

CLAUSE WISE ANALYSIS - GST AMENDMENTS (FINANCE BILL 2023)



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CGST ACT		
	Section	Insertion/Omission/Substitution
Sec 10(2)	Composition levy	Omission in clause (c)
Sec 10(2A)	Composition levy	Omission in clause (c)
Sec 16(2)	Eligibility and conditions for taking input tax credit	Substitution in second proviso.
		Substitution in third proviso.
Sec 17(3)	Apportionment of credit and blocked credits	Substitution in Explanation.
Sec 17(5)		Insertion of Clause (fa)
Sec 23	Person not liable for registration	Substitution of new section for section 23.
Sec 37(5)	Furnishing details of outward supply	Insertion of new sub-section (5)
Sec 39(11)	Furnishing of return	Insertion of new sub-section (11)
Sec 44(1)	Annual Return	Re-numbered as sub-section (1)
Sec 44(2)		Insertion of new sub-section (2)
Sec 52(14)	Collection of tax at source	Insertion of new sub-section (15)
Sec 54(6)	Refund of Tax	Omission of sub- section (6)
Sec 56	Interest on delayed refund	Substitution in section 56
Sec122(1B)	Penalty for certain offence	Insertion of new sub-section (1B)
Sec 132 (1)	Punishments for certain offence	Insertion, Omission and Substitution in sub-section 1 of section
Sec 138 (1)		Insertion, Omission and Substitution in sub-section 1 of section
Sec 138 (2)		Substitution in sub-section (2)

Sec 158A	Consent based sharing of Information furnished by taxable person	Insertion of new section 158A
Sch III	Activities or Transactions which shall be treated neither as a Supply of Goods nor a Supply of Services	Date notified with retrospective effect for Paragraphs 7 and 8 and explanation 2
IGST ACT		
	Section	Insertion/Omission/Substitution
Sec 2(16)	Definition (Non-taxable online recipient)	Substitution in clause (16)
Sec 2(17)	Definition(online information and database access or retrieval services)	Omission in clause (17)
Sec 12(8)	Place of supply of services where location of supplier and recipient is in India	Omission in sub-section (8)

Clause wise Analysis - GST Amendments (Finance Bill 2023)

Central Goods and Services Tax

SL No	Section	Clause	Existing	Proposed	Effect of the Amendment/ Explanation
1.	Sec 10	128	Composition Levy		
	Sec 10 (2) (d)		(2) The registered person shall be eligible to opt under sub-section (1), if— (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;	(2) The registered person shall be eligible to opt under sub-section (1), if— (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;	This amendment removes the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the composition levy. Now, it is proposed that such persons would be allowed to opt for the composition scheme.
	Sec 10 (2A) (c)		(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;	(c) engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52;	



2	Sec 16	129	Eligibility and conditions for taking input tax credit		
	Sec 16(2)(d)	<p>(d) he has furnished the return under section 39:</p> <p>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:</p> <p>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.</p>	<p>(d) he has furnished the return under section 39:</p> <p>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, along with interest thereon, in such manner as may be prescribed:</p> <p>Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.</p>	<p>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.</p> <p>To align with the return filing system, the Act provides for ITC reversal along with interest u/s 50 in such cases. Further, upon making payment of such amount thereafter, one can re-avail the credit without any time limit. To clarify further, it has been provided that reavailment would only be allowed if the said value of supply has been paid to the supplier.</p>	

3.	Sec 17	130	Apportionment of credit and blocked credits.		
	Sec 17(3)		<p>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.</p> <p>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.</p>	<p>(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.</p> <p>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”;</p>	<p>Due to this amendment</p> <p>As per Section 17(3) read with Rules 42 and 43, certain activities or transactions are to be treated as exempt supplies for proportionate ITC reversal. In this, 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, high sea sales (i.e. goods sold after dispatch from the port of origin outside India before clearance for home consumption) would not be treated as an exempt supply for the purpose of ITC reversal</p>
	Sec 17(5)			<p>(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</p>	<p>It has always been a matter of debate whether ITC would be eligible to companies in respect of goods or services used for meeting the obligations of Corporate Social Responsibility.</p> <p>Due to this amendment it has been provided that such obligations met by eligible companies as part of their CSR would not be eligible to avail ITC</p>

4	Sec 23	131	Persons not liable for registration		
	Sec 23(1)		<p>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.</p> <p>(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.</p>	<p>Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24,—</p> <p>(a) the following persons shall not be liable to registration, namely:—</p> <p>(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; 13 of 2017.</p> <p>(ii) an agriculturist, to the extent of supply of produce out of cultivation of land;</p> <p>(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.</p>	<p>Due to this amended, with retrospective effect from 01st July, 2017, so as to provide that persons for compulsory registration in terms of sub section (1) of section and section 22 of the Act need not register if exempt under sub section (1) of section 23.</p>
5	Sec 37	132	Furnishing details of outward supplies		
				<p>Sub Sec (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:</p> <p>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</p>	<p>Due to this amendment CBIC has fixed the upper limit of three years from due date for filing of outward supplies.</p>



