

Changes in GST law effective from 1.10.2023

Few changes in GST law had been made in Budget 2023 which we had explained vide our alert no. 13/2022-23 dated 2.02.2023. These changes in GST law are now being made effective from 1st October 2023, following is a gist of them. These amendments may affect certain decisions in your business operation or financial strategies, hence kindly go through them.

1. Exemption to specified supplier of E-Commerce from Registration [Noti 34/2023- Central Tax]:

CBIC has granted relief to specified supplier of E commerce from registration whose aggregate turnover is below threshold limit, collects TCS as per GST Law and making supplies through E commerce. Now the supplier needs to get an enrollment number instead of Registration number subject to following condition:

- (i) Such person shall not make interstate supply.
- (ii) Shall not make supply in more than one state and UT through ECO.
- (iii) Person have PAN as per Income Tax Act, 1961.
- (iv) Before supplies, person shall upload on portal details of PAN and place of business.
- (v) Person have been granted enrollment number on portal after successful validation.
- (vi) Shall not be given more than one enrollment number.
- (vii) Cannot undertake supply unless enrollment number is issued.
- (viii) If subsequently it has been granted registration u/s 25, then enrollment number shall cease to have effect from effective date of registration.

2. Composition Levy extended to supplier of goods through E-commerce operator (ECO):

Person making supply of goods through ECO will now be eligible to enjoy the benefit of composition scheme. However, this benefit is still not available to supplier of services through ECO.



3. Export of certain goods on payment of IGST [Section 16(4) r.w. Noti 1/2023-IGST]:

Any person involved in export goods or services had 2 options as under:

1. Export goods or services WITH PAYMENT OF IGST and seeking refund thereof later.
2. Export goods or services WITHOUT PAYMENT OF IGST and seeking refund OF ITC.

As per amendment made effective from 1.10.2023, the Central Government now has power to notify either a class of persons or a class of goods or services which can be Exported with payment of tax and subsequently claiming refund thereon.

Using this power, Government has notified that all goods and services can be exported with payment of IGST except a list of 25 goods which majorly relate to Pan Masala (2106 9020) Tobacco, hookah, jarda, etc. (falling in HSN 2403) as well as certain essential oils (3301 2400 and 3301 2510 to 3301 2540 and 3301 2590). These goods shall be exported only on payment of IGST for which supplier can claim refund subsequently.

4. Change in manner of calculation of common ITC reversal:

When the business is engaged in supply of taxable as well as exempt supply, then Input Tax Credit (ITC) is proportionately required to be reversed. For the purpose of calculating ITC reversal under rule 42/43, **the value of sale of warehoused goods before customs clearance shall be included in Value of Exempt Supply.**

5. Clarification regarding non-payment to supplier within 180 days:

Section 16 has been amended to bring it in line with the return filing system. Where a recipient does not pay the Invoice value and GST thereon to the supplier within 180 days, he is required to reverse the ITC proportionate to such pending payment. Currently said ITC amount is required to be shown as Output Tax liability and paid along with Interest. Now, it will have to be shown as reversal of ITC in GSTR 3B and paid along with Interest.



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Another amendment provides that the recipient will be eligible to re-avail such reversed ITC once the pending payment has been paid to the Supplier, currently the law is silent on the aspect of whom the payment is required to be made.

6. ITC related to CSR activities:

ITC debarring provision, Section 17(5) of CGST Act has been amended to include ITC of CSR Activities. ITC related to CSR Activities will be blocked w.e.f. 1.10.2023.

7. Extension of time limit for application for revocation for cancellation of registration:

The provision of Section 30(1) of CGST Act, 2017 have been amended to remove the time limit prescribed therein for application of revocation. The Section mentioned a period of 30 days. However, this time limit will now be governed from Rule 23 of CGST Rules, 2017 that provides that application can be made within a period of 90 days from date of order of cancellation.

8. Limitation on time limit for filing GST Returns:

A registered person shall not be allowed to file GST returns such as GSTR-1, GSTR-3B, GSTR-8, GSTR-9 and GSTR-9C after 3 years from due date of their respective returns.

9. Increase in time limit to reply against order issued form ASMT-13:

Form GST ASMT-13 is a best judgement assessment order for taxpayers who have not filed returns. Such order is issued when the taxpayer do not file return after issuance of GSTR-3A (system generated notice to intimate that return has not been filed). If the taxpayer files pending returns within 60 days (earlier it was 30 days) from date of service of Form GST ASMT-13 then such order shall be deemed to be withdrawn. Such period can be extended for further 60 days on payment of additional fees of Rs 100 per day.

10. Insertion of penalty for Ecommerce Operator [Section 122(1B)].

An E-commerce Operator who:



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- (1) Allows unregistered person to supply goods and services.
- (2) Allows a person to make interstate supply who is restricted to do so.
- (3) Fails to furnish correct details in details of outward supply.

Shall be liable to pay penalty of 10,000 or tax amount of such transaction whichever is higher.

11. Amendment in prosecution for evasion case between 1 cr and 2 cr:

If any person commits an offence relating to fake/bogus invoices he will be liable to prosecution if the amount of tax evaded between 1 crore to 2 crores. For offences other than those involving fake/bogus invoices, prosecution can be initiated if amount exceeds 2 crores.

