

RJA

Rajput Jain & Associates
Chartered Accountants

**Imports (Customs-GST) Input
Tax Credit**



About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

Central GST Act

- (56) “India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;
- (109) “taxable territory” means the territory to which the provisions of this Act apply;
- (79) “non-taxable territory” means the territory which is outside the taxable territory;
- (81) “other territory” includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114);

IGST Act-Customs Act-SEZ Act

- 5.(1)
- Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.
- (11) "customs area" means the area of a customs station ¹⁴[or a warehouse] and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;
- 53. A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.

Integrated GST Act

- (4) “customs frontiers of India” means the limits of a customs area as defined in section 2 of the Customs Act, 1962;
- (5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;
- (6) “export of services” means the supply of any service when,—
 - (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Integrated GST Act

- (10) “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;
- (11) “import of services” means the supply of any service, where—
 - (i) the supplier of service is located outside India;
 - (ii) the recipient of service is located in India; and
 - (iii) the place of supply of service is in India;

GST on International Supplies

Customs Act

- Amendment Act, 2017:
 - IGST and Cess levied u/s 3(7)/(9) 'as a duty of customs'
 - Customs area includes warehouse (57, 58 and 58A)
- Levy of Customs duty:
 - Imported goods
 - Date for rate of duty
 - Point when duties of customs are levied
 - Bonded warehouse
 - Special bonded warehouse

IGST Act

- AGTO-exempt supply
- Proviso to 5(1):
 - Imported goods
 - 'Goods imported into India'
 - Goods brought into India
- Non-taxable territory:
 - Customs territory
 - Customs boundaries
 - Customs frontiers
 - Territorial waters
 - Special economic 'zone'

GST on International Supplies

Circular 33/2017-Cus.

- Issues addressed:
 - HSS akin to 'inter-State' supply
 - Taxable 'twice' (CTA & IGST)?
 - No, IGST only on 'importation'
- Basis 'in law' applied:
 - Referred 3(12) of CTA
 - Entire VA taxed on clearance
- Contentious issues:
 - Admits, it's exempt supply
 - Admits, includible in AGTO

Circular 46/2017-Cus.

- Issues addressed:
 - uplift AV (ex-bond) not allowed
 - IGST on in-bond sales at 'price'
 - Illustrations given
- Basis 'in law' applied:
 - Supply 'in-bond' liable to IGST
 - VA in-bond taxed but 'deferred'
- Contentious issues:
 - Overlooks 'point of levy' in CA
 - Proposed CGST Amendments

GST on International Supplies

Outside Non-taxable Territory

- Merchanting Trade
- Overseas branch (operating)
- Overseas investment branch
- High-sea sales (pre-det.)
- Lacking economic substance
- Operations of LO-Rep.:
 - Foreign staff payroll
 - Indian staff (secondment)
 - Indian staff (dedicated cost)
 - Expenses of foreign office
 - Allocated India expenses

Within Taxable Territory

- Deemed exports
- Zero-rated supplies (SEZ)
- DTA sales by SEZ
- Zero-rated supply (NGPP-Ex)
- Effect of R89(5) or R96(10)
- Export of services (forex)
- Exports to Nepal/Bhutan
- Exports in INR (nature)
- Margin monitor (GP)
- Unjust enrichment (proof)

GST on Exporters

Exports-Deemed and EOUs

- Disband bonded-warehouse
- Special concession (ltd.)
- Deemed export benefit
- Location based services (GP)
- CGST (Amendment) Bill
- Export of NGPP
- R.96(10) 'supplier who.....'
- LUT relief (45/19 and 37/11)
- Successive exports (refund)

SEZs

- Non-SEZ activity of SEZ unit
- PoS override
- Scope of S.53 v. IGST v. CTA
- DTA-sale effect in S.30:
 - Goods supplied
 - Services supplied
- Why exemption on imports?
- BTST – entry into zone
- Credit and refund to SEZ
- Intra-zone activities

