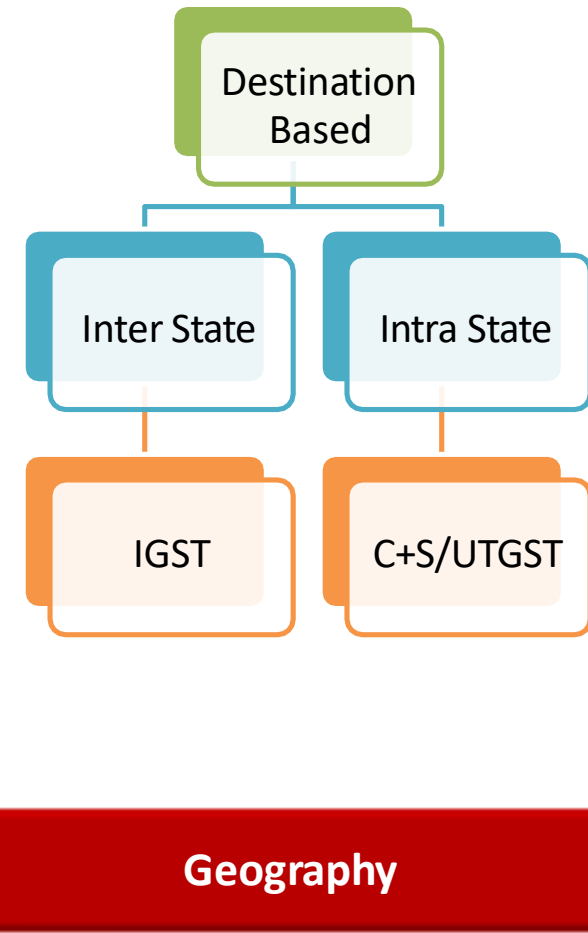
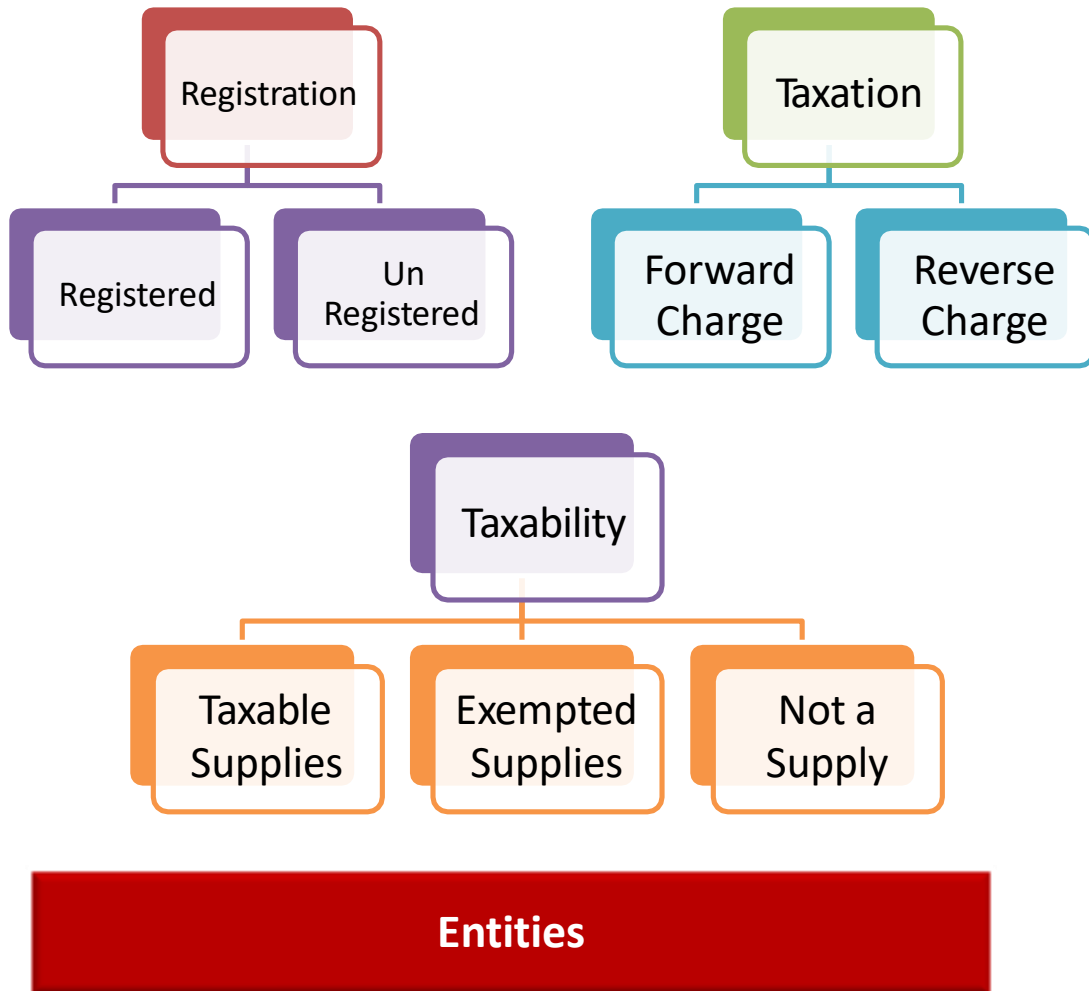


Input Tax Credit

– Law, Procedures & Complexities



Taxation Fundamentals – GST Landscape



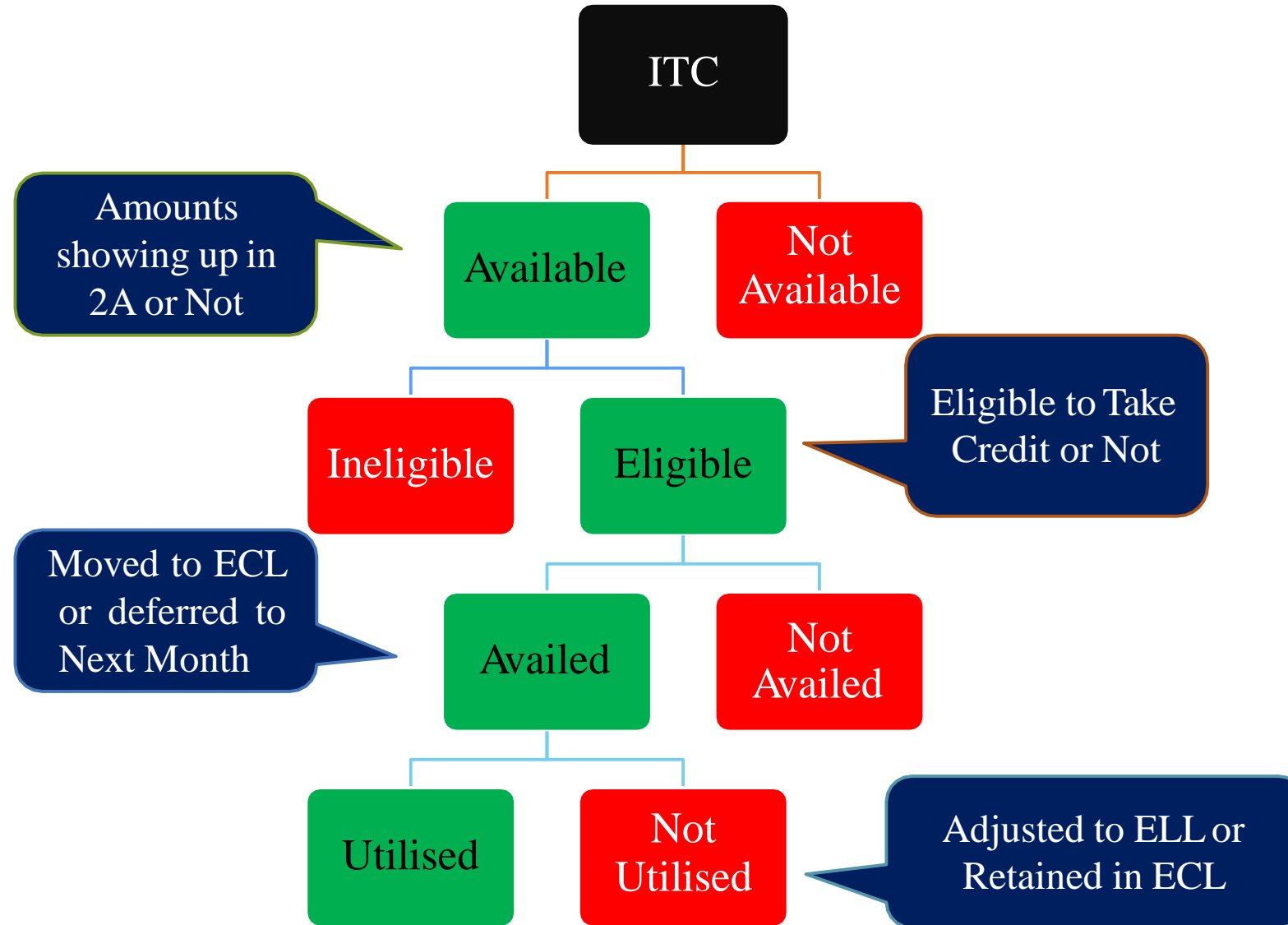
Input Tax Credit - Introduction



Concept of ITC

- “Input tax” means IGST (including that on import of goods), CGST, SGST and UTGST;
- Charged on any supply of goods or services and;
- Includes the tax payable under sub-section (3) and (4) of section 9,
- Includes the tax payable under sub-section (3) and (4) of section 5 of IGST Act,
- Includes the tax payable under sub-section (3) and (4) of section 9 of SGST Act,
- Includes the tax payable under sub-section (3) and (4) of section 7 of UTGST Act, excludes the tax paid under section 10 (composition levy)

Flow of Credit – System Track



Principles on Input Tax Credit

- System for a seamless flow of credit
- Extends to inter-State supplies
- Credit utilization would be as follows [Sec 49(5)]:

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST
IGST	Y	Y	Y
CGST	Y	Y	N
SGST	Y	N	Y

Y – Yes

N - No

Manner of Utilisation of ITC

Clarification in respect of utilization of ITC under GST - Circular No 98/17/2019 – GST dated 23rd April, 2019

- Section 49 was amended and Section 49A and Section 49B were inserted vide CGST Tax (Amendment) Act, 2018 with effect from 1st February 2019.
- Based on the representations received from the trade and industry regarding challenges being faced by taxpayers due to bringing into force of section 49A of the CGST Act, 2017, that this is resulting in accumulation of input tax

ITC Balance	Utilized for Set off against liability of				Remarks
IGST	IGST	CGST	SGST	UTGST	After utilization towards payment of IGST only, balance can be used for set off of liability for CGST or SGST/UTGST (any manner)
CGST	IGST	CGST	NA	NA	Cannot be used against SGST/UTGST
SGST	IGST	NA	SGST	NA	Cannot be used against CGST/UTGST
UTGST	IGST	NA	NA	UTGST	Cannot be used against CGST/SGST

Note – Utilization of CGST/SGST/UTGST shall be allowed only when ITC for IGST has been first utilized in full.

