

# UNION BUDGET 2023 – KEY CHANGES PROPOSED IN GOODS AND SERVICES TAX



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*Union Finance Minister Madam Nirmala Sitharaman presented the Union budget 2023-24 in parliament on 1st February, 2023. This was her fifth budget presentation. In this article, an attempt has been made to analyse the amendments proposed in Goods and Services Tax and its impact.*

SINo	Ref to Finance Bill, 2023 [Clause No]	Relevant Chapter/ Section under CGST/ IGST Act, 2017	Particulars
Central Goods & Services Tax Act, 2017			
1	128	Chapter III - Levy & Collection of Tax/ Section 10: Composition levy	<p>47<sup>th</sup> GST Council Recommendation:</p> <p>In-principal approval for relaxation in the provisions for suppliers making supplies through e-Commerce Operators (ECOs). One of the recommendation in this regard was:</p> <ul style="list-style-type: none"> <li>➤ Composition taxpayers would be allowed to make intra-State supply through e-commerce operators subject to certain conditions. The details of the scheme will be worked out by the Law Committee of the Council. The scheme would be tentatively implemented with effect from 01.01.2023, subject to preparedness on the portal as well as by ECOs.</li> </ul> <p>Proposed changes:</p> <p>Clause (d) of sub-section (2) and Clause (c) of sub-section (2A) in section 10 of the CGST Act is being amended so as to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy.</p>



			<p>SKS Comment:</p> <ul style="list-style-type: none"><li>➤ The proposal made in the budget is in line with the recommendation made by the GST Council;</li><li>➤ On becoming effective, a person supplying goods through an e-commerce operator, liable to collect tax under section 52, may opt for the Composition scheme;</li><li>➤ Removal of the explicit restriction imposed since the beginning will be beneficial for e-commerce operators and the small taxpayers registered under the Composition scheme.</li><li>➤ Small taxpayers with an aggregate turnover up to Rs. 1.50 crore, who opted for the Composition scheme for paying tax, will thus be eligible to supply goods through e-commerce operators.</li></ul>
2	129	Chapter -V, Input tax Credit / Section 16: Eligibility and conditions for taking input tax credit	<p>GST Council Recommendation: Not Applicable.</p> <p>Proposed changes:</p> <p>Second and third provisos to sub-section (2) of section 16 of the CGST Act are being amended to align the said sub-section with the return filing system provided in the said Act.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"><li>➤ The existing provision contemplates that if a taxpayer fails to pay the value of supply including the tax amount within 180 days, the tax amount will be added to his output liability;</li><li>➤ It is now proposed to reverse the benefit of input tax credit (ITC) along with interest, as self-assessed, under section 50. Such reversal is required to be reported in FORM GSTR-3B under Other reversals - Table (4)(B)(2);</li><li>➤ On making payment of the value to the supplier along with the taxes, ITC so reversed, as stated above, can subsequently be re-availed in Table 4(A)(5) of GSTR-3B with a corresponding disclosure in Table 4(D)(1) of GSTR-3B;</li><li>➤ Rule 37 of the CGST Rules, 2017 has already been changed vide Notification No. 19/2022 - CT dated 28.09.2022, effective from 1<sup>st</sup> October 2022 in this regard;</li><li>➤ The proposal will now align the Act with the Rules and with the return filing procedure in the Portal.</li></ul>

