

Webinar on Indirect Tax Provisions of Finance Bill 2022
Qua GST

A. R. Krishnan

Wednesday, 9th February, 2022

Organized by

***Chamber of
Tax Consultants***



WIRC OF ICAI

Significant Amendments made in GST Law by Finance Bill 2022 ["Bill"]

- Changes to be effective from a date to be notified after the enactment of the Bill as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States & Union territories. [except as mentioned below]
- Retrospective changes effective from 1.7.2017:
 - i. Amendment in section 50(3) [operationalized on a date to be notified in the above manner]
 - ii. Substitution of rate at which interest is payable under section 50(3) under Notn. No. 13/2017-CT dated 28.6.2017 [operationalized automatically on enactment of the bill]

N.B. Only significant amendments taken

Significant Amendments made in GST Law by Finance Bill 2022

Broad Scope of Budget Changes - *qua* GST law

- i. **Part A** – (a) Amendment in Eligibility conditions for taking ITC
(b) Dispensing with the process and procedure for claiming of ITC and matching of ITC.
- ii. **Part B** – Other Changes

Part A

- (a) Amendment in Eligibility conditions for taking ITC
- (b) Dispensing with the process and procedure for claiming of ITC and matching of ITC.

Present Eligibility Conditions for taking ITC

- Possession of tax invoice
- Receipt of goods/services
- Details of such supply has been furnished by the vendor and the same has been reflected in Form GSTR 2B.
- Tax thereon has been paid by the vendor
- Information about claiming of ITC has been declared in return [in GSTR 3B]

Additional Eligibility Conditions now introduced

- *ITC to be claimed only to the extent it is not restricted in auto generated statement containing details of ITC that would be made available by the portal [under proposed s. 38].*

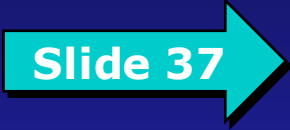
Proposed Section 38

ITC allowable and ITC restricted

Following details to be made available by portal to the recipient of supply



- Details of inward supply furnished by vendors.
- Details of other supplies as may be *prescribed*.
- Auto generated statement containing details of inward supply
alongwith
 - **ALLOWABLE ITC** alongwith the limits upto which it can be availed
 - **RESTRICTED ITC**

Restricted input tax credit

- In following cases ITC would not be available wholly/ partly to the recipient viz., where the vendor of inward supply has –
 - Issued revised tax invoice after obtaining registration but the same has not been issued within the prescribed period of obtaining registration 
 - Defaulted in payment of tax and the default has continued for *prescribed period (?)*
 - Total output tax paid is less than output tax payable – (Short paid)

Restricted input tax credit

Cases ITC would not be available wholly/ partly to the recipient viz., where the vendor of inward supply has –

- Defaulted by claiming allowable credit in excess of **prescribed limit** under this Section 38 [**Jigsaw puzzle**] 
- Defaulted in complying with provisions of proposed section 49(12) 
- Belongs to **prescribed** class of person

Challenges of Operationalization?



Way Forward – after enactment of proposed s. 38

Recipient RP to claim ITC only after he has been made available the following by the GSTN portal –

- Statement containing details of inward supply;
- Auto-generated statement containing details of input tax credit
 - which can be claimed – Allowable Credit
 - which cannot be claimed or can be partially claimed – Restricted Credit – Will this credit be dynamic?

Point of time!

SECTION 38 SAYS – WAIT FOR ME!!



Two Issues

- Issue 1 - In case of defaults by the vendor by way of partial or short payment of tax /excess ITC claimed whether all his customers would be entitled to the relevant proportion of ITC on their inward supply (details made available in auto-generated statement) to the extent the vendor is in compliance or nothing at all?;

May be partially available considering the words "wholly or partly" has been mentioned in the opening portion of the said

Section 38(2)(b). – How Operationalised ?

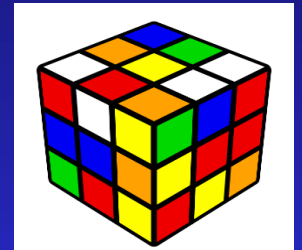
Two Issues

- Issue 2 - where the default is subsequently rectified fully / partially what would be the mechanism to re-instate the ITC *qua* the vendor's customers?

Lost forever or can be regained?

INPUT LOST – INPUT REGAINED ?

[Paradise Lost – Paradise Regained]



Interim period – Interest ?

More Clarity expected once relevant rules prescribed.