GST on International Supplies

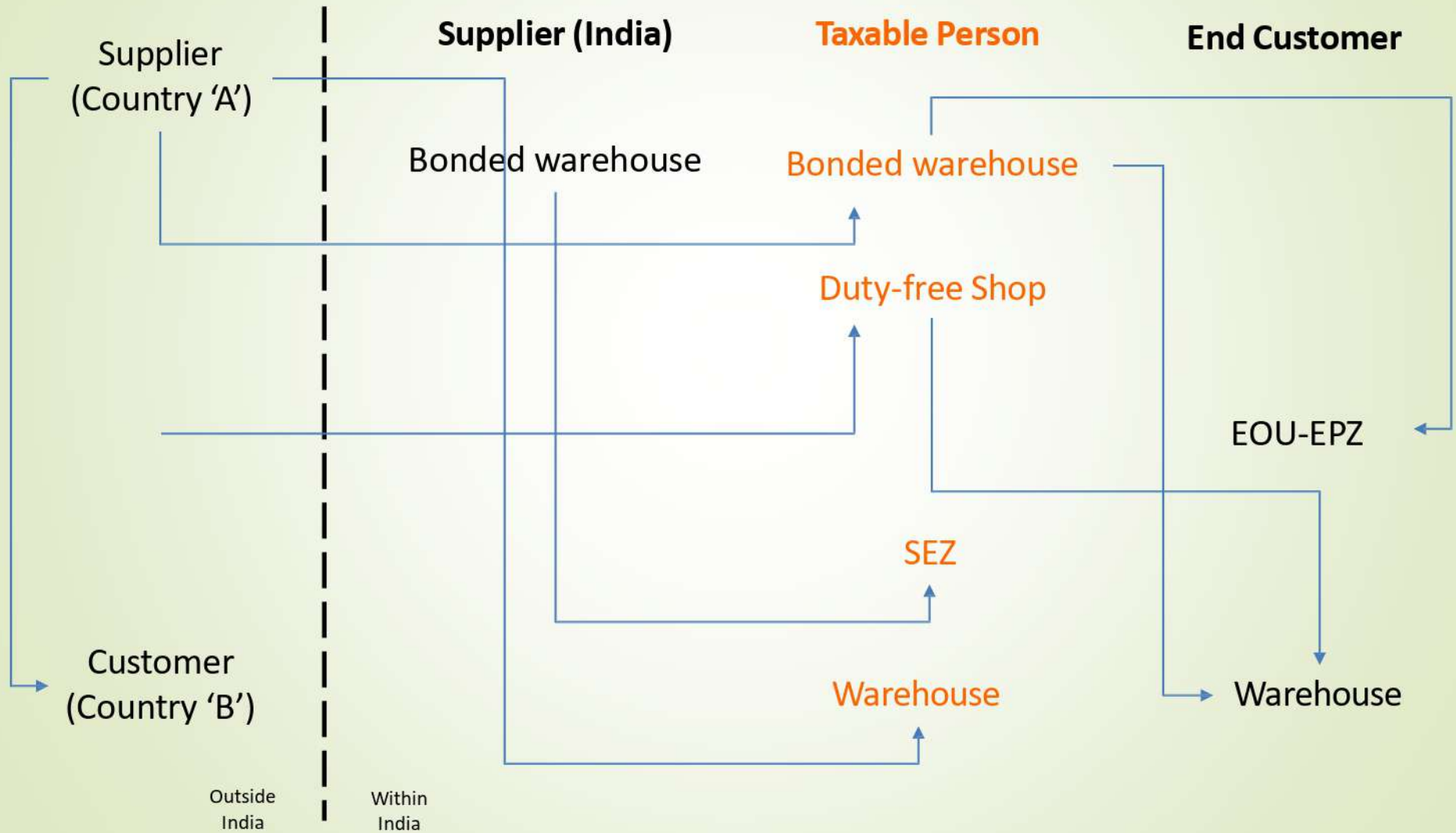
FTP - Incentives

- MEIS issues:
 - Merchandise
 - Elaborate exclusions (onus)
 - NFE criteria
- SEIS issues:
 - Notified services (fraction)
 - Appx 3D (location-based)
 - Erroneous scrip use
- Scrip sales:
 - Grant accounting effect
 - Sale and taxability
 - Credit effect R.42
 - Utilization accounting

Non-physical imports

- Intellectual Property:
 - Royalty-free license
 - Patent-SEP
 - TCS-ACC HSN 49-85-90
- Form A2/A1 (10CB)
- FMV uplift (deemed income)
- Special category HSNs (lease)
- Other aspects:
 - ESOP (stock block)
 - RSU, Phantom stocks
 - Samples (no value)
 - LERMS remittances

International Supplies



Export is “supply by way of export out of India”

2(5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India

Is ‘export of goods’ when:

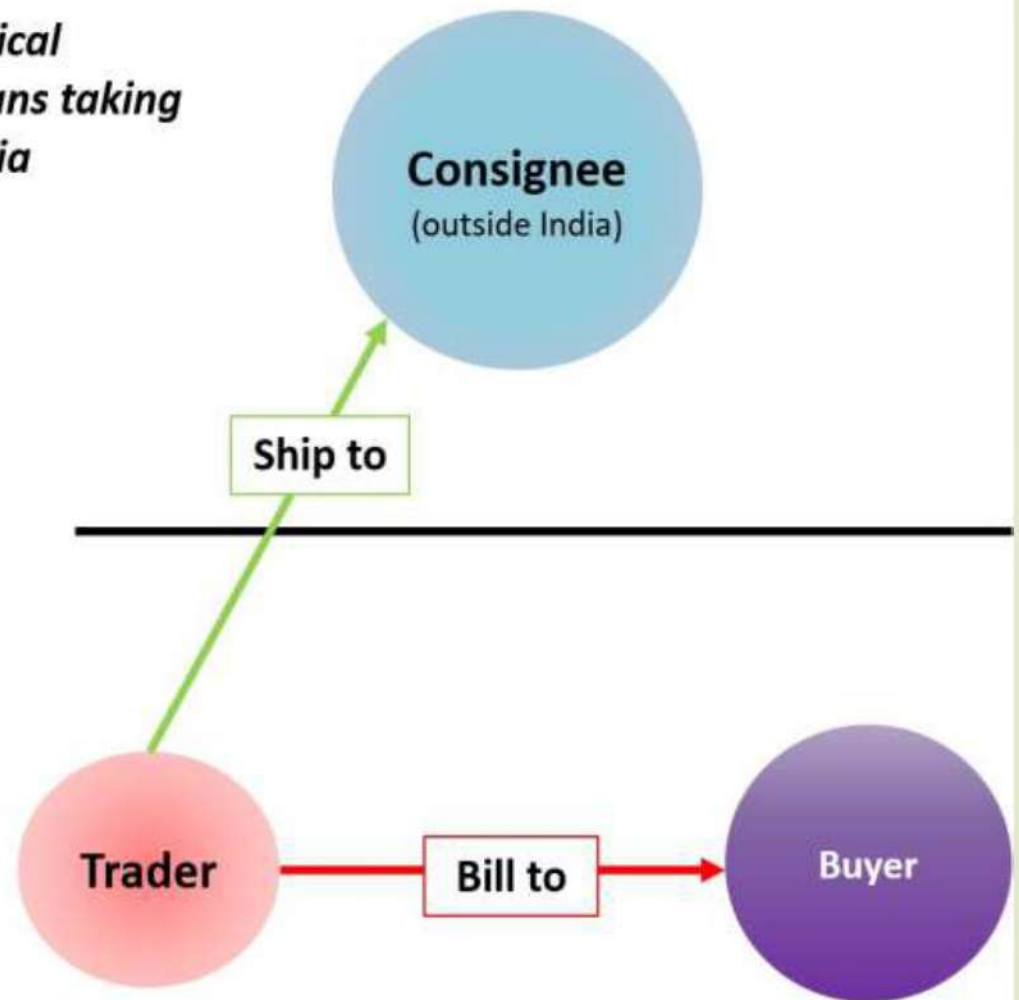
- ‘bill to’ recipient outside India? or
- ‘ship to’ any person outside India?