3	130(a)	<p>Chapter -V, Input tax Credit / Section 17: A p p o r t i o n - m e n t o f c r e d i t &amp; b l o c k e d c r e d i t</p>	<p>GST Council Recommendation: Not Applicable.</p> <p>Proposed changes:</p> <p>Explanation to sub-section (3) of section 17 of the CGST Act is being amended so as to restrict availing of input tax credit in respect of certain transactions specified in para 8(a) of Schedule III [Supply of warehoused goods to any person before clearance for home consumption] of the said Act, as may be prescribed, by including the value of such transactions in the value of exempt supply.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ The proposed amendment seeks to include the supply of warehoused goods to any person before clearance for home consumption as an exempt supply for the purpose of reversal of common input tax credit (ITC) in accordance with rule 42 of the CGST Rules, 2017;</li> <li>➤ Section 17(2) of the CGST Act, 2017 stipulates, the benefit of the input tax credit is available as is attributable to taxable supplies. Explanation to Section 17(3) states that the benefit of the input tax credit cannot be claimed on an exempt supply of goods or services or both. The activity of supply of the imported warehoused goods before clearance for home consumption would now become part of the schedule.</li> <li>➤ An importer incurs different types of expenses during the course of import, viz, clearing and forwarding, CHA Charges, port charges, handling charges, freight charges, etc. on which tax (GST) is payable. Until now, a supplier claims exemption from tax on such type of sale and enjoys the benefit of the input tax credit as is not specifically barred. With this amendment in place, input tax credit on inputs and input services directly attributable to this type of sale along with proportionate common credit would not be available. This proposed amendment negates the favorable judgments passed by the Bombay High Court and the Kerala High Court in the case of Sandeep Patil and CIAL Duty-Free &amp; Retail Services Limited respectively.</li> <li>➤ On one hand the CGST Act, 2017 states that activities or transactions mentioned in Schedule III [refer section 7(2)(a)] shall be treated neither as a supply of goods nor a supply of services, on the other hand, an activity specified in para 8(a) of Schedule III has been proposed to be considered as an exempt supply which is considered as not a supply, even for the limited purpose of ITC reversal and are in contradictory;</li> </ul>
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4	130(b)	<p>Chapter -V Input tax Credit / Sec 17(5)(f) Apportionment of credit &amp; blocked credit</p>	<p>GST Council Recommendation: Not Applicable.</p> <p>Proposed changes:</p> <p>The following clause shall be inserted in Sec (17)(5)</p> <p>Further, sub-section (5) of said section is also being amended so as to provide that input tax credit shall not be available in respect 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.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ Input tax credit (ITC) on CSR activities has been subjected to controversies since the beginning in the light of whether the goods supplied free of cost as a CSR activity can be considered a “gift”;</li> <li>➤ Section 135 of the Companies Act, 2013 stipulates that any company, that meets the criteria for CSR, is mandatorily required to spend towards CSR activities to be compliant with the Companies Act, 2013 and non-compliance with these provisions may lead to business disruptions – the element of the compulsory requirement to undertake CSR activities in order to run its business, it becomes an essential part of the business process – therefore the said CSR activities are to be treated as incurred – “in the course of business”;</li> <li>➤ Favourable judgements/ruling allowing the benefits of ITC on CSR activities: Dama India (P.) Ltd – Gujarat AAR, Essel Propack Ltd vs Bhiwandi on 31 August 2018 – CESTAT, Mumbai, M/s Commissioner of Central Excise, Bangalore Vs Millipore India (P) Ltd – Karnataka High Court;</li> <li>➤ Unfavourable Advance Ruling dis-allowing the benefits of ITC on CSR activities: Dwarikesh Sugar Industries Ltd.- Gujarat AAR, Polycab Wires Private Limited – Kerala AAR;</li> <li>➤ Under Income Tax Act 1961, the expenses incurred for CSR activities are not allowed as ‘Business Expense’ for the purpose of computation of total income; <del>and</del></li> <li>➤ Now proposed to restrict the benefit of ITC in respect of goods or services or both received by a taxable person which are used for CSR activities as referred to in Sec 135 of the Companies Act, 2013; and</li> <li>➤ It appears, input tax credit benefits relating to the inward supply of goods or services or both for any voluntary CSR activity would be available.</li> </ul>
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5	131	Chapter VI, Registration/ Section 23: Persons not liable for registration	<p>GST Council Recommendation: Not Applicable.</p> <p>Proposed changes:</p> <p>Sub-section (1) and sub-section (2) of section 23 of the CGST Act are being amended, with retrospective effect from 01st July 2017, so as to provide that person for compulsory registration in terms of sub-section (1) of section and section 22 of the Act need not register if exempt under subsection (1) of section 23.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ Confusion was prevailing as to whether section 23 has an overriding effect on the provision as stated under section 22 and section 24;</li> <li>➤ Section 23 has been proposed to be substituted with a non-obstante clause and the following persons shall not be liable to registration: <ul style="list-style-type: none"> <li>❖ 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;</li> <li>❖ an agriculturist, to the extent of supply of produce out of cultivation of land;</li> </ul> </li> <li>➤ Retrospective effect is given to the proposal w.e.f 01<sup>st</sup> July, 2017.</li> </ul>
6	132	Chapter IX- Returns / Section 37-Furnishing details of outward supplies	<p>48th GST Council Recommendation:</p> <p>Section 37 to be amended to restrict the filing of returns/ statements to a maximum period of 3 years from the due date of filing.</p> <p>Proposed changes:</p> <p>A new sub-section (5) in Section 37 is being inserted so as to provide a time limit up to which the details of outward supplies under the said Section for a tax period can be furnished by a registered person.</p> <p>Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ No maximum time limit was prescribed beyond the due date to furnish the details of outward supplies;</li> <li>➤ Once the proposal is effected, the registered person will not be able to file Form GSTR-1 electronically on the common portal after the expiry of a period of three years from the due date of furnishing the said details;</li> <li>➤ Government by notification may exempt certain categories of persons from the above provision.</li> </ul>