Philosophy of GST

"seamless credit" to "see less credit"

predicted way back in 2017

Some doubt on Section 16(2)(aa)

Recipient eligible to claim ITC under section 16(2) only

- ✓ to the extent ITC claim matches with the inward supply details in GSTR2B [*Section 16(2)(aa)*]
- ✓ tax on the said inward supply paid by the vendor/supplier to the government [*Section 16(2)(c)*]
- ✓ ITC on said inward supply is not restricted [*Section 16(2)(ba)*]

If amount of ITC eligible to be claimed is restricted to the auto-generated statement u/s. 38(2) a doubt arises then whether matching of ITC with GSTR2B would be relevant?

Process and procedure for claiming of ITC & matching of ITC dispensed with



– Gone with the wind

Existing Scheme of Taking Credit

The entire scheme of taking ITC involves the following process and procedures:-

- Eligibility of taking ITC;
- Taking of ITC;
- Cross checking / Reconciliation of the ITC;
- Matching of ITC;
- Final acceptance of ITC by Portal and
- Consequences of non-matching of ITC and consequential action by the recipient and the portal;

Slide 39 

Plus sides of the envisaged GST ITC mechanism

- opportunity to intimate supplier through portal that some invoices are not reflected by him in the portal
- gives sanctity to declaration of outward supplies by the supplier and claiming of input tax credit by recipient
- Recipient not deprived of his genuine ITC claim due to the negligence/mistake of the supplier
- error warning to portal that supplier is guilty of not uploading/disclosing his supplies.
- onus on supplier to discharge tax on outward supply furnished by him returns so as to enable recipient to claim ITC

*Though envisaged GST ITC mechanism – not operational
Hence temporary restriction by Rule 36(4)*

Slide 42 

Appears - Government not able to operationalize envisaged ITC mechanism encompassed in the GST law.

Hence the process mentioned in Step No. 4 to Step No. 7 and Step No. 9 to Step No. 18 - *two way communication process* in the table have been abolished by

- Abolishing of sections 42, 43 and 43A[Section 43A – *Death before birth*(GST Amendment Act 2018 - but not notified)]
- Substitution of section 38 and Section 41; and
- Introduction of new section 38 providing unilateral restriction on availment of ITC both by the CGST law and the portal due to the misdeeds of the vendor [Analysed Slides 7 to 13]

Onerous responsibility has been cast on recipient taking ITC to

- do his due diligence before dealing with the vendor and
- ensure he has complied with GST law
- And also ensure all his vendors have complied with GST law.
- His vendor, his vendor's vendor and so on.. also have complied with the law



Recipient claiming ITC to follow-up with the vendor to ensure that

- supplier has disclosed the supply made by him to the recipient in his returns,
- paid the tax in respect of such supply and also
- that he does not commit any of the defaults mentioned in Section 38(2)

Changes in Section 41

Existing dispensation

- ITC taken by recipient on a provisional basis through his return (Section 41)
- this ITC intended to be matched by portal with outward supplies details furnished by vendor suppliers. (Section 42)

Proposed amendments

- ITC taken through FORM GSTR 3B would be considered as self-assessed ITC not subjected to any matching process on GSTN portal.
- If it is found that the tax payable on such supply has not been paid by the vendor recipient to reverse ITC alongwith interest.
- If vendor makes the payment of tax in respect of such supplies then recipient entitled to re-avail the ITC reversed by him earlier.
- The manner for reversal of credit, interest applicable thereon and the manner of re-availing the credit would be *prescribed*

Changes in Section 41

ISSUE

Whether the recipient would be entitled to re-avail the interest paid by him on reversal of ITC if the vendor subsequently pays the tax with interest as was envisaged under the omitted section 42 of CGST Act.

If the re-availment of interest is not allowed then both the vendor and the recipient would be paying interest on same amount, thus unduly enriching the treasury

The entire process of ITC in GST reminds me of

Algebra

$a+a_1+a_2+a_3\dots\dots\dots a(n)$. [V1, V2, V3.....R]

&

Geometry

Riders/Construction

PART B

OTHER CHANGES

Other proposed changes - IMPORTANT

- transfer of any tax, interest, penalty, fee or any other amount in the electronic cash ledger of a registered person to the electronic cash ledger of integrated tax or central tax of a registered distinct person u/s. 25(4) or s. 25(5) to be permitted
[E.g. the tax in the electronic cash ledger of Maharashtra branch of a company registered under the GST law can be transferred to its registered Gujarat Branch provided there is no unpaid tax liability in the Maharashtra Branch]. [s. 49(10)]
- Pay something in cash - The Central Government be empowered to prescribe, based on the recommendations of the council, and subject to conditions and restrictions, the maximum proportion of output tax liability that can be discharged by the registered person through electronic credit ledger – the avowed purpose being to pay some amount of GST in cash. [s.49(12)]

Can this be challenged ?

