



Input Tax Credit under Delhi VAT

P K Bansal, Advocate
98102-88440

Main Provisions

Sec	Provision	Deliberation
2(1)(r)	<p><u>Definition of ITC</u></p> <p>“input tax” in relation to the purchase of goods, means the proportion of the price paid by the buyer for the goods which represents tax for which the selling dealer is liable under this Act;</p>	<ul style="list-style-type: none">▪ Definition of input tax credit under Delhi VAT law

Main Provisions

Sec	Provision	Deliberation
9(1)	<p><u>Opening provision for claim of ITC</u></p> <p>a dealer <u>who is registered</u> or is <u>required to be registered</u> under this Act shall be <u>entitled to a tax credit</u> in respect of the turnover of <u>purchases occurring during the tax period</u> where the purchase arises <u>in the course of his activities as a dealer</u> and the goods are to be used by him <u>directly or indirectly</u> for the purpose of making -</p> <p>(a) sales which are liable to tax under section 3 of this Act; or (b) sales which are not liable to tax under section 7 of this Act</p> <p><i>Section 3(9) is in respect of person who transport or hold goods in custody for delivery</i> <i>Section 3(10) is in respect of person who organizes exhibition-cum-sale in Delhi</i> <i>Section 7 includes sales not liable to tax “in the course of inter-state sales”, “sales outside Delhi” and “in the course of import / export out of India”</i></p>	<ul style="list-style-type: none"> ▪ Section 18 provides for when the dealer is required to be registered (based on taxable turnover which does not include sale of capital assets, winding up or closure of business) ▪ Reading of above provides that no ITC available in case of purchase of goods (raw material, packing material, etc) used for manufacture of exempted goods or for use other than sale ▪ ITC on Consumables can also be claimed as words say “directly” or “indirectly”. However, no ITC if such consumables expressly included in the schedule of non-creditable items (example – fuel)

Restriction on availability of Tax credit

Sec	Provision	Deliberation
9(2)(a)	<p><u>Unregistered dealer</u></p> <p>No tax credit in case of purchase of goods for goods purchased from a person <u>who is not a registered dealer</u></p>	<ul style="list-style-type: none"> ▪ Tax invoice, in any case, can only be issued by a registered dealer (i.e. after obtaining the TIN under Delhi VAT) ▪ However, situation may arise wherein purchase had been made from a dealer who was registered under the Delhi VAT Act but the same had been cancelled by the department suo-motu and the seller is under the bona-fide belief that he is registered with the department

Restriction on availability of Tax credit

Sec	Provision	Deliberation
9(2)(b)	<p><u>Non-creditable goods</u></p> <p>No tax credit for the purchase of non-creditable goods</p>	<ul style="list-style-type: none"> ▪ Items mentioned in Seventh Schedule provided the dealer is not engaged in trading of such goods (includes automobiles, fuel, spare parts for repair & maintenance, conventional clothing, food, beverages, goods for entertainment like TV & radio, tobacco, ACs, office equipment, stationery items, etc) ▪ Non availability of ITC does not mean that output tax is not leviable on sale of such goods (for example – motor car)

Restriction on availability of Tax credit

Sec	Provision	Deliberation
9(2)(c)	<p><u>Building material</u></p> <p>No tax credit for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person;</p> <p>Explanation.- This sub-section does not prevent a tax credit arising for goods and building materials that are purchased either for the purpose of re-sale in an unmodified form, or for the performance of a works contract on a building owned or occupied by another;</p>	<ul style="list-style-type: none"> ▪ Provisions not applicable in case of builder or trader of such building material. Provisions only triggers where building made for own use ▪ Where such change in utilization happens subsequently, the ITC to be reversed in such tax period when the change happens [Section 10(4)] ▪ Rule 6(i) & 6(ii) provides the mode of computation – discussed below

