

Changes in Budget 2023-24



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Changes in Central Goods and Services Tax Act, 2017

Enabling composition taxpayers to supply goods through E commerce operator

Existing Provision

Section 10: Composition levy

(2) The registered person shall be eligible to opt under sub-section (1).....

(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.

*1
(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.

Amended Provision

Section 10: Composition levy

(2) The registered person shall be eligible to opt under sub-section (1).....

(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.

*1
(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 services through an electronic commerce operator who is required to collect tax at source under section 52.

Tattvam Comments

This is a welcome amendment for composition taxpayer making intra state supply of goods who can now make supply through ECOs.

Further, similar amendment was sought for unregistered suppliers in 47th GST council meeting. However, it appears that due to lack of preparedness the same has not been approved.

Effective from enactment of Finance Bill 2023.

Earlier Provision

Section 16: Eligibility and conditions for taking input tax credit

(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,–

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.

Amended Provision

Section 16: Eligibility and conditions for taking input tax credit

(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,–

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 **to the supplier** of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Tattvam Comments

Earlier the language of the relevant proviso was drafted in the light of return filing system conceptualized originally viz GSTR 1, 2 and 3 which could not be implemented in the prescribed manner.

The present amendment aims to align the methodology of reversal of ITC with current return filing system and recently inserted Rule 37A.

The interest provision laid down under section 50 has also been made specifically applicable in this case.

Effective from enactment of Finance Bill 2023.

Expansion of scope of exempt supply for the purpose of ITC reversal u/s 17(2)

Earlier Provision

Section 17: Apportionment of credit and blocked credits

(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.~~

Amended Provision

Section 17: Apportionment of credit and blocked credits

(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";

Tattvam Comments

The present amendment has been introduced to restrict availment of ITC in respect of supply of goods from bonded warehouse by deeming the same as exempt supply.

Further, the value of such transactions will also be prescribed.

Effective from enactment of Finance Bill 2023.

Inserted Provision

Section 17: Apportionment of credit and blocked credits

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (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.

Tattvam Comments

Input tax credit has been disallowed on goods or services used for the purpose of corporate social responsibility (CSR) activity.

Prior to this amendment, there was a dispute on availability of ITC on such expenditure. However, post amendment, the aforesaid dispute will be put to rest for the subsequent period.

Amendment made u/s 23 to give it overriding effect on section 22(1) and 24

Earlier Provision

Section 23: Persons not liable for registration

~~(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.~~

Amended Provision

Section 23: Persons not liable for registration

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.”.

Amendment made u/s 23 to give it overriding effect on section 22(1) and 24

Tattvam Comments

This is a welcome step for persons exempted from taking registration u/s 23 but mandatorily required to take registration under section 24 resulting in undue compliance burden thereon.

By way of aforesaid amendment, section 23 has been given overriding effect over section 22(1) and 24, which will henceforth absolutely exempt such persons from taking mandatory GST registration.

Effective retrospectively from 01.07.2017

Maximum time limit for furnishing of return u/s 37,39,44 and 52

Furnishing details of outward supplies

Section 37 of CGST Act:

(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.

Furnishing of returns

Section 39 of CGST Act:

(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.

Maximum time limit for furnishing of return u/s 37,39,44 and 52

Annual_Return

Section 44 of CGST Act:

(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.

Collection of tax at source.

Section 52 of CGST Act :

(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.

Tattvam Comments

Maximum time limit of three years has been prescribed for filing/furnishing of following returns:

- ✓ GSTR-1 ie. Statement of Outward Supply
- ✓ GSTR-3B ie. Statement of Outward and Inward Supply
- ✓ GSTR-9 ie. Annual Return
- ✓ GSTR-8 ie. TCS Return

Effective from enactment of Finance Bill 2023.

Earlier Provision

Section 54: Refund of tax

(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.

Amended Provision

Section 54: Refund of tax

(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.

Tattvam Comments

The above amendment have been made to align the refund provision with the present scheme of availment of self-assessed input tax credit as per section 41 of CGST Act.

Effective from enactment of Finance Bill 2023.

Earlier Provision

Section 56: Interest on the refund of tax

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 subsection (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.~~

Amended Provision

Section 56: Interest on the refund of tax

*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 subsection (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 **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.***

Tattvam Comments

The above amendment provides for an enabling provision under the Act to prescribe manner for computing the period of delay for calculation of interest on delayed refunds.

