

Proposed amendments in the GST Law under the Union Budget 2023: The key proposed amendments in GST Law are discussed as under:

AMENDMENTS IN THE CGST ACT, 2017

Supplier of goods through Electronic Commerce operators will now be eligible to opt for composition Scheme.

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. Thus, upon this amendment being enforced the person engaged in supply of goods through ECOs will also be eligible to composition scheme, subject to fulfilment of other conditions.

Payment of amount towards ITC reversal in case payment of invoice not made within 180 days

Second proviso section 16(2) of the CGST Act has been amended to provide for payment of tax along with interest u/s 50 in respect of ITC availed and payment not made to supplier within 180 days. Further third proviso to above sub-section also amended to specifically provide that upon payment made to supplier ITC can be availed. These amendments have been made to align the said sub-section with the return filing system provided in the Act.

Value of exempt supply for purposes of apportionment of credits shall include sale of warehoused goods to any person before clearance for home consumption

Explanation to section 17(3) of the CGST Act is being amended so as to restrict availment of input tax credit in respect of certain transactions specified in para 8(a) of Schedule III of the said Act viz sale of warehoused goods to any person before clearance for home consumption, by including the value of such transactions in the value of exempt supply. It may be noted that earlier only value of activities or transactions specified in para 5 of Schedule III viz sale of land and incomplete building were included in value of exempt supply.

ITC on CSR Expenses has now specifically been blocked

Section 17(5) of the CGST Act, 2017 has been 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.

Persons exempt from registration u/s 23(1) need not take GST Registration u/s 22(1)/24

Section 23(1) and (2) of the CGST Act are being amended, with retrospective effect from 01st July, 2017, so as to provide that persons for compulsory registration in terms of section 22(1) and 24 of the CGST Act need not register if exempt under section 23(1) i.e. persons engaged exclusively in the business of exempt supply of goods or services or an agriculturist, to the extent of supply of produce out of cultivation of land.

Filing of belated GSTR-1 not beyond three years of due date

A new Section 37(5) of the CGST Act is being inserted so as to provide a time limit up to three years from the due date within which the details of outward supplies under section 37(1) i.e. GSTR-1 for a tax period can be furnished by a registered person. 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.

Filing of belated GSTR-3B not beyond three years of due date

A section 39(11) of the CGST Act is being inserted so as to provide a time limit up to three years from the due date within which the return GSTR-3B for a tax period can be furnished by a registered person. 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.

Filing of belated Annual Return not beyond three years of due date

A new section 44(2) of the CGST Act is being inserted so as to provide a time limit up to three years from the due date within which the annual return under section 44(1) viz GSTR-9/GSTR-9A for a financial year can be furnished by a registered person. 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.

Filing of belated GSTR-8 not beyond three years of due date

A new section 52(15) of the CGST Act is being inserted so as to provide a time limit up to three years within which the statement under section 52(4) viz GSTR-8 for a month can be furnished by an electronic commerce operator.

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.

Provisional refund eligible for provisionally accepted ITC

Section 54(6) of the CGST Act viz Provisional refund of 90% of total amount claimed in cases of zero-rated supplies, 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 availment of self-assessed input tax credit as per section 41(1) of the CGST Act. Currently provisionally accepted ITC are not eligible for provisional refund.

Manner will be prescribed for computing Interest on delayed refunds

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 beyond 60 days from the date of receipt of application till date of refund, for calculation of interest on delayed refunds.

New Section for penalty on Electronic Commerce Operators

A new Section 122(1B) 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. The proposed Section reads as under:

"(1B) 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 subsection (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."*

Decriminalization of certain offences and increase in monetary threshold

Section 132(1) of the CGST Act is being amended so as to decriminalize offences specified in **clause (g)** (obstruct or prevents any officer in the discharge), **clause (j)** (tamper with or destroys any material evidence or documents) and **clause (k)** (fails to supply any information) of the said 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.

Amendment in compounding of offences

First proviso to section 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. It further seeks to amend sub-section (2) so as to rationalize the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding.

Consent based sharing of information furnished by taxable person

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 Eway bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.

Amendment in Schedule III

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 viz High seas Sale, Supply of warehoused goods before clearance and Supply by endorsement of documents of title before clearance for home consumption, 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.

AMENDMENTS IN THE IGST ACT, 2017

Amendment in definition of non-taxable online recipient and online information and data base access or retrieval services

Section 2(16) of the IGST Act is being amended so as to revise the definition of "non-taxable online recipient" by removing 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 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 of CGST Act shall be treated as unregistered person for the purpose of the said section. Also, section 2 (17) 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.

Amendment in Place of Supply of services by way of transportation of goods

Proviso to section 12(8) of the IGST Act is being omitted so as to specify the place of supply of services by way of transportation of goods to a registered person, shall be the location of recipient and else shall be location at which goods are handed over for their transportation, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.

Currently as per proviso to Section 12(8) in cases where the transportation of goods is to a place of outside India, the place of supply is regarded as place of destination of such goods.