

HOW TO HANDLE 2A BASIS GST NOTICES

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CGCTC

GSTR 3B VS GSTR 2A VS GSTR
2B

GSTR 3B

- Summary Return
- Tax payable vs tax paid
- Paid through ITC & cash

GSTR 2A

- **Progressive** auto-populated statement
- Covers outward supplies declared by supplier
- **Dynamic**

GSTR 2B

- **Constant** auto-populated statement
- Covers outward supplies declared by supplier
- **Static**

LEGAL BACKGROUND



CGST Act

- Section 16(1)
- Section 16(2)(c) read with section 41,42, 43
- Section 16(2)(aa)
- Section 43A



CGST Rules

- Rule 69
- Rule 36(4)
- Rule 86A

SECTION 16(1)



Every registered person shall,



Entitled to take credit of input tax **charged** on any supply of goods or services or both to him



which are used or intended to be used in the course or furtherance of his **business** and



the said amount shall be credited to the **electronic credit ledger** of such person.

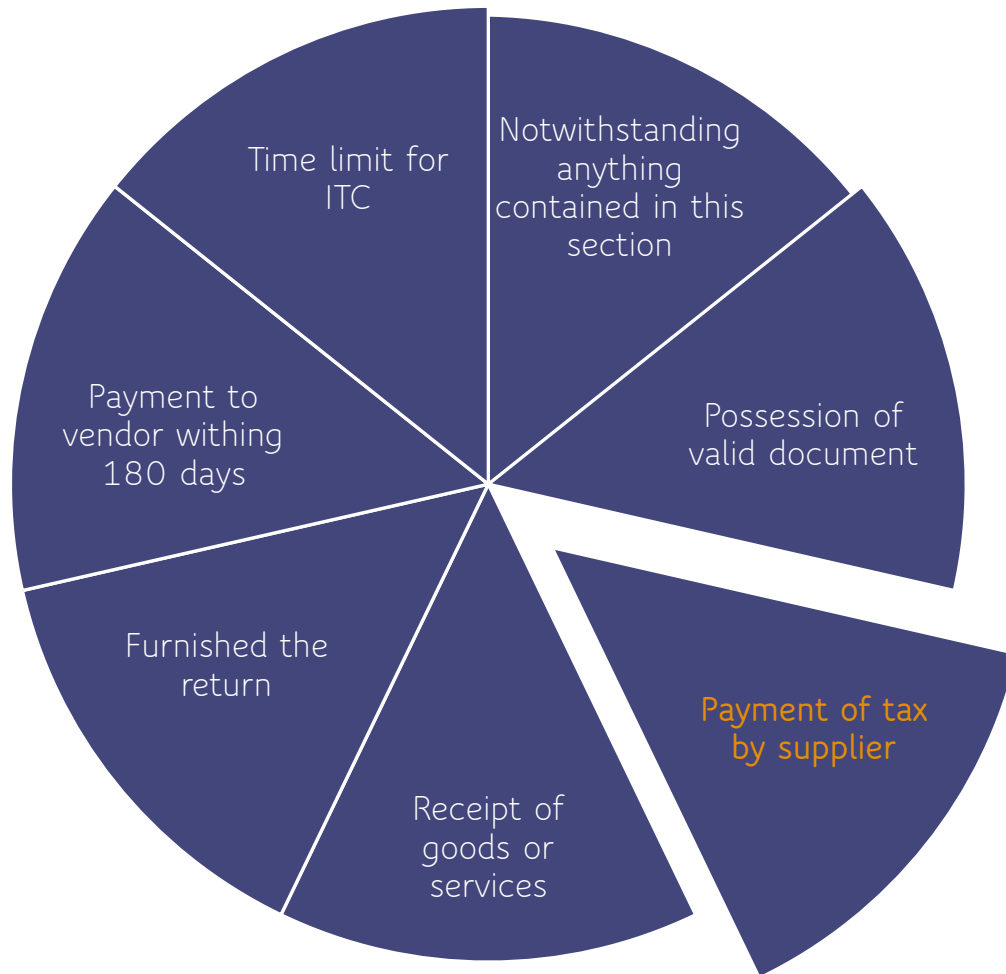


subject to such **conditions and restrictions** as may be **prescribed** and



in the manner specified in section 49. (Utilisation Manner)

SECTION 16(2)



Section 16(2)(c)

Payment of tax by supplier

- Subject to the provisions of section 41 or [43A],
- the tax charged in respect of such supply
- has been actually paid to the Government,
- either in cash or
- through utilization of input tax credit admissible in respect of the said supply

SECTION 16(2)

Section 41

- Every registered person to **provisionally** take the credit of eligible input tax, as self-assessed, in his return which shall be credited in his electronic credit ledger.

