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# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA GST & INDIRECT TAXES COMMITTEE

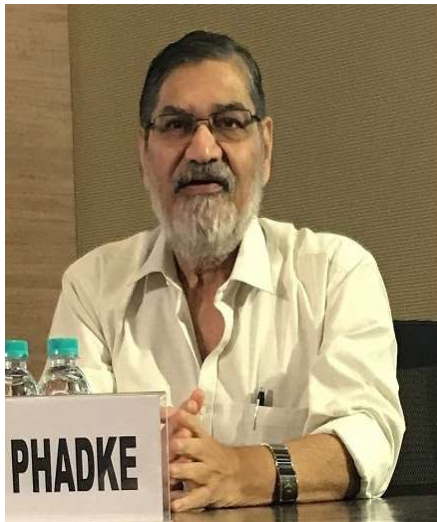
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## Webinar on Input Service Distributor & Cross Charge

Date: 09/04/2025

By CA DILIP PHADKE

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### *ISD V/S CROSS CHARGE*

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## ISD Concept

Concept of ISD was introduced in **Central Excise/ service tax** Regime to enable business entity to avail **CENVAT Credit** of services procured by centralized location and to distribute it to various factories registered under separate **Excise Registration**. ( Excise & Service tax – Vat on sales)

During the initial operation of CENVAT Credit Rules there were no specific guidelines for distribution of input services. In the absence of specific guidelines for distribution of the input credit, the ISD can distribute the credit of input services to the non-related unit having no nexus to that service or to any of units of its choice, or among various units without applying any ratio or proportion.

The free choice of distribution of ITC services by ISD was curbed by an amendment to CENVAT Credit Rules. [CBEC vide Noti. No. 13/2016- Central Excise (NT), dt.1-3-2016 CENVAT Credit Rules, 2004], w.e.f. 01.04.2016

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## ISD Concept

**Multi-locational entities** have **centralized accounting/payment system at H.O.** a) Receives invoices b) Maintain accounts & makes payment for them c) Services are consumed by its **distinct entities** at various places having separate GST registration either separately or commonly.

In GST Regime proper system is required for distribution of tax credits taken by Head office among DISTINCT PERSONS which will be just & proper

ISD is relevant for multi locational entities having separate GST Reg. in different states / Union Territory (UT) or in the same State /UT.

### **ISD not relevant for entity having single registration**

ISD is an office of an entity which **requires authorization to distribute the ITC** of services by way of registration with the government tax authorities. The registration of office of an entity as ISD is different from the Branch Office registration & can transfer ITC Which can be consumed by B.O.

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## ISD Concept

GST, being a **destination-based consumption tax**, the revenue accrues and flows to the consumption state and hence Input Tax Credit (ITC) should travel **to consumption state**.

Consumption state is procuring services and getting tax revenue is entitled to benefit of ITC and not the state of H.O. receiving the tax inv. of vendors.

ISD facilitates the transfer of ITC from H.O. receiving the tax invoices for services to the entity consuming said services

In the absence of ISD Mechanism: a) H.O. cannot claim ITC as **corresponding input services are not used by it exclusively for its own business; &**

b) Distinct entities receiving the services can't claim ITC as suppliers invoices are not on their GST Registration Number

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## ISD - Concept – Common Taxable Services

*The illustrative list of common taxable services is as under procured:*

<i>Audit fees</i>	<i>Tax consultancy</i>	<i>Legal Services</i>	<i>Telecommunication</i>
<i>Advt.</i>	<i>Banking Services</i>	<i>Royalty</i>	<i>HO Rent</i>
<i>Marketing</i>	<i>Sales promotion</i>	<i>Prof. Services</i>	<i>Auditing Services</i>
<i>Recruitment</i>	<i>Technical K/H.</i>	<i>Software Services</i>	<i>Staff Insurance</i>
<i>AMC Ser.</i>	<i>Conference Fees</i>	<i>Membership Fees</i>	<i>Del. Veh. Rep. etc.</i>

- **input services common to all the units /distinct persons** from external / third party suppliers on which input tax is paid
- **Above referred services are referred to as common input service**