Keeps Accumulating-Refund?



Extension / Reduction of time limits for certain compliances / Provisions

Sl. No.	Particulars of the provision	Present time limit	Proposed time limit
1.	Time limit for availment of Credit in respect of an invoice / debit note pertaining to a financial year [s. 16(4)]	Earlier of – (i) Due date for filing the return (GSTR-3B) for the month of September (generally 20 th October) of the following financial year; or (ii) date of furnishing of the relevant annual return.	Earlier of – (i) 30 th November of the following Financial Year; or (ii) date of furnishing of the relevant annual return.
2.	Time limit for issue / declaration of Credit Notes in the return for adjustment of value of supply [s. 34(2)]	Earlier of – (i) 30 th September of the following financial year; or (ii) date of furnishing of the relevant annual return.	Earlier of – (i) 30 th November of the following Financial Year; or (ii) date of furnishing of the relevant annual return.

Extension / Reduction of time limits for certain compliances / Provisions

Sl. No.	Particulars of the provision	Present time limit	Proposed time limit
3.	Time limit for Rectification of errors or omissions in the statement of outward supplies (GSTR-1) [proviso to s. 37(3)]	Earlier of – (i) date of furnishing return in GSTR-3B for 30 th September of the following financial year; or (ii) date of furnishing of the relevant annual return.	Earlier of – (i) 30 th November of the following Financial Year; or (ii) date of furnishing of the relevant annual return.
4.	Time limit for Rectification of errors or omissions in returns [proviso to s. 39(9)]	Earlier of – (i) Due date for filing the return for the month of September of the following financial year; or (ii) date of furnishing of the relevant annual return.	Earlier of – (i) 30 th November of the following Financial Year; or (ii) date of furnishing of the relevant annual return.

Extension / Reduction of time limits for certain compliances / Provisions

Sl. No.	Particulars of the provision	Present time limit	Proposed time limit
5.	Time limit for Rectification of errors or omissions in monthly TCS returns of Electronic Commerce Operators [proviso to s. 52(6)]	Earlier of – (i) Due date for filing monthly statement for the month of September of the following financial year; or (ii) actual date of furnishing of the annual statement.	Earlier of – (i) 30 th November of the following Financial Year; or (ii) actual date of furnishing of the relevant annual statement.
6.	Time limit for filing monthly returns by a Non-resident taxable person [s. 39(5)]	Earlier of – (i) 20 days after the end of a calendar month; or (ii) within 7 days after the last day of the expiry period of his registration	Earlier of – (i) 13 days after the end of a calendar month; or (ii) within 7 days after the last day of the expiry period of his registration

Other proposed changes

Liability for Cancellation of Registration [s. 29]:

Existing	Proposed
Composition Assessee [s.29(2)(b)]	
if he has not furnished returns for 3 consecutive tax periods (tax period = Financial Year).	<i>if return of a financial year is not furnished beyond 3 months from the due date (due date is 30th April following end of Financial year).</i>
Normal Assessee [S. 29(2)(c)]	
if he has not furnished returns for 6 consecutive tax periods (tax period = month)	if such persons have not furnished returns for such continuous tax period as may be prescribed.

Other proposed changes

- Except in notified cases bar on furnishing statement of outward supplies (GSTR-1) pertaining to a tax period if the details of any of the previous periods remain unfurnished. **[proposed s.37(4)]**
- persons who have opted to file quarterly returns under *proviso* to s. 39 [small tax payer scheme] to be given an option to pay either the self-assessed tax or an amount as maybe prescribed. **[first proviso to s.39(7)]**
- furnishing the statement of outward supplies (GSTR-1) pertaining to a tax period a condition precedent for filing the monthly return (GSTR-3B) for that tax period (except in notified cases) [presently this is not a condition.] **[s. 39(10)]**.
- levy a late fee of Rs. 100/- per day subject to a maximum of Rs. 5000/- for failure by Electronic Commerce Operators [TCS filers] to file their monthly statement of outward supplies within ten days after the end of such month in Form GSTR-8. **[s. 47]**

