









# Finance Bill 2023



# Changes in Composition Levy

				Before Finance Bill 2023	After Finance Bill 2023
Composition Levy	Sec 10(1) – Trade/Manufacture of Goods / Restaurant	Goods through ECO			
		Services through ECO			
	Sec 10(2A) – If not eligible in Sec 10(1)	Goods through ECO			
		Services through ECO			



# Changes in Composition Levy

In the CGST Act, in section 10,— 12 of 2017. (a) in sub-section (2), in clause (d), the words “goods or” shall be omitted; (b) in sub-section (2A), in clause (c), the words “goods or” shall be omitted

Section 10(2) and 10(2A) imposes restrictions on composition dealer. To remove the condition restricting registered persons engaged in supplying through electronic commerce operators from opting for the Composition Levy, **the condition that he should not be make supply of goods through ECO is being omitted.**

(i) Section 10(2)(d) of CGST Act is being amended as under:

*(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;*

(ii) Section 10(2A)(c) of CGST Act is being amended as under:

*(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;*



## Amendment in Sec 16 for Reversal and Reclaim of ITC

Particular	Before Finance Bill 2023	After Finance Bill 2023
Payment not made within 180 days by the recipient to the supplier	input tax credit availed by the recipient shall be <b>added to his output tax liability, along with interest thereon</b>	input tax credit availed by the recipient shall be <b>paid by him along with interest payable under section 50</b>
Reclaim of ITC when the payment is made	Recipient shall be entitled to avail of the credit of input tax on payment <b>made by him</b> of the amount towards the value of supply of goods or services or both along with tax payable thereon.	Recipient shall be entitled to avail of the credit of input tax on payment <b>made by him to the supplier</b> of the amount towards the value of supply of goods or services or both along with tax payable thereon.



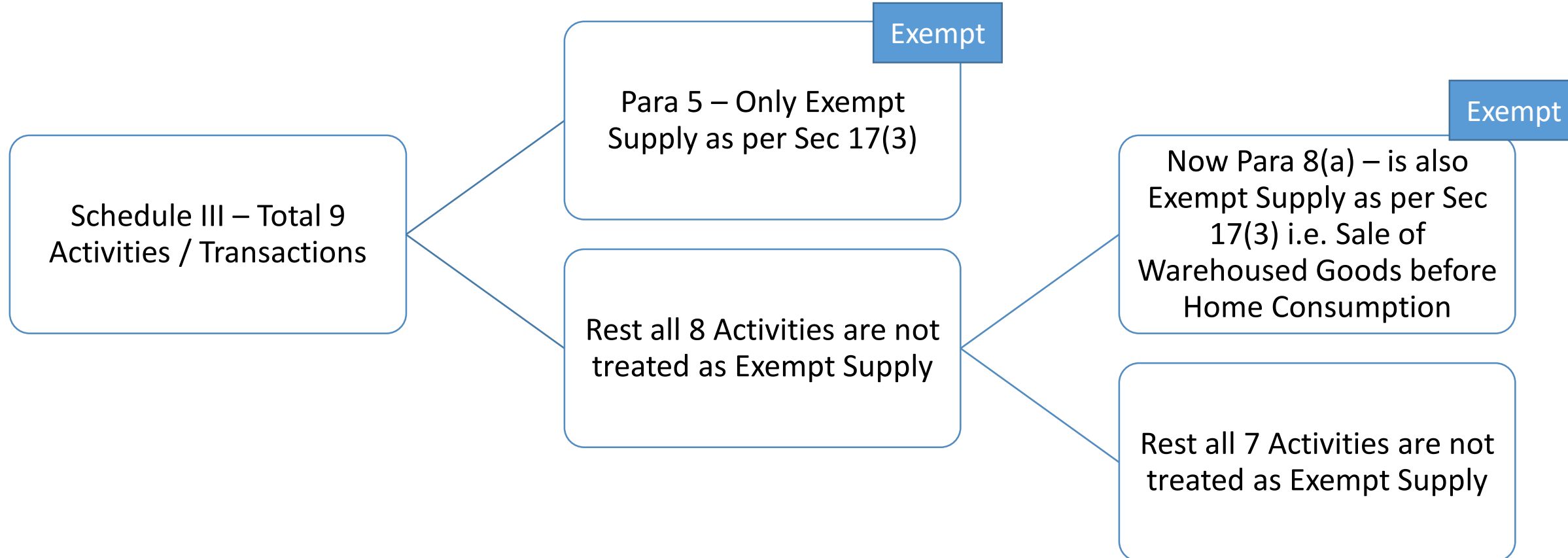
## **Amendment in second proviso to Section 16 of the CGST Act, 2017 to align with GSTR-1/3B**

In section 16 of the CGST Act, in sub-section (2),—

- (i) in the second proviso, for the words “added to his output tax liability, along with interest thereon”, the words and figures “paid by him along with interest payable under section 50” shall be substituted;
- (ii) in the third proviso, after the words “made by him”, the words “to the supplier” shall be inserted.