Rule 69 Matching

- The following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under section 41, shall be matched under section 42.....



PRINCIPLES OF MATCHING, REVERSAL AND RECLAIM OF ITC

Eco system originally envisaged.
[Section 41, 42, 43 read with relevant rules]

RULE 36(4) -

NOTIFICATION
NO.49/2019-CT
DT. 9-10-19

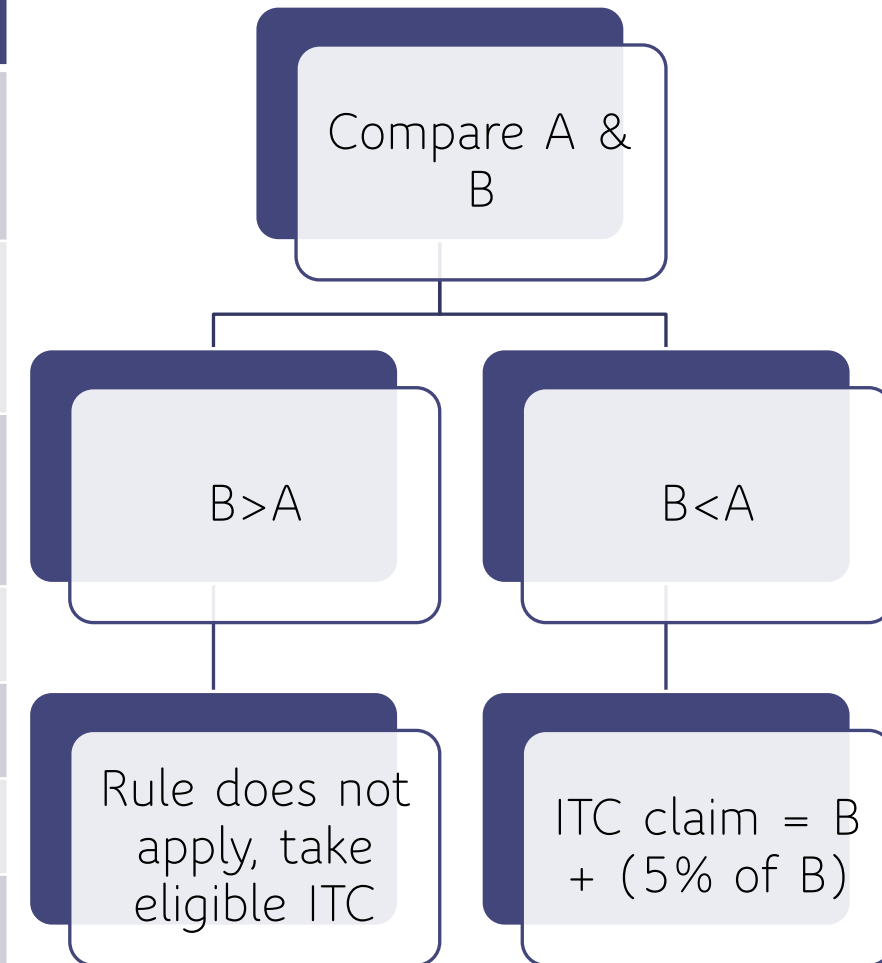
*Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed **5 per cent** of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.*

However, this rule is not applicable to following:

- Import of Goods
- Input Service Distributors
- Reverse Charge Mechanism

HOW TO CALCULATE ?

	Particulars		Amount
	Total ITC as per <u>books</u> for a particular month		XXX
Less:	ITC - RCM, import, ISD as per books		XX
	Balance ITC forward charge [B2B] as per books	(A)	XXX
	Total ITC as per <u>GSTR 2A</u>		XXX
Less:	Ineligible ITC as per GSTR 2A		XX
	Balance ITC forward charge as per GSTR 2A	(B)	XXX



CIRCULAR NO. 123/42/2019 – GST 11-11-19

Clarifies various issues with reference to ITC restriction.

