

PROPOSALS IN GST (FINANCE BILL, 2023)



Vivek Laddha

Shailendra Saxena

Manish Kumar Gupta

Rohit Mangal

Mahadev Birla

Ajay Nolakha

Pooja Patwari

Ritu Gupta

209, Standard House, 83, M K Road,
Churchgate, Mumbai- 400020
Mobile No.: 83690 44670, 94607 24737

A-414, Plot No.63, Skylark Building
Sector-11, CBD Belapur, Navi Mumbai - 400614
Mobile No.: 99200 30745, 98200 30745

<https://www.lawbrothers.in>; info@lawbrothers.in

Mumbai | Navi Mumbai | Ahmedabad | Bharuch | Jaipur | Udaipur | Bhilwara

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GIST OF AMENDMENTS (CATEGORY-WISE)

Note: Amnesty in GST was expected, and this expectation is still alive !!

Registration	Amendment provides relief to persons exempted from taking GST registration even though section 24 is attracted.	
Scope of Supply	Supply of Custom bonded warehoused goods and high sea sales are not to be treated as supply with retrospective effect from 01 July 2017.	
Output tax	Composition registered person is permitted to make intra state supply of goods through E- Commerce Operator. At present it is not permissible. Place of supply of services for transportation of goods outside India (where both recipient and supplier are located in India) is restored to the earlier provision.	
ITC	ITC Availment	No amendment
	ITC Reversal	Section 16(2)- 180 days provision: Asking to 'pay equal to ITC' instead of 'adding to the output tax liability'; Interest is said to be paid u/s 50.
	Proportionate ITC	Scope of Exempt supply has been enhanced to included the supply of custom bonded warehoused goods for the purpose of reversal of common ITC
	ITC Blocked	ITC is blocked on CSR expenditure incurred as per Co. Act 135
	ITC Reclaim	Section 16(2): Reclaiming the ITC as and when the payment is made to the supplier
Interest	Interest Liability	It is specified to levy the interest u/s 50 where it is due to delay in making the payment to the supplier within 180 days. At present, it just talks about the interest without referring to the provision of section 50.
	Interest on Refund	Manner of computation of interest, conditions and restrictions are required to be specified where there is delay in making the refund.
Late Fee	No amendment.	
Penalty	Imposed for E-Commerce operator for certain situations.	
Imprisonment	Relaxation in specified situations	
Compounding	Relaxation in specified situations	
Compliance	Being made stringent. It is for filing of Form GSTR 1, 3B, 8, 9 & 9C where restriction is imposed to furnish the said Form after expiry of 3 years from the respective due date.	

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GST Amendments, unlike Income Tax Act Amendments, do not take effect on April 1, 2023. State governments must also introduce the bills in their legislative assemblies and then the CGST and respective SGST amendments are notified.			
CGST Act			
Section		Insertion/Omission/Substitution	Remarks
Sec 10(2)	Composition levy	Omission in clause (c)	
Sec 10(2A)	Composition levy	Omission in clause (c)	
Sec 16(2)	Eligibility and conditions for taking input tax credit	Substitution in second proviso.	
		Substitution in third proviso.	
Sec 17(3)	Apportionment of credit and blocked credits	Substitution in Explanation.	
Sec 17(5)		Insertion of Clause (fa)	
Sec 23	Person not liable for registration	Substitution of new section for section 23.	
Sec 37(5)	Furnishing details of outward supply	Insertion of new sub-section (5)	
Sec 39(11)	Furnishing of return	Insertion of new sub-section (11)	
Sec 44(1)	Annual Return	Re-numbered as sub-section (1)	
Sec 44(2)		Insertion of new sub-section (2)	
Sec 52(14)	Collection of tax at source	Insertion of new sub-section (15)	
Sec 54(6)	Refund of Tax	Omission of sub- section (6)	
Sec 56	Interest on delayed refund	Substitution in section 56	
Sec122(1B)	Penalty for certain offence	Insertion of new sub-section (1B)	
Sec 132 (1)	Punishments for certain offence	Insertion, Omission and Substitution in sub-section 1 of section	
Sec 138 (1)	Compounding of Offence	Insertion, Omission and Substitution in sub-section 1 of section	
Sec 138 (2)		Substitution in sub-section (2)	
Sec 158A	Consent based sharing of Information furnished by taxable person	Insertion of new section 158A	
Sch III	Activities or Transactions which shall be treated neither as a Supply of Goods nor a Supply of Services	Date notified with retrospective effect for Paragraphs 7 and 8 and txplanation 2	