Manner of Utilisation of ITC

- Rule 88A was inserted in the CGST Rules, 2017 vide notification No. 16/2019- Central Tax, dated 29th March, 2019.
- Rule 88A in the CGST Rules allows utilization of input tax credit of Integrated tax towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in ***any order*** subject to the condition that the entire input tax credit on account of ***Integrated tax is completely exhausted first*** before the input tax credit on account of Central tax or State / Union territory tax can be utilized credit for one kind of tax (say State tax) in electronic credit ledger and discharge of liability for the other kind of tax (say Central tax) through electronic cash ledger in certain scenarios

Manner of Utilisation of ITC

Query –

Amount of ITC available and Output Tax Liability under different tax heads. Find out the ITC utilization -

Head	Output Liability	Input Tax Credit
Integrated Tax	1000	1300
Central tax	300	200
State/ UT Tax	300	200
Total	1600	1700

Option 1 Solution -

ITC on account of	Discharge of Output liability on account of			Balance of ITC	Remarks
	Integrated Tax	Central Tax	State/ UT Tax		
Integrated Tax	1000	200	100	0	
ITC on account of IGST has been exhausted completely					
Central Tax	0	100	-	100	Cannot be used against SGST/UTGST
State/ UT Tax	0	-	200	0	Cannot be used against CGST
Total	1000	300	300	100	

Option 2

ITC on account of	Discharge of Output liability on account of			Balance of ITC	Remarks
	Integrated Tax	Central Tax	State/ UT Tax		
Integrated Tax	1000	100	200	0	
ITC on account of IGST has been exhausted completely					
Central Tax	0	200	-	0	Cannot be used against SGST/UTGST
State/ UT Tax	0	-	100	100	Cannot be used against CGST
Total	1000	300	300	100	

Conditions for Availment of ITC by a Registered Taxable Person – Sec 16

Basis - **tax invoice / debit note issued by a registered supplier**, or other prescribed taxpaying document

Goods and/or services have been received*

Tax actually paid by the supplier to the credit of the appropriate Government, either in cash or by utilization of ITC

He has furnished the monthly return

Availment of ITC by a RTP – Sec 16

Note:

- Credit only upon receipt of the last lot/ instalment in case of goods received in lots / instalments.
- Goods deemed to be received by a taxable person when the supplier delivers the goods to the recipient/ any other person, on the direction provided by the taxable person to the supplier.
- Exception in case of goods being directly sent to job worker
- If the recipient of services fails to pay (value + tax) within 180 days from date of invoice, (ITC availed + interest @ 18%) shall be added to his output tax liability. ITC available when amount discharged later

Rule 36 (4) – Last nail in the coffin

- CBIC issued Notification No 49/2019-Central Tax dated 9th October 2019 amending Rule 36(4) specifying conditions for availing ITC and further amended vide Notification No 75/2019-Central Tax dated 26th December, 2019.
- The clarification was clarified by Circular No. 123/42/2019– GST dated 11th November 2019 (F. No. CBEC – 20/06/14/2019 – GST) which was issued clarifying Restriction in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017
- No System restriction by GSTN Portal. The restriction is to be computed on self-assessment basis.
- All other conditions and eligibility for availing ITC shall be governed by CGST Act, 2017 (Chapter – V) and Rules made thereunder. This being an additional condition for availment of credit

Cumulative application of restriction u/r 36(4) during the lockdown period (GSTR 2A + 10%)
– Notification No 30/2020 – CT dated 03.04.20

Vide notification No. **30/2020- Central Tax, dated 03.04.2020**, the condition shall not apply to input tax credit availed by the registered persons in the returns in FORM GSTR-3B for the months of ***February, March, April, May, June, July and August, 2020***, but that the said condition shall apply **cumulatively** for the said period and that the return in FORM GSTR-3B for the tax period of ***September, 2020*** shall be furnished with cumulative adjustment of input tax credit for the said months in accordance with the condition under rule 36(4).

Chart for compliance of Rule 36(4) – GSTR 2A + 20%/10%

FY	2019-20				2020-21	
Months	1 st April 19 to 8 th October 19	9 th October 19 to 31 st Dec 19	1 st January 20 to 31 st Jan 20	Feb 20 and Mar 20	Apr 20 to Aug 20	Sep 20 to Mar 21
Applicability of Rule 36(4)	Normal – Match 2A [Rule 36(4) Not applicable]	Lower of ITC as per Books or GSTR 2A +20%	Lower of ITC as per Books or GSTR 2A +10%	Lower of ITC as per Books or GSTR 2A +10% on consolidated basis (Feb 20 to Aug 20) to be complied till filing of return for Sep 20		Lower of ITC as per Books or GSTR 2A +10%

Notes –

1. Matching of ITC is required as per Sec 16 and may not be compulsory while filing of monthly Return in Form GSTR 3B but same is necessitated by legislative compulsion.
2. It is imperative for businesses to ascertain compliance for suppliers on regular basis for Feb 20 to Aug 20 to avoid reversal of ITC while furnishing return for Sep 20.

Rule 36(4) – Computation of claim of ITC

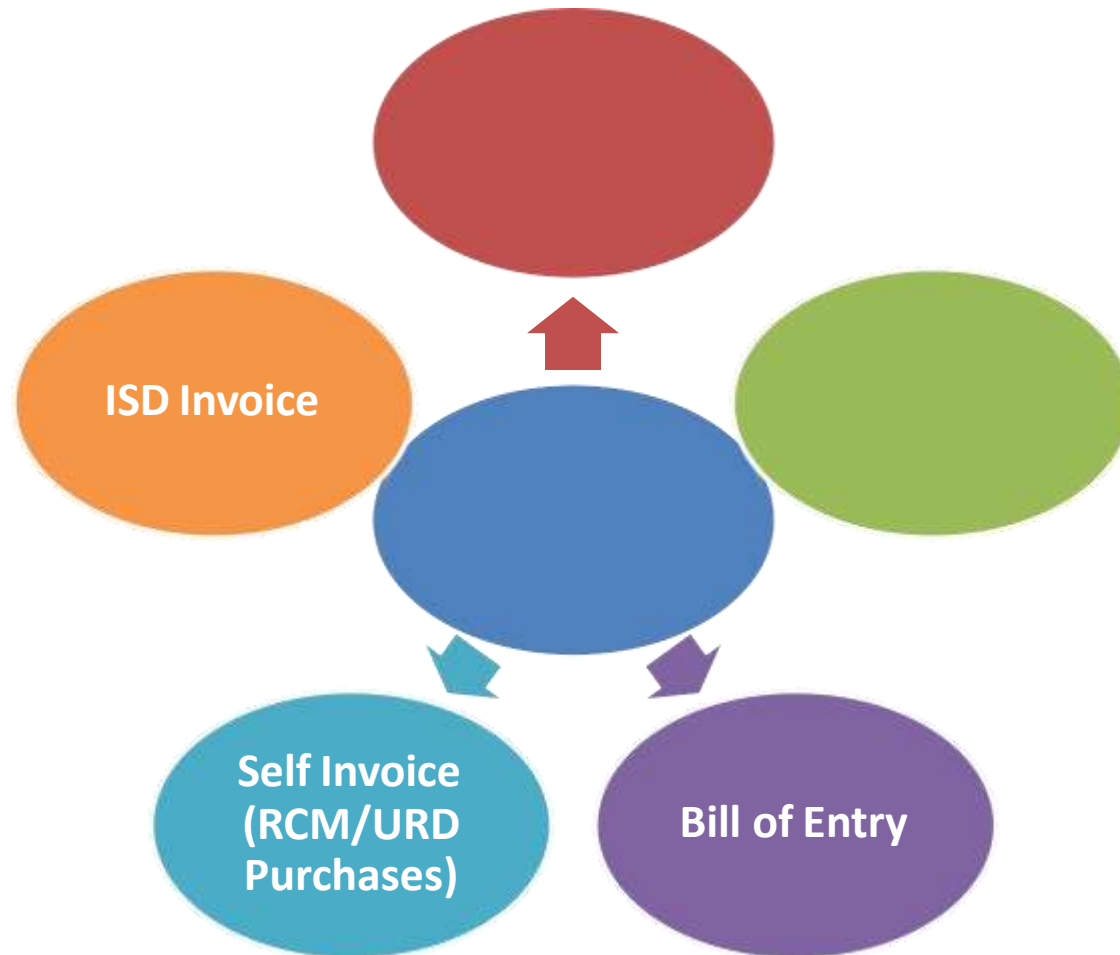
Analysis of excess ITC claimed -	(based on data for Sep 2020)				
Particulars	CGST	SGST	IGST	Total ITC	
ITC as per GSTR 2A for Sep 2020	3,30,667.51	3,30,667.51	15,862.12	6,77,197.14	
ITC for Vendors filing post due date	90,760.76	90,760.76	-	1,81,521.52	
Eligible ITC - Filing on due date	2,39,906.75	2,39,906.75	15,862.12	4,95,675.62	
Add: 10% as per Circular	23,990.68	23,990.68	1,586.21	49,567.56	
ITC claimable as per new Circular	2,63,897.43	2,63,897.43	17,448.33	5,45,243.18	
ITC as per GSTR 3B	2,96,400.72	2,96,400.72	15,433.38	6,93,945.87	
Excess claimed	32,503.30	32,503.30	-2,014.95	1,48,702.69	

Legal Provision: Notification 49/2019-Central Tax dated 9th October 2019

Implication: May endanger claim of eligible ITC on time and an interest shall also be payable if the claim is in excess as instructed in circular.

