

Union Budget 2023

Indirect Tax Analysis



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Introduction

- In this update we have highlighted the key changes made to the indirect tax regime in the Union Budget presented by the Finance Minister on February 1, 2023. Various new proposals have been tabled. Apart from amending the current provisions of indirect tax laws, certain new provisions have been introduced.
- We hope that this update will prove to be handy for understanding the key implications to the indirect tax regime pursuant to the Budget. We will be happy to hear your feedback on this update and help you with any further information that you may require. Feel free to send us an email at **communications@argus-p.com**

February 1, 2023

GST – Key Changes

- The restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy, is being removed.
- Explanation to Section 17(3) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”)[^] is being amended to restrict availment of input tax credit in respect of certain transactions specified in para 8(a) of Schedule III^{^^} of the said Act, by including such transactions in the value of exempt supply.
- Section 17(5) of the CGST Act is being amended to restrict availment of input tax credit by a registered person in respect of goods or services which are used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.
- Section 37(5) of the CGST Act is being introduced to provide a time limit for disclosing the details of outward supplies by a registered person for a tax period (3 years from the due date of furnishing the return). It also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions.

All changes would be effective from the date of enactment of Finance Bill, 2023, unless specified otherwise

[^] *Reference invited to the provisions of CGST Act would include similar reference to the State GST laws*

^{^^} *Supply of warehoused goods to any person before clearance for home consumption*

GST – Key Changes

- Section 39(11) of the CGST Act is being introduced to provide a time limit upto which the return for a tax period can be furnished by a registered person (3 years from the due date of furnishing the return). It also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions.
- Section 44(2) of the CGST Act is being introduced to provide a time limit upto which the annual return for a financial year can be furnished by a registered person (3 years from the due date of furnishing the return). It also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions.
- Section 52(15) of the CGST Act is being introduced to provide a time limit upto which the details of supplies effected by an electronic commerce operator for a month can be furnished (3 years from the due date of furnishing the statement). It seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions.
- Section 56 of the CGST Act is being amended to provide for an enabling provision to prescribe manner of computation of period of delay for calculation of interest on delayed refunds.

GST – Key Changes

- Section 122(1B) of the CGST Act is being introduced to provide for penal provisions for Electronic Commerce Operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers.
- Section 132(1) of the CGST Act is being amended 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.
- Section 138 of the CGST Act is being amended 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 also seeks to rationalize the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding.
- 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 July 1, 2017, so as to treat the transactions mentioned in the said paragraphs as neither supply of goods nor supply of services. Further, no refund would be granted, if tax is already paid[^].

[^] *Immediate effect*

GST – Key Changes

- The definition of “non-taxable online recipient” under Section 2(16) of the Integrated Goods and Services Tax Act, 2017 (“**IGST Act**”) is being amended to provide for taxability of online information and database access or retrieval services (“**OIADR**”) provided by any person located in non-taxable territory to an unregistered person receiving the said services and located in the taxable territory.
- The definition of OIADR under Section 2(17) of the IGST Act is being amended to remove the condition of rendering of the said supply being essentially automated and involving minimal human intervention.
- The proviso to Section 12(8) of the IGST Act is being omitted so as to specify the place of supply, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.

Customs – Key Changes

- Section 25(4A) of the Customs Act, 1962 (“**the Customs Act**”), *inter alia* provides that duty exemption shall be valid upto 31st of March falling immediately after two years of the grant of such exemption. The same is being amended now and a proviso has been inserted to the effect that the validity period of two years will not be applicable to the exemption granted in or in relation to:
 - a) Any multilateral or bilateral trade agreement
 - b) Obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations
 - c) Privileges of constitutional authorities
 - d) Schemes under the Foreign Trade Policy
 - e) The Central Government schemes having validity of more than two years
 - f) Re-imports, temporary imports, goods imported as gifts or personal baggage
 - g) Any duty of customs other than that leviable under Section 12 of the Customs Act

Customs – Key Changes

- In respect of settlement of cases by the Settlement Commission, Section 127C(8) of the Customs Act has been introduced to provide that in case no order is passed within a period of 9 months (may be extended by three months) from the last day of the month in which the settlement application is made, such settlement proceedings shall abate. Consequently, the adjudicating authority before whom the proceeding was pending at the time of application shall dispose of the same as if no settlement application was made.
- Certain retrospective amendments have been brought out in Customs Tariff Act, 1975 (“**CTA**”) to clarify that determination and review of counter-vailing duty, anti-dumping duty and appeals against such determination and review, refers to the manner specified under Sections 8B, 9, 9A and 9B of the CTA and rules framed thereunder.
- Heading 9801 of the first schedule of CTA is being amended to exclude solar power plant/solar power project from the purview of Project Imports[^]

[^] *Effective from February 2, 2023*

Customs – Key Changes

- Basic Customs Duty (“**BCD**”) increased on compounded rubber, imitation jewellery, electric kitchen chimney, toys, naphtha, coal, peat, lignite etc.
- BCD decreased on coins, certain specified base metals, camera lens and other aircrafts, etc.
- Exemption under Notification No. 50/2017-Cus dated June 30, 2017 extended to March 31, 2024 for ferrous waste and scrap, solar tempered glass for use in manufacture of solar cell or solar module, gold ores and concentrates, etc.
- In order to maintain the total effective duty owing to rationalization of basic customs duty, certain goods such as silver, gold, imitation jewellery, platinum, bicycles, specified motor vehicles, toys etc. have been exempted from levy of Social Welfare Surcharge.
- Agriculture Infrastructure and Development Cess rate changed on silver, silver dore, coal, peat, lignite etc.

Effective from February 2, 2023

CST – Central Sales Tax

- Section 19 of the Central Sales Tax Act (“**CST**”) has been substituted so as to declare the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act as the Appellate Authority for settlement of inter-State disputes falling under Sections 6A and 9 of the CST Act.
- Section 25 of the CST Act is being amended to provide for transfer of pending proceedings before the erstwhile Authority for Advance Rulings to the Authority referred to in Section 19.

Excise Act – Key Changes

- The Seventh Schedule to the Finance Act, 2001 is being amended to revise the National Calamity Contingent Duty rates on specified cigarettes under HS 2402 (levied under Finance Act, 2001).
- Notification No. 05/2023-Central Excise dated February 1, 2023 has been issued to exempt Excise duty on blended Compressed Natural Gas (“**CNG**”) from so much of the amount as is equal to GST paid on biogas /compressed biogas contained in such blended CNG subject to the conditions specified.

Effective from February 2, 2023

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