



INDORE BRANCH OF CIRC OF ICAI

# NEWSLETTER

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# ITC Reversal on Sale of USED CAPITAL GOODS



Many a time we have seen that people buy capital goods, take their Input Tax Credit (ITC) and then sell the asset after some time. Now the question here is whether there is any need to reverse the ITC already taken at the time of purchase?

In this article we will understand the answer to this question as per SECTION 18(6) OF CGST ACT, 2017 READ WITH PRESCRIBED RULES. First of all, we should know that as per GST, the life of any capital goods is considered as 5 years i.e. 60 months. On sale of any capital goods, the liability to pay GST arises. This liability is calculated as follows :-

Liability will be higher of the following :-

1. ITC Booked on purchase – monthly proportionate ITC for the used life\*  
\*We can also take 5% per quarter or part thereof instead of monthly proportionate (Amount may vary in both the methods).
  2. Tax liability on transaction value i.e. sale value
- HOW TO CALCULATE USED LIFE OF THE CAPITAL GOODS?** In case of monthly proportionate method:-
- To calculate the no. of months for which the capital goods has been used we need to calculate the time period for which it is used and then convert it into months. A period of less than a month shall be considered as a complete month.

For Example: Miss Ravita purchased a machine on 10.01.2019 and sold the machine on 25.05.2021. Calculate the used life in months.

**Solution:** Miss Ravita used the machinery for 2 years 4 months and 16 days. Now convert this period into months and part of the month shall be considered as one month. Hence used life will be 29 months.

In case of quarterly calculation:-

First of all we should know that the months of the quarter are fixed in GST. Following are considered as quarters in GST:-

**Quarter 1** – January to March

**Quarter 2** – April to June

**Quarter 3** – July to September

**Quarter 4** – October to December

A part of the quarter shall be considered as complete quarter.

For Example: Miss Ravita purchased a machine on 12.08.2018 and sold the machine on 11.12.2021. Calculate the used life in quarters.

Solution: No. of quarters in 2018-19 = 3(Jul-Sep, Oct-Dec, Jan-Mar)

No. of quarters in 2019-20 = 4(April-Jun, Jul-Sep, Oct-Dec, Jan-Mar)

No. of quarters in 2020-21 = 4(April-Jun, Jul-Sep, Oct-Dec, Jan-Mar)

No. of quarters in 2021-22 = 3(April-Jun, Jul-Sep, Oct-Dec)

Hence used life will be 14 quarters.

Now let's understand the whole concept with an example,

Question: Mr. Avinash is a registered person under GST in Haryana. He bought a plant & machinery of Rs.531000 (450000+81000 GST@18%) on 01.01.2018 and booked the ITC. On 24.01.2021, he sold the machine for Rs. 275000. Calculate his liability to pay GST on sale.

**Solution:**

### MONTHLY PROPORTIONATE METHOD

The asset is used for 3 years and 24 days which constitute 37 months for our calculation.

GST liability will be higher of the two :-

(1)  $81000 - 81000 \times \frac{37 \text{ months}}{60 \text{ months}} = 31050$

(2)  $275000 \times 18\% = 49500$

Hence liability to pay GST is 49500.

### QUARTER WISE METHOD

No. of qtr. In 2017-18 = 1(Jan-Mar)

No. of qtr. In 2018-19 = 4(All qtrs.)

No. of qtr. In 2019-20 = 4(All qtrs.)

No. of qtr. In 2020-21 = 4(All qtrs.)

GST liability will be higher of the two :-

(1)  $81000 - 5\% \times 13 \text{ quarters} = 28350$

(2)  $275000 \times 18\% = 49500$

Hence liability to pay GST is 49500.

**Note:-** On sale of refractory bricks, moulds and dies, jigs and fixtures as scrap, tax liability will be calculated on transaction value i.e. sale value only since they are only for one time use or for consumption in the manufacturing process completely.