Effective from enactment of Finance Bill 2023.

Inserted sub-section (1B) in Section 122 of the CGST Act

Section 122: Penalty for certain offences

(1B) Any electronic commerce operator who--

- (i) 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;***
- (ii) 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***
- (iii) 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

Tattvam Comments

Penalty has been proposed to be imposed upon the Electronic Commerce Operator (ECO) in following cases:

- ✓ Allowing any unregistered person to effect supply. No penalty if the unregistered person is exempted from taking registration through notification for making supply through ECO.
- ✓ Allowing any person to effect inter-state supply not eligible to make such supply (e.g., composition taxpayer engaged in supply of services);
- ✓ Failure to furnish correct details in form GSTR-8 w.r.t. outward supply of goods effected through it by a **person exempted from obtaining registration.**

Penalty shall be ***higher of* INR 10,000/- or an amount equivalent to the amount of tax** involved had such supply been made by a registered person (other than composition taxpayer).

The above amendment would have substantial impact on ECOs.

Hence, ECOs are advised to get the due diligence of the unregistered and composition suppliers done before onboarding them on their portal.

Effective from enactment of Finance Bill 2023.

Earlier Provision

Section 132: Punishment for certain offences

(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;~~

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

Amended Provision

Section 132: Punishment for certain offences

(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,

Tattvam Comments

Amendment made to decriminalize certain specific offences.

This amendment comes as big relief for the taxpayers who were harassed for such offences.

Effective from enactment of Finance Bill 2023.

Earlier Provision

Section 132: Punishment for certain offences

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

.....
(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 shall be punishable-*

.....
(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;*

Amended Provision

Section 132: Punishment for certain offences

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

.....
(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 shall be punishable-*

.....
(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;*

Tattvam Comments

As a relief to the taxpayers, amendment made to decriminalize the offences, mentioned under section 132, where the amount involved is from **Rs. 1 Crore to Rs. 2 Crores**.

However, such relief would not be available where the offence pertains to fake invoicing.

Effective from enactment of Finance Bill 2023.

Earlier Provision

Section 138: Compounding of offences

(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 (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;*~~

Amended Provision

Section 138: Compounding of offences

(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;

Exclusion of fake invoicing cases from the provision of compounding of offences

Earlier Provision

Section 138: Compounding of offences

- ~~(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)~~
- ~~(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~~

Amended Provision

Section 138: Compounding of offences

- (b) Omitted**
- (c) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132**
- (d).....**
- (e) Omitted**

Earlier Provision

Section 138: Compounding of 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.~~

Amended Provision

Section 138: Compounding of 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.***

Tattvam Comments

Section 138 of the CGST Act provides for the compounding of offences. Amendment made to disallow compounding of offences in following cases also where compounding for the same offence was allowed earlier:

- ✓ Acquires possession of or deals with any goods which he knows are liable to confiscation under GST Law
- ✓ Receives or deals with any supply of services which he knows are in contravention of any provisions of the GST Law

No compounding available for the offences relating to issuance of invoices without supply of goods or services or both.

Furthermore, amendment is also proposed to rationalize the compounding scheme by reducing the compounding amount from the present range of **50% to 150% of tax** amount to the range of **25% to 100% of tax amount**

Effective from enactment of Finance Bill 2023.

Inserted Section 158A in the CGST Act

Section 158A: Consent based sharing of information furnished by taxable person

- (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:–*
- (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 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*

Tattvam Comments

Power conferred for sharing the following information furnished by the registered person from common portal with the notified systems:

- ✓ Particulars furnished in registration application
- ✓ Returns furnished u/s 39, 37 and 44
- ✓ E-way bill details
- ✓ Any other details, as may be prescribed

Effective from enactment of Finance Bill 2023.

Relevant extract of Minutes of 47th GST Council Meeting

7.63 The proposal of amending the GST Acts to allow sharing of supply data with the consent of the supplier and the recipient with these systems, was discussed by Law Committee and it suggested that the "Amendment to be done in CGST/SGST Act to this effect which will incorporate due safeguards for indemnity and non-liability of GSTN/GST authorities (without prejudice to any action under GST Law). The proposed amendment to ensure the provision for non-disclosure clause.

