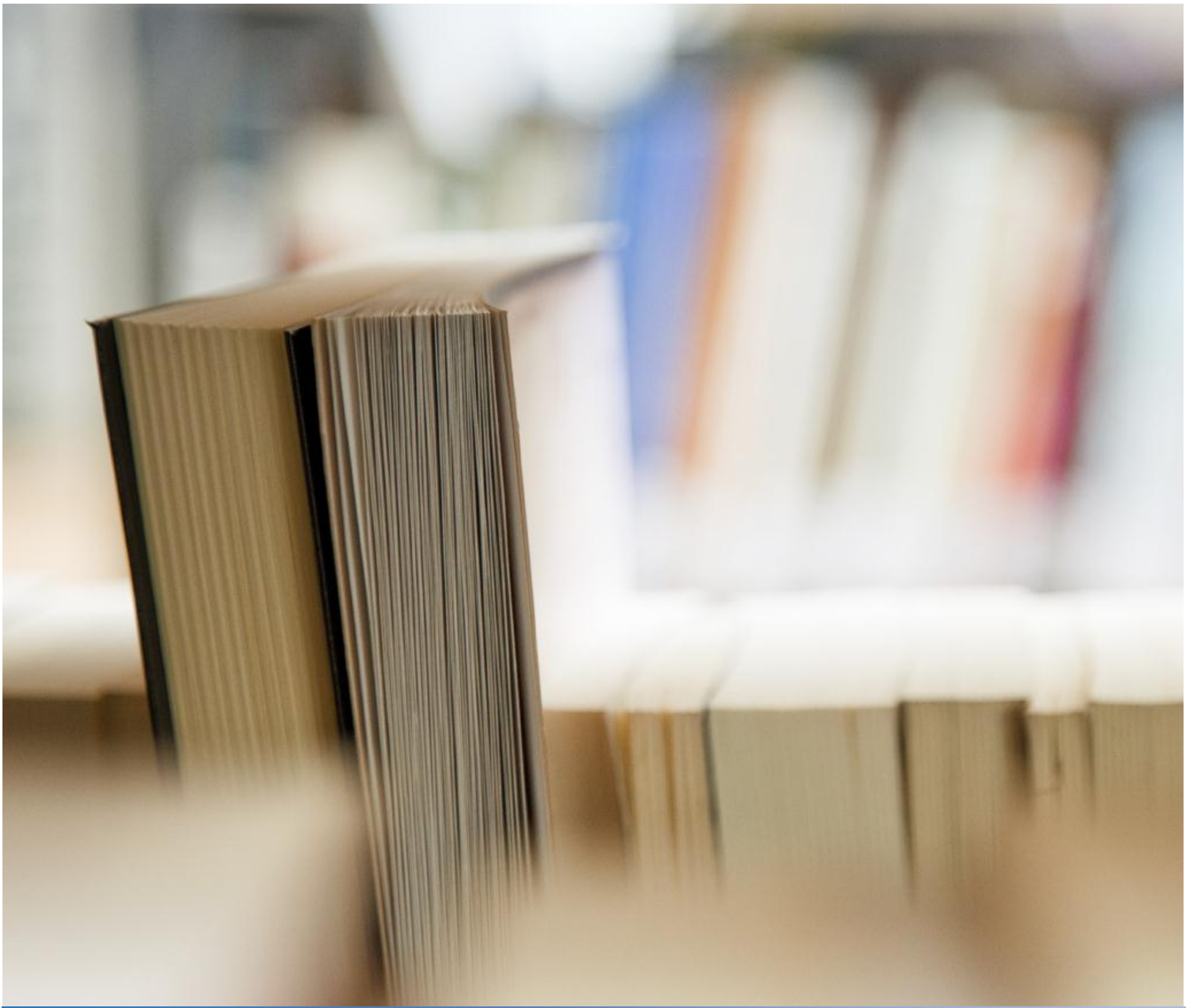

Claiming certain less likely ITC under GST

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CLAIMING CERTAIN LESS LIKELY ITC UNDER GST

Probably it will be a cliché to mention that GST advocates seamless flow of Input Tax Credit. Input tax credit which were earlier not allowed have not become eligible under GST. However, as and when one is getting to understand the intricacies of the GST law, one becomes aware of the various bottlenecks for availment of Input Tax Credit under GST. This article purports to highlight these bottlenecks and the possible remedies available to circumvent them.

Section 10 to Section 14 of the IGST Act, 2017 talks about the place of supply provisions for all types of supplies. Place of supply determines which state receives the share of GST in case of a supply. Now, Input tax credit in a state can be taken only if that state has received its share of revenue on that particular inward supply. For instance, CGST and SGST paid in Maharashtra cannot be set off against CGST and SGST payable in West Bengal. This is because the West Bengal cannot provide benefit of tax which it has not received in the first place. Hence, this kind of Input Tax credit is indirectly blocked by the law. Without a registration in Maharashtra in the given example, it will not be possible to take Input Tax Credit of the taxes paid to the Maharashtra Government.

One of the major bottlenecks in availment of Input Tax Credit is with regard to business travel expenses in the form of lodging, fooding, travelling, attending business conventions/conferences etc. Place of supply in case of lodging in a hotel is the location of the hotel itself. Admission to business conferences/conventions also results in the place of supply being specified as the place where the event is held. So, if a business is not registered at such place, then the Input Tax Credit cannot be availed for the GST charged in such a state.

