019</u></p> <p>Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-</p>
		(a)	<p>Where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month</p>

			<p>of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from first day of April of the succeeding financial year till the date of payment; or</p>
		(b)	<p>Where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.</p>
		<p><u>For the period 01.07.2017 to 31.03.2019</u> The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner prescribed in the said sub-rule and-</p>	
		(a)	<p>Where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 i.e. 18% p.a. For the period starting from first day of April of the succeeding financial year till the date of payment; or</p>
		(b)	<p>Where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.</p>
		<p>In the manner in which the same was calculated provisionally. Further, since w.e.f. 01.04.2019 a specific provision has been made for computing reversal of input tax credit in case of construction services (where units are sold prior to completion), accordingly, same was excluded from the ambit of aforesaid rule. Furthermore, the excess/shortfall in such availment of input tax credit, is required to be treated in the following manner:</p>	
			<p>Where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the</p>

		(a)	aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 (upto 31.03.2019, such excess availment was required to be included in the output tax liability of the registered person).
		(b)	Where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.
Rule 42(3)		<p><u>Applicable with effect from 01.04.2019 - N. No. 16/2019-CT, dated 29.03.2019</u></p> <p>In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act (i.e. services provided by promoter to the intending buyer), the input tax determined under Rule 42 (1) shall be calculated finally, for each ongoing project. The same principal shall apply to projects which commences on or after 01.04.2019 which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 01.04.2019. This change in rate of tax is in accordance with notification No. 11/2017- CT(R), dated 28.06.2017 as amended vide N.No.03/2019-CT(R) dated 01.04.2019. Calculation of tax credit under Rule 42(1) is to be made for the entire period from the commencement of the project or 01.07.2017, whichever is later, to the completion or first occupation of the project, whichever is earlier. Such calculation is to be made before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued, or first occupation takes place of the project. Calculation of tax credit is to be made in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under:</p> <p>E= Aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:</p> <p>F = aggregate carpet area of the apartments in the project; and, -</p> <p>Where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under Rule 42 (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person</p>	

		<p>(a) in Form GSTR-3B or through Form GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place. Further, the said person shall be liable to pay interest on the said excess amount at the rate specified in section 50(1) for the period starting from the first day of April of the succeeding financial year till the date of payment ; or</p>
		<p>(b) Where the aggregate of the amounts determined under Rule 42 (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' , such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.</p>
<p>Rule 42 (4)</p>		<p><u>Applicable with effect from 01.04.2019 - N.No.16/2019-CT, dated 29.03.2019</u> In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, (i.e. services provided by promoter to the intending buyer) the input tax determined under Rule 42 (1) shall be calculated finally, for commercial portion in each project. However, this calculation shall not apply to residential real estate project (RREP) which underwent transition of input tax credit consequent to change of rates of tax on 01.04.2019. This is to recollect the readers that RREP projects are such project where commercial portion is upto 15% of the total area i.e. (residential area plus commercial area) and the same is taxable at the concessional rate of 5% with no input tax credit. Thus, question of reversal of credit in case of RREP does not arise at all. To illustrate if the residential area is 85000 square feet one can have commercial area to the extent of 15000 square feet i.e. $(85000+15000) \times 15\%$. Looking from another prospective it can be 17.64% of the residential area which also works out to be 15000 square feet i.e. $(85000 \times 17.64\%)$. Such calculation of tax credit is to be made for the entire period from the commencement of the project or 01.07.2017 whichever is later, to the completion or first occupation of the project, whichever is earlier. Further, this calculation is to be made before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued, or first occupation takes place of the project. This change is being provided in accordance with Notification No. 11/2017- CT(R), dated 28.06.2017 as amended vide Notification No. 03/2019-CT(R), dated 29.03.2019 and</p>

		<p>must be done in the following manner:-</p> <p>(a) The aggregate amount of common credit on commercial portion in the project (C3aggregate_comm) shall be calculated as under: $C3aggregate_comm = [aggregate\ of\ amounts\ of\ C3\ determined\ under\ sub- rule\ (1)\ for\ the\ tax\ periods\ starting\ from\ 01.07.2017\ to\ 31.03.2019,\ x\ (AC / AT)] + [aggregate\ of\ amounts\ of\ C3\ determined\ under\ Rule\ 42(1)\ for\ the\ tax\ periods\ starting\ from\ 01.04.2019\ to\ the\ date\ of\ completion\ or\ first\ occupation\ of\ the\ project,\ whichever\ is\ earlier]$ Where, - AC = total carpet area of the commercial apartments in the project AT = total carpet area of all apartments in the project</p> <p>(b) The amount of final eligible common credit on commercial portion in the project (C3final_comm) shall be calculated as under $C3final_comm = C3aggregate_comm \times (E / F)$ Where, - E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier. F = AC = total carpet area of the commercial apartments in the project</p>
		<p>(c) Where, C3aggregate_comm exceeds C3final_comm, such excess shall be reversed by the registered person in Form GSTR-3B or through Form GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in Section 50(1) for the period starting from the first day of April of the succeeding financial year till the date of payment;</p> <p>(d) Where, C3final_comm exceeds C3aggregate_comm, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the</p>

		project.
	Rule 42(5)	<p><u>With effect from 01.04.2019 -N.No.16/2019-CT, dated 29.03.2019</u> Input tax determined under Rule 42(1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 01.04.2019 in accordance with Notification No. 11/2017- CT(R), dated 28.06.2017 as amended vide Notification No. 03/2019-CT(R), dated 29.03.2019. It has been discussed in detail in the preceding Para. As no credit is available to RREP projects, question of reversal of credit does not arise.</p>
	Rule 42(6)	<p><u>With Effect From 01.04.2019 -N.No.16/2019-CT, dated 29.03.2019</u> Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per Rule 42(3).</p>
	Rule 43	<p><u>Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases</u> Subject to the provisions of Section 16(3), 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,-</p> <p><u>With effect from 01.04.2019 -N.No.16/2019-CT, dated 29.03.2019</u> The amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall not be credited to his electronic credit ledger;</p> <p>A careful perusal of the amended Rule 43(1) (a) reveals that with effect from 01.04.2019 the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated both in FORM GSTR-2 and FORM</p>

		<p>GSTR-3B. Further, such amount of input tax is not to be credited to the electronic credit ledger of the registered person.</p> <p><u>For the period 01.07.2017 to 31.03.2019</u></p> <p>The amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 and shall not be credited to his electronic credit ledger;</p> <p><u>With effect from 01.04.2019 -N.No. 16/2019-CT, dated 29.03.2019</u> the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall be credited to the electronic credit ledger;</p>
		<p>Explanation: In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.</p> <p>A careful perusal of the amended Rule 43(1) (b) reveals that with effect from 01.04.2019 the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated both in FORM GSTR-2 and FORM GSTR-3B.</p> <p>An explanation has been inserted to clarify that in case of supply of construction services covered by paragraph 5(b) of the Schedule II of the CGST Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase. This is due to the fact that during the construction phase capital goods are used commonly in the construction of both kind of units i.e. which are booked prior to completion certificate or which are booked afterwards.</p>

		<p>For the period 01.07.2017 to 31.03.2019 the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-2 and shall be credited to the electronic credit ledger;</p> <p>The amount of input tax in respect of capital goods not covered under clauses (a) i.e. exclusively used for non-business purposes or for making exempted supplies and (b) i.e. exclusively used for making taxable supplies including zero rated supplies, shall be denoted as 'A' (i.e. common credit of capital goods), and be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of invoice for such goods:</p> <p>Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;</p> <p>Explanation: An item of capital goods declared under clause (a) (i.e. exclusively used for non-business purposes or for making exempted supplies) on its receipt shall not attract the provisions of section 18(4) if it is subsequently covered under this clause.</p> <p>The aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'Tc', shall be the common credit in respect of capital goods for a tax period:</p> <p>However, where any capital goods earlier covered under clause (b) (i.e. exclusively used for making taxable supplies including zero rated supplies) is subsequently covered under clause (c) (i.e. common credit), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'Tc';</p> <p>the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'Tm' and calculated as: - $T_m = T_c / 60$</p>
		<p>The amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'Tr' and shall be the aggregate of 'Tm' for all such capital goods.</p>

With effect from 01.04.2019 -N.No.16/2019-
CT

The amount of common credit attributable towards exempted supplies, where,

'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero-rated supplies, during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

However, in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation 1 : In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in notification No. 11/2017- CT(R) dated 28.06.2017 as amended vide Notification No.