7	133	Chapter IX, Returns / Section 39: Furnishing of Returns	<p>48th GST Council Recommendation: Section 39 is to be amended to restrict the filing of returns/ statements to a maximum period of 3 years from the due date of filling.</p> <p>Proposed changes: A new sub-section (11) in Section 39 of the CGST Act is being inserted so as to provide a time limit up to which the return for a tax period can be furnished by a registered person.</p> <p>Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for registered persons or a class of registered persons.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"><li>➤ No maximum time limit was prescribed beyond the due date to file the return;</li><li>➤ Once the proposal is effected, the registered person will not be able to file Form GSTR-3B electronically on the common portal after the expiry of a period of three years from the due date of furnishing the said return;</li><li>➤ Government by notification may exempt certain category of persons from the above provision.</li></ul>
8	134	Chapter IX- Returns / Section 44: Annual return	<p>48th GST Council Recommendation: Section 44 is to be amended to restrict the filing of returns/ statements to a maximum period of 3 years from the due date of filling.</p> <p>Proposed changes: A new sub-section (2) in section 44 of the CGST Act is being inserted so as to provide a time limit up to which the annual return under sub-section (1) of the said section for a financial year can be furnished by a registered person.</p> <p>Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"><li>➤ No maximum time limit was prescribed beyond the due date to file the return;</li><li>➤ Once the proposal is effected, the registered person will not be able to file Form GSTR-9 electronically on the common portal after the expiry of a period of three years from the due date of furnishing the said return;</li><li>➤ Government by notification may exempt certain category of persons from the above provision.</li></ul>

9	135	Chapter - X, Payment of Tax Section 52: Collection of Tax at Source	<p>48th GST Council Recommendation:</p> <p>Section 52 to be amended to restrict the filing of returns/ statements to a maximum period of 3 years from the due date of filing.</p> <p>Proposed changes:</p> <p>A new sub-section (15) in section 52 of the CGST Act is being inserted so as to provide a time limit up to which the statement under sub-section (4) of the said section for a month can be furnished by an electronic commerce operator.</p> <p>Further, it seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for an electronic commerce operator or a class of electronic commerce operators..</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ No maximum time limit was prescribed beyond the due date to file the return;</li> <li>➤ Once the proposal is notified, the electronic commerce operator required to collect tax at source will not be able to file Form GSTR-8 electronically on the common portal after the expiry of a period of three years from the due date of furnishing the said statement;</li> <li>➤ Government by notification may exempt certain category of persons from the above provision.</li> </ul>
10	136	Chapter - XI Refund / Section 54: Refund of Tax	<p>GST Council Recommendation: Not applicable.</p> <p>Proposed changes:</p> <p>Sub-section (6) of section 54 of the CGST Act is being amended so as to remove the reference to the provisionally accepted input tax credit to align the same with the present scheme of availing of the self-assessed input tax credit as per sub-section (1) of section 41 of the said Act.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ The idea of provisional ITC was conceived on the basis of inward supply matched and accepted by the recipients under section 42 of the CGST Act, 2017;</li> <li>➤ The concept was done away in the Finance Act, 2022 by way of substituting section 41(1) and 41(2), which stipulates to avail ITC on a self-assessment basis on the basis of FORM GSTR-2B and subject to other conditions of section 16 of the CGST Act, 2017;</li> <li>➤ Insertion of section 16(2)(aa) and section (2)(b)(a) read with an amendment in section 41 resulted in the need of removal of provisional credit for which section 54(6) has been proposed to be amended.</li> </ul>





