



# ***IMPORTANT GST AMENDMENTS IN BUDGET 2023***

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## **BUDGET 2023**

- ☞ Last Full-fledged Budget of Modi Government 2019-24
- ☞ First budget of “Azadi ka Amrut Kal”
- ☞ Zero Discussion on GST



## **THE COMPOSITION SUPPLIER MAY SUPPLY GOODS THROUGH E-COMMERCE OPERATORS: [ SEC 10]**

- ☞ Section 10 of CGST Act, 2017, amended to remove restriction imposed on registered person supplying “goods” through E-commerce Operator from opting in for composition scheme.
- ☞ ☒ Now registered Person supplying goods through E-Commerce operator can also opt for composition scheme.
- ☞ Its welcome amendment for Small Suppliers, now they can also supply goods through E-Commerce Operators.
- ☞ **However, such composition taxpayer can make only “Intra State”** supply of goods through E – commerce operator. **✗** “Inter State” supply of goods through E – commerce operator is still not permitted for composition scheme.
- ☞ Amendment is applicable only for supply of goods through E-commerce operator and not to Supply of services thorough E-commerce Operator. **✗** Service providers supplying through E-commerce portal are still not be eligible for composition scheme.



## AMENDMENT IN ITC REVERSAL DISCLOSURE OF 180 DAYS TO ALIGN THE SUB-SECTIONS WITH RETURN FILING STATUS: [ 2ND AND 3RD PROVISO TO SEC 16 (2)]

- ☞ Second and third provisos to of Sec 16(2) of the CGST Act are being amended to align it with the return filing system provided in the said Act. It deals with payment to supplier within 180 days as ITC eligibility condition.
- ☞ 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”**.
- ☞ However since GSTR 2 and 3 was not introduced, it was important to amend said proviso to remove “addition to output liability” of ITC amount, if payment is not made to supplier within 180 days.
- ☞ Now said proviso is aligned with the return filing system. Already corresponding amendment is made in the Rule 37 of CGST Rule 2017 vide Notification No. 19/2022 - CT dt 28.09.2022 & Notification No. 26/2022 - CT dated 26.12.2022
- ☞ Amendment in proviso now will remove the confusion/anomaly on Disclosure of ITC reversal in case of Non-Payment to supplier within 180 days from the date of invoice.



## ITC RESTRICTED U/S 17 IN CASE OF SUPPLY OF WAREHOUSE GOODS BEFORE CLEARANCE FOR HOME CONSUMPTION: [ EXPLANATION TO SEC 17(3)]

- ☞ Section 17(2) of CGST Act 2017 restrict ITC in relation to outward supply which is Exempt. Section 17(3) of CGST Act 2017 gives extended meaning of Exempt Supply such as it include transaction in shares , sale of land etc.
- ☞ Now scope of Exempted Supply is increased for the purpose of Sec 17(2) and ITC Reversal by including one more category in it. Now, **“Supply of warehouse goods to any person before clearance for home consumption”** [ As given in Entry 8(a) to Schedule III ] is treated as exempt supply and accordingly ITC reversal will be attracted in there is such outward supply.
- ☞ **Thus, 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, **ITC reversal will not be required under Sec 17(2) for –**
  - Entry 8(b) of Schedule III - High Sea Sales
  - Entry 7 of Schedule III - Supply From Non Taxable Territory To another Non Taxable Territory



## **ITC NOT ALLOWED FOR GOODS OR SERVICES OR BOTH USED FOR CORPORATE SOCIAL RESPONSIBILITY EXPENDITURES [ SECTION 17 (5) (FA)]:**

- ☞ Section 17 (5) amended to provide that the 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;”
- ☞ **Now Input Tax Credit on CSR Expenditures is Specifically disallowed.**
- ☞ There is dispute since inception of GST as to whether ITC of CSR will be allowed or not. Few AAR were also pronounced. However, it is provided that such ITC will not be allowed.
- ☞ However, **this amendment is prospective in nature**, there can be one view with respect to past transaction that such ITC should be eligible.



## THE PERSON NEED NOT TO TAKE COMPULSORILY REGISTRATION IF IT IS EXEMPTED U/S 23 OF CGST ACT-2017 [ SEC 23]

- ☞ With respect to GST Registration requirement, related are three important sections
  - Sec 22 of CGST Act 2017 **deals with turnover based** registration
  - Sec 23 of CGST Act 2017 **deals with Person exempted** from Registration
  - Sec 24 of CGST Act 2017 **deals with Compulsory Registration**
- ☞ There was ambiguity between applicability of Sec 23 and Sec 24 in certain cases and which has resulted in dispute too.
- ☞ Now Section 23 of CGST Act, 2017 amended to provide that the Persons exempted from taking registration U/S 23, need not to take registration under section 22 or 24.
- ☞ This amended is applicable with **retrospective effect** from 1st Jul 2017.
- ☞ Now amendment has given **overriding effect to Section 23 over Section 22 (1) and Sec 24** of CGST Act 2017.