# Changes in the reversal of ITC



## Changes in the reversal of ITC

130. In section 17 of the CGST Act,—

- (a) in sub-section (3), in the Explanation, for the words and figure “except those specified in paragraph 5 of the said Schedule”, the following shall be substituted, namely:— “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”;



No ITC on CSR  
Expenses

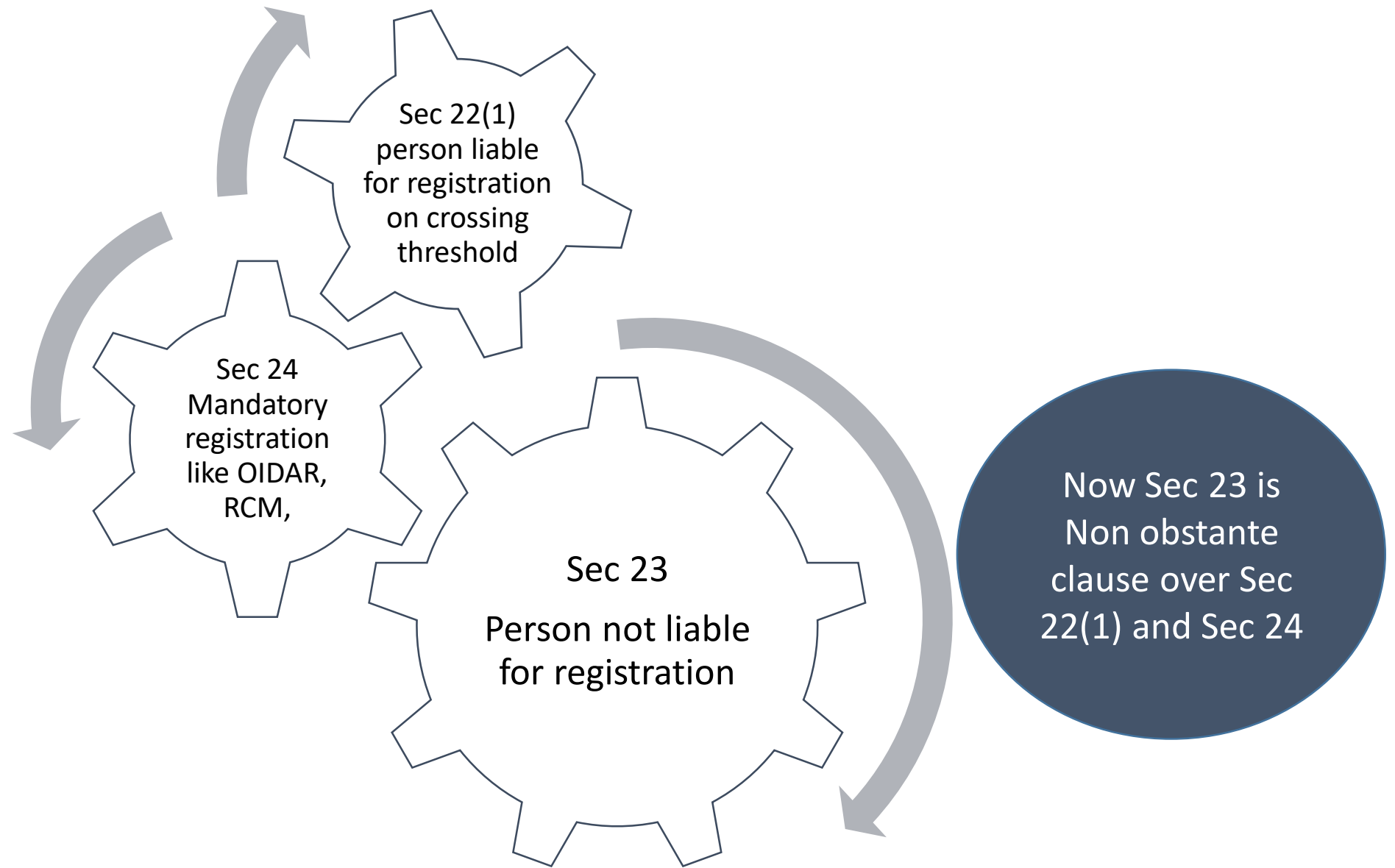
130. In section 17 of the CGST Act,—

(b) in sub-section (5), after clause (f), the following clause shall be inserted, namely:—

“(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;”.