- Conditions & eligibility as per provisions of the Act & Rules
- Being new provision, restriction is not imposed through the common portal, but it shall be done on self assessment basis.
- Full ITC on import, RCM, credit received from ISD
- Applicable only on the invoices/debit notes on which credit is availed after 9-10-19.
- Not supplier wise – aggregate basis – all suppliers – all eligible supplies
- GSTR 2A as available on due date of filing of GSTR 1 is to be considered
- Practical case studies given in circular itself.

NOTIFICATION NO.30/2020-CT DT. 3-4-20

- Claim input tax credit in the GSTR-3B return from February 2020 to August 2020, without applying the rule of ITC claims at **10%** of the eligible ITC as per GSTR-2A.
- However, while filing the GSTR-3B of September 2020, the taxpayers must **cumulatively adjust ITC** as per the above rule from **February 2020 to September 2020**.

NOTIFICATION NO.27/2021-CT DT. 1-6-21

- Provided further that such condition shall apply cumulatively for the period **April, May and June 2021** and the return in FORM GSTR-3B for the tax period June 2021 or quarter ending June 2021, as the case may be, shall be furnished with the **cumulative adjustment of input tax credit** for the said months in accordance with the condition above.

UNANSWERED QUESTIONS

- What if majority of vendors are in **Quarterly mode**? Should we request them to upload Invoice details at least on monthly basis?
 - Section 37(1) relevant rule 59 – Form GSTR 1 statement
 - Notification No. 57/2017 provides facility of quarterly filing
- ITC in respect of **Goods in Transit** – may appear in GSTR-2A in previous month and in 3B in next month on receipt of goods.
- What if credit reversed and re-availed due to non-payment within 180 days ?

SUMMARY

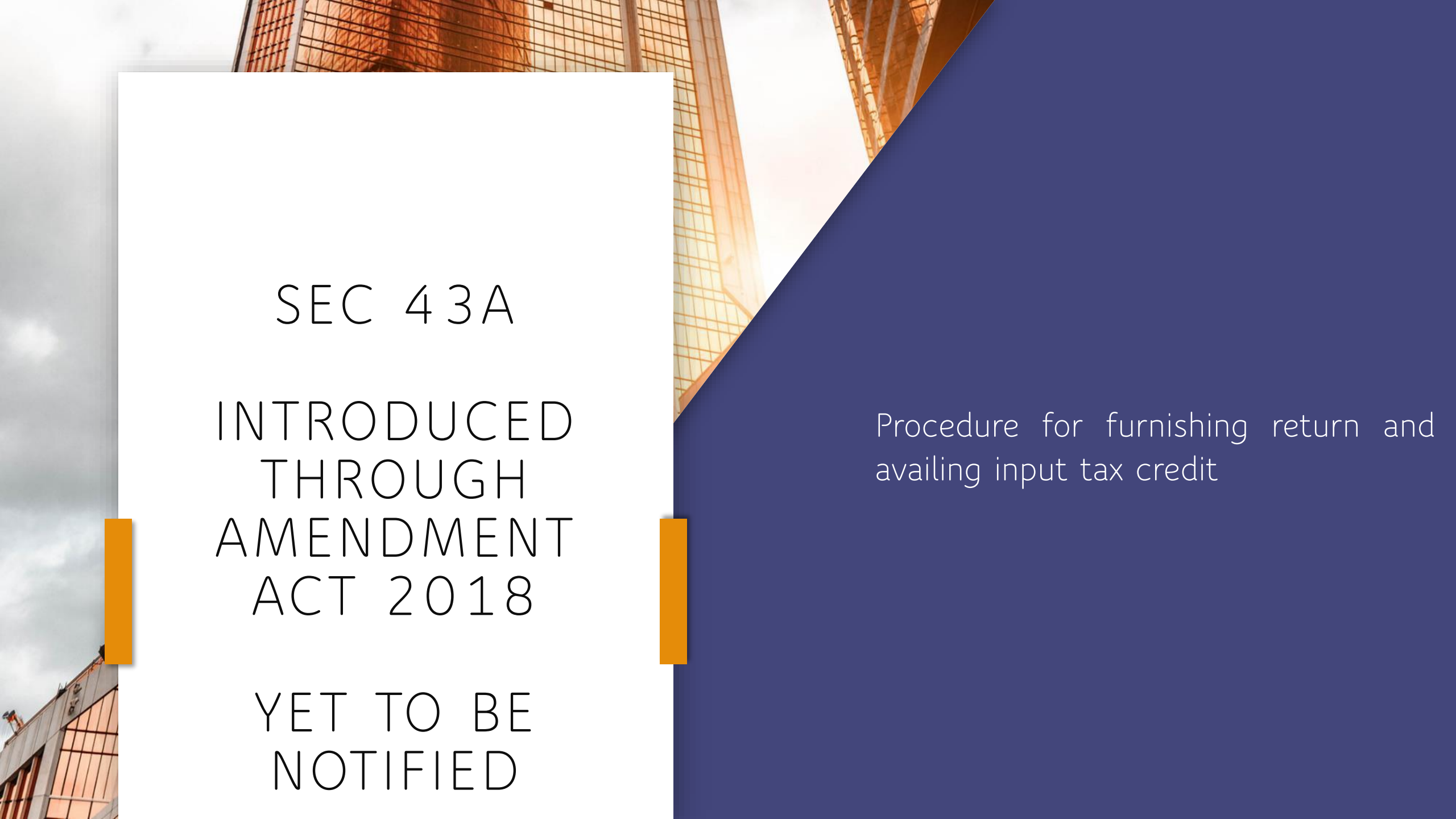
Period	Eligible ITC
Up to 9-10-19	?????
9-10-19 to 31-12-19	20%
1-1-20 to 29-2-20	10%
1-3-20 to 31-8-20	No Restriction Cumulative adjustment in Sept 20
1-9-20 to 31-12-20	10%
1-1-21 to 31-3-21	5%
1-4-21 to 30-6-21	No Restriction Cumulative adjustment in June 21
1-6-21 onwards	5%