# GST on Supply of Food Beverages to Employees

## Chargeability of GST on Food served to Employees

- GST is leviable on all forms of supply unless exempted exclusively [Sec. 9(1)]
- Supply includes all forms of supply made or agreed to be made for a consideration by a person in the course or furtherance of business [Sec. 7(1)(a)]
- Supply also includes the activities specified in Schedule-I, made or agreed to be made without consideration [Sec. 7(1)(c)]
- Activities to be treated as supply of goods or services or both even if made without consideration between related persons or distinct persons as specified in Sec. 25, when made in the course or furtherance of business (Clause 2 of Schedule-I)
- Employer and employee shall be deemed as related persons [Exp. (a)(iii) to Sec. 15(5)].

## Conclusion:

After reading the above provisions till now, we can say that since employer and employee are related persons as per GST law, hence, GST is leviable on any

goods or services are provided by the company to their employees at free of cost or at concessional rate. We need to analyze it further on case to case basis to see the actual taxability

## Serving of Food in Canteen is Goods or Services??

1. If certain activities and transactions constitute as "Supply" as per section 7(1) then those supplies shall be treated as either Goods or Services as specified in Schedule-II [Sec. 7(1A)]
2. Composite supply of service of any goods, being food or any other article for human consumption or any drink (excluding alcoholic liquor for human consumption) shall be treated as supply of services (Clause 6(b) of Schedule-II)
3. It is clarified by the GST council that supply of food in cafeteria is covered under the definition of "Restaurant Service" (Circular No. 164/20/2021-GST dated 06th Oct, 2021)
4. The GST rate on "Restaurant Service" is 5% without ITC (Notification No. 20/2019-Central Tax (Rate) dated 30th Sept. 2019)

## Taxable Value of Food served to Employees

1. The **taxable value** of a supply of Goods or Services or both shall be the **“transaction value”**, where supplier and recipient are **not related** and price is the sole consideration [Sec. 15(1)]
2. As discussed in earlier para, **employer and employee are related** persons as per Exp. (a)(iii) to Sec. 15(5), hence, we **cannot** take **“transaction value”** as **“taxable value”** for the purpose of calculating GST
3. Where the supplier and recipient (employer and employee in our case) are related persons then the **“taxable value”** of Goods or Services or both shall:
  - be the **open market value** [Rule 28(a)]
  - if the open market value is not available then the **value of Goods or Services of similar kind and quantity** [Rule 28(b)]
  - if it is not determinable as per above both methods then it shall be **110% of cost of production/manufacture or cost of acquisition** of such Goods or Services (Rule 30)
  - if it is not possible to determine with any of the above methods then it shall be such **value which is reasonable and consistent with the provisions** of GST law (Rule 31)

## Various Models adopted by Companies

- a. Business Catering Model
- b. Corporate Social Event Modal
- c. Cash & Carry Model
- d. Outdoor Catering Service Model
- e. Coupon Based Model

### a. Business Catering Model

Under this model food facility procures by the company from outside caterer and provides to their employees at **free of cost or at nominal** amount which recovers latter from employees, where it is mandatory/not mandatory for the company to provide such facility under any law in force (Generally mandatory u/s 46 of Factories Act, where number of employees are more than 250).

#### ITC Availability:

1. If **mandatory** on the part of company to provide food facility to their employees under any law in force and company procures such facility from caterer – **ITC Available** [Proviso to Sec. 17(5)(b)(iii)]

However, contrary Rulings have been given, where it has decided that ITC would not be available even if it is mandatory under any law to provide such canteen facility (Advance Ruling No. HAR/HAAR/R/2019-20/18 dated February 4, 2020 in the case of M/s. Musashi Auto Parts Pvt. Ltd. and ADVANCE RULING NO. GUJ/GAAR/R/39/2021 in the case of Tata Motors Ltd.)