## Amendment in Registration – Sec 23



# Amendment in Registration – Sec 23

## **B. Amendment to Section 23 to provide overriding effect over Sections 22(1) & 24**

- ❑ Section 22 provides for persons liable for registration
- ❑ Section 24 provides for compulsory registration in certain cases.
- ❑ Section 23 provides for persons not liable for registration and exemption of specified categories of persons from obtaining registration.

Existing Section 23 does not have any clause overriding the registration requirement imposed vide Section 24 and Section 2(1). Therefore, a doubt arises whether provisions of compulsory registration under Section 24 prevail over the exemption under Section 23.

Section 23 may be amended retrospectively w.e.f. 01.07.2017 as under:

### ***Section 23. Persons not liable for registration.-***

*(1) Notwithstanding anything to the contrary contained in sub-section (1) of Section 22 or Section 24, the following persons shall not be liable to registration,*



## Limitation in Filing – 3 Years

Section 37 – GSTR 1

Section 39 – GSTR 3B

Section 44 – Annual Return

Section 52 – GSTR 8 by ECO for TCS

Not be allowed  
to furnish after  
the expiry of 3  
years from the  
due date of  
furnishing the  
said statement

## Amendment in Sec 54

136. In section 54 of CGST Act, in sub-section (6), the words “excluding the amount of input tax credit provisionally accepted,” shall be omitted.

(6) 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, refund on a **provisional basis, 90% of the total amount so claimed, excluding the amount of ITC provisionally accepted, ....**

**excluding the amount of ITC  
provisionally accepted,  
omitted**

## Amendment in Sec 56

In section 56 of the CGST Act, for the words “from the date immediately after the expiry of sixty days from the date of receipt of application under the said subsection till the date of refund of such tax”, the words “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” shall be substituted.



# Decriminalization of CGST Act, 2017



**Deletion of the offences mentioned in clause (g), (j) and (k) of sub-section (1) of section 132 of CGST Act**

The **minimum threshold** for launching prosecution to be increased to **Rs two crore from the current Rs one crore** except fake invoice case

**Range of compounding amount** in section 138(2) of CGST Act to be **reduced** suitably to **minimum of 25%** of the tax amount to **maximum of 100%** of tax amount

## Relevant Clauses of Sec 132 which has been omitted

## Corresponding IPC Section

(g) obstructing or preventing any officer in discharge of his duties or

Sec 186

(j) deliberate tampering of material evidence or

Sec 204

(k) failing to supply the information,

Sec 176

## New Provision – Sec 158A

“158A. (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:—

- (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;
- (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;
- (c) such other details as may be prescribed.



## New Provision – Sec 158A

Sec 158A(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of —

- (a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and
  - (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.

(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.”





## Retrospective applicability of para 7, 8(a) and 8(b) of Schedule III

Para 7 and 8(a) and 8(b) has been inserted vide Finance Act 2018 w.e.f. 1.2.2019. Considering the issues discussed in paras above, to avoid unnecessary litigation and doubts, the above paras of Schedule III made retrospectively.

Para 7 of  
Sch III

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.

Para 8(a)  
of Sch III

Supply of warehoused goods to any person before clearance for home consumption;

Para 8(b)  
of Sch III

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

## Amendment in Para 7 & 8 of Schedule III

142. (1) In Schedule III to the CGST Act, paragraphs 7 and 8 and the Explanation 2 thereof shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.

(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.



## Amendment in provisions related to OIDAR Services under the IGST Act, 2017:

→ High revenue implication, need to plug loop holes



### Issue in Definition of non-taxable online recipient

As per Section 14 of the IGST Act, 2017 on supply of OIDAR services by any person located in a non-taxable territory and **received by a non-taxable online recipient, the supplier of services** located in a non-taxable territory shall be the person **liable for paying** integrated tax on such supply of services.

A “non-taxable online recipient” is defined under Section 2(16) of the IGST Act, 2017.