SEC 16(2)(AA)

INTRODUCED
THROUGH FA
2021

YET TO BE
NOTIFIED

the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37



SEC 43A

INTRODUCED
THROUGH
AMENDMENT
ACT 2018

YET TO BE
NOTIFIED

Procedure for furnishing return and
availing input tax credit

- (1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.
- (2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.
- (3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.
- (4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.

- (5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.
- (6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.
- (7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.
- (8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person, –
 - (i) within six months of taking registration;
 - (ii) who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount, shall be such may be prescribed.



GSTR 2A VS GSTR 3B NOTICES

Generally issued by virtue of power under section 61 read with rule 99 relating to 'Scrutiny of Returns'

The proper officer may scrutinise the return, with reference to **information available**

Proper office = Superintendent

GSTR 1, 2A, 3B, E way bill, e invoice

To verify the correctness of the return

And inform registered person of the discrepancies noticed, if any

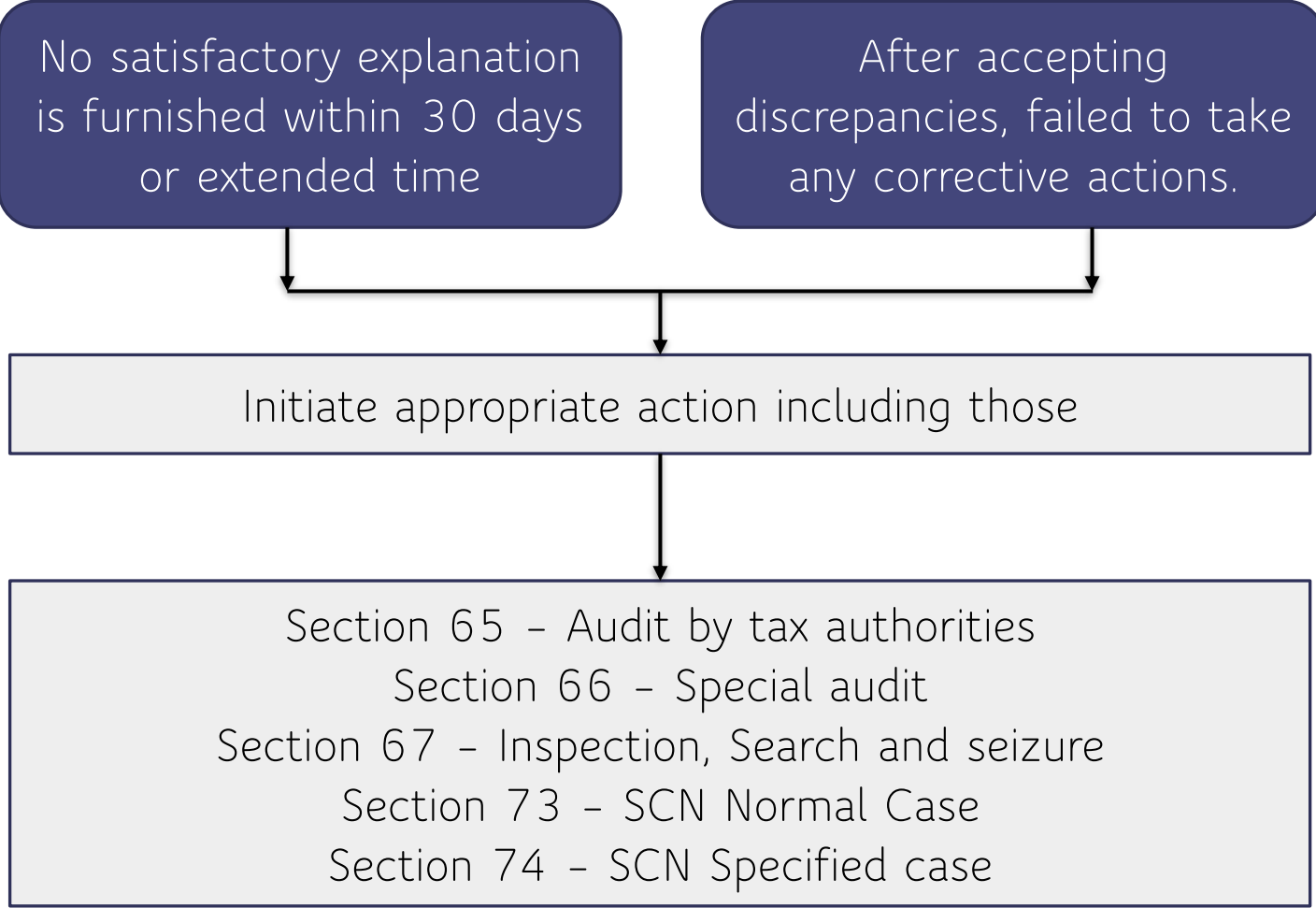
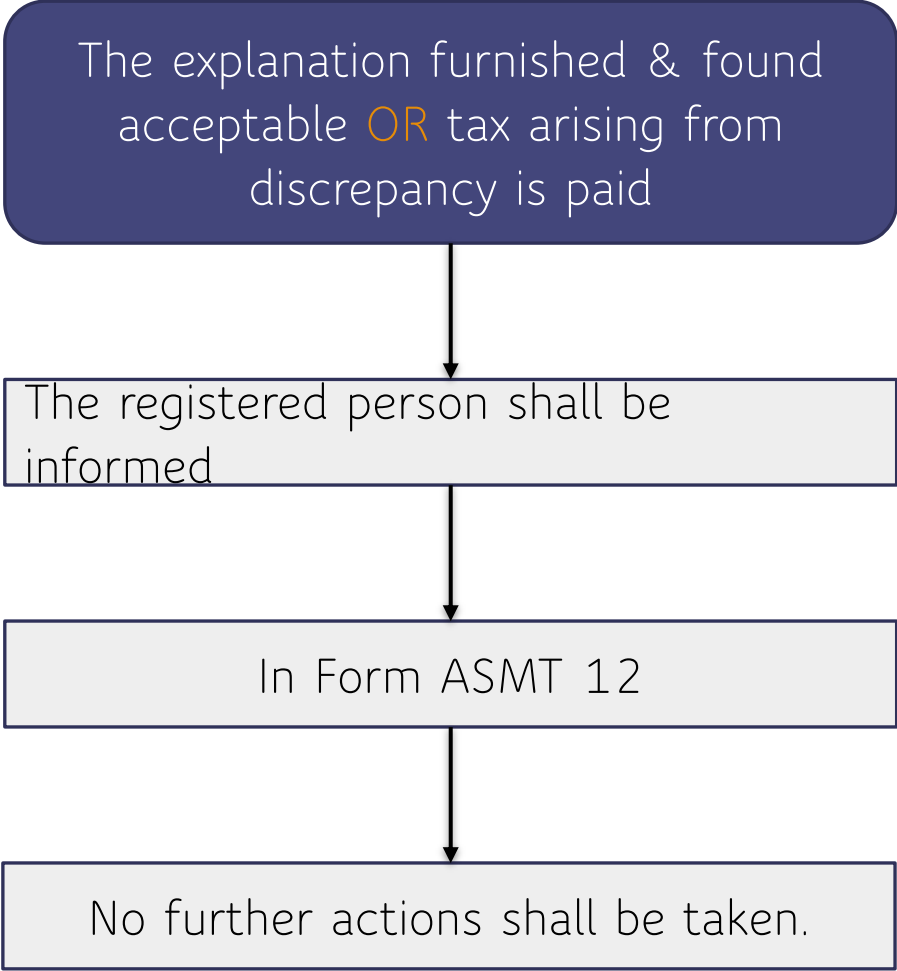
Form ASMT 10

Reply in Form ASMT 11

And seek explanation within 30 days.