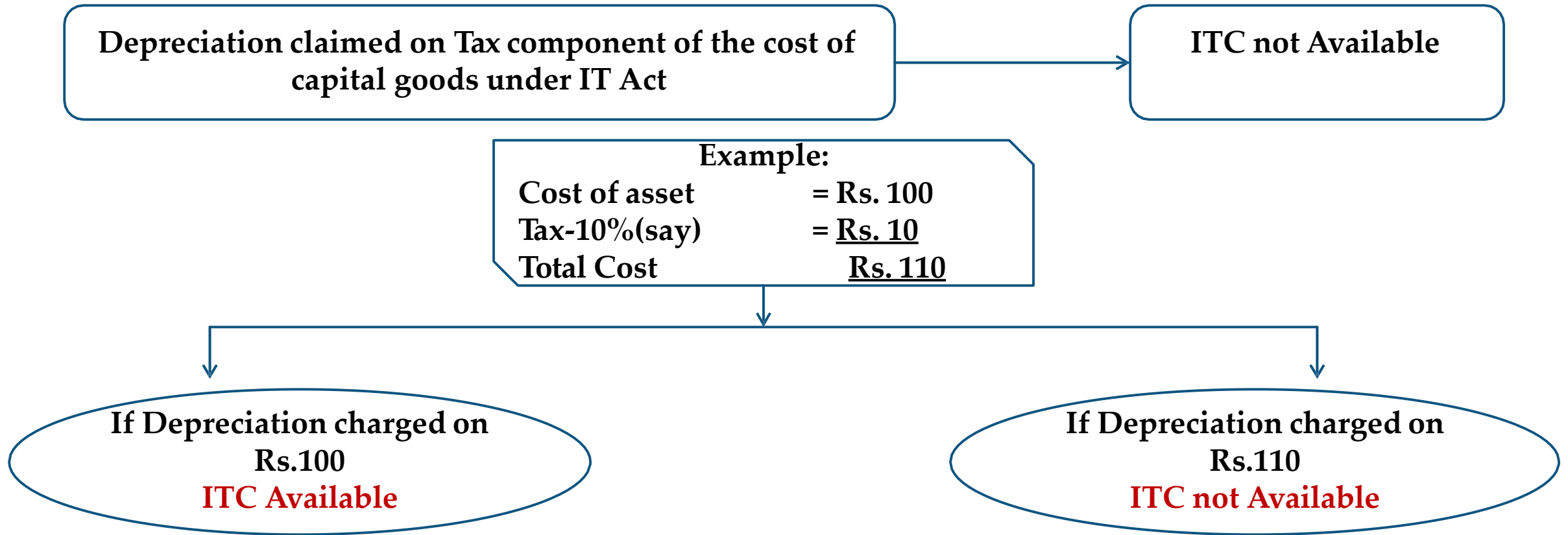
Suggestion: Contact the suppliers and request them to file within due date of filing returns as per GST Law.

Input Tax Credit – Documents for availing credit



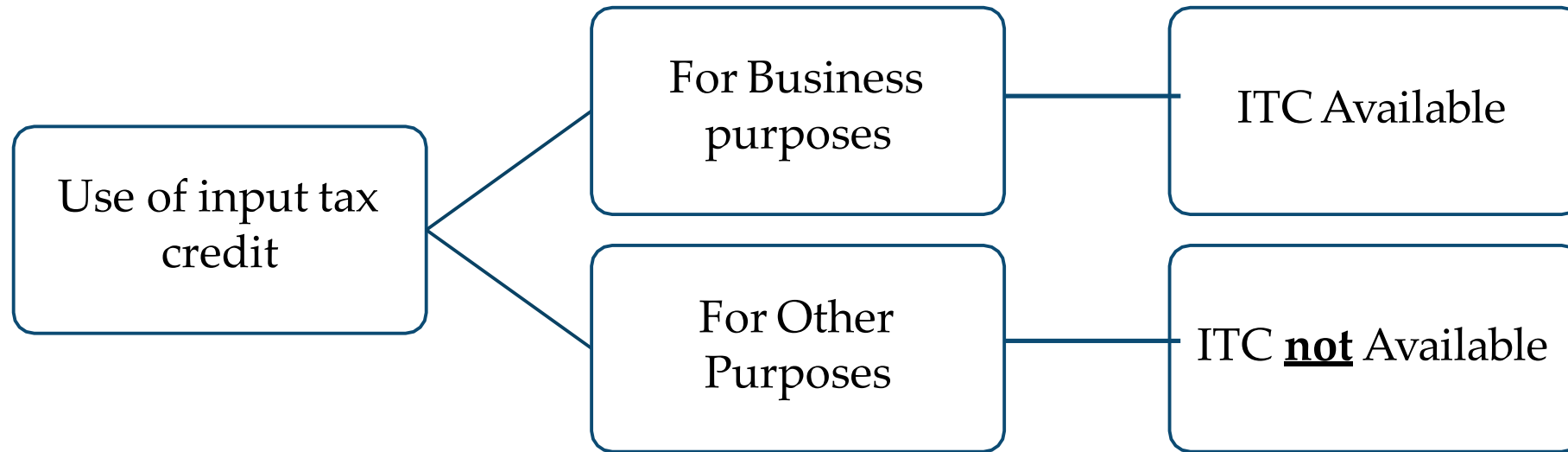
- ITC to be available only if all the particulars prescribed are contained in the invoice and the details are furnished in Form GSTR-1 by supplier
- No ITC if tax paid in pursuance of any order where demand has been raised on account of fraud, willful misstatement or suppression of facts

ITC in case of Capital Goods



“capital goods” means the goods, the value of which is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of the business

ITC on the Basis of use of Inputs – Sec 17

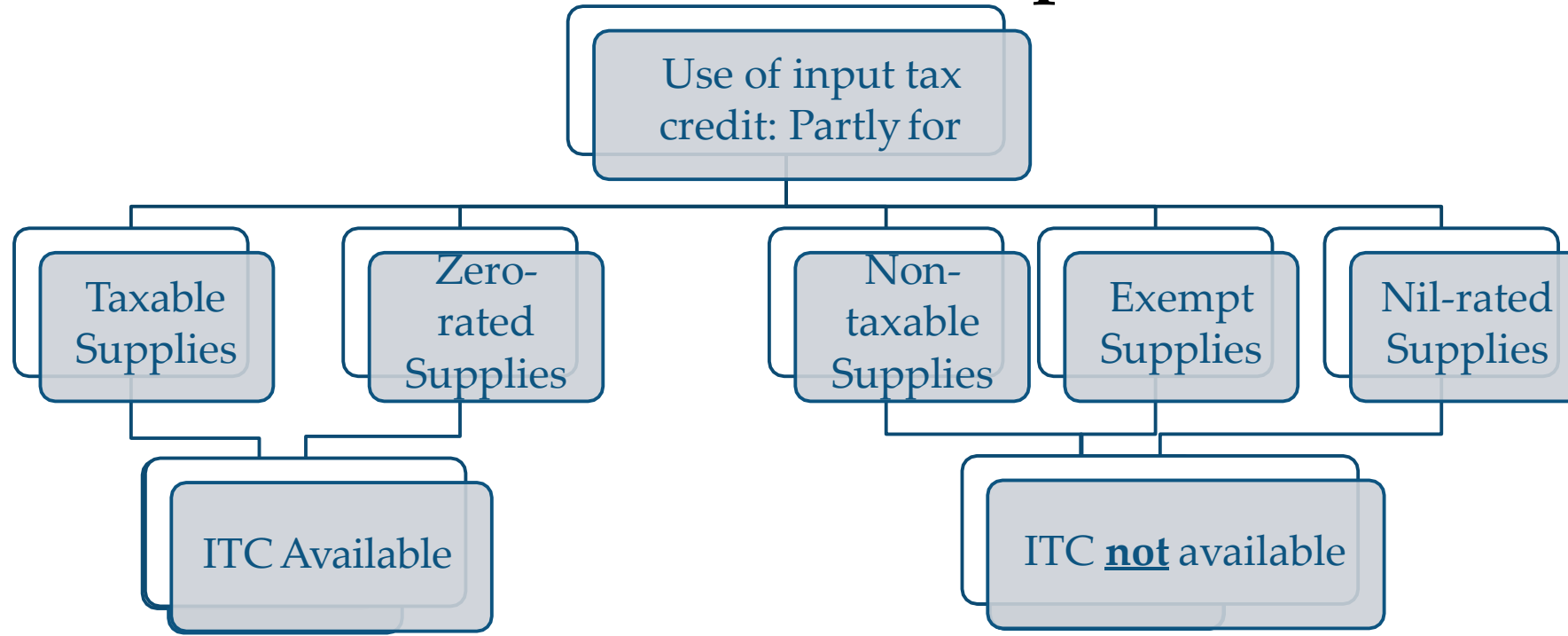


Note: Attribution of ITC to be made as per the manner prescribed in the ITC Rules

“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business

“input service” means any service used or intended to be used by a supplier in the course or furtherance of business

ITC on the Basis of use of Inputs – Sec 17



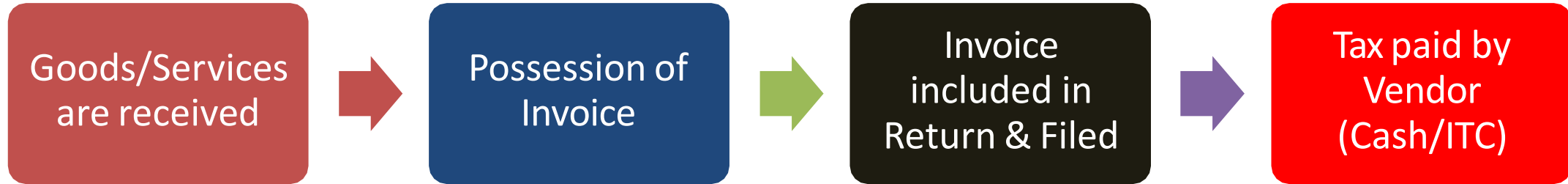
***Note:** Attribution of ITC to be made as per the manner prescribed in the ITC Rules*

Alternative to apportionment between taxable and exempt supplies in case of banking companies and financial institutions:

- Yearly option to avail a standard rate of 50% of eligible ITC on inputs, capital goods and input services on a monthly basis
- 50% shall not be applied on tax paid on supplies made by one registered person to another registered person having same PAN

Delay in filing GSTR 3B – Interest to be paid on net liability or gross liability?

Eligibility to claim ITC is determined based on Sec 16 of the CGST Act -



Telangana High Court Judgment in Megha Engineering & Infrastructure Ltd – WP No. 44517 of 2018

Telangana High Court Ruling –

- ✓ Until a return is filed as self – assessed, no entitlement to credit and no actual entry of credit in Electronic Credit Ledger takes place
- ✓ No payment may be made out of such credit
- ✓ Once the claim is made in the return, the same gets credited in ECL.
- ✓ Only on entry in ECL, payment can be made using ITC.

A notification has been issued setting this issue. Now Interest is leviable on Net Cash Paid and not on gross liability.

I have received an email message as well as a SMS stating - "Please visit your Credit Ledger to see the amount of credit blocked for utilization by the jurisdictional tax officer." What does this message indicate?

Your Jurisdictional Tax Officer has blocked some ITC amount available in your Electronic Credit Ledger.

Navigate to Services > Ledgers > Electronic Credit Ledger.

You will notice the amount that has been blocked in your Electronic Credit Ledger by your Jurisdictional tax officer

I am unable to utilize the available balance in my Electronic Credit Ledger? Why?

The amount blocked by Jurisdictional tax officer would be reduced in your Electronic Credit Ledger, hence would not be available for utilization. Balance amount of ITC, if any, after deducting the amount blocked by the officer, can be utilized as per credit utilization rules.

I can see some amount/ entire amount available in my Electronic Credit Ledger as blocked. Who has blocked it and Why?

To avoid misuse of the ITC credit availed, your Jurisdictional Tax Officer has blocked the ITC available in your Electronic Credit Ledger.

