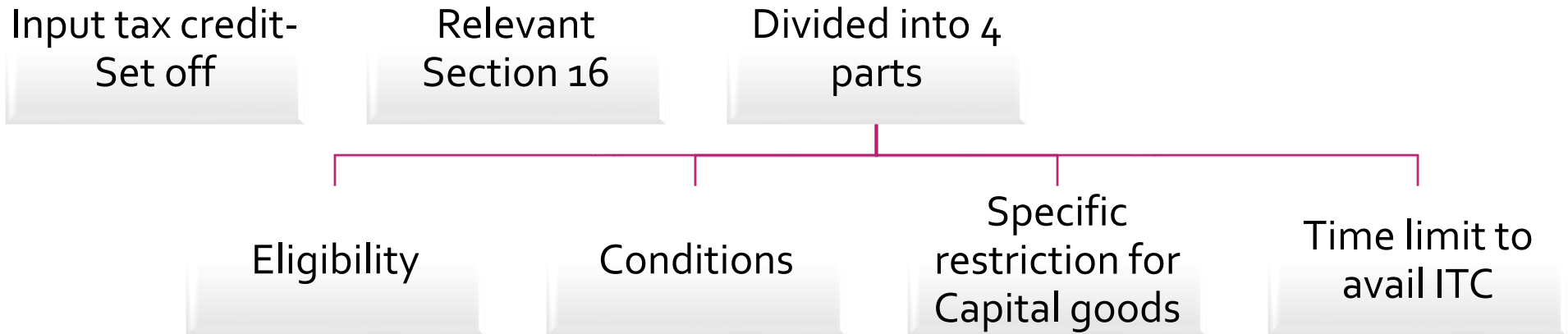


**ARE YOU AWARE
OF 6 BIG ISSUES
IN ITC AS NOTIFIED
RECENTLY**



Background



Eligibility

- 16. (1) *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.*

Goods or services

Used or intended to be
used

In the course or
furtherance of business

Conditions

- Recipient is in possession of tax invoice/Debit Note/other prescribed tax paying document
- Supplier has filed GSTR 1
 - And such details have been communicated to recipient
- Recipient has received goods or services
- Tax actually paid by the supplier
 - Cash
 - ITC admissible
- Filing of GSTR-3B by recipient

+

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○

Additional condition wef 1.10.2022

- *(ba) the details of input tax credit in respect of the said supply **communicated** to such registered person under **section 38** has not been restricted*

Role and scope of Section 38...

- *38. (1) The details of outward supplies furnished by the registered persons under subsection (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.*

38 (2) The auto-generated statement under sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

...Role and scope of Section 38

- *(i) by any registered person within such period of taking registration as may be prescribed; or*
- *(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or*
- *(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or*
- *(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or*
- *(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or*
- *(vi) by such other class of persons as may be prescribed*

Before the availment

- Interpretation
- Representation
- Writ

At the stage of availment

- Interpretation of scope of S. 38

Audit/Enquiry

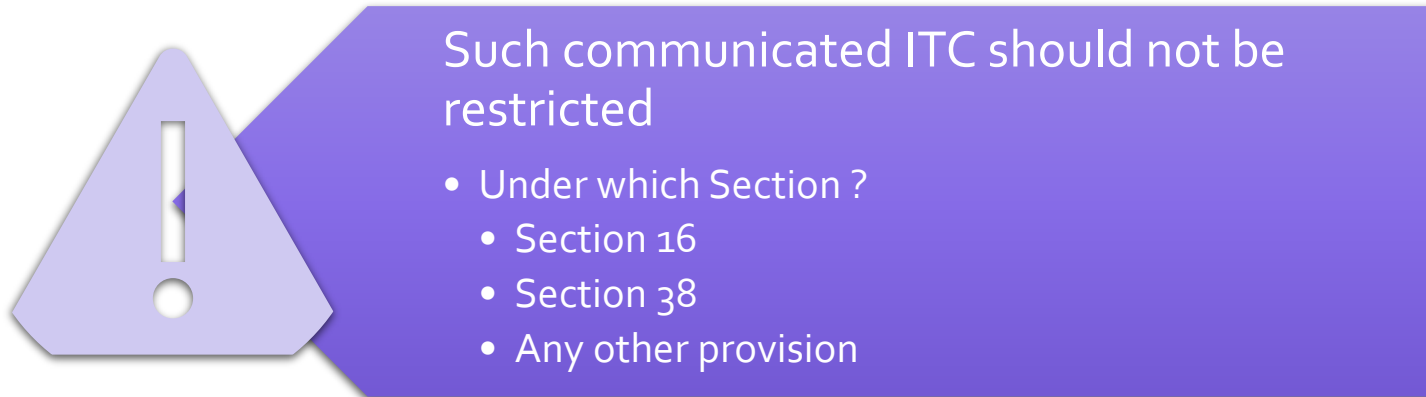
- Subjectivity of 16(2)(ba)
- Section 73/74