‘Bill to’ recipient outside India is not export of goods

‘Ship to’ any person outside India is export under Customs law

Export is zero-rated only when it is ‘supply by way of export out of India’

Trader not authorized to apply s.11 based on ‘ship to’ location being outside India



Export of Services is defined in 2(6) to embody the above principle

Supply 'to' SEZ....is it 'bill to' SEZ or 'ship to' SEZ?

2(105) Supplier is one who 'supplies'

SEZ falls 'beyond' customs boundaries is fiction only for *proviso* to s.5(1) and s.7(2)

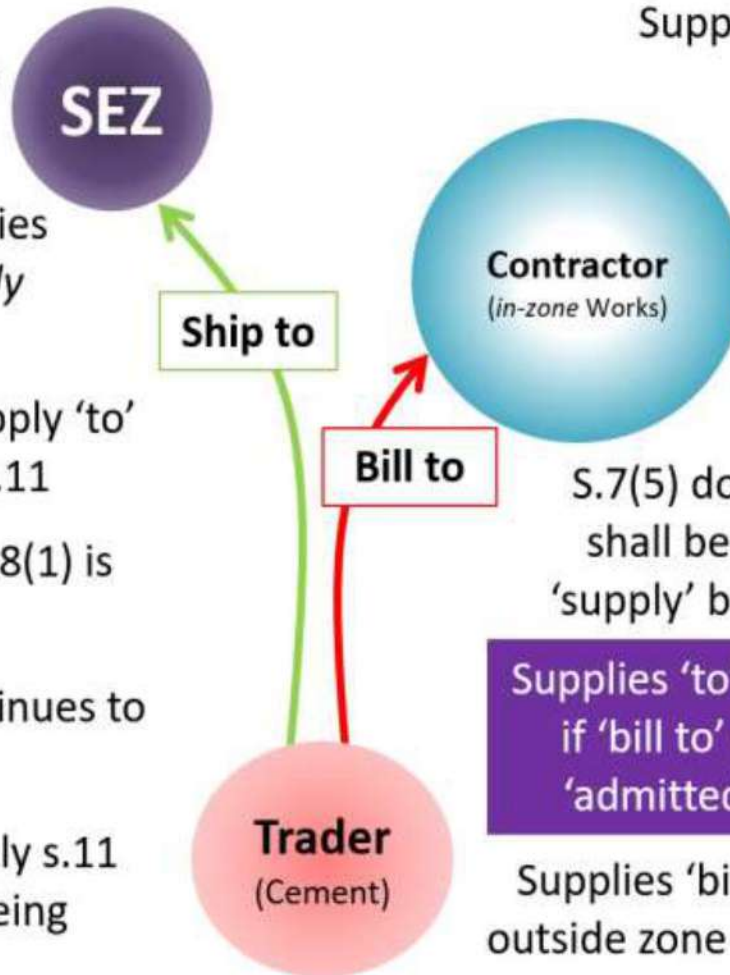
S.11 not applicable for supplies 'to' SEZ..... *zero-rated supply* is fiction in s.16

Place of Supply in case of supply 'to' SEZ guided by s.10 and not s.11

'Carve out' in *proviso (i)* to s.8(1) is subject to s.10 and not s.11

Trader's *Place of Supply* continues to be guided by s.10(1)(b)

Trader not authorized to apply s.11 based on 'ship to' location being special economic zone



2(93) Recipient is one who 'pays'

Supply 'to' SEZ does not operate under s.11 or s.13

'Bill to' location is relevant; not 'ship to' location

'Carve out' in *proviso* to s.8(2) is subject to s.12 and not s.13

S.7(5) does not say 'place of supply' shall be inter-State; it declares that 'supply' be 'treated' to be inter-State

Supplies 'to' SEZ will be zero-rated only if 'bill to' and 'ship to' are to SEZ and 'admitted' for authorized operations

Supplies 'billed to' SEZ but 'shipped to' outside zone NOT zero-rated; apply IGST

Words "supply to" not what we think!



Afghanistan

Pakistan

Tajikistan

China

New Delhi

नई दिल्ली

Nepal

Bhutan

India

Myanmar (Burma)

Laos

Mumbai

मुंबई

Thailand Vietnam

Bengaluru

ಬೆಂಗಳೂರು

Bangkok

กรุงเทพมหานคร

Cambodia

Bay of Bengal

Gulf of Thailand

Arabian Sea

Sri Lanka

Laccadive Sea

Malaysia

Kuala Lumpur

Singapore

Input Tax Credit

GST is a 'value added' tax

Purchase	100
Tax @ 10%	10
	<hr/> 110

Sale	150
Tax @ 10%	15
	<hr/> 165

Liability to pay Govt.	15
Collected from customer	15
Payment to Govt.	??