Your Jurisdictional Officer at his discretion may block only CGST, SGST, IGST & Cess balance partly or fully.

After scrutiny of the GST TRAN-1 and GST TRAN-2 or any other return or statement through which credit has been claimed, the Jurisdictional Officer may unblock the ITC.

What should I do in case my ITC has been blocked?

Your Jurisdictional Officer may ask for certain clarifications based on the returns/statements you have filed and have claimed ITC.


Please provide necessary information as may be asked by the Jurisdictional Officer.

After scrutiny of the GST TRAN-1 and GST TRAN- 2 or any other return/ statement, the Jurisdictional Officer may unblock the ITC.

How will I know if my ITC has been unblocked?

You will receive an email message as well as an SMS - "Please visit your Credit ledger to see the amount of credit unblocked by the jurisdictional officer".

Navigate to Services > Ledgers > Electronic Credit Ledger. You will notice the ITC has been unblocked.

[Dashboard](#) > [Services](#) > [Ledger](#) English

Electronic Credit Ledger

Financial Year	Month	ITC Balance As On Date : 03-10-2020
2020-2021	October	0.00

1. Electronic Credit Ledger
2. Provisional Credit Balance : 0.00
3. Blocked Credit Balance : 0.00

Blocked Credit Balance

Date	Amount of blocked credit balance (₹)				
	Integrated Tax	Central Tax	State Tax	CESS	Total
	0.00	0.00	0.00	0.00	0.00

[BACK](#)[SAVE AS PDF](#)[SAVE AS EXCEL](#)

Blocked Credit – ITC Restriction – Sec 17(5)

Goods or Services partly used for business purpose
(Restriction of ITC on non business use)

Zero Rated and Exempt Supplies

Zero Rated and Exempt Supplies (ITC on Taxable and Zero rated allowed as credit)

Rent a cab, life and health insurance

Motor Vehicles and other conveyance

Food & Beverages, Outdoor catering, beauty treatment, health services, cosmetic and plastic surgery

Membership of club, health and fitness centre

Travel benefits to employees on vacation such as LTA

Works Contract Services (Except P&M)

Construction on Own Account

Tax Paid under Composition Scheme

Goods, Services or both received from non-resident taxable person

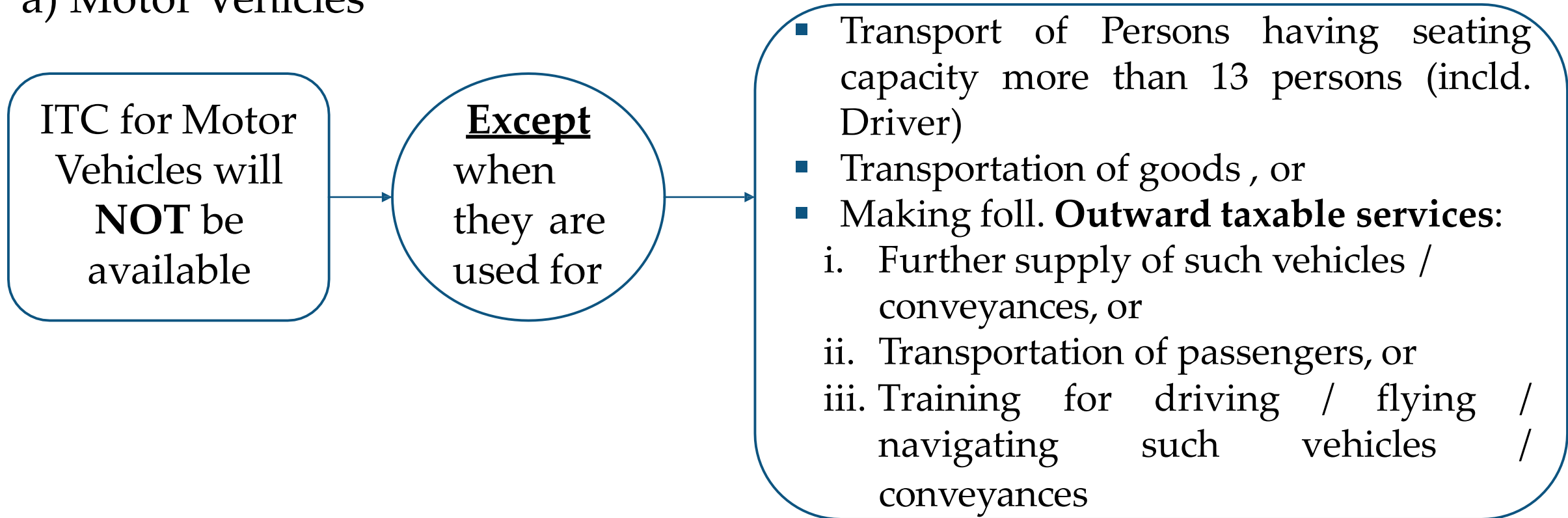
Goods, Services or both used for personal purpose

Goods lost, stolen, damaged, written off

Goods disposed off by way of gifts or free samples

Restrictions on ITC – Sec 17(5) - Blocked credits

a) Motor Vehicles



Note: ITC for general insurance, servicing, repairs and maintenance is available in respect ***Motor vehicles on which ITC is allowed***

ITC on purchase of Cash Carry Vans for transport of Money for Banks-

CMS Info Systems Limited

Purchase of motor vehicles i.e. cash carry vans - cash management network pan India –
Whether ITC is available for purchase of such vehicles?

Applicant's Contention:

- ✓ The vans were use for carrying of goods and hence ITC is eligible as per GST Laws.
- ✓ Same is not covered under blocked credit u/s 17(5)

Ruling of Authority for Advance Ruling –

- Money is not covered in the definition of goods under the CGST Act.
- It can not be said that it is “***not goods***” for general purpose and “***goods***” for the applicant

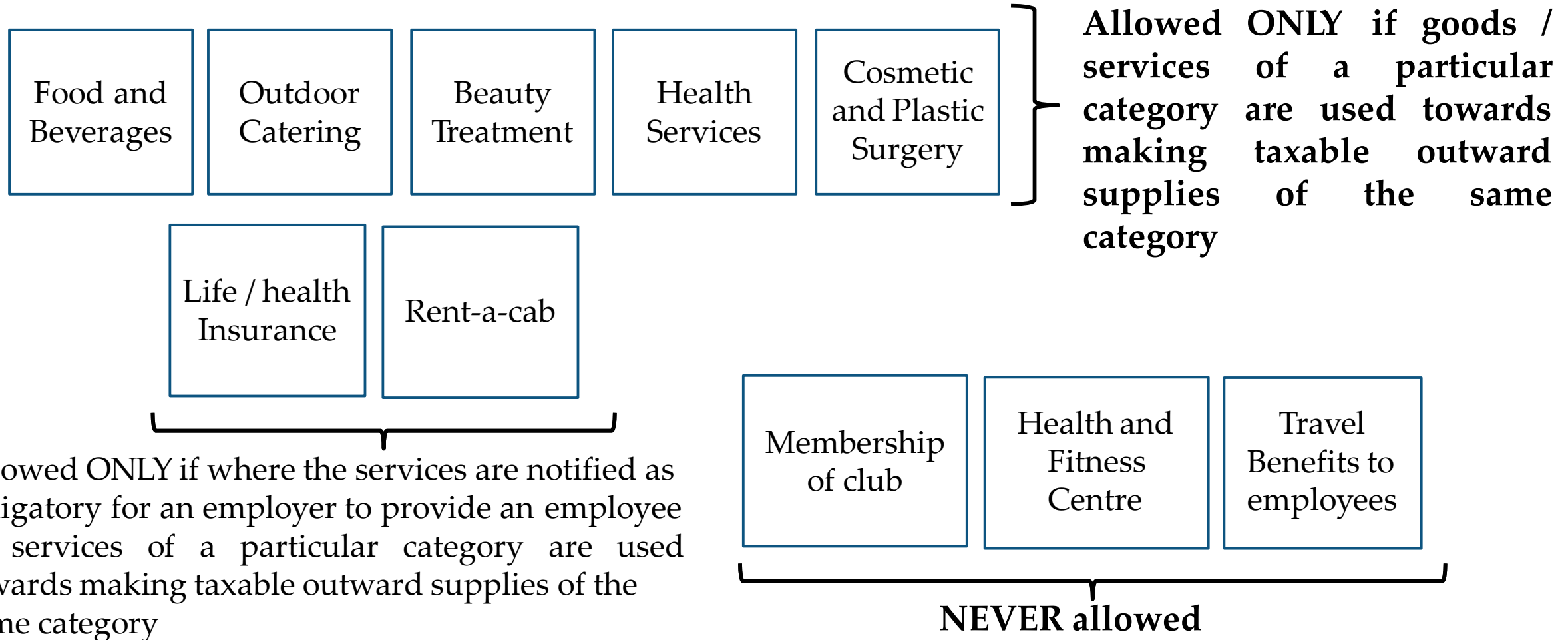
Current Position -

The Bombay High Court ***allowed ITC on purchase of Motor vehicles*** for carry of cash for banks and financial institutions and reversed the decision of Appellate Authority for Advance Ruling Mumbai in aforesaid case.

The same was appealed vide **Writ Petition No. 5801 of 2019** and order was issued on 09/07/2019

Restrictions on ITC – Sec 17(5) - Blocked credits

b) Supply of goods and services being:



Restrictions on ITC – Sec 17(5) - Blocked credits

c) Construction of Immovable Property (other than plant and machinery)

Works contract services, except where it is an input service for further supply of works contract service

Goods or services received by a taxable person for construction of an immovable property on his own account *even when used in course or furtherance of business;*

ITC not Available

Construction includes re-construction, renovation, additions or alterations or repairs to the extent of capitalisation

*Plant and machinery means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes— (i) land, building or **any other civil structures**; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.*

ITC on construction of property which is to be let out?

Odisha High Court Judgment in Safari Retreats Pvt Ltd – WP(C) No.20463 of 2018

Odisha High Court Ruling –

Hon'ble High Court of Orissa observed:

- ❖ Clause (c) and (d) of section 17(5) of CGST Act provides that input tax credit is ***not available*** when the immovable property is constructed ***'on his own account'***.
- ❖ And that this condition cannot be applied in cases where construction of immovable property is ***intended for letting out***.
- ❖ It was further held that the shopping mall was ***neither intended for sale nor on his own account*** but was ***'intended for letting out'***.
- ❖ For these reasons, it was held that ***set off ITC on the goods/services used in the construction of mall*** is admissible against the ***GST payable on the renting of immovable property service***.