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## ISD- Legal Framework

S.N.	Sec. / Rule	Particulars
1	Sec. 2(61)	Definition of Input Service Distributor (ISD)
2	Sec. 24(viii)	Compulsory Registration for Input Service Distributor (ISD)
3	Sec. 25 (4) & (5)	Multiple registrations are deemed to be distinct persons
4	Rule. 8(1) Prov.	Separate Application to be done for ISD Registration even for assessee having regular registration as supplier
5	Rule 36	Allows ISD to avail ITC based on tax invoices issued by supplier u/s 31 of CGST Act, self invoices issued under 31(3)(f) for tax paid under reverse charge and debit note issued U/s. 34 of CGST Act 5. Rule 36(1) of CGST Rules
6	Rule 36	Allows distinct persons of entity to take credit based on invoice or debit notes issued by ISD
7	Rule 54	Prescribes details to be furnished in invoice issued by ISD

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## ISD- Legal Framework

S.N.	Sec. / Rule	Particulars
8	Rule 54(1A)(a) & Rule 39(1A)	A registered person to issue invoice, debit note or credit note on ISD to transfer credit of common input services to ISD including tax paid under RCM by it
9	Section 20	Provides manner of distribution of ITC by ISD
10	Rule 39	Prescribes procedure for distribution of ITC by ISD
11	Sec. 39(4) r/w Rule 39	ISD return to be filed in Form No. GSTR-6 on monthly basis on or before 13th of next month
12	Rule 65	Prescribes form and manner of submission of ISD returns based on GSTR-6A i.e. system generated inward supply for ISD
13	Section 21	Provides for recovery of excess credit distributed to any unit along with interest under Section 73 or 74 of the CGST Act
14	Section 122(ix)	Provides for penalty for improper availment or distribution of ITC

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## Definition of Input Service Distributor [Section 2(61)]

*“Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to RCM tax u/s 9(3)/ (4) of CGST Act or u/s 5(3)/(4) of IGST Act for or on behalf of distinct persons referred to in sec. 25, and liable to distribute the ITC in respect of such invoices in the manner provided in sec. 20*

1. Office of the supplier of goods and/or services – existing or new ISD?
2. Receives tax invoice for receipt of input services including tax paid under RCM u/s 9(3) & 9(4) of CGST Act and u/s 5(3) & 5(4) of IGST Act Pays CGST, SGST, UTGST & IGST – Is it possible?
3. Issues invoice/debit note for distributing credit of CGST, SGST, IGST & UTGST
4. On behalf of Distinct persons 5. Distribute the ITC

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## ISD- Salient Features

ISD can be used only for **transfer of ITC pertaining to Input Services**

ISD Registration cannot avail and distribute ITC pertaining to: Inputs; and Capital Goods

Section 24 of the CGST Act mandates an ISD to obtain a separate registration which is different from normal registration taken as a supplier U/s. 22 - CGST Act

ISD is neither a supplier nor recipient of goods/services

ISD is solely used for availing and distributing common ITC amongst distinct persons and such distinct persons can utilize said ITC to discharge its output liability

ISD mechanism cannot be used for transfer of credit to holding company, subsidiary company, group entities or related parties

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## ISD- Salient Features

**ISD can avail the ITC based on :**

Invoices issued (subject to C/N) by the supplier of services u/s 31 of CGST Act

Debit Notes issued by supplier of services u/s 34 of CGST Act

ITC transferred from regular reg. in the same state under Rule 54(1A)(a) based on Self Invoice for RCM payments u/s 9(3) /9(4) of CGST Act & 5(3) /5(4) of IGST Act

ISD will be able to avail ITC only on invoices appearing in its GSTR- 6A

Vendors providing common services used by HO and distinct persons should raise the invoice on ISD

In case where vendor provides services exclusively used by a distinct person, he may raise inv. directly on the distinct person or on ISD. If invoice is raised on ISD, ITC will be distributed to said distinct person only Availment of ITC by ISD

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## ISD- Legal Framework w.e.f. 1-4-2025

**Sec. 25(4) “Distinct person”** means an A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or, more than one State or Union territory shall, in respect of each such registration,

(5) Where a person who has obtained or is required to obtain reg. in a State or UT in respect of an establishment, has an establishment in another State or UT, then such establishments shall be treated as establishments of distinct persons for this Act.