Liability to pay Govt.	15
Reduce liability by tax already paid	(10)
Actual payment to Govt.	<hr/> 5

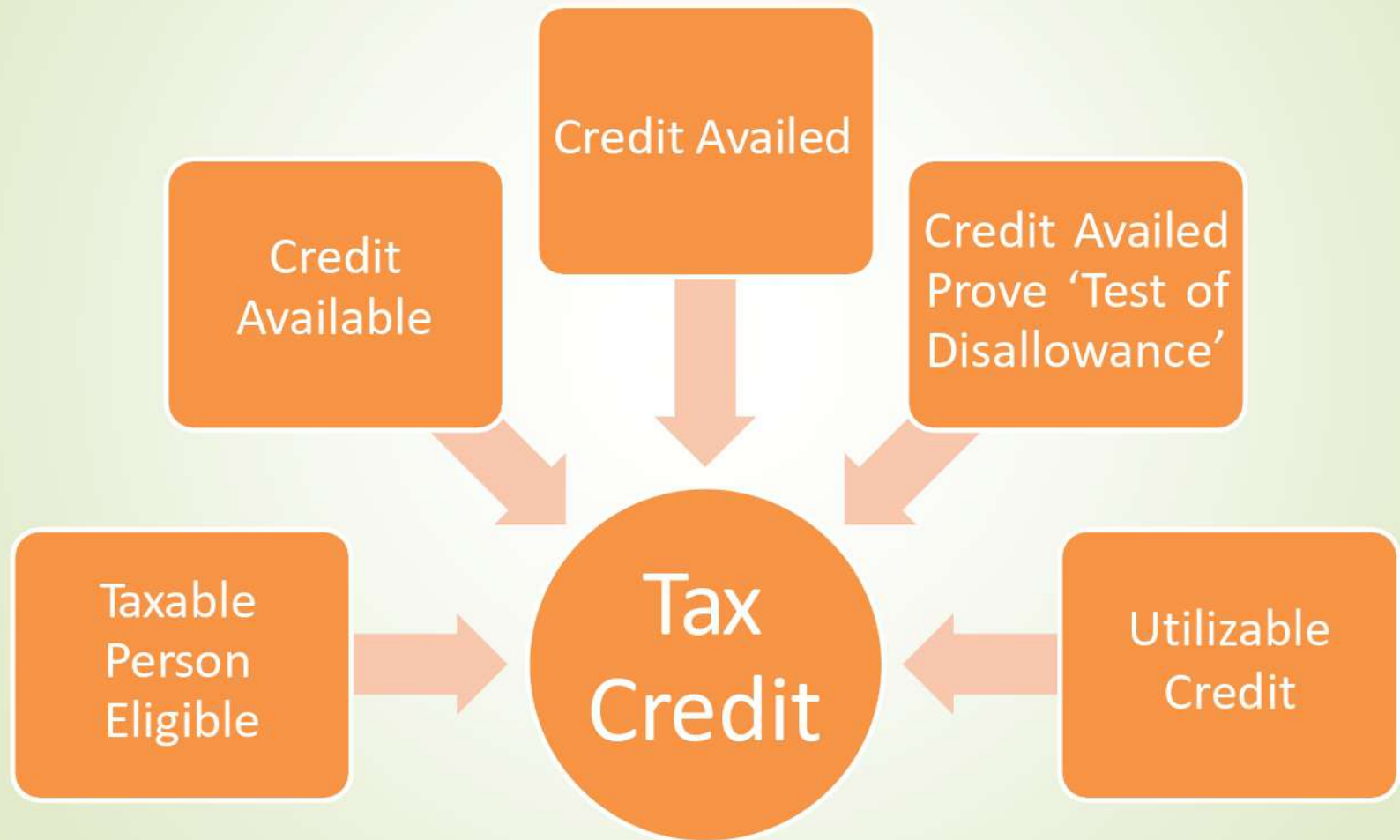
Background

- Right to collect tax; duty to pay tax
- Taxable person and Person liable to tax
- Nature of input tax credit
- Inchoate right and vested right
- Effect of ITC on Cost and Price
- Legality of conditions for allowing credit
- Effect of limitation on inchoate/vested right

Principles of Tax Credit

- It is my money
- Held by Government
- To be given back
- When I create a liability
- To pay the Government
- An equal (or greater) sum of tax
- So, its behaves as tax on output 'pre-paid'
- Is not 'cost of purchase'
- Carried as current asset
- Recoverable in future
- On onward supplies
- As tax on output supplied
- Of 'net' amount only
- And restored out of output tax collected

Principles of Tax Credit



Input Tax Credit

- 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.

Taxable Person Eligible

- Procure 'tax paid' articles
- And actually 'use' in the operations
- Creating a GST liability (on sell-side)
- 'Tax paid' by supplier (not by taxable person)
- No diversion of end-use
- Output not to be 'exempt'

Credit Available

- Goods or services 'actually' received
- 'Non-trades' excluded
- Supplier's invoice 'addressed' to registered person
- 'Trade' nexus must
- Extent of credit allowed in a year may be capped (if any, by law)

Creditable Taxes Paid

- Cost is defined in para 7 of AS 2: Inventories:
 - to include purchase price
 - other than taxes and duties that are subsequently recoverable from taxing authorities
- Credit of taxes paid denied if it is 'expensed' or 'depreciated'
- Cash outflow towards tax on purchase does not influence cost of purchase

Cash-flow / Credit-flow

- Tax 'stated as' paid on suppliers' invoice
- Actually deposited with a time delay (but within due date)
- But, regarded as 'paid' on date of invoice
- Tax credit available 'immediately'
- Tax credit available by availing
- Registration or filing of GST return is not a condition for credit

Tax Credit

- Any tax availed as credit is an 'asset'
- GST-asset encashed when GST-liability arises
- Only 'net' GST is paid to Government
- But, 'gross' GST on the output is recovered from customer
- Yet, there is no 'unjust enrichment' in law
(decided in *Dai Ichi Karkaria Ltd. Vs UoI* 1996 (81) ELT 676 (Del.LB))

Commercial Effect

- Creditable taxes charged be excluded in price comparison of two suppliers
- Offer with higher creditable tax be preferred over lower but non-creditable tax
- Creditable tax paid on capital goods/services:
 - Improves profitability of supplier
 - But, not reflect in 'sales price' reduction