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IGST Act			
Section		Insertion/Omission/Substitution	
Sec 2(16)	Definition (Non-taxable online recipient)	Substitution in clause (16)	
Sec 2(17)	Definition (online information and database access or retrieval services)	Omission in clause (17)	
Sec 12(8)	Place of supply of services where location of supplier and recipient is in India	Omission in sub-section (8)	

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Composition Levy	
Finance Bill: Clause 128, Section 10 of CGST Act [Omission in clause (d) of Sec 10(2) and clause (c) of Sec 10(2A) respectively]	
Existing	Proposed
<p>(2) The registered person shall be eligible to opt under sub-section (1), if –</p> <ul style="list-style-type: none"> (a) save as provided in sub-section (1), he is not engaged in the supply of services; (b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act; (c) he is not engaged in making any inter-State outward supplies of goods or services; (d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council; and (f) he is neither a casual taxable person nor a non-resident taxable person: <p>Provided that where more than one registered persons are having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961), the registered person shall not be</p>	<p>(2) The registered person shall be eligible to opt under sub-section (1), if –</p> <ul style="list-style-type: none"> (a) save as provided in sub-section (1), he is not engaged in the supply of services; (b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act; (c) he is not engaged in making any inter-State outward supplies of goods or services; (d) he is not engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52; (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council; and (f) he is neither a casual taxable person nor a non-resident taxable person: <p>Provided that where more than one registered persons are having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961), the registered person shall not be eligible</p>

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eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent of the turnover in State or turnover in Union territory, if he is not –

- (a) engaged in making any supply of goods or services which are not leviable to tax under this Act;
- (b) engaged in making any inter-State outward supplies of goods or services;
- (c) engaged in making any supply of **goods or** services through an electronic commerce operator who is required to collect tax at source under section 52;
- (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
- (e) a casual taxable person or a non-resident taxable person:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-

to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent of the turnover in State or turnover in Union territory, if he is not –

- (a) engaged in making any supply of goods or services which are not leviable to tax under this Act;
- (b) engaged in making any inter-State outward supplies of goods or services;
- (c) engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52;
- (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
- (e) a casual taxable person or a non-resident taxable person:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-

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tax Act, 1961 (43 of 1961), the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.

tax Act, 1961 (43 of 1961), the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.

Memorandum: Not available

Law Brothers' Analysis:

- At present, the person is not eligible to opt for the composition scheme if he is engaged in making any supply of goods or services **through** an electronic commerce operator (ECO) who is required to collect tax at source under section 52. In case he supplies the goods or services through ECO, the person is not eligible to opt the composition scheme and shall be treated as entered into the normal scheme and thereby he has to pay the tax at the applicable tariff rate, he is entitled to collect the tax from the recipient and pay the tax to the government. Further, the person is entitled to avail the ITC (as per eligibility) and also provision of section 18(1)(c) inter-alia comes into the effect.
- Now with the proposed position, even if the person supplies the goods through ECO, he will not be ineligible to opt or continue the composition scheme. It is pertinent to mention that he can not make the inter state supply (Directly or through ECO).
- This provision promotes the small-scale businesses and further this change is also applicable to 6% composition scheme.

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Eligibility and conditions for taking input tax credit	
Finance Bill : Clause 129 , Section 16 of CGST Act [Substitution in second proviso and insertion in third proviso of 16(2)]	
Existing	Proposed
<p>(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, –</p> <p>(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;</p> <p>(aa) 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;</p> <p>(b) he has received the goods or services or both.</p> <p>Explanation. – For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services –</p> <p>(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods,</p>	<p>(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, –</p> <p>(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;</p> <p>(aa) 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;</p> <p>(b) he has received the goods or services or both.</p> <p>Explanation. – For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services –</p> <p>(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods,</p>

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<p>either by way of transfer of documents of title to goods or otherwise;</p> <p>(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.</p> <p>(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;</p> <p>(c) subject to the provisions of section 41 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</p> <p>(d) he has furnished the return under section 39:</p> <p>Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:</p> <p>Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis,</p>	<p>either by way of transfer of documents of title to goods or otherwise;</p> <p>(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.</p> <p>(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;</p> <p>(c) subject to the provisions of section 41 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</p> <p>(d) he has furnished the return under section 39:</p> <p>Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:</p> <p>Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis,</p>
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the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be **added to his output tax liability**, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be **paid by him along with interest payable under section 50**, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him **to the supplier** of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Memorandum: Not available