**Sec 24 Compulsory registration in certain cases** Notwithstanding anything contained in Sec. 22(1), the following categories of persons shall be required to be registered under this Act. Subclause (viii) Input Service Distributor, whether or not separately reg. under this Act;

**Rule 8 Application for registration :** Person applying for reg., declare his PAN, State or UT in **Part A of FORM GST REG-01** on the common portal, : **Provided** that every person being an ISD shall make a separate application for registration as such ISD

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## Documents for Availment of Credit - Rule 36(1)

(1) The ITC shall be availed by a the ISD, from following documents:

- (a) an invoice issued by the supplier of goods or services or both – sec. 31;
- (b) an invoice issued by H.O. for tax paid on RCM basis in by preparing an invoice in accordance with the provisions of Sec. 31 (3) (f) subject to the payment of tax for further distribution to distinct units;
- (c) a debit note issued by a supplier in accordance with the prov. of sec. 34;

**ISD will be able to avail ITC** only on invoices appearing in its GSTR- 6A

Vendors providing common services used by HO and distinct persons should raise the invoice on ISD. In case of RCM the invoice shall be raised on H.O.

In case where vendor provides services exclusively used by a distinct person, he may raise inv. directly on the distinct person or on ISD. If invoice is raised on ISD, ITC will be distributed to said distinct person only Availment of ITC by ISD

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## Documents to be prepared by ISD - Rule 54

(1) An ISD - invoice or, credit note issued by an ISD shall contain the following details:- (a) name, address and GSTIN of the ISD; (b) a consecutive serial number not exceeding sixteen characters, (c) date of its issue; (d) name, address and GSTIN of the recipient to whom the credit is distributed; (e) amount of the credit distributed; & (f) sig. of the ISD or his authorised Rep.:

(1A) (a) **A reg. person, having the same PAN and State code as that of ISD, may issue an invoice, a C/N or D/N to transfer the credit of common input services to ISD.** Such Inv. shall contain the following details:- (a) name, address and GSTIN of the RTP; (b) a consecutive serial number not exceeding sixteen characters, (c) date of its issue; (d) GSTIN of supplier of common service and org. inv. No. whose credit is sought to be transferred to ISD; (e) name, address and GSTIN of the ISD to whom the credit is transferred; (f) taxable value, rate and amt. of the credit to be transferred.; & (g) Sig.  
(Note: Taxable value & Common Ser. Value to be same)

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## Documents to be prepared by / for ISD

**Rule 39 (1A)** For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of section 9, **a registered person, having the same PAN and State code as an Input Service Distributor**, may issue an invoice or, as the case may be, a credit or debit note as per the provisions of sub-rule (1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1).

**Important Point :** As per **Rule 36 sub clause (e)** the credit of ITC will be available to distinct unit from invoice or debit note prepared by ISD

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## Documents to be prepared by ISD

**Rule 39 (2)** If the amt. of ITC distributed by an ISD is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the ISD, the process specified in rule 39(1)(n) for reduction shall apply, *mutatis mutandis*, for reduction of credit.

**Rule 39 (3)** Subject to sub-rule (2), the ISD shall, on the basis of the ISD cr./note specified in clause (I) of sub-rule (1), issue an **ISD invoice to the recipient entitled to such credit** and include the ISD credit note and the invoice in the return in **FORM GSTR-6** for the month in which such credit note and invoice was issued.

**Sec. 39(4)** Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within **thirteen days** after the end of such month.

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## Documents to be prepared by ISD

*Sec. 20 (1) Any office of the supplier of G &/OR S which receives tax invoices towards the receipt of input services, **including invoices in respect of services liable to tax u/s 9(3)/(4) of CGST Act & 5(3)/(4) of IGST Act**, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under section 24(viii) and shall distribute the input tax credit in respect of such invoices.*

*(2) ISD shall distribute the credit of CGST OR IGST charged on invoices received by him, including the credit of CGST OR IGST in respect of services subject to levy of tax u/s 9(3)/(4) or 5(3)/(4) paid by a distinct person reg. in the same State as the said ISD, in such manner, within prescribed time & subject to such restrictions and conditions*

*(3) The credit of central tax shall be distributed as CGST OR IGST and **integrated tax as IGST OR CGST**, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed. (IN RULE 54)*