Madhya Pradesh - AAR ⑦ – Jabalpur Entertainment Complexes Ltd – Order No 12/2018 dt. 27/08/18

Facts of the Case -

A. M/s. ***Jabalpur Entertainment Complexes Ltd***, Jabalpur is engaged in operation of a mall and multiplex. The applicant is having a single GST registration with GSTIN **00XXXX1234X1ZA**. The Applicant is having following four operations in the company: i. Multiplex (Cinemas);
ii. Mall – Applicant owns and operates the Mall and has given space to several brands under rent/revenue sharing basis. The Applicant is also charging Common Area Maintenance charges from tenants;
iii. Food Court – Operates a food court in the Mall;;
iv. SAM Retail – Operates a franchise apparel retail store within the Mall.

B. The Applicant is charging GST on outward supply of Goods & Services as under:

- i. Sale of Movie tickets – @28% (on tickets exceeding Rs.100/-) or @18% (on tickets below Rs.100/-);
- ii. Renting of Shops – @18%
- iii. Common Area Maintenance Charges – @18%
- iv. Sale of Food & Drinks – @5% (Without claiming ITC on food items and beverages purchased)

C. Further, the Applicant is claiming ITC of GST paid on following inward supplies of goods & services:

- i. Movie Distributor Share Bill
- ii. Projector Rental Bills
- iii. Advertising Bill
- iv. Security Agency & Housekeeping Bill – Security and Housekeeping services are used for office area, public area and common area of Multiplex.

It has been informed by the Applicant that it is claiming full ITC on civil items purchased for maintenance and renovation of the building. And the Applicant is also engaging registered and unregistered contractors for Works Contract Service for the purpose of maintenance and renovation of building.

Select Advance Rulings on ITC -

D. QUESTIONS TO BE DECIDED:

The following questions have been posed, with reference to the activity undertaken by the Applicant:

1. Whether GST @5% can be charged on food, soft drinks, and snacks sold in the Snack Bar & Food Court in terms of Notification no.46/2017;
2. Whether ITC of GST paid on Movie Distributor revenue share bill, Projector Rental Bill, Advertising Bill, Security Agency Bill, and House Keeping Bill can be claimed in full;
3. Whether ITC on GST paid on goods purchased for the purpose of maintenance such as Vitrified Tiles, Marble, Granite ACP Sheets, Steel Plates, TMT TOR, Bricks, Cement, Paint, Chemicals, Sanitary items like wash basin, urinal pots, and toilet accessories can be claimed in full;
4. Whether ITC of GST paid on Works Contract service received from registered & unregistered Contractor for maintenance contract of building can be claimed in full?

Select Advance Rulings on ITC -

Finding and Decision –

Whether ITC on GST paid on goods purchased for the purpose of maintenance such as Vitrified Tiles, Marble, Granite ACP Sheets, Steel Plates, TMT TOR, Bricks, Cement, Paint, Chemicals, Sanitary items like wash basin, urinal pots, and toilet accessories can be claimed in full?

Held that:- Mere statement that *expenditure is not capitalized* cannot come to the rescue of Applicant. Be that as it may, **the eligibility of ITC does not depend on the treatment given to the expenditure. If the expenditure is revenue in nature but subsequently capitalized in the books of account it would not make Applicant eligible to ITC on such goods** – ITC on such goods used for maintenance/repair/renovation of Mall building, an immovable property, shall not be available to the Applicant.

Select Advance Rulings on ITC -

Finding and Decision –

Whether ITC of GST paid on Works Contract service received from registered & unregistered Contractor for maintenance contract of building can be claimed in full?

Held that:- As far as availability of ITC on Works Contract Services is concerned the law is very categorical and unambiguous. ITC on works contract services are allowable only in case when such works contract service is used as an input service for providing further output service of Works Contract – Works Contract Service which the Applicant intends to engage is for the civil work etc. for repair/renovation/maintenance of Mall building. Such service is fully consumed at the end of Applicant and it is not an input service for further provision of output service as Works Contract – ***ITC in respect of Works Contract Service utilised by the Applicant for repair/renovation/maintenance of Mall building shall not be available to them.***

Select Advance Rulings on ITC -

Ruling:-

The items supplied in Snack Bar and Food Court shall be chargeable to GST in terms of Notification No.11/2017-Central Tax (Rate) as amended by Notification No.46/2017-Central Tax (Rate) and corresponding notification under MPGST ACT,2017 at prevailing rate of 5%(2.5% SGST and 2.5% CGST), subject to conditions laid down at Serial Number 7 of the parent Notification classifiable under SAC 9963.

Applicant shall be entitled to ***ITC of tax paid on Movie Distributor Revenue Sharing Bill, Projector Rental Bill and Advertising Bill in full***; further in respect of Security Agency Bill and Housekeeping Bill, the ITC shall be restricted to the apportioned part which is utilised in providing taxable output services. Any ITC attributable to exempted output services shall be subject to reversal in terms of Section 17(1) of the GST Act 2017.

ITC of GST paid on ***goods purchased for the purpose of maintenance of Mall*** such as Vitrified Tiles, Marble, Granite, ACP Sheets, Steel Plates, TMT Tor (Saria), Bricks, Cement, Paint, Chemicals, Sanitary Items like wash basin, urinal pots and toilet accessories ***shall not be admissible*** to the Applicant in terms of clause (c) of Section 17(5) of the GST Act 2017.

ITC of GST paid on **Works Contract Service** received by the Applicant for maintenance contract of building ***shall not be available to them in terms of clause (d) of Section 17(5)*** of the GST Act 2017.

Andhra Pradesh - AAR ⑦ Maruti Ispat & Energy Pvt Ltd – Ord No AAR/AP/ 14(GST)/2018 dt 9/10/18

M/s ***Maruti Ispat & Energy Pvt Ltd***, (here in after called as ‘applicant’), is a private limited company, and manufacturers of steel and generation of power. The applicant submitted that they had DRI (direct reduced iron)i.e spong iron unit and they involve in generation of power. They stated the nature of industry and product requires buying of large plant and machinery for installation and protection of this plant & machinery, they required to lay foundations, and also to construct the sheds.

QUESTIONS TO BE DECIDED:

- 1) Whether we are eligible to take GST input on Goods which are used for installation (Foundation) of plant and machinery?
- 2)Whether we are eligible to take GST input services which are used for installation (Foundation) of plant and machinery?
- 3) Whether we are eligible to take GST input on goods which are used for protection (by creating sheds) for plant and machinery?
- 4) Whether we are eligible to take GST inputs on services which are used for protection (by creating shed) for plant and machinery

Applicant contention of law: As per section 17(5)(C) & sec 17(5)(d) of CGST Act, 2017, there is no restriction to claim input, with respect to items related to plant & machinery.

Further, they stated that structural support and civil structure are covered as per the explanation to the said provisions. They submitted that the digging process is done with regard to creation of foundation for specific installation of plant & machinery.

They further highlighted that the word ‘support’ used in the explanation not only means support from base, but it also means support from all the ways i.e. creating sheds is to protect the plant & machinery. Further, they submitted the list of goods and services, which are to be used for their plant and machinery as input.

Andhra Pradesh - AAR ⑦ Maruti Ispat & Energy Pvt Ltd – Ord No AAR/AP/ 14(GST)/2018 dt 9/10/18

The **Hon'ble AAR of Andhra Pradesh vide ORDER NO. AAR/AP/14(GST)/2018 dated October 09, 2018 stated that the argument of the applicant to treat *civil structures as structural support for plant and machinery is not tenable.***

The civil structures under consideration is squarely falls other civil structures which is excluded as per the explanation to the proviso of Section 17(5) of CGST Act, 2017.

However, the application, on which clarification is sought for does not fall under the ambit of explanation to the proviso to the Section 17(5) of CGST/APGST Act, 2017.

Hence, the applicant is not entitled to claim the input tax credit on the goods and services.

Restrictions on ITC – Sec 17(5) - Blocked credits

8. Goods Lost, Stolen, Destroyed, written off or given off as gift or free samples:

• Not Allowed:

1. Goods lost/stolen – Impact of Insurance claims received
2. Year end write offs for shortages of stock/inventories – Post Board Approval
3. Goods distributed as Diwali/ year end gifts – ITC Eligible?
4. Treatment of free samples – Pharma Industry/FMCG or other practice of sending samples for approval by clients

Clarification issued by CBIC vide ***Circular No 92/11/ 2019-GST dated 7th March 2019*** for ***treatment of sales promotion schemes*** –

Free samples or gifts - Where the activity of distribution of gifts or free samples falls within the scope of “supply” as per ***Schedule I*** of the Act, the supplier would be eligible to avail of the ITC.

BOGO Schemes for FMCG or Pharma Industry - Such supplies may not be treated as 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.

ITC on Gifts to dealers/partner schemes/ incentive schemes?