Other proposed changes

- refund of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed [Proviso to S. 54(1)] Presently the proviso provided to claim such refund through the monthly returns though there is no provision in FORM GSTR3B to claim such refunds
- Presently only refunds due on account of zero rated supply and inverted duty rate structure can be withheld if the claimant has defaulted in furnishing return, or is required to pay any tax, interest, penalty pursuant to an order. The bill has extended the scope of withholding of refunds or recovery from refunds in respect of all types of refund.
- In case of zero rated supply of goods / services to an SEZ Developer / Unit relevant date i.e. the starting date from which the period of 2 years for claiming refund of ITC / tax paid on zero rated supply is to be reckoned would be the due date of furnishing the return (GSTR-3B) in respect of such zero rated supplies. Amendment [being stated as to provide clarity in Board Circular no. D.O.F.No. 334/01/2022-TRU dated 1.2.2022 and cl. 14(iv) of the Explanatory Memorandum] maybe treated as clarificatory i.e. to clarify the position in law as it always was

Retrospective Amendment in section 50(3)b w.e.f 1.7.17

(To be operationalized on a date to be notified after enactment of Bill)

Existing dispensation	Proposed Amendment
<p>Specified interest payable in case of –</p> <ul style="list-style-type: none">• Undue/excess claim of ITC u/s 42(10)• Undue/excess reduction in output tax liability u/s. 43(10)	<p>Specifies interest payable on ITC if ITC is</p> <ul style="list-style-type: none">• wrongly availed <p>&</p> <ul style="list-style-type: none">• Utilized

Retrospective Amendment in rate of interest payable u/s 50(3)

w.e.f.1.7.2017

(To be operationalized on enactment of the Bill)

Existing rate of Interest	Retrospective rate of Interest
24%	18%

Implications of the Amendment

- ✓ Similar interest rate under State Acts?
- ✓ No mention of refund if interest paid u/s 50(3) in past

Conclusions

Some important impact of Bill on GST-

- since the operationalization of the system was difficult for the Government the novel mechanism of matching ITC through the portal - which is referred to as the "two-way communication process" has been given a burial
- the restriction of ITC based on the vendors misdeeds strikes at the root of GST framework viz., a tax which is supposed to have no cascading effect.

Conclusions

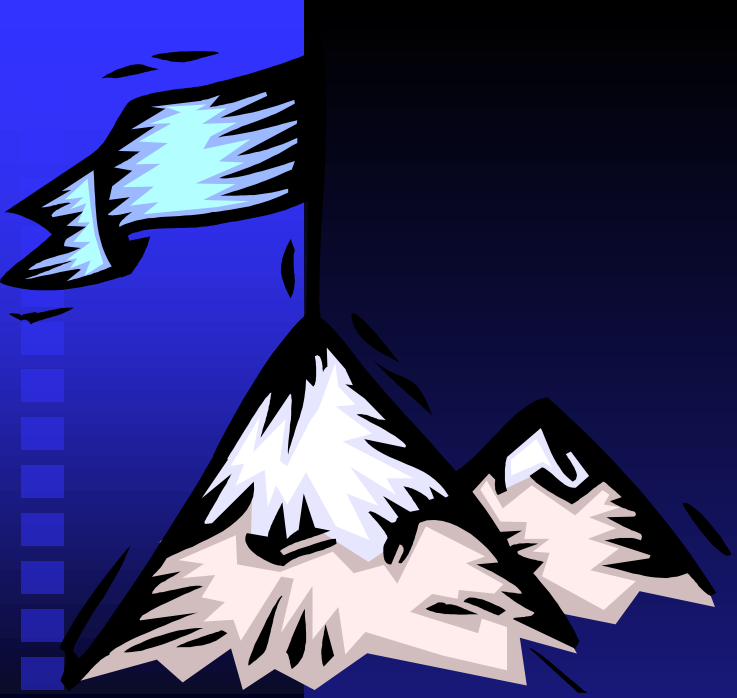
Contd....

Some important impact of Bill on GST-

- This may impact cash flow.
- Result in Micromanagement of compliance.
- Pose enormous challenges on vendor management. Create distortion in Vendor Selection - Vendor's price and quality will have to be matched with his band-width for GST compliance and **ensure his vendor's compliance.**



Everybody in the trade has to be in the Business of GST Compliance !





