



# CLAUSEWISE ANALYSIS – GST AMENDMENTS (FINANCE BILL 2023)

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## **GST AMENDMENTS – HIGHLIGHTS AT A GLANCE**

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## 1. Registered Person supplying Goods through ECO can opt for Composition Levy: -

### Source

Clause 128 of the Finance Bill, 2023.

### Effective Date

Prospectively from the date of the enactment

### Affected Provision

Clause (d) of sub-section (2), Clause (c) of sub-section (2A) of Section 10 of the CGST Act, 2017

### Amendment:

(2) The registered person shall be eligible to opt sub-section (1), if: -

(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;

(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-  
(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;

### Effect of the Amendment

Currently, a person making a supply of goods through an electronic commerce operator liable to deduct TDS is not allowed to opt for the composition scheme. Now, it is proposed that such persons would be allowed to opt for the composition scheme.

## 2. Non-payment within 180 days to lead to ITC reversal and not payment of output tax

### Source

Clause 129 of the Finance Bill, 2023.

**Effective Date**

Prospectively from the date of the enactment

**Affected Provision**

Sub section 2 of Section 16 of the CGST Act, 2017

**Provision before Amendment**

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, 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.

**Provision after Amendment**

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, 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, 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.

### Effect of the Amendment

As per the current provisions, if a recipient does not make the payment of the value of supply to the supplier within 180 days, he would be required to add the ITC availed on it to his output tax liability. To align with the return filing system, the Act provides for ITC reversal along with interest u/s 50 in such cases. The respective change in the corresponding rule 37 had already been carried out vide Notification No. 19/2022 - CT dated 28.09.2022 w.e.f 1<sup>st</sup> October 2022.

Further, upon making payment of such amount thereafter, one can re-avail the credit without any time limit. To clarify further, it has been provided that re-availment would only be allowed if the said value of supply has been paid to the supplier. This may bring into question cases where a recipient makes the payment of the value of supply to any other person other than the supplier (e.g. disputed rent paid under the Rent Control law, direct payment to the Government instead of the creditor as part of recovery provisions under Section 79 etc.)

### 3. ITC restricted for supply of warehoused goods before home consumption

#### **Source**

Clause 130(a) of the Finance Bill, 2023.

#### **Effective Date**

Prospectively from the date of the enactment

#### **Affected Provision**

Explanation to the Sub-section (3) of the Section 17 of the CGST Act, 2017

#### **Provision before Amendment**

(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.

*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.~~

#### **Provision after Amendment**

(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.

*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.

#### Effect of the Amendment

As per Section 17(3) read with Rules 42 and 43, certain activities or transactions are to be treated as exempt supplies for proportionate ITC reversal. In this, the supply of goods kept in customs bonded warehouse before clearance for home consumption has now been included in exempt supply for the purpose of ITC reversal. However, high sea sales (i.e. goods sold after dispatch from the port of origin outside India before clearance for home consumption) would not be treated as an exempt supply for the purpose of ITC reversal.

#### **4. ITC not available on goods and services received for CSR activities: -**

##### **Source**

Clause 130(b) of the Finance Bill, 2023.

##### **Effective Date**

Prospectively from the date of the enactment

##### **Affected Provision**

Section 17(5) of the CGST Act, 2017

##### **New Clause**

Clause (fa) has been inserted

##### **Amendment**

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(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.

### Effect of the Amendment

It has always been a matter of debate whether ITC would be eligible to companies in respect of goods or services used for meeting the obligations of Corporate Social Responsibility under Section 135 of the Companies Act 2013. It could be argued that the same could not be considered as a gift which is gratuitous and without any contractual obligations. Therefore, the disallowance under Section 17(5)(h) could be questioned.

Now, it has been provided that such obligations met by eligible companies as part of their CSR would not be eligible to avail ITC. Since this amendment is prospective, one can take a stand that such ITC would be eligible before this amendment stands notified. It may be noted that only companies mandated for CSR under Section 135 of the Companies Act 2013 would be affected by this amendment.

## 5. No compulsory registration required if registration exempted under section 23

### Source

Clause 131 of the Finance Bill, 2023.