**Karnataka Advance Ruling in Surfa Coats (India) Pvt Ltd –
GST – ARA – KAR-ADRG 28/2019**

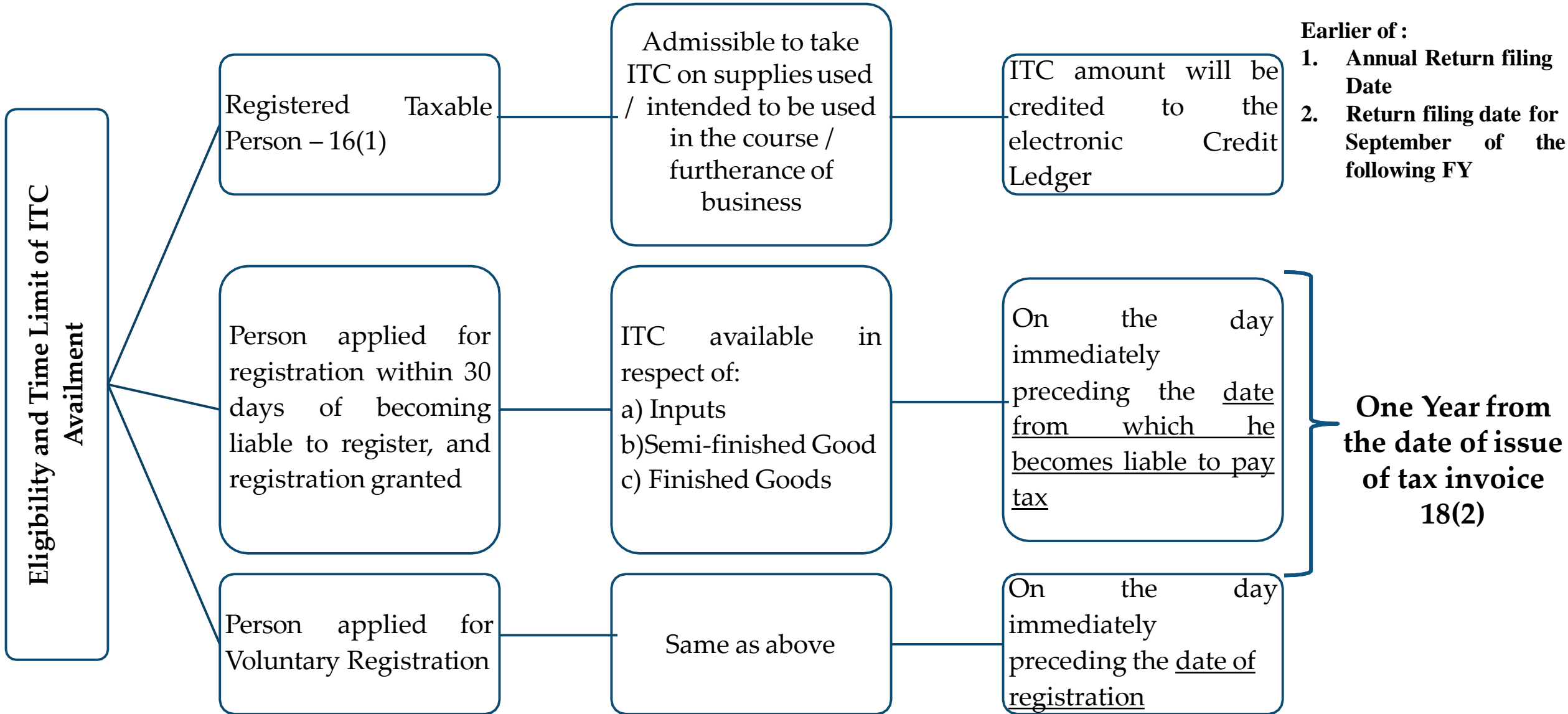
Karnataka Authority of Advance Ruling –

- ❖ Applicant frames incentive schemes to motivate dealers to lift their products. Some schemes read as ***Painters Schemes, Dealers Incentive Schemes, Gold Schemes, Foreign and Local Trip Schemes***, etc.
- ❖ The incentives are given ***subject to fulfillment of terms laid down in each such scheme***.
- ❖ **Observation –**
 - ***Section-17(5)(h)*** of CGST Act 2017 does not allow credit on any goods disposed by way of gift or free samples, ***whether or not in the course or furtherance of business***
 - As per Circular No.92/11/2019-GST dated 07.03.2019, issued by CBIC, wherein, at Para (A)(ii), ***“Input tax credit shall not be available to the supplier to the extent they are used in relation to the gifts or free samples distributed without any consideration”***

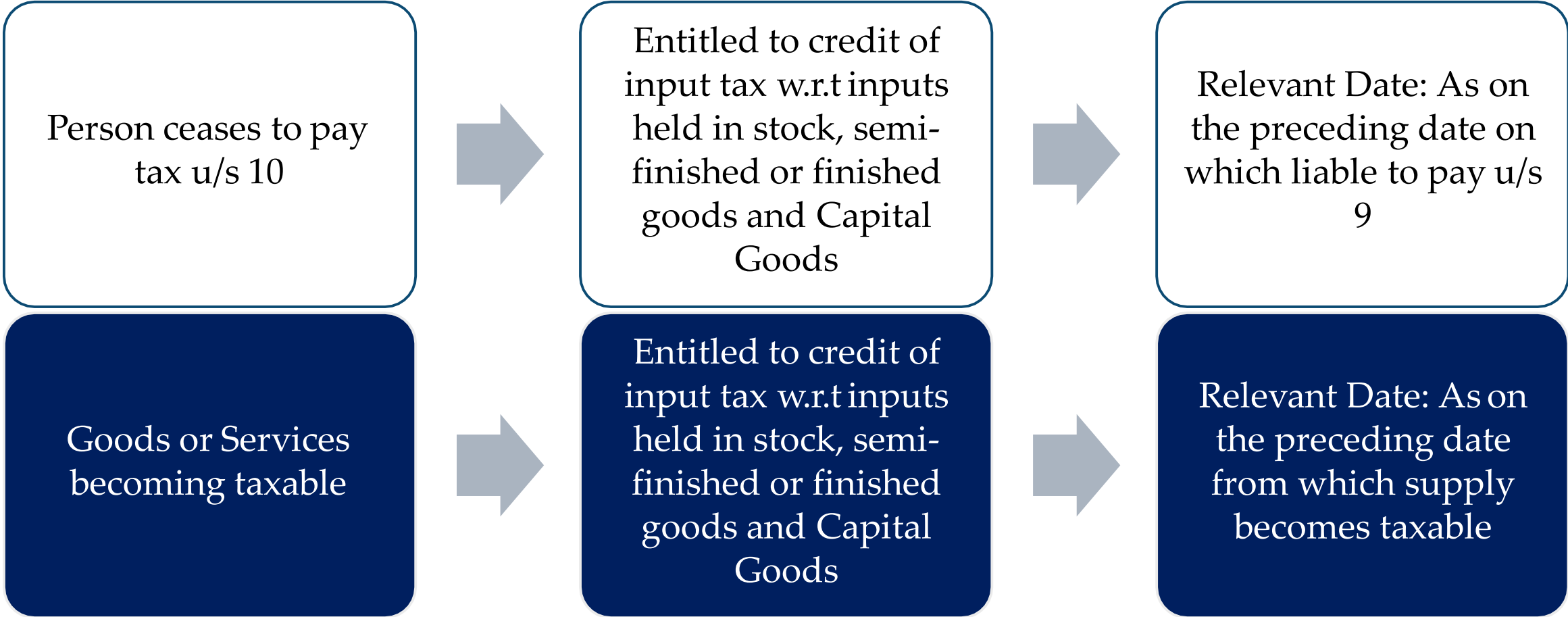
Restrictions on ITC – Sec 17(5) - Blocked credits

- Taxes on supply of goods or services paid u/s 10
- Goods or services or both received *by a non-resident taxable person* except on goods imported by him, shall not be allowed
- Goods or services or both used for personal consumption; and
- Any tax paid in accordance with the provisions of sections 74, 129 and 130.

Eligibility and Time Limit for Availing ITC



Switching from Composition / Exempt Supply to Normal Tax / Taxable Supply – Sec 18(1)

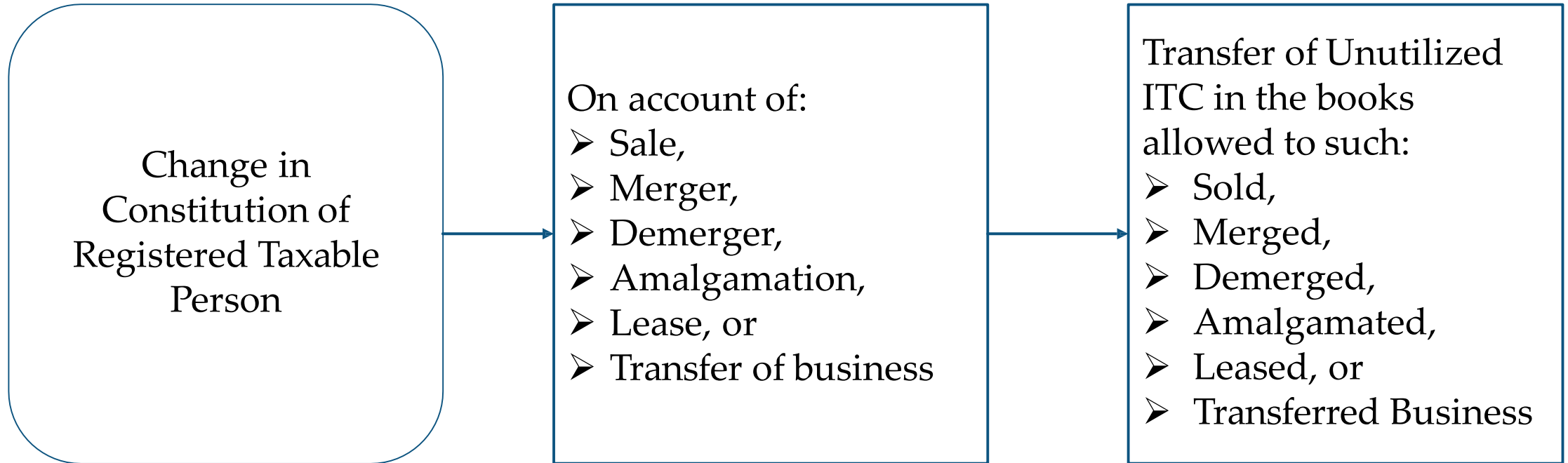


Credit on Capital Goods to be available after reducing 5% per quarter of a year or part from the date of invoice or such other document on which capital goods were received by taxable person

Conditions for claiming credit under – Sec 18(1)

- Purchase invoice should not be earlier than 1 year from the relevant date
- Declaration in Form GST ITC-01 to be filed within 30 days from the date of him becoming eligible
- Details of Inputs held in stock / semi finished or finished goods and capital goods to be furnished in Form GST ITC-01 within 30 days from the relevant date
- Declaration in Form GST ITC-01 to be certified by a practicing Chartered Accountant or Cost Accountant if the value of credit claimed exceeds Rs. 2,00,000

ITC – Change in Constitution of Taxable Person Sec 18(3)



- ITC shall be apportioned in the ratio of value of assets of the new units in case of demerger scheme
- Transferor to submit certificate from a practicing Chartered Accountant certifying whether the sale / merger / de-merger / amalgamation / lease / transfer has been done with specific provision for transfer of liabilities
- Transferee to furnish details of credit available in Form GST ITC-02

Switching from regular to over composition- Pay and Exit – Sec 18(4)

Eligible credit under earlier law carried forward in the return

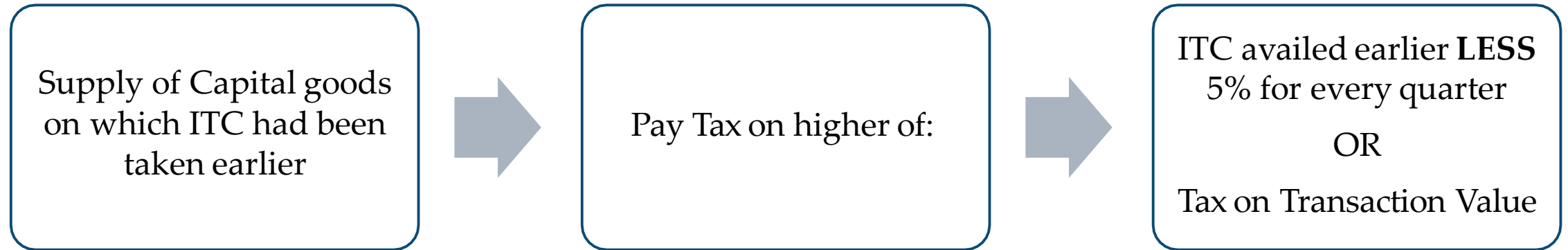
Amount equivalent to the credit of input tax in respect of input held in stock or input contained in semi-finished goods or finished goods held in stock and capital goods as on appointed day

Such amount shall be payable by debiting the electronic credit ledger or cash ledger

Balance in electronic credit ledger shall lapse

Declaration for input tax reversed to be submitted in Form GST ITC-3

Supply of Capital goods on which ITC already taken – Sec 18(6)



Note: Any credit wrongly taken shall be subjected to the recovery provisions

Purchase Date of Laptop	Jan 01, 2018
Purchase Price	50,000
Taxes Paid	9,000
Sale Date	July 05, 2020
Sale Value of Laptop	10,000

Particulars	Amount
Sale Value of Laptop	10,000
IGST @ 18%	1,800

Particulars	Amount
Input Tax Credit Availed	9,000
Less: 5% per quarter (For 11 quarters)	4950
Higher of Tax – Rs 1800 or ITC availed less 5% per Quarter i.e. Rs 4,950	4050

ITC Rules – Credit in Special Circumstances

- Credit of Capital Goods as provided to a person switching from composition to regular scheme and a person whose exempt supply becomes taxable supply (Section 18 (1)(c) and (d), shall be claimed after reducing such tax by 5% per quarter from the date of issue of invoice;
- A declaration within 30 days shall be furnished in all the scenarios as specified in Section 18 (1) for details relating to inputs, semi-finished, finished and capital goods as the case may be;
- CA/CMA certificate is necessary in case claim for input tax exceeds 2 lakhs;
- Matching of claims shall be done with GSTR-1 or GSTR-4 of the corresponding supplier.