Restriction on availability of Tax credit

Sec	Provision	Deliberation
9(2)(d)	<p><u>Purchase from composition dealers</u></p> <p>No tax credit for goods purchased from a dealer who has elected to pay tax under section 16 of this Act</p>	<ul style="list-style-type: none"> Section 16 applicable in case of dealers under composition scheme
9(2)(e)	<p><u>Purchase from casual trader</u></p> <p>No tax credit for goods purchased from a casual trader</p>	<ul style="list-style-type: none"> Casual traders are those taking temporary registrations (mainly participating in exhibitions)
9(2)(f)	<p><u>Purchase from Fifth schedule dealers</u></p> <p>No tax credit to the dealers or class of dealers specified in the Fifth Schedule except the entry no.1 of the said Schedule</p>	<ul style="list-style-type: none"> Entry 1 is CSD canteens While Entry 2 is Ramakrishna Mission

Restriction on availability of Tax credit

Sec	Provision	Deliberation
9(2)(g)	<p><u>Seller not depositing tax with the government</u></p> <p>No tax credit to the dealers or class of dealers <u>unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer</u> with the Government or has been <u>lawfully adjusted against output tax liability and correctly reflected in the return</u> filed for the respective tax period [Amendment brought in force w.e.f 1.4.2010]</p> <p>Rule 6A(2) introduced which provides that VATO may satisfy himself on compliance of above provisions</p>	<p>Intention for introduction was to trigger where collusion between buyers & sellers with the intention to deceive the department of its revenue</p> <p>Recent decision by Delhi High court in Shanti Kiran India Pvt Ltd had held that provision is not applicable retrospectively (decision of VAT Tribunal over-ruled)</p>

Restriction on availability of Tax credit

Sec	Provision	Deliberation
9(7)(b)	<p><u>Exempted sales</u></p> <p>No ITC allowed in case the purchase of goods which are used exclusively for the manufacture, processing or packing of goods specified in the First Schedule</p>	<ul style="list-style-type: none"> ▪ Not applicable in case such exempted goods are exported. Delhi High court in the case of Jaishree Exports vs CIT has held that the provision is not applicable where goods are exported out of India since the provision applies where goods are exempt u/s DVAT Act read with Schedule I and not to those cases where transaction is exempt by virtue of Article 286(1) of the Constitution of India

Restriction on availability of Tax credit

Sec	Provision	Deliberation
9(7)(c)	<p><u>Job worker</u></p> <p>No ITC allowed in case of any purchase of consumables or of capital goods where</p> <ul style="list-style-type: none"> ▪ the dealer is exclusively engaged in doing job work or labour work and ▪ is not engaged in the business of manufacturing of goods for sale by him and ▪ incidental to the business of job work or labour work, obtains any waste or scrap goods which are sold by him. 	<ul style="list-style-type: none"> ▪ Example – Job worker engaged in cutting of iron sheets. In the process, scrap is generated which is sold by him after payment of VAT. No ITC can be claimed in view of this clause ▪ Includes purchase of both consumables & capital goods

Reduction (Proportionate or otherwise) in ITC

Sec	Provision	Deliberation
9(4) & 9(5)	<p><u>Goods used partly for Exempted sales or other purposes</u></p> <p>ITC to be reduced where a dealer has purchased goods and the goods are to be used partly for the purpose of making the sales referred to in sub-section (1) of this section and partly for other purposes, the amount of the tax credit shall be reduced proportionately</p> <p>The method used by a dealer to determine the extent to which the goods are used in the manner specified in sub-section (4) of this section, shall be fair and reasonable. However, the Commissioner may reject the same by giving reasons in writing.</p>	<ul style="list-style-type: none"> ▪ No eligibility of ITC on purchase of goods used for the purpose of distributing free samples / free gifts [As gifts specifically included in Schedule VII items] ▪ In case of 1+1 offer, ITC can't be denied – However, provisions of 10(5) become important i.e. Output tax should not be lower than ITC. However, determination in case of L G Electronics (No 69 of 2005) says otherwise. ▪ In case goods lost / destroyed by fire, ITC claimed needs reversal [Rule 7(3)]. Another issue may arise as whether any amount received from insurance company is taxable? However, the same is 'actionable claim' which is not covered under the definition of "goods" as defined in Section 2(m) ▪ In case of normal loss (like evaporation of petrol), whether ITC to be reversed? [Internal circular issued by Commissioner provides for such reversal] ▪ Where manufacturing process generates scrap which is exempt, ITC to be proportionately reduced (Notification F1(1)/Policy-III/VAT/2005/1203] dated 15.12.2005

