

GST Alert -ITC dated 18.10.2019

Circular on eligibility of un-reconciled ITC

Vide notification no. 49/2019-CT 09. 10.2019, certain amendments were made to CGST Rules, 2017. One of the amendments relates to 'the imposition of restrictions on availment of ITC by the recipients in cases where details of outward supplies are not furnished by the suppliers in the Statement (Form GSTR-2A) under Sec 37 of the CGST Act, 2017. The following sub-rule (4) has been inserted under Rule 36.

"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"

Essence of the amendment is that in respect of the inward supplies where invoices have been received but the suppliers have not filed GSTR-1 or have not uploaded such invoices in the GSTR-1, the recipient is not entitled to avail the entire credits. The recipient can avail only maximum of 20% of the eligible credit which is reflecting in the GSTR-2A on the common portal in respect of invoices not uploaded by the supplier. For example:

Illustration 1

Let us assume that a recipient has invoices involving a total ITC of Rs. 20 lakhs against the inward supply invoices during the month. The details of the transactions are tabulated below:

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Total credit available based on the inward supply invoices available	Credit auto populated in Form GSTR 2A	Total eligible credit out of the auto populated invoice (after excluding ineligible credits, if any)	Total credit in respect of which invoice has not been uploaded	20% of the eligible credit available with respect of the non-uploaded invoice	Total credit entitled to the recipient
(A)	(B)	(C)	(D)= (A)-(B)	(E)= 20% of (C)	(F)= (C) + (E)
20L	10L	10L	10L	2L	12L
20L	15L	14L	5L	2.8L	16.8L

Illustration 2

Description	CGST	SGST	IGST	Remarks
Eligible ITC as per invoices	1000000	1000000	500000	Since more than 80% of the credit is uploaded, the assessee is entitled to take full credit as per the invoices available with him
GST reflected in 2A	900000	900000	450000	
% of credit reflected in 2A	90%	90%	90%	
Entitlement as per the new Rule 36(4)	1000000	1000000	500000	
GST paid under RCM	100000	100000	300000	
IGST paid on import	0	0	500000	
Total entitlement	1100000	1100000	1300000	

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Applicability of Rule 36(4) of CGST Rules, 2017

The effective date of this rule is from 09.10.2019 as per the said notification. A question may arise as to whether this would apply on the GSTR 3B to be filed in October for September 2019 or from the October return to be filed in November. It is informed, that the newly inserted rule was non-existent during the tax period September 2019. However, the credit for the inward supplies made during the month of September is availed in GSTR3B filed on October 2019. Therefore, it is debatable whether the rule would apply in September or October return. As a precautionary measure, it is suggested to implement the said rule in September return filed in October 2019.

Effects of the amendment

1. While applying the newly inserted rule, the credit on tax paid under reverse charge need not be accounted for calculation of 20% ITC since the rule talks about the credit auto populated in GSTR 2A. Further, if GSTR 2A has both eligible and ineligible credit due to Section 17(5), for the purpose of calculation of 20% ITC, only eligible credit has to be considered.
2. As per the press release dated 20.09.2019 this restriction on availment of input tax credit by the recipients in cases, where details of outward supplies are not furnished by the suppliers in the statement under section 37 of the CGST Act, 2017 was made, in order to nudge taxpayers to timely file their statement of outward supplies. Therefore, the recipient must ensure that the supplier has filed return furnishing the requisite details for availing credit.
3. In any case, as per Section 43A (6) (which is yet to be implemented), both recipient and supplier are jointly and severally responsible to pay tax or reverse ITC availed. Therefore, it is advised not to have dealings with defaulters and to do monthly reconciliation before availing credit to avoid interest liability.

Considering the above amendments, we advise you to take ITC of only those eligible credits, as reflected in GSTR 2 A and follow up with the suppliers who have not filed their returns to file the same as early as possible.

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