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GST-News Updates

Clarification regarding New Rule 36(4) of CGST Rules, 2017, Restriction in Availment of ITC

Issue No. 1

Whether the said restriction will be on Autopopulated basis through Common Portal or is to be calculated on Self-assessment basis ?

This restriction is not imposed through the common portal.
It is the responsibility of the taxpayer to calculate the amount of restricted ITC as per Rule 36(4) on **Self-assessment basis**

Issue No. 2

Whether the said restriction is to be calculated supplier wise or on consolidated basis ?

The restriction imposed is not supplier wise, It is on consolidated basis;

Calculation would be based on only those invoices which are otherwise eligible for ITC.
Accordingly, 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

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Various issues relating to implementation of the said sub-rule and the clarification on each of these points is as under: -

Issue No. 3

On which invoices / debit notes, Restriction under rule 36(4) of the CGST Rules shall apply ?

Only in respect of those invoices / debit notes, which are required to be uploaded by the suppliers under GSTR-1 and which have not been uploaded.

Taxpayers may avail full ITC in respect of IGST paid on

1. Import of Goods/ services,
2. RCM,
3. Credit received from ISD etc.

which are outside the ambit of GSTR-1, provided that eligibility conditions for availment of ITC are met in respect of the same.

The restriction of 36(4) will be applicable

only on the invoices / debit notes on which credit is availed after 09.10.2019.

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Issue No. 4

FORM GSTR-2A being a dynamic document, How much ITC a registered tax payer can avail in his FORM GSTR-3B in a month in case the details of some of the invoices have not been uploaded by the suppliers under sub-section (1) of section 37.

The taxpayer may have to ascertain the same from his auto populated **FORM GSTR 2A as available on the due date of FORM GSTR-1.**

Issue No. 5

When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)?

The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (under sub-section (1) of section 37) remains under 20 per cent of the eligible input tax credit, the details of which are uploaded by the suppliers

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The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form, below.

In the illustrations, say a taxpayer "R" receives 100 invoices (for inward supply of goods or services) involving ITC of Rs. 10 lakhs, from various suppliers during the month of Oct, 2019 and has to claim ITC in his FORM GSTR-3B of October, to be filed by 20th Nov, 2019.

Case	Details of suppliers' invoices for which recipient is eligible to take ITC	20% of eligible credit where invoices are uploaded	Eligible ITC to be taken in GSTR-3B to be filed by 20th Nov.
I	Suppliers have furnished in FORM GSTR-1 80 invoices involving ITC of Rs. 6 lakhs as on the due date	Rs.1,20,000/-	Rs. 6,00,000 (i.e. amount of eligible ITC available, as per details uploaded by the suppliers) + Rs.1,20,000 (i.e. 20% of amount of eligible ITC available, as per details uploaded by the suppliers) = Rs. 7,20,000/-

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Case	Details of suppliers' invoices for which recipient is eligible to take ITC	20% of eligible credit where invoices are uploaded	Eligible ITC to be taken in GSTR-3B to be filed by 20th Nov.
II	Suppliers have furnished in FORM GSTR-1 80 invoices involving ITC of Rs. 7 lakhs as on the due date	Rs.1,40,000/-	Rs 7,00,000 + Rs. 1,40,000 = Rs. 8,40,000/-
III	Suppliers have furnished in FORM GSTR-1 75 invoices having ITC of Rs. 8.5 lakhs as on the due date	Rs. 1,70,000/-	Rs. 8,50,000/- + Rs.1,50,000/-* = Rs. 10,00,000 * The additional amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.

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After Studying all clarification in this circular would like to conclude that,

A taxpayer may avail full ITC in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent Eligible ITC/ 1.2. (i.e. 83.33%),

The same is explained for Case No. 1, 2 and 3 above

in present illustration by "R", in case total ITC pertaining to invoices the details of which have been uploaded reaches Rs. 8.3 lakhs (Rs 10 lakhs /1.20).