12. Decriminalisation of certain offences

Following offences which are liable for prosecution in the current law have been decriminalised, in other words no prosecution will be launched in such cases:

- a. Obstructs or prevents any officer in the discharge of his duties under this Act.
- b. Tamper with or destroys any material evidence or documents.

However, in cases where any person falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act shall be punishable by way of imprisonment for a term which may extend to 6 months.

13. No compounding of offence, if involved in Fake/bogus billing:

- A. Any offence under the GST, either before or after the institution of prosecution, may be compounded by the Commissioner on payment of prescribed compounding amount. In other words, if any person accused of an offence which is liable for prosecution and imprisonment under the GST law can be let off if he agrees and pays the amount as ordered by the



Commissioner by way of an order. Section 138 provides for minimum and maximum limit of compounding fee, which is sought to be amended as under:

Limit	Earlier	Now
Minimum Compounding Fee	Rs. 10,000 or 50% of tax involved, whichever is higher.	25% of tax involved.
Maximum Limit	Rs. 30,000 or 100% of tax involved, whichever is higher.	100% of the tax involved

B. Person involved in fake billing shall not be allowed to take the benefit of Compounding Scheme w.e.f. 1.10.2023.

14. Consent based sharing of information furnished by Taxable person:

A new Section 158A has been inserted to allow sharing of information which is furnished by taxpayer on GST portal to notified systems. Information sharing will be currently based on consent of the taxpayer.

15. Insertion of new entries in Schedule III:

Following transaction which were listed in Schedule III as neither supply of goods nor supply of services from 1.02.2019 have been now made effective retrospectively from 1.07.2017:

- 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.
- Supply of warehoused goods to any person before clearance for home consumption.
- High Sea Sales

However, if anyone has paid tax on these supplies cannot seek refund thereof.

16. Change in place of Supply of service in case of transportation of goods including by mail or courier:



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Proviso to Section 12(8) of the IGST Act which was inserted w.e.f. 01.02.2019, provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods. Many issues with respect to this proviso were raised including eligibility of ITC to the recipient. All these issues were clarified vide circular 184/16/2022-GST dated 27.12.2022. As the said proviso created an anomaly whereby the place of supply ended up being in contravention of the main section, hence the said proviso stands deleted now.

Now, in case of supply of service of transportation of goods outside India, POS will be as follows:

- **If recipient of service is registered:** POS will be place of such person.
- **If recipient of service is unregistered:** POS will be the place where goods are handed over for transportation.

17. Change in place of Supply of service in case of transportation of goods (outside India) other than by mail or courier [Section 13(9)]:

If transportation of goods is by other than mail or courier and recipient of goods is outside India. POS of goods transportation service was decided by Section 13(9) of IGST Act, 2017 which stated that POS was destination of such goods. Since section 13(9) of IGST Act, 2017 has been omitted, then POS of goods transportation service will be decided by location of recipient of service. [Section 13(2) of IGST Act, 2017]. Hence if the recipient of transportation service is outside India, said service would qualify to be export of service.

18. Change in definition of Non-taxable Online Recipient

Currently the term “Non-taxable Online Recipient” (NTOR) means any Government, Local Authority, Government undertakings, Individuals and unregistered person located in India who avail Online Information and Database Access or Retrieval Services (OIDAR) where such services are used for non-commercial purposes. When an overseas entity supplies OIDAR services to NTOR then such Overseas Entity is liable to pay GST and not the recipient.



Hence, if any person listed above received OIDAR services for commercial purposes, then he would be liable to pay IGST thereon under RCM.

With the amendment, the definition of NTOR is amended whereby it shall include only Unregistered person and Entities who have taken compulsory registration for deducting GST TDS (which are mainly Governments and Government bodies) who receive OIDAR services whether for commercial or non-commercial purposes.

Hence, where an Overseas Entity provides OIDAR services to NTOR **irrespective of its end use**, the supplier (overseas entity) would be liable to pay GST.

19. Change in definition of Online Information and Database Access or Retrieval Services (OIDAR) Services.

Currently OIDAR means services whose delivery is mediated by information technology and where such supply is essentially automated and involving minimal human intervention and the supply is impossible in the absence of information technology.

This definition is amended whereby OIDAR shall mean services whose delivery is mediated by information technology and the supply is impossible in the absence of information technology. The need for minimal human intervention is being removed, which shall mean that any service involving information or database access provided through the internet shall now be classified as OIDAR.

Earlier services like Online Astrology services, Online yoga classes, Online music classes and the likes were not classified as OIDAR because these involved considerable human intervention, now classification of such services shall become contentious especially if the service provider is located outside India.

20. Refund of Input Tax Credit

Section 54 currently provides that refund of ITC shall be given excluding the amount of input tax credit provisionally accepted. Said provision is now amended to align the same with the present



scheme of availment of self-assessed input tax credit by matching the credit availed in books with Form 2B. Accordingly ITC reflecting in GSTR 2B which is availed GSTR 3B shall only be eligible for Refund.

21. Manner of computation of Interest on delayed refunds

Section 56 currently provides that in cases of delayed refund, interest is payable from the end of 60th day from the date of receipt of refund application till the date of actual refund of such tax.

Now, Section 56 is amended so as to provide for an enabling provision to prescribe manner, conditions and restrictions with respect of computation of interest. Once this provision becomes part of GST law and is notified, rules under this section will have to be further notified to provide for the exact mechanism of calculation of interest.

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