2. If **not mandatory** on the part of company to provide food facility to their employee as per any law in force – **ITC not Available** [Proviso to Sec. 17(5)(b)(i)]

#### **GST applicability on outward supply to employees:**

GST is chargeable at the rate of 5% by the company on the value which is to be determined as per section 15(5) r.w.r. 28, 29, 30 and 31 of CGST Rules, 2017 (Refer Hon'ble AAAR of KERALA vide Order No. CT/7726/2018-C3 dated 25th Sept, 2018 in the case of M/s. Caltech Polymers Pvt. Ltd. and Hon'ble AAR or Gujarat vide Advance Ruling No. GUJ/GAAR/R/50/2020, dated 30th July, 2020 in the case of M/s Amneal Pharmaceuticals Pvt. Ltd.)

However, contrary Ruling has been given, where it has decided that GST is not leviable on nominal amount recovered from employees (ADVANCE RULING NO. GUJ/GAAR/R/39/2021 in the case of Tata Motors Ltd.)

### **b. Corporate Social Event Model**

Under this model caterer provides catering and allied banquet services at internal events hold at company's premises against consideration receives from the company or their employees who are responsible for the event, as the case may be.

#### **ITC Availability:**

Is company eligible to avail the ITC on all the supplies made by caterer?? – **ITC available on all the supplies except supply of food**



### **GST applicability on outward supply to employees:**

GST is chargeable at the rate of 5% by the company on the food value which is to be determined as per section 15(5) r.w.r. 28, 29 and 30 (Refer previous slides)

However, contrary Ruling has been given, where it has decided that GST is not leviable on nominal amount recovered from employees (ADVANCE RULING NO. GUJ/GAAR/R/39/2021 in the case of Tata Motors Ltd.)

**Note:** There is no question of ITC eligibility to the company if the whole consideration is paid by employees to caterer directly without any involvement of the company in the whole transaction.

### **c. Cash & Carry Model**

Under this model caterer provides food facility directly to company's employees and receives the consideration directly from employees without any involvement of company in the whole transaction.

#### **ITC Availability:**

There is **no question of ITC** to the company since amount is directly paid by employees to caterer without any transaction with the company ITC would not be available to caterer also since it is blocked u/s 17(5)(b)(i)

### **GST applicability on outward supply to employees:**

GST is chargeable at the rate of 5% on the transaction value which is actually paid by employees to caterer as caterer and employees are not related persons.

### **d. Outdoor Catering Service Model**

This model is more or less similar to "Business Catering Model". Under this model food facility provided to employees by outside caterer and caterer raise invoice in the name of company. Company deducts the whole amount from employees' salary.

#### **ITC Availability:**

1. If **mandatory** on the part of company to provide food facility to their employees under any law in

force and company procures such facility from caterer – **ITC available** [Proviso to Sec. 17(5)(b)(iii)]

2. However, contrary Rulings have been given, where it has decided that ITC would not be available even if it is mandatory under any law to provide such canteen facility (Advance Ruling No. HAR/HAAR/R/2019-20/18 dated February 4, 2020 in the case of M/s. Musashi Auto Parts Pvt. Ltd. and ADVANCE RULING NO. GUJ/GAAR/R/39/2021 in the case of Tata Motors Ltd.)
3. If **not mandatory** on the part of company to provide food facility to their employee as per any law in force – **ITC not Available** [Proviso to Sec. 17(5)(b)(i)]

### **GST applicability on outward supply to employees:**

GST is chargeable at the rate of 5% by the company on the value which is to be determined as per section 15(5) r.w.r. 28, 29, 30 and 31 of CGST Rules, 2017 (Refer Hon'ble AAAR of KERALA vide Order No. CT/7726/2018-C3 dated 25th Sept, 2018 in the case of M/s. Caltech Polymers Pvt. Ltd. and Hon'ble AAR or Gujarat vide Advance Ruling No. GUJ/GAAR/R/50/2020, dated 30th July, 2020 in the case of M/s Amneal Pharmaceuticals Pvt. Ltd.)

### **e. Coupon Based Model**

Company distributes coupons to their employees specifying the manner of its usage i.e. for meal in canteen or other outlet only and recovers partial or full amount from the employees.

