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Compulsory Reversal of GST Credit by Buyers for Non-Payment of GST by Suppliers w.e.f October 1, 2022

The CBIC vide **Notification No. 18/2022- Central Tax dated September 28, 2022** notified the following changes in this regard vide Sections 100 and Section 106 of the Finance Act, 2022 in the Central Goods and Services Tax Act, 2017 ("the CGST Act") **w.e.f. October 01, 2022:**

Current provisions	Amended provisions	Effect
Section 100 of the Finance Act, 2022- Section 16 - Eligibility and conditions for taking input tax credit		
Sec 16(2)(c): <i>subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and</i>	Sec 16(2)(c): <i>subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and</i>	Reference of sec 43A to be omitted: Earlier, sec 16(2)(c) of the CGST Act was amended to insert sec 43A vide sec 8 of CGST (Amendment) Act, 2018, which was not made effective and now the same is being omitted so as to remove the concept of ITC matching-mismatching i.e., two-way communication of GST return filing system is omitted.
Section 106 of the Finance Act, 2022- Section 41 - Claim of input tax credit and provisional acceptance thereof		
41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger. (2) The credit referred to in sub-section (1) shall be utilised only	41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger. (2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed	Sec 41 of the CGST Act is amended so as to remove the concept of provisional ITC and provided for reversal of ITC where GST not deposited by the supplier to Govt. exchequer along with the interest @ 18% PA and re-avail the same once payment has been made by the supplier in respect of such supplies. Sec 41(2) is to be read with sec 16(2)(c) of the CGST Act as it has been amended vide sec 106 of the Finance Act, 2022 to do away with all the litigation w.r.t vires of sec 16(2)(c) of the CGST Act by providing an option to the recipient to re-avail the

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<p>for payment of self-assessed output tax as per the return referred to in the said sub-section.</p>	<p><i>along with applicable interest, by the said person in such manner as may be prescribed:</i></p> <p><i>Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.</i></p>	<p>credit after supplier makes the payment of the corresponding GST to the government.</p> <p>However, the levy of interest for a failure beyond the control of the recipient is very harsh and no provision has been envisaged for refund of such interest.</p> <p>Moreover, department will also collect tax along with interest from the defaulting supplier which will result into unjust enrichment by the Department at the expense of the recipient for no fault on his part.</p> <p>Furthermore, ITC cannot be re-availed in cases where proceedings have been initiated under sec 74, 129 or 130 of the CGST Act.</p> <p>It is to be noted that sec 41 is amended prospectively therefore, recipient cannot be asked to reverse the ITC for the past period i.e., the period prior to October 1, 2022 when this substituted sec 41 is notified.</p>
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The Notification can be accessed at: <https://taxinformation.cbic.gov.in/view-pdf/1009513/ENG/Notifications>

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