03/2019-CT(R), dated 29.03.2019 shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the Notification No. 11/2017-CT (R), dated 28.06.2017 as amended vide Notification No. 03/2019-CT(R), dated 29.03.2019.

For the period 01.02.2019 to 31.03.2019-
N.No.03/2019-CT, dated 29.01.2019

The amount of common credit attributable towards exempted supplies, be denoted as 'Te', and calculated as: $T_e = (E/F) \times T_r$

Where,

'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero-rated supplies, during the tax period, and

		<p>'F' is the total turnover of the registered person during the tax period:</p> <p><u>For the period 01.07.2017 to 31.01.2019</u> The amount of common credit attributable towards exempted supplies, be denoted as 'Te', and calculated as: $Te = (E / F) \times Tr$, where,</p> <p>'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero-rated supplies, during the tax period, and</p> <p>'F' is the total turnover of the registered person during the tax period:</p> <p>The amount Te along with applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.</p> <p><u>With effect from 01.04.2019 - N.No. 16/2019-CT, dated 29.03.2019</u> The amount Te shall be computed separately for input tax credit of Central tax, State tax, Union territory tax and integrated tax and same is to be declared in Form GSTR-3B .</p> <p><u>Applicable with effect from 01.04.2019</u> Where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated.</p> <p>The aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under the following :</p> <p>Entry 84 of List I of the Seventh Schedule to the Constitution</p> <p>Entry 92A of List I of the Seventh Schedule to the Constitution</p> <p>Entry 51 & 54 of List II of the Seventh Schedule to the Constitution</p> <table border="1"> <thead> <tr> <th data-bbox="912 1661 1110 1703">Entry</th> <th colspan="3" data-bbox="1110 1661 1554 1703">Details</th> </tr> </thead> <tbody> <tr> <td data-bbox="912 1703 1110 2045" rowspan="2">Entry 84 of List I of Seventh Schedule</td> <td data-bbox="1110 1703 1198 1969">(a)</td> <td data-bbox="1198 1703 1300 1969">Petrol eum crude;</td> <td data-bbox="1300 1703 1554 1969">(d) Natural gas;</td> </tr> <tr> <td data-bbox="1110 1969 1198 2045">(b)</td> <td data-bbox="1198 1969 1300 2045">High speed</td> <td data-bbox="1300 1969 1554 2045">(e) Aviation</td> </tr> </tbody> </table>	Entry	Details			Entry 84 of List I of Seventh Schedule	(a)	Petrol eum crude;	(d) Natural gas;	(b)	High speed	(e) Aviation
Entry	Details												
Entry 84 of List I of Seventh Schedule	(a)	Petrol eum crude;	(d) Natural gas;										
	(b)	High speed	(e) Aviation										

			diesel ;		turbine fuel; and
		(c)	Motor spirit	(f)	Tobacco and tobacco products.
		Entry 92A of List I of Seventh Schedule	Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.		
		Entry 51 of List I of Seventh Schedule	Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India: -		
			(a)	Alcoholic liquors for human consumption; and	
			(b)	Opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.	
		Entry 54 of List II of Seventh Schedule	Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.		
		For the period 01.02.2019 to 31.03.2019			
		Explanation to Rule 43(1)(g): The aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under Entry 84 of List I and Entry 51 & 54 of List of the Seventh Schedule to the Constitution.			
		Substituted with effect from 01.04.2019 - N.No.16/2019-CT, dated 29.03.2019			
		In case of supply of services covered by clause			

Rule 43(2)

(b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (T_e final) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under:
 T_e Final= $[(E1 + E2 + E3) / F] \times T_c$ Final ,
Where, -

E1= Aggregate carpet area of the apartments, construction of which is exempt from tax

E2= Aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April 2019, which shall be calculated as under, -

$E2 = [\text{Carpet area of such apartments}] \times [V1 / (V1 + V2)]$, -

Where, -

V1 is the total value of supply of such apartments which was exempt from tax; and

V2 is the total value of supply of such apartments which was taxable

E3 = Aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= Aggregate carpet area of the apartments in the project;

$T_{c\text{final}} =$ Aggregate of A_{final} in respect of all capital goods used in the project and A_{final} for each capital goods shall be calculated as under,

$A_{\text{final}} = A \times (\text{number of months for which capital goods is used for the project} / 60)$ and, -

(a) Where value of T_e final exceeds the aggregate of amounts of T_e determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in Form GSTR-3B or through Form GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rates specified in subsection (1) of section 50 for the period starting from the

		<p>first day of April of the succeeding financial year till the date of payment;or</p> <p>(b) Where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Tefinal, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.</p> <p>For the purpose of calculation of Tcfinal , part of the month shall be treated as one complete month.</p>
Rule 43(3)		<p>With effect from 01.04.2019 - N.No. 16/2019-CT, dated 29.03.2019</p> <p>The amount Tefinal and Tcfinal shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.</p> <p>For the period 01.07.2017 to 31.03.2019</p> <p>The amount Te shall be computed separately for Central tax, State tax, Union territory tax and integrated tax.</p>
Rule 43(4)		<p>With effect from 01.04.2019 - N.No. 16/2019-CT, dated 29.03.2019</p> <p>Where capital goods are used for more than one project, input tax credit in respect of such capital goods firstly to be assigned to each project on some reasonable basis. Further, after assigning such credit, reversal is required as per aforesaid sub-rule (2).</p>
Rule 43(5)		<p>With effect from 01.04.2019 - N.No. 16/2019-CT, dated 29.03.2019</p> <p>Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used;</p> <p>Where the useful life of any capital goods remains after the completion of any project, input tax credit attributable to the remaining useful life of such capital goods is to be availed in another project in which it is being used.</p>
		<p>With effect from 01.04.2019 - Re-numbering of Existing Explanation as “Explanation 1” and Insertion of Explanation 2 - N.No. 16/2019-CT, dated 29.03.2019</p> <p>Explanation 1: - For the purposes of Rule 42 and this Rule , it is hereby clarified that the aggregate value of exempt supplies shall exclude: -</p>
	(a)	<p>.....;(omitted w.e.f. 01.02.2019 vide N.No 03/2019 -CT dated 29.01.2019</p>

		<p>(b) The value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of 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; and</p>
		<p>(c) The value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India</p>
		<p>In terms of the aforesaid explanation, for the purposes of reversal of input tax credit, value of exempt supplies shall not include the following :</p>
		<p>(a) <u>Value of services by way of accepting deposits, extending loans or advances etc. in so far as consideration is represented by way of interest or discount</u> This amount has been excluded since each and every business extends advances or has term deposits with the banks. Thus, if the said amount is not excluded, every business must reverse a certain amount of input tax credit whereas such services utilize a minimal amount of inputs or input services. However, such Value is not to</p>
		<p>be excluded in case deposits are extended by banking company, financial institution etc. since banks are mainly engaged in this business only.</p>
		<p>(b) Value of supply of services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.</p> <p>For the period 01.02.2019 to 31.03.2019 - N.No.03/2019-CT, dated 29.01.2019 Explanation: - For the purposes of Rule 42 and this Rule , it is hereby clarified that the aggregate value of exempt supplies shall exclude: -</p> <p>(a) Exemption granted to supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees (vide Notification No. 42/2017-IT(R), dated 27.10.2017 has been withdrawn vide Notification No. 02/2019-IT(R), dated 04.02.2019. As a result, aforesaid services have become taxable. Therefore, Explanation (a) has been omitted vide Notification No. 03/2019-CT, dated</p>