Revision in Value of Supply

Debit Note

- Reason for debit note:
 - Value or
 - Tax
- Issuer of debit note
- Additional charge
- Interest
- Time interval
- Deliberate delay
- Contingent uplift

Credit Note

- Purpose of credit note:
 - Value or
 - Tax
- Issuer of credit note
- Discount v. Bad debts
- Incentive v. URD supply
- Time interval
- Supply v. Return supply
- Accounting-credit note

ITC Available-Allowable

Supplies	Goods	Services	Sch III	S.17(3)
Money	O	O	O	O
Securities	O	O	O	P
Actionable Claim	P	O	P	O
Sale of Land	O	O	P	P
Sale of Building	O	O	P	P
Supplies (RCM)	P	P	O	P

#	Excluded	Restored
(a)	Motor vehicle	Making taxable supply Transport of goods
(b)	Various	Food, beverage, catering, etc. Club membership Cab, insurance, etc. Vacation travel (LTA)
(c)	Works contract services	for further works contract supply
(d)	Goods or services or both	for constuction on own account
(e)	Supplies taxed u/s 10	
(f)	NRTP except imported goods	
(g)	Personal consumption	
(h)	LSDW and 'disposed of'	
(i)	Tax paid u/s 74, 129 & 130	

Credit Availed

- Credit is a right
- Rights vest when 'exercised'
- Delay in 'exercise' entertains revocation by subsequent legislation
- Occurrence of vesting facts confers this right
- Exercised rights cannot be revoked
- Latent rights lapse by limitation

Test of Disallowance

- Credit availed disallowed:
 - *Bona fine* alteration of 'end-use' of goods or services
 - 'Taxable supply to exempt-
▶ buyer'
- Intermingling of taxable and exempt supplies
- End-use in taxable supply
▶ 'must' for credit
- Segregation mitigates risk of artificial disjointing by rule
- Recovery from customer 'credit loss' due to buyer 'privileges' permitted

ITC in Special Cases

ITC *	New Registrant	Voluntary Registrant	Exiting Composition	Exemption Withdrawn
ITC on Inputs	P	P	P	P
ITC on CG	O O	O O	P O	P O
ITC on Services				

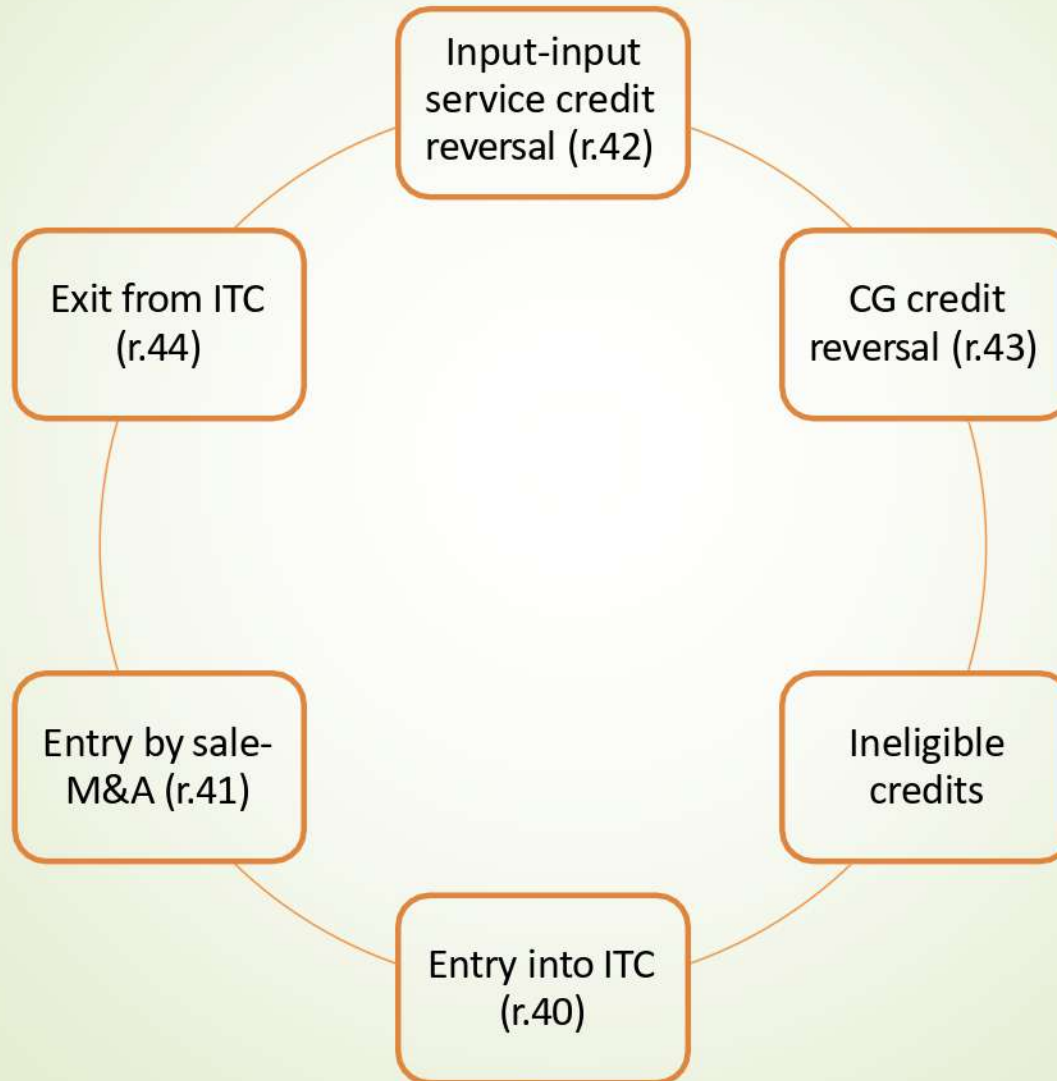
* ITC invoices < 1 year old

ITC	Transferor (minus)	Transferee (plus)
ITC on Inputs	P	P
ITC on CG	P	P
ITC on Services	P	P