7.64 The Law Committee proposed to insert new Section 158A in the GST Acts to enable sharing. The exact mode of obtaining consent and sharing of data: would be outlined in rules.

7.65 Accordingly, the Agenda item was put up before the Council to seek its approval in order to carry out the proposed amendments in the respective GST Laws and it was also proposed that in the meantime, consent based data sharing module may be implemented with appropriate safeguards. This Agenda item was agreed to in the Officers Meeting held on 27 June 2022.

The Council approved the recommendation of Law Committee.

Schedule III of the CGST Act

Schedule III: Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

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 (52 of 1962).

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.

Tattvam Comments

Following entries were inserted earlier in Schedule III of the CGST Act w.e.f. 1st February, 2019 so as to treat such activities as neither supply of goods nor supply of services:

- ✓ Supply of goods from a place outside India to a place outside India;
- ✓ Supply of warehouse goods before clearing for home consumption; and
- ✓ High sea sales.

Department disputing liability for the earlier period. To avoid such dispute, now amendment is being made in Schedule III to give **retrospective** application in respect of above activities w.e.f. 01.07.2017.

It has also been also provided that where the tax has already been paid in respect of such transactions/ activities during the period from 01.07.2017 to 31.01.2019, no refund of such tax paid shall be available.

Effective retrospectively from 01.07.2017

Relevant extract of Minutes of 25th GST Council Meeting

32. For Agenda item 13(i), the Council approved the following:

- i. Sale of goods within the Customs bonded warehouse shall be declared as 'no supply' under Schedule III of the CGST Act, 2017;
- ii. High sea sale of goods shall be declared as 'no supply' under Schedule III of the CGST Act, 2017



Changes in Integrated Goods & Services Tax Act, 2017

Earlier Provision

2. Definition

(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.**

Amended Provision

2. Definition

(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'.

Tattvam Comments

Prior to this amendment, OIDAR services provided to non-taxable online recipient was made taxable in the hands of service providers in case such services were used for purposes other than business.

The proposed amendment has expanded the scope of taxability in the hand of OIDAR service providers where such services are used by unregistered person for any purpose (whether business or not).

Effective from enactment of Finance Bill 2023.

Earlier Provision

2. Definition

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

Amended Provision

2. Definition

(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;

Tattvam Comments

The scope of OIDAR is expanded by removing the condition of same being essentially automated and involving minimal human intervention.

Thus, the above amendment would have impact on online coaching or training services and other similar services which require substantial human intervention.

Effective from enactment of Finance Bill 2023.

Earlier Provision

Section 12: Place of supply of services where location of supplier and recipient is in India

(8) 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."**~~

Amended Provision

Section 12: Place of supply of services where location of supplier and recipient is in India

(8) 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.

Tattvam Comments

The proviso under section 12(8) of IGST Act, 2017 has been removed to change the place of supply from destination of goods to location of registered persons / place where goods are handed over for their transportation (in case of unregistered person) where the goods are being exported out of India.

The above change has been introduced to allow the free flow of ITC.

Availability of ITC for previous period has been clarified vide Circular No. 184/16/2022 dated 27.12.2022.

Effective from enactment of Finance Bill 2023.



Changes in Customs Law

Amendment in Section 25(4A)

As per Section 25(4A) of Customs Act,1962, the conditional exemption granted from payment of customs duty shall be valid upto 31st day of March falling immediately after two years from the date of such grant. Now a proviso has been inserted to the effect that said validity period of two years shall not apply to the following:

- a) any multilateral or bilateral trade agreement;**
- b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organizations;**
- c) privileges of constitutional authorities;**
- d) schemes under the Foreign Trade Policy;**
- e) the Central Government schemes having validity of more than two years;**
- f) re-imports, temporary imports, goods imported as gifts or personal baggage;**
- g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act,1975, other than duty of customs leviable under section 12.**