		<p>29.01.2019. Omitted with effect from 01.02.2019 vide Notification No. 03/2019-CT, dated 29.01.2019.</p>														
		<table border="1"> <tr> <td data-bbox="906 373 982 703">(b)</td> <td data-bbox="982 373 1549 703"> <p>The value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of 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; and</p> </td> </tr> <tr> <td data-bbox="906 703 982 850">(c)</td> <td data-bbox="982 703 1549 850"> <p>The value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.</p> </td> </tr> <tr> <td colspan="2" data-bbox="906 850 1549 1071"> <p><u>For the period 23.01.2018 to 31.01.2019 - N.No. 03/2018-CT, dated 23.01.2018</u> Explanation: - For the purposes of Rule 42 and this Rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -</p> </td> </tr> <tr> <td data-bbox="906 1071 982 1396">(a)</td> <td data-bbox="982 1071 1549 1396"> <p>The value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-IT(R), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017;</p> </td> </tr> <tr> <td data-bbox="906 1396 982 1722">(b)</td> <td data-bbox="982 1396 1549 1722"> <p>The value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of 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; and</p> </td> </tr> <tr> <td data-bbox="906 1722 982 1869">(c)</td> <td data-bbox="982 1722 1549 1869"> <p>The value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside Indi</p> </td> </tr> <tr> <td colspan="2" data-bbox="906 1869 1549 2009"> <p>Further, w.e.f. 23.01.2018, following two services were also excluded from the ambit of value of exempt supplies for calculation of reversal of credit as per Rule 42 and Rule 43:</p> </td> </tr> </table>	(b)	<p>The value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of 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; and</p>	(c)	<p>The value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.</p>	<p><u>For the period 23.01.2018 to 31.01.2019 - N.No. 03/2018-CT, dated 23.01.2018</u> Explanation: - For the purposes of Rule 42 and this Rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -</p>		(a)	<p>The value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-IT(R), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017;</p>	(b)	<p>The value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of 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; and</p>	(c)	<p>The value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside Indi</p>	<p>Further, w.e.f. 23.01.2018, following two services were also excluded from the ambit of value of exempt supplies for calculation of reversal of credit as per Rule 42 and Rule 43:</p>	
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		<p>For the Period 15.11.2017 to 22.01.2018 - N.No. 55/2017-CT, dated 15.11.2017 Explanation -It is hereby clarified that the aggregate value of exempt supplies shall exclude the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017.</p> <p>Reversal of input tax credit under Rule 42 or Rule 43, value of exempt supplies shall not include value of supplies specified in N.No.42/2017 - IT(R) dated 27.10.2017 which exempts the services having place of supply in Nepal or Bhutan.</p> <p>Explanation 2: For the purposes of Rule 42 and this rule,-</p> <table border="1" data-bbox="906 1096 1547 1963"> <tr> <td data-bbox="906 1096 1040 1268">(i)</td> <td data-bbox="1040 1096 1547 1268">Apartment shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);</td> </tr> <tr> <td data-bbox="906 1268 1040 1381">(ii)</td> <td data-bbox="1040 1268 1547 1381">Project shall mean a real estate project or a residential real estate project;</td> </tr> <tr> <td data-bbox="906 1381 1040 1566">(iii)</td> <td data-bbox="1040 1381 1547 1566">Real Estate Project (REP) shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;</td> </tr> <tr> <td data-bbox="906 1566 1040 1785">(iv)</td> <td data-bbox="1040 1566 1547 1785">Residential Real Estate Project (RREP) shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. Of the total carpet area of all the apartments in the REP;</td> </tr> <tr> <td data-bbox="906 1785 1040 1963">(v)</td> <td data-bbox="1040 1785 1547 1963">Promoter shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016;</td> </tr> </table>	(i)	Apartment shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);	(ii)	Project shall mean a real estate project or a residential real estate project;	(iii)	Real Estate Project (REP) shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;	(iv)	Residential Real Estate Project (RREP) shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. Of the total carpet area of all the apartments in the REP;	(v)	Promoter shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016;
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		(vi)	Residential apartment shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;						
		(vii)	Commercial apartment shall mean an apartment other than a residential apartment;						
		(viii)	" Competent authority as mentioned in definition of "residential apartment, means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;						
		(ix)	Real Estate Regulatory Authority shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 by the Central Government or State Government;						
		(x)	Carpet area shall have the same meaning assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016;						
			An apartment booked on or before the date of issuance of completion certificate or first occupation of the project shall mean an apartment which meets all the following three conditions, namely-						
		(xi)	<table border="1"> <tr> <td>(a)</td> <td>Part of supply of construction of the apartment service has time of supply on or before the said date; and</td> </tr> <tr> <td>(b)</td> <td>Consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and</td> </tr> <tr> <td>(c)</td> <td>An allotment letter or sale agreement or any</td> </tr> </table>	(a)	Part of supply of construction of the apartment service has time of supply on or before the said date; and	(b)	Consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and	(c)	An allotment letter or sale agreement or any
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				other similar document evidencing booking of the apartment has been issued on or before the said date.																												
		(xii)	“Ongoing project” shall have the same meaning as assigned to it in N.No. 11/2017- CT(R), dated the 28.06.2017.																													
		(xiii)	Project which commences on or after 01.04.2019 shall have the same meaning as assigned to it in N.No.11/2017- CT(R), dated the 28.06.2017.																													
17(4)	<p><u>Option given to banking company or a financial institution (including a NBFC) in respect of availment of ITC</u> 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 option to either avail:</p> <table border="1"> <tr> <td>(a)</td> <td>Tax credit proportionately as per Section 17(2); or</td> </tr> <tr> <td>(b)</td> <td>50% of the eligible credit for every month and the rest</td> </tr> </table>				(a)	Tax credit proportionately as per Section 17(2); or	(b)	50% of the eligible credit for every month and the rest																								
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First proviso	<p>Withdrawal of option not allowed Option once exercised shall not be withdrawn during the remaining part of the financial year.</p>																															
Second proviso	<p><u>Non-application of restriction of 50%</u> Restriction of availment of 50% credit for every month shall not apply in case of supply between distinct persons as defined in Section 25(4) of the CGST Act.</p>																															
	Rule 38	<p><u>Manner of claim of credit by banking company or a financial institution</u> A banking company /a financial institution (including a NBFC) engaged in supply of services by way of accepting deposits or extending loans or advances, that opts to claim 50% of the eligible credit for every month, shall follow the procedure specified below:</p> <table border="1"> <tr> <td>a)</td> <td colspan="3">The said company or institution shall not avail the credit of,</td> </tr> <tr> <td></td> <td colspan="3">-</td> </tr> <tr> <td>(i)</td> <td colspan="3">Tax paid on inputs and input services that are used for non-business purposes, and</td> </tr> <tr> <td>(ii)</td> <td colspan="3">The credit attributable to supplies specified in section 17(5), in Form GSTR-2i.e. blocked credit.</td> </tr> <tr> <td>b)</td> <td colspan="3">The said company or institution shall avail the credit of tax paid on supplies made within the registered branches of such institution under the same Permanent Account Number and not covered under clause (a);</td> </tr> <tr> <td>c)</td> <td colspan="3">50% of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in Form GSTR-2;</td> </tr> <tr> <td>d)</td> <td colspan="3">The amount referred to in clauses (b) and (c) shall be credited to the electronic credit ledger of the said company or the institution. However, aforesaid credit shall be subject to the provisions of following sections:</td> </tr> </table>			a)	The said company or institution shall not avail the credit of,				-			(i)	Tax paid on inputs and input services that are used for non-business purposes, and			(ii)	The credit attributable to supplies specified in section 17(5), in Form GSTR-2i.e. blocked credit.			b)	The said company or institution shall avail the credit of tax paid on supplies made within the registered branches of such institution under the same Permanent Account Number and not covered under clause (a);			c)	50% of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in Form GSTR-2;			d)	The amount referred to in clauses (b) and (c) shall be credited to the electronic credit ledger of the said company or the institution. However, aforesaid credit shall be subject to the provisions of following sections:		
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			Section 41	Claim of input tax credit and provisional acceptance thereof
			Section 42	Matching, reversal, and reclaim of input tax credit
			Section 43	Matching, reversal, and reclaim of reduction in output tax liability
<p><u>Apportionment of credit and blocked credits</u> It is a non-obstante clause and overrules the provisions of Section 16(1) and section 18(1) of the Act. Thus, if there is a conflict in the provisions of Section 16(1) /Section 18(1) and the provisions of Section 17(5), provisions of Section 17(5) shall prevail. ITC shall not be available in respect of the following, namely: -</p>				
(a)	<p>With effect from 01.02.2019 Restrictions in respect of motor vehicles, vessels, aircrafts etc.: - Motor vehicles which are having seating capacity of not more than 13 passengers (including the driver) are not available to the registered person in general. However, input tax credit of the same shall be available when such motor vehicle is used for making following taxable supplies namely:</p>			
	(A)	Further supply of such motor vehicles; or		
	(B)	Transportation of passengers; or		
	(C)	Imparting training on driving such motor vehicles;		
(aa)	<p>Vessels and aircrafts. However, the credit of same shall be available when used for the following:</p>			
	(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			
(ab)	<p>If supplier is not eligible to claim the tax credit in respect of motor vehicle, vessel or aircraft, he shall not be eligible to claim credit of general insurance, servicing, repair and maintenance services received in relation to such motor vehicle, vessel or aircraft. However, credit of aforesaid services shall be available if such services are received by a taxable person engaged in making following supplies:</p>			
	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;		
(a)	<p><u>For the period 01.07.2017 to 31.01.2019</u> Input tax credit of motor vehicles and other conveyances was also not available except when such motor vehicles or conveyances was used:</p>			
	(i)	For making the following taxable supplies, namely: -		
		(A)	Further supply of such vehicles or conveyances; or	
		(B)	Transportation of passengers; or	
	(C)	Imparting training on driving, flying, navigating such vehicles or conveyances;		
(ii)	For transportation of goods.			
(a)	<p>Thus, on a comparative analysis of the blocked credits both prior to 01.02.2019 and after 01.02.2019, it can be inferred that w.e.f. 01.02.2019, the credit of motor vehicles having seating capacity of more than 13 passengers (including the driver) namely buses etc. has</p>			