Input Credits – Reversal of ITC – Common Credit- Rule 42 & 43

Input Tax Credit

T1

Used Exclusively
for Other than
Business

No ITC

T2

Used for sale of
Exempted
Products

No ITC

T3

Restricted Credits
(Sec 17(5) + Rate
Restriction

No ITC

T4

Exclusively used
for Taxable & '0'
Rated

100% ITC

C2

Common Supplies {
 $T - (T1 + T2 + T3 + T4)$ }

See Next Slide

ITC Rules (Rule 36-45) – Manner of Reversal

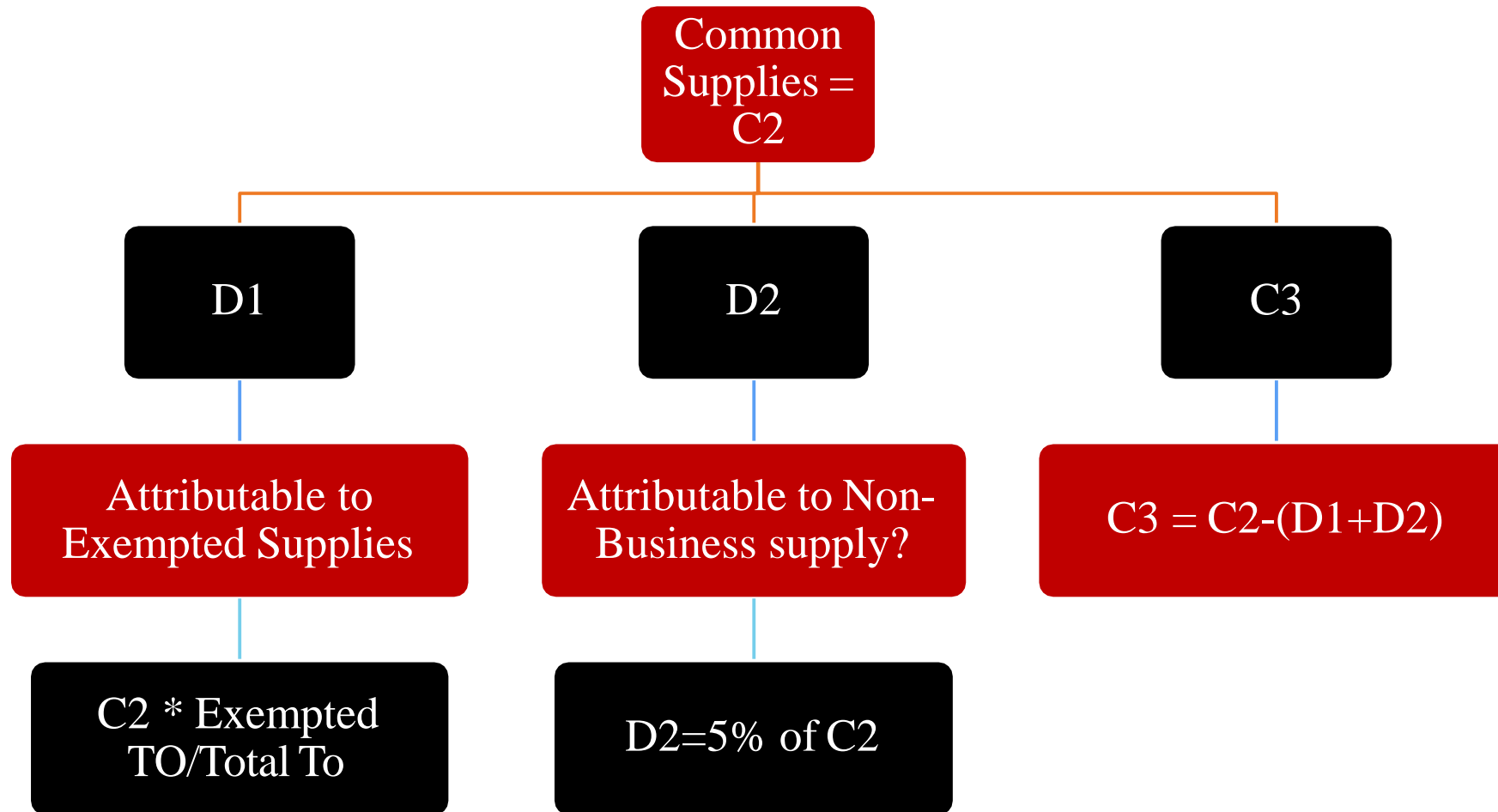
I. Reversal of credit where inputs or input services are used partly for business purposes or partly for effecting exempt supplies –

- Total input tax in a tax period to be denoted as 'T'
- Amount of input tax used exclusively for the purposes other than business 'T1'
- Amount of input tax used exclusively for effecting exempt supplies 'T2'
- Amount of blocked credit as per Section 17 (5) 'T3'
- Amount of input tax to be credited to electronic credit ledger ' $C1 = T - (T1 + T2 + T3)$ '
- Amount of input tax used exclusively for effecting taxable and zero rated supplies 'T4'
- T1, T2, T3, T4 to be determined at invoice level in GSTR-2
- Common Credit " $C2 = C1 - T4$ "
- Credit attributable towards exempt supplies " $D1 = C2 * (E/F)$ "

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 of the registered person during the tax period:
- Credit attributable towards non business purpose " $D2 = C2 * 5\%$ "

ITC Reversal – Rule 42



The amount equal to 'D1' and 'D2' shall be added to the output tax liability

ITC Rules – Manner of Reversal

- Remaining credit available for business purpose and for taxable and zero rated supplies “ $C3 = C2 - (D1 + D2)$ ”;
- C3 to be computed separately for CGST, SGST, UTGST and IGST;
- D1 and D2 shall be added to output tax liability provided invoice wise segregation has been made;
- Credit calculated on provisional basis shall be computed finally before due date of filing returns for the month of September following the end of the FY to which credit relates;
- In case amount calculated exceeds the provisional calculation the differential amount shall be added to the output tax liability and interest from the month of April of next FY till the date of payment to be paid;
- In case amount finally calculated is short of the provisional calculation, the differential amount shall be taken as credit in the month of September.

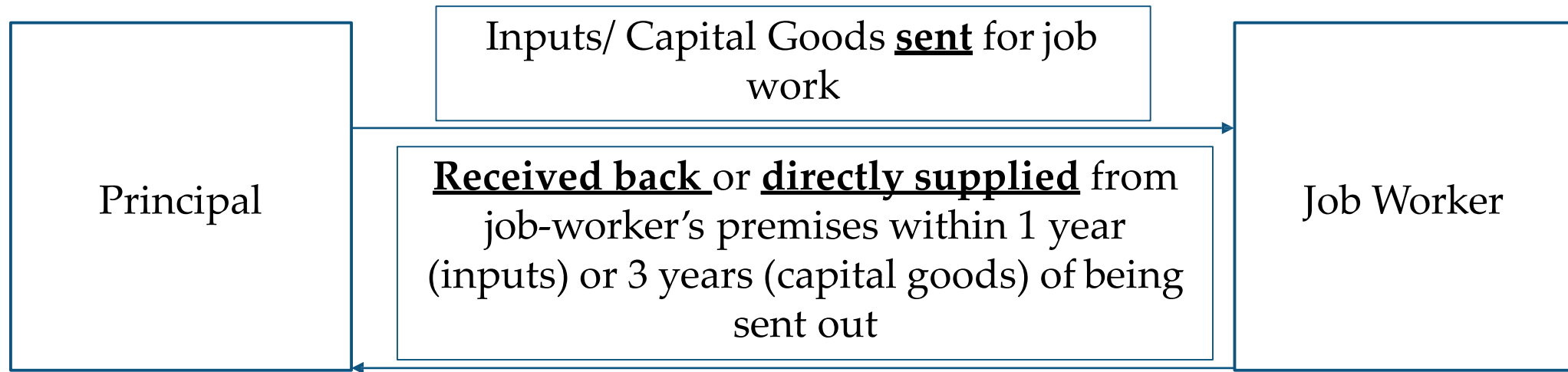
ITC Rules – Manner of Reversal- Illustration

Terms used in Rule	Particulars	Amount
T	Total Input Tax of Input and Input Services	500.00
T1	ITC for Non Business	100.00
T2	ITC for Exempt Supply	50.00
T3	ITC of Blocked Credits (Inputs Only)	25.00
C1	Valid ITC in ECL	
T4	ITC for Taxable Supply	200.00
C2	Common ITC	
E	Value of Exempt Supplies	2000.00
F	Aggregate Turnover	5000.00
D1	Value of ITC for Exempt Supply (From Common ITC)	
D2	Value of ITC for Non Business Purpose (From Common ITC)	
C3	Eligible ITC from Common ITC	
T4+C3	Total Eligible ITC for Use	

ITC Rules – Manner of Reversal- Illustration

Terms used in Rule	Particulars	Amount
T	Total Input Tax of Input and Input Services	500.00
T1	ITC for Non Business	100.00
T2	ITC for Exempt Supply	50.00
T3	ITC of Blocked Credits (Inputs Only)	25.00
$C1 = T - (T1 + T2 + T3)$	Valid ITC in ECL	325.00
T4	ITC for Taxable Supply	200.00
$C2 = C1 - T4$	Common ITC	125.00
E	Value of Exempt Supplies	2000.00
F	Aggregate Turnover	5000.00
$D1 = E/F * C2$	Value of ITC for Exempt Supply (From Common ITC)	50.00
$D2 = C2 * 5\%$	Value of ITC for Non Business Purpose (From Common ITC)	6.25
$C3 = C2 - (D1 + D2)$	Eligible ITC from Common ITC	68.75
$T4 + C3$	Total Eligible ITC for Use	268.75