### Effective Date

Retrospectively from 1<sup>st</sup> July, 2017

### Affected Provision

Section 23 of the CGST Act, 2017

### Provision before Amendment

~~(1) The following persons shall not be liable to registration, namely:—~~

- ~~(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~~
- ~~(b) an agriculturist, to the extent of supply of produce out of cultivation of land.~~

~~(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.~~

**Provision after Amendment**

Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24–

(a) the following persons shall not be liable to registration, namely: -

(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

(ii) an agriculturist, to the extent of supply of produce out of cultivation of land.

(b) the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.

**Effect of the Amendment**

Section 23 provides for exemption from registration under the GST law. On the other hand, Section 24 provides for compulsory registration under the GST law. In quite a number of cases, a person would fall under both of the above provisions. Since neither provision used to override the other, there was a great deal of confusion about whether he would require registration under the GST law. For example, a person is making wholly exempt supplies and also falls under the reverse charge liability notification.

In such cases, it has been clarified that Section 23 (persons not liable for registration) will prevail over Section 22 (turnover-based registration limits) and Section 24 (persons liable for compulsory registration). Hence, a person exempt from registration under Section 23 would not be required to take registration irrespective of coverage under other registration provisions.

**6. Maximum time limit up to which GSTR-1 / 3B / 9 / 9C and 8 can be furnished****Source**

Clause 132, 133, 134 and 135 of the Finance Bill, 2023.

**Effective Date**

Prospectively from the date of the enactment

**Affected Provision**

Section 37, 39, 44, 52 of the CGST Act, 2017



**New Sub-section**

section 37(5), 39(11), 44(2) and 52(15) has been inserted.

**Amendment****Insertion in Section 37**

37(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:

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;”

**Insertion in Section 39**

(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:

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.”.

**Insertion in Section 44**

(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:

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.”.

**Insertion in Section 52**

(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:

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.

#### **Effect of the Amendment**

While the law prescribes late fees upon the delayed filing of the return, there is no outer time limit prescribed up to which the returns could be filed. Now, it is proposed to provide that GSTR-1, 3B, 9, 9C and 8 would not be allowed to be filed after the due date of furnishing of annual returns for that financial year. For a certain class of registered persons, this outer time limit could be extended by the Government.

### **7. Removal of provisional ITC concept from refund provisions**

#### **Source**

Clause 136 of the Finance Bill, 2023.

#### **Effective Date**

Prospectively from the date of the enactment

#### **Affected Provision**

Sub-section (6) of section 54 of the CGST Act, 2017

#### **Amendment**

(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.

### Effect of the Amendment

During the introduction of GST, there was a concept of provisional ITC till the same stood matched and accepted by the recipient. This provision was altered, and the concept of provisional ITC was scrapped through Finance Act 2022.

To rationalize this, the provisional refund provisions allowing 90% of claimable refunds have been modified to exclude the concept of provisional ITC. Therefore, 90% of self-assessed and claimed refunds would be allowed on a provisional basis pending the final disposal of the refund application without getting into the concept of provisional ITC.

## **8. Manner to be prescribed for interest on delayed refunds**

### **Source**

Clause 137 of the Finance Bill, 2023.

### **Effective Date**

Prospectively from the date of the enactment.

### **Affected Provision**

Section 56 of the CGST Act, 2017.

### **Provision before amendment**

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 subsection till the date of refund of such tax.~~

### **Provision after Amendment**

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.

### Effect of the Amendment

Even though there is a clear provision for interest on delayed refunds beyond 60 days of the date of application, the GST Department denies such interest claims on several occasions.

Now, Section 56 is being amended to provide an enabling provision through which the manner of computation of such interest on delayed refunds would be provided. Hence, one can expect the rules prescribing the manner and conditions/restrictions for computing the interest on delayed refund to be inserted after such provision gets notified.

## 9. Penalty for ECO, if unregistered / composition persons wrongly supply through them

### Source

Clause 138 of The Finance Bill, 2023

### Effective Date

Prospectively from the date of the enactment.

### Affected Provision

Section 122 of the CGST Act, 2017

### New Clause

Sub-section (1B) has been inserted

### Amendment

(1B) Any electronic commerce operator who—

1. 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;
2. 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; or
3. fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

### Effect of the Amendment

Special penalty provisions have now been provided for electronic commerce operators. The responsibility has now been cast upon such online platforms to ensure that only eligible persons are allowed to supply through its website.