Law Brothers' Analysis:

- The wording 'added to his output tax liability' was written in the line of the original thought process of GSTR 1 → GSTR 2 → GSTR 3. With shifting to GSTR 3B, there does not remain the relevance of adding the amount equal to the input tax credit availed to the output tax liability. Therefore, the government has already amended rule 37 using the wording 'shall pay or reverse an amount equal to the input tax credit availed'.
- This is the beauty that the Act has been aligned with the Rule !! The viewpoint is correct but the reverse process is followed where the Act should be amended first then the Rule. Amazing, isn't it?

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Apportionment of credit and blocked credits

Finance Bill : Clause 130, Section 17 of CGST Act [Substitution in section 17(3) Explanation]

Existing	Proposed
<p>(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.</p> <p>Explanation. – For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.</p>	<p>(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.</p> <p>Explanation. – For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, “except,-- (i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule”;</p>

Memorandum: Clause 130 of the Bill seeks to amend the Explanation in sub-section (3) of section 17 of the Central Goods and Services Tax Act which clarifies that the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III except certain activities or transactions specified therein. Clause (ii) of the said Explanation empowers the Government to specify by rules the value of such activities or transactions in respect of clause (a) of paragraph 8 of Schedule III which are so excepted.

Law Brothers’ Analysis:

- It may be noted that Explanation provides that value of exempt supply shall not include the value of activities or transactions specified in Schedule III which infers that activities or transactions mentioned in Schedule III* do not trigger the reversal of common credit.

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- Kindly note that at present there is one activity of Schedule III which is covered under the gamut of value of exempt supplies for the purpose of reversal of common credit i.e. the value of activities or transactions specified in paragraph 5 of the said Schedule. Now with this proposal, value of exempt supplies shall also cover the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule”;
- **Para 8(a) of Schedule III:** Supply of warehoused goods to any person before clearance for home consumption is treated neither as a supply of goods nor a supply of services. (i.e. generally known as Sale of custom bonded warehoused goods)
- It is pertinent to note that though this activity is out of the scope of supply still the same is being considered for the purpose of computation of value of exempt supply.
- The legislative drafting of section 17(2), section 17(3) and Rule 43 is very interesting to understand the value of exempt supply. For this purpose value of exempt supply is to be computed as per below:

Value of exempt supply shall include	Value of exempt supply shall not include
<ul style="list-style-type: none"> • Supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 of CGST Act or under section 6 of the IGST Act, and includes non-taxable supply • Supplies on which the recipient is liable to pay tax on reverse charge basis, • Transactions in securities, • Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building • Supply of warehoused goods to any person before clearance for home consumption is treated neither as a supply of goods nor a supply of services. (Proposed) [Para 8(a) of Sch III] 	<ul style="list-style-type: none"> • Value of activities or transactions specified in Schedule III other than Para 5 and 8(a). • Value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances • Value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India. • Value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of

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	Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017.
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It is to be noted that activity mentioned in Para 7 and High Sea sales (Para 8(b) of Schedule III activity) does not trigger the common credit reversal.

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Apportionment of credit and blocked credits

Finance Bill: Clause 130, Section 17 of CGST Act [Insertion of 17(5)(fa)]

Existing	Proposed
	(5) (fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;

Memorandum: Not available

Law Brothers' Analysis:

- Section 135 of Co. Act, 2013 provides that every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or a net profit of rupees 5 crore or more during the immediately preceding financial year shall spend, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years.
- It infers that in the case where the Board of such companies spends the amount by procuring the goods or services or both for activities relating to CSR, the ITC on such expenditure is proposed to be blocked.
- Strict interpretation suggests that ITC shall not be blocked in case voluntary spending in name of CSR.
- This provision will increase the cost to the companies. Now, neither the CSR expenditure is allowed as expenditure in Income Tax nor its ITC is proposed to be allowed. In our view, the empowerment should not be exercised to that level.