Case-I	**"R" may avail balance ITC of Rs. 2.8 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of Rs. 2.3 lakhs out of invoices involving ITC of Rs. 4 lakhs details of which had not been uploaded by the suppliers. [Rs. 6 lakhs + Rs. 2.3 lakhs = Rs. 8.3 lakhs]**
Case-II	"R" may avail balance ITC of Rs. 1.6 lakhs in case suppliers upload details of some of the invoices involving ITC of Rs. 1.3 lakhs out of outstanding invoices involving Rs. 3 lakhs. [Rs. 7 lakhs + Rs. 1.3 lakhs = Rs. 8.3 lakhs]

Lets understand Rule 36(4) by taking a Example

S. No.	Types of ITC as per Books (Inclding Blocked ITC)	Amount	% of Total ITC	Comment
1	Regular Invoice (Inputs, Input Services, Capital goods, Deemed supply, Supply to SEZ on payment of IGST Etc.)	500,000	50.00%	**Rule 36(4) Applicable,** Require to reported in GSTR-1 by supplier
2	Debit Notes	60,000	6.00%	
3	Credit Notes	40,000	4.00%	
	Total (S.No. 1 to 3)	**600,000**	**60.00%**	
4	IGST paid on RCM	55,000	5.50%	**Rule 36(4) Not Applicable,** since not require to reported in GSTR-1 by supplier
5	IGST paid on Import of services	75,000	7.50%	
6	IGST paid on Import of goods	65,000	6.50%	
7	Credit received from ISD	70,000	7.00%	
8	ITC Availed through ITC-01	45,000	4.50%	
9	ITC Availed through ITC-02	90,000	9.00%	
	Total (S.No. 4 to 9)	**400,000**	**40.00%**	Can be claimed Fully
	Grand Total	**1,000,000**	**100.00%**	

GSTR-2A	Amount	% of Total ITC	Comment
Eligible ITC	400,000	66.67%	Only 66.67% is Shown by suppliers in their GSTR-1
Ineligible ITC	200,000	33.33%	
Total	**600,000**	**100.00%**	

Eligible ITC- Coming in 2A	300,000	75.00%	Only on This Amount Rule 36(4) is Applicable
Eligible ITC- Not Coming in 2A	100,000	25.00%	
Total	**400,000**	**100.00%**	

Ineligible ITC- Coming in 2A	50,000	25.00%	Rule 36(4) is not Applicable
Ineligible ITC- Not Coming in 2A	150,000	75.00%	
Total	**200,000**	**100.00%**	

Rule 36(4)
Eligible ITC as per Rule 36(4) is 3,00,000 + 60000 (20% of 3,00,000) Total 3,60,000 Since 75% Eligible Invoice has been uploaded already.
Case-1 -If Supplier uploads 8.33% Eligible Invoice i.e. 33,333 in further period then Assessee is eligible to claim Full ITC i.e. 100% Because at that time Total Eligible Invoice will be 3,33,333 and 20% additional ITC allowed under this rule 36(4) will be 66,667 and total will be 4 Lakh.
Case-2 -If Supplier uploads only 5% Eligible Invoice i.e. 20,000 in further period then Assessee is eligible to claim 20,000 plus 20% of 20,000 i.e. 4000 total 24000, Thus Total ITC Claimed is 3,84,000, Thus assessee can claim full ITC if eligible invoice of 13,333 also been uploded by supplier
Case-3 -If Supplier uploads only 10% Eligible Invoice i.e. 40,000 in further period then Total ITC coming in 2A will be 3,40,000 and Assessee is already claimed 3,60,000 and as per rule 36(4) total ITC will be 40,000 plus 20% of 40,000 i.e. 8000 = 48000, Thus total ITC claimed will be 3,60,000 plus 48,000 total 4,08,000. So a.ssessee will be eligible to claim only 40,000 remaining to avail

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