		<p>been made available to the registered persons. Secondly the confusion whether credit of general insurance, servicing, repair and maintenance services received in relation to such motor vehicle, vessel or aircraft has been put to rest. It has been specifically provided that credit of such services shall not be available generally except to the extent provided in the provision itself.</p>			
		<p><u>Restriction in respect of food and beverages, outdoor catering, membership of club and other miscellaneous services</u></p>			
		<p><u>With effects from 01.02.2019</u></p>			
	(i)	<p>Input tax credit in respect of supply of following goods or services or both is not available :</p>			
		1.	Food and beverages;	5.	Cosmetic and plastic surgery;
		2.	Outdoor catering;	6.	Life insurance; and
		3.	Beauty treatment;	7.	Health insurance.
		4.	Health services;	8.	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;
	Proviso	<p>ITC in respect of aforesaid goods, services or both shall be available where 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 per se or as an element of a taxable composite or mixed supply.</p>			
	(ii)	<p>Membership of a club, health and fitness centre; and</p>			
	(iii)	<p>Travel benefits extended to employees on vacation such as leave or home travel concession.</p>			
	Proviso	<p>ITC in respect of aforesaid 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.</p>			
		<p><u>For the period 01.07.2017 to 31.01.2019</u></p>			
		<p><u>Input tax credit of following goods or services was not available :</u></p>			
	(i)	1	Food and Beverages	4	Health Services
		2	Outdoor Catering Services	5	Cosmetic and Plastic Surgery Services
		3	Beauty Treatment		
		<p>However, this restriction was not absolute. Tax credit on above specified goods or services or both was available in the following situations: -</p>			
		1	<p>Where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both.</p>		
		2	<p>Where an inward supply of goods or services or both of a particular category is used by a registered person as an element of a taxable composite or mixed supply.</p>		
	(ii)	<p>Input tax credit of membership of a club, health and fitness centre was not available. This restriction was absolute, and no exception was provided.</p>			
		<p>Input tax credit of Rent-a-cab, life insurance and health insurance were also not available. However, this restriction again was not absolute. Tax credit in respect of aforesaid services was available in the following situations: -</p>			

	(iii)	Where the Government notifies services, which are obligatory for an employer to provide to its employees under any law for the time being in force. For instance, under Delhi Shops and Establishments Act, 1954, it is obligatory for an employer to provide rent-a-cab services to its women employees working in a night shift.
		Such inward supply of goods or services or both is used by a registered person for making an outward taxable supply of same category of goods or services or both or as an element of a taxable composite or mixed supply.
	(iv)	Tax credit was not available to the registered person for tax paid on travel benefits extended to employees on vacation such as leave or home travel concession. This restriction was absolute, and no exception was provided. Therefore, tax credit for tax paid on travel benefits extended to employees on vacation such as leave, or home travel concession was not available under any situation/circumstances. Such travel is not linked with the business or profession of such registered person.
(c)	<u>Works contract services when supplied for construction of an immovable property</u> Works contract services when received for construction of an immovable property. However, tax credit shall be available in the following cases: -	
	1.	When received for construction of a plant and machinery; or
	2.	Where it is an input service for further supply of works contract service.
(d)	<u>Goods or services or both received by a taxable person for construction of an immovable property</u> Goods or services or both received by a taxable person, which are used for construction of an immovable property. Such immovable property may be used by such taxable person on his own account. Tax credit shall not be available even if such property is used in the course or furtherance of business. However, this prohibition shall also not apply when such goods or services or both are used for plant or machinery.	
	The word construction as used in the aforesaid clauses (c) and (d), shall also include reconstruction, renovation, addition, or alterations or repairs to such immovable property, if the said amount is capitalized in the books of accounts. Thus, if the amount incurred on repair, renovations etc. is added to the cost of building, in such a case, credit of GST paid on such expenses shall not be available to the recipient.	
	<u>Distinction between clause (c) and clause (d)</u>	
	Clause (c) deals with the works contract services i.e. when such services are received under composite contract and used for the purpose of construction of immovable property (other than plant and machinery). Clause (d) provides when goods or services or both are received under different independent contracts i.e. supply of goods and supply of services under separate and independent contracts for the construction of immovable property (other than plant and machinery).	
(e)	<u>Goods or services or both on which tax has been paid under composition levy</u> Inward supplies of goods or services or both on which tax has been paid by the supplier under composition levy. This restriction is also absolute and shall not be available under any situation/circumstances.	
(f)	<u>Goods or services or both received by a non-resident taxable person except on goods imported by him</u> Goods or services or both received by a non-resident taxable person. However, aforesaid restrictions shall not apply in respect of goods imported by him.	
(g)	<u>Goods or services or both used for personal consumption</u> Goods or services or both which are used by such person for personal consumption. This restriction is absolute, and credit shall not be available under any situation/circumstances.	