In case of individual:

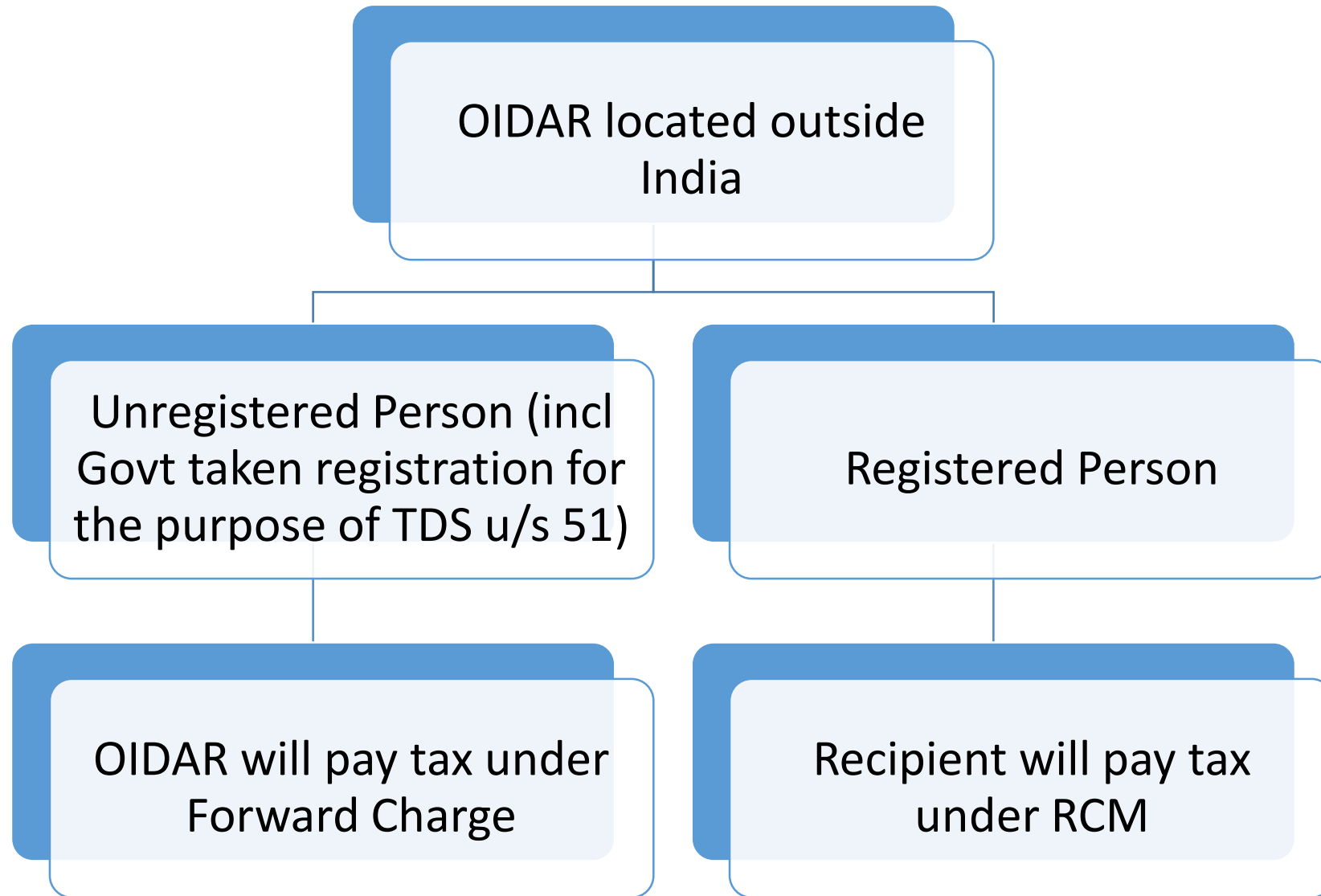
1. Service recipient should **not be registered** under the GST law, and
2. Service recipient should not use OIDAR for **commerce**, industry or any other business or profession.(being dropped now)

In case of Govt:

1. Govt, local authority and govt authority.

Now, only Govt entities registered under TDS will be covered under this definition





### Issue of minimal human intervention

1. Currently for a service to be classified as OIDAR services under Section 2(17) of the IGST Act, 2017 an essential condition is that the supply of such service must be essentially automated and should involve minimal human intervention. However, many a times interpretation of what is 'human intervention' and what is 'minimal' becomes contentious and litigative.
2. **Many** countries are doing away with the requirement of "minimal human intervention". Thus, the definition of OIDAR services under Section 2(17) of the IGST Act, 2017 proposed to be amended.