Adjudication

- Submission
- Challenge

Appeals

Interpretation – Before availment



Powers to impose conditions and restrictions in furnishing the details of outward supplies

- Background** ☹ Sec. 37 provides for furnishing details of outward supplies
- Current Scenario** ☹ Currently, Sec. 37 provides that registered person shall furnish the details of outward supplies and such details shall be communicated to recipient
- Change in Law** ☹ Sec. 37(1) is amended and provides powers to **prescribe conditions and restrictions** for furnishing the details of outward supply and for communication of the details of such outward supplies to concerned recipients
- WEF** ☹ With effect from 1st October 2022
- Impact** ☹ Tax-payer will have to be careful about conditions and restrictions as and when they are prescribed

Substitution of Sec. 41 providing for availment of ITC

Background

- 🕒 Sec. 41 provides the manner for availing ITC

Current Scenario

- 🕒 The mechanism for availment of ITC was based on 'provisional basis' and subject to conditions and restrictions as may be prescribed

Change in Law

- 🕒 If ITC is availed by a recipient in respect of supply of goods or services for which tax has not been paid by supplier then such recipient shall be liable to reverse such ITC along with interest
- 🕒 However, such recipient can re-avail the ITC reversed by him if the supplier makes payment of the tax
- 🕒 The provision is silent on re-credit of interest

WEF

- 🕒 With effect from 1st October 2022

Impact

- 🕒 The concept of claiming ITC on 'provisional basis' is done away with

CHANGES IN TIME LIMITS

Extension of time limit to avail ITC

Background

- 🕒 Sec. 16 provides for eligibility and conditions for availment of ITC

Current Scenario

- 🕒 Sec.16(4) prescribes registered person shall not be entitled to take ITC after earlier of the following:
 - the due date of furnishing of the GSTR-3B for the month of September following the end of FY to which such invoice or debit note pertains or
 - furnishing of the relevant annual return

Change in Law

- 🕒 Now a registered person shall not be entitled to take ITC after earlier of the following:
 - 30th November of succeeding FY or
 - Furnishing of the relevant annual return

WEF

- 🕒 With effect from 1st October 2022

Impact

- 🕒 The time limit to avail ITC is extended till 30th November of the succeeding FY instead of 20th October of the succeeding FY as of now

Background

- 🕒 Sec. 34 provides for issuance and reporting of debit and credit notes

Current Scenario

- 🕒 Sec. 34(2) provides the time limit to furnish details of credit note as earlier of the following:
 - The due date of return for the month of September of the FY succeeding the FY to which credit note pertains
 - The date of furnishing of the relevant annual return

Change in Law

- 🕒 Sec. 34(2) is amended to allow furnishing the details of credit note:
 - 30th November of the FY succeeding the FY to which credit note pertains
 - The date of furnishing of the relevant annual returnwhichever is earlier

WEF

- 🕒 With effect from 1st October 2022

Impact

- 🕒 The time limit to furnish the details of credit notes in respect of any supply made in a FY is extended till 30th November of succeeding FY instead of 20th October of the succeeding FY as of now

Background

- 🕒 Sec. 37 provides for furnishing details of outward supplies

Current Scenario

- 🕒 Currently, Sec. 37(3) provides that no rectification of error or omission of details furnished in GSTR-1 shall be done after:
 - The due date of return for the month of September of the FY succeeding the FY
 - The date of furnishing of the relevant annual return whichever is earlier

Change in Law

- 🕒 The following time limit has been provided for rectification of error or omission of details of GSTR-1:
 - 30th November of the FY succeeding the FY
 - The date of furnishing of the relevant annual return whichever is earlier

