# Budget 2023: Penal provisions introduced for e-commerce operators

*21 February 2023*

***Partner:*** *Himanshu Sinha,* ***Counsel:*** *Shashank Shekhar,* ***Senior Associate:*** *Tushar Joshi,* ***Associate:*** *Samyak Jain*

In a move to curb tax leakages, the Finance Bill, 2023 (**Bill**) has proposed several amendments to regulate supplies made through e-commerce platforms by persons not registered under the Central Goods and Services Tax Act, 2017 (**CGST Act**), i.e., unregistered persons, and composition taxpayers.[1] Electronic Commerce Operators (**ECOs**) have now been burdened with the additional responsibility of ensuring compliance with applicable tax provisions in respect of such supplies and could be subjected to penalties of INR 10,000 or more for certain violations under the CGST Act.

The Finance Bill, 2023 proposes to penalise Electronic Commerce Operators who allow non-compliance of applicable provisions of the Central Goods and Services Tax Act, 2017 for supplies made on their e-commerce platform by unregistered persons and composition taxpayers.

## 1 Key provisions under CGST Act applicable to ECOs

Under the CGST Act, electronic commerce has been defined to mean the supply of goods or services or both, including digital products, over digital or electronic networks. An ECO has been defined to mean any person who owns, operates or manages a digital or electronic facility or platform, for electronic commerce.

Currently, the CGST Act contains various provisions to create an audit trail of supplies made through ECOs and to ensure that there is no tax leakage in respect of such transactions, for example -

a. <u>If the consideration is to be collected by the ECO (and not by the supplier directly)</u>, the ECO must collect tax at source (**TCS**) at a rate not exceeding 1% of the net value of taxable supplies made by a supplier of goods or services through it.[2]

b. Subject to certain exceptions, the ECO and the supplier above must be registered under the CGST Act.

c. For certain specified categories of services, ECOs must pay the Goods and Services Tax (**GST**) liability when such services are provided through their platform. These categories include transportation of passengers, provision of accommodation, housekeeping and restaurant services.

Further, at present, unregistered persons and composition taxpayers are ineligible to make supply of goods or services where payments are channelled through ECOs, leading to loss of substantial business for them. Being mindful of the same, the GST Council, in its 47th meeting, had granted an in-principle approval to allow both

1 The Composition Scheme allows small taxpayers to pay Goods and Services Tax at a fixed rate of turnover.

2 The phrase *'net value of taxable supplies'* has been defined to mean the aggregate value of taxable supplies of goods or services made during a month by all registered taxable persons through the ECO, reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

unregistered suppliers and composition taxpayers to make intra-state supply of goods through ECOs, subject to certain conditions.

# 2 Proposals in the Finance Bill, 2023

## 2.1 Supplies by unregistered persons through ECOs

The government has now proposed to impose a penalty on ECOs that allow unregistered persons to supply goods or services (be it inter or intra-state) through their platform unless such persons are exempted from registration by way of a notification issued under the CGST Act.

This proposal, if implemented, can lead to an anomaly in respect of supplies made by certain service providers[3] whose turnover does not exceed INR 20 lakhs. While the general rule is that all persons who supply goods or services through ECOs (that are facilitating payment and collecting tax at source) are required to register under the GST laws, such service providers are exceptions to this rule. This will conflict with the proposal made by the Bill which only provides for an exemption by way of a notification issued under the CGST Act.

Thus, if this proposal is given effect, it will have an onerous impact on ECOs since in addition to paying the applicable GST on supplies of such services of unregistered service providers, ECOs will also be subject to penalty for allowing these supplies.

## 2.2 Supplies by composition taxpayers through ECOs

The Bill proposes to allow intra-state supply of goods by composition taxpayers though ECOs. However, no changes have been proposed in respect of the inter-state supplies of goods made by them. The supply of services (whether inter-state or intra-state) by composition taxpayers through ECOs remains prohibited under the CGST Act.

It has further been proposed that an ECO will be subject to penal provisions if it allows an inter-state supply of goods or services or both through it by composition taxpayers.

## 2.3 Supply of goods by a person exempted from obtaining registration through ECOs

At present, every ECO who collects tax at source is required to furnish a statement containing the details of (i) the outward supplies of goods or services or both effected through it, (ii) the supplies of goods or services or both returned through it, and (iii) the amount of tax collected by it during a month.

If an ECO fails to furnish the correct details of any outward supply of goods effected through it by a person exempted from obtaining registration, the Bill proposes that such an ECO will be subject to penal provisions.

## 2.4 Penalty proposed to be imposed in case of contraventions discussed above

The penalty proposed to be imposed on the ECOs in respect of the contraventions discussed above is either INR 10,000 or an amount equivalent to the amount of tax involved had such supply been made by a registered person (other than a person who has opted for the composition scheme), whichever is higher. Given that this penalty amount will be applicable in respect of each unregistered person/ineligible composition taxpayer making supplies through the ECO as well as for each event where details of supplies made by unregistered persons exempt from registration are not furnished, it could lead to hefty penalties overall for ECOs.

---

3 This refers to the unregistered service providers who do not make any inter-state taxable supplies and provide the services notified under Section 9(5) of the CGST Act through ECOs in respect of which GST is payable by the ECOs.

## 3 Conclusion

ECOs will have to be vigilant regarding supplies made through them by small scale players and prohibit any infraction of the relevant provisions of the CGST Act to avoid attracting the penal provisions.

Further, the government has only partially given effect to the stand adopted in the 47th GST Council meeting by allowing composition taxpayers (but not unregistered persons) to make intra-state supplies of goods through ECOs. Supplies by unregistered persons through ECOs have effectively reached a dead-end as ECOs will be left with no choice but to prohibit them from using their platforms, even though their turnover may be below the threshold required for registration under the CGST Act.