	<p><u>Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples</u></p> <p>Tax credit shall not be available to a registered person on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples . In order to understand this restriction in a better way, the restriction has been sub-divided as under:</p> <p>Tax credit shall not be available to the registered person on inward supplies of:</p>			
	(a)	Goods lost, Goods stolen, Goods destroyed; or	(c)	Goods disposed of by way of free samples; or
	(b)	Goods written off; or	(d)	Goods disposed of by way of gift.
	<p>Part (a) disallows the credit on goods lost, stolen or destroyed. It appears that the intention is to disallow the tax credit when there is loss of goods due to unnatural reasons as the three terms lost, stolen or destroyed inclined towards that. However, if there is loss of goods due to natural reasons or due to the nature of products like medicines getting expired or evaporation loss etc. in all such situations credit may be allowed.</p>			
(h)	<p>Part (b) restriction of credit is when goods are written off. One view that may be taken is that if goods are written off due to expiry date, evaporation etc. then such kind of loss can also be treated as writing-off of goods and tax credit can be denied. Written off is an accounting term and any asset written off may get covered irrespective of the purpose of written off. Loss of asset either by way of theft, getting expired or becoming useless for changes in technology has to be written off in the book of account of the assessee. Credit availed has to be added to the output tax liability of the receiver of goods. The term written off which is a general term and it is preceded with the term lost, stolen and destroyed, therefore applying the interpretation principal of rule of 'Nositur Sociis' and 'Ejusdem Generis' the term written off shall be read with the preceding words i.e. lost stolen or destroyed i.e. written off due to unnatural reasons.</p>			
	<p>Part (c) and (d) deal with goods disposed of by way of gift or free samples. So long as disposal by way of free sample is concerned, the concept is crystal clear and there cannot be any doubt on the same. Further, transfer of any existing movable or immovable property by one person to another voluntarily and without consideration shall be considered as Gift. The gift made should not be an obligation of the giver. It is an act of generosity. Moreover, such gift should not arise out of any contractual obligation.</p>			
	<p><u>Any tax paid under specified provisions</u></p> <p>Tax credit shall not be available to a recipient for any tax paid in accordance with the provisions of Sections 74, 129 and 130 of CGST Act, 2017. Once tax has not been paid by the supplier of goods or services or both at the time of supply but later on the same is recovered from him by the revenue under the aforesaid sections, the recipient of such supply of goods or services or both shall not be eligible to claim the credit for the same in spite of the fact supplier has discharged his liability of tax.</p>			
	(i)	74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts.	
		129	Detention, seizure and release of goods and conveyances in transit.	
		130	Confiscation of goods and/or conveyances and levy of penalty.	
17(6)	<p><u>Division of credit under section 17(1) and section 17(2) as per Rule 42 and Rule 43</u></p> <p>Government is empowered to prescribe the manner in which the credit attributed to non-business supply and exempted supply as provided in section 17(1) and 17(2) is to be calculated. In exercise of aforesaid power, Government has notified Rules 42 and 43 which have already been discussed.</p>			
Circular No. 72/46/2018-GST, dated 26.10.2018 [Relevant Extract]				
Subject: Circular to clarify the procedure in respect of return of time expired drugs or medicines-Reg.				
(A)	Return of time expired goods to be treated as fresh supply:			
d)	Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer , he/she is required to reverse the ITC availed on the return supply in terms of the provisions of clause (h) of sub-section (5) of section 17 of the CGST			

	Act. It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.		
(B)	Return of time expired goods by issuing Credit Note:		
d)	Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of clause (h) of subsection (5) of section 17 of the CGST Act. This has been illustrated in table below:		
Case	Date of Supply of goods from manufacturer to retailer	Date of return of time expired goods from retailer to manufacturer	Treatment in terms of tax liability & credit note
1	1st July, 2018	20th September,2019	GST Credit note will be issued by the supplier (manufacturer)and the same to be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient(retailer) has either not availed the ITC or if availed hasreversed the ITC.
2	1st July, 2018	20th November,2019	Commercial Credit note will be issued by the supplier (manufacturer) but the same cannot be uploaded on the common portal on account of time limitation (till due date of GSTR-3B of Sep 2020). Subsequently tax liability cannot be adjusted by such supplier and retailer is not required to reverse the ITC.
Clarification on various doubts related to treatment of sales promotion schemes under GST - Reg. - Circular No. 92/11/2019-GST, dated 07.03.2019			
2.	It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Some of these schemes have been examined and clarification on the aspects of taxability, valuation, availability or otherwise of Input Tax Credit in the hands of the supplier (hereinafter referred to as the "ITC") in relation to the said schemes are detailed hereunder:		
A.	Free samples and gifts :		
i.	It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the expression "supply "includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST(except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as „supply' under GST, except where the activity falls within the ambit of Schedule I of the said Act.		
ii	Further, clause (h) of sub-section (5) of section 17 of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of „supply' on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.		

B	Buy one get one free offer :	
i.	<p>Sometimes, companies announce offers like ‘Buy One, Get One free". As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as „supply’ under GST (except in case of activities mentioned in Schedule I of the said Act). It may appear at first glance that in case of offers like „Buy One, Get One Free’, one item is being „supplied free of cost’ without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.</p> <p>Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.</p> <p>It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.</p>	
C	Discounts including ‘Buy more, save more’ offers :	
	i.	Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). Such discounts are shown on the invoice itself.
	ii.	Some suppliers also offer periodic/year ending discounts to their stockists, etc. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been affected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as “ volume discounts”. Such discounts are passed on by the supplier through credit notes.
	iii.	It is clarified that discounts offered by the suppliers to customers (including staggered discount under Buy more, save more’ scheme and post supply/ volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.
	iv.	It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.
D	Secondary Discounts:-	
	i.	These are the discounts which are not known at the time of supply or are offered after the supply is already over.
	ii.	<p>The provisions of sub-section (1) of section 34 of the said Act provides as under:</p> <p>“Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.”</p>
	iii.	Representations have been received from the trade and industry that whether credit notes(s) under sub-section (1) of section 34 of the said Act can be issued in such cases even if the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. It is hereby clarified that financial/commercial credit note(s) can be issued by the supplier even if the

		conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.
	iv.	It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied.
	V.	In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in Para 2 (D) (iii) or by any other means, except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.
	Vi.	There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

3.4 Availability of ITC in special circumstances - Section 18

	Credit availability in specified special circumstances-	
	In the following special circumstances tax credit shall be available to supplier of goods or services or both subject to fulfilment of conditions and restrictions as specified in each case:	
	(a)	<u>A person who has applied for registration within 30 days from the date on which he becomes liable for registration and has been granted such registration</u> In the above special circumstance, the registered person shall be entitled to take ITC in respect of Inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of CGST Act. Tax credit is available only for tax paid on inward supplies of inputs and not in respect of input services or capital goods used for the manufacture of semi-finished or finished goods. This sub-section is applicable to supplier of services or supplier of goods or both. Supplier of goods in turn shall include trader as well as manufacturer of goods.
Rule 40(1)	(b)	<u>Declaration on the Common Portal</u> The registered person shall within a period of 30 days from the date of becoming eligible to avail the ITC under section 18(1) or within such further period as may be extended by the Commissioner by issuance of notification in this behalf . Such registered person shall make the declaration, electronically , on the Common Portal in FORM GST ITC-01 to the effect that he is eligible to avail of input tax credit as aforesaid. However, in terms of proviso to Rule 40(1) (b), any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner of Central Tax.
	(c)	<u>Details to be included in the Declaration on the Common Portal</u> The aforesaid declaration under Rule 40(1) (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act .
	(d)	<u>Certificate by a practicing CA/ Cost Accountant</u> The details to be furnished in the aforesaid declaration are required to be duly certified by a practicing-chartered accountant or a cost accountant if the aggregate value of claim on account of central tax, State tax, Union territory tax and integrated tax exceeds Rs. 2,00,000 [Rupees Two Lakh]
		<u>A person who takes voluntary registration in terms of Section 25(3) of the CGST Act</u> In the above special circumstance, the registered person shall be entitled to take ITC