ITC	Regular	Step 1: Exit *	Step 2: Enter
ITC on Inputs	P	Reverse full	Nil
ITC on CG	P P	Reverse "5% per qtr" NA	Nil NA
ITC on Services			

* surplus to lapse

Test of Disallowance



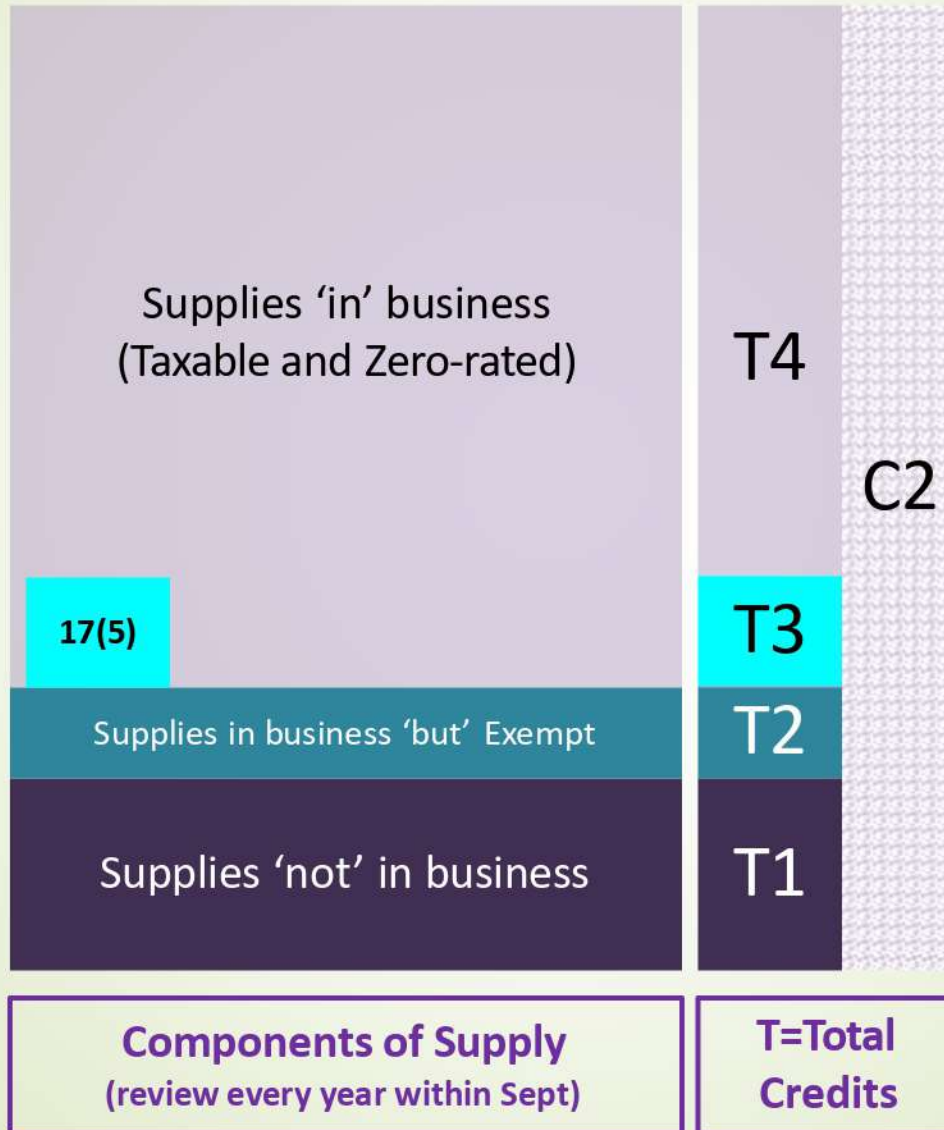
Credit reversal linked to end-use 'formula' in rule 42

S.17(1) restricts credits to extent exclusively 'attributable' for business purposes

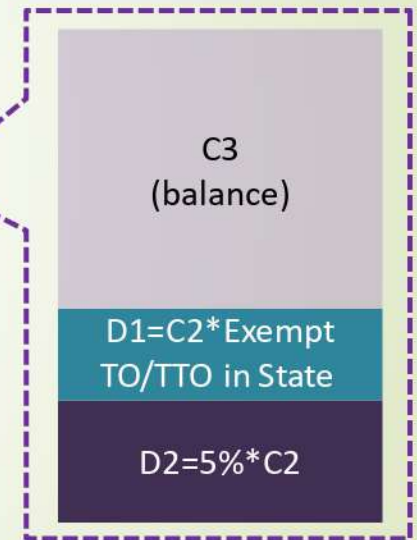
S.17(2) restricts common credits 'attributable' to taxable and zero-rated supplies

S.17(3) declares following to be 'exempt' supplies to restrict credit:

- Taxable on reverse charge
- Transactions in securities
- Sale of land and building