## Amendment in the Integrated Goods and Services Tax

**Sec 2(16) of IGST Act** - “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 CGST 2017’;



## Amendment in the Integrated Goods and Services Tax

Sec 2(17), the words “essentially automated and involving minimal human intervention and” shall be omitted.





## Place of supply (PoS) of services by way of transportation of goods

### Issues related to place of supply in terms of the proviso to Section 12(8) of the IGST Act, 2017

Effect of insertion of the aforesaid proviso in determining the PoS is summarized as under:

Prior to insertion of the proviso in Section 12(8) and after deletion of the proviso		After insertion of the proviso in Section 12(8)	
Location of the supplier of services	West Bengal	Location of the supplier of services	West Bengal
Location of the recipient of services	West Bengal	Location of the recipient of services	West Bengal
Place of supply	West Bengal	Place of supply	Singapore
Tax to be charged by the supplier	CGST + WBGST	Tax to be charged by the supplier	IGST

# Place of supply (PoS) of services by way of transportation of goods

## Circular 184/16/2022- GST dated 27<sup>th</sup> December 2022

PoS outside India LoR and LoS in India	Proviso to Sec 12(8) clarifies PoS is foreign destination.
Is above supply Inter State or Intra State	LOS and POS determine the nature of supply. LOS is in India and PoS is outside India and therefore it is Inter State Supply (Sec 7(5)(a) of IGST Act)
Whether Recipient is eligible to take ITC?	Eligible to take ITC subject to Section 16 & 17 of CGST Act.
State Code in GSTR 1?	96 - Foreign Country



# Place of supply (PoS) of services by way of transportation of goods

## Issues related to place of supply in terms of the proviso to Section 12(8) of the IGST Act, 2017

**a. Circular issued** for clarifying that input tax credit would be available to the registered person located in India, in respect of receipt of services of transportation of goods where supplier of the service is based in India, and where the place of supply is outside India in terms of the proviso to sub-section (8) of Section 12 of the IGST Act, 2017 and that in such cases, PoS is to be declared in FORM GSTR-1 on the common portal under the state code “96- Foreign Country”(and not under “97-Other Territory”).

ITC

- **ITC would be available** to the registered person located in India, in respect of such receipt of services of transportation of goods, where place of supply is outside India in terms of proviso to section 12(8)

POS in GSTR 1

- PoS is to be declared in **FORM GSTR-1** on the common portal under the **state code “96- Foreign Country”** (and not under “97-Other Territory”).



## Place of supply (PoS) of services by way of transportation of goods

### Issues related to place of supply in terms of the proviso to Section 12(8) of the IGST Act, 2017

**b.** No useful purpose is being served by the **proviso** to Section 12(8) of IGST Act, 2017 inserted w.e.f. 01.02.2019.

Therefore, the Law Committee recommended that the proviso to Section 12(8) of IGST Act, 2017 may be omitted.

### Amendment in the Integrated Goods and Services Tax

In section 12 of the Integrated Goods and Services Tax Act, in sub-section (8), the proviso shall be omitted.



Q&A





1. Post to the amendments in Finance Bill 2023, whether a service provider under composition (Sec 10 (2A)) can make his supply of service through E commerce Operator?
- A. Yes
  - B. No
  - C. Partly allowed

Ans: No, the change is for Goods only. Service is not allowed prior and post to the budget 2023





2. Mr S from Mumbai has imported goods from Mr J who is in USA . The goods are sold by Mr S to Mr N from Chennai, from the warehouse before filing Bill of Entry for home consumption. Whether Rule 42/43 will apply in this case for common ITC ?

- A. Yes
- B. No
- C. Partial reversal

Ans: Para 8a of the Schedule III is included in the exempted supply category and hence reversal of common ITC if any is mandatory





3. In the above example, if Mr S from Mumbai makes supply of the imported goods from Mr J of USA while the goods are in high sea, whether ITC reversal is required considering the amendments of the Finance bill 2023?

- A. Yes
- B. No
- C. Partial

Ans: Para 7, which is covered above in schedule III is not included in the exempted supply prior and post to Finance Bill 2023. Therefore, no reversal







4. TSR Ltd a multi-national company has supplied 50 laptops to an orphanage as a part of their corporate social responsibility. Can they take the ITC ? Specify the reason if not allowed

- A. Allowed to take ITC as it's a statutory compulsion
- B. Not allowed under Sec 17 (5) h
- C. Not allowed under 17 (5) (fa)

Ans: C – New Subsection inserted





5. What's the amendment made in sec 23 (1) – person not liable for the registration vide Finance Bill 2023?

- A. Retrospective made applicable
- B. Supersedes Sec 22(1) and Sec 24
- C. Both the above

Ans: A – Made applicable from 1.7.2017





6. Mr X is an unregistered dealer exclusively dealing with exempted goods avails advocate service from Mr A advocate. Whether Mr X has to take registration as the service of advocate is under RCM?