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Person not liable for registration

Finance Bill : Clause 131, Section 23 of CGST Act (Substitution in section 23)

Existing	Proposed
<p>(1) <u>The following persons shall not be liable to registration, namely:—</u></p> <p>(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;</p> <p>(b) an agriculturist, to the extent of supply of produce out of cultivation of land.</p> <p>(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.</p>	<p><u>23. Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24,—</u></p> <p>(a) the following persons shall not be liable to registration, namely:—</p> <p>(i) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act, 2017; 13 of 2017.</p> <p>(ii) an agriculturist, to the extent of supply of produce out of cultivation of land;</p> <p>(b) the Government may, on the recommendations of the Council, by notification, <u>subject to such conditions and restrictions as may be specified therein</u>, specify the category of persons who may be exempted from obtaining registration under this Act.</p>

Memorandum: Not available

Law Brothers' Analysis:

- It has been amended to provide the intended relief to persons exempted from taking GST registration even though section 24 is attracted.
- E.g. Where any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under GST is not liable for registration [Sec 23(1)(a)]. On another hand, if such person receives the supplies notified under RCM becomes liable for registration [Section 24(iii)]. This type of oxymoron is actually defeating the intended purpose of relaxation to the person engaged in wholly exempt supply. To cater this peculiar issue, proposed law states that even though a person is liable u/s 22(1) or section 24 (various situation including liability of registration based on RCM), a person will not be required to registration if person is engaged in wholly exempt supply and other cases of section 23.

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Furnishing details of outward supply	
Finance Bill : Clause 132, Section 37 of CGST Act (Insertion of sub-section 5)	
Existing	Proposed
	<p>(5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after the expiry of a period of three years from the due date of furnishing the said details:</p> <p>Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said details.</p>
Furnishing of return	
Finance Bill : Clause 133 Section 39 of CGST Act [Insertion of sub-section (11)]	
Existing	Proposed
	<p>(11) A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of three years from the due date of furnishing the said return:</p> <p>Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of the said period of three years from the due date of furnishing the said return.</p>
Annual Return	
Finance Bill : Clause 134, Section 44 of CGST Act [Renumbering of existing provision and Insertion of sub-section (2)]	
Existing	Proposed
	<p>(2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return:</p> <p>Provided that the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return.</p>

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Collection of tax at source

Finance Bill : Clause 135, Section 52 of CGST Act [Insertion of sub-section (15)]

Existing	Proposed
	<p>(15) The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement:</p> <p>Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said period of three years from the due date of furnishing the said statement.</p>

Memorandum: Not available

Law Brothers' Analysis:

- At present, the time limit has been provided of furnishing the form GSTR 1, GSTR 3B, GSTR 8, GSTR 9 & 9C.
- But law has not provided the time bar beyond which it can not be furnished. Now the proposed amendments provide that it shall not be allowed to furnish the form GSTR 1, GSTR 3B, GSTR 8, GSTR 9 & 9C after the expiry of a period of 3 years from the due date of furnishing the said form.
- E.g. Where the due date of GSTR 9 and GSTR 9C of FY 2022-23 is 31 Dec 2023 (assuming it is not extended), with this proposal, it can be construed that it will not allow to furnish GSTR 9 and GSTR 9C post 31 Dec 2026.
- This time limit can create difficulties in certain cases like case pending for appeal for revocation of cancellation of registration. After enabling the provisions, government may come up with notification to cater to the situations of practical difficulties.

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Refund of Tax

Finance Bill : Clause 136, Section 54 of CGST Act (Omission in sub-section(6) of section 54)

Existing	Proposed
(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted , in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub- section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.	(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent of the total amount so claimed, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub- section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

Memorandum: Not available

Law Brothers' Analysis:

- In the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, law provides the refund on a provisional basis, 90% of the total amount so claimed, excluding the amount of input tax credit provisionally accepted.
- It is noticeable that the concept of provisional ITC is done away w.e.f. 01 Oct 2022 vide Finance Act, 2022.
- With this the reading has been redundant and thereby it is proposed to omit the wordings 'excluding the amount of input tax credit provisionally accepted'.

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Interest on Delayed Refund

Finance Bill : Clause 137, Section 56 of CGST Act (Substitution in section 56)

Existing	Proposed
<p>If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:</p> <p>Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.</p> <p><i>Explanation.</i> – For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).</p>	<p>If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed:</p> <p>Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.</p> <p><i>Explanation.</i> – For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).</p>

PROPOSALS IN GST (FINANCE BILL, 2023)

Memorandum: Clause 137 of the Bill seeks to amend section 56 of the Central Goods and Services Tax Act by substituting certain words therein which empowers the Government to provide by rules the manner of computing the interest in respect of refund payable for the period of delay beyond sixty days from the date of receipt of application till the date of refund, subject to the conditions and restrictions specified therein.

