

Effective GST Changes w.e.f October 01, 2023

Sections 137 to 162 of the Finance Act, 2023 (**the FA, 2023**) (except Sections 149 to 154) will come into force from October 01, 2023 vide **Notification no. 28/2023-Central Tax dated July 31, 2023**.

Sections 149 to 154 of the FA, 2023 came into effect from August 01, 2023, and the same has not been covered under this Article.

Central Goods and Services Tax Act (CGST ACT)

1. **Section 137 of the FA, 2023 - Sections 10 (2)(d) and 10 (2A)(c) of the CGST Act:**

Composition levy extended to suppliers of goods under the ecommerce model

The Benefit of composition scheme which was earlier not available to the registered person engaged in supplying goods through an E-commerce operator (“**ECO**”) shall now be extended to them. However, restrictions will continue to apply for such registered persons who are engaged in the supply of services through an E-commerce operator.

The CBIC vide **Notification Nos. 36/2023 and 37/2023 – Central Tax dated August 04, 2023** notified special procedure to be followed by the ECO in respect of the supply of goods made by the person paying tax under Section 10 of the Act (Composition Dealer).

The procedure is summarized hereunder:

1. The ECO is prohibited from allowing any inter-state supply of goods through its platform by the said person.
2. The ECO shall allow the supply of goods through it by the said person only if an enrolment number has been allotted on the common portal to the said person;
3. The ECO must collect tax at source under subsection (1) of Section 52 of the CGST Act for the supplies of goods made by the said person through its platform.

4. The ECO is required to electronically submit the details of supplies of goods made by the said person through its platform in the statement in FORM GSTR-8.

2. Section 138 of the FA, 2023 – Second and third proviso to Section 16(2) of the CGST Act:

Clarificatory amendment concerning payment to supplier within 180 days

To align the language of law with the return filing system provided in the CGST Act, the updated provision stipulates that if a recipient fails to settle the invoice amount, including taxes, to the supplier within 180 days from the date of issue of the invoice, the recipient must pay an amount equivalent to the ITC they have claimed, in addition to the interest outlined in Section 50 of the CGST Act. The amendment changes the previous provision, where the ITC was treated as an addition to the output tax liability, to a new requirement for either payment or reversal of the ITC.

Consequently, the liability of interest on such reversal shall be determined in accordance with Section 50(3) instead of 50(1) of the CGST Act, only when such wrongly availed credit is utilised by the registered person.

3. Section 139 of the FA, 2023 –

Section 17(3) of the CGST Act: Sale of warehoused goods before filing BOE includible in value of exempt supply for reversal of common ITC u/s 17(2) and (3) r.w. Rule 42/43

This change will be in respect to para 8(a) of Schedule III of the CGST Act, which includes the supply of warehoused goods to any person before clearance for home consumption within the meaning of exempted supply for the purpose of reversal of common ITC under Section 17(2) and (3) read with Rule 42 and 43 of the CGST Rules.

Section 17(5)(fa) of the CGST Act: ITC blocked on CSR activities

Henceforth, there would be restrictions on ITC on goods/services received by taxable person, that are used or intended to be used for activities associated with fulfilling Corporate Social Responsibility (“CSR”) obligations. This is applicable prospectively.

4. Section 140 of the FA, 2023 – Section 23(2) of the CGST Act:

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Retrospective overriding effect of Section 23(2) on Sections 22 and 25 w.e.f. July 2017

This change will be having a retrospective effect from July 01, 2017, granting an exemption to person from taking registration in GST as per Section 22(1) of the CGST Act and compulsory registration under Section 24 of the CGST Act, from taking GST registration, e.g. persons already exempted from compulsory registration viz. person making outward supplies which are exclusively covered under RCM, person making supplies of services through E-Commerce Operator having aggregate turnover not exceeding INR 20L in a FY, person supplying handicraft goods having aggregate turnover not exceeding INR 20L in a FY, person making inter-state supplies of tax- able services having aggregate turnover not exceeding INR 20 Lakhs in a FY, etc. need not to obtain GST registration.

5. Section 141 of FA, 2023 – Section 30(1) of the CGST Act:

Time limit on application for revocation of cancelled registration

Under Section 30(1) of the CGST Act will extend the time limit of 30 days for moving an application for revocation of cancellation of GST registration. The time period has now been increased to 90 days from the date of order of cancellation or such further period as may be allowed by the commissioner but not exceeding 180 days as prescribed under Rule 23 of the CGST Rules.