After allocating ITC 'exclusively' used for each activity, balance is 'common credits' to be reallocated as prescribed u/r 42



$$C1 = T4 + C2$$

Report in GSTR-2

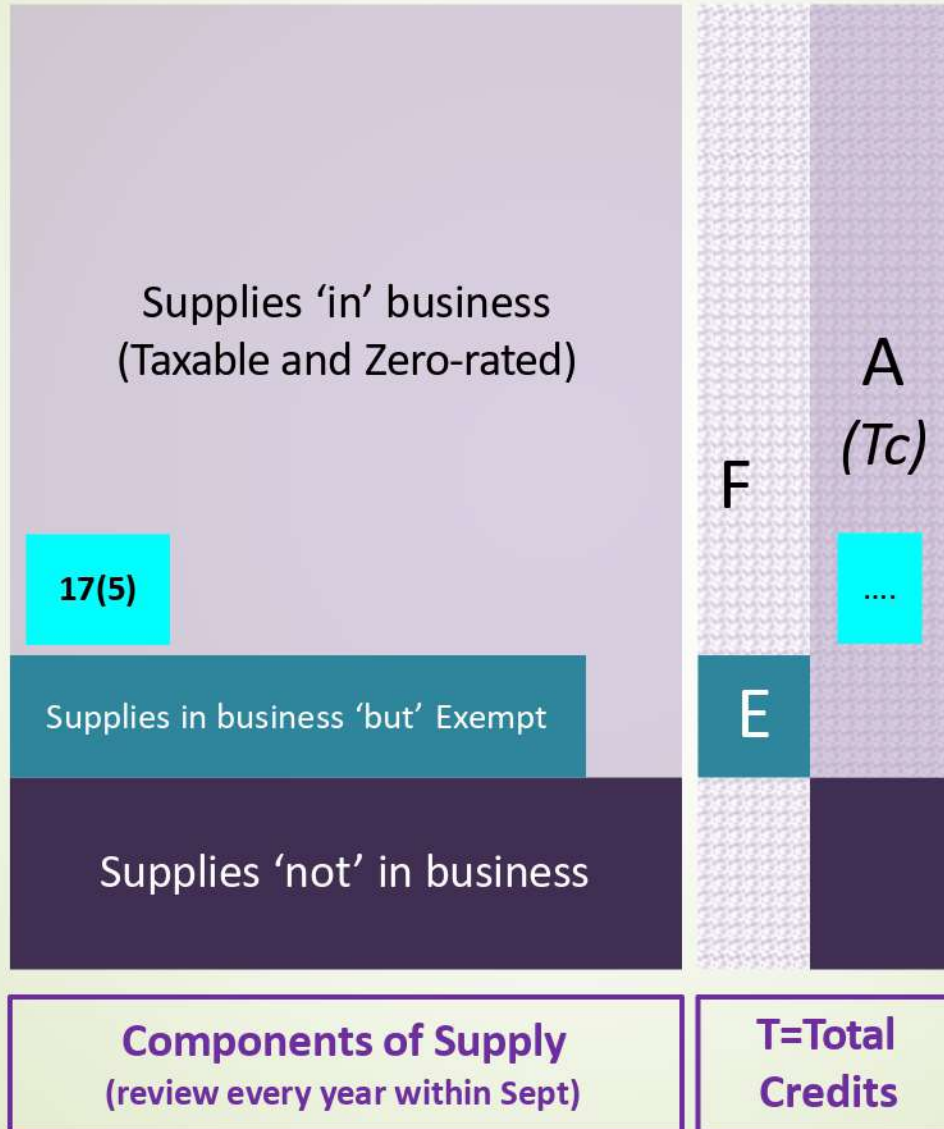
Credit reversal linked to end-use 'formula' in rule 43

S.17(1) restricts credits to extent exclusively 'attributable' for business purposes

S.17(2) restricts common credits 'attributable' to taxable and zero-rated supplies

Credit of 'capital goods' also requires end-use examination

Interchangeable 'end-use' of capital goods attracts 'quarterly' review



After allocating ITC 'exclusively' used for each activity, balance is 'common credits' to be reallocated as prescribed u/r 43

#1: $T_c/60=T_m$

#2: $T_r=T_{m_1}+T_{m_2}+....$

#3: $T_e=(E/F) \times T_r$

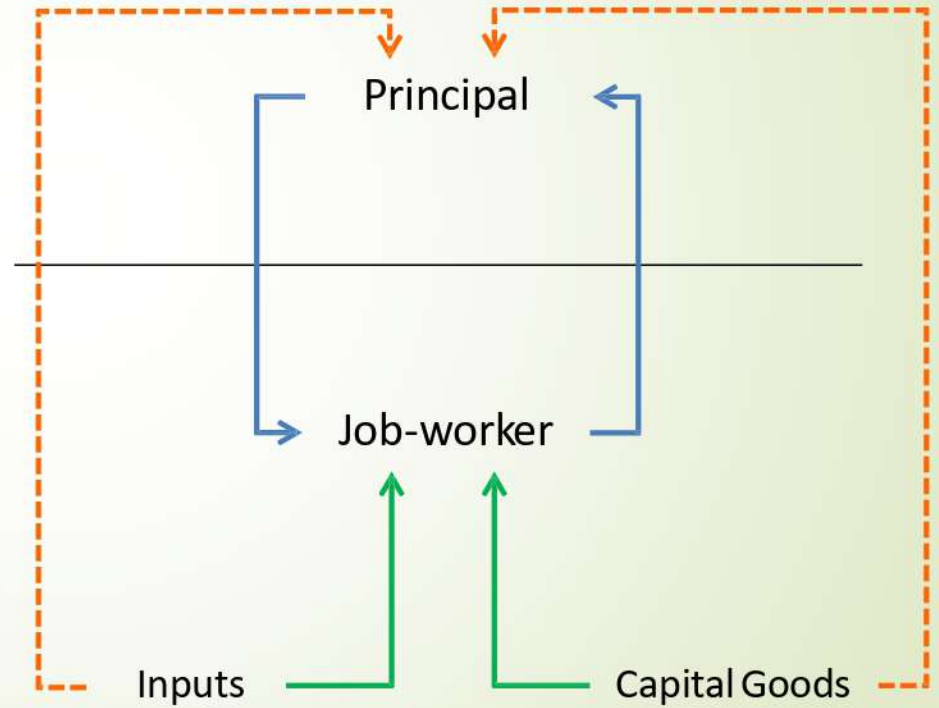
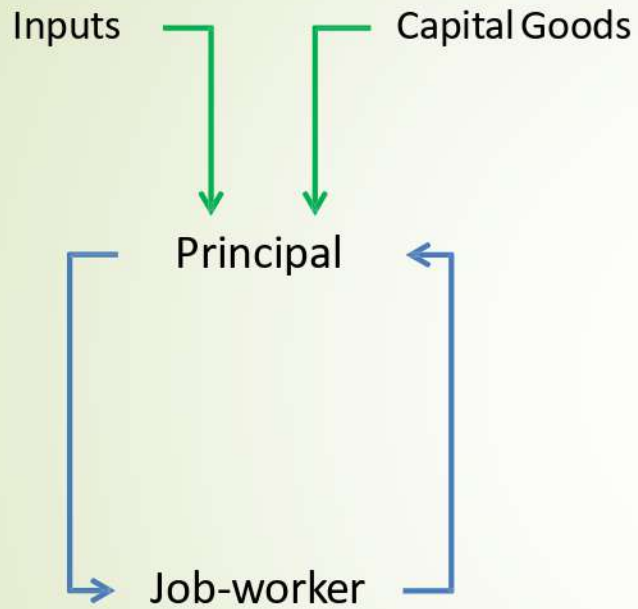
5% per quarter