11	137	Chapter – XI Refund / Section 56: Interest on delayed refunds	<p>GST Council Recommendation: Not applicable.</p> <p>Proposed changes:</p> <p>Section 56 of the CGST Act is being amended to provide an enabling provision to prescribe the manner of computation of the interest for the period of delay for calculation of interest on delayed refunds.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"><li>➤ Interest is payable on refunds sanctioned after 60 (sixty) days but no mechanism for calculation of such interest was prescribed, thus the amendment in this respect has been made for calculating such interest;</li><li>➤ The basis of calculation of interest on delayed refunds shall be provided in the Rules.</li></ul>
12	138	Chapter XIX, Offences and Penalties / Section 122: Offences and Penalties	<p>GSTC Recommendation: Not applicable.</p> <p>Proposed changes:</p> <p>A new sub-section (1B) in section 122 of the CGST Act is being inserted so as to provide for penal provisions applicable to electronic Commerce Operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"><li>➤ Once becoming effective, the electronic commerce operator shall be liable to a penalty of 10,000/- or the amount of tax involved whichever is higher if he<ul style="list-style-type: none"><li>❖ allows the supply of G/S or both through it by a URP other than a person exempted from obtaining registration under GST;</li><li>❖ allows an inter-state supply of G/S or both through it by a person who is not eligible to do such inter-state supply; and</li><li>❖ fails to furnish correct information in Form GSTR 8 of any O/S of goods effected through it by a person exempt from obtaining such registration.</li></ul></li></ul>





13	139	Chapter XIX, Offences and Penalties /Section 132: Punishment for certain offences	<p>48th GST Council Recommendation:</p> <p>Decriminalization under GST: Minimum threshold for launching prosecution from 1 cr. To 2 cr. Except for offence of issuance of invoice. Decriminalize certain offence u/s 132(1)(g)(h)(k).</p> <p>Proposed changes:</p> <p>Sub-section (1) of section 132 of the CGST Act is being amended so as to decriminalize offenses specified in clauses (g), (j), and (k) of the said sub-section and to increase the monetary threshold for launching prosecution for the offenses under the said Act from 1 cr. to 2 cr. rupees, except for the offenses related to the issuance of invoices without the supply of goods or services or both.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ Decriminalization of certain offenses, as stated above, are friendly measure meant for honest taxpayers and will keep them away from unnecessary harassment, if any;</li> <li>➤ However, the decriminalization benefit has not been extended for taxpayers issuing invoices without supply of goods or services or both.</li> </ul>
14	140	Chapter XIX, Offences and Penalties /Section 138: Compounding of Offences	<p>48th GST Council Recommendation:</p> <p>Reduce compounding amount (present range 50% to 150% &amp; proposed range 25% to 100%)</p> <p>Proposed changes:</p> <p>The first proviso to sub-section (1) of section 138 of the CGST Act is being amended so as to simplify the language of clause (a), to omit clause (b), and to substitute clause (c) of said proviso so as to exclude the persons involved in offenses relating to the issuance of invoices without a supply of goods or services or both from the option of compounding of the offenses under the said Act. It further seeks to amend sub-section (2) to rationalize the amount for compounding of various offenses by reducing the minimum and maximum amount for compounding.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ Consequential change suggested for change proposed in section 132 of the CGST Act, 2017.</li> <li>➤ The proposal to lower the minimum and maximum limit of compounding of offenses is a welcome and tax-friendly measure for honest taxpayers.</li> <li>➤ However, the benefit of compounding of offenses has not been extended to a taxpayer who has issued a tax invoice without supplying goods or services or both.</li> </ul>