Webinar on Indirect Tax Provisions of Finance Bill 2022 *Qua GST*

A. R. Krishnan

Wednesday, 9th February, 2022

Mb:9820302623

Email – arkandco@gmail.com

Organized by

***Chamber of
Tax Consultants***



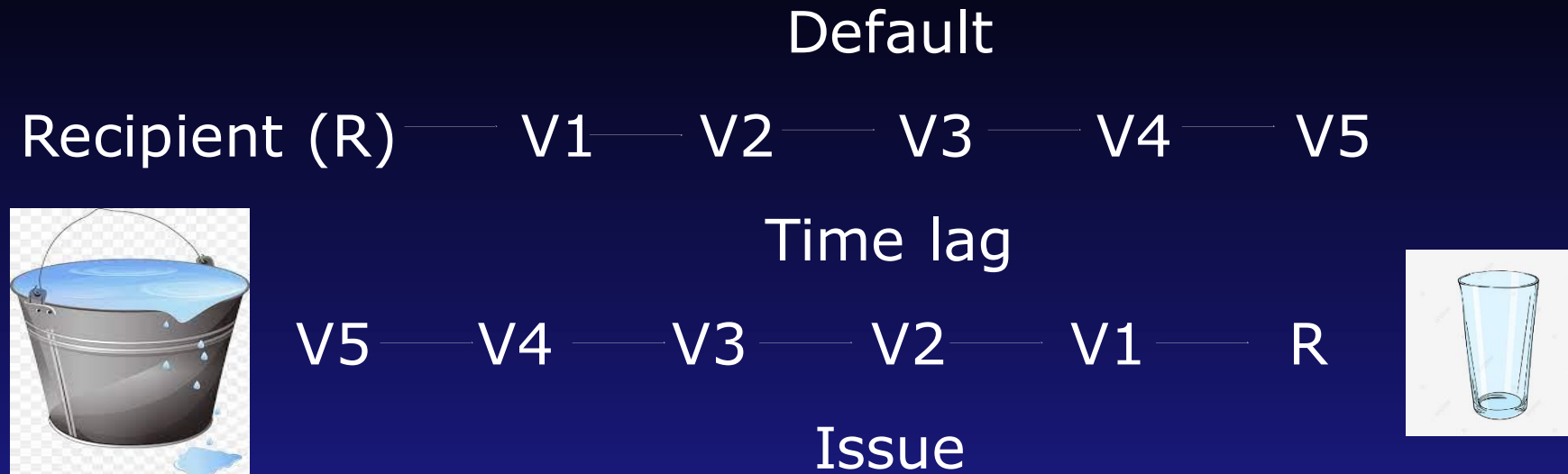
WIRC OF ICAI

Illustration – denial of ITC where invoice not issued by vendor within prescribed period of obtaining registration

Event	Vendor 1	Vendor 2
Vendor becoming liable for obtaining registration	1.10.21	1.10.21
Date of making application for registration	25.10.21	30.11.21
Date of grant of registration	1.11.21	7.12.21
Effective date of registration	1.10.21	7.12.21
Time period in which revised tax invoice can be issued within 30 days of grant of registration	1.11.21 – 30.11.21	Not permissible Issue to Recipient?



Jigsaw Puzzle – Reverse process of trickle down theory



- At what point will R know how much ITC is allowable/restricted.
- Restriction- point of time / dynamic
- Mechanism of communicating above details to R?
- Again challenges of operationalization



Wait & Watch



Step	Step by step process upto 1.1.21 Particulars	Whether operation alized
A	TAKING OF ITC	
Step 1	Taking of ITC by the Recipient S.41	Yes
B	PROCESS OF CROSS CHECKING AND RECONCILIATION OF ITC	
Step 2	Filing of outward supply details in Form GSTR-1 S. 37(1), Expln to S. 37 & R. 59 (1)	Yes
Step 3	Form GSTR-2A received by Recipient auto populated from portal S. 37(1) & R 60(1)	Yes
Step 4	'Cross checking' / Reconciliation, 'Verification and validation' of inward supply details and ITC thereon by the Recipient and intimation of discrepancy / modifications therein by filing GSTR-2 to validate and establish his input credit claim S. 38(1), (2) & R 60(1), (3), (4), (8)	No
Step 5	Communication of discrepancy and modification made by Recipient to the supplier in Form GSTR-1A S. 38(3) & R 59(4)	No
Step 6	Acceptance or Rejection by Supplier of the discrepancy / modification made by the Recipient S. 37(2) & R 59(4)	No
Step 7	Electronic Generation of data based on above steps in FORM GSTR-3 (Part A) and filing of the return for the tax period S. 39(1) & R 61(1), (2), (5)	No