...Extension of time limit for rectification of errors in GSTR-1

WEF

🕒 With effect from 1st October 2022

Impact

🕒 The time limit to make rectifications of errors in respect of the details of outward supplies (GSTR-1) is extended till 30th November of succeeding FY instead of 20th October of succeeding FY as of now

Reduction in time limit to furnish returns by Non-resident taxable person

Background

- ⌚ Sec. 39 states that all registered persons are required to furnish a monthly return in such form and manner as may be prescribed

Current Scenario

- ⌚ As per Sec. 39(5), a non-resident taxable person is required to furnish return (GSTR-5) for a particular month within 20 days after the end of such month

Change in Law

- ⌚ Sec. 39(5) is amended stating that a non-resident taxable person is required to furnish return for a particular month within 13 days after the end of such month

WEF

- ⌚ With effect from 1st October 2022

Impact

- ⌚ The time limit to furnish return (GSTR-5) by Non-resident taxable person is reduced to 13th day of subsequent month in place of 20th day of subsequent month

Extension in time limit for rectification TCS returns

Background

- 🕒 Sec. 52 provides for mechanism of TCS by ECO

Current scenario

- 🕒 Sec. 52(6) allows an ECO to make rectification in TCS Return (GSTR-8) till earlier of the following dates:
 - Due date of furnishing TCS Return for the month of September following the FY to which TCS Return pertains
 - Date of furnishing Annual Return

Change in law

- 🕒 The time limit for rectification of any omission has been extended to earlier of the following dates:
 - 30th November following the FY to which TCS Return pertains
 - Date of furnishing Annual Return

WEF

- 🕒 With effect from 1st October 2022

Impact

- 🕒 This will provide additional time to ECO for rectification of TCS returns as time limit is extended from 10th October of succeeding FY to 30th November of succeeding FY

Time limit to claim refund by specified person increased to 2 years

Background

- ⌚ Sec. 54(2) allows specific persons to claim refund

Current scenario

- ⌚ The time limit to claim refund by Specialized agency of UNO or notified Multilateral Financial Institution and Organization or Consulate or Embassy of foreign countries or any other person is within **6 months (extended to 18 months as per Not. 20/2018-CT dated 28.03.2018)** from the last day of the quarter in which they receive the inward supply

Change in Law

- ⌚ Now the time limit to claim refund by Specialized agency of UNO or notified Multilateral Financial Institution and Organization or Consulate or Embassy of foreign countries or any other person is increased to **2 years** from the last day of the quarter in which they receive the inward supply. Also, Not. 20/2018-CT dated 28.03.2018 is rescinded

WEF

- ⌚ With effect from 1st October 2022

Impact

- ⌚ Now specified person will get additional time limit from existing 18 months to 2 years

Clarity in computing time limit to claim refund of supplies to SEZ

Background

- ⌚ Explanation 2(b) to Sec. 54(14) defines relevant date i.e. the date from which the time limit to claim refund should be computed

Current scenario

- ⌚ The relevant date for computing time limit for claiming refund in respect of supplies to SEZ was not specifically provided and therefore the “relevant date” as per residuary provision i.e. date of payment of tax was considered

Change in Law

- ⌚ The time limit in case of refund of with payment/without payment in respect of supplies made to SEZ Unit/Developer is to be reckoned from the due date for furnishing GST return U/s 39 (GSTR-3B)

WEF

- ⌚ With effect from 1st October 2022

Impact

- ⌚ This will provide clarity for reckoning the time limit for computing refund in respect of supplies made to SEZ Unit/Developer

OTHER IMPORTANT AMENDMENTS

Cancellation of GST registration...

Background

- 🕒 Sec. 29 provides powers to GST Authorities for cancellation or suspension of GST registration

Current Scenario

- 🕒 Currently, GST Authorities can cancel GST registration if:
 - **Composition Tax-payers:** fail to furnish returns for 3 consecutive tax periods
 - **Other Tax-payers:** fail to furnish returns for a continuous period of 6 months

Change in Law

- 🕒 GST Registration of a person is liable to be cancelled if:
 - **Composition Tax-payers:** Not furnished the GST return for a FY beyond 3 months from the due date of such return
 - **QRMP Tax-payers:** Not furnished the GST return for a continuous two tax periods
 - **Other Tax-payers:** Not furnished the GST returns for continuous period of 6 months