- A. Yes
- B. No
- C. It depends on supplier

Ans: B No – As Section 23 override the Section 24 and 22(1)





8. What is the major change in Sec 56 of the CGST Act related refund ?

- A. Made retrospective since 01.07.2017
- B. Omitted
- C. Rule making power inserted for calculation of 60 days

Ans: C





9. What is the quantum of penalty for defaults as specified under Sec 122 (1A) in case of the ECO who defaults in the conditions specified ?

- A. Rs 10000
- B. Tax involved considering the recipient is a registered person other than under composition
- C. A&B Which ever is higher
- D. Equal to B

Ans: C





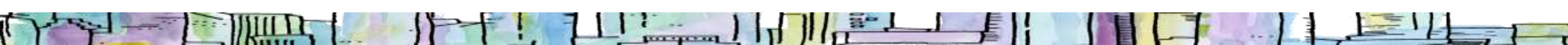
10. Which of the 3 sub clauses below are omitted under de criminalisation vide amendment of sec 132 of the CGST act ?

A. g . j . k

B. a, b, c

C. d. e. f

Ans: A





11. The monetary limit for launching the prosecution has been for the offences in Sec 132 has been proposed to be increased from 1 Cr to Rs 2 Crs. There is only one exception to this which is ...?

- A. Supply of goods with out invoice
- B. Invoice with out supplying goods
- C. Deliberate tampering of material evidences

Ans: A





12. The newly introduced sec 158A of CGST Act provides for what ?

- A. De criminalisation
- B. Manner and conditions for sharing information
- C. Compounding of offences

Ans: B







13. Which are the paragraphs made effective retrospective in Schedule III vide the Finance Bill 2023?

- A. Para 7 ,8
- B. Para 3,5
- C. Para 5 and Para 8(a)

Ans: A





14. What is the clause that is proposed to be omitted in the definition of OIDAR ?

- A. Mediated by Information Technology
- B. Over the internet or Electronic network
- C. Essentially automated and involves minimum human intervention

Ans: C





15. If OIDAR located out of India provide the Service to the Central Govt who is registered only for the purpose of TDS u/s 51 then who is liable to pay the tax -

- A. OIDAR under Forward Charge basis
- B. Central Govt, need to pay tax under RCM
- C. No Tax as recipient is only registered for the purpose of TDS

Ans: A



# Overview of Finance Bill 2023

SI No	Clause of Finance Bill 2023	Corresponding Sections of GST Act	Description for changes
1	128	Sec 10	Composition levy to be eligible for supply of goods through Electronic Commerce Operator
2	129	Sec 16	Align the provision for reversal of ITC if the payment is not made within 180 days and its reclaim
3	130	Sec 17	1. Warehoused Goods supplied before home consumption will be considered as Exempt supply 2. CSR will be in the Section 17(5) – Blocked Category
4	131	Sec 23	Section 23 made overriding to Section 22 and Sec 24.
5	132, 133, 134, 135	Section 37, 38, 44 and 52	GSTR 1, GSTR 3B, Annual Return and GSTR 8 – Cannot be furnished after 3 years from the due date of Return
6	136	Sec 54(6)	Word <b><u>Provisional ITC</u></b> has been omitted
7	137	Sec 56	Manner of computation of period for the delay in 60 days will be prescribed.



# Overview of Finance Bill 2023

SI No	Clause of Finance Bill 2023	Corresponding Sections of GST Act	Description for changes
8	138	Sec 122(1B)	New Penalty provision for E Commerce Operator
9	139	Sec 132	Amendment in the Offences in the GST
10	140	Sec 138	Amendment in the Compounding of the offence
11	141	New Sec 158A	Sharing of the Information
12	142	Schedule III	Retrospective Amendment in the Para 7 and Para 8 of Sch III
13	143	Sec 2(16) & 2(17) of IGST Act	Definition of non-taxable online recipient and OIDAR has been amended
14	144	Proviso to Sec 12(8)	Amendment in the Sec 12(8) for the movement of Goods out of India



Thank you