	(b)	in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration. Tax credit is available only for tax paid on inward supplies of inputs and not in respect of input services or capital goods used for the manufacture of semi-finished or finished goods. This sub-section is applicable to supplier of services or supplier of goods or both. Supplier of goods in turn shall include trader as well as manufacturer of goods
Rule 40(1)	(b)	<u>Declaration on the Common Portal</u> The registered person has to make a declaration on the electronic portal in FORM GST ITC 01 .
	(c)	<u>Details to be included in the Declaration on the Common Portal</u> The declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, on the day immediately preceding the date of grant of registration , in the case of a claim made under clause (b) of sub-section (1) of Section 18.
	(d)	<u>Certificate by a practicing CA. / Cost Accountant</u> The details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of claim on account of central tax, State tax, Union territory tax and integrated tax exceeds Rs. 2,00,000 [Rupees Two Lakh]
		<u>Where any registered person ceases to pay tax under composition levy</u>
	(c)	In the above special circumstance the registered person shall be entitled to take ITC in respect of Inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9 i.e. at regular rates. Tax credit is available for tax paid on inward supplies of inputs and capital goods both and not in respect of input services used for the manufacture of semi-finished or finished goods. Unlike section 18(1) (a) and 18(1) (b) where credit is available for tax paid on inputs, under this clause credit is available for tax paid on inputs and capital goods both. However, credit for input services is not available in any of the clauses discussed so far. This sub-section is applicable to supplier of services or supplier of goods or both. Supplier of goods in turn shall include trader as well as manufacturer of goods.
Rule 40(1)	(a)	<u>Reduction of credit of capital goods</u> Credit on capital goods shall be reduced by five percentage points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by taxable person.
	(b)	<u>Declaration on the Common Portal</u> Further, as discussed hereinabove under special circumstance 1, in terms of Rule 40(1) (b) of the CGST Rules, 2017, the registered person has to make a declaration on the electronic portal in FORM GST ITC 01 .
	(c)	<u>Details to be included in the Declaration on the Common Portal</u> The declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods on the day immediately preceding the date from which he becomes liable to pay tax under Regular Scheme under Section 9.
	(d)	<u>Certificate by a practicing Chartered Accountant/ Cost Accountant</u> The details furnished in the declaration under clause (b) are required to be duly certified by a practicing-chartered accountant or a cost accountant if the aggregate value of claim on account of Central tax, State tax, Union territory tax and Integrated tax exceeds Rs. 2,00,000 [Rupees Two Lakh].

		<p><u>Verification of the ITC claimed with the corresponding details furnished by the corresponding supplier</u></p> <p>(e) The input tax credit claimed in accordance with the provisions of Section 18(1)(c) shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 on the Common Portal.</p>
	(d)	<p><u>Where an exempt supply of goods or services or both by a registered person becomes a taxable supply</u> In the above special circumstance the registered person shall be entitled to take ITC in respect of Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable. Tax credit is available for tax paid on inward supplies of inputs and capital goods exclusively used for exempted supplies and not in respect of input services used for the manufacture of semi-finished or finished goods. Unlike section 18(1) (a) and 18(1) (b) where credit is available for tax paid on inputs, under this clause credit is available for tax paid on inputs and capital goods used exclusively for making exempt supply. However, credit for input service is not available in any of the clauses discussed so far. This sub-section is applicable to supplier of services or supplier of goods or both. Supplier of goods in turn shall include trader as well as manufacturer of goods.</p>
Rule 40(1)	(a)	<p><u>Reduction of credit of capital goods</u></p> <p>Credit on capital goods shall be claimed after reducing five percentage points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by taxable person.</p>
	(b)	<p><u>Declaration on the Common Portal</u></p> <p>The registered person has to make a declaration on the electronic portal in Form GST ITC 01.</p>
	(c)	<p><u>Details to be included in the Declaration on the Common Portal</u></p> <p>The declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods used exclusively for making exempt supply on the day immediately preceding the date from which supplies made by the registered person becomes taxable.</p>
	(e)	<p><u>Verification of the ITC claimed with the corresponding details furnished by the corresponding supplier</u></p> <p>The input tax credit claimed in accordance with the provisions of Section 18(1) (d) shall be verified with the corresponding details furnished by the corresponding supplier in Form GSTR-1 on the Common Portal.</p>
	(d)	<p><u>Certificate by a practicing CA. /Cost Accountant</u></p> <p>The details furnished in the declaration under clause (b) are required to be duly certified by a practicing-chartered accountant or a cost accountant if the aggregate value of claim on account of central tax, State tax, Union territory tax and integrated tax exceeds Rs. 2,00,000 [Rupees Two Lakh].</p>
18(2)		<p><u>No tax credit after the expiry of one year from the date of issue of tax invoice</u></p> <p>This provision is applicable where tax credit is claimed under sub-section (1) of section 18. As discussed above, the sub-section (1), deals with the credit on stock and/or capital goods in case a person becomes liable to pay tax, seeks voluntary registration, composition dealer shift to regular rate of tax or goods or services or both become taxable which were exempted earlier.</p>

18(3)	<u>Transfer of ITC in case of change in the constitution of a registered person</u>	
	Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business. Such change in the constitution of registered person shall be with the specific provisions for transfer of liabilities to take advantage of transfer of unutilized tax credit to the transferee. If the above discussed two conditions are satisfied the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to transferee in such manner as may be prescribed. Tax credit shall be transferred to transferee in the manner discussed in Rule 41 of the CGST Rules, 2017 as discussed hereunder:	
	Rule 41(1)	<u>Electronically furnishing details of sale, merger etc.</u> A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02 electronically on the Common Portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.
	Proviso	In the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.
		<u>Explanation -With effect from 29.03.2019</u> -N.No. 16/2019-CT, dated 29.03.2019 “Value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon .
	Rule 41A	<u>With effect from 01.02.2019</u> Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory. Thus, with a view to bring parity between Rule 41 and Rule 41A, explanation has also been inserted in Rule 41 with effect from 29.03.2019.
	Rule 41(2)	<u>Submission of a copy of a certificate by the transferor</u> The transferor shall also submit a copy of a certificate issued by a practicing-chartered account or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for transfer of liabilities.
	Rule 41(3)	<u>Acceptance of details by the transferee</u> The transferee shall, on the Common Portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.
	Rule 41(4)	<u>Accounting of inputs and capital goods transferred in the books of account by the transferee</u> The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.
	Rule 41A	<u>With effect from 01.02.2019</u> -N.No.03/2019-CT, dated 29.01.2019 Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.
Rule 41A(1)	<u>Furnishing of Details on Transfer of ITC to Newly Registered Place of Business in the ratio of the Value of Assets held by them at the Time of Registration</u> Where, a registered person, who has obtained separate registration for multiple places of business within the same state or union territory in accordance with the provisions of Rule 11. Further, such registered person intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or the entire newly registered place of business. Such registered person is required to furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner.	