[Notification No. 38/2023- Central Tax dated August 04, 2023]

6. Sections 142-145 of the FA, 2023 – Sections 37(5), 39(11), 44(1) & (2) and 52(15) of the CGST Act:

Limitation of 3 years on filing of returns

The Registered person will not be allowed to furnish belated returns in Form GSTR-1, GSTR-3B, GSTR-8, GSTR-9 and GSTR-9C after the expiry of three years from the due date of furnishing the relevant returns.

7. Section 146 of the FA, 2023 – Section 54(6) of the CGST Act:

Refunds and Interest on delayed refunds

This amendment will remove the reference to the provisionally accepted ITC to align the same with the scheme of availment of self-assessed ITC as per Section 41(1) of the CGST Act.

Section 54(6) allows a refund on a provisional basis of ninety percent of the total amount so claimed excluding the amount of input tax credit provisionally accepted, in per case of zero-rated supply.

Section 147 of the FA, 2023 – Section 56 of the CGST Act:

The government will be empowered to prescribe the mechanism, computation, manner, and restrictions for payment of interest on delayed refunds beyond 60 days from the date of receipt of refund application until the date of refund.

[Notification No. 38/2023- Central Tax dated August 04, 2023]

8. Section 148 of FA, 2023 – Section 62(2) of the CGST Act:

Assessment of unregistered persons

The time period for furnishing Form GSTR 3B or Form GSTR 10 (Final Return) under the Best Judgment Assessment, for the deemed withdrawal of the best judgment order, will increase from 30 days to 60 days. The period of 60 days may further be extended to 120 days on the payment of additional late fees over above the standard late fee.

9. Section 155 of the FA, 2023 – Section 122(1B) of the CGST Act:

Penalty for certain offences

Introduction of a penal provision applicable to ECO subject to a penalty of INR 20,000 (CGST + SGST) or the tax amount involved in such supply, whichever is higher, in cases where there is a violation of specified provisions relating to supplies of goods made through ECO by unregistered person or composition taxpayers.

[Notification No. 37/2023- Central Tax dated August 04, 2023]

10. Section 156 of the FA, 2023 – Section 132(1) of the CGST Act:

Decriminalization of certain offences

Decriminalization of the offences specified under clauses (g), (j) and (k) of Section 132(1) of the CGST Act which is related to obstructing or preventing any officer in the discharge of his duties, tampering with, or destroying any material evidence or documents, or failure to supply any information or supplies false information.

Monetary limit for prosecution: Further, this amendment will increase the limit for launching prosecution from INR 1 Crore to INR 2 Crores except for the offence of issuance of invoice without supply of goods or services.

Thus, in case of offences, other than fake invoices, prosecution provisions to be initiated if the value of taxes is more than Rs. 2 Crores and for fake invoices, the prosecution will continue as for the threshold tax amount of Rs. 1 Crore.

11. Section 157 of the FA, 2023 – Section 138(1) of the CGST Act:

No Compounding of offences: Fake/bogus invoice cases are excluded from the option of compounding of offences.

Reduction in Compounding fees: Reduction of amount for compounding of various offences except offence of fake invoice, by reducing the minimum and maximum amount for compounding as mentioned below:

	Earlier	Now
Minimum	Higher of INR 10,000 or 50% of the tax involved	25% of the tax involved
Maximum	Higher of INR 30,000 or 150% of the tax involved	100% of the tax involved

[Notification No. 38/2023- Central Tax dated August 04, 2023]

12. Section 158 of the FA, 2023 – Section 158A of the CGST Act:

Consent based sharing of information furnished by taxable person

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This new provision will allow sharing of information or details furnished by the taxpayers (viz. particulars in the registration application, returns or e-invoice or e-Waybill or any other as may be prescribed) on the GST Common portal, with other systems upon taxpayer's consent.

[Notification No. 38/2023- Central Tax dated August 04, 2023]

13. Section 159 of the FA, 2023 – Para 7, 8(a) and 8(b) in Schedule III of the CGST Act:

Retrospective applicability of Para 7, 8(a) and 8(c) of Schedule III

Following entries in Schedule III (non-taxable supplies) deemed to have been inserted with effect from July 01, 2017 to put an end on ongoing litigations or prospective litigations in cases wherein no tax is paid by any taxpayer on following supplies:

1. Supply of goods from a place in outside the taxable territory to another place outside the taxable territory without such goods entering India, high seas sales.
2. Supply of warehoused goods to any person before clearance for home consumption.
3. No refund of such tax paid shall be available in cases where any tax has already been paid in respect of such transactions/ activities during the period from July 01, 2017 to January 31, 2019.