In the following cases, the said electronic commerce operator would be liable to a penalty of a higher of Rs. 10000 or the tax amount involved:

- a) Any unregistered person (who was liable to be registered and not exempted from it) is allowed to make the supply of goods or services through the website of such ECO
- b) A composition dealer (not otherwise permitted to make inter-state supply under GST) is allowed to make inter-state supply through the website of such ECO
- c) Fails to furnish information regarding supplies made by an unregistered person through its website in GSTR-8

The above provisions would not apply to an ECO opting for composition scheme.

## **10. Decriminalization of some offences and increase of monetary limit for prosecution**

### **Source**

Clause 139 of The Finance Bill, 2023

### **Effective Date**

Prospectively from the date of the enactment.

### **Affected Provision**

Section 132 of the CGST Act, 2017

### **Provisions before Amendment:**

(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: -

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

~~(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 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.

**Provision After Amendment:**

**(1)** Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: -

- (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.

### Effect of the Amendment

The following offences have been decriminalized and no prosecution can be launched for them:

- i. Obstruction or prevention of an officer in the discharge of his duties
- ii. Tampering with or destroying any material evidence or documents
- iii. Failure to supply information or supplying false information required under the law

Further, the limit for prosecution has been increased from Rs. 1 crore to Rs. 2 crores for all the offences except if he is engaged in the issuance of fake invoices without actual supply of goods or services

## 11. Changes in cases allowed for compounding of offences

### **Source**

Clause 140(a)(i), (ii), (iii) and (iv) of the Finance Bill, 2023.

### **Effective Date**

Prospectively from the date of the enactment.

### **Affected Provision**

Section 138 (1) of the CGST Act, 2017

### **Provision before amendment**

(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 be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to-

- ~~(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 section 132 and the offences specified in clause (1) 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;~~
- ~~(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 subsection (1) of section 132; and~~
- (f) any other class of persons or offences as may be prescribed:

#### **Provision after amendment**

- (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 be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to-

- (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
- (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:

#### **Effect of the Amendment**

The law allows for the compounding of certain offences upon payment of the applicable amount and offers protection from further proceedings under the GST law. The following amendments have been made to such provisions:

- a) Irrespective of the amount, if a person deals with goods liable for confiscation or services in contravention of the provisions, he can apply for compounding.
- b) The limit of value earlier was Rs. 1 crore to apply for compounding of certain offences has now been removed.
- c) Earlier, a person accused of committing an offence under any other law could not apply for compounding. This restriction has now been removed
- d) A person who is accused of issuing fake invoices without an actual supply of goods or services would not be allowed to apply for compounding now

There is no prosecution for certain offences provided above for which compounding would also be no longer needed.



**12. Revised payment limit for compounding: -****Source**

Clause 140(b) of the Finance Bill, 2023.

**Effective Date**

Prospectively from the date of the enactment.

**Affected Provision**

Section 138 (2) of the CGST Act, 2017

**Provision before amendment**

(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.~~

**Provision after amendment**

(3) 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.

**Effect of the Amendment**

The payment limit for compounding has been revised as below:

Nature	Current	Revised
Minimum Limit	Higher of Rs. 10000 or 50% of tax involved	25% of the tax involved
Maximum Limit	Higher of Rs. 30000 or 150% of tax involved	100% of the tax involved

**13. Sharing of information by GST portal with other systems****Source**

Clause 141 of the Finance Bill, 2023.

**Effective Date**

Prospectively from the date of the enactment

**Affected Provision**

Section 158A of the CGST Act, 2017

**Insertion of new section**

- (1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of sub-section (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: –
- (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;
  - (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies 92 furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;
  - (c) such other details as may be prescribed.
- (2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of —
- (a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and
  - (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.
- (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 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.

**Effect of the Amendment**

The Government is planning for sharing the following information with other systems after obtaining the consent of the relevant supplier/recipient:

- a) Application for registration
- b) GSTR-1, GSTR-3B and GSTR-9 / 9C
- c) Invoices uploaded on the GST portal for e-invoice
- d) E-waybill particulars
- e) Other prescribed details

**14. High sea sales / Merchant Trading Transaction not to be supply from July 2017****Source**

Clause 142 (1) and (2) of the Finance Bill, 2023.

**Effective Date**

Applicable retrospectively from 1<sup>st</sup> July,2017

**Affected Provision**

Schedule III to the CGST Act, paragraphs 7 and 8 and the Explanation 2

**Provision**

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.
8. (a) Supply of warehoused goods to any person before clearance for home consumption;  
(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.

Explanation 2.- For the purposes of paragraph 8, the expression " warehoused goods " shall have the same meaning as assigned to it in the Customs Act, 1962 (50 of 1962).