Wherever possible, quantifying the amount of tax, interest and any other amount payable

Only tax specified



UNDERSTANDING DISCREPANCIES AND ITS REPLY

- Check ITC as per latest 2A and amount mentioned in notice
- Ineligible ITC to be excluded from 2A
- RCM, import, ISD to be excluded from books
- Compare & check rule 36(4) in aggregate
- If rule 36(4) not satisfied then;
- **Vendor wise reconciliation required.**

CATEGORY OF DISCREPANCY

Vendor has filed returns but not appearing

- B2B supplies not reported in GSTR 1 by mistake.
- B2B supplies reported as B2C by mistake
- B2B supplies reported with wrong GSTIN by mistake

Vendor has not filed returns

VENDOR HAS FILED RETURNS
BUT NOT APPEARING

PRESS RELEASE DATED 18-10-18

Para 4

“It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September 2018 is unfounded as the same exercise can be done thereafter also.”

PROCEDURAL LAPSE CAN'T DENY SUBSTANTIVE BENEFIT

Mangalore Chemicals & Fertilizers Ltd., 1991 (55) ELT 437 (S.C.)

- A distinction between the provisions of statute which are of **substantive character** and were built-in with certain specific objectives of policy on the one hand and those which are merely **procedural and technical in their nature** on the other must be kept clearly distinguished.
- The mere fact that it is statutory does not matter one way or the other. There are conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

POSSIBLE ARGUMENTS IN REPLY

Press release dated 18-10-18

Substantial benefit can't be denied on account of procedural lapse. SC Judgement

Producing screenshot of GSTR 1 relevant portion in cases where not appearing in 2A.

Obtain certificate from supplier that due to clerical error not appearing in 2A.

GSTR 2A is not a return. It is mere a statement.

GSTR 2A has no legal backing. Legally, no power to deny ITC based on GSTR 2A and 3B compare.

Rule 36(4) stops at GSTR 1 and no reference to GSTR 2A

GSTR-9 - Annual return only talks about lapsing of credit and there is no mention to reversal of ITC

GSTR-9C do not have any reference to GSTR-2A

VENDOR HAS NOT FILED
RETURNS

RULE 36(4), SECTION 16(2)(C)

PRESS RELEASE DATED 4-5-18 [27TH MEETING]

Para (iv) *No automatic reversal of credit:*

*“There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of **default in payment of tax by the seller, recovery shall be made from the seller however** reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc. “*

DG AUDIT MANUAL

Para 5.8.3

*“For verifying the gap in ITC availment as identified in para 5.5.4, the auditor should carry out a test check of the invoices of such suppliers whose details are **not figuring in GSTR 2A and identify some of such suppliers with high tax value and get the particulars of tax payment verified at the supplier’s end.**”*

JUDICIAL BACKING – ERSTWHILE LAW

- Hon'ble Apex Court in case of CCE v. Kay Kay Industries, [2013] 38 taxmann.com 336/42 (SC)
 - Apex court categorically laid down that a genuine businessman cannot be penalized by denying the credit of tax for the default committed by his seller in not depositing tax with Government.
- Hon'ble Madras High Court in case of Sri Ranganathar Valves (P.) Ltd. v. Assistant Commissioner (CT), [2020] 120 taxmann.com 345
 - That ITC cannot be disallowed on the ground that the seller has not paid tax to the Government, when the purchaser is able to prove that the seller has collected tax and issued invoices to the purchaser.

JUDICIAL BACKING – ERSTWHILE LAW

■ Hon'ble Delhi High Court in case of Arise India Ltd

- In the event that selling dealer fails to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against the selling dealer for recovery of such tax. Further, in cases where the department is satisfied that there is collusion of purchasing and selling dealer then proceeding under Section 40A of the DVAT Act can be initiated. Even the Supreme Court did not interfere with this order and dismissed the special leave petition filed before it.