ITC in respect of goods sent for job work – Sec 19

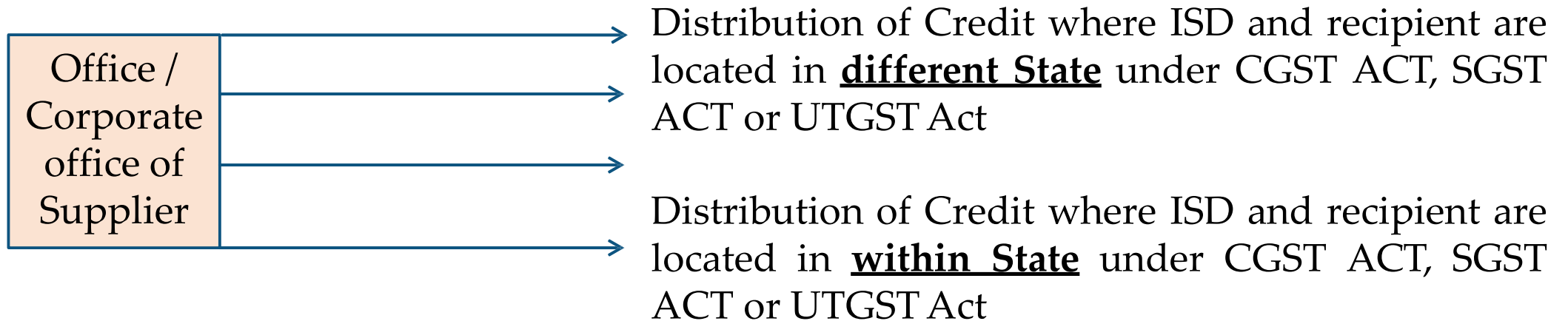


ITC available if the conditions and restrictions under job work are satisfied

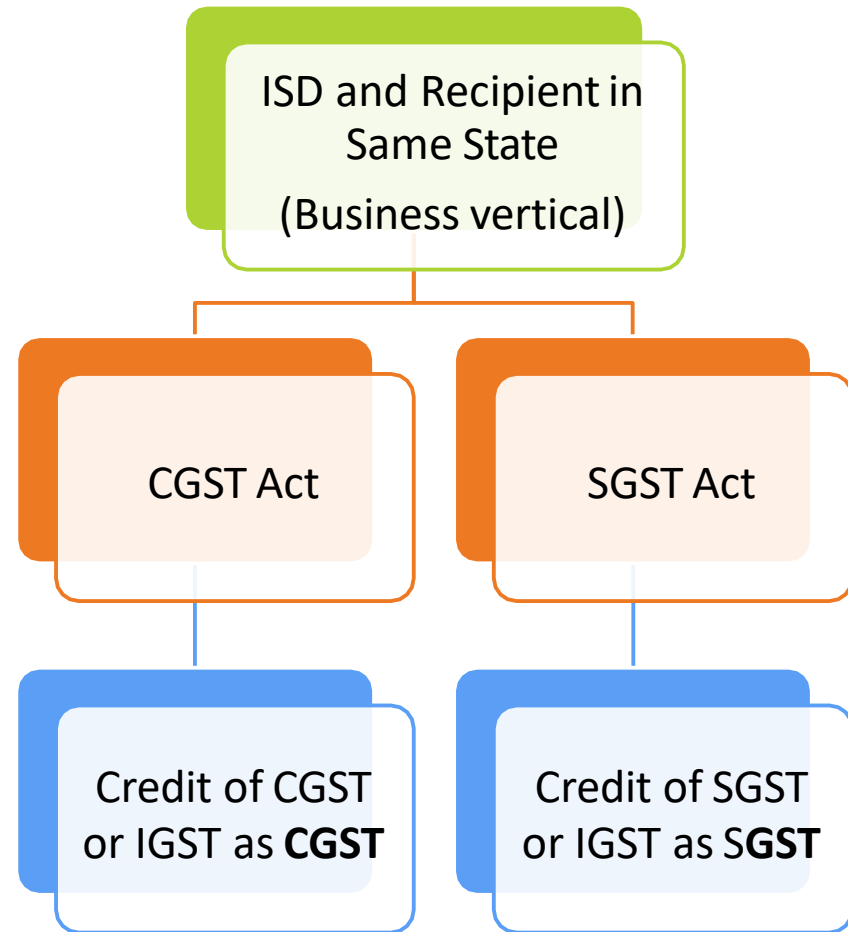
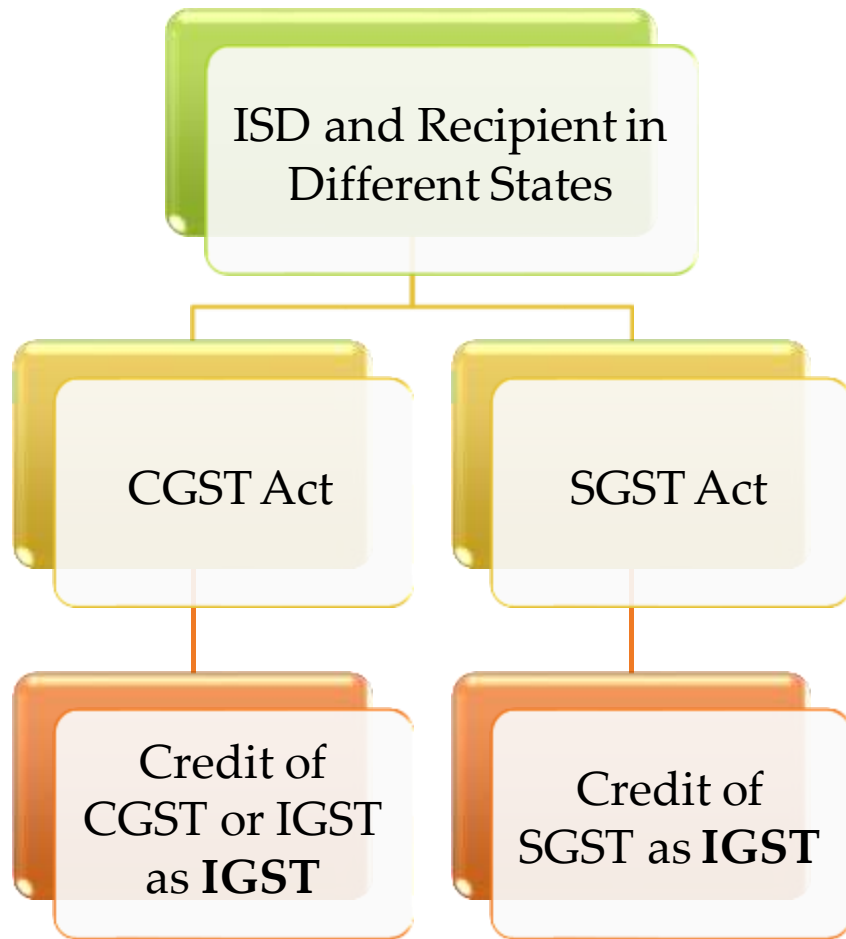
If not received / directly supplied in time: Principal to pay ITC availed + **Interest.**
He can reclaim this ITC on receiving back such inputs/ capital goods.

Input Service Distributor – Sec 20

- ITC is distributed to supplier of goods and / or services of same entity having the same PAN
- Deemed as ISD is a supplier of Service for distributing credit
- Common Services used at for



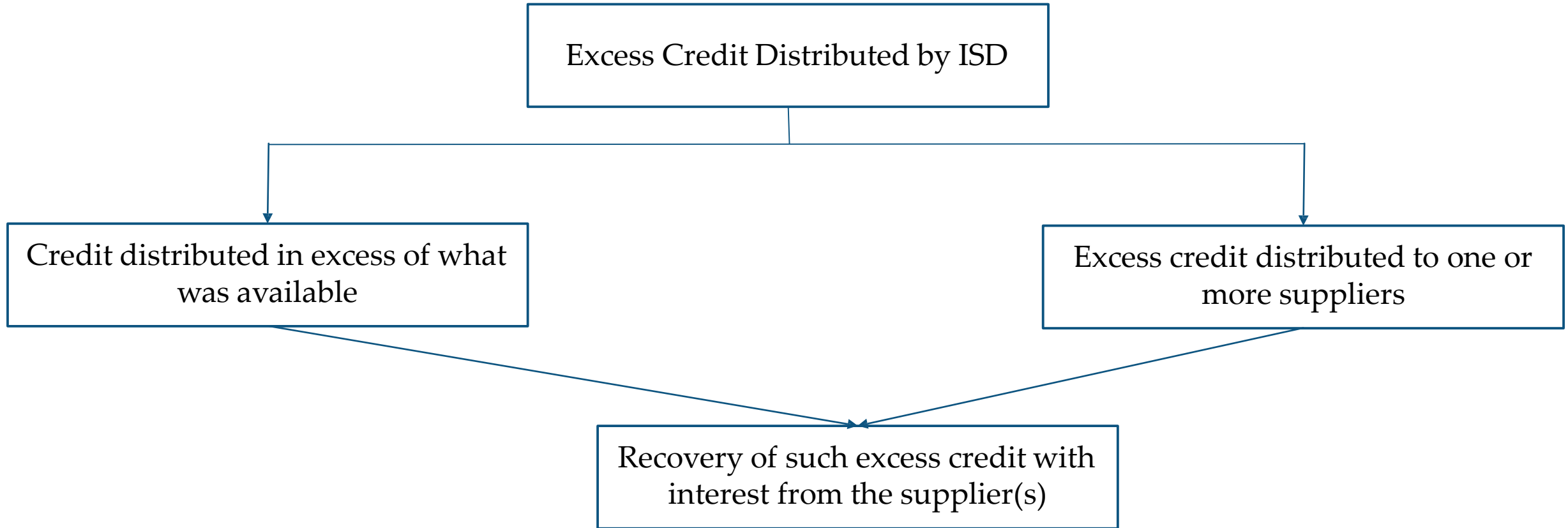
Input Service Distributor



Conditions to distribute credit : ISD

- Credit distributed to recipient through prescribed documents containing prescribed details. Such document should be issued to each of the recipient of credit.
- Credit distributed should not exceed the credit available for distribution
- Tax paid on input services used by a particular location (registered as supplier) has to be distributed only to that location.
- Credit of tax paid on input service used by more than one location who are operational is to be distributed to all of them based on the pro rata basis of turnover of each location in a State to aggregate turnover of all such locations who have used such services

Excess Credit distributed by ISD – Sec 21



ITC Rules – Credit Distribution Procedure in case of ISD

I. Distribution to one or more recipients – Section 20(2)(d)(e)

- Credit to be distributed to recipients whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason –

$$C1 = (t1/T)*C$$

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 of all recipients during the relevant period;

Thank you