Law Brothers' Analysis:

- There is an explicit provision of granting the 6% interest in case of delay in giving the refund to the applicant of refund. Still, the department has not taken steps in many cases in the application of the provision.
- Further in cases where the deficiency memo is issued by the department in RFD-03, the computation of the time limit has been debated as to whether it is to be started from the date of filing of the application or the date of the resolution of deficiency. It appears that the amendment is brought to consider this situation.

PROPOSALS IN GST (FINANCE BILL, 2023)

Penalty for certain offence

Finance Bill : Clause 138, Section 122 of CGST Act [Insertion of sub-section (1B)]

Existing	Proposed
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Memorandum: Not available

Law Brothers' Analysis:

E-commerce operator (ECO) has been made liable for penalty in respect of

➤ Where ECO allows the persons to make the supply in 2 specified contraventions of the provisions.

1. ECO allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply.

Note: It may be noted that as per section 24, persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52, is required to obtain the registration mandatorily. Such persons if supplies through ECO then they are liable to registration. Penalty is invoked on ECO if it allows the unregistered persons to make the supply through it.

2. ECO allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply.

Note: Composition registered person engaged in making any inter-State outward supplies is not eligible to opt the composition levy. So he will be eligible to make intra- state supply only.

➤ failure to furnish the correct details in the GSTR-8 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act.

PROPOSALS IN GST (FINANCE BILL, 2023)

Punishments for certain offence

Finance Bill : Clause 139, Section 132 of CGST Act (Omission, Substitution in sub-section 1)

Existing	Proposed
<p>1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: –</p> <p>(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;</p> <p>(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;</p> <p>(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;</p> <p>(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;</p> <p>(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);</p> <p>(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;</p>	<p>1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: –</p> <p>(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;</p> <p>(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;</p> <p>(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;</p> <p>(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;</p> <p>(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);</p> <p>(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;</p>

PROPOSALS IN GST (FINANCE BILL, 2023)

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable –

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

PROPOSALS IN GST (FINANCE BILL, 2023)

refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

- (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
- (iii) in the case of **any other offence** where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
- (iv) in cases where he commits or abets the commission of an offence specified in clause (f) **or clause (g) or clause (j)**, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(l) attempts to commit, or abets the commission of any of the offences mentioned in **clauses (a) to (f) and clauses (h) and (i)** of this section,

shall be punishable –

- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
- (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
- (iii) in the case of **an offence specified in clause (b)** where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
- (iv) in cases where he commits or abets the commission of an offence specified in clause (f), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

PROPOSALS IN GST (FINANCE BILL, 2023)

Memorandum: Not available

Law Brothers' Analysis:

- Section 132 is amended so as to not invoke the prosecution for the following activities:
 - obstructs or prevents any officer in the discharge of his duties under this Act;
 - tampers with or destroys any material evidence or documents;
 - fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information
- This is an amendment towards the decriminalization of certain offences.
- Amendment seeks to enhance the limit for prosecution from INR 1 crore to INR 2 crores for all the listed offences except when a person issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax

PROPOSALS IN GST (FINANCE BILL, 2023)

Compounding of Offence

Finance Bill : Clause 140, Section 138 of CGST Act (Omission, Substitution in sub-section 1 & 2)

Existing	Proposed
<p>(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case may be, of such compounding amount in such manner as may be prescribed:</p> <p>Provided that nothing contained in this section shall apply to –</p> <ul style="list-style-type: none">(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of <u>section 132</u> and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;	<p>(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case may be, of such compounding amount in such manner as may be prescribed:</p> <p>Provided that nothing contained in this section shall apply to –</p> <ul style="list-style-type: none">(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;(b) Omitted

PROPOSALS IN GST (FINANCE BILL, 2023)

(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

(d) a person who has been convicted for an offence under this Act by a court;

(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than **ten thousand rupees or fifty per cent of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent of the tax, whichever is higher.**

(c) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132;

(d) a person who has been convicted for an offence under this Act by a court;

(e) Omitted

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than **twenty-five per cent. of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved**".

Memorandum: Not available

Law Brothers' Analysis:

- Compounding is not permitted for fake invoicing cases mentioned in sec 132(1)(b).