...Cancellation of GST registration

WEF

☑ With effect from 1st October 2022

Impact

- ☑ Now GST registration of composition dealer can be cancelled if he fails to furnish GST returns for a FY beyond 3 months from the due date of such return
- ☑ New criteria is prescribed for QRMP tax-payer where GST registration can be cancelled if he fails to furnish the GST return for a continuous two tax periods

Sequential filing of GSTR-1

Background

- 🕒 Sec. 37 provides for furnishing details of outward supplies

Current Scenario

- 🕒 Currently, there is no restriction in filing GSTR-1 of subsequent period even if GSTR-1 of previous periods are not filed (even though GST portal does not permit)

Change in Law

- 🕒 A new sub-Sec. (4) is inserted in Sec. 37 stating that if statement of outward supplies (GSTR-1) is not filed for a particular period, then the statement of outward supplies for next period cannot be filed
- 🕒 However, Govt. may issue Not. to notify the class of persons who can furnish the statement of outward supplies even if such persons have not furnished the details of outward supplies for one or more previous tax periods

WEF

- 🕒 With effect from 1st October 2022

Impact

- 🕒 Sequential filing of details of outward supplies was already implemented on GSTN portal. Now, this has been expressly included in the law book

Late fee can be imposed for delay in filing TCS Returns

Background

- ⌚ Sec. 47 deals with levy of late fees due to delay in furnishing various returns

Current Scenario

- ⌚ U/s 47(1) any registered person who fails to furnish the details of outward or inward supplies required U/s 37 (GSTR-1) or 38 (inward supply details) or 39 (GSTR-3B) or 45 (final return) till the due date shall pay a late fee of Rs. 100 every day during which such failure continues, subject to a maximum amount of Rs. 5,000

Change in Law

- ⌚ To levy late fees on delay in filing returns U/s 52 (TCS Returns)

WEF

- ⌚ With effect from 1st October 2022

Impact

- ⌚ Now, the scope of levying late fees has been extended to TCS returns

Refund of excess balance in cash ledger

Background

- ⌚ As per Sec. 54(1), an assessee can claim refund of balance of tax, interest, penalty or fee paid under this Act

Current scenario

- ⌚ As per proviso to Rule 89 of CGST Rules, the refund of excess balance in electronic cash ledger can be claimed by filing return in GSTR-3

Change in law

- ⌚ Now, excess balance in electronic cash ledger can be claimed by filing application U/s 54 i.e. Form GST RFD-01

WEF

- ⌚ With effect from 1st October 2022

Impact

- ⌚ As GSTR-3 could not be implemented, the mechanism to claim refund of excess balance of electronic cash ledger was routed through refund application in Rule 89 of CGST Rules. By virtue of this amendment, this mechanism is synchronized with Rule 89 of CGST Rules

Power to withhold refund widened for all cases

Background

- ⌚ Sec. 54(10) provides power to GST Authorities to withhold refund/ deduct the tax demand from refund

Current scenario

- ⌚ Currently, the powers to withhold refund/ deduct the tax demand from refund are available only in case of refund of unutilised balance of ITC

Change in Law

- ⌚ Now the powers to withhold refund/ deduct the tax demand from refund are widened and applicable to all types of refunds

WEF

- ⌚ With effect from 1st October 2022

Impact

- ⌚ The powers to withhold refund/ deduct the tax demand from refund is widened to all types of refund. By virtue of this, GST Authorities may also withhold the refund of balance available in electronic cash ledger

Background

- ⌚ Rule 37 prescribes the manner in which ITC availed is to be reversed along with interest in case of non-payment of consideration to supplier within 180 days from issue of invoice.

Current scenario

- ⌚ As per sub-rule (3) to Rule 37, if a recipient fails to pay the amount along with GST to supplier within 180 days from the date of issue of invoice, then he is liable to reverse ITC along with interest as per Sec. 50(1) and for the period starting from the date of availing ITC till the date of payment

Change in Law

- ⌚ Sub-rule (3) of Rule 37 has been omitted and Sub-rule (1) and (2) of Rule 37 are substituted.
- ⌚ As per substituted sub-rule (1) of Rule 37, on ITC reversal due to non-payment within 180 days, interest is applicable as per Section 50

