

GST 2.0 for Intermediaries - Unlocking India's Global Services Export Potential

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As India strategically fortifies its global economic presence and assumes a pivotal role as a services export hub, its tax policy must proactively evolve to support this ambition. The Union Budget 2026 signals such a recalibration. Acting upon the recommendations of the [56th Goods and Service Tax \("GST"\) Council Meeting](#) held on 03.09.2025, the Finance Bill, 2026 proposes the omission of Section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 ("IGST Act"). This proposal is not a mere drafting exercise. It is a structural correction that restores primacy to the destination-based character of GST and recalibrates the place of supply framework for intermediary services in line with global best practices.

Embodying the spirit of 'Kartavya' and sustained reform momentum articulated in the Budget, this amendment underscores a deliberate policy choice. Its aim is multifaceted: to streamline cross-border taxation, cultivate a framework of trust-based compliance, and crucially, to ensure that Indian enterprises maintain their global competitive edge by exempting them from tax burdens on value truly consumed outside India's territorial jurisdiction.

Reclaiming the Destination Principle

Section 13 of the IGST Act governs place of supply where either the supplier or the recipient is located outside India. Until now, Section 13(8)(b) created a legal fiction by deeming the place of supply of "intermediary services" to be the location of the

intermediary. The consequence was that Indian intermediaries were liable to GST even where services were rendered to overseas recipients and consideration was received in convertible foreign exchange. Conversely, similar services procured from intermediaries located outside India did not, in several cases, trigger corresponding tax implications as “import of services,” thereby creating asymmetry in treatment.

With the proposed omission of Section 13(8)(b), the place of supply for intermediary services is likely to fall back upon the default rule under Section 13(2), i.e., the location of the recipient of services. The consequence is significant:

- Where the recipient is located outside India and other conditions under Section 2(6) of the IGST Act are satisfied, such supplies would qualify as “export of services” and consequently as zero-rated supplies under Section 16 of the IGST Act.
- Conversely, where the conditions under Section 2(11) of the IGST Act are satisfied, services procured from overseas intermediaries may qualify as “import of services,” attracting tax in India.

The reform thus restores symmetry, reinforces the destination principle, and removes the conceptual inconsistency of taxing services in India where their effective consumption lies offshore.

The Intermediary Construct: A Legacy of the Negative List Era

The intermediary concept traces its origins to the erstwhile 2012 negative list regime under service tax. Despite the express articulation of GST as a destination-based consumption tax in the Statement of Objects and Reasons, the deeming fiction embedded in Section 13(8)(b) was carried into the GST framework.

This conceptual dissonance led to challenges before various Hon’ble High Courts, primarily on the grounds that Section 13(8)(b) contravened the fundamental destination-based principle of GST and exceeded the legislative framework contemplated under Articles 246A and 269A of the Constitution of India. While the provision withstood judicial scrutiny, the debate underscored a deeper tension between statutory drafting and economic principle.

The present proposal reflects a conscious legislative choice to resolve that tension in favour of policy coherence. By aligning intermediary services with the default place of supply rule, the Government has effectively harmonized statutory mechanics with constitutional philosophy.

The Elusive Definition of "Intermediary"

Although the constitutional challenges primarily sought to secure export benefits and corresponding refunds, the bedrock issue that profoundly plagued the industry was the elusive scope of what constitutes an 'intermediary.' Section 2(13) of the IGST Act defines an 'intermediary' as a broker, an agent, or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

While the statutory text *prima facie* appears confined to classical agency arrangements, its application has been far from straightforward. Over the years, both the legislative intent and judicial pronouncements have endeavoured to delineate the precise contours of 'intermediary services.' These clarifications have consistently emphasised three core attributes of an intermediary arrangement: (i) the indispensable presence of at least three parties, a main supplier, a recipient, and the intermediary; (ii) the intermediary's role in

'arranging or facilitating' the principal supply between the other two parties; and (iii) the crucial exclusion of a person supplying the main service 'on his own account.'

Despite these judicial guardrails, administrative interpretation often expanded the scope of the provision frequently reclassifying independent suppliers as intermediaries. Even limited facilitation functions were, in several cases, characterised as intermediary services, often overriding assertions of principal-to-principal supply:

- Admission facilitation services for foreign universities;
- Marketing, liaison, and technical support provided by Indian subsidiaries to their foreign principals;
- Payment-processing services in cross-border transactions;
- IT-enabled services including data-hosting services;
- Business Process Outsourcing (BPO) and Knowledge Process Outsourcing (KPO) operations; and
- Professional consultancy firms rendering auxiliary services to multinational group entities.

The commercial effect was substantial. Despite receipt of foreign exchange and offshore consumption, such services were denied export status and consequent zero-rating benefits, resulting in working capital blockage and competitive disadvantage.

The Definition Survives — A Shift in Consequence

Notably, while Section 13(8)(b) is proposed to be omitted, the definition of “intermediary” under Section 2(13) remains intact. At first glance, this may raise questions regarding its continuing relevance. However, the retention of the definition is neither accidental nor redundant.