Reduction (Proportionate or otherwise) in ITC

Sec	Provision	Deliberation
9(6)	<p><u>Stock transfer</u></p> <p>ITC to be reduced by the prescribed percentage where</p> <p>(a) a dealer has purchased goods (other than capital goods) for which a tax credit arises under sub-section (1) of this section;</p> <p>(b) the goods or goods manufactured out of such goods are to be exported from Delhi by way of transfer to a –</p> <ul style="list-style-type: none"> ✓ non-resident consignment agent; or ✓ non-resident branch of the dealer; and <p>(c) the transfer will not be by way of a sale made in Delhi;</p>	<ul style="list-style-type: none"> ▪ Provision triggers in case of local purchases made in Delhi which is sent outside Delhi by way of stock transfer ▪ Reversal to be made as follows <ul style="list-style-type: none"> ✓ 2% (from 1.6.08 till date) ✓ 3% (from 14.5.07 to 31.3.08) ✓ 4% (upto 13.5.07) ▪ Reversal of only 1% in case of goods subjected to 1% tax. ▪ ITC to be computed on purchase price (excluding tax) ▪ In case of exempted goods or purchase from unregistered dealers or imports or central purchase or branch transfer inward, no reversal required as no ITC claimed in the first place. However, the same applies only when there is one-to-one correlation ▪ Thus, issue may arise where stock transfer done out of both local purchase & central purchase (with no records being made about utilization). In such a case, proportionate value of stock transfer may need to be computed. ▪ Where goods transferred to branch / agent who processes the goods and sends the same back, ITC reversed earlier can be taken back again [Rule 7(2)] provided <u>the goods are same or the goods processed / manufactured are out of the goods as originally transferred</u>. Provisions not to apply if goods sent to an independent job worker as there shall not be reversal of ITC in the first place

Reduction (Proportionate or otherwise) in ITC

Sec	Provision	Deliberation
10(1)	<p><u>Return / rejection of purchased goods</u></p> <p>(1) Where any purchaser has been issued with a credit note or debit note in terms of section 51 of this Act or if he returns or rejects goods purchased, as a consequence of which the tax credit claimed by him in any tax period in respect of which the purchase of goods relates, becomes short or excess, he shall compensate such short or excess by adjusting the amount of the tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned.</p>	<ul style="list-style-type: none"> ▪ Provisions applicable in case of return / rejection of goods ▪ Seller to reverse output tax only when goods received within 6 months. Purchaser to reverse ITC in any which case ▪ ITC to be reversed by buyer, whether or not output tax had been reversed by the seller [DVAT Tribunal in case of Alpha Marketing Co] ▪ Adjustment only in tax period when credit note / debit note issued or goods returned

Reduction (Proportionate or otherwise) in ITC

Sec	Provision	Deliberation
10(2)	<p><u>Change in utilization of goods</u></p> <p>(2) If goods which have been purchased were - (a) intended to be used for the purposes specified under sub-section (1) of section 9 of this Act and are subsequently used, fully or partly, for purposes other than those specified under the said sub-section; or (b) intended for purposes other than those specified under sub-section (1) of said section 9 of this Act, and are subsequently used, fully or partly, for the purposes specified in the said subsection;</p> <p>the tax credit claimed in respect of such purchase shall be reduced or increased (as the case may be) for the tax period during which the said utilization otherwise has taken place.</p>	<ul style="list-style-type: none"> ▪ Adjustment only in tax period when there is change in utilization ▪ Rule 6(i) & 6(ii) provides the mode of computation. Where commodity wise accounts maintained correlating the use, ITC on purchases used for such purpose to be reduced. In case, the same is not maintained, purchase price based on last bill or FMV of such goods (whichever is higher) shall be taken as the base

Reduction (Proportionate or otherwise) in ITC

Sec	Provision	Deliberation
10(5)	<p><u>Output tax on goods is lower than ITC claimed</u></p> <p>Where the goods which have been purchased by a dealer are sold at a price lower than the price at which it was purchased by the dealer, the tax credit on such purchases shall be reduced proportionately in the tax period during which the goods are sold.</p> <p>Explanation – The tax credit claimed on a particular purchase shall not exceed the amount of tax payable on its sale</p>	<ul style="list-style-type: none"> ▪ Amendment made effective from 1.4.2010 ▪ Linked to individual purchases ▪ Not applicable if goods sold in ordinary course of the business [Rule 6A(4)] ▪ Also, not applicable where sale price is higher than the purchase price (after reducing discount allowed in credit note) ▪ Concerns arise in case of credit notes issued not related to particular purchase (i.e. for reimbursement of expenses by purchaser, rent for display of goods, etc)

