

RULE 36(4)

LEGAL VALIDITY & COMPLIANCE

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RULE 36(4)

- 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.*

CLARIFICATIONS BY CIRCULAR NO 123 DT 11/11/2019

Self compliance

No effect on
RCM credit ,
IGST on Import,
ISD credit

Applicable on Invoices
On which Credit
availed after
09/10/2019

Restriction on
aggregate basis not
supplier wise

Auto Populated GSTR
2A as available on due
date of sec 37(I) has
to be considered

Balance ITC can be
claimed in succeeding
months provided
invoice uploaded by
supplier.

EFFECT OF COMPLIANCE

Rs in lakhs

B2B ITC as per books	Eligible ITC as As per 2A	120% of eligible ITC	Itc to be availed on B2B	ITC deferred
A	B	C	D= Lower of A & C	E=A-D
10	7	8.4	8.4	1.6
10	8.33	10	10	0
10	12	14.40	10	0

ISSUES

Date of upload not available in GSTR 2A

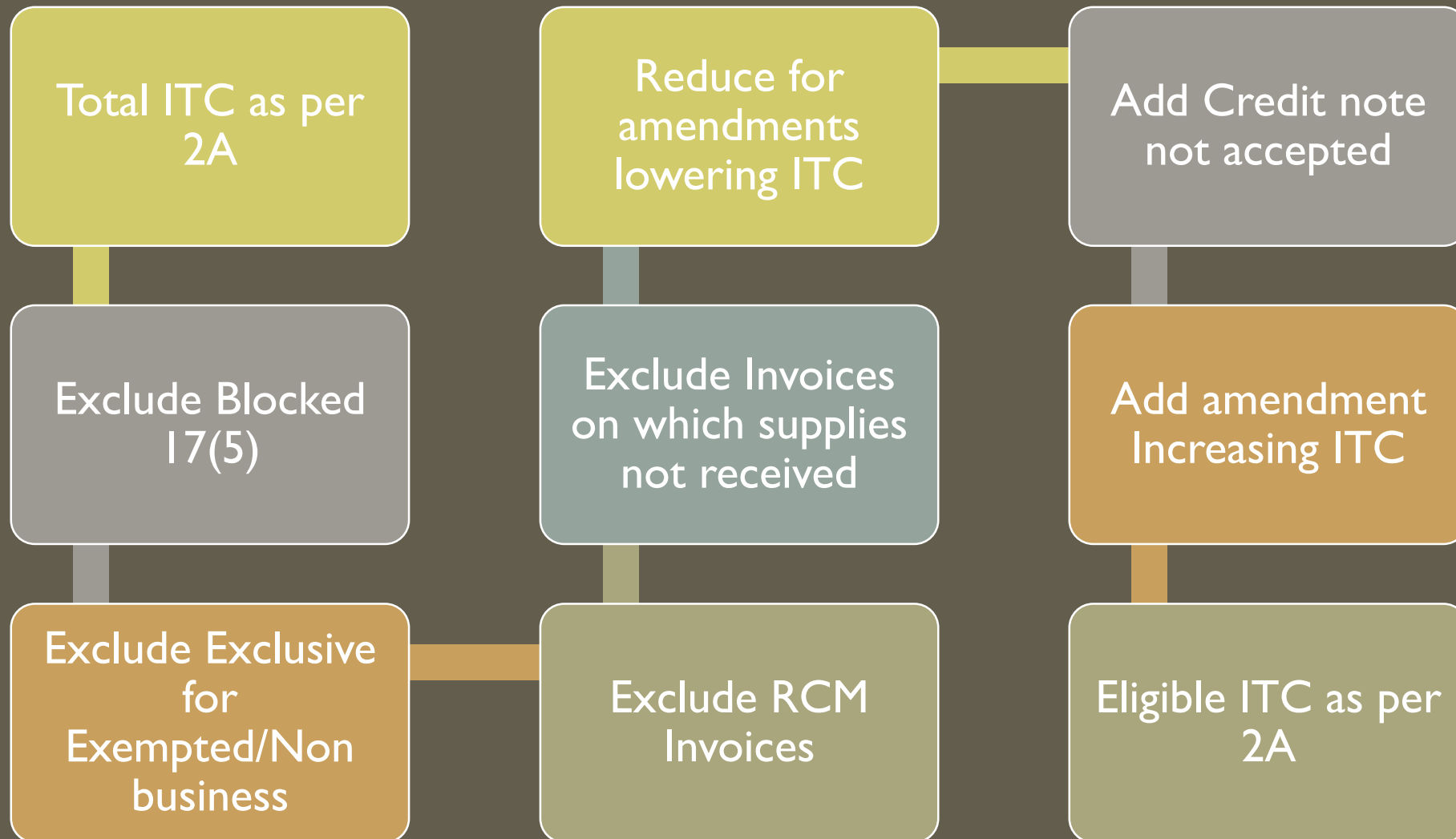
GSTR I filed late gets updated in GSTR 2A of that tax period only

No clarification regarding Suppliers filing quarterly Return

Invoice of one month included In Gstr I of some other month gets updated in 2A of reporting month

Arriving at eligible Credit as per 2A

ELIGIBLE ITC AS PER 2A



AGGREGATE YEAR TO DATE METHOD

Calculation for Jan 19 Month	
A	Total B2B ITC as per books (Oct 19 to Jan 19)
B	Total eligible ITC as per 2A (Oct 19 to Jan 19 (determined according to previous sheet)
C	Amount ITC availed on Invoices Issued prior to Oct 19 appearing 2A prior to Oct 19
D	120% OF (B+C)
E	Total B2B ITC availed as per 3B Oct 19 to Dec 19
F	B2B ITC to be availed in JAN 19 3B = (Lower of A & D) Minus E

ULTRA VIRES ?