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## Manner of distribution of credit by ISD. R. 39

- a)** the ITC available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in **FORM GSTR – 6**
- b)** Amt. of ITC distributed shall not exceed the amt. of distributable credit
- c)** the credit of tax paid on input services attributable **to a recipient** of credit shall be distributed only to that recipient;
- d)** ITC on input services attributable **to more than one recipient** of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the t/o in a State or UT of such recipient, during the relevant period, to the ATO of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

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## Manner of distribution of credit by ISD. R. 39

- e) ITC on input services attributable **to all recipients** of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the t/o in a ST. or UT of such recipient, during the **relevant period**, to ATO of all recipients and which are operational in the current year, during the said relevant period
- f) Gives formula for distribution as per Cl. d & e.
- g) ISD shall, separately distribute the amount of ineligible input tax credit (Sec. 17(5)) as per cl. d & e and the amount of eligible input tax credit
- h) ITC on account of CGST, SGST, UTGST & IGST shall be distributed separately in accordance with the prov. of clauses (d) and (e);
- k) ISD shall issue ISD.-Inv., [R54(1)], indicating it is for distribution of ITC

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## Manner of distribution of credit by ISD. R. 39

Prov. As per Rule 39(1) (i) & (j)	Category of ITC	Nature of Tax – Distributed
ISD & recipient (Dist. Person) both are located in <b>SAME</b> state or Union territory	Integrated Tax	IGST OR <b>CGST</b> (As per Sec.)
	Central Tax	CGST
	State Tax / U.T. Tax	SGST OR UTGST
ISD & recipient (Dist. Person) both are located in <b>DIFFERENT</b> state or Union territory	Integrated Tax	IGST
	Central Tax	IGST
	State Tax / U.T. Tax	IGST

l) ISD shall issue ISD.- C/N., [R54(1)], indicating it is for reduction of credit in case the input tax credit already distributed gets reduced for any reason

(m) Addl. amt. of ITC on account of issuance of a D/N to an ISD by the supplier shall be distributed in the same manner and amt. attributable to any recipient shall be calculated in manner provided in cl.(f) and such credit shall be distributed in month in which D/N is included in return in **GSTR- 6**;

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### **Manner of distribution of credit by ISD. R. 39**

**(n)** ITC required to be reduced on account of issuance of a C/N to ISD by the supplier shall be apportioned to each recipient in the same ratio in which ITC contained in the org. inv. was distributed, & such amt. shall be-

**(1)** reduced from the amount to be distributed in the month in which the credit note is included in the return in **FORM GSTR-6**; or

**(2)** added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

**(1A)** For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax u/s 9(3) or (4) of CGST Act, or u/s 5 (3) or (4) of IGST Act, a RTP, having the same PAN and State code as an ISD, may issue an inv. Or C/N or D/N as per rule 54(1A) to transfer common credit to ISD, & further distributed by ISD per rule 54(1)

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### **Manner of distribution of credit by ISD. R. 39**

**(2)** If the amt of ITC distributed by an ISD is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the ISD, the process specified in sub-rule (1) (n) shall apply, mutatis mutandis, for reduction of credit.

**(3)** ISD shall, on the basis of the ISD credit note specified in sub-rule (1) (I), Subject to sub-rule (2) issue an ISD invoice to the recipient entitled to such credit and include ISD credit note and invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.

***"Relevant period" shall be***—(a) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

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### **Manner of distribution of credit by ISD. R. 39**

(b) if some or all recipients of the credit **do not have any turnover** in their ST. or UT in the fin. Yr. preceding the yr. during which the cr. is to be distri., the last quarter for which details of such turnover of all recipients are available, previous to the month during which cr. is to be distributed;;

(ii) The expression "recipient of credit" means the supplier of goods or services or both having the same PAN as that of the ISD;

(iii) The term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

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### **ISD- ITC Distribution U/R 39 — Relevant points**

Reduction of ITC on account of **Credit Note (CN)**

Supplier / vendor issues CN to ISD for sales return / short or non-provision of service