PROPOSALS IN GST (FINANCE BILL, 2023)

- Other offences can be compounded once in a life-cycle of a person. Kindly note that here the word 'person' is used but not the 'registered person'.
- Compounding fee is proposed to be reduced

Position	Present	Proposed
Minimum	<ul style="list-style-type: none">• INR 10000 or• 50% of the tax involved, (whichever is higher)	25% of tax tax involved
Maximum	150% of tax tax involved	100% of tax tax involved

PROPOSALS IN GST (FINANCE BILL, 2023)

Consent based sharing of Information furnished by taxable person	
Finance Bill : Clause 141, Section 158 of CGST Act (Insertion of new section 158A)	
Existing	Proposed
	<p>158A. (1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of subsection (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely:--</p> <p>(a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;</p> <p>(b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;</p> <p>(c) such other details as may be prescribed.</p> <p>(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of --</p> <p>(a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and</p> <p>(b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed.</p> <p>(3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared</p>

PROPOSALS IN GST (FINANCE BILL, 2023)

under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

Memorandum: Clause 141 of the Bill seeks to insert a new section 158A in the Central Goods and Services Tax Act relating to consent based sharing of information furnished by taxable person. Sub-section (1) of the said section empowers the Government to provide by rules the details to be shared and the manner in which and the conditions subject to which the details may be shared by the common portal with such other systems notified by the Government. Sub-section (2) of the said section empowers the Government to provide by rules the form and manner in which the consent of the supplier and the recipient specified therein shall be obtained.

Law Brothers' Analysis:

- It is intended to share the information of registered person with the notified systems.
- The information shall be in the nature of the information furnished
 - for registration
 - GSTR-3B
 - GSTR-9
 - details of outward supplies in GSTR 1
 - E-way bill
 - Other information as may be prescribed by rules.

Further, the government does not take any responsibility with respect to any liability arising consequent to information shared.

PROPOSALS IN GST (FINANCE BILL, 2023)

Activities or Transactions which shall be treated neither as a Supply of Goods nor a Supply of Services

Finance Bill : Clause 142, Section 168 of CGST Act [Retrospective exemption to certain activities and transactions in Schedule III to the Central Goods and Services Tax Act.]

Existing	Proposed
<p>7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.</p> <p>8. (a) Supply of warehoused goods to any person before clearance for home consumption;</p> <p>(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.</p> <p><i>Explanation 2.</i> – For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962).</p> <p>Para 7 and 8 and Explanation 2 are inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019.</p>	<p>7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.</p> <p>8. (a) Supply of warehoused goods to any person before clearance for home consumption;</p> <p>(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.</p> <p><i>Explanation 2.</i> – For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962).</p> <p>Paragraphs 7 and 8 and Explanation 2 thereof shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.</p> <p>No refund shall be made of all the tax which has been collected, but which would not have been so collected, had subsection (1) been in force at all material times.</p>

Memorandum: Not available

Law Brothers' Analysis:

- Para 8(a) pertains to the supply of Custom bonded warehoused goods and Para 8(b) pertains to high sea sales which are not treated as supply.

PROPOSALS IN GST (FINANCE BILL, 2023)

- Both of the paragraphs 7 and 8 of Sch III were inserted vide Finance Act, 2018 and made effective from 01 Feb 2019 and therefore levy on such activity occurred during the period from 01 July 2017 to 31 Jan 2019 was being questioned by department.
- By way of Finance Bill, 2023 it is proposed to take a retrospective effect. Though delayed, but welcome move.
- But Finance Bill, 2023 also states that No refund shall be made of all the tax which has been collected on such items. Absolutely wrong and will be tested by Court in times to come.

Definition: Non-taxable online recipient (NTOR)

Finance Bill : Clause 143, Section 2 of IGST Act [Substitution of clause 16]

Existing	Proposed
<p>(16) "non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.</p> <p><i>Explanation.</i>—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—</p> <p>(i) set up by an Act of Parliament or a State Legislature; or</p> <p>(ii) established by any Government,</p>	<p>“(16) “non-taxable online recipient” means any unregistered person receiving online information and database access or retrieval services located in taxable territory.</p> <p><i>Explanation.</i>—For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017’;</p>

PROPOSALS IN GST (FINANCE BILL, 2023)

with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution;

Memorandum: Not available

Law Brothers' Analysis:

Relevance of this definition: Section 14 of IGST Act states that on supply of OIDAR services by any person located in a non-taxable territory and received by a NTOR, the supplier of OIDAR services located in a non-taxable territory shall be the person liable for paying IGST on such supply.