15	141	Chapter XXI, Miscellaneous / Section 158A: Consent based sharing of information furnished by taxable person [Newly inserted]	<p>47th GST Council Recommendation:</p> <p>The GoM on IT Reforms, inter alia, recommended that the GSTN should put in place the AI/ML-based mechanism to verify the antecedents of the registration applicants and improve risk-based monitoring of their behavior post-registration so that non-compliant taxpayers could be identified in their infancy and appropriate action be taken so as to minimize risk to the exchequer.</p> <p>Proposed changes:</p> <p>A new section 158A in the CGST Act is being inserted so as to provide for prescribing manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"><li>➤ Aims to share information with ‘such other systems’ which needs to be studied once made available;</li><li>➤ The proposal may aim to identify and monitor risky and non-compliant taxpayers from the initial period itself to minimize the risk of revenue loss;</li><li>➤ Although not stated specifically, if all such compliance-based information either in total or in a selective manner, is shared at the front end for other taxpayers <del>although not specifically mentioned</del>, may reduce litigation for honest and compliant taxpayers (recipients) and may also lead to lay the foundation of system based compliance rating for taxpayer as prescribed under section 149 of the CGST Act, 2017.</li></ul>
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16	142	Schedule III	<p>48th GST Council Recommendation:</p> <p>Paras 7, 8(a) and 8(b) were inserted in Schedule III of CGST Act w.e.f 01.02.2019 to keep certain transactions/ activities as specified therein, outside the purview of GST.</p> <p>In order to remove the doubts and ambiguities regarding the taxability of such transactions/ activities during the period 01.07.2017 to 31.01.2019, the Council recommended making the said paras effective from 01.07.2017.</p> <p>However, no refund of tax paid shall be available in cases where any tax has already been paid in respect of such transactions/ activities during the period 01.07.2017 to 31.01.2019.</p> <p>Proposed changes:</p> <p>Schedule III of the CGST Act is being amended to give retrospective applicability to Para 7, 8 (a), and 8 (b) of the said Schedule, with effect from 01st July 2017, so as to treat the activities/ transactions mentioned in the said paragraphs as neither supply of goods nor supply of services. It is also being clarified that where the tax has already been paid in respect of such transactions/ activities during the period from 01st July 2017 to 31st January 2019, no refund of such tax paid shall be available.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ Transactions/ activities, such as High Sea sales, supply of warehoused goods before their home clearance and supply by the consignee, by the endorsement of document of title, after the goods dispatched from the port of origin located outside India but before clearance for home consumption, are to be treated as neither supply of goods nor supply of services, w.e.f 01.07.2017;</li> <li>➤ Denial to refund to taxpayers those who have already paid will discourage and frustrate the compliant taxpayers;</li> </ul>
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Integrated Goods and Services Tax Act, 2017			
17	143	Chapter I, Preliminary / Section 2: Definitions	<p>48th GST Council Recommendation:</p> <p>Amendment in definition of “non-taxable online recipient” under section 2(16) of IGST Act, 2017 and definition of “Online Information and Database Access or Retrieval Services (OIDAR)” under section 2(17) of IGST Act, 2017 so as to reduce interpretation issues and litigation on taxation of OIDAR Services.</p> <p>Proposed changes:</p> <p>Seeks to amend said clause as “non-taxable online recipient” to mean any unregistered person receiving online information and database access or retrieval services (OIDAR) located in the taxable territory.”</p> <p>It further seeks to clarify that the persons registered solely in terms of clause (vi) of section 24 of the CGST Act shall be treated as an unregistered person for the purpose of the said clause.</p> <p>It also proposes to amend clause (17) of the said section by removing certain words therein so as to remove the condition of “essentially automated” and “involving minimal human intervention” from the said definition.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ The definition of ‘non-taxable online recipient’ under section 2(16) and ‘Online Information and Database Access and Retrieval Services (OIDAR) under section 2(17) of IGST Act, 2017 has been widened;</li> <li>➤ A person registered as a TDS deductor u/s 51 shall be considered as an unregistered person;</li> <li>➤ Also, the definition of “online information and database access or retrieval services” is being proposed to be amended to remove the condition of rendering of the said supply being essentially automated and involving minimal human intervention.</li> <li>➤ This proposal aims to reduce interpretation issues and litigation on taxation of OIDAR Services.</li> </ul>



18	144	<p>Chapter V, Place of Supply of Goods or Services or Both /</p> <p>Section 12: Place of supply of services where location of supplier and recipient is in India</p>	<p>48th GST Council Recommendation:</p> <p>Proviso to sub-section (8) of section 12 of the IGST Act, 2017 may be omitted.</p> <p>Proposed changes:</p> <p>Proviso to sub-section (8) of section 12 of the IGST Act is being omitted so as to specify the place of supply, irrespective of the destination of the goods, in cases where the supplier of services and recipient of services are located in India.</p> <p>SKS Comments:</p> <ul style="list-style-type: none"> <li>➤ Proviso was introduced to iron out the difference of taxability that arose from receipt of services from foreign shipping line as compared to receipt of services from domestic shipping line.</li> <li>➤ However, this led to a compliance difficulty in the GST portal as the place of supply was to be mentioned as the destination of goods.</li> <li>➤ In the case of the export of goods, PoS was to be mentioned as a non-taxable territory which is the destination place, leading to a problem in claiming ITC. Removal of the proviso has addressed the issue appropriately.</li> </ul>
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