• Hon'ble Karnataka High Court in case of Onyx Design

- It was held that “the benefit of input tax cannot be deprived to the purchaser dealer, if the purchaser dealer satisfactorily demonstrates that while purchasing goods, he has paid the amount of tax to the selling dealer. If the selling dealer has not deposited the amount in full or a part thereof, it would be for the revenue to proceed against the selling dealer.”

JUDICIAL BACKING – ERSTWHILE LAW

- Hon'ble Punjab & Haryana High Court in case of Gheru Lal Bal Chand
 - It held that that no liability could be fastened on a buyer on account of nonpayment of tax by the seller in the treasury unless a case of fraud is made out by the Revenue, or unless collusion/connivance between the seller and buyer is established.
- Quest Merchandising India Pvt Ltd [2017-TIOL-2251-HC-DEL-VAT]

JUDICIAL BACKING - GST LAW - RULE 36(4) CHALLENGED

Hon'ble Gujarat High Court	M/s Surat Mercantile Association v. Union of India	R/Special Civil Application No. 13289 of 2020 dated December 18, 2020
Hon'ble Calcutta High Court	M/s. LGW Industries Limited & and vs. Union of India & ors.	W.P.A. 92 of 2020, dated December 14, 2020
Hon'ble Gujarat High Court	M/s Society for Tax Analysis and Research v. Union of India	R/Special Civil Application No. 19529 of 2019, dated, November 14, 2019
Hon'ble Rajasthan High Court	Gr Infraprojects Limited v. Union of India	Writ Petition No. 6337/2020 dated August 05, 2020

JUDICIAL BACKING - GST LAW - SECTION 16(2)(C) - CHALLENGED

Hon'ble Gujarat High Court	M/s Surat Mercantile Association v. Union of India	R/special civil application no. 15329 of 2020
Hon'ble Delhi High Court	Bharti Tele Media Ltd. Vs. Union of India & Ors.	W.P. (C.) no. 6293/2019] TS-385-HC-2019(DEL)-NT
Hon'ble Calcutta High Court	M/s. LGW Industries Limited & and. v. Union of India & ors.	W.P.A. 23512 of 2019, dated January 8, 2020 TS-16-HC-2020(CAL)
Hon'ble Orissa High Court	M/s. Shree Gobind Alloys Pvt. Ltd. Vs Union of India and others	W.P.(C) No. 16242 of 2021 dated 5-5-21

JUDICIAL BACKING – GST LAW – PRONOUNCED

Hon'ble Madras High Court	D. Y. Beathel Enterprises vs State Tax officer	TS 190 HC(MAD) 2021 GST
Issue and Facts		Court verdict
<ul style="list-style-type: none">- Petitioner engaged in trading of Raw Rubber Sheets, had purchased goods from sellers and made payments thereto, including tax component. Based on the returns filed by sellers, the petitioner availed ITC.- However, when Revenue discovered that sellers had not paid tax, Revenue passed the impugned orders, levying the entire liability on the purchaser to reverse the ITC due to non-payment by seller.- Therefore, petitioner have challenged the said impugned through the writ petition.		<p>It was held that;</p> <ul style="list-style-type: none">- When it has come out that the seller has collected tax from the petitioners, the omission on part of the seller to remit the tax in question must have been viewed seriously and strict action ought to have been initiated against them.- The impugned orders suffer from fundamental flaws of non-examination of seller in the enquiry and non-initiation of recovery action against seller in the first place.- Therefore, the impugned orders are quashed, and the matter is remitted back to the file of the authorities.

JUDICIAL BACKING – GST LAW

Hon'ble Chhattisgarh High Court	Bharat Aluminium Company Ltd. Vs. Union of India ors.	TS 286 HC(Chat) 2021 GST
Issues and Facts		Court verdict
<ul style="list-style-type: none">- Petitioner was denied ITC based on matching of Input tax credit availed in Form GSTR-3B with the details furnished by suppliers in GSTR 1 which in turn appearing in Form GSTR-2A for the period 2018-19.- Input Tax Credit as claimed by the petitioner was 95464.59 lakhs and 2A GST, ITC Form was of 86606.67 in lakhs, which if the seller declares. He would submit that the difference of tax 8857.91 lakhs has been claimed along-with interest.		The Hon'ble Court admitted the writ petition and granted conditional ad interim stay on the Order.