	Proviso	The input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration. Further, Explanation to Rule 41A(1) has clarified that for the purposes of this sub-rule, the ‘ value of assets’ means the value of the entire assets of the business whether or not input tax credit has been availed thereon.	
	Rule 41A(2)	<u>Transferee’s Acceptance of Details furnished by the Transferor</u> The newly registered person (transferee) shall accept the details so furnished by the registered person (transferor) on the common portal. And, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC- 02A shall be credited to his electronic credit ledger.	
18(4)	<u>Payment of ITC where the supplier shifts from Regular Scheme to Composition Levy or where Supplies made by supplier become wholly Exempt</u> The payment of tax credit in two situations as dealt in the table below. One where any registered person has shifted his discharge of outward tax liability from regular payment of tax to composition levy. Secondly, supplies made by any registered person become exempt, which were earlier taxable under the Act. The amount of payment of tax credit, its nature, and consequence has also been dealt in the table below:		
	Case	Reversal of input tax credit	
	Where any registered person who has availed of ITC opts to pay tax under Section 10 i.e. under Composition Levy	He shall pay an amount, by way of debit in the Electronic Credit Ledger or Electronic Cash Ledger. Such amount shall be equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed. Such stock and capital goods are held on the day immediately preceding the date of exercising of such option. Further, after payment of such amount, the balance of ITC, if any, lying in his Electronic Credit Ledger shall lapse.	
	Where the goods or services or both supplied by him become wholly exempt	He shall pay an amount, by way of debit in the Electronic Credit Ledger or Electronic Cash Ledger. Such amount shall be equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed. Such stock and capital goods are held on the day immediately preceding the date of such exemption. However, after payment of such amount, the balance of ITC, if any, lying in his Electronic Credit Ledger shall lapse.	
Rule 44	<u>Manner of reversal of credit under special circumstances</u>		
	(1)	The amount of input tax credit, relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of section 18(4) or section 29(5), be determined in the following manner namely,-	
		(a)	For inputs held in stock, and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered taxable person on such input.
		(b)	For capital goods held in stock the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years;
(2)	The amount, as prescribed in Rule 44 (1) shall be determined separately for input tax credit of Central tax, State tax, Union territory tax and Integrated tax. It is provided with effect from 01.07.2017 vide Principal Notification No. 03/2017-CT, dated 19.06.2017 as amended vide Notification No. 15/2017-CT, dated 01.07.2017.		
	Where the tax invoices related to the inputs held in stock are not available with the registered person, the registered person shall estimate the amount under Rule 44(1) based on the prevailing market price of goods on the effective date of occurrence of any of the events		

(3)	specified in following Sections:	
	18(4)	Shifting from regular rate to composition levy or goods supplied by supplier have become wholly exempt, or
	29(5)	Deals with reversal of input tax credit in the event of cancellation of registration and reproduced above for the sake of ready reference.
(4)	The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in Form GST ITC-03 , where such amount relates to any event specified in sub-section (4) of section 18 and in Form GSTR-10 , where such amount relates to cancellation of registration i.e. Section 29(5).	
(5)	The details furnished in accordance with Rule 44(3) shall be duly certified by a practicing-chartered accountant or cost accountant.	
18(5)	<u>Manner of Calculation of the Amount of Credit under Section 18(1) and the amount Payable under Section 18(4)</u> The relevant rules namely Rule 40 and Rule 44 have been dealt in the respective Para dealing with Section 18(1) and Section 18(4) respectively and not reproduced here once again for the sake of brevity.	
18(6)	<u>Payment of Input Tax Creditor Payment of Tax on Transactional Value of Capital Goods etc.</u> Provisions of this sub-section shall apply where a registered person disposed of capital goods or plant and machinery on which he has claimed the tax credit at the time of acquisition of the same. The registered person shall pay an amount equal to the input tax credit taken on such capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher.	
Proviso	Where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15 of the CGST Act, 2017.	
Rule	40(2)	The amount of credit in the event of supply of capital goods or plant and machinery, as provided in Section 18(6) , shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of issue of invoice for such goods.
	44(6)	The amount of input tax credit availed earlier which is subsequently required to be paid under section 18(6) on supply of capital goods shall be determined in the same manner as prescribed in Rule 44(1)(b). The amount shall be determined separately for input tax credit of central tax, state tax, union territory tax and integrated tax. Further, where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in Form GSTR-1 .
1. Clarification in respect of transfer of input tax credit in case of death of sole proprietor-Reg. - 96/15/2019-GST, dated 28.03.2019		
Doubts have been raised whether sub-section (3) of section 18 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act') provides for transfer of input tax credit which remains unutilized to the transferee in case of death of the sole proprietor. As per sub-rule (1) of rule 41 of the Central Goods and Services Rules, 2017 (hereinafter referred to as „CGST Rules'), the registered person (transferor of business) can file Form GST ITC-02 electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. Further, clarification has also been sought regarding procedure of filing of Form GST ITC-02 in case of death of the sole proprietor. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act,.		

2. Clause (a) of sub-section (1) of section 29 of the CGST Act provides that reason of transfer of business includes “death of the proprietor”. Similarly, for uniformity and for the purpose of sub-section (3) of section 18, sub-section (3) of section 22, sub-section (1) of section 85 of the CGST Act and sub-rule (1) of rule 41 of the CGST Rules, it is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

3. In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below -

a.	Registration liability of the transferee/ successor: As per provisions of sub-section (3) of section 22 of the CGST Act, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in FORM GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as “death of the proprietor”.
b.	Cancellation of registration on account of death of the proprietor : Clause (a) of subsection (1) of section 29 of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as “death of sole proprietor”. The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.
c.	Transfer of input tax credit and liability : In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Sub-section (3) of section 18 of the CGST Act, allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in rule 41 of the CGST Rules, where there is specific provision for transfer of liabilities. As per sub-section (1) of section 85 of the CGST Act, the transferor and the transferee/ successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business “in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever”. Furthermore, sub-section (1) of section 93 of the CGST Act provides that where a person,
d.	Manner of transfer of credit: As per sub-rule (1) of rule 41 of the CGST Rules, a registered person shall file FORM GST ITC-02 electronically on the common portal with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason. In case of transfer of business on account of death of sole proprietor, the transferee/successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor. FORM GST ITC-02 is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee/successor, the un-utilized input tax credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

Manner of Reversal of Credit of Additional Duty of Customs in respect of Gold Dore Bar- Rule 44A with effect from 17.08.2017

This provision has been made effective with effect from 17.08.2017 vide Principal Notification No. 03/2017-CT, dated 19.06.2017 as amended vide Notification No. 22/2017-CT, dated 17.08.2017.

The credit of Central tax in the Electronic Credit Ledger taken in terms of the provisions of Section 140 [which deals with transitional arrangements for ITC] relating to the CENVAT Credit carried forward which had accrued on account of payment of the additional duty of customs levied under Section 3(1) of the Customs Tariff Act, 1975, paid at the time of importation of gold dore bar, on the stock of gold dore bar held on 01.07.2017 or contained in gold or gold jewelry held in stock on 01.07.2017 made out of such imported gold dore bar, shall be restricted to one-sixth of such credit. Further, five-sixth of such credit shall be debited from the Electronic Credit Ledger at the time of supply of such gold dore

bar or the gold or the gold jewellery made there from and where such supply has already been made, such debit shall be within one week from the date of commencement of these Rules i.e. within one week from 17.08.2017.