**Effect of the Amendment**

In case of high sea sales, sales from customs bonded warehouses and merchant trading sales i.e. where sales take place before clearance for home consumption, no GST is leviable. Such supplies are neither a supply of goods nor a supply of services under Schedule III of the CGST Act 2017 effective from 1<sup>st</sup> February 2019. Due to persisting debate with the GST Department for the earlier period i.e. 1<sup>st</sup> July 2017 to 31<sup>st</sup> January 2019, Schedule III is being amended to provide that this amendment would be applicable for the said period also.

**15. Change in the definition of OIDAR and non-taxable online recipient****Source**

Clause 143 (a) and (b) of the Finance Bill, 2023.

**Effective Date**

Prospectively from the date of the enactment

**Affected Provision**

Clause (16) and (17) of Section 2 of IGST Act, 2017

**Provision before Amendment**

~~2(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.~~

~~**Explanation**— For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,~~

~~(i) set up by an Act of Parliament or a State Legislature; or~~

~~(ii) established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted 1 [to a Panchayat under article 243G or] to a municipality under article 243W of the Constitution;~~

2(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-

- (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;
- (iv) online supplies of digital content (movies, television shows, music and the like);
- (v) digital data storage; and
- (vi) online gaming;

#### **Provision after Amendment**

2(16). non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation — 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';

2(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 and impossible to ensure in the absence of information technology and includes electronic services such as, -

- (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

#### **Effect of the Amendment**

Where services are provided in the nature of 'online information and database access or retrieval services' (like internet ads, cloud services, online e-books/music/movie/software/ digital content/gaming etc.) and the services are received by a non-taxable online recipient for other than commerce, industry or business, the tax is liable to be paid by the supplier even if located outside India.

Such non-taxable online recipient included any Government, local authority, governmental authority or individual / any other person unregistered. This has now been restricted to only unregistered persons (including persons only registered for TDS purposes). Further, the condition that it should not be for business purposes has now been removed. Therefore, any unregistered person taking such services for business purposes would not be liable to register under GST and pay taxes under RCM. Such taxes would continue to be discharged by the foreign supplier.

Also, the scope of OIDAR services was restricted to cases which were essentially automated and not involving human intervention and were impossible to ensure in absence of information technology. After the amendment, the only condition is that the supplies are impossible to ensure in absence of IT. Without checking for automation or minimum human intervention, the supplies would be classified as OIDAR if they cannot be supplied without the assistance of information technology. Thereby, the scope of such OIDAR services seems to have been significantly expanded.

#### **16. POS within India where supplier /recipient within India and destination outside India**

##### **Source**

Clause 144 of the Finance Bill, 2023.

##### **Effective Date**

Prospectively from the date of the enactment.

##### **Affected Provision**

Sub-section 8 of Section 12 of IGST Act, 2017

##### **Amendment**

The place of supply of services by way of transportation of goods, including by mail or courier to:

- (a) a registered person, shall be the location of such person;
- (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

~~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.~~

#### Effect of the Amendment

With effect from 1st February 2019, the place of supply in case of transportation of goods was provided as the destination of goods where the location of the supplier and recipient were in India and the destination of goods was outside India.

Therefore, the logistics company taking goods out of India would always invoice with IGST by showing the place of supply as 'Other territory' or 'Foreign Country'. The revenue from such supply would not accrue in the favor of the state where the recipient was located. In such cases, the ITC had been called into question by the GST Department. Recently a clarification was issued that the ITC would be fully available in such cases.

Despite this clarification, the recipient state (i.e. where the exporter is located) would be incurring a loss because it would not receive the revenue from the original supply but still provide ITC benefit to the exporter. To remove this anomaly and confusion regarding ITC availability, the place of supply provisions has been amended.

The place of supply even where the destination of goods is outside India would be as follows for the transportation of goods:

- a) Supply to registered person - Location of the registered person
- b) Supply to unregistered person – Location at which such goods handed over for transport

*This publication contains information for general guidance only. It is not intended to address the circumstances of any particular individual or entity. Although the best of endeavour has been made to provide the provisions in a simpler and accurate form, there is no substitute to detailed research with regard to the specific situation of a particular individual or entity. S. Khaitan & Associates or any of its officials do not accept any responsibility for loss incurred by any person for acting or refraining to act as a result of any matter in this publication*



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