POSSIBLE ARGUMENTS IN REPLY

Press release dated 4-5-18
- no automatic reversal

Reference of DG audit
manual

Judicial backing - erstwhile
law

Judicial backing - GST law

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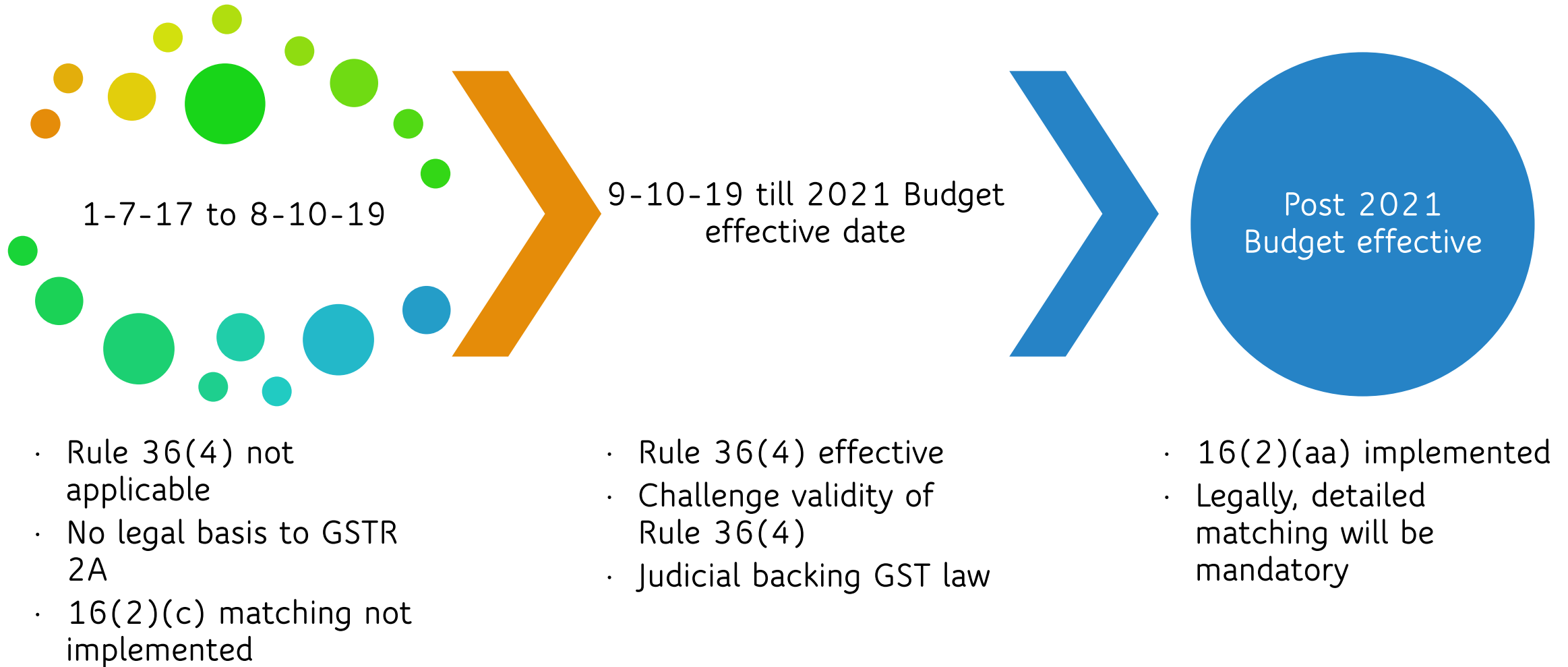
Section 16(2)(aa) is yet to
be notified.

The law cannot compel the
doing of impossibilities when
there is no mechanism to
verify whether supplier has
actually paid tax to the
Government

Denial of ITC to buyer due
to default of supplier would
tantamount to shifting the
incidence of tax from
supplier to the buyer which
is unconstitutional.

Buyer would pay double tax
on same transaction i.e., one
at the time of purchase and
another at the time of ITC
reversal.

TO SUMMARIZE



RULE 86(A)

- Provides that the electronic credit ledger of a recipient may be blocked inter alia due to failure of the seller to deposit the tax, credit of which has been availed.
- Also, Rule 86A of the CGST Rules, 2017 is also challenged before various High Courts. One petition has been filed before the Hon'ble Gujarat High Court in the case of Kalpsutra Gujarat Vs, UOI [TS-749-HC-2020(GUJ)-NT]



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