Key Highlights

- **The customs duty rate structure has been rationalized. Consequently, there are changes in the rate of BCD as well as in the rate of AIDC and/or SWS.**
- **Wherever there are increase in duty rates, they would come into effect from 2.2.2023 and the others would come into effect from the date of assent of the Bill.**
- **The BCD and the AIDC /SWS rates are being re- calibrated while maintaining the existing incidence of customs duties on several commodities.**
- **The heading 9801 of the first schedule of Customs Tariff Act, 1975 is being amended to exclude solar power plant/solar power project from the purview of Project Imports with effect from the date of assent.**
- **Out of 196 exemptions, 146 exemptions are being extended for a period of one year i.e. up to 31.3.2024 for the purpose of undertaking review. Of the remaining, a few are being extended for five years, two years and one year while some exemption entries are being discontinued with effect from 31.3.2023.**
- **An illustrative list of rate change in sector-specific commodities are provided in following pages.**

Changes in Customs Duties Rates- Precious Metal

The rate of customs duties have been re-calibrated while the existing incidence of import duty has been maintained on items tabulated below:

Commodity	BCD		AIDC		SWS		Total duty
	From	To	From	To	From	To	
Gold Bars	12.50%	10%	2.50%	5.00%	Nil	Nil	15%
Gold Dore	11.85%	10%	2.50%	4.35%	Nil	Nil	14.35%
Platinum	12.50%	10%	1.50%	5.40%	1.4	Nil	15.40%
Silver Bar	7.50%	10%	2.50%	5.00%	0.75	Nil	15%
Silver Dore	6.10%	10%	2.50%	4.35%	0.61	Nil	14.35%

- The import duty on articles made of precious metals falling under CTH 7113 & 7114 is being increased to 25%. It is however being exempted from SWS.
- The BCD on 'seeds' for use in manufacture of rough lab grown diamond is being reduced to Nil subject to IGCR condition for a period of two years.

Changes in Customs Duties Rates- Others

Sector	Commodity	Pre-Budget Rate (BCD)	Post-Budget Rate (BCD)
Chemicals and petrochemicals	Denatured ethyl alcohol for use in the manufacture of industrial chemicals through IGCR route	5%	NIL
Electronics goods	Camera lens for camera module and input/sub parts for lens of camera module of mobile phone subject to IGCR condition	2.5%	Nil
Electronics goods	Parts for manufacture of open cells of TV panels subject to IGCR condition	5%	2.5%
Electrical appliances	Electric kitchen chimney	7.5%	15%
Electrical appliances	Heat coils for use in manufacture of electric kitchen chimney subject to IGCR condition	20%	15%
Automobiles	Vehicles, specified automobile parts/components, sub-systems and tyres, when imported by notified testing agencies for the purpose of testing and/ or certification , subject to specified conditions	As Applicable	Exempted
Automobiles	Vehicle (including electric vehicles) in Semi-Knocked Down (SKD)	30%	35% (SWS Exempted)

Changes in Customs Duties Rates- Others

Sector	Commodity	Pre-Budget Rate (BCD)	Post-Budget Rate (BCD)
Automobiles	Vehicles in Completely-Built Unit (CBU)	60%	70% (SWS Exempted)
Capital Goods	Import of specified capital goods and machinery required for manufacture of lithium-ion cells for batteries used in electric vehicles as is available for manufacture of lithium-ion cells for batteries used in mobile handsets.	As Applicable	Exempted
Others	Aircraft (other than those at Nil or 2.5%) and aircraft tyres (other than those at Nil)	3%	2.5% +AIDC 0.5%
Others	Coal, peat and lignite	As Applicable	2.5% (AIDC Exempted)
Others	Compounded rubber	10%	25% or Rs. 30/kg whichever is lower

Notification No. 05/2023- Central Excise dt. 01.02.2023 w.e.f 02.02.2023

Excise duty is exempted on blended Compressed Natural Gas (CNG) (HSN 27112100) from so much of the amount as is equal to GST paid on biogas /compressed bio gas contained in such blended CNG. In order to claim the exemption, manufacturer of such blended CNG shall:

- ***maintain detailed records regarding the quantum of Biogas or CBG blended with CNG, along with the value thereof, at the registered premises;***
- ***submit a reconciliation statement, certified by the statutory auditor to the jurisdictional Commissioner of Central Excise by 10th of the month following every quarter; and***
- ***pay the short-paid duty of excise along with applicable interest after such reconciliation.***

TATTVAM ADVISORS

Thank You

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