[Notification No. 38/2023- Central Tax dated August 04, 2023]

14. Rule 64 of CGST Rules:

Inclusion of 'Non-taxable online recipient'

A significant inclusion to Rule 64 is the term “non-taxable online recipient” as referred to in the Integrated Goods and Services Tax Act, 2017 (“**the IGST Act**”). This change expands the scope of Rule 64 to cover more categories of recipients, thereby promoting greater tax compliance.

[Notification No. 38/2023- Central Tax dated August 04, 2023]

Integrated Goods and Services Act (IGST)

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The following amendments to the IGST Act shall be made effective from October 01, 2023:

1. Section 160 of the FA, 2023 – Section 2(16) of the IGST Act:

Scope of OIDAR services widened

The definition of “non-taxable online recipient” aims to broaden the scope of Online Information and Database Access or Retrieval Services (OIDAR). Any unregistered individual in India’s taxable territory, regardless of the purpose, who receives OIDAR services will be considered as a non-taxable online recipient. Previously, services from OIDAR providers located in non-taxable territories abroad, when received by the central government, state government, government authorities, or individuals for non-business purposes, were exempt from taxation. However, this exemption has been eliminated from October 01, 2023.

2. Section 161 of the FA, 2023 – Section 12(8) of the IGST Act:

Place of Supply in relation of Transportation of Goods

This change has omitted the proviso to Section 12(8) of the IGST Act, which covers the place of supply (POS) for the transportation of goods irrespective of the destination of goods, where the supplier and recipient of service are located in India. The POS shall be the location of recipient of service if the recipient is a registered person.

[Notification 13/2023 - Integrated Tax (Rate) dated September 26, 2023]

Section 162 of the FA, 2023 - Section 13(9) of the IGST Act:

Under Section 13(9) of the IGST Act, 2017, which provides the place of supply of services in case of transportation of goods, other than by way of mail or courier would be covered under the default provision of Section 13(2) of IGST Act and would be the location of the recipient of services, in cases where either the supplier of services or recipient of services is located outside India. As a result, Services to recipients outside India would qualify as exports, and Services from suppliers outside India would qualify as import of service irrespective of the destination of goods.

[Notification 11/2023 - Integrated Tax (Rate) dated September 26, 2023]

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3. Section 123 of the FA Act, 2021 - Section 16(1)(b) of the IGST Act:

Zero-rated supplies to SEZ for authorised operations

The CBIC vide **Notification No. 27/2023-Central Tax dated July 31, 2023** made the stated change, which will remove the ambiguity that only the supplies made for authorised operations to SEZ unit or developer shall qualify as zero-rated supplies. Earlier, the requirement existed under Rule 89 to provide endorsement from the designated officer of SEZ regarding authorised operations while claiming refund of accumulated ITC or IGST by the DTA supplier. Now, the same has been incorporated under the Statute so that the Rules cannot be challenged as superseding the Statute.

4. Section 16(3) & (4) of IGST Act:

IGST Zero-rated supplies not permitted with payment of IGST until notified

The default option is now supplying under LUT without tax payment and claiming a refund of accumulated ITC, with the government authorized to notify categories permitted for IGST payment and refund route.

The CBIC vide **Notification No. 1/2023–Integrated Tax dated July 31, 2023**, permits tax payment for all exports of goods and services, barring specific goods like cigarettes, panmasala, and other tobacco-related products. Currently, no notification has been issued permitting supplies to SEZ units/developers with payment of IGST. Hence, the default route of LUT without payment of IGST would only be available.

5. Notification No. 11/2023, 12/2023 and 13/2023 - Integrated Tax (Rate) dated September 26, 2023

The three **Notifications No. 11/2023, 12/2023 and 13/2023 - Integrated Tax (Rate) dated September 26, 2023** have made amendments in the Rate, Exemption, and RCM notifications of IGST to terminate the liability cast on the importers on the services supplied by a person located in the non-taxable territory (foreign shipping line) to a person located in the non-taxable territory (foreign supplier) by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India (in lieu of import ocean freight)

in case of CIF imports under reverse charge. The amendments were made after more than a year of the Hon'ble Supreme Court's judgement in ***Union of India v. M/s Mohit Minerals Pvt. Ltd.*** wherein the Supreme Court had held the reverse charge levy on importer as import of service violative of Section 8 of the CGST Act, 2017, and decided in favour of the Indian importers.

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