## **GST RETURNS NOT ALLOWED TO FILE AFTER EXPIRY OF THREE YEARS FROM THE DUE DATE OF FILING THE SAME [ SEC 37, SEC 39, SEC 44 AND SEC 52]**

- ☞ GST Law prescribed due date for filing of return. However, there was no upper limit in GST Law. **Now upper limit/maximum time limit of due date is provided in GST Law for filing GST Return.** Below GST Return shall not be allowed to be furnished after the Expiry of three years from the due date of furnishing the same.
- ☞ However, Government may on Recommendation of the council extend the said limit by notification.

FORM NO	PERSON LIABLE TO FURNISH RETURN	RELEVANT SECTION
FORM GSTR 1	Regular Taxable Person	Sec 37
FORM GSTR 3B	Regular Taxable Person	Sec 39(1)
FORM GSTR 5	Non-Resident Taxable Person	Sec 39(5)
FORM GSTR 6	Input Service Distributor – ISD	Sec 39(4)
FORM GSTR 7	Person Deducting Tax at Source - TDS	Sec 39(3)
FORM GSTR 8	E-Commerce Operator - TCS	Sec 52
FORM GSTR 9	Annual Return for Regular Dealer	Sec 44
FORM GSTR 9C	Reconciliation Statements	Sec 44



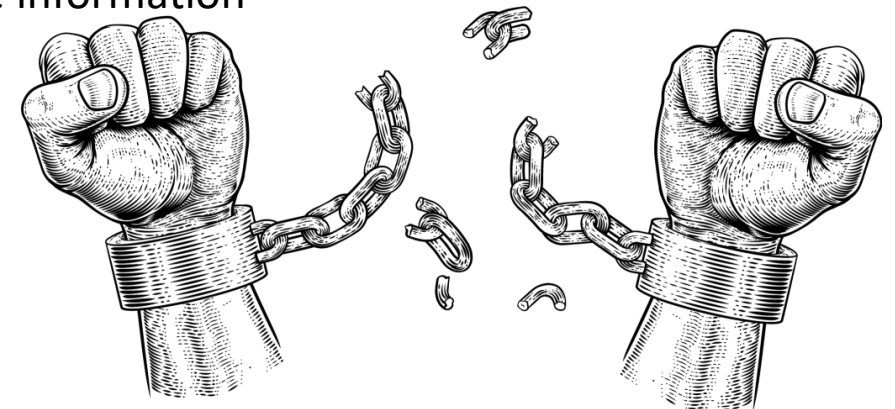
## **PENAL PROVISIONS APPLICABLE TO ELECTRONIC COMMERCE OPERATORS: [ SEC 122(1B)]**

- ☞ By inserting Sec 122(1B), Special penalty provisions have now been provided for Electronic Commerce Operators (ECO), so as to cast responsibility on ECO that, only eligible supplier under GST, supplies through it.
- ☞ A penalty of Rs 10,000 or an amount equivalent to the amount of tax involved, whichever is higher is applicable on ECO, if ECO:
  - 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 inter-State supply of goods/services 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 Sec 52(4) of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act, for allowing a supply of goods or services through it by an unregistered person other than a person exempted by any notification.



## DECriminalIZATION OF OFFENCES: [ SEC 132(I)] Welcome Move 😊

- ☞ Sec 132 of CGST Act 2017 is amended to decriminalizes certain offences and to increase the monetary threshold for launching prosecution for the offences under the said Act from Rs 1 crore to Rs 2 crore [ except for the offences related to issuance of invoices without supply of goods or services or both]
- ☞ **Below offences are removed from punishment list of Sec 132**
  - Obstructing or preventing any officer in the discharge of his duties under the Act.
  - Tampering with or destroying any material evidence or documents.
  - Failure to supply information required under the Act or supplies false information



## **COMPOUNDING OF OFFENCES: [SEC 138]**

- ☞ Sec 138 of CGST Act 2017 **allows for the compounding of certain offences upon payment of the applicable amount and offers protection from further proceedings under the GST law.**
- ☞ Now, First proviso to Sec 138(1) of the CGST Act is being amended so as to simplify the language of clause (a), to omit clause (b) and to substitute the clause (c) of said proviso so as to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of the offences under the said Act.
  - Accordingly, persons involved in offences relating to issuance of invoices without supply of goods or services or both cannot opt for the compounding of the offences under this Act.
- ☞ It further seeks to amend Sec 138(2) so as **to rationalize the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding.**
  - Accordingly, Reduction in the compounding amount from the present range of 'min 50% - max 150%' to 'min 25% - max 100%'.