- ISD shall issue ISD-CN to operational units
- ITC on account of ISD-CN shall be reduced in same proportion in which the credit was distributed on original invoice
- ITC shall be reduced from the amount to be distributed in the month in which CN is included in Form GSTR-6
- Where ITC to be reduced exceeds ITC to be distributed for a particular unit, difference shall be added to the output liability of the recipient unit

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## **ISD- ITC Distribution U/R 39 — Relevant points**

- 1) Details of distributable amount would be available in GSTR 6A
- 2) Details of distribution to be furnished in Form No. GSTR-6 on or before **13th** day of subsequent month
- 3) A Nil return must be filed even if no distributable ITC available
- 4) Late fee of Rs. 50 per day for delay in filing of Form GSTR-6
- 5) Credit needs to be distributed among all units whether it is: (Cl. f)
  - Taxable/ Non-taxable, Registered /unregistered, Fully exempt unit
  - Export-oriented unit

### **Penalty for taking or distributing ITC in contravention of Sec. 20**

**[Sec.122(1)(ix)]**- Higher of Rs.10,000/- or amount of ITC availed or ITC distributed irregularly

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## **ITC Distribution by ISD U/R 39 — Relevant points**

- ISD Credit distributed to non-taxable unit or fully exempt unit will become a cost to the entity

### **ITC wrongly distributed to a particular recipient or in wrong proportion:**

Issue ISD-CN to the recipient to whom it was wrongly distributed / excess distributed

Issue ISD invoice to recipient to whom it actually pertains to / to whom it was short distributed

### **Export-oriented unit can use the ISD credit:**

- To pay IGST on export with payment of tax
- To discharge its liability on domestic transactions
- Claim refund of ISD Credit as part of unutilised ITC

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**Form and manner of submission of return by ISD -R.65**

Every ISD shall, on the basis of details contained in **FORM GSTR-6A**, and where required, after adding, correcting or deleting the details, furnish electronically the return in **FORM GSTR-6**, containing the details of tax invoices on which credit has been received and those issued u/s 20, through the common portal

**Sec. 21 Manner of recovery of credit distributed in excess.**

Where ISD distributes the credit in contravention of the provisions contained in sec. 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the prov. of sec. 73 or 74 or 74A, as the case may be, shall, *mutatis mutandis*, apply for determination of amount to be recovered.

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**FORM GSTR-6**

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**6. Amendments in information furnished in earlier returns in Table No. 3**

Original details			Revised details									
GSTIN of supplier	No.	Date	GSTIN of supplier	Invoice/debit note/credit note details			Rate	Taxable value	Amount of Tax			
				No	Date	Value			Integrated tax	Central Tax	State / UT Tax	CESS
1	2	3	4	5	6	7	8	9	10	11	12	13
6A. Information furnished in Table 3 in an earlier period was incorrect												
6B. Debit Notes/Credit Notes received [Original]												
6C. Debit Notes/Credit Notes [Amendments]												

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**7. Input tax credit mis-matches and reclaims to be distributed in the tax period**

Description	Integrated tax	Central Tax	State/ UT Tax	Cess
1	2	3	4	5
7A. Input tax credit mismatch				
7B. Input tax credit reclaimed on rectification of mismatch				

**8. Distribution of input tax credit reported in Table No. 6 and 7 (plus / minus)**

GSTIN of recipient	ISD credit no.		ISD invoice		Input tax distribution by ISD			
	No.	Date	No.	Date	Integrated Tax	Central Tax	State Tax	CESS
1	2	3	4	5	6	7	8	9
8A. Distribution of the amount of eligible ITC								
8B. Distribution of the amount of ineligible ITC								

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**9. Redistribution of ITC distributed to a wrong recipient (plus / minus)**

Original input tax credit distribution					Re-distribution of input tax credit to the correct recipient						
distribution											
GSTIN of original recipient	ISD invoice detail		ISD credit note		GSTIN of new recipient	ISD invoice		Input tax credit redistributed			
	No.	Date	No.	Date		No.	Date	Integrated Tax	Central Tax	State Tax	CESS
1	2	3	4	5	6	7	8	9	10	11	12
9A. Distribution of the amount of eligible ITC											
9B. Distribution of the amount of ineligible ITC											

