

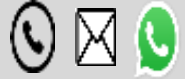


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Section 17 of CGST Act, 2017

17. Apportionment of credit and blocked credits.

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation. —For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of subsection (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty percent shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) BLOCKED CREDITS- to be covered in Separate Volume

(6) The Government may prescribe the manner in which the credit referred to in subsections (1) and (2) may be attributed- (Rule 42 and Rule 43)- to be covered in Separate Volume

Explanation. —For the purposes of this Chapter and Chapter VI, the expression —“ plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

Relevant Rule	Subject
Rule 38	Claim of credit by a banking company or a financial institution

Our Interpretation

Section 17(1)	<p><u>Apportionment of credit for business or non-business purpose</u></p> <p>When the Goods or service or both are partly used for Business purpose and partly for non-business purpose, then the amount of input tax credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.</p>
Section 17(2)	<p><u>Apportionment of credit for taxable supply or exempt supply</u></p> <p>Out of Business-related credit, we have to further apportion credit between exempt supply and taxable supply including zero rated proportionately in terms of Section 17(2) of the CGST Act.</p> <p>So, proportionate credit shall be allowed to the extent supplies are received for business purpose for effecting taxable sales including Zero rated sales.</p>
Section 17(3)	<p><u>Value of Exempt supply</u></p> <p>Though Exempt supply is defined in section 2(47) means any supply which attracts Nil rate of tax or wholly exempt from tax under Section 11 of CGST Act and Section 6 of IGST Act and also includes non-taxable supply. BUT interestingly as per section 17(3) of CGST Act, the value of exempt supply shall include followings:</p> <ul style="list-style-type: none"> ▪ Tax paid under RCM ▪ Transaction in Security ▪ Sale of Land and Sale of Building subject to clause (b) of paragraph 5 of Schedule-II <p>Explanation to sec 17(3) specifically mentioned that transactions specified in Schedule III should not be considered for reversal EXCEPT those specified in Paragraph 5 of the said schedule and Para 5 of schedule III pertains to the sale of land or sale of the building after completion certificate is obtained. Thus, Proportionate ITC attributable to the sale of land and building after completion certificate is required to be reversed.</p> <p>For section 17(3) of CGST Act (proportionate reversal of ITC when the taxable person is making both taxable and exempt supply), the expression “value of exempt supply” shall not include the following: - (a) Construction of complex (building) where supply is made before obtaining completion certificate. This exception has been made as, in fact, GST is payable, and hence it is not ‘exempt supply’.</p> <p>(b) Value of activities or transactions specified in Schedule III of the CGST Act, except those specified in paragraph 5 of the said Schedule.</p> <p>(c) Schedule III of CGST Act specifies transactions or activities which shall be treated neither as supply of goods nor supply of services. Thus, inputs or input services used for making supplies specified in Schedule III need not be reversed</p>
Section 17(4)	<p>A banking company or a financial institution including a NBFC, shall have the option to either comply with the provisions of section 17(2) of CGST Act OR avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and balance 50% would lapse for each month as per section 17(4) of CGST Act.</p>

First proviso means that the option, once exercised, shall not be withdrawn during the remaining part of the financial year.

Second proviso means that the 50% restriction shall not apply to the tax paid on supplies made by one registered person to another registered person having the **same PAN number**. This provision applies when Bank/FI/NBFC in one State provides services (or supplies goods) to its branch in another State. Full credit (Even if 50% option choose) for the transactions between distinct person (All branches under same PAN) shall be available.

Rule 38

Claim of credit by a banking company or a financial institution.

A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely, -

(a) the said company or institution shall not avail the credit of, -

- i. the tax paid on inputs and input services that are used for non-business purposes; and
- ii. the credit attributable to the supplies specified in sub-section (5) of section 17,

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);

(c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and the balance amount of input tax credit shall be reversed in FORM GSTR-3B.

Rule 38

This Rule is amended vide Notification No. 19/2022–Central Tax dated 28.09.2022.

In most cases, Bank, FI or NBFC, may find it easy and profitable to avail 50% of an input tax credit instead of availing input tax credit on a proportionate basis as per section 17(2) of CGST Act.

Rule 38 gives the procedure for determining the 50% eligible ITC and reversal of balance amount:

ITC of the tax paid on inputs and input services that are used for non-business purposes and the Blocked Credits as per Section 17(5) will not be available but the full credit for the transactions between distinct person (All branches under same PAN) shall be available.

50% of the remaining amount of input tax shall be the admissible ITC to the company or the institution and the balance amount of input tax credit shall be reversed in FORM GSTR-3B.

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