



# **ISSUES IN GST: NEED TO REVISE THE DEADLINE SET FOR CLAIM OF ITC: PART -10**

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In today's update, we would be discussing Provisions of Section 16(4) which provides the deadline for claim of ITC by a registered taxable person with respect to an inward supply in a particular financial year. The deadline linked with actual filing of return for the month of September of next financial year or date of filing of Annual return should be linked to due date of filing of return for the month of September of next financial year as has been done in proviso to section 34(9) of the Revised Draft Model GST Law.

The deadline to claim Input Tax Credit in respect to any invoice should be linked with the due date rather than actual filing of the return. The provision relating to actual filing of the return makes compliance based system dependent upon the whims and acts of a particular person.

CBEC has released revised Draft GST Law on 26<sup>th</sup> November 2016. The law is slated to be presented before Loksabha in the coming days. It's not the final blueprint and is bound to change on the basis of suggestions received from various quarters. In this series of updates, we would be putting forth various issues in the Revised Draft GST Law which needs consideration. The entire objective is to bring before the readers certain issues in the present revised GST Law which may be raised at appropriate platforms.

10.1 Provisions of Section 16(4) of the Draft GST Law provides that

*"A taxable person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services after furnishing of the return under section 34 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier."*

10.2 The provision is similar to proviso to Section 32(3) and 34(5) of the Revised Model GST Law relating to rectification of omission or error in GSTR-1 and GSTR-2 but is different from the proviso to Section 34(9) relating to rectification or omission in GSTR-3.

10.3 The provision contains that a person would not be entitled to take input tax credit of an invoice or invoice relating to such debit note pertaining to a financial year

- a) After furnishing of return under section 34 for the month of September following the end of financial year to which such invoice or invoice relating to the debit note pertains or
- b) Furnishing of the relevant annual return, whichever is earlier

Condition (a) above links the deadline with furnishing of return for the month of September of next financial year and not the due date for filing of return for the month of September. Condition (b) also links the deadline with furnishing of Annual Return of the relevant financial year and not the due date for filing of return for the relevant financial year.

10.4 The important thing to observe here is that, the law is not restricting the time limit by the due date of filing of the return for the month of September following the end of the financial year as has been provided in proviso to Section 34(9).

10.5 Thus a person who has forgotten to claim Input Credit of the invoice for the month of March 2018, can claim credit of that invoice till he files return for the month of September 2018 or files annual return for the period 2017-18, whichever is earlier. His time limit is not restricted to the due date of monthly return of September 2018 or



10.6 It has not to be forgotten that the entire system compliance based. The compliance by the person making the outward supplies makes it possible for the person receiving the inward supplies to claim the Input Tax Credit. The compliance by the person receiving the inward supplies makes it possible for the person making the outward supply to accept/reject the details of inward supply submitted by the person receiving the inward supply. Thus, submission of an entry relating to an inward supply supposedly after submission of the returns by the outward supplier would create issues in supply chain.

Take for e.g. a particular invoice for which the "A" finds that a credit has been erroneously claimed by him in his return and intends to change GSTR-2 and GSTR-3. The outward supplier to such person i.e. "B" and person to whom A has made supplies i.e. "C" has filed their returns for the month of September following the end of the financial year. Now if "A" rectifies his return, then such rectification would be affecting

1. Details filed by "B" in GSTR-1, if any correction is required at the end of "B" in his GSTR-1
2. GSTR-3 of "A", but no such change would be possible, if due date for filing of monthly return for the month of September of Next Financial Year has passed (Limitation in proviso to Section 34(9)),
3. Tax liability of "C" as now tax is payable by "A" on such erroneous credit alongwith Interest. If "A" does not pay the due tax or is not able to reflect the same in his due tax, then the claim of Input Tax Credit of C of the supplies received from "A" would also be reversed.

In this case B and C also cannot rectify their returns in GSTR-1 and GSTR-2 respectively as they have filed their returns for the month of September following the end of financial year. The whole system would come to a standstill due to such erroneous due dates.

10.7 The deadlines for rectification in GSTR-1, GSTR-2 and GSTR-3 for a particular financial year and deadline for section 16(4) for claim of Input Tax Credit pertaining to an invoice for a financial year should be brought in consonance and should be common preferably lined to due date rather than filing of a particular return. Presently, deadlines for rectification in GSTR-1, GSTR-2 and section 16(4) year differs from deadline provided for rectification in GSTR-3.

If a supplier supposedly finds error or omission in respect of credit claimed by him pertaining to an invoice pertaining to the month of March 2018 and rectifies GSTR-1 in November 2018, how would he able to rectify GSTR-3 as the time limit for rectification of GSTR-3 is due date for filing of monthly return for the month of September of next financial year. Further, if tax is payable by him in GSTR-3 on account of rectification GSTR-3, then how would he reflect the changes in GSTR-3 as he cannot rectify the same. Whether such non-reflection of payment in GSTR-3 would no be treated as non-payment of due taxes and would not be affecting the claim of Input Tax Credit of the person who has received the supply from such person.

10.8 Another shortcoming of linking the deadline of claim of Input Tax Credit pertaining to a financial year with the filing of return would be that if a particular return is substantially delayed by the person receiving the inward supply due to any reason then entire supply chain would have to suffer and would be dependent upon the whims and actions of such person.

10.9 The deadline to claim Input Tax Credit in respect to any invoice should be linked with the due date rather than



actual filing of the return. The provision relating to actual filing of the return makes the whole system dependent upon the whims and acts of a particular person.

**Comment:** If we analyse the provisions in the law and the compliance based system developed in GST, it would be appropriate that the deadline in proviso of Section 32(3), 34(5), 34(9) and 16(4) are linked with respect to the due date of filing of return for the month of September following the end of financial year rather than actual filing of the Return for the month of September of the next financial year or annual return whichever is earlier.