**10. Late Fee**

On account of	Central Tax	State / UT tax	Debit Entry No.
1	2	3	4
Late fee			

**11. Refund claimed from electronic cash ledger**

Description	Fee	Other	Debit Entry Nos.
1	2	3	4
(a) Central Tax			
(b) State/UT Tax			
Bank Account Details (Drop Down)			

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# FORM GSTR-6A

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**3. Input tax credit received for distribution**

(Amount in Rs. for all Tables)

GSTIN of supplier	Invoice details			Rate	Taxable value	Amount of Tax			
	No	Date	Value			Integrated tax	Central Tax	State / UT Tax	Cess
1	2	3	4	5	6	7	8	9	10

**4. Debit / Credit notes (including amendments thereof) received during current tax period**

Details of original document			Revised details of document or details of Debit / Credit Note									
GSTIN of supplier	No.	Date	GSTIN of supplier	No.	Date	Value	Rate	Taxable value	Amount of tax			
									Integrated tax	Central Tax	State / UT Tax	Cess
1	2	3	4	5	6	7	8	9	10	11	12	13

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## Cross Charge — The Concept

In case of multilocal entities of same legal entity having separate registrations in same state/different states/union territories are regarded as distinct persons **[Sec. 25(4) & (5) of CGST Act]**

Cross charge is not defined under GST law. It is a popular term used for charge by Head Office to its Distinct entities such as:

Factories      Depots                      Warehouses                      Retail outlets  
Branches      Divisions                      Service Ourlets                      SEZ Unit

HO / Centralized Office performs various function for whole entity including above referred distinct persons

HO / Centralized office provides support services to all its distinct entities

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## Cross Charge — The Concept

***Inputs, Capital goods & Input Services are received and consumed by HO like***

Printing & Stationery, Computers, Air conditioners, Salary, Electricity, Rent, Internal audit, Conveyance etc.

are used for

**Internally generated services:**

- |                           |                               |
|---------------------------|-------------------------------|
| • Accounting services     | IT system management services |
| • CEO / CFO / CS services | Compliance services           |
| • HR services             | Brand name / Logo             |
| • Marketing               | Management & Supervision      |

**To provide support services to distinct entities**

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## Cross Charge — The Concept

**Following provisions read together, triggers the Cross Charge:**

Section 9 of CGST Act levies tax on supply made by taxable person

Section 7(1)(c) deems activities listed in Schedule I to CGST Act to be supply even if made without consideration

**Entry 2 of Schedule I** to CGST Act provides that supply of goods or services made between distinct persons, in the course or furtherance of business shall be treated as supply even if made without consideration

The support provided by HO is treated as deemed supply of taxable services under Schedule I to CGST Act and is liable to GST.

It is necessary to charge to branch and other offices by proper valuation for the services deemed to be rendered otherwise H.O. will have to pay the tax but the credit of the same will not be availed by branches.

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## Cross Charge — Valuation

Rule 28 of CGST prescribes value of supply between distinct person as under:

- i. Open market value ('OMV') of supply;
- ii. Where OMV is not available, value of supply of like kind and quality;
- iii. If value is not determined under (i) and (ii) above, be the value as determined by application of **Rule 30 and 31 of CGST Rules** in that order;
  - R 30 – 110% of cost of provision of such services
  - R 31 – Using reasonable means consistent with principle and prov. of Sec. 15.
  - In case of service, supplier may opt for Rule 31 ignoring Rule 30

***[2nd proviso - Provided where recipient is eligible for full ITC, value declared in invoice deemed to be OMV]***

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## Cross Charge — issue

Whether employee cost is to be included for deciding the value for cross charge to the distinct entities. Following Advance Ruling Authorities held that employee cost should be included for determining cross charge value:

- Columbia Asia Hospitals (P.) Ltd. [2018] 100 taxmann.com 501 (AAAR- KAR)
- Cummins India Limited [2022] 134 taxmann.com 342 (AAAR-MAH.)