Report in GSTR-2

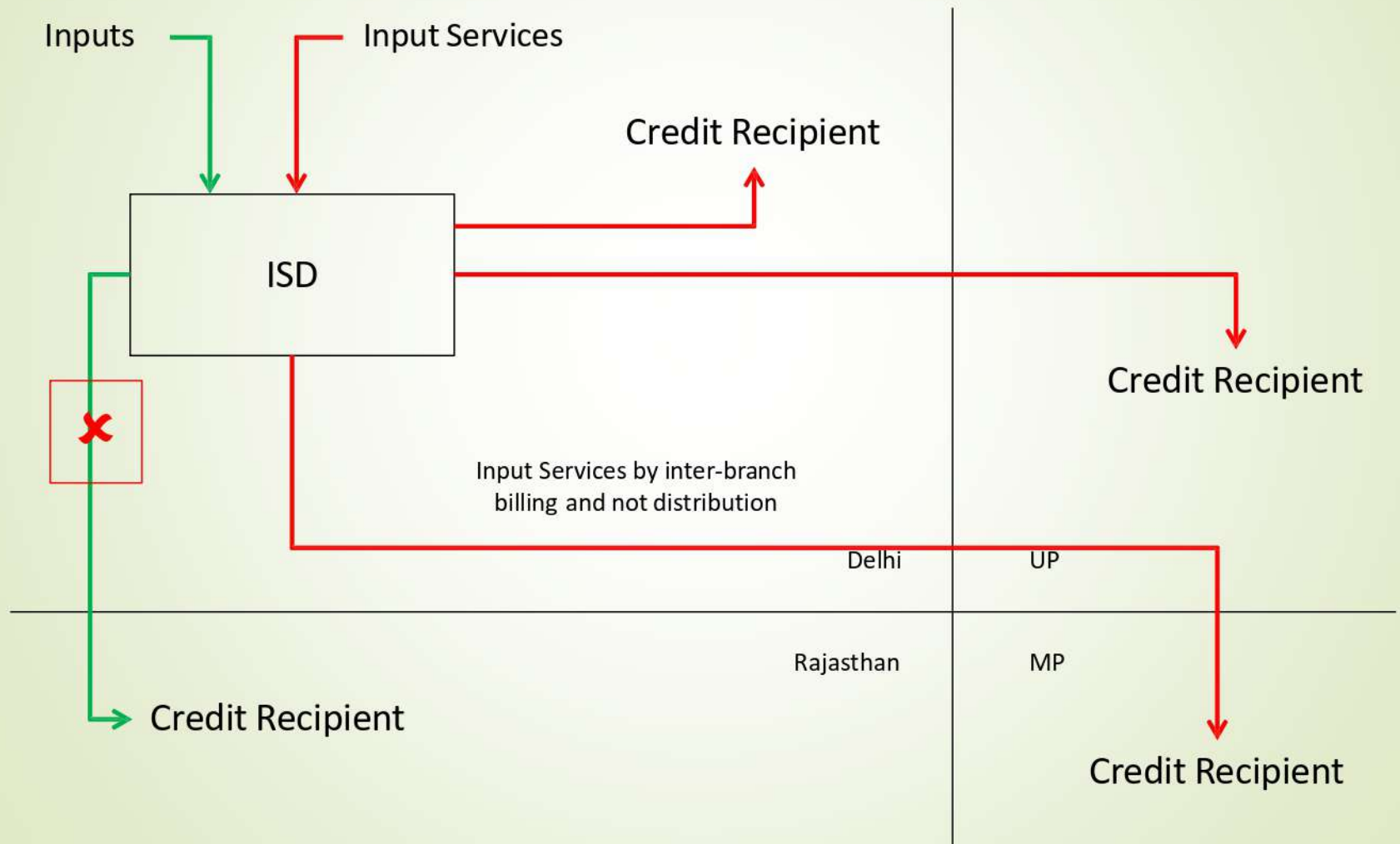
Input Tax Credit – Utilized

- Credit in ECL and liability in GSTR3
- Transfer in arrangement – Court/Private
- ‘As such’ removal – inputs and CG
- Jobbing removal – inputs, CG and
- Payment of GST by distinct person(s)
- Exit from credit arrangement
- Cancellation of registration

ITC in Job-work



Distribution by ISD



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