

GST Alert 07/2019-20

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ITC availment – A Quagmire

Government has come out with an important change in the way we avail input tax credit (ITC), this change is the result of and reaction to bogus billing cases mushrooming all over the country. This alert tries to explain what this change is and how should one implement this in their own environment. Currently we avail credits based on our books of accounts irrespective of the fact whether the supplier has filed corresponding returns and paid the due taxes. Reconciliation with GSTR 2A was being insisted only superficially and circulars were issued by the government clarifying that GSTR 2A is just a measure of trade facilitation. However, all good things are supposed to end so is this, government has introduced rule 36 (4) in CGST Rules and brought in linkage between credit availed and those reflecting in GSTR 2A. This is a step in the direction whereby credits reflecting in GSTR 2A will only be eligible in future.

Please note, this change is effective from 9.10.2019.

Restriction on Availment of Input Tax Credit {Rule 36(4) of CGST Rules, 2017}

1. Position before Rule 36 (4) was introduced

A. Para 4 of Press Release dated 18-10-18 states in face as follows:

*“It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of **taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis** in consonance with the provisions of section 16 of the Act”.*

B. Circular 59/33/2018 dt 04-09-2018 (Clarification on refund related issues), Para 2.3

*“It may be noted that there may be situations in which FORM GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier’s FORM GSTR-1 was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. Hence, here the **essence is to grant refund on the basis of hard copies of invoices.**”*

C. Section 43A of CGST Act, 2017

- Before we go through the provisions of section 43A, it is important to note that this piece of law has not yet been notified and therefore is not the law at this point in time.
- As per section 43A(3) for the purpose of availing ITC, procedure for furnishing GST returns shall be prescribed. And Further as per Section 43A(4), where outward supplies are not furnished by the supplier u/s 43A(3), procedure for taking such ITC (on the basis of details not uploaded by the supplier) shall be prescribed and such procedure may include placing a maximum cap of 20% of the eligible ITC uploaded by supplier and reflecting in GSTR-2A and Actual ITC which are not reflected in GSTR-2A whichever is lower (in respect of ITC not uploaded by Supplier).
- Hence rules could have been prescribed under section 43A (i.e. new simplified return scheme) for placing this 20% cap. It may not be out of place to mention that new return scheme earlier proposed from October 2019 has been postponed till April 2020 vide GST Council Meeting dated 20-09-2019.
- In recent GST Council Meeting dated 18.12.2019 they have further reduced percentage of 20% to 10% from date to be notified.

2. Provisions of Rule 36 (4) effective from 09.10.2019:

Government has issued notification No. 49/2019 dated 9-10-2019 which places restrictions on availment of ITC in respect of those Invoices which are not uploaded by supplier to the extent it exceeds 20% of Total eligible Input Tax credits shown in GSTR-2A of recipient. In other words facility of taking credits merely on the basis of books of accounts has ended, now one will be eligible to take credit only on the basis of ITC reflecting in GSTR 2A plus a maximum of 20% of the eligible ITC therein and no more. Further this 20% cap will be reduced to 10% from a date to be notified.

Rule 36 (4):-

“Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section

(1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”

Important points arising from this Rule:

- A. Input Tax Credits in respect of which Invoices or Debit Notes have been uploaded by Supplier on GST Portal shall be available.
- B. Input Tax Credits in respect of which Invoices or Debit Notes have not been uploaded by Supplier shall be restricted to maximum of 20% of ELIGIBLE ITC already reflecting in GSTR-2A.

3. Analysis of the provisions of the above Rule 36(4): -

- A. Input tax Credit Shall be restricted to 20% of **the eligible Input Tax Credit** available in respect of invoices/debit notes which have been uploaded by the supplier on GST Portal.

The said **restriction shall not be** applicable on following Input Tax Credits:

- (i) **IGST paid at the time of import of goods.**
- (ii) **GST paid under Reverse Charge basis including of Import of services.**
- (iii) **Tax Invoices issued by Input service Distributor.**
- (iv) ITC initially reversed due to non-payment of Consideration as per 3rd proviso to Sec. 16(2) and now availing the same after making payment.
- (v) Excess reversal of ITC restored back under Rule 42(2) after final calculation as per the said rule.
- (vi) Further, the calculation of 20% ITC would be based on **those invoices which are otherwise eligible for ITC and uploaded on GST Portal.** Those invoices on which ITC is not available under any of the provision (say under section 17 (5) would not be considered for calculating 20% of the eligible credit available.

- B. Input tax credit **to be availed** in respect of invoices/debit notes which have not been uploaded by the suppliers' u/s 37(1). :-

The restriction of 20% will be applicable only on the Tax invoices / debit notes on which credit is availed on or after 9th October, 2019.

As clarified vide Circular No. 123/42/2019– GST dated 11th November, 2019 ITC in respect of Tax Invoices/Debit notes of which details has not been uploaded by the suppliers shall not exceed 20% of the eligible ITC available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub- section (1) of section 37 **as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period.**

- C. So, while calculating Eligible Input tax Credit **as per books** in accordance with Rule 36(4) which ITC required to be excluded?

As, discussed in detail above, below mentioned ITC accounted in books is required to be excluded while comparing it with GSTR-2A as required by rule 36(4):

- (i) ITC not eligible u/s 17(5)
- (ii) ITC availed on the basis of Bill of Entry filed at the time of Import of goods
- (iii) ITC availed on the basis of Tax paid under Reverse charge mechanism
- (iv) ITC Taken on the basis of document issued by the Input service distributor.
- (v) ITC restored back as per 3rd proviso to Sec. 16(2) of The CGST Act, 2017 after payment to the supplier.
- (vi) Excess reversal of ITC restored back under Rule 42(2)/ Rule 43 after final calculation as per the provisions specified under the rule.
- (vii) ITC which is taken on Or Before 9th October, 2019

4. Suggestive steps one may follow where he decides to comply with provision of the rule 36(4) as discussed above?

First Month (For Eg. Let's say November, 2019) **in which the compliance of the above rule made:-**

- (i) Create Ledger of ITC-Deferred a/c of CGST, SGST/UTGST, IGST & CESS.
- (ii) Do Monthly Invoice-wise Reconciliation of ITC as per books as compare to reflected in GSTR-2A as discussed above.
- (iii) Unreconciled ITC Transfer from ITC Receivable to ITC-Deferred A/c.
- (iv) Now Transfer up to 20% of eligible ITC from ITC-Deferred A/c To ITC Receivable A/c.
- (v) Balance ITC shall be available as when as the same is reflected in GSTR-2A.
- (vi) All other conditions as to availability of ITC invoice, receiving of goods and services, making payment to the supplier within 180 days remain as it is and have to be complied with for availment of ITC.
- (vii) **In case any organisation wants to avoid falling into the daily reconciliation trap, they may choose to take ITC on the basis of GSTR 2A only and not go for 20% calculations**

5. Key Practical challenges in implementation:

Although, the government has issued a circular attempting to clarify the notification, there are certain unaddressed practical challenges in its implementation.

- A. **Period of restriction** – ‘20% of the eligible credit’ is to be restricted for each tax period or on a cumulative basis?
- B. Is it **mandatory to maintain monthly GSTR 3B vs 2A reconciliation**?
- C. Invoices may contain ITC’s used exclusively for taxable supplies (100% eligible credits) and used for **both taxable and exempt supplies (common credits)** subject to reversal under Rule 42. Then whether 20% is to be calculated on ‘eligible credit’ before reversal or after reversal?
- D. GSTR-2A does not reflect date of submission of GSTR-1 by vendor, so how to ascertain cut off date.
- E. What if the registered person purchasing the goods/services from **the suppliers who have exercised an option to file quarterly GSTR-1 as per provisions of Section 37(1)** r.w. Rule 59 of CGST Rules, 2017?

6. Conclusion:

Sum and substance of this whole exercise to drive a point home (or to work!!), that businesses should start identifying non-compliant suppliers and do constant follow ups with them for uploading invoices within time frames else risk losing ITC, this exercise will also force recipients to learn play by new rules as this rule will become a norm when new return forms are notified (which is expected to be in place from 1st Apr '2020).

Having said so, all laws and especially tax laws must be simple to understand for the taxpayers and easy for the tax authorities to implement, converting them into an everyday puzzle goes against the very spirit with which GST was introduced. Every accountant worth his salt would know just by reading the above (coupled with the new return forms) that his work life will be lost to perennial reconciliations. Legality of this provision has been challenged in various High Courts and outcome thereof is awaited, however courts don't do assessments, officers do and therefore even if courts say otherwise, this piece of law will turn GST into a one big quagmire and haunt everyone and increase compliance cost substantially.

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