ITC in case of Capital goods

Sec	Provision	Deliberation
9(9)(a)	<p><u>Proportionate credit each year</u></p> <p>Tax credit in respect of capital goods allowed as below</p> <ul style="list-style-type: none">(i) 1/3rd of the input tax on such capital goods arising in the tax period, in the same tax period;(ii) balance 2/3rd of such input tax, in equal proportions in two immediately successive financial years :	

ITC in case of Capital goods

Sec	Provision	Deliberation
1 st proviso to 9(9)(a)	<p><u>ITC in case of sale of capital goods</u></p> <p>PROVIDED that, where the dealer sells such capital goods, the dealer shall be allowed as tax credit, the balance amount of the input tax, if any, in respect of such capital goods as has not been earlier availed as tax credit, such tax credit shall be allowed in the tax period in which such capital goods are sold and only after adjusting the output tax payable by him</p>	
9(9)(b)	<p>If any capital goods in respect of which tax credit is allowed under clause (a) of this sub-section is transferred to any other person <u>otherwise than by way of sale at the fair market value before the expiry of a period of five years</u> from the date of purchase, the tax credit claimed in respect of such purchase shall be [reversed] in the tax period during which such transfer takes place.</p>	

ITC in case of Capital goods

Sec	Provision	Deliberation
2 nd proviso to 9(9)(a)	<p><u>ITC in case of stock transfer of capital goods</u></p> <p>PROVIDED FURTHER that where the dealer transfers <u>such capital goods from Delhi</u> otherwise than by way of sale before the expiry of three years from the date of purchase, he shall, after claiming the balance amount of input tax, if any, not availed earlier in respect of such capital goods, reduce the input tax credit by the prescribed percentage of the purchase price of such capital goods and make adjustments in the input tax credit in the tax period in which these capital goods are so transferred</p>	<ul style="list-style-type: none"> ▪ 2% rate had even notified in such cases for reversal of ITC

ITC in case of Capital goods

Sec	Provision	Deliberation
Proviso to 9(9)(a)	<p><u>ITC in case of capital goods used for other than making taxable sales</u></p> <p>PROVIDED ALSO that where a dealer has purchased capital goods and the capital goods are to be used partly for the purpose of making sales referred to in sub-section (1) of this section and partly for other purposes, the amount of tax credit shall be reduced proportionately:</p> <p>PROVIDED ALSO that no tax credit in respect of capital goods shall be allowed if such capital goods are used exclusively for the purpose of making sale of exempted goods specified in the first schedule</p>	

ITC in case of Capital goods

Sec	Provision	Deliberation
Proviso to 9(9)(a)	<u>Depreciation on capital goods</u> PROVIDED ALSO that no tax credit in respect of capital goods shall be allowed on that part of the value of such capital goods which represents the amount of input tax on such capital goods, which the dealer claims as depreciation under section 32 of the Income Tax Act, 1961 (43 of 1961).	

Other provisions

Sec	Provision	Deliberation
9(8)	<p><u>Tax invoice mandatory</u></p> <p>The tax credit may be claimed by a dealer only if he holds a tax invoice at the time the prescribed return for the tax period is furnished</p>	<ul style="list-style-type: none"> ▪ In case tax invoice is lost, dealer can obtain duplicate copy of same from the seller [Sec 50(8)] ▪ Recent decision by Delhi VAT Tribunal in case of L&T Finance Ltd provides that eligibility & availment of ITC are 2 different concepts. A dealer may be eligible to avail ITC at the time of purchase, ITC can be actually availed when he holds the tax invoice. ▪ Recent online reconciliation of 2A & 2B is resulting in practical difficulties where tax invoice is issued by a selling dealer in particular month while the same is received by the purchasing dealer in subsequent month ▪ Mistake in invoices (like 'Sales invoice' mentioned as against 'Tax invoice') can still be allowable if the same is rectified by selling dealer. Delhi VAT Tribunal in case of C.Damani & Co had held that there is difference between 'illegality' and 'irregularity' wherein latter are curable and can be rectified even subsequently. ▪ Where deficiencies in tax invoice are rectified even after receipt of notice of assessment, the demand of tax had been set aside by Delhi VAT Tribunal in the case of Deutsche Motoren. ▪ In case higher tax charged by selling dealer (as against mentioned in the schedule), ITC can be claimed by the purchasing dealer in full [Delhi VAT Tribunal in the case of Banarsi Dass & Sons] ▪ Where selling dealer was supplying goods against delivery-cuum-challan and raised composite bill for the entire month, Delhi VAT tribunal held that ITC cannot be claimed on the tax invoice as the seller can't issue composite bill in the first place.