The classification of a service as “intermediary” will no longer, by itself, result in domestic taxability. Instead, such classification will now operate within the broader framework of Section 13. Consequently, services previously characterised as intermediary and denied export benefits may now legitimately qualify as exports, provided the conditions under the IGST Act are satisfied. Equally, transactions earlier escaping tax as “import of services” may now fall within the tax net if the recipient is located in India and other statutory conditions are met.

Paradoxically, judicial precedents that once operated to the detriment of taxpayers may now serve as enabling authorities to support export claims, reversing previous denials.

Interplay with Specific Place of Supply Provisions

While the 56th GST Council Recommendation and the Memorandum Explaining the Provisions in the Finance Bill, 2026 unequivocally state that the place of supply for 'intermediary services' will now be governed by the default provision of Section 13(2), a critical interpretational question remains: will intermediary services uniformly default to Section 13(2), or could specific place of supply provisions under Sections 13(3) to 13(13) still apply depending on the nature of the underlying service?

For instance, performance-based services, or event-based services are governed by specific statutory rules. If an intermediary facilitates such services, the determination of place of supply may not be automatic. The omission of Section 13(8)(b) may not, in itself, override other specific statutory provisions.

Accordingly, the critical inquiry will shift from the label “intermediary” to the true nature of the underlying service facilitated. Whether the general rule under Section 13(2) will uniformly apply, or whether specific sub-sections will govern certain fact patterns, is likely to ignite the next wave of interpretational debates and potential disputes.

Prospective or Retrospective? The Fiscal Stakes

Perhaps the most consequential issue pertains to the retrospective application and impact of the proposed omission, particularly in the absence of a specific savings clause, raises important questions:

- Will the omission have prospective effect?
- How will the omission impact pending proceedings?
- Could it trigger refund claims for taxes paid in prior periods?
- Could import-related tax exposures arise for earlier year?

The settled principle is that substantive amendments operate prospectively. However, an argument may be advanced that the omission is curative, a legislative correction to restore alignment with the destination-based scheme of GST. If viewed as declaratory or clarificatory, Courts may be invited to consider retrospective effect. However, considering that the constitutional validity of the provision has previously been upheld by the High Courts, any judicial endorsement of retrospective application may encounter significant legal constraints.

The financial implications are substantial. Refund claims spanning several years could emerge, and conversely, the sustainability of past demands may be tested. Clarity from the Central Board of Indirect Taxes and Customs (“CBIC”) through an appropriate circular would go a long way in mitigating avoidable litigation and reinforcing ease of doing business.

Strategic Business Imperatives

To effectively capitalize on the immense opportunities presented by this proposed amendment, businesses must adopt a proactive and agile approach by undertaking the following critical steps:

- **Contractual Re-evaluation:** Meticulously examine existing contracts, especially in light of settled judicial precedents that have previously classified their activities as 'intermediary' services, to ascertain the implications and ensure alignment with the revised position.
- **Business Model and Documentation Alignment:** Comprehensively review business models, contractual agreements, and invoicing practices to accurately reflect the change in taxability status from taxable to zero-rated or vice versa, ensuring full compliance and optimal benefit realization.
- **Re-determining Place of Supply:** Carefully assess the applicability of other specific subsections under Section 13 of the IGST Act to correctly re-determine the place of supply and understand any consequent implications for their services.
- **Strategic Timing of Receipts:** Explore the feasibility of strategically delaying receipts for ongoing cross-border transactions until the amendment is formally notified, thereby maximizing the accrual of benefits.
- **Optimizing Refund Claims:** Formulate a tax-optimized strategy for claiming refunds for past periods, particularly for businesses positively impacted by this omission, ensuring robust documentation is maintained to substantiate such claims.
- **Navigating Retrospectivity:** Strategize on the approach for past periods, whether

to file protective refund claims or await further judicial or legislative clarity on the complex issue of retrospective applicability.

- **Risk Review:** Evaluate exposure relating to potential import-of-service implications for past or transitional periods.

Conclusion: A Progressive Reset with Measured Optimism

The proposed omission of Section 13(8)(b) marks a decisive and progressive shift in India's indirect tax policy. It strengthens the integrity of the GST framework, enhances export competitiveness, and signals responsiveness to industry concerns.

However, as is often the case with monumental legal reforms, the nuances of implementation hold the key. Until the CBIC provides comprehensive clarifications regarding the implications of this omission, particularly on the critical issue of retrospective applicability, the legal landscape will remain dynamic and necessitate careful navigation. As we eagerly anticipate the formal notification of this transformative amendment, the industry finds itself at an intriguing confluence of optimism and cautious curiosity. The ultimate success of this initiative will hinge on balanced administrative guidance, disciplined contractual structuring, and informed judicial engagement.

For now, the direction is unmistakable. India's GST regime is evolving, not merely through incremental adjustments, but through principled course correction. For intermediaries and service exporters alike, this is not just a policy amendment; it is a moment of strategic inflection.