- The above-referred controversy is set right by CBIC Circular No. **199/11/2023-GST dt. 17-07- 2023** wherein it is clarified at point no. 3

***"In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO."***

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## Cross Charge — issue

How to interpret the phrase 'recipient is eligible to full ITC'?:

- *Where the distinct person deals exclusively in taxable supplies;*
- *Where the distinct person deals exclusively in exempt supplies;*
- *Where distinct person deals with taxable as well as exempt supplies;*
- *Where distinct person is SEZ unit having 100% export turnover;*
- *Where distinct person is EOU having 100% export turnover;*

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## Cross Charge and ISD

Cross charge and ISD are two different concepts :

Cross charge is a **charge of tax on supply or deemed supply made by HO** to its distinct entities i.e. B.O., factories, retail outlets, division having separate reg.

- ISD is meant for **distribution of ITC amongst distinct entities where invoices are received at HO or centralized office**
- Cross charge is applicable for **internal transactions** between HO and distinct persons

ISD comes into play when tax invoices for services pertaining to one or more distinct persons are received from **vendors by the centralized office**

**Circular No. 199/11/2023-GST dt. 17-07-2023** clarifies that:

- **ISD is not mandatory** Employee cost can be excluded from cross charge
- If distinct entity is eligible for full credit, no need to cross charge

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## ISD vs. Cross Charge: A Clear Comparison

**ISD:** Used when services are received from *outside* vendors (e.g., IT support Stat. Audit) and need to distribute the ITC to your different B.O.

**Cross Charge:** Used when one of your *own* departments provides services to other dept. or B.O. (e.g., H.O. accounting team/ Internal audit dept. providing services to B.O.).

The main difference lies in whether the service is received from an external vendor which are shared by one (**ISD**) or

Services provided to branches are generated internally with own staff and utilities and charged to B.O. (**Cross Charge**).

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## ISD vs. Cross Charge: A Clear Comparison

Feature	Input Service Distributor (ISD)	Cross Charge
<b>Meaning</b>	Mechanism to distribute ITC on <i>shared input services procured from third-party vendors</i> to your branches or units. It is distributing the GST benefit from services you buy from outside companies.	Allocation of expenses and ITC of <i>internally generated services</i> within the same entity. This is for allocating the cost of services your own company provides to its different branches.
<b>Purpose</b>	To distribute common ITC on services <i>bought from third parties</i> .	To allocate expenses and ITC from <i>services your company provides internally</i> .
<b>Applicability</b>	Applies when input services are used by or for another branch/s.	Applies when allocating the cost of input services, goods, or capital goods your company provides to its branches.
<b>Legal Basis</b>	Defined under Section 2(61) of the GST Act. Requires separate GST registration under Section 24(viii).	Not specifically defined in the GST Act. Guidance can be found in Circular No. 199/11/2023-GST. <b>No separate reg. is reqd.</b>

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## ISD vs. Cross Charge: A Clear Comparison

Feature	Input Service Distributor (ISD)	Cross Charge
<b>Distribution</b>	ITC is distributed through an ISD invoice as per Rule 54(1) and reported in GSTR-6.	A regular tax invoice must be raised.
<b>Valuation</b>	To be done as per Rule 39 of the CGST Rules. This determines how the ITC is distributed, No valuation.	Valuation provisions apply. However, <i>if full ITC is available to the recipient branch, the value may be declared as NIL</i> . This can simplify the process.
<b>Frequency</b>	Monthly	Not specified

### ISD Distribution - Works Process :

- 1. Vendor Invoices:** Your vendors must issue invoices in the name of your **ISD GSTIN**.
- 2. GSTR-6A & GSTR-6:** These invoices will automatically appear in your GSTR-6A form (12th of each month). You'll then need to file GSTR-6, (on or before 13<sup>th</sup> of each month) which includes details of the tax credits you've received and are distributing.

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## ISD Distribution - Works Process

**3. ITC Distribution:** The ISD will distribute the Input Tax Credit (ITC), both eligible and ineligible, based on specific rules (Rule 39). This ensures the credit goes where it's supposed to. The details of the distribution will then appear in your GSTR-2B form.

### Special Case: Reverse Charge Mechanism (RCM) Services:

If you use services where you pay GST directly to the government (Reverse Charge Mechanism), here's how it works:

1. Your H.O. receives the inv. from vendors supplying common services liable to RCM
2. H.O. pays the GST under RCM and claims the initial Input tax credit.
3. The HO then transfers the tax credit to the ISD by preparing normal invoice.
4. The ISD distributes the credit to the relevant locations, as described above.