6	Sec 39	133	Furnishing of returns	<p>“(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:</p> <p>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.”.</p>	<p>Due to this amendment CBIC has fixed the upper limit of three years from due date for filing of returns.</p>
7.	Sec 44	134	Annual return	<p>(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:</p> <p>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</p> <p>sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return.</p>	<p>Due to this amendment CBIC has fixed the upper limit of three years from due date for filing of Annual returns.</p>



8	Sec 52	135	Collection of tax at source	<p>“(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.”.</p>	<p>Due to this amendment CBIC has fixed the upper limit of three years from due date for filing of Annual returns.</p>
9	Sec 54 Sec 54(6)	136	Refund of tax	<p>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.</p>	<p>Intention to remove word Excluding the amount of input tax credit provisionally accepted after the amendment above word, they are supposed to remove.</p>



10	Sec 56	137	<p>Interest on delayed refunds</p> <p>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:</p>	<p>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 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.</p>	<p>Section 56 of the CGST Act is being amended so as to provide for an enabling provision to prescribe manner of computation of period of delay for calculation of interest on delayed refunds.</p>
11	Sec 122 122(1B)	138	<p>Penalty for certain offences</p>	<p>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.”.</p>	<p>Section 122 deals with penalties for certain offences. Section 122(1B) of the CGST Act, 2017 has been newly inserted. It prescribes the penalty on the E-Commerce Operator (ECO).</p>



12	Sec 132	139	Punishment for certain offences		
	<p>Sec 132(1) Sec132(1) (l)(iii)</p> <p>Sec(132)(1) (l) (iv)</p>		<p>(g) obstructs or prevents any officer in the discharge of his duties under this Act;</p> <p>(j) tampers with or destroys any material evidence or documents;</p> <p>(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; or</p> <p>(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section</p> <p>(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;</p> <p>(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.</p>	<p>(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</p> <p>(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;</p>	<p>Section 132(1) of the CGST Act is being amended so as to decriminalize offences specified in clause (g), (j) and (k) of the said sub-section and to increase the monetary threshold for launching prosecution for the offences under the said Act from one hundred lakh rupees to two hundred lakh rupees, except for the offences related to issuance of invoices without supply of goods or services or both.</p>

13	Sec 138	140	Compounding of offences		
	Sec 138(1)		<p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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</p>	<p>(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;</p> <p>“(c) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132;”</p>	<p>Due to amendment</p> <ol style="list-style-type: none"> 1. Sec 138(1)(a) has been rationalized to remove the relevant part of Sec 132. 2. Sec 138(1)(b) & Sec 138(1)(e) have now been omitted as it was majorly covering compounding relating to sec 132(1)(g) / 132(1)(j) / 132(1)(k) and the ones which were not covered earlier are now covered in Sec 138(1)(a) itself. 3. The benefit of compounding is not available to crimes covered under section clauses (a) to (f), (h), (i) and (l) of section 132(1) MORE THAN ONCE. 4. The benefit of compounding is not available to crimes covered under section 132(1)(b) MORE THAN ONCE.
	Sec 138(2)		<p>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.</p>	<p>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</p>	<ol style="list-style-type: none"> 5. The amount under compounding is now further reduced to 25%. Thus the compounding bracket now is 25% - 100%



14	Sec 158A	141	Consent based sharing of information furnished by taxable person	
				<p>(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:—</p> <p>(a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;</p> <p>(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;</p> <p>(c) such other details as may be prescribed</p>
	Sec 158(2)			<p>(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of —</p> <p>(a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and</p> <p>(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.</p>



	Sec 158(3)			<p>(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</p>	
15	Schedule III	142	Retrospective exemption to certain activities and transactions in Schedule III to the Central Goods and Services Tax Act.	<p>(1) In Schedule III to the Central Goods and Services Tax Act, paragraphs 7 and 8 and the Explanation 2 thereof (as inserted vide section 32 of Act 31 of 2018) shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.</p> <p>(2) 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.</p>	<p>Due to this amendment these activities Are treated NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES.</p> <p>THE SAID SHALL BE DEEMED TO BE IN EFFECT FROM 01/07/2017. HOWEVER, NO REFUND SHALL BE GRANTED OF THE TAXES ALREADY PAID.</p>

Integrated Goods and Services Tax

SL No	Section	Clause	Existing	Proposed	Effect of the Amendment/ Explanation
1	Sec 2	143			
	Sec 2(16)		(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.	(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’;	The term “ESSENTIALLY AUTOMATED AND INVOLVING MINIMAL HUMAN INTERVENTION AND” is now removed from the definition.
	Sec 2 (17)		(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	(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 impossible to ensure in the absence of information technology and includes electronic services	
2	Sec 12	144	Place of supply of services where location of supplier and recipient is in India		
	Sec 12(8)		(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.	(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.	Section 12(8) of the IGST Act deals with place of supply with respect to transportation of goods. It is amended so as to delete the proviso to Sec 12(8). Thus, Circular No 184 issued after the 48th GST Council Meeting becomes redundant or to say is no longer required. Hence, suppliers of transportation of goods will have to follow the specified section IRRESPECTIVE of the DESTINATION of the goods