

# SKKA IDT ALERT

23/2023-24

The CBIC has notified the amendments to CGST Act, 2017 to be made effective from 01.10.2023 as passed by the Finance Act, 2023 vide N/No. 28/2023 - Central Tax dated 31st July 2023. The gist of the amendments except those relating to formation of GST Tribunal are given herein below:

Section No	Old Provision	Amended Provision	SKKA Comments								
<b>Section 10-Composition levy</b>	<p>(2) The registered person shall be eligible to opt under sub-section (1), if—</p> <table border="1"><tr><td>[(a)</td><td>save as provided in sub-section (1), he is not engaged in the supply of services;]</td></tr><tr><td>(b)</td><td>he is not engaged in making any supply of goods [or services] which are not leviable to tax under this Act;</td></tr><tr><td>(c)</td><td>he is not engaged in making any inter-State outward supplies of goods [or services];</td></tr><tr><td>(d)</td><td>he is not engaged in making any supply of <b>goods [or services]</b> through an electronic commerce operator who is required to collect tax at source under <a href="#">section 52</a>;</td></tr></table> <p>[(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4)</p>	[(a)	save as provided in sub-section (1), he is not engaged in the supply of services;]	(b)	he is not engaged in making any supply of goods [or services] which are not leviable to tax under this Act;	(c)	he is not engaged in making any inter-State outward supplies of goods [or services];	(d)	he is not engaged in making any supply of <b>goods [or services]</b> through an electronic commerce operator who is required to collect tax at source under <a href="#">section 52</a> ;	<p><b>Section 137 of Finance Act, 2023</b></p> <p><b>The words “goods or” is proposed to be deleted from 10(2)(d) and 10(2A)(c).</b></p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 - Central Tax dated 31<sup>st</sup> July 2023.</b></p>	<p><i>The above amendment is aimed to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy.</i></p>
[(a)	save as provided in sub-section (1), he is not engaged in the supply of services;]										
(b)	he is not engaged in making any supply of goods [or services] which are not leviable to tax under this Act;										
(c)	he is not engaged in making any inter-State outward supplies of goods [or services];										
(d)	he is not engaged in making any supply of <b>goods [or services]</b> through an electronic commerce operator who is required to collect tax at source under <a href="#">section 52</a> ;										

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	<p>of <u>section 9</u>, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of <u>section 9</u>, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent of the turnover in State or turnover in Union territory, if he is not—</p> <p>(a) engaged in making any supply of goods or services which are not leviable to tax under this Act;</p> <p>(b) engaged in making any inter-State outward supplies of goods or services;</p> <p>(c) engaged in making any supply of <b>goods or</b> services through an electronic commerce operator who is required to collect tax at source under <u>section 52</u>;</p>		
<p><b>Section 16- Eligibility and conditions for taking input tax credit</b></p>	<p>“Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be <b>added to his output tax liability</b>,</p>	<p><b>Section 138 of Finance Act, 2023</b></p> <p>For the highlighted words, the below shall be substituted –  <b>“paid by him along with interest payable under section 50.”</b></p> <p><b>In the second para after the words made by him, the words “to the supplier” shall be inserted.</b></p> <p><b>The said amendment shall be</b></p>	<p><b>Second and third provisos to sub-section (2) of section 16 of the CGST Act are being amended to align the said sub-section with the return filing system provided in the said Act.</b></p>