Other provisions

Sec	Provision	Deliberation
20	<p><u>ITC on opening stock in case of new registered dealers</u></p> <p>Dealer is eligible to claim ITC on stock held by him prior to registration but after the commencement of Delhi VAT Act, which in turn have suffered tax</p>	<ul style="list-style-type: none"> ▪ Claim in first return ▪ Stock statement to be furnished within 7 days of registration ▪ Adequate proof of payment of tax to be available
	<p><u>Related party transactions</u></p> <p>In case of related party transactions, if the price is influenced with the relation between the parties, the ITC will be disallowed.</p>	<ul style="list-style-type: none"> ▪ In the course of income tax assessment, it is normally asked if the transactions have been undertaken with the related parties. Mutuality of interest will have to be looked into.
	<p>No need for “one to one” or “bill to bill” correlation while taking ITC</p>	

Other provisions

Sec	Provision	Deliberation
86(10)	<p><u>Tax deficiency arising on account of false return</u></p> <p>Penalty leviable is higher of</p> <ul style="list-style-type: none"> ▪ 10,000 or ▪ Amount of tax deficiency 	
86(12)	<p><u>Tax deficiency arising on account of incorrect availment of ITC</u></p> <p>Penalty leviable is higher of</p> <ul style="list-style-type: none"> ▪ 1% of tax deficiency per week or ▪ Rs 100 per week for the period of default 	

Other provisions

Sec	Provision	Deliberation
	<p><u>Right to Use</u></p> <p>Purchase to also include acquisition of right to use goods [Sec 105(2)(a)].</p>	<ul style="list-style-type: none"> ▪ Delhi VAT Tribunal in the case of L&T Finance had held that the leasing companies are eligible for ITC provided hire charges are taxable under Delhi VAT ▪ Hire charges are taxable when the full possession and control is given to the lessee. Where owner retains the effective control over the equipment, it is not a transfer of 'right to use' ▪ Transfer of 'right to use' goods implies that full liberty is vested in the hands of the transferee to have the right to use the goods in any manner he feels fit

Other provisions

Sec	Provision	Deliberation
	<p><u>Intra-state stock transfer</u></p> <p>Stock transfer in Delhi includes 2 cases</p> <ol style="list-style-type: none"> 1. goods are transferred by a dealer to its own branch which is its additional place of business 2. when goods are transferred to another dealer which will act as consignor and would be selling goods for a commission to consignment agent <ul style="list-style-type: none"> ▪ <i>No concerns for ITC as Output tax to arise only when branch sells the goods</i> ▪ <i>In second case, Notification No. F.4(3)/PII/VAT/2005/1158 dated 2.12.2005 issued by Commissioner has provided that VAT is applicable on transfer from dealer to consignor</i> 	<ul style="list-style-type: none"> ▪ Delhi High court struck down the notification by holding that the transaction between the Principal and Consignment Agent does not constitute “sale” within the meaning of Section 2(zc) of the Act. Hence, it was not open to department to demand VAT unless either the property in the goods supplied by the dealer to its Consignment Agents or the transaction between the parties amounted to sale within the meaning of some other provision of the Act. ▪ Even after the said decision, though the tax may not be chargeable on stock transfer from a dealer to another if that is on consignment basis, the decision failed to provide its inputs on the mechanics of the transactions. Though dealer transferring stock may claim input tax, consignee dealer would be chargeable to output tax. Thus, one dealer may have input credit being piled up, selling dealer (i.e. consignee) would be required to discharge the whole of output tax liability

Thank You