WEF

- ☺ With effect from 1st October 2022

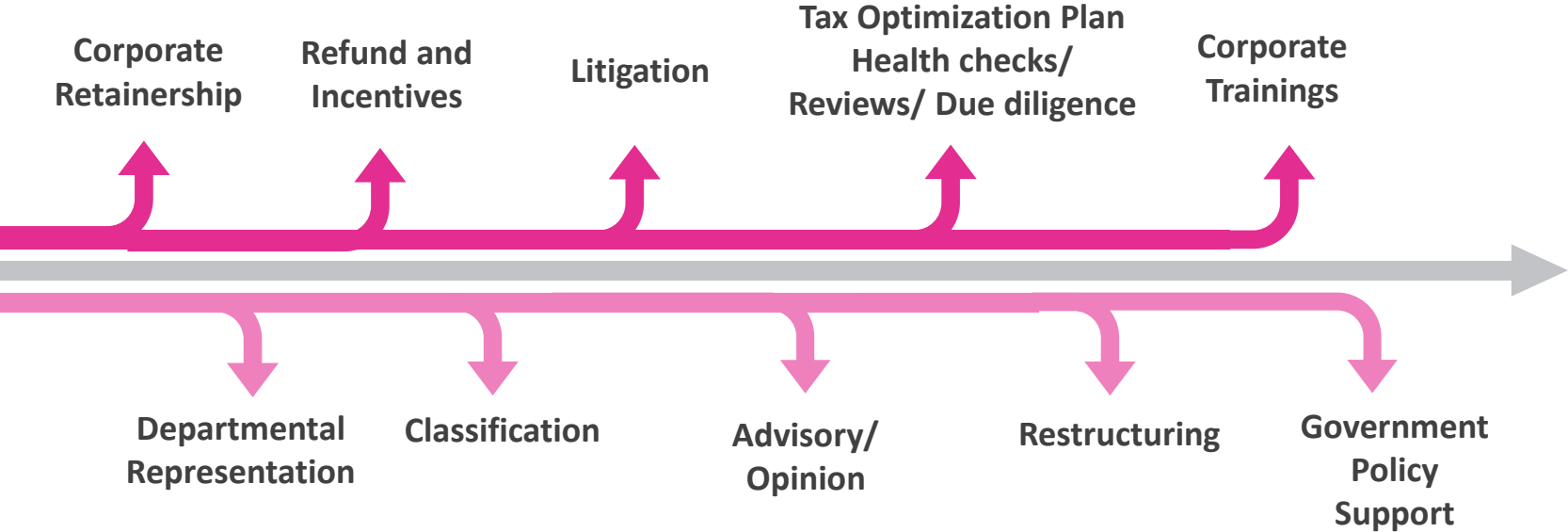
Impact

- ☺ Earlier the period for determining interest was explicitly specified in sub-rule (3) of Rule 37 which commenced from the date of availment of ITC till the date of ITC reversal. Only the rate was supposed to be borrowed from S. 50(1)
- ☺ Now, the entire manner for determining interest i.e. rate as well as period is governed by the provisions of Sec. 50. It provides that interest is payable from the date on which such tax was due to be paid till the date such tax is paid
- ☺ In case of non-payment within 180 days, ITC reversal (i.e. tax payment) is required to be done while furnishing GSTR-3B for the tax period immediately following the period of 180 days. Thus, tax payment will be due furnishing GSTR-3B for the tax period immediately following the period of 180 days. Accordingly, even the interest meter will begin from that date

Miscellaneous amendments

- ⌚ Services supplied by way of transportation of goods by aircraft/vessel from customs station of clearance in India to a place outside India were exempt till 30.09.2022. Now the said exemption has ended
- ⌚ GSTR-1A, GSTR-2 and GSTR-3B are omitted from the rule book. Consequent cosmetic changes are also made in respective rules
- ⌚ The ITC matching concept through GSTR-2 is done away
- ⌚ The common ITC reversal workings were earlier required at invoice level. Now, it can be done on summary level

....What do we do?



Disclaimer

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Reach Us

**West
Region**

6th Level, HDIL
Kaledonia -A,
Sahar Road,
Andheri East,
Mumbai - 400 069

**North
Region**

A-36, 1st Floor,
Ring Road,
Adjacent to Raja
Garden Flyover,
Rajouri Garden,
New Delhi - 110 027

**East
Region**

Unit No. 7, 2nd
Floor, Vasundhara,
Sarat Bose Road,
Kolkata – 700 020.

**South
Region**

64, Thirumalai
Pillai Road, T.
Nagar, Chennai –
600 017



www.gscintime.com

02/02/2022



info@gscintime.com