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	<p><b>along with interest thereon</b>, in such manner as may be prescribed.</p> <p><b>Provided also</b> that the 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.</p>	<p><b>made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 - Central Tax dated 31<sup>st</sup> July 2023.</b></p>	
<p><b>Section 17- Apportionment of credit and blocked credits</b></p>	<p>(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.</p> <p>[Explanation.—For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, <b>except those specified in paragraph 5 of the said Schedule.</b></p>	<p><b>Section 139 of Finance Act, 2023</b></p> <p><i>for the words and figure "except those specified in paragraph 5 of the said Schedule", the following shall be substituted, namely:--</i></p> <p><i>"except,--</i></p> <p><i>(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and</i></p> <p><i>(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule";</i></p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 - Central Tax dated 31<sup>st</sup> July 2023.</b></p>	<p><i>The amendment provides that the value of supply for clause 8(a) of Sch III viz. "Supply of warehoused goods to any person before clearance for home consumption" shall be taken as exempt supply value for the purposes of reversal of common ITC under section 17(2) of the Act read with Rule 42/43 of the CGST Rules, 2017. This amendment shall effect companies who are importing goods in India but selling the same to another entity before clearance for home consumption to other company and thus such value shall be deemed to be exempt supply value for reversal of ITC.</i></p>
<p><b>Section 17- Apportionment of credit and blocked credits</b></p>	<p>NA</p>	<p><i>"(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;"</i></p>	<p><i>With this amendment, the Govt. has added one more ITC in list of blocked ITC and now GST on expenditure toward CSR activities as per section 135 of the Companies Act,</i></p>

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		<p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 – Central Tax dated 31/07/2023.</b></p>	<p><i>2013 cannot be claimed as ITC as being specifically prohibited. However since the amendment is perspective, the argument of it being eligible in the earlier period gets more strong.</i></p> <p><i>In service tax regime, the judgment of the Hon'ble Mumbai CESTAT in ESSEL PROPACK LTD. Versus COMMISSIONER OF CGST, BHIWANDI 2018 (362) E.L.T. 833 (Tri. - Mumbai) had allowed such Cenvat credit, which now gets reversed with the current amendment.</i></p>
<p><b>Section 23- Persons not liable for registration</b></p>	<p><b>23. (1)</b> The following persons shall not be liable to registration, namely:—</p> <p>(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;</p> <p>(b) an agriculturist, to the extent of supply of produce out of cultivation of land.</p> <p>(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from</p>	<p><b>Section 140 of the Finance Act, 2023</b></p> <p><i>The following shall be substituted-</i></p> <p><i>“Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24,—</i></p> <p><i>(a) the following persons shall not be liable to registration, namely:—</i></p> <p><i>(i) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly</i></p>	<p><i>The above amendment is being made applicable w.e.f. 01.07.2017 so as to provide that persons for compulsory registration in terms of sub section (1) of section and section 22 of the Act need not register if exempt under sub section (1) of section 23. The above is a welcome amendment to clarify the intent of the Govt.</i></p>

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	<p>obtaining registration under this Act.</p>	<p><i>exempt from tax under this Act or under the Integrated Goods and Services Tax Act, 2017;</i></p> <p><i>(ii) an agriculturist, to the extent of supply of produce out of cultivation of land;</i></p> <p><i>(b) the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act."</i></p> <p><i>The said amendment shall be made applicable retrospectively w.e.f. 1<sup>st</sup> July 2017 vide N/No. 28/2023 - Central Tax dated 31/07/2023.</i></p>	
<p><b>Section 37,39,44 and 52</b></p>	<p>NA</p>	<p><b>Section 142 - 145 of Finance Act, 2023</b></p> <p>In all the sections, further sub section has been introduced to provide the upper time period to file returns i.e. the time period to file GSTR 1/3B/9/8 for a tax period is being restricted up to <b>three years</b> from the due date of furnishing the said statement/return.</p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 - Central Tax dated</b></p>	<p><i>The above amendment restricts the filing of GSTR 1/3B/9/8 for a tax period up to 3 years from the due date of furnishing of the said statement/return.</i></p> <p><i>Powers has been vested on the Council to allow filing beyond such period also subject to such restriction and conditions as may be notified.</i></p>