Effect of the amendment:

- Any unregistered person located in taxable territory who receives OIDAR services will be regarded as NTOR.
- Now, any unregistered person of any capacity can be regarded as NTOR as there is an omission of definite wordings 'Government, local authority, governmental authority, an individual or any other person not registered receiving OIDAR services other than commerce, industry or any other business or profession'. With this, it is clear that even for a business purpose, an unregistered person can be regarded as NTOR.
- Consequently, for an import of services by NTOR (even for a business purpose), the tax (i.e. IGST) shall be paid by OIDAR service provider located outside India (Sec 14 of IGST Act).
- It is pertinent to recall that the import of services by NTOR (even for a other than business purpose) falls under the scope of supply because as per section 7(1)(b) of CGST Act, import of services for a consideration whether or not in the course or furtherance of business falls under the scope of supply.
- It is also pertinent to recall that every person supplying OIDAR services from a place outside India to a person in India, other than a registered person shall be required to be registered mandatorily [Sec 24(xi) of CGST Act]
- For the purpose of clarity, it is provided that unregistered person includes a person registered solely in terms of section 24(vi) of CGST Act. [Note: Section 24(vi) provides that persons who are required to deduct tax under section 51 (i.e Govt department, Govt. agencies, local authorities etc.), whether or not separately registered under this Act is required to obtain the registration mandatory].

PROPOSALS IN GST (FINANCE BILL, 2023)

Definition: OIDAR Services

Finance Bill : Clause 143, Section 2 of IGST Act [Omission in clause 17]

Existing	Proposed
Section 2: In this Act, unless the context otherwise requires, —	
<p>(17) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, —</p> <ul style="list-style-type: none">(i) advertising on the internet;(ii) providing cloud services;(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;(v) online supplies of digital content (movies, television shows, music and the like);(vi) digital data storage; and(vii) online gaming;	<p>(17) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as, —</p> <ul style="list-style-type: none">(i) advertising on the internet;(ii) providing cloud services;(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;(v) online supplies of digital content (movies, television shows, music and the like);(vi) digital data storage; and(vii) online gaming;

PROPOSALS IN GST (FINANCE BILL, 2023)

Memorandum: Not available

Law Brothers' Analysis: The new definition of OIDAR services is provided as per below:

OIDAR

➤ means

- services whose delivery is mediated by information technology over the internet or an electronic network and
- the nature of which renders their supply impossible to ensure in the absence of information technology and
 - includes specified electronic services

It is noticeable that there has been the omission of 2 conditions from this definition i.e.

- essentially automated and
- involving minimal human intervention

It infers that to fall into the definition, there will not be a need to satisfy such 2 conditions and thereby the scope of definition is enlarged. With this the ambiguity of subjectivity in the determination of **minimal** human intervention is removed.

PROPOSALS IN GST (FINANCE BILL, 2023)

Place of supply of services where location of supplier and recipient is in India

Finance Bill : Clause 144, Section 12 of IGST Act [Omission in sub-section 8]

Existing	Proposed
<p>(8) The place of supply of services by way of transportation of goods, including by mail or courier to, —</p> <p>(a) a registered person, shall be the location of such person;</p> <p>(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation:</p> <p><i>Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.</i></p>	<p>(8) The place of supply of services by way of transportation of goods, including by mail or courier to, —</p> <p>(a) a registered person, shall be the location of such person;</p> <p>(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation:</p>

Memorandum: Not available

Law Brothers' Analysis: This proviso was inserted by the Integrated Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019. And now with this proposed amendment, it is as if fool returns the home.

The effect of the insertion of the proviso was to charge the IGST on supply of services of transportation of goods as per section 7(5)(a) of IGST Act (of course, it is not the case of export of services being the recipient of such services in located in India).

Consequently, IGST with place of supply is required to be declared as 'other states' in GSTR 1. States were reporting the issue that they are not getting benefits due to non allocation of the place of supply to the state and thereby they are losing revenue. To overcome such an operational anomaly of allocation of funds to the states, now it is proposed to be removed. So, the position is proposed to be resorted as prevailing before 01.02.2019.

PROPOSALS IN GST (FINANCE BILL, 2023)

HAPPY
READING

<https://www.lawbrothers.in>; info@lawbrothers.in

Mumbai | Navi Mumbai | Ahmedabad | Jaipur | Udaipur | Bhilwara