

# Navigating the Global Ramifications of India's GST Law Amendments: An In-depth Analysis

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The Finance Act of 2023 has brought about significant changes to India's Goods and Services Tax (GST) law, impacting global companies not registered for GST in India. This article delves into the details of these changes and their potential implications for businesses.

## **Adjustment in Place of Supply for Goods Transport Services**

The GST Council has thoroughly examined the proposal to modify the place of supply (PoS) for goods transport services in order to create a level playing field for Indian and foreign shipping lines. Previously, Indian Shipping Lines (ISL) providing outward goods transport agency (GTA) services for transporting goods to destinations outside India were subject to GST, giving Foreign Shipping Lines (FSL) an advantage. To rectify this imbalance, the following two adjustments have been implemented:

1. The provision in Section 12(8) of the Integrated Goods and Services Tax Act, 2017 ("IGST Act") stated that when both the supplier and the

recipient are located in India, the point of origin of transportation services for goods located outside India is the destination of the goods is repealed by Section 161 of the Finance Act, 2023. With this change, ISL services delivered outside of the Greater Toronto Area are no longer subject to GST law.

2. Section 162 of the Finance Act, 2023 repeals Section 13(9) of the IGST Act, which provided a special PoS provision for shipment of goods other than by mail or courier when the supplier or recipient is located outside India. This change equalizes ISLs and FSLs by making the recipient's location the point of sale for such transportation services. The GST applies to all external GTA services given to a registered recipient unless it is a free-on-board contract in which an unregistered foreign importer pays the outward GTA cost.

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## **Taxability of OIADR Services widened**

Previously, Section 2(17) of the IGST Act mandated that online information and database access or retrieval (OIDAR) services be offered via the Internet or an electric network with as little human intervention as possible. OIDAR service providers in India were required to voluntarily register and pay GST while offering services to non-taxable online recipients ("NTORs"). If the recipient of OIDAR services was an Indian citizen who had registered for GST, they would be accountable for paying IGST through a reverse-charge process.

However, Section 160 of the Finance Act, 2023 expanded the definition of OIDAR services by eliminating the minimal human participation requirement. Furthermore, any individual who is not registered is now included in the modified definition of an NTOR under Section 2(16). Furthermore, it has been clarified that people who have registered only to deduct tax at source in line with Section 51 shall be regarded as unregistered for the NTOR definition.

These amendments have greatly increased the number of OIDAR services available. Online education and test-taking services, which were previously justified as falling outside of OIDAR's jurisdiction due to the utilization of human resources, may now fall under the amended definition. OIDAR service providers must register regardless of the cost of the services given, which may result in increased scrutiny by the Indian Tax Department. Suppliers

would be obligated to collect GST on OIDAR services delivered to unregistered persons following notification of the amended NTOR definition, regardless of the intent for the purchase.

## **Insertion of Separate Offences for E-commerce Operators (“ECOs”)**

The Finance Act, 2023 amended the Central Goods and Services Tax Act, 2017 to establish a new subsection that specifies fines for particular offences committed by ECOs. Infractions include failing to submit appropriate information on Form GSTR-8 for outbound deliveries of goods, allowing an unregistered person to supply goods and/or services through the ECO, and facilitating the interstate supply of goods and/or services by an ineligible person. ECOs who are found guilty of these infractions face a fine of Rs. 10,000 or the amount of the tax in question, whichever is greater.

The addition of specific ECO violations warrants a comprehensive study of how these changes may affect foreign ECOs, particularly those with operations in India. ECOs must have governance mechanisms to guarantee that suppliers who use their platforms are legally registered and comply with GST law requirements. Foreign-based ECOs that use Indian suppliers to execute client orders must pay close attention to these adjustments, as well as the requirements for registration and tax collection at the source.

## **Conclusion**

In conclusion, the recent amendment to India's GST law through the Finance Act, 2023 will significantly impact multinational enterprises operating in India or providing services to Indian customers. It is crucial for global companies to carefully evaluate the implications of these changes and ensure compliance. The effective date of these amendments will be determined by the federal government and published in the Official Gazette. Businesses must stay vigilant, closely monitor any further developments, and take necessary actions to fulfill their obligations under the amended GST law.

## **FAQs**

### **How do the recent amendments to India’s GST law affect global companies not registered for GST in India?**

The changes are intended to level the playing field for domestic and international shipping lines, change the location of supply for goods transport services, increase the taxability of online information and database access or retrieval (“OIDAR”) services, and impose specific penalties on e-commerce operators.

### **What is the impact of the changes to the place of supply for**

## **goods transport services?**

By taxing outbound goods transport agency (“GTA”) services, it levels the playing field between Indian and foreign shipping companies. Exemptions may apply in some cases, such as free onboard arrangements with unregistered overseas importers.

## **How do the amendments expand the taxability of OIDAR services?**

With the changes, no human intervention is necessary to classify a service as OIDAR. OIDAR services could be expanded to include online testing and instruction. The Indian Tax Department may require all providers of OIDAR services to non-taxable internet recipients to register with the government, and these providers may be audited

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