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		31/07/2023.	
<b>Section 56- Interest delayed refunds</b>	<b>56-</b> 56. If any tax ordered to be refunded under sub-section (5) of <u>section 54</u> to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund <b>from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:</b>	<p><b>Section 147 of Finance Act, 2023</b></p> <p><b>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</b></p> <p><b><i>“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.</i></b></p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 – Central Tax dated 31/07/2023.</b></p>	<i>Vide this amendment, the Govt has taken powers to notify the conditions and restrictions for payment of interest on delayed payment of refund amount beyond 60 days of application</i>
<b>Section 122- Penalty for certain offences</b>	NA	<p><b>Section 155 of Finance Act, 2023</b></p> <p><b>New section inserted</b></p> <p><b>“(1B) Any electronic commerce operator who--</b></p> <p><b>(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;</b></p> <p><b>(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State</b></p>	<i>With this amendment, penalty provisions on ECO has been inserted in the statue in case of noncompliance of provisions of section 52 of the Act. With this the onus of verification of persons to use the platform operated by the ECO has been heavily shifted on the ECO and any non compliance will attract penalty as per section 122(1B).</i>

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		<p>supply; or (iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,</p> <p>shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.”</p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 – Central Tax dated 31/07/2023.</b></p>	
<p><b>Section 132- Punishment for certain offences</b></p>	<p>(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences], namely:—</p> <p>(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;</p> <p>(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;</p> <p>[(c) avails input tax credit using the invoice or bill</p>	<p><b>Section 156 of Finance Act, 2023</b></p> <p>(a) clauses (g), (j) and (k) shall be omitted;</p> <p>(b) in clause (l), for the words, brackets and letters “clauses (a) to (k)”, the words, brackets and letters “clauses (a) to (f) and clauses (h) and (i)” shall be substituted;</p> <p>(c) in clause (iii), for the words “any other offence”, the words, brackets and letter “an offence specified in clause (b),” shall be substituted;</p> <p>(d) in clause (iv), the words, brackets and letters “or</p>	<p><i>With this amendment, certain offences such as tampering of evidence, obstructing any officer on duty etc. has been decriminalized, which is a welcome move.</i></p> <p><i>Further, the monetary threshold for prosecution for cases other than that of issuance of fake invoices has been increased to Rs. 2 cr. from Rs. 1 cr.</i></p> <p><i>The threshold for offence of fake invoicing remains at Rs. 1 cr</i></p>

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	<p>referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;]</p> <p>(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;</p> <p>(e) evades tax [***] or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);</p> <p>(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;</p> <p><b>(g) obstructs or prevents any officer in the discharge of his duties under this Act;</b></p> <p>(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;</p> <p>(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;</p> <p><b>(j) tampers with</b></p>	<p><b>clause (g) or clause (j)” shall be omitted.</b></p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 - Central Tax dated 31/07/2023.</b></p>	
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<p>or destroys any material evidence or documents;</p> <p><b>(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or</b></p> <p>(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses <b>(a) to (k) of this section,</b></p> <p>shall be punishable—</p> <p>(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;</p> <p>(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;</p> <p><b>(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit</b></p>		
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	<p>wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;</p> <p>(iii) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.</p>		
<p><b>Section 138- Compounding of offences.</b></p>	<p>(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case may be, of such compounding amount in such manner as may be prescribed:</p> <p>Provided that nothing contained in this section shall apply to—</p> <p>(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable</p>	<p><b>Section 157 of Finance Act, 2023</b></p> <p>(i) for clause (a), the following clause shall be substituted, namely:--</p> <p>“(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;”</p> <p>(ii) clause (b) shall be omitted.</p> <p>(iii) for clause (c), the following clause shall be substituted, namely:--</p> <p>“(c) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section</p>	<p><i>With this amendment the provisions of compounding of offence option will not be available to the persons involved in offences relating to issuance of invoices without supply of goods or services or both.</i></p> <p><i>Further the maximum and minimum amount for compounding has also been rationalized for wider coverage of the same.</i></p>