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## Common Challenges & Our Recommended Solutions

**Challenge: *Identifying ITC for Specific States*:** It can be difficult to directly link ITC to specific states for services like branding and travel, benefiting all B.O.

**Remedy:** Previously it was possible to develop a clear allocation methodology based on factors like employee headcount, usage, or other relevant metrics, ensuring a fair and defensible distribution, now it's t/o based only.

**Challenge: *Unclaimed ITC Risk*:** If ITC is claimed under a regular GSTIN instead of the ISD, it could be denied.

**Remedy:** Provide training and process documentation to ensure all invoices are correctly directed to the ISD GSTIN and that your team follows the correct procedures for claiming ITC. Still if supplier makes mistake get it corrected or make regular invoice to ISD to transfer Wrong credit.

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## Common Challenges & Our Recommended Solutions

**Challenge: *ITC Distribution for New Branches*:** Using turnover-based allocation may delay ITC benefits for new B.O. that haven't yet generated revenue.

**Remedy:** Till t/o is generated NO ITC CAN BE TRF. Explore alternative allocation methods, such as taking invoices directly in GSTIN of new branch etc.

**Challenge: *Treatment of SEZ Units*:** It's unclear whether ISD-routed ITC retains its zero-rated supply benefits when distributed to SEZ units.

**Remedy:** Researching this issue and have updated guidance as soon as clarification is available from the authorities. Document your approach to ensure compliance. Apply for refund till solution is found out.

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## Common Challenges & Our Recommended Solutions

**Challenge: *RCM Blocking ITC*:** Routing Reverse Charge Mechanism (RCM) invoices through the ISD will cause a month-long delay in claiming the ITC.

**Remedy:** No remedy.

**Challenge: *Limited Filing Window for GSTR-6*:** Businesses only have two days (the 12th and 13th of month) to file the ISD return (GSTR-6), - a tight deadline. As on today GSTR 6B is available on 14<sup>th</sup> of the month.

**Remedy:** Streamline your data collection and reconciliation processes to ensure timely GSTR-6 filing and avoid penalties.

**Challenge:** *The registration authorities are demanding all reg. documents including photograph of the place when H.O. is already reg. & ISD is applying at same place.*

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## ISD- Some Issues

In case where branches / division (registered separately) receives common services benefiting all distinct entities, whether such branch / division needs to take ISD registration? If answer is yes, there would be multiple Input Service Distributors for same legal entity

Whether ISD distribution should be done on non-operative branches?

**How to distribute the credit through ISD mechanism in following case:**

- Business entity is having its registered office and ISD reg. in Maharashtra
- Marketing Exhibition in Gurgaon, Haryana – Stall expenses, rent etc.

Bill be made to Gurgaon or ISD? How it will appear in 6A & how to distribute?

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## ISD- Some Issues

**Can ISD take ITC of invoices of a particular FY on or after 30<sup>th</sup> November succeeding said Financial year?**

- Sec.16(4) applies to a registered person - Sec. 2(94) defines reg. person to mean a person reg. u/s 25 - ISD is reg. person u/s 24 of CGST Act
- Hence, ISD is bound by time limit prescribed by section 16(4) for taking the ITC in respect of an invoice

**In case where payment to vendor is delayed beyond 180 days whether ITC is to be reversed by ISD or distinct entity to which such ITC was distributed?**

- Sec. 2(93) defines recipient to mean person liable to pay consideration - HO (ISD reg.) is person liable to pay consideration - Hence, ISD needs to reverse such ITC - ISD will have to raise ISD-CN on the distinct entities for recovery of excess credit distributed.

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## ISD- Some Posers

uniform Stitching charges for employees of Pune 100 & Goa 50 How ISD to Distribute?

Can a B.O. remain URD?

Can ISD have any reverse charge supplies. If ISD wants to take reverse charge supplies, what is way out?

Can ISD distribute the ITC to URD units?

Who has to decide about eligible or ineligible ITC?

Can B.O. convert ineligible ITC distributed BY ISD to Eligible ITC?

Is it compulsory for B.O. to take full ITC trf. By ISD and reverse ineligible ITC?

If there are two units in a state having separate reg. what should be turnover of the state for distribution of ITC ?

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