#### **ITC Availability:**

There is **no question of ITC** since coupon directly uses by employees at caterer counter without involvement of company in the whole transaction.

### **GST applicability on outward supply to employees:**

If no amount is recovered from the employees by the company then no GST would be chargeable.

However, if any amount whether partial or full is recovered from the employee then the value of coupon will be the taxable value for the purpose of calculating GST.

# Minimum Alternate Tax

## (Section 115JB) MAT



### Minimum Alternative Tax (Section 115JB)

MAT Stands for Minimum Alternative Tax, the objective of introduction of MAT is to bring into the tax net “zero tax companies” which in spite of having earned substantial book profits and having paid handsome dividends, do not pay any tax due to various tax concessions and incentives provided under the Income-tax Law.

MAT was introduced in Finance Act, 1987 but later it was withdrawn by the Finance Act, 1990 but again it was reintroduced in Finance Act, 1996.

#### Rate of MAT:

Rate of MAT is 15% + SC and CESS (as applicable)

MAT Rate is 9% + surcharge and cess (as applicable) in case of a company, Being a unit of an International Financial Services Centre and deriving its income solely in Convertible foreign exchange.

#### Liability:

The tax liability of a company will be higher of the following:

1. Tax liability of the company computed as per the normal provisions of the Income-tax Law, i.e., tax computed on the taxable income of the company by applying the tax rate applicable to the company. Tax computed in above manner can be termed as normal tax liability.
2. Tax computed @ 15% + surcharge and cess (as applicable) on book profit (manner of computation of book profit is discussed in later part). The tax computed by applying 15% + surcharge and cess (as applicable) on book profit is called MAT.

#### Applicability:

The provisions of MAT are not applicable on:

- a) The domestic companies which have opted for tax

regimes under Section 115BAA or Section 115BAB ; (115BAA – domestic companies have the option to pay tax at a rate of 22% plus SC of 10% and cess of 4%)

115BAB- Companies opting under this section 115BAB, shall be required to pay tax at the rate of 22% on the income which has not derived or incidental to manufacturing or production of article or thing and no deduction or allowance shall be allowed on such income.

- b) Any income accruing or arising to a company from the life insurance business referred to in Section 115B;
- c) Shipping company, the income of which is subject to tonnage taxation.

**MAT Credit:** MAT Credit can be carry forward for 15 Years and after that it will lapsed. Example: Tax Liability of ABT LTD as per normal provision is for FY 20-21 is 10 lakh and as per provision of MAT liability is 11 lakh. Here Company have to pay Tax as per MAT, as liability is greater under MAT but company is entitled to claim MAT credit of 1 Lakh and can adjust this credit till next 15 FY. (Whenever in any FY Tax Liability as per normal Provision becomes greater than MAT tax liability).

#### Report from Chartered Accountant:

Every company to whom the provisions of section 115JB applies is required to obtain a report from a chartered accountant in Form No. 29B certifying that the book profit has been computed in accordance with the provisions of section 115JB. The report should be obtained before the specified date referred to in Section 44AB.

Audit report in Form No. 29B shall be filed electronically.

स्वच्छ इंदौर-स्वस्थ इंदौर  
अभियान के तहत  
न्यूनतम दरों पर  
स्वास्थ्य  
संबंधित जाँचे



₹1000 की जाँच  
मात्र ₹100 में

- Blood Sugar
- S. Cholesterol
- Creatinine
- GRF Sugar
- SGPT
- Protein
- Albumin
- Globulin-A/G Ratio

₹3550 की जाँच  
मात्र ₹550 में

- Vitamin-D
- B-12
- Thyroid (TSH)

Both ₹ 100 + ₹ 550 = ₹ 650

शनिवार, 18 दिसम्बर 2021

प्रातः 8:30 से 1:30 तक

सी.जी.ओ. ऑफिस, आयकर भवन, ए.बी.रोड, इंदौर

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