LIMIT	CURRENT LIMIT	AMENDED LIMIT
Minimum Limit	Higher of Rs. 10,000 or 50% of Tax involved	25% of the Tax involved
Maximum Limit	Higher of Rs. 30,000 or 150% of Tax involved	100% of the Tax involved

## CONSENT BASED SHARING OF INFORMATION FURNISHED BY TAXABLE PERSON ON GST PORTAL: [Sec 158A]

- ☞ By insertion of Sec 158A, it is now provided that, on recommendation of GST Council, **following information furnished by the registered person on the common portal, will be shared by GST Portal with other systems on consent from supplier** [ or receiver only where such details include identity information of the recipient].
- a) Particulars furnished in the application for **Registration** under section 25 or in the return filed under section 39 (**GSTR 3B**) or under section 44 (**GSTR 9 / 9 C**)
  - b) Particulars uploaded on the common portal for preparation of **invoice**, the details of outward supplies furnished under section 37 (**GSTR 1**) and the particulars uploaded on the common portal for generation of documents under section 68 (**Documents for movement**);
  - c) Any other details, as may be prescribed.
- ☞ It is also provided that, 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



## **RETROSPECTIVE APPLICABILITY TO CERTAIN ACTIVITIES AND TRANSACTIONS IN SCHEDULE III: [ SCHEDULE III]**

- ☞ Provisions of paragraphs 7 (pertaining to transaction of export from non-taxable territory) and 8 (relating to high sea sale and supply of Warehoused goods) and the Explanation 2 to the Schedule III are made applicable with effect from the 1st day of July, 2017.
- ☞ No refund of tax which has already been paid in respect of such transactions/ activities during the period from 01st July, 2017 to 31st January, 2019, shall be available.

## AMENDMENT IN DEFINITION OF NON-TAXABLE ONLINE RECIPIENT AND OIDAR [ SEC 2(16) of IGST Act 2017]

- ☞ Sec 2 (16) and Sec 2(17) of IGST Act 2017 is replaced to widen the scope of Non-taxable online recipient and OIDAR.
- ☞ Sec 2(16) : Definition of Non-taxable online recipient
  - The condition of receipt of online information and database access or retrieval services (OIDAR) for purposes other than commerce, industry or any other business or profession, is removed, so as **to provide for taxability of OIDAR service provided by any person located in non-taxable territory to an unregistered person** receiving the said services and located in the taxable territory.
  - Further, it also seeks to clarify that the persons registered solely in terms of clause (vi) of Section 24(vi) of CGST Act 2017 [ Person who are required to TDS under Sec 51]; shall be treated as unregistered person for the purpose of the said clause.

## AMENDMENT IN DEFINITION OF NON-TAXABLE ONLINE RECIPIENT AND OIDAR [ SEC 2(16) of IGST Act 2017]

☞ Sec 2(17): Definition of **Online information and database access or retrieval services (OIDAR)**

- Clause (17) of the said section is being amended to revise the definition of “online information and database access or retrieval services” to remove the condition of rendering of the said supply being essentially automated and involving minimal human intervention.
- 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.

## **AMENDMENT IN PLACE OF SUPPLY IN CASE OF TRANSPORTATION OF GOODS [ SEC 12(8) of IGST Act, 2017]**

- ☞ Sec 12(8) of IGST deals with place of supply of Services by way of transportation of goods, including by mail or courier.
- ☞ Proviso to Sec 12(8) was inserted with effect from 1<sup>st</sup> Feb 2018, to provide the place of supply as place of destination of goods, where the transportation of goods is to a place outside India.
- ☞ Due to which Export Transport / Freight service provider to Indian recipient was charging IGST and used to disclose state as “other territory/foreign territory”. Due to which there was issue in accruing revenue to state government. To resolve this, recently CBIC has issued circular.
- ☞ However now proviso to Sec 12(8) of IGST Act 2017 is omitted and due to which now place of supply will be dealt as under:
  - a) Supply of service to a registered person, Place of supply shall be ➔ the location of such person;
  - b) Supply of service to a person other than a registered person, Place of supply ➔ shall be the location at which such goods are handed over for their transportation.

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**Thank You.**

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