

INDIRECT TAX PROPOSALS



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As per section 1(2) of The Finance bill 2023, section 2 to 122 shall come into force from 01/04/2023. The GST proposals are contained in sections 128 to 144. From the Tax Research Unit letter issued along with Finance Bill, 2023 it is evident that all the proposed amendments in GST will come into effect from the date when the same will be notified, as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States and Union territories with legislature, unless stated otherwise.

AMENDMENTS IN THE CENTRAL GOODS AND SERVICE TAX ACT:

- **Amendment to Section 10 of The CGST Act pertaining to Composition levy:**

Section 10 deals with the provisions for composition scheme for small taxpayers.

Existing position: The current provisions do not allow tax payers opting to pay GST under composition scheme to supply goods or services through e-commerce operators.

Proposed: A relief is sought to be given to such small taxpayers by allowing them to supply goods through e-commerce operators and still enjoy the benefits of the composition scheme. It is pertinent to note that still supply of services through e-commerce operator is not eligible under composition scheme.

- **Amendment to Section 16 of The CGST Act:**

Sec. 16 provides for eligibility and conditions for availment of ITC

Amendment to second proviso to Section 16(2):

Existing position: In cases where recipient fails to pay amount of invoice along with tax to the supplier within 180 days from the date of issue of invoice, the same is added to his output tax liability. Vide notification 14/2022-CT dated 05/07/2022, Form GSTR 3B was amended to provide separate row in Table 4B for giving details of ITC reversal on account of non-payment to suppliers beyond 180 days.

Proposed: An amendment is proposed to align the method of reversal of ITC as per this proviso with the GST rule 37 and Form GSTR 3B with the section.

Amendment to third proviso to Section 16(2):

Existing position: The third proviso to Section 16(2) provides for reclaim of any ITC that has been reversed due to non-payment within 180 days to the supplier, when such payment is made. Currently the proviso does not specify to whom the payment should be made to.

Proposed: The reclaim of ITC is sought to be allowed when the payment is made **to the supplier**.

- **Amendment to Section 17 of The CGST Act:**

Sec. 17 provides for reversal of ITC in cases where goods or services are used partly for effecting taxable supplies and partly for exempt supplies.

Amendment to Explanation to Section 17(3) pertaining to transactions to be included in value of exempt supplies for reversal of ITC:

Existing position: Schedule III transactions are excluded from the definition of “exempt supply” for the purpose of calculation of reversal of ITC as per Section 17(3), except for sale of land or building.

Proposed: It is proposed to include in the definition of “exempt supply” for the purpose of reversal of ITC, Supply of warehoused goods to any person before clearance for home consumption in addition to sale of land and building.

Amendment to Section 17(5) pertaining to blocked credits:

Existing position: There is no specific provision in GST law to restrict the ITC of goods and service used for carrying out activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

Proposed: It is proposed to insert new clause (fa) in Section 17(5) to restrict the ITC of 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.

- **Amendment to Section 23 pertaining to the cases where registration is not required:**

Existing position: Section 23 provides for certain exemption to requirement for GST registration. However, the current drafting of Section 23 does not account for over lapping provisions of Section 22 for regular registration and Section 24 for compulsory registration.

Proposed: A person not liable to register under Section 23 (being a person exclusively engaged in supply of exempt or Non-GST supplies or an agriculturalist) need not register under GST even if it satisfies conditions of compulsory registration u/s 24 or turnover threshold u/s 22.

- **Amendment to Section 37 pertaining to furnishing of details of outward supplies.**

- **Amendment to Section 39 pertaining to furnishing of returns.**

- **Amendment to Section 44 pertaining to Annual return.**

- **Amendment to Section 52 pertaining to Collection of Tax at source.**

Existing position: Till date there was no time limit specified within which the returns specified under respective sections can be filed if the same are not filed within due dates.

Proposed: The Sections are amended to provide the maximum time limit of 3 years from the due dates of the returns within which the returns in GSTR 1, GSTR 3B, GSTR 9, GSTR 8 can be filed. Further, The Central Government is empowered to allow any registered person or class of persons to furnish the said returns even after expiry of said period of 3 years subject to conditions & restrictions.

- **Amendment to Section 52 pertaining to refund of tax.**

Existing position: 90% refund is granted on provisional basis for zero-rated supplies after excluding the amount of ITC provisionally accepted

Proposed: The proposed omission brings Section 54(6) in line with the current return filing system so as to provide that refund of 90 % on provisional basis shall be granted on the entire amount.

- **Amendment to Section 54 pertaining to interest on delayed refund.**

Existing position: Section provides for payment of interest on delay in issue of refund from the date immediately after the expiry of 60 days from the date of receipt of application u/s. 54 till the date of refund.

Proposed: The procedure to claim such interest is not provided in the CGST Act or Rules. This is sought to be corrected by inserting the power to prescribe the procedure, conditions and restrictions to claim such interest.

- **Amendment to Section 122 pertaining to penalty for certain offences:**

Existing position: There is no specific penalty for offences committed by E-commerce operator.

Proposed: It is proposed to be prescribe penalty on E-commerce operator of higher of Rs. 10,000/- 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 for following offences :

-allows supply by unregistered person other than exempted from registration.

-allows inter supply by a person who is not eligible.

-Fails to furnish correct details in the TCS statement of outward supply of goods effected by a person exempted from obtaining registration.

- **Amendment to Section 132 pertaining to punishment for certain offences:**

Existing position: Presently, prescribed 12 categories of offences involving amount of Rs. 1 crore or more may trigger imprisonment.