Step	Step by step process upto 1.1.21 Particulars	Whether operationalized
Step 8	Making payment of the tax liability before filing of return in FORM GSTR-3 S. 39(7) & R 61(3)	No
Step 4	filing of the return for the tax period in Form GSTR3B S. 39 (1) & R. 61(1)	Yes
Step 5	Making payment of the tax liability before filing of return in FORM GSTR-3B S. 39(7) & R 61(2)	Yes
C	MATCHING OF ITC	
Step 9 / 6	Matching of ITC claimed with the corresponding details of outward supply by the common portal S. 42(1) & R. 69	No
D	FINAL ACCEPTANCE OF ITC BY PORTAL	
Step 10 / 7	Matching of ITC provisionally claimed with details of outward supplies and communicating the final acceptance of ITC (by portal) claimed by the Recipient through FORM GST MIS-1 S. 42(2) & Explan to R 69, R 70(1)	No
Step 11 / 8	Communication of discrepancies between ITC claimed with the corresponding outward supply details in FORM GST MIS-1 to the recipient and to the supplier in FORM GST MIS-2 through common portal S. 42(3) & R 71(1)	No
Step 12 / 9	Rectification by the Supplier of the discrepancy communicated in FORM GST MIS-2 in subsequent period through FORM GSTR-1 S. 37(3) & R 71(2)	No

Step	Step by step process upto 1.1.21 Particulars	Whether operatio nalized
E	CONSEQUENTIAL ACTION BY RECIPIENT AND PORTAL	
Step 13/10	Rectification by the Recipient of the discrepancy communicated in FORM GST MIS-1 in subsequent period through FORM GSTR-2 S. 38(5) & R. 71(3)	No
Step 14/11	Consequence of non-rectification of the discrepancy communicated - addition of the ITC claimed to the output tax liability of the recipient by the portal S. 42(5) & R 71(4)	No
Step 15/12	Payment of addition of ITC made to the output tax liability along with interest by recipient based on Step 14 S. 42(8)	
Step 16/13	Suo Motu Rectification of any omission or incorrect particulars in FORM GSTR-3 return. S. 39(9)	No
Step 17/14	Refund of addition of ITC made to the output tax liability to be claimed by Recipient on rectification by the Supplier. S. 42(7)	No
Step 18/15	Refund of interest paid on addition of ITC made to the output tax liability to be claimed by Recipient on rectification by the Supplier S. 42(9) & R. 77	No



Rule 36(4) of CGST Rules – Govt's temporary measure to resolve mismatch of ITC claim in un-operationalised process

Time Period	Amount of ITC to be claimed	
	Reflected Credit (in GSTR2A) (referred to as "a")	Non Reflected Credit (referred to as "b")
Prior to 9.10.2019	a	b
9.10.2019-31.12.2019	a	Lower of b or 20% of a
1.1.2020-31.12.2020	a	Lower of b or 10% of a
1.1.2021-31.12.2021	a	Lower of b or 5% of a
1.1.2022 onwards	a	NIL

The philosophy & background for introduction of Rule 36(4) as per detailed agenda notes and minutes of 37th GST Council meeting held on 20.9.2019 - to overcome the issue of unmatched credit being claimed without any legal impediments as scheme of matching credit under GST system through form GSTR2 and GSTR3 could not be operationalized because of technical glitches in portal

Some Arguments as to why ITC cannot be restricted u/r 36(4)

- ITC not matching with supplier's return cannot be denied to the recipient - can be denied only on the completion of the entire process of taking, cross checking/Reconciliation and Matching of Credit and consequential action by Recipient and Portal as envisaged in GST law. But this process was not operationalized and not in place.
- *Denial of ITC* based on GSTR 2B without giving an opportunity provided by law to the recipient to either amend his claim or substantiate his claim by ensuring supplier makes corrections is contrary to GST law.
- Mere fact of non-reflection of ITC in GSTR2B does not mean tax has not been paid by supplier – invoice details may not have been uploaded by the supplier, or may be uploaded as B2C supply
- Even S. 43A (pending to be notified) which empowered the Govt. to prescribe maximum amount of ITC that can be availed on the basis of details furnished by suppliers also did not envisage automatic reversal of ITC at recipient's end merely on non-reflection of supply details on the portal [See agenda Notes of 28th GST Council meeting]