There are a few alternatives which can be adopted to claim such Input Tax Credit:

1) **Availing services through an agent** – The best remedy to avail Input Tax Credit in the abovementioned case is to avail services through an agent. Such an agent should be registered in the state wherein the services are being provided. In such a situation, the agent can receive the invoices of the hotels, convention

centres etc. and take the Input Tax Credit of CGST and SGST charged in that state. Thereafter, he can charge IGST to the registered person making the business travel by specifying the place of supply of that state in which such person is registered. This will enable smooth transfer of Input Tax Credit in respect of certain supplies wherein credits are not usually available. Of course, there will be an agency commission cost involved for procuring such services for the company. So, it will be a cost benefit analysis for the company as to whether the services should be availed through an agent.

For example, X Ltd. Registered in West Bengal sends its executives for attending a conference in Goa. If the hotel directly bills to the company, then it will charge CGST and SGST by showing the place of supply as Goa. Such Input Tax Credit will not be available to X Ltd which is registered in West Bengal.

On the other hand, X Ltd can hire a local travel agent with GST registration in Goa. The agent will then receive the invoice from the hotel and take the Input Tax Credit of CGST and SGST charged by the hotel. Then, the agent can raise an invoice of IGST on X Ltd with the place of supply as West Bengal. X Ltd in West Bengal is then free to avail such Input Tax Credit in West Bengal.

2) **Casual Taxable Person** – A person may obtain a registration of a casual taxable person in a particular state where he does not have any fixed establishment if he intends to provide supplies for a temporary period from that state. It may be noted that such registration can only be obtained if any supplies are intended to be made from that state. However, such a registration can only be obtained for a period of 90 days and upon deposit of the estimated tax liability in advance. Such period can further be extended by a period of 90 days after making an application to the Proper Officer. Upon registration as a casual taxable person, the person can avail the Input Tax Credit in that state and utilise it against making outward supplies from that state.

   For example, X Ltd registered in West Bengal intends to sells its goods in an exhibition organised in Maharashtra. For this, it sends its sales executives for a period of 15 days to Maharashtra. X Ltd. can opt for a registration as a casual taxable person in Maharashtra and provide the GSTIN of Maharashtra to the hotel. Now, if the hotel raises an invoice of CGST and SGST of Maharashtra, still X Ltd which does not have any fixed establishment in Maharashtra will be avail the Input Tax Credit. Such Input Tax Credit can be utilised by X Ltd. against the output tax liability incurred upon selling of goods through the exhibition in Maharashtra.

3) **Input Service Distributor** – The concept of Input Service Distributor is borrowed from the Service Tax Law. This option should only be availed if any person has a fixed establishment in a state and receives regular inward supplies in that state but he may or may not have any output tax liability to set it off against. A person registered as an Input Service Distributor may distribute the Input Tax Credit of that place to his other offices to which such credit is attributable. It allows that person to convert his local Input Tax Credit of CGST and SGST of that particular state to IGST of another state. This will ensure that a person is not faced with a situation wherein his Input Tax Credit is accumulating at a place wherein he does not have sufficient outward supplies and his other place of business is paying taxes in cash as it does not have sufficient Input Tax Credit. By this mechanism, he may plan his tax liability.
For example, X Ltd. registered in West Bengal regularly sends its executives for corporate assignments in Maharashtra. X Ltd. has a liaison office in Maharashtra which works on behalf of the West Bengal office but does not provide any independent supplies from there. X Ltd. may not get Input Tax Credit of the hotel charging CGST and SGST in Maharashtra if it is not registered in Maharashtra. Also, the liaison office in Maharashtra may be in receipt of a number of supplies for which it is not getting any Input Tax Credit in absence of registration. In this case, X Ltd may opt for registration as an Input Service Distributor in Maharashtra. It can receive the Input Tax Credit of the CGST and SGST charged in Maharashtra and distribute it as IGST to the registration in West Bengal.

Of course, it may be pertinent to mention here that the above alternatives are available only for Input Tax Credit which is not blocked under Section 17(5) of the CGST Act. For instance, services of restaurant/outdoor catering received during travelling will not be available even if they are availed through an agent or registration is obtained as a Casual taxable person/Input Service Distributor. Blocked credits like these will not be available irrespective of the fact whether the tax is received by the state where registration is already present.

In respect of all inward supplies, it becomes highly important that the correct GSTIN is disclosed to the supplier. For each nature of supply, place of supply needs to be found out and GSTIN of the recipient should be provided for the state wherein such place of supply lies in order to get the Input Tax Credit. This will ensure seamless flow of credit from the supplier to the recipient.

Input Tax Credit is a very underrated concept. Usually, businesses focus on outflows and the rate structure under GST, Input Tax Credit seem to attract far lesser attention. 'Money saved is money earned' is a very old saying which perfects fits with the concept of Input Tax Credit. In fact, the major change under GST is the availability of certain credits which were never really available. So, in order to truly unleash the potential benefits of GST, one should focus on availing all the credits that is available within the legal framework through diligent tax planning.

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