	<p>to offences specified in clauses (a) to (f) of the said sub-section;</p> <p><del>(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;</del></p> <p>(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;</p> <p>(d) a person who has been convicted for an offence under this Act by a court;</p> <p><del>(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and</del></p> <p>(f) any other class of persons or offences as may be prescribed:</p> <p>(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the <b>minimum amount not being less than ten thousand rupees or fifty per cent of the</b></p>	<p>132;”</p> <p><b>In sub-section (2), for the words “ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum</b></p>	
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	<p><b>tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent of the tax, whichever is higher.</b></p>	<p>amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher”, the words</p> <p><b>“twenty-five per cent. of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved” shall be substituted.</b></p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 - Central Tax dated 31/07/2023.</b></p>	
<b>Sch III</b>	<p>7. 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.</p> <p>8. (a) Supply of warehoused goods to any person before clearance for home consumption;</p> <p>(b) 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.</p> <p>Explanation 2.—For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962).</p>	<p><b>Section 159 of Finance Act, 2023</b></p> <p><b>Sl. No. 7 and 8 of the SCH III is proposed to be applicable retrospectively w.e.f. 01.07.2017.</b></p> <p><b>Also no refund of tax which has been collected on the above account can be claimed.</b></p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 - Central Tax dated 31/07/2023.</b></p>	<p><i>The above is a welcome amendment as the entries has been made applicable retrospectively as during the intermittent period i.e. from 01.07.2017 to 01.02.2019, there was dispute as to taxability of such supplies and issues of ITC reversal was being raised by the department. Now, the same shall not be raised in any proceedings as the amendment has been proposed to be made applicable retrospectively.</i></p>
<b>Section 2(16) of IGST Act, 2017</b>	<p>"non-taxable online recipient" means any Government, local authority, governmental</p>	<p><b>Section 160 of Finance Act, 2023</b></p>	<p><i>With this amendment, the definition of non-taxable online</i></p>

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	<p>authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.</p> <p>Explanation.—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—</p> <p>(i) set up by an Act of Parliament or a State Legislature; or</p> <p>(ii) established by any Government,</p> <p>with ninety per cent or more participation by way of equity or control, to carry out any function entrusted 5[to a Panchayat under article 243G or] to a municipality under article 243W of the Constitution;</p>	<p><b>“non-taxable online recipient” means any unregistered person receiving online information and database access or retrieval services located in taxable territory.</b></p> <p><b>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 Central Goods and Services Tax Act, 2017’;</b></p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 - Central Tax dated 31/07/2023.</b></p>	<p><i>recipient has been revised by removing the condition of receipt of online information and database access or retrieval services (OIDAR) for purposes other than commerce, industry or any other business or profession so as to provide for taxability of OIDAR service provided by any person located in nontaxable territory to an unregistered person receiving the said services and located in the taxable territory. Further, it also seeks to clarify that the persons registered solely in terms of clause (vi) of Section 24 of CGST Act shall be treated as unregistered person for the purpose of the said clause.</i></p>
<p><b>Section 2(17) of IGST Act, 2017</b></p>	<p>(17) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply <del>essentially automated and involving minimal human intervention</del> and impossible to ensure in the absence of information technology and includes electronic services such as,—</p> <p>(i) advertising on</p>	<p><b>Section 160 of Finance Act, 2023</b></p> <p><b>The words “essentially automated and involving minimal human intervention and” shall be omitted.</b></p> <p><b>The said amendment shall be made applicable w.e.f. 1<sup>st</sup> October 2023 vide N/No. 28/2023 - Central Tax dated 31/07/2023.</b></p>	<p><i>With this amendment the condition of rendering OIDAR services being essentially automated and involving minimal human intervention has been done away with.</i></p> <p><i>Over the last 5 years of GST several advance rulings has been pronounced on the OIDAR services and its classification</i></p>

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	<p>the internet;</p> <p>(ii) providing cloud services;</p> <p>(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;</p> <p>(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;</p> <p>(v) online supplies of digital content (movies, television shows, music and the like);</p> <p>(vi) digital data storage; and</p> <p>(vii) online gaming;</p>		<p><i>and the phrase being deleted now was used in almost all rulings to interpret the definition of OIDAR services. Now, with the amendment, the definition will be interpreted in its new form and we shall see how the authorities interpret the same in times to come.</i></p>
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