3.5 Taking input tax credit in respect of inputs and capital goods sent for job-work- Section 19

19(1)	<p><u>ITC to be allowed to principal on inputs sent to a job-worker for job-work</u> ITC on inputs sent to a job-worker for job-work shall be allowed to principal subject to following conditions and restrictions as provided in Rule 45 of the CGST Rules, 2017 ;</p>	
19(4)	<p><u>ITC to be allowed to principal on capital goods sent to a job-worker for job-work</u> ITC on capital goods sent to a job-worker for job-work shall be allowed to Principal subject to following conditions and restrictions as provided in Rule 45 of the CGST Rules, 2017:</p>	
		<p><u>The inputs or capital goods shall be sent under the cover of a Delivery Challan</u></p>
	Rule 45(1)	<p>(i) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a Delivery Challan issued by the principal , including where such goods are sent directly to a job- worker.</p>
		<p>(ii) Anywhere the goods are sent from one job worker to another job worker, the Challan may be issued either by the principal or the job worker sending the goods to another job worker.- With effect from 23.03.2018.</p>
		<p>(iii) Further, according to first proviso to Rule 45(1), the Challan issued by the principal maybe endorsed by the job worker, indicating there in the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.- With effect from 23.03.2018.</p>
		<p>(iv) In terms of second proviso to Rule 45(1), the Challan endorsed by the job worker may be further endorsed by another job worker, indicating there in the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.- With effect from 23.03.2018.</p>
		<p><u>Delivery Challan to contain specified details</u></p>
		<p>(i) Date and number of the delivery challan;</p>
		<p>(ii) Name, address and Goods and Services Tax Identification Number of the consigner, if registered;</p>
		<p>(iii) Name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered</p>
	<p>(iv) Harmonized System of Nomenclature code and description of goods;</p>	
	<p>(v) Quantity (provisional, where the exact quantity being supplied is not known);</p>	
	<p>(vi) Taxable value;</p>	
	<p>(vii) Tax rate and tax amount - central tax, State tax, integrated tax, Union territory tax or Cess, where the transportation is for supply to the consignee;</p>	
	<p>(viii) Place of supply, in case of inter-State movement; and</p>	
	<p>(ix) Signature</p>	
	<p><u>The details of challan shall be included in FORM GST ITC-04</u></p>	
	<p>Rule 45(3)</p>	
	<p>The details of challan in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the quarter or within such further period as may be extended by the Commissioner by a Notification in this behalf.</p>	

	Proviso	<u>Applicable with effect from 31.12.2018</u> Any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner of Central Tax.
19(2)		The same principal shall be entitled to take ITC on goods even if inputs are directly sent to a job-worker for job-work, without being first brought to his place of business.
19(5)		The same principal shall be entitled to take ITC on capital goods even if capital goods are directly sent to a job-worker for job-work, without being first brought to his place of business.
19(3)		Consequences of not receiving back the inputs within prescribed period Where the inputs sent for job-work are not received back by the principal after completion of job-work or otherwise or are not supplied from the place of business of the job worker within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out. However, where the inputs are sent directly to a job-worker, the period of one year shall be counted from the date of receipt of inputs by the job-worker.
19(6)		Consequences of not receiving back the capital good within prescribed period Where the capital goods sent for job-work are not received back by the principal within three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job-worker on the day when the said inputs were sent out. However, where the capital goods are sent directly to a job-worker, the period of three years shall be counted from the date of receipt of capital goods by the job-worker.
	Rule 45(4)	<u>Deemed supply by principal to job worker</u> Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, the same shall be deemed as supplied to job - worker on the day when the same were sent out. Accordingly, such supply is required to be included in GSTR-1 by the principal and principal is required to pay tax on the same along with applicable interest.
19(7)		Provisions not applicable on the supplies of moulds and dies, jigs and fixtures or tools Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work. In simple words the time limit of return of inputs for one year and three years for capital goods shall not apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work. It will not be out of the context to mention here that depending upon the nature of tools, moulds etc., the same may be treated as inputs or capital goods in the books of suppliers depending upon the accounting treatment given to such tools moulds etc.

3.6 Manner of distribution of credit by Input Service Distributor- Section 20

20(1)	<u>ISD shall distribute credit of CGST as 'CGST or IGST' and IGST as 'IGST or CGST'</u> The Input Service Distributor shall have the facility of distributing the credit of central tax as central tax or integrated tax. Similarly, in the case of integrated tax it has the facility to distribute the same as integrated tax or central tax. Such distribution of credit of central and integrated tax is to be done by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed. Procedure has been discussed in detail later in this chapter.
	<u>Conditions for distribution of credit by ISD</u> The Input Service Distributor may distribute the credit subject to the following conditions, namely:-
(a)	Tax credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;
(b)	The amount of the tax credit distributed shall not exceed the amount of credit available for distribution;

	(c)	Tax credit of tax paid on input services attributable to a single recipient shall be distributed only to that recipient;
	(d)	Tax credit of tax paid on input services attributable to more than one recipient shall be distributed amongst such recipients to whom the input service is attributable. Such distribution of tax credit shall be on pro rata basis on the basis of turnover in a State or turnover in a Union territory of such recipient to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year. For the purpose of this clause turnover during the relevant period is to be considered.
	(e)	Tax credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst all such recipients. Such distribution of credit shall be on pro-rata basis on the basis of turnover in a State or turnover in a Union territory of all such recipient to the aggregate of the turnover of all such recipients and which are operational in the current year. For the purpose of this clause turnover during the relevant period is to be considered.
		An Input Service Distributor shall distribute input tax credit in the manner and subject to the following cumulative conditions specified below-
	(a)	The input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 [ISD Return];
	(b)	The ISD shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible ITC [ineligible under Section 17(5) or otherwise] and the amount of eligible ITC;
	(c)	The ITC on account of Central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);
	(d)	The ITC that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients 'R1', whether registered or not, from amongst the total of all the recipients to whom ITC is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula:- $C1 = (t1/T) \times C$
		Where,
		"C" is the amount of credit to be distributed,
		"t1" is the turnover, as referred to in section 20, of person R1 during the relevant period, and
		"T" is the aggregate of the turnover during the relevant period of all recipients to whom the input service is attributable in accordance with the provisions of section 20;
Rule 39(1)	(e)	The ITC on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;
	(f)	The ITC on account of central tax and State tax or Union territory tax shall,
	(ii)	(i) In respect of a recipient located in the same State or Union territory in which the ISD is located, be distributed as ITC of central tax and State tax or Union territory tax respectively;
		(ii) In respect of a recipient located in a State or Union territory other than that of the ISD, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of ITC of central tax and State tax or Union territory tax that qualifies for distribution to such recipient in accordance with clause (d);

	(g)	The ISD shall issue an ISD invoice clearly indicating in such invoice that it is issued only for distribution of input tax credit.
	(h)	The ISD shall issue an ISD credit note, for reduction of credit in case the input tax credit already distributed gets reduced for any reason.
	(i)	Any additional amount of ITC on account of issuance of a debit note to an ISD by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) above and such credit shall be distributed in the month in which the debit note is included in the return in Form GSTR-6.
	(j)	Any ITC required to be reduced on account of issuance of a credit note to the ISD by the supplier shall be apportioned to each recipient in the same ratio in which ITC contained in the original invoice was distributed in terms of clause (d) above, and the amount so apportioned shall be, -
		(i) Reduced from the amount to be distributed in the month in which the credit note is included in the return in Form GSTR-6; or
		(ii) Added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.
Rule 39(2)		If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process prescribed in clause (j) of sub-rule (1) shall apply, mutatis mutandis for reduction of credit.
Rule 39(3)		Subject to sub-rule (2), the Input Service Distributor shall, on the basis of ISD credit note specified in clause (h) of sub-rule (1), issue an ISD Invoice to the recipient entitled to such credit and include the ISD credit note and the ISD Invoice in the return in FORM GSTR-6 [ISD Return] for the month in which such credit note and invoice was issued.
Entry 84 of List I of Seventh Schedule		
Duties of excise on the following goods manufactured or produced in India, namely; -		
(a)	Petroleum crude;	(c) Motor spirit; (e) Aviation turbine fuel; and
(b)	High speed diesel;	(d) Natural gas; (f) Tobacco and tobacco products.
Entry 92A of List I of Seventh Schedule		
Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.		
Entry 51 of List II of Seventh Schedule		
Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India: -		
(a)	Alcoholic liquors for human consumption;	
(b)	Opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.	
Entry 54 of List II of Seventh Schedule		
Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of inter-national trade or commerce of such goods.		

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