Proposed: The three clauses are sought to be deleted are :

(g) obstructing or preventing any officer in the discharge of his duties under GST Act

(j) tampering with or destroying any material evidence or documents

(k) failure to supply any information which a person is required to supply under this Act or the rules made there under or supply of false information.

Deletion of these three clauses means such offences are proposed to be decriminalized (no imprisonment).

- It Is proposed that only offence mentioned in clause (b) i.e. issues any invoice or bill without supply of goods or services or both leading to wrongful availment or utilisation of ITC or refund of tax will be punishable for imprisonment upto 1 year plus fine in case Tax sought to be evaded in more than 1 crore but less than 2 crore.

- Thus, except clause (b), all the offence will be punishable with imprisonment if tax evaded is more than 2 crore (The limit is raised from present limit of Rs. 1 crore).

- **Amendment to Section 138 pertaining to compounding of offences :**

Existing position: there are seven offences i.e., clauses (a) to(f) and clause (l) of Section 132(1) for which compounding is allowed only once.

Proposed: Following two offences are proposed to be added in the list

- Knowingly deals with goods which are liable for confiscation
- Knowingly deals with services which are supplied in contravention of law.

Further it is proposed to exclude the persons involved in offences relating to issue of invoices without supply of goods or services or both from the option of compounding. It is further proposed to reduce the compounding amount from range of '50% to 150%' to range of '25% to 100%'.

- **Insertion of Section 158A related to Consent based sharing of information furnished by taxable person:**

Proposed: It is proposed that the data uploaded by a taxpayer for generation of e-invoices, e-waybills, the data uploaded in his registration, GSTR-1, GSTR-3B, GSTR-9 or other data as maybe specifically prescribed shall be shared with any other system by the Government only after obtaining consent of the supplier and recipient involved. The Section further seeks to provide that no action shall lie against the Government and GST portal from any liability that arises consequent to sharing of such information.

- **Amendment to Schedule III to pertaining to supplies which are outside the scope of GST**

Existing position: Following supplies were brought in this list from 01.02.2019

- Supply of goods of from non-taxable territory to another non-taxable territory without entering into India
- Supply of warehoused goods before home consumption
- Supply of goods by endorsement of title document after they are dispatched from outside India before clearance for home consumption

Proposed: Now it is proposed that these supplies will be part of Schedule III with retrospective date from 01/07/2017. However, any GST that has already been paid on such supplies shall not be refunded by the Government.

AMENDMENTS IN THE INTEGRATED GOODS AND SERVICE TAX ACT:

- **Substitution of Section 2(16) of The IGST Act related to definition of 'Non taxable online recipient':**
Existing position: Person located in non-taxable territory and supplying OIDAR services is required to pay IGST on OIDAR services supplied to Government, Local authority, Government authority, an individual, or any other person not registered in relation to any purpose other than commerce, industry or any other business or profession.

Proposed: Any unregistered person, including the Government and Government entities, shall be covered by the definition of "non-taxable online recipient", irrespective of the end use of the service.

- **Amendment to Section 2(17) of The IGST Act related to definition of 'Online information and database access or retrieval services':**

Existing position: Definition of 'Online information and database access or retrieval services' was restricted to include such services the nature of which renders the supply essentially automated and involving minimum human intervention.

Proposed: The scope of OIDAR services as a whole has been expanded by removing the conditions of services being "essentially automated and involving minimal human intervention".

- **Amendment to Section 12(8) of The IGST Act related to Place of supply of services where location of supplier and recipient is in India:**

Existing position: Where the location of supplier and recipient is in India, the place of supply of service by way of transportation of goods to place outside India is the destination of the goods.

Proposed: By deleting the proviso, the default place of supply, i.e. the location of the registered recipient or the place of hand over of goods to the transporter in case of unregistered recipient, shall be applicable in all cases of transportation of goods.

AMENDMENTS IN THE CUSTOMS ACT, 1962:

- **Amendment to section 25 related to Power to grant exemption from duty:**

Existing position: Through the Finance Act 2021, with effect from 28/03/2021, conditional exemptions were generally valid up to 31st March falling immediately after 2 years from the date of granting or varying any exemption unless it is effective till a specified date or exemption is withdrawn before 2 years. Further exemptions already in force on the date of enactment of the Finance Bill, 2021 will come to an end on 31/03/2023 if not extended specifically.

Proposed: As per proposed amendment to Section 25, validity of 2 years will not apply to exemption notifications issued in relation to the followings: -

- To multilateral trade agreements,
- Obligations under international agreements, treaties, conventions etc,
- UN agencies, diplomats, international organizations, privileges of constitutional authorities,
- Schemes under Foreign Trade Policy,
- Central government schemes having a validity of more than 2 years,
- Re-imports, temporary imports, goods imported as gifts or personal baggage,
- All other duties of customs except basic custom Duty.

- **Insertion of sub section (8A) to section 127C related to procedure on receipt of an application for settlement of cases:**

Existing position: Importer/ exporter has option to settle the adjudication with Custom authorities, during the pendency of any proceedings, through the route of Settlement Commission. Presently there is no time limit to pass the order.

Proposed: Now it is proposed that the Settlement Commission order shall be passed within 9 months from the last day of the month in which application is filed. If order is not passed within such time limit, then it is proposed that adjudication shall continue as if no such application is made. For pending applications, 9 months' time limit will be considered from the date of enactment of the Finance Bill 2023.