POWER TO MAKE RULES (SEC 164)

- The govt may on **recommendation of Council** by notification make rules for carrying out the provisions of the Act .
- **Without prejudice to the generality of the provisions of sub-section (I)**, the Government may make rules for
 - **all or any of the matters which by this Act are required to be, or may be, prescribed**
 - **or in respect of which provisions are to be or may be made by rules**

SEC 16(I)

- Every registered person shall,
- **subject to such conditions and restrictions as may be prescribed** and
- in the manner specified in section 49,
- be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business
- and the said amount shall be credited to the electronic credit ledger of such person.

SEC 16(2)

- Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—
 - he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such **other tax paying documents as may be prescribed**
 - he has received the goods or services or both
 - subject to the provisions of *section 41* or *section 43A* the tax charged in respect of such supply has been actually paid to the Government,
 - he has furnished the return under section 39

OTHER PROVISIONS

- Sec 38(4) Read with Rule 60 allows adding of Missing Invoices By recipient
- Sec 41 provides “Every registered person shall, subject to **such conditions and restrictions as may be prescribed**, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger”
- Sec 39 read with Rule 59 allow communication of Missing Invoices to suppliers
- Sec 42 & sec 43 read with Rule 69 , Rule 70 & Rule 71 prescribes matching process and reversal/payment of unmatched credit

SEC 43A

- Overrides section 37 , 38 , 41, 42 , 43 and 16 (2)
- Prescribes new 'simplified returns'
- Restrict itc on invoice not uploaded to 20% of invoices uploaded
- Not yet notified

RULE 36(4) VS RULE 43A(4)

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.]*

RULE 43A(4)

- *The procedure for availing input tax credit*
- *in respect of outward supplies **not furnished under sub-section (3)** shall be such as may be prescribed and such procedure may include*
- *the maximum amount of the input tax credit which can be so availed, **not exceeding twenty per cent** of the input tax **credit available**, on the basis of **details furnished by the suppliers** under the said sub-section.*

DECISIONS IN 27TH GST COUNCIL MEETING 04/05/2018

MINUTE BOOK

Annexure 4

Return Design - Fusion Model

- Periodicity of return
- Flow of documents and information
- Transition
- Provisional input tax Credit
- Credit matching
- Partial Payment of tax
- Other steps for simplification

Periodicity of return & Flow of documents

- All taxpayers to file monthly return except composition dealers and NIL returns which would be quarterly.
- Staggering of the dates of returns - Large taxpayers by 20th, Small by 25th and Nil quarterly.
- Unidirectional flow of documents from seller with continuous upload of invoice with viewing and locking by the buyer to control input tax credit.
- Locking may be deemed to reduce compliance.

DECISIONS IN 27TH GST COUNCIL MEETING 04/05/2018

MINUTE BOOK



Transition to be in three stages

- **Stage 1:** GSTR 3B + GSTR 1 plus any extra information to close cycle.
- **Stage 2:** GSTR 3B+ new return.
- **Provisional Credit available.** (Information on missing and rejected invoices/credit thereon may be collected and cost imposed to expedite transition) .
- **Stage 3:** Only the new return.
- GSTR 3B withdrawn and provisional credit comes to an end.

Recovery of tax and reversal of credit

- There shall be not be any automatic reversal of credit.
- In case of non-payment of tax, recovery shall be first made from the seller.
- Where recovery is not feasible due to seller being missing or assets not being available, reversal of credit shall be carried out.
- Both recovery of tax from seller or reversal of credit from buyer shall be based on notice and order.
- To control non-payment of tax, upload of invoice shall be controlled by making rules. Analytics to be used to identify new registrants with high risk and build safeguards to control credit.

DECISIONS IN 28TH GST COUNCIL MEETING 21/07/2018

and no input tax credit would also have a facility to file return through SMS. Facility for continuous upload of invoices by the supplier and viewing by the recipient along with tax payment status of an invoice shall also be available. On locking those invoices, the recipient can avail the input tax credit. In cases where no return is filed after uploading of the invoices, it shall be treated as self-admitted liability of the supplier, after the due date of filing of that return.

18.3. Invoices uploaded by the supplier before 10th of the next month shall be posted for viewing by the recipient by 11th of next month. He stated that earlier the paper invoice was adequate to avail the credit but now the uploaded invoices would become a necessary and mandatory condition for availing credit and to that extent, one was moving towards system-based credit. Hence credit control would improve. The IT tool would be provided for


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MINUTE BOOK

continuous uploading of invoices. IT tool/facility for matching of the invoices downloaded from the viewing facility of the buyer shall also be provided. There shall be a system for locking of invoices which basically means acceptance of transactions by the recipient before filing of his return. Locked invoices cannot be amended. Provision for pending invoices facility was proposed to be incorporated in the return in view of the large tax payers, particularly large manufacturing setups, because they have a cycle in which they examine the

CONCLUSION

- Unless Rule 43A is notified , Sec 37 , 38 , Sec 41 , sec 42 & Sec 43 are in force
- Express Provisions under said sections on
 - Claiming Of ITC on Invoices not uploaded by Supplier
 - Opportunity to recipient to add such Invoices and corresponding communication to supplier

Rule 36(4) curtails recipients right to claim ITC on Missing Invoices , even in case of delayed filing by supplier or quarterly filing by supplier in contravention of said provisions and Hence seems to ultra vires Sec 38 , sec 41 ,Sec 42